PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-NINTH PARLIAMENT

FIRST SESSION

THURSDAY, 18 AUGUST 2022

hansard.parliament.vic.gov.au

By authority of the Victorian Government Printer

The Governor

The Honourable LINDA DESSAU AC

The Lieutenant-Governor

The Honourable JAMES ANGUS AO

The ministry

Premier	The Hon. DM Andrews MP
Deputy Premier, Minister for Transport Infrastructure, Minister for the Suburban Rail Loop and Minister for Commonwealth Games Delivery	The Hon. JM Allan MP
Attorney-General and Minister for Emergency Services	The Hon. J Symes MLC
Minister for Training and Skills, Minister for Higher Education and Minister for Agriculture	The Hon. GA Tierney MLC
Treasurer, Minister for Economic Development, Minister for Industrial Relations and Minister for Trade	The Hon. TH Pallas MP
Minister for Planning	The Hon. EA Blandthorn MP
Minister for Child Protection and Family Services and Minister for Disability, Ageing and Carers	The Hon. CW Brooks MP
Minister for Police, Minister for Crime Prevention and Minister for Racing	The Hon. AR Carbines MP
Minister for Public Transport, Minister for Roads and Road Safety, Minister for Industry Support and Recovery and Minister for Business Precincts	The Hon. BA Carroll MP
Minister for Energy, Minister for Environment and Climate Action and Minister for Solar Homes	The Hon. L D'Ambrosio MP
Minister for Tourism, Sport and Major Events and Minister for Creative Industries	The Hon. S Dimopoulos MP
Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Local Government and Minister for Suburban Development	The Hon. MM Horne MP
Minister for Education and Minister for Women	The Hon. NM Hutchins MP
Minister for Corrections, Minister for Youth Justice, Minister for Victim Support and Minister for Fishing and Boating	The Hon. S Kilkenny MP
Minister for Commonwealth Games Legacy and Minister for Veterans	The Hon. SL Leane MLC
Assistant Treasurer, Minister for Regulatory Reform, Minister for Government Services and Minister for Housing	The Hon. DJ Pearson MP
Minister for Employment, Minister for Innovation, Medical Research and the Digital Economy, Minister for Small Business and Minister for Resources	The Hon. JL Pulford MLC
Minister for Water, Minister for Regional Development and Minister for Equality	The Hon. H Shing MLC
Minister for Multicultural Affairs, Minister for Prevention of Family Violence, Minister for Community Sport and Minister for Youth	The Hon. RL Spence MP
Minister for Workplace Safety and Minister for Early Childhood and Pre-Prep	The Hon. I Stitt MLC
Minister for Health and Minister for Ambulance Services	The Hon. M Thomas MP
Minister for Mental Health and Minister for Treaty and First Peoples	The Hon. G Williams MP
Cabinet Secretary	Mr SJ McGhie MP

Legislative Council committees

Economy and Infrastructure Standing Committee

Mr Finn, Mr Gepp, Dr Kieu, Mrs McArthur, Mr Quilty and Mr Tarlamis.
Participating members: Dr Bach, Ms Bath, Dr Cumming, Mr Davis, Ms Lovell, Mr Meddick, Mr Ondarchie, Mr Rich-Phillips, Ms Vaghela and Ms Watt.

Environment and Planning Standing Committee

Dr Bach, Ms Bath, Dr Cumming, Mr Grimley, Mr Hayes, Mr Meddick, Mr Melhem, Dr Ratnam, Ms Terpstra and Ms Watt.
Participating members: Ms Burnett-Wake, Ms Crozier, Mr Davis, Dr Kieu, Mrs McArthur, Mr Quilty and Mr Rich-Phillips.

Legal and Social Issues Standing Committee

Ms Burnett-Wake, Mr Erdogan, Dr Kieu, Ms Maxwell, Mr Ondarchie, Ms Patten and Ms Taylor.
Participating members: Dr Bach, Ms Bath, Ms Crozier, Dr Cumming, Mr Gepp, Mr Grimley, Ms Lovell, Mr Quilty, Dr Ratnam, Mr Tarlamis, Ms Terpstra, Ms Vaghela and Ms Watt.

Privileges Committee

Mr Atkinson, Mr Bourman, Mr Davis, Mr Grimley, Mr Leane, Mr Rich-Phillips, Ms Shing, Ms Symes and Ms Tierney.

Procedure Committee

The President, the Deputy President, Ms Crozier, Mr Davis, Mr Grimley, Dr Kieu, Ms Patten, Ms Pulford and Ms Symes.

Joint committees

Dispute Resolution Committee

Council: Mr Bourman, Ms Crozier, Mr Davis, Ms Symes and Ms Tierney.
Assembly: Ms Allan, Ms Hennessy, Mr Merlino, Mr Pakula and Mr R Smith.

Electoral Matters Committee

Council: Mr Erdogan, Mrs McArthur, Mr Meddick, Mr Melhem, Ms Lovell, Mr Quilty and Mr Tarlamis.
Assembly: Ms Hall, Dr Read and Mr Rowswell.

House Committee

Council: The President (*ex officio*), Mr Bourman, Mr Davis, Mr Leane, Ms Lovell and Ms Stitt.
Assembly: The Speaker (*ex officio*), Mr T Bull, Ms Crugnale, Mr Fregon, Ms Sandell, Ms Staley and Ms Suleyman.

Integrity and Oversight Committee

Council: Mr Grimley.
Assembly: Mr Halse, Mr Maas, Mr Rowswell, Mr Taylor, Ms Ward and Mr Wells.

Pandemic Declaration Accountability and Oversight Committee

Council: Ms Crozier and Mr Erdogan.
Assembly: Mr J Bull, Mr Eren, Ms Kealy, Mr Sheed, Ms Ward and Mr Wells.

Public Accounts and Estimates Committee

Council: Mrs McArthur and Ms Taylor.
Assembly: Ms Connolly, Mr Hibbins, Mr Maas, Mr Newbury, Mr D O'Brien, Ms Richards and Mr Richardson.

Scrutiny of Acts and Regulations Committee

Council: Mr Gepp, Ms Patten, Ms Terpstra and Ms Watt.
Assembly: Mr Burgess, Ms Connolly and Mr Morris.

Heads of parliamentary departments

Assembly: Clerk of the Legislative Assembly: Ms B Noonan

Council: Clerk of the Parliaments and Clerk of the Legislative Council: Mr A Young

Parliamentary Services: Secretary: Ms T Burrows

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-NINTH PARLIAMENT—FIRST SESSION

President
The Hon. N ELASMAR (from 18 June 2020)
The Hon. SL LEANE (to 18 June 2020)

Deputy President
The Hon. WA LOVELL

Acting Presidents
Mr Bourman, Mr Gepp, Mr Melhem and Ms Patten

Leader of the Government
The Hon. J SYMES

Deputy Leader of the Government
The Hon. GA TIERNEY

Leader of the Opposition
The Hon. DM DAVIS

Deputy Leader of the Opposition
Ms G CROZIER

Member	Region	Party	Member	Region	Party
Atkinson, Mr Bruce Norman	Eastern Metropolitan	LP	McIntosh, Mr Thomas Andrew[9]	Eastern Victoria	ALP
Bach, Dr Matthew[1]	Eastern Metropolitan	LP	Maxwell, Ms Tania Maree	Northern Victoria	DHJP
Barton, Mr Rodney Brian	Eastern Metropolitan	TMP	Meddick, Mr Andy	Western Victoria	AJP
Bath, Ms Melina Gaye	Eastern Victoria	Nats	Melhem, Mr Cesar	Western Metropolitan	ALP
Bourman, Mr Jeffrey	Eastern Victoria	SFFP	Mikakos, Ms Jenny[10]	Northern Metropolitan	ALP
Burnett-Wake, Ms Cathrine[2]	Eastern Victoria	LP	O'Donohue, Mr Edward John[11]	Eastern Victoria	LP
Crozier, Ms Georgina Mary	Southern Metropolitan	LP	Ondarchie, Mr Craig Philip	Northern Metropolitan	LP
Cumming, Dr Catherine Rebecca	Western Metropolitan	Ind	Patten, Ms Fiona Heather	Northern Metropolitan	FPRP
Dalidakis, Mr Philip[3]	Southern Metropolitan	ALP	Pulford, Ms Jaala Lee	Western Victoria	ALP
Davis, Mr David McLean	Southern Metropolitan	LP	Quilty, Mr Timothy	Northern Victoria	LDP
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Ratnam, Dr Samantha Shantini	Northern Metropolitan	Greens
Erdogan, Mr Enver[4]	Southern Metropolitan	ALP	Rich-Phillips, Mr Gordon Kenneth	South Eastern Metropolitan	LP
Finn, Mr Bernard Thomas Christopher[5]	Western Metropolitan	DLP	Shing, Ms Harriet	Eastern Victoria	ALP
Garrett, Ms Jane Furneaux[6]	Eastern Victoria	ALP	Somyurek, Mr Adem[12]	South Eastern Metropolitan	Ind
Gepp, Mr Mark	Northern Victoria	ALP	Stitt, Ms Ingrid	Western Metropolitan	ALP
Grimley, Mr Stuart James	Western Victoria	DHJP	Symes, Ms Jaclyn	Northern Victoria	ALP
Hayes, Mr Clifford	Southern Metropolitan	SAP	Tarlamis, Mr Lee[13]	South Eastern Metropolitan	ALP
Jennings, Mr Gavin Wayne[7]	South Eastern Metropolitan	ALP	Taylor, Ms Nina	Southern Metropolitan	ALP
Kieu, Dr Tien Dung	South Eastern Metropolitan	ALP	Terpstra, Ms Sonja	Eastern Metropolitan	ALP
Leane, Mr Shaun Leo	Eastern Metropolitan	ALP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Limbrick, Mr David[8]	South Eastern Metropolitan	LDP	Vaghela, Ms Kaushaliya Virjibhai[14]	Western Metropolitan	Ind
Lovell, Ms Wendy Ann	Northern Victoria	LP	Watt, Ms Sheena[15]	Northern Metropolitan	ALP
McArthur, Mrs Beverley	Western Victoria	LP	Wooldridge, Ms Mary Louise Newling[16]	Eastern Metropolitan	LP

[1] Appointed 5 March 2020
[2] Appointed 2 December 2021
[3] Resigned 17 June 2019
[4] Appointed 15 August 2019
[5] LP until 24 May 2022
Ind 24 May–2 June 2022
[6] Died 2 July 2022
[7] Resigned 23 March 2020
[8] Resigned 11 April 2022
Appointed 23 June 2022
[9] Appointed 18 August 2022
[10] Resigned 26 September 2020
[11] Resigned 1 December 2021
[12] ALP until 15 June 2020
[13] Appointed 23 April 2020
[14] ALP until 7 March 2022
[15] Appointed 13 October 2020
[16] Resigned 28 February 2020

Party abbreviations

AJP—Animal Justice Party; ALP—Labor Party; DHJP—Derryn Hinch's Justice Party;
DLP—Democratic Labour Party; FPRP—Fiona Patten's Reason Party; Greens—Australian Greens;
Ind—Independent; LDP—Liberal Democratic Party; LP—Liberal Party; Nats—The Nationals;
SAP—Sustainable Australia Party; SFFP—Shooters, Fishers and Farmers Party; TMP—Transport Matters Party

CONTENTS

Thursday, 18 August 2022

The PRESIDENT (Hon. N Elasmar) took the chair at 9.35 am and read the prayer.

Announcements

ACKNOWLEDGEMENT OF COUNTRY

The PRESIDENT (09:35): On behalf of the Victorian state Parliament I acknowledge the Aboriginal peoples, the traditional custodians of this land which has served as a significant meeting place of the First People of Victoria. I acknowledge and pay respect to the elders of the Aboriginal nations in Victoria past, present and emerging and welcome any elders and members of the Aboriginal communities who may visit or participate in the events or proceedings of the Parliament.

Members

MR MCINTOSH

Swearing in

The PRESIDENT (09:36): I have to report that the house met with the Legislative Assembly yesterday to choose a person to hold the seat in the Legislative Council rendered vacant following the death of the Honourable Jane Garrett. Mr Thomas McIntosh was elected to hold the vacant place in the Legislative Council.

Mr McIntosh introduced and oath of allegiance affirmed.

Papers

TREASURER AND ASSISTANT TREASURER

2021–22 annual reporting arrangements

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (09:38): I move, by leave:

> That there be laid before this house a letter from the Treasurer and Assistant Treasurer to the Presiding Officers in relation to the 2021–22 annual reporting arrangements.

Motion agreed to.

Committees

PRIVILEGES COMMITTEE

Inquiry into Mr Adem Somyurek's Use of Government Resources

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (09:39): Pursuant to standing order 23.29, I lay on the table a report from the Privileges Committee on the inquiry into Mr Adem Somyurek's use of government resources, including appendices, and I move:

> That the report be published.

Motion agreed to.

Ms SHING: I move:

> That the Council take note of the report.

In doing so, I want to outline for the benefit of the chamber a number of considerations which have informed the work of the Privileges Committee in the drafting and completion of this report. Mr Somyurek's reference to the Parliament of his motion was a matter which contained a number of assertions and suppositions which go to the heart of matters that are the subject of contemplation and

ultimately determination by the Victorian Ombudsman and the Independent Broad-based Anti-corruption Commission.

The tabling of the report into Operation Watts was, as determined unanimously by the Privileges Committee, a significant intervening factor into the way in which the Privileges Committee discharged its obligations pursuant to the terms of reference. It is noteworthy that the terms of reference were extremely wideranging and in fact sought to investigate and to initiate an inquiry of substance that overlapped in large part with the work of Operation Watts and the investigation by the Ombudsman and by the IBAC. The latter investigation, which resulted in the tabling out of session of the Operation Watts report and its various findings and recommendations, was a matter which was undertaken with significant resources over a long period of time and went to detail and to issues which are of significance not just to this chamber, not just to the Parliament but to the conduct of individuals across a range of circumstances. The Privileges Committee has not sought to intervene in or indeed to displace the findings, recommendations or conclusions reached by integrity bodies in the course of the Operation Watts investigation or the tabling of the final report.

For reasons set out in the Privileges Committee report it is important to note that the scope of this committee is limited. The Privileges Committee has indicated very clearly to the Independent Broad-based Anti-corruption Commission that it had never intended to, nor did it wish to, intervene in or displace any of the findings, recommendations, conclusions or decisions reached by the integrity bodies in its work. It is, however, important to note that in discharging our obligations pursuant to the motion the unanimous decision that the Operation Watts report constituted a significant intervening factor has materially changed the way in which the Privileges Committee could operate to discharge and to acquit to the relevant extent available obligations pursuant to the terms of reference. In shorthand, this is a matter which the Privileges Committee has been able to turn its mind to in the way appropriate to the rules and to the frameworks within which the Privileges Committee operates.

To that end and given the very tight time frames which applied in the Privileges Committee work following the reference of that matter to the committee pursuant to a resolution of this Council, I wish to place on the record my thanks and thanks on behalf of other committee members to the secretariat for working assiduously to particularly cross-reference the work, consideration and determination of the various matters in the Operation Watts report and inquiry on the one hand with the terms of reference and contributions made in support of it as far as this Council resolution goes on the other. To Richard Willis, Patrick O'Brien and Juliana Duan, thank you for all of your work behind the scenes. I also wish to thank fellow committee members. The process of this matter was one which was undertaken necessarily within very tight time frames according to the terms of the motion as passed. Thank you, Mr Grimley, our deputy chair, for your work, and Mr Atkinson, Mr Bourman, Mr Davis, Mr Leane, Mr Rich-Phillips, Ms Symes and Ms Tierney.

This is work which has been undertaken and the subject of unanimous decision. I look forward to being able to move to see this report accepted, to see it for what it is—namely, operating within the structure and systems of the Privileges Committee as are available to it within the rules and frameworks of this Parliament. I also note that there are a number of matters in this report which go directly to the substance and conclusions reached in Operation Watts and its report, and again it is important to underscore that in no way, shape or form has the Privileges Committee sought to intervene in, interfere with or displace any of the work, considerations or conclusions reached by integrity agencies in that regard. I commend, on that basis, the committee's report to the house.

Motion agreed to.

Papers

PAPERS

Tabled by Clerk:

Subordinate Legislation Act 1994—Documents under section 15 in respect of Statutory Rule No. 65.

Victorian Inspectorate—Report on surveillance device records inspected during the period 1 July 2021 to 31 December 2021, under section 30Q of the Surveillance Devices Act 1999.

Business of the house

NOTICES

Notices of motion given.

Notice of intention to make a statement given.

STANDING AND SESSIONAL ORDERS

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (09:48): I move, by leave:

That standing and sessional orders be suspended to the extent necessary to allow the following to occur on Friday, 19 August 2022:

1. Order of business

   Messages

   Formal business

   General business (maximum 3 hours)

   At 12.00 noon Questions

   Constituency questions

   General business (continues)

   Government business

   At 4.00 p.m. Adjournment (maximum 30 minutes)

2. Time limits—General business

   Sessional order 8 is suspended and the following time limits for general business will apply:

   General business (standing order 5.07)

Total time	60 minutes
Mover/sponsor	20 minutes
Lead speakers	10 minutes
Remaining speakers	10 minutes
Mover/sponsor, in reply	5 minutes

Motion agreed to.

GENERAL BUSINESS

Dr CUMMING (Western Metropolitan) (09:49): I move, by leave:

That precedence be given to the following general business on Friday, 19 August 2022:

(1) notice of motion 822, standing in Ms Crozier's name on the production of documents relating to a supervised injecting room;

(2) notice of motion 796, standing in Mrs McArthur's name on brumby culling;

(3) order of the day 3, resumption of debate on the second reading of the Firearms Amendment Bill 2022; and

(4) the notice of motion given this day by Dr Cumming on a Royal Commission into Victoria's response to COVID-19.

Motion agreed to.

Members statements

BARRY TRAYNOR

Mrs McARTHUR (Western Victoria) (09:50): I wish to make a statement about an amazing man, Barry Traynor, who was the member for Ballarat East between 1992 and 1999. He joined the Liberal Party in 1988. He was a police inspector from 1966 to 1992, 26 years and five months of amazing service. After he left the Parliament in 1999 he returned to the police force and retired in 2002. He was educated at Ararat High School and at Ballarat High School. He has four Chief Commissioner of Police commendations, a National Medal, a National Police Service Medal, a Victoria Police Service Medal for diligent and ethical service and a Police Service Good Conduct Medal. But it is actually his amazing volunteer service to the Victoria Police veterans that I really want to make comment about. He has ensured that police veterans get every opportunity to retire and participate in life in a very productive way and a way that ensures that they are helped if they need it with psychological assistance and counselling. He sets up volunteers that will help do odd jobs for them if they are struggling. *(Time expired)*

PARLIAMENT PRIZE

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (09:52): I would like to today share the great news that three schools in the Western Metropolitan Region have received awards as part of the 2022 Parliament Prize competition. As you know, the Parliament Prize is an annual competition delivered by the Parliament of Victoria where students are invited to consider what they would say in Parliament if they were an MP and to submit a 90-second video of their own members statement. I am thrilled that local student Theresa Morton from Williamstown Primary School has been awarded first place in the grades 5 and 6 category for her speech on teaching Aboriginal languages in school. In second place was Warringa Park School in Hoppers Crossing for their joint speech on using mindfulness to support learning. I would like to congratulate the students for their very thoughtful contributions. And I am also pleased that Saltwater P–9 College in Point Cook has been awarded the prestigious Alicia Katz Award, with judges selecting only one school in Victoria to receive this award. Across Western Metropolitan Region there were a total of 120 entries from 33 different schools, which was a fantastic contribution. Well done to every student and school community in the Western Metropolitan Region for their participation, and also thanks to the Parliament's community engagement unit for delivering this important program.

BIG BROTHERS BIG SISTERS, WANGARATTA

Ms MAXWELL (Northern Victoria) (09:53): It was a pleasure to attend an evening in Wangaratta last week to celebrate the return of the Big Brothers Big Sisters program. Caz Sammon has been employed to facilitate this much-needed program which matches mentors with young people in our communities. We previously had Big Brothers Big Sisters in Wangaratta, so it is a very welcome return to allow this very valuable and important work to be done. The evening raised over $6000, which is to be utilised for ongoing service provision. It was a fabulous night with many raffles and auctions, and I thank all those who generously donated those items. I have to say I went with a friend of mine and I said to her, 'Do not let me buy anything'—I walked out with a $700 gym membership. But I did make a comment that it is cheaper than liposuction.

I know this will be an extremely successful mentoring program because of Caz's extraordinary commitment and passion to support her community. This is a woman who will bring only the best collaboration and intentions to the table to drive this mentoring program to remain sustainable for the youth of Wangaratta and surrounding areas. So, thanks, Caz, and thanks Big Brothers Big Sisters for returning to Wangaratta.

SUBURBAN RAIL LOOP

Mr RICH-PHILLIPS (South Eastern Metropolitan) (09:54): For over two years the residents of Heatherton have lived with the spectre of having a train stabling yard built next to their houses as part

of the Suburban Rail Loop. It is a site where Labor previously promised the residents a park would be built as part of the chain of parks—

Mr Davis interjected.

Mr RICH-PHILLIPS: but, as Mr Davis says, it is green wedge land. But given Heatherton is part of Clarinda, a safe Labor seat, the Labor government have been happy to walk away from their commitment to a park and instead leave the residents with a train stabling yard. The Liberal candidate for Clarinda, Anthony Richardson, has worked assiduously with the community over the last 18 months to hear their concerns and to find a solution that would address the concerns about this project, which would absolutely destroy their houses, destroy their lifestyle and is completely at odds with what the government had promised.

Yesterday's announcement by opposition leader Matthew Guy that a Liberal government would not proceed with the Suburban Rail Loop and would instead prioritise those funds into the health system gives the people of Clarinda and the people of Heatherton a lifeline. By electing Anthony Richardson in November and by delivering a change of government, the stabling yard and the threat it poses to those homes will be removed, and the people of Clarinda and the people of Heatherton can have the chain of parks, can have the open space, they were promised by this Labor government and which has subsequently been rejected by this government, by the local member and by the Minister for Transport Infrastructure, who saw a convenient way to fix a problem rather than deliver what she had promised.

The PRESIDENT: Just before I call the next speaker, there is a change in the seating plan. Minister Pulford will be moved back to near Mr Leane, and if she is asked any questions during question time, she will approach the front microphone.

NEW STREET, BRIGHTON, PUBLIC HOUSING

Mr ERDOGAN (Southern Metropolitan) (09:56): I rise to inform the chamber of the progress towards the redevelopment of public housing in New Street, Brighton. Early works on the project started in August 2021, and the Andrews Labor government is getting on with delivering this transformative redevelopment, which is part of a $515 million investment across sites in Brighton, Prahran and Flemington. Fourteen apprentices have already been employed and seven jobs created for social housing tenants, with 900 jobs expected to be created throughout the project.

The Big Housing Build is a win for jobs. The redevelopment, to be completed at the start of 2024, will create 299 homes in Brighton to be made up of 151 social housing homes and 148 market rental homes which will be designed specifically for people with disabilities. Other features include flexible floorplans to accommodate larger families. This will replace 127 existing outdated public housing properties with modern homes that better meet the needs of residents. These homes will be accessible, energy efficient and environmentally sustainable, and the redevelopment will include a precinct that will feature new public open spaces and community facilities. This project is a massive win for existing and future residents of our local community and sends a message that public and social housing is welcome everywhere, including in Brighton. This is yet another example of the Andrews Labor government delivering for my constituents and all Victorians.

COVID-19

Dr CUMMING (Western Metropolitan) (09:58): I rise today to congratulate in some ways the Labor government for finally giving the community the right advice: that the N95 mask is the mask that should be used in COVID-19. I raised this issue in 2020, and now, two years later, this government is giving them out for free. Unfortunately in the time I have been in Parliament in the two weeks since the announcement there have been hardly any ALP members wearing the N95 masks, the free masks.

Mr Gepp: You're not wearing one at all.

Dr CUMMING: And you know why, government? Because I am not part of this COVID theatre.

Mr Gepp: You've never worn one.

Dr CUMMING: And you know why? Because I understand science and I understand the medical advice, and I read the medical advice in 2020. This is not the Spanish flu of 100 years ago where you put your little mask on or what you are wearing on your nose. Why do doctors wear the N95 masks? Why do you don a mask the way that you do and sterilise your hands? Why did this government make children wear masks in summer, in primary school? You should be ashamed of yourselves for the mental health effects this will have on these children for years to come.

GIPPSLAND NEW ENERGY CONFERENCE

Ms BATH (Eastern Victoria) (09:59): Last week I attended the Gippsland New Energy Conference in Sale, and I congratulate the Wellington shire and partners on a dynamic event, with presentations on solar, on offshore wind, on hydrogen, on transmission, on storage, on energy from landfill and more. There were hundreds of people with a keen interest in investment in our future energy landscape. The Latrobe Valley is at the epicentre of change, and it has the most to lose. However, the physical infrastructure, the human resources and the industry capability mean Central Gippsland also has the potential to be a key player in the solution. This week the city-based Greens introduced a reckless, harebrained and ideologically driven bill that will shut down all coal-fired power stations by 2030. This bill will see Victorians suffer from extended blackouts and unaffordable electricity prices, businesses will be forced to close and families will suffer. Even in the best-case scenario renewable energy is just not going to be up and running in eight years. The radical Greens will condemn Latrobe workers to the unemployment line and our state to becoming a basket case. The question is: will Labor negotiate with city preferences and do a deal with these reckless, reckless Greens?

EASTERN VICTORIA REGION FLOODS

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (10:01): I, today with my time, want to acknowledge the enormous heartache and hardship that is being felt by people affected once again by rising floodwaters across Eastern Victoria. In recent days and indeed across the wetter months of this year we have seen rivers and waterways break their banks. This is a stark reminder of the dangers and of the risks associated with living, working and moving around near floodwaters. In the course of this week we have seen the Lang Lang River, the La Trobe River, the Bunyip River, the Kiewa River, Traralgon Creek, the Tarago River and the Moe River break their banks, and it looks like we will continue to see heavy rainfall across the region for some time.

In Darnum and Trafalgar, in Nyora, in Leongatha and around Meeniyan we are continuing to see the impact of floods. We are also continuing to see, however, frontline responders rising to the challenge. To the SES and regional agency command through to the CFA, police, ambulance and community members who have volunteered their time, their effort and their energy and whose families have allowed and encouraged them to do so, thank you for all that you are doing. We continue to work towards effective emergency and disaster response frameworks. However, I would urge anyone who is in and around floodwaters to travel carefully, to make sure to be vigilant and, again, to take care of themselves, their health and the health of those around them.

UNDER COVER

Ms PATTEN (Northern Metropolitan) (10:02): I would like to congratulate the team at the Melbourne International Film Festival on another successful year—in fact their 70th year. I also want to alert members to a really terrific film that premiered at MIFF last weekend called *Under Cover*. It was produced by Adam Farrington-Williams and the wonderful Sue Thomson, and it follows the lives of five women over 50 who have found themselves without homes. This is the fastest growing cohort of people in our society who are finding themselves homeless. It is around gender inequality, and this film beautifully shows the fragility, the economic fragility, of many women in our society. I really commend the film, and I encourage you all to see it.

SOME HAPPY DAY

Ms PATTEN: I would also like to let members know about another film that is coming to their inboxes very soon, *Some Happy Day*. It was filmed in St Kilda and directed by another wonderful Victorian, Catherine Hill, and it follows the life of two people sleeping rough in St Kilda. This film has a happy ending, hence its name, so I encourage you to see it. You will also receive an invitation to attend a special showing for MPs coming up in the next few weeks.

SUBURBAN RAIL LOOP

Mr DAVIS (Southern Metropolitan—Leader of the Opposition) (10:04): I think the chamber and the community should be aware of the bombshell report from the Parliamentary Budget Office today which shows that the Cheltenham to Box Hill rail line and the further extension, the second section in the north, has a total cost, a capital cost, according to the PBO, and these figures may be only part of the story, of $125 billion—that is the estimate—and $75 billion of operating costs, coming to more than $200 billion for just two-thirds of what was originally promised at $50 billion. This is an enormous cost blowout, a cost blowout that is testament to Daniel Andrews's and Jacinta Allan's incompetence and failure to manage. Two hundred billion dollars—four times the original estimate for just two-thirds of the project—

Ms Terpstra interjected.

Mr DAVIS: You can go and read the Parliamentary Budget Office document yourself. I think it underestimates part of it. We know that there is already an escalation in the first stage—Box Hill to Cheltenham—of $2 billion now, before they have dug a thing. There is already a $2 billion escalation on that. Every single project that this government touches, whether it is the West Gate Tunnel, whether it is level crossings, whether it is the Metro or the heart hospital, which is costing four times what the project was costed at originally and is four years late—what an incompetent government. Who would trust them with that? That is why we will redivert the money to health.

VIETNAM VETERANS DAY

Dr KIEU (South Eastern Metropolitan) (10:06): Today, 18 August, marks the anniversary of the Battle of Long Tan, and on this day, Vietnam Veterans Day, we reflect on, honour and pay gratitude to the brave service—

Members interjecting.

The PRESIDENT: Order! Stop the clock, please.

Ms Shing: On a point of order, President, Dr Kieu is talking about an incredibly important occasion. It is the remembrance day for Long Tan today, and perhaps he could go from the top with a bit of respect, given the subject matter.

Members interjecting.

The PRESIDENT: Order! I will bring this to the attention of all members. This is members statements now: no interjections, no debate.

Dr KIEU: President, may I have the clock restarted?

The PRESIDENT: Yes.

Dr KIEU: Thank you. Today, 18 August, marks the anniversary of the Battle of Long Tan, and on this day, Vietnam Veterans Day, we reflect on, honour and express our gratitude for the brave service shown on this day and to all the service men and women who served in Vietnam. Around 60 000 courageous Australians served in Vietnam, with 521 soldiers making the ultimate sacrifice and over 3000 being wounded. I was a Vietnamese refugee, and both of my parents served in the armed

forces of the Republic of Vietnam. In particular my mother volunteered and served for 16 years of the 20-year war.

The Vietnam War is now entrenched in our Australian history, and we must preserve and learn the details of the events and pass on the knowledge to the next generation to ensure that the determination, spirit and sacrifice of our veterans are honoured and never forgotten. I am proud to see the flag of the former Republic of Vietnam on the Vietnam War medal. The flag has now transformed into a heritage symbol for the Vietnamese-Australian community of which I am so grateful to be a part. I extend our deepest gratitude and forever indebtedness to the sacrifice of the Australian Defence Force in the Vietnam War.

SOCIAL HOUSING

Mr HAYES (Southern Metropolitan) (10:08): The Victorian Ombudsman's report into complaint handling in the Victorian social housing sector is a dire read. The report highlights a broken system, a system that has not worked for years, a system in chaos, delays and an unwillingness to respond. Properties in dire need of repairs are affecting people's health. One has to ask: where is the government's duty of care? Isn't decent housing a basic human need? The government prides itself on its big build for housing, yet until recently has all but ignored the increasing need for affordable housing. The recent budget commitments will not be realised for years.

I worry about the current situation, and we need to act now. I support the calls for a social housing ombudsman. We need a clear framework for complaint handling and maintenance. I have previously raised the issue of public housing properties such as Barak Beacon estate, Braybrook and Ascot Vale being neglected and great housing options being inadequately maintained and not refurbished. We need more publicly owned housing, not less. The pursuit of private contracts rather than restoring existing publicly owned housing is a poor outcome for Victorians, both in social and economic outcomes, especially the loss of publicly owned land. Such partnerships are opportunistic rather than strategic, and I hope the government soon wakes up to the mess it is creating with these complex arrangements.

GILWELL PARK SCOUT CAMP

Ms BURNETT-WAKE (Eastern Victoria) (10:09): Gilwell Park in Gembrook has been the home of scouting in Victoria for over 100 years. Every year thousands of excited Scouts make their way to Gilwell Park. There are over 1 million Victorians who have participated in the scouting movement since its inception, and a camp at Gilwell Park has become a rite of passage. I was lucky enough to have a guided tour of Gilwell Park over the winter break with Jon McGregor, executive manager and general secretary of Scouts Victoria. Scouts Victoria has grand plans for Gilwell Park to ensure future generations can learn the same skills through scouting camps as has been done for the last 100 years. The outgoing coalition federal government awarded $5 million in funding towards the cost of the master plan thanks to the advocacy of Jason Wood MP, but the upgrades are expected to cost $10 million altogether.

Scouts Victoria is a wonderful organisation that encourages young people to challenge themselves with adventures that promote social, emotional, physical and intellectual growth alongside a range of practical life skills. These are all skills that are needed now more than ever after extensive lockdowns. Our kids' mental health has been devastatingly impacted, and we will be talking about mental health later today in this chamber. By having upgraded facilities, Scouts Victoria will be able to continue to attract children and equip them with crucial life skills moving forward.

LEARN LOCAL PROVIDERS

Mr MELHEM (Western Metropolitan)

Incorporated pursuant to order of Council of 7 September 2021:

Last week I attended the 2022 Learn Local conference: 'It takes a village'. The ACFE board, Learn Local providers and other stakeholders gathered to highlight the work of the sector and reconnect after COVID setbacks.

Learn Locals in partnership with other organisations provide essential support to individuals and ensure everyone has a successful learning journey and can achieve meaningful pathways to work or further study or just help them in day-to-day life. Over the two days of the conference, I saw the success of this sector in connecting with agencies and the importance of local responses to local issues.

We heard from several Learn Locals about their work with local industry, TAFE and community services and the work they are doing to support learners on their journeys. We also heard from Mark Cabaj on the power of community and local response, taking a deep dive into this sentiment by discussing the work undertaken by the sector and exploring steps to achieve successful collaborations on the ground. This provided opportunity to share and learn for each other while inspiring new ways of working together.

It was a privilege to visit many of these providers over the past couple of years. Through these visits, the issue of access to digital devices was highlighted, with many learners unable to access a computer. This prompted the start of the repurposing of departmental end-of-life computers. This became the refurbished laptop program, which reduces e-waste and supports the closure of this digital divide.

We have since secured the rollout of 1000 refurbished laptops to the sector with 350 dispatched to Learn Locals as a part of the pilot program, followed by 300 notebooks in June and a final dispatch by November.

It really does take a village to be able to provide quality education and opportunity the way these Learn Locals are. That is why the Andrews Labor government is committed to supporting this sector to continue this incredible work in delivering a first-class service to our most disadvantaged group in our society.

Business of the house

NOTICES OF MOTION

Mr TARLAMIS (South Eastern Metropolitan) (10:11): I move:

That the consideration of notices of motion, government business, 683 to 730, be postponed until later this day.

Motion agreed to.

Bills

MENTAL HEALTH AND WELLBEING BILL 2022

Second reading

Debate resumed on motion of Ms STITT:

That the bill be now read a second time.

Ms CROZIER (Southern Metropolitan) (10:11): I rise to speak on this important piece of legislation that has been brought into the house this morning, the Mental Health and Wellbeing Bill 2022. It is a substantive piece of legislation, as is evidenced by the hundreds and hundreds of pages—over 650 pages—of this bill. It takes into consideration many, many aspects around what we will be debating this morning. It is timely, as I have just come from acknowledging and being with some Vietnam War veterans on this important day and being with my colleagues Tim Bull, Matthew Guy and our candidate for Richmond, Lucas Moon, who is also a returned veteran, talking about mental health impacts and the Liberal-Nationals' commitment to reinstate ward 17 at the Austin Hospital in Heidelberg. This is a very important commitment that goes a long way to supporting these veterans. I note that the Liberal candidate Cynthia Watson, who hopefully will be representing that area, was also in attendance. We were there collectively with war veterans and the mother of a war veteran, who has a terrible story about her son. This issue is so significant because, whether it is those veterans who have tragically taken their lives or those with PTSD episodes that they experience on a

regular basis, they have had nowhere to go. There has been no specialised care for their mental health needs. This announcement today of reinstating ward 17 I think is a tremendous announcement about what we will undertake should we form government in a few months time. My colleague Tim Bull has been talking about this issue for years—raising it. He understands the significant issues for those veterans. I have raised it in this house with the minister—this very issue, reinstating ward 17—so I am absolutely delighted that today we are making that commitment.

I say that at the outset because mental health obviously is a very, very significant issue. Back in 2010 Mary Wooldridge, a former minister in the Baillieu government, following our election win in 2010 made reform of the Mental Health Act 1986 a priority. She undertook extensive stakeholder consultation—round tables and exposure drafts of a bill, inviting submissions from a range of stakeholders—and in 2013 the coalition government then released *Victoria's Priorities for Mental Health Reform 2013–15*. That reform required legislation, and the legislation that was then introduced under a Liberal-Nationals government was about strengthening clinical mental health services, improving community mental health support services, increasing connections between mental health services and other services, widening prevention and promotion and building a stronger and more sustainable workforce. Now, that was a significant amount of work that we did in just a few years, and former Minister Wooldridge did an enormous amount of work in this area. She really paved the way. That legislation was brought in, and it supported those objectives that I have just outlined. But you can see, after eight long years of this government, the workforce issues are still very, very profound and there has been an enormous shortfall in what the Andrews government has been able to achieve.

The government did undertake to have a royal commission into mental health, and that was a very good inquiry that went on. It was an extensive inquiry; there was a deep analysis of the issues. That was undertaken, and of course it had the support of the Liberals and Nationals. We have always supported more reform in this area. As I said, it was our government that really led the way in terms of having some significant reform and identifying those workforce shortages back in 2013.

What this bill does is it replaces the former act, the Mental Health Act 2014, that was introduced by the then minister, Minister Wooldridge, and it is an extensive piece of legislation, as I have highlighted. I want to go to some of the aspects of the bill and what the bill actually does. My colleague in the other place Emma Kealy outlined very succinctly in her second-reading contribution her support for the initiative of the government for the royal commission and the royal commission's findings, but she also highlighted the many issues around the workforce shortages that the government has failed to address in its time in government.

This bill does a number of things. It reforms the system for the provision of mental health and wellbeing services; it improves the administration of the system for mental health and wellbeing services; it establishes the Mental Health Tribunal; it establishes the Mental Health and Wellbeing Commission; it establishes the Victorian Institute of Forensic Mental Health; it establishes the Victorian Collaborative Centre for Mental Health and Wellbeing; and it repeals—obviously, as I mentioned—the Mental Health Act 2014, which we brought in. The entire bill is to enact a new law relating to the treatment of persons living with mental illness or experiencing psychological distress.

The one area that I wanted to speak about in more depth is the establishment of Youth Mental Health and Wellbeing Victoria, which is also a main part of what this bill seeks to achieve. We know that the interim report was handed down in 2019, where five of the nine recommendations highlighted the desperate need to build the mental health workforce to ensure that there were sufficient personnel to effectively deliver mental health services in Victoria under this reformed system. We know that that interim report, which was handed down years ago, should have been acted upon. Obviously there has been a widening crisis within our mental health system. Some of those issues I spoke about at the start of the debate, like our initiative to reinstate ward 17—that could have been done by this government. It has not been done by the Andrews government. Those simple measures could have been achieved to enable a freeing up of other services for people that are experiencing specific mental illness and requiring specific treatments.

It is, as I said, a very extensive bill, and it does look at a new definition of a mental health and wellbeing professional. It does recognise that a broader range of professionals will be required to really be able to deliver on what the royal commission was trying to achieve. I have highlighted some of those in terms of what the main purposes of the bill are: to establish the tribunal and the wellbeing commission, the forensic mental health institute, a collaborative centre, and then having Youth Mental Health and Wellbeing Victoria established as well. So it does require significant personnel.

The bill also sets out obligations for the provision of a statement of rights and really looks at how it needs to have a broader range of circumstances and strengthen those obligations. It establishes obligations that all patients are provided written reasons when a treatment preference outlined in an advance statement is overridden or a second psychiatric opinion is not adopted, and it establishes the opt-out model of non-legal mental health advocacy. I am not going to go through every single thing that the bill seeks to do, but I want to just highlight a few more things that the bill does. It does provide for the chief psychiatrist to prepare guidelines on the application of the decision-making principles, and it regulates the use of chemical restraint for the first time in Victoria. I think that is something that is welcomed, because we need to ensure that those that are being restrained in such a way have treatments and protections in place. I want to make some more comments in terms of restraint, because it has been incredibly challenging over the last 2½ years with the numbers of Victorians presenting to our emergency departments with severe and acute mental illness and how police have had to be with those patients because there have been no staff to care for them. Some of the restraints that are required and the issues that will be around that I want to understand through the committee stage and by asking the government a couple of questions around that.

The bill also establishes a framework for obviously a health-led response to mental health crises in the community, and I have just highlighted the extent of the crises that we are seeing at the moment. It also embeds principles that, wherever possible, responses to mental health crises are led by health professionals rather than by police or protective services officers. Those restrictive powers should be exercised in the least restrictive way. I will have some questions around the administration of how the government intends to establish all of these entities. I also would like to understand an issue around the alcohol and drug sector, and I will come to that in a moment.

The bill also aims to have system-wide oversight of the quality and safety of mental health service delivery, and it will provide for monitoring and reporting on the system-wide quality. These are issues around community visitors and the Mental Health Victoria board and the Mental Health Tribunal. These various bodies will also be advising government on areas of concern and areas for improvement. The security of patients, forensic patients, and some of these very challenging areas can be very difficult, and there has to be a fine balance between managing some of the very complex patients that do have very significant mental health issues and are a harm not only to themselves but to the wider community. So those issues need to have a very thorough analysis in terms of how those patients are treated, how they are accommodated and who monitors and supervises those people with those complex needs, who are normally detained in facilities like the Thomas Embling facility.

The bill also provides for the Victorian Institute of Forensic Mental Health—Forensicare—board composition and states that the power of that board will be transferred to the secretary, who will then issue directions to Forensicare. I think that is something that the royal commission looked into and the disclosure of health information and codes of practice—really looking at the whole issue around improving consumer experiences and autonomy.

I could say a lot more because of the extent of this bill and how significant the reforms that the government have brought in through this bill are. But I just want to go to some of those issues that are of concern that we have raised in the other house—that my colleague Ms Kealy raised. The consultation on this process was limited with the number of stakeholders. Increasingly and concerningly, the government continues to not provide full draft exposures to the vast majority of stakeholders who are being impacted. The vast majority of the sector did not see the full bill as an exposure draft and first saw the bill when it was tabled in the Parliament. You need to be talking to a

wide range of stakeholders. I grant you cannot get across every single organisation or speak to every single individual, but it should include the peak bodies that are predominantly involved and are affected by this bill. If that consultation is not thorough, then I do think that is, as I said, a concern. We have seen it not only with this bill but with many other bills that have been introduced into the Parliament by the Andrews government.

I said at the outset that the workforce issue is one of the biggest issues facing Victoria's health system, whether it is the acute system or the mental health system. The health crisis, I should say, is the biggest issue, and the workforce issue obviously plays into that. The government has failed to address this over many years. There has been an underinvestment, a lack of planning and mismanagement in the entire health system for many, many years, and we know that because of the Productivity Commission's findings in 2019, which was pre COVID. The government keeps blaming COVID, and of course COVID has delivered challenges. There have been challenges—I am not denying that—but to blame everything on COVID is an excuse. It is not good enough.

The government came out in March 2020 and said, 'Don't worry, we've got surge capacity in our workforce to deal with this' or promised things like 4000 intensive care unit beds. Admittedly, that is nothing to do with mental health, that is acute care. But my point is the promises that were made—'We've got our health system in place and we're preparing it'—never eventuated. What we saw was Victoria having the harshest restrictions of anywhere in the country and the worst outcomes. We know that through the failures in mid-2020—contact tracing, hotel quarantine, security and over 801 Victorians losing their lives.

What we also saw with the six lockdowns—Melbourne was the longest locked-down city in the world at that point in time—was the huge impacts on children. The Pandemic Declaration Accountability and Oversight Committee, which I sit on, heard from so many people that really highlighted the failures of the government in relation to those impacts, that they just ignored the impacts of not having children attend school. I want to read something from the *Review of the Pandemic (Visitors to Hospitals and Care Facilities) Orders* minority report that the Liberals and Nationals presented. We said in that minority report regarding the mental illness that really affected millions and millions of Victorians:

> The Committee heard dozens of compelling stories from parents regarding the impact of pandemic lockdowns and restrictions on their children's mental health, and particularly, the impact of school closures.
>
> …
>
> The Committee also heard that funding provided by the … Government to deliver additional mental health support in schools would not be available in metropolitan schools for another two years, deemed "too late" by—

one particular group, which was a grassroots advocate group—

> the Shadow Pandemic group.

We also heard from the AOD sector; the Victorian Alcohol and Drug Association made various comments. They shared key statistics regarding the impact of pandemic lockdowns and restrictions on the use and abuse of alcohol and other drugs and the demand that was put on their sector. The number of people calling helplines for alcohol and other drugs doubled from 2019 to 2020, and it has gone on and on. The fatal overdose data from the Coroners Court revealed that in 2020 the highest number of women overdosed from alcohol and that that number of overdoses was a very significant contributing factor to the overall statistics. The alcohol and other drug treatment agencies informed the committee that there was an increase in the number of people relapsing. During the pandemic closing the waitlist for treatment became more frequent, with the common refrain from agencies, 'They have to close the counselling books for a couple of weeks'. Closing the waitlists meant no new clients could be seen. That has impacted the acute system because those people ended up in emergency departments and had to be cared for by police officers and others because there was no-one else to do it.

We heard again today that there are so many issues regarding the mental health of generations of people in this state, and it is just a pity that the government has never fully acknowledged the true impacts of the lockdowns. The World Health Organization states that lockdowns did not work and that there was an impact from lockdowns. Here in Victoria, when we went into lockdown after lockdown, we were promised we were going into lockdown to prepare our health system. Our health system is the worst it has ever been. Our health system is crumbling, our health system is failing Victorians. Victorians are dying because they cannot get through to 000, they have died because they could not get an ambulance, and they are dying because they cannot get their elective surgery. Now we have this mental health crisis where far too many people are suiciding or becoming drug dependent and their mental illness is increasing. These issues are very, very significant for the Victorian population.

I want to say, in the few moments that I have left, that the Liberals and Nationals want to move an amendment about the very area I am talking about, the alcohol and drug area. I want to state that there is feedback from this sector that they feel they are not included in this. They feel that they have been not fully acknowledged in the mental health reform. They feel like the government has just ignored them and what they are doing in dealing with their thousands of clients, and they ask why they have not been included in this significant reform. They understand that there has got to be some legislative reform, but they feel that they should be included in that reform. I would like to circulate, if I can, the amendment that deals with this.

Opposition amendment circulated by Ms CROZIER pursuant to standing orders.

Ms CROZIER: The amendment that has just been circulated is to amend clause 12. On page 36, line 9, where paragraph (vii) says:

> connect and coordinate with other support services to respond to the broad range of circumstances that influence mental health and wellbeing …

we are seeking to insert, after 'wellbeing', 'including alcohol and other drug support services and treatment'. It is a very simple amendment that will go a long way in including and acknowledging that sector in the reform that this legislation is proposing. I understand that the government may be supporting this, and I will be very pleased if that is the case. I will wait to hear from the government in terms of what they say about that. But again, as I say, this sector has been dealing with an enormous array of individuals and the connective services that they are dealing with, applying those for people with substance abuse and mental illness, and we are looking at how they can be included in this reform. It is a very simple amendment.

I have another few comments to make. Part of the bill, as I said at the outset, seeks to establish Youth Mental Health and Wellbeing Victoria. I acknowledge that because of what I have described around the massive impacts on children, who have been impacted significantly, especially over the last 2½ years, with lockdowns, with a lack of ability to go to school, the disgraceful locking up of playgrounds and the message that sent to children and the inability for children to be able to express themselves with one another because of mask wearing, and the government still wants masks to be worn in schools. I mean, we are not in March 2020 when there were no vaccines and no antivirals, we are three years into this pandemic, and these aspects are very, very significant.

What I want to say is I am concerned that there has been no agency establishment or acknowledgement for those elderly Victorians who have also suffered through the pandemic. There is no Elderly Wellbeing Victoria being established by the government, and I think that just goes to show the lack of understanding of the impacts of the pandemic on so many elderly Victorians. On Saturday, when I was out with the Liberal candidate for Kew, Jess Wilson, two elderly women came up to me—Helen and Jan were their names. Helen described to me that she has no family in Victoria. She had lost her son recently—her granddaughter was here, but she had no family. And the impacts of the lockdowns for her were significant. She feels that her cognitive ability and her self-confidence have declined. The only thing she could do was literally walk around the streets with her friend Jan. She said, 'There's

nothing for us. There's been no acknowledgement of the impacts of the lockdowns on us'. These impacts, the lockdown impacts, have been profound. That is why we need a royal commission in this state—to get to the bottom of what actually worked in the decisions that the government made and the multiple failures, so that we never have those failures again.

Ms Bath: Learning from it.

Ms CROZIER: Thank you, Ms Bath. We need to learn from those failures, because the failures were profound. Whether they were children or whether they were adults, people were impacted so significantly.

We have got a mental health crisis in this state that is feeding into our acute health crisis where the whole health system is broken because of decision-making by the Andrews Labor government. This is a very, very significant issue that needs to be addressed now, and I am very proud to be standing with Matthew Guy, Peter Walsh and all my colleagues to say that we will fix this system by reprioritising money—billions of dollars—from a rail line from Cheltenham to Box Hill to fixing what we are talking about today, the mental health crisis and the acute health crisis, because Victorians deserve to be able to get the treatment and support that they need when they need it. At the moment they are not getting any of that. They are not getting any that because the system has failed them and it is broken.

I say again, in conclusion, that this is an important piece of legislation. It builds on what former minister Mary Wooldridge did back in 2010 when we came into government, introducing a significant reform at that time—the work that she did in a very short period of time. She identified the workforce issues back then. The Andrews Labor government has failed to recognise that. They have had years to fix it. Prior to COVID they had years. No more excuses from COVID—they had years to fix it.

As I said, I do hope that the government will support the amendment put forward by the Liberals and Nationals today to ensure that the stakeholders in the alcohol and drug sector are acknowledged in this important reform. As I said, with 650 pages in the bill they deserve to be in it.

Ms TERPSTRA (Eastern Metropolitan) (10:41): I rise to make a contribution on the Mental Health and Wellbeing Bill 2022. This is a very important milestone in the work that the Andrews Labor government is doing in regard to mental health. It is one of the recommendations that came from the Royal Commission into Victoria's Mental Health System. I will address Ms Crozier's contribution a bit later on. I want to approach my contribution today with a sense of optimism and positivity, because if you listen to all of them over there it is just shocking, we do nothing and all the rest of it. I want to correct the record, because we have done a significant amount of work. Ms Crozier should remember that it was this government that invested a lot of time, energy and effort in making sure that we could have a royal commission into mental health, and that royal commission made a number of recommendations, all of which we are implementing. In fact this bill represents the delivery of a key royal commission recommendation, recommendation 42. This bill will establish one of the three fundamental pillars of reform that was recommended by the royal commission, which is legislative transformation, significant workforce expansion and sustainable ongoing investment. If you just listened to the previous contribution, we are doing nothing about it.

I might just say from personal experience, I worked for the Australian Nursing and Midwifery Federation. I used to represent nurses out there in the field in the public health system but also in the field of mental health and in aged care as well. Workforce is always a challenge in health. Listening to Ms Crozier's contribution, it is like all of a sudden it is new and we have failed to understand it and do anything about it. These are completely wrong, incorrect assertions over there from Ms Crozier. But that is what you get from the Liberal Party—it is like night and day. I am going to talk about all the great things that we are doing, and I am also going to correct the record about the views of Ms Crozier on what Victorians have been saying about and experiencing with mental health, because there is also a flip side to that; there is a different side to that. I want to make sure I also talk about

mental health in terms of what people's trajectory is and how, if they get the right treatment and intervention, they can have a positive outcome, rather than hearing all the rubbish that has been talked about over there today.

In terms of getting back to the purposes of this bill—like I said, I am going to address the negative misinformation that was put forward over there earlier as I go on—the track record of this government's investment in mental health services is unprecedented. I am going to go through it in a moment; the investment is billions of dollars. One of the highlights of the 2021–22 state budget was $3.8 billion in investment. It is unprecedented investment, because what we know is the royal commission highlighted that our mental health system was broken and in urgent need of repair. It was unequivocal that our system was broken and failing Victorians. The final report laid out the blueprint for building a compassionate and effective mental health and wellbeing system from the ground up. While the royal commission undertook its important work, we did not stand idly by. We made a record investment of $869 million in November 2020 to address critical demand and improve the mental health system while we awaited the final report. We jumped in. We got in early. We did not waste a minute. We said, 'Quick, we need to get some urgent investment in, and then we'll await the final recommendations and the final report'. In total we have invested more than $252 million in additional mental health support since April 2020 to help meet demand and ensure Victorians get the care they need during and well beyond COVID-19. This was in keeping with the expert advice on how best to manage traumatic events, such as a viral pandemic. This is a one-in-100-year event, okay?

I recall one of the press conferences that we had during the pandemic where the chief psychiatrist addressed the media in regard to mental health, and this is why I want to approach this with a sense of optimism. There is no doubt that people suffer from mental health conditions. I mean, all of us at some point in our lives may suffer with some mental health affliction, whether it be minor, moderate or severe, and sometimes events—traumatic events like the pandemic—can actually bring out underlying mental health conditions that were there anyway but are brought out by a severe traumatic event. What is really key and important is that people get the help and support that they need when they need it.

I was talking to principals of schools in my region, Eastern Metropolitan Region, and some of the key messages that were coming out prior to the pandemic—and this is not related to the pandemic—were that they were seeing more complex behaviours presenting earlier in children, in primary years, and so we responded to that by making sure we could get mental health supports into primary schools. They were there for secondary schools, but we have also invested in that as well. What that means is that kids can get earlier intervention and their trajectories can be better. What was happening under the previous, old system was people were being dealt with at a crisis point, so when it was effectively too late. They had gone into crisis, they had some kind of traumatic event and they might have needed to be hospitalised to get their lives back on track. So the whole point is, if you can get earlier intervention, the better your trajectory.

Some people are born with a trajectory where they are going to end up with a mental illness, and some are not. We have all got different experiences, and I find it really frustrating and offensive for the Liberal Party to lump everyone in together and say, 'It's all the same. It's all bad'. That is not the case. People have very different trajectories. Some people can make recoveries from whatever mental health condition they are suffering, and some people sadly will have to manage a long and ongoing serious mental health condition for most, if not all, of their lives. So there is a lot of nuance in this, but those opposite suggest that it is all just about the pandemic and it is all bad or good. I spoke to children in my region who were saying they actually loved learning from home during the pandemic. There were people who were neurodiverse who loved being away from all the brightness, the noise and the lights of the school environment and were quite happy. In fact some children thrived during lockdown because they were learning online. So again, there is lots of diversity in the way that people come to experience life and in what they may have experienced in their own environments. We are having this debate, and I am coming at this as a person who is not neurodiverse, so I can cope with bright lights, I

can cope with noise and I can cope with lots of things coming and going, but not everyone has that experience.

It just shows the ignorance of Ms Crozier in her kind of approach to this debate. It is ignorant and ill informed to approach this debate and say that everyone's experience is the same. It is not. Everyone has a diverse experience—

Ms Crozier: I never said that.

Ms TERPSTRA: Yes, you did. I listened quite carefully. You did not support the mental health royal commission, and all you want to do is go on and attack this government for the—

Ms Crozier: On a point of order, President—sorry to interrupt, I know that you are dealing with something—Ms Terpstra is verballing me, and I would ask her not to throw around ridiculous claims. It is an important debate, and there is no need to verbal.

The PRESIDENT: I am sorry, I was not aware of it because I was talking to Ms Maxwell. Ms Terpstra, I did not hear anything. I will ask: did you?

Ms TERPSTRA: No, there was nothing that was—

The PRESIDENT: Okay, thank you.

Ms TERPSTRA: There was no point of order.

The PRESIDENT: I decide that, thank you.

Ms TERPSTRA: Yes, I know, but further to the point of order, there is a problem in this chamber. Whenever something is said by the government speakers on these benches that they do not agree with, they raise a point of order. It is an abuse of the standing orders, and I raise this to—

Ms Crozier interjected.

Ms TERPSTRA: I just want to finish what I am saying without interjection and be heard. What I am saying is that, whenever there is something that is challenged by the government speakers on this bench, they continually raise fake points of order. It is something that is an abuse of the standing orders, and I bring it to your attention.

The PRESIDENT: Now we are debating, and I do not want to get involved in debate.

Ms TERPSTRA: Again, we have made record investments in this area, and it is something that the Liberals and those opposite will never do. What they want to do is just criticise constantly without foundation, without any points and without any substance at all, because they have got nothing to offer other than just constant criticism. I am really grateful for the fact that Victorians are not listening to that. Victorians want to move on from the pandemic, they want to move on from COVID, and what they are looking for is support from a government that knows and understands what Victorians need. That is why we had the royal commission into mental health.

Again, a record-breaking investment in the 2021–22 budget provided an enormous $3.8 billion to kick-start the next decade of mental health reform, focusing on the funding of services to provide greater clinical care and community support to Victorians in need. We then further backed that in, as I said earlier, with billions of dollars of investment. In the 2022–23 budget there is another $1.3 billion for further investment, building on the foundations created the year before and continuing to build the momentum necessary to further deliver on the royal commission. This investment will be turning the tide for mental health in Victoria, and this government is immeasurably proud to be the one that can deliver it. This cannot be achieved overnight, and in order to secure the future of Victoria's mental health system we need the opposition to actually come to the table and explain how they intend to continue to support this vital work if not through the sustainable funding mechanisms, including the mental health levy.

I am going to leave some of this for other speakers to comment on. I know Mr Gepp might want to go through some of the billions of dollars of record investment that we have outlaid here—there are pages and pages of it. As I said, $3.8 billion was set aside in the 2021–22 budget. I will just touch on a couple of things: 20 new local services for adults and older adults supporting people in their communities—but again, if you listen to Ms Crozier, we are doing nothing about that; supports for mental health and wellbeing of young people—again, those opposite said we are doing nothing about that; new models of care for bed-based services that are safe and compassionate; a government- and community-wide suicide prevention response; reform in education, setting up children and young people to thrive and survive; supporting Aboriginal social and emotional wellbeing; and enabling the mental health and wellbeing workforce to be delivered and reformed. As I said earlier, as someone who worked for the nurses union, I know how challenging building that pipeline of skilled workers is—it take years; it does not happen overnight. That is why we are funding and investing in that to happen and to continue to happen. Also, there is asset funding to expand mental health treatment options for Victoria's youth.

So again, these are complex things. If you listen to those opposite, somehow we should just be able to wave a magic wand and have it all magically appear and function well. No. What those opposite want is not something that is publicly funded. What those opposite want is something that they can just pump out to the private sector and have their rich mates make money out of it. It is just disgraceful.

Ms Crozier interjected.

Ms TERPSTRA: Ridiculous. The most recent budget, as I said, invests in the critical workforce needs of the system, developing a pipeline of skilled mental health professionals to deliver compassionate care to Victorians, with over 1500 new jobs being supported by that investment, with over 100 psychiatrists, 300-plus psychologists, more than 400 mental health nurses and over 600 allied health professionals taking up roles in our new system. That means that since the royal commission's report over 2500 mental health jobs have been created in Victoria, delivering on exactly what our mental health workforce strategy identified as necessary for this reform, for without caring mental health workers there can be no mental health system at all—because, as we know, it is the people that make up the care that people need to be provided with. So it is critically important that we have these people skilled and trained up to be able to step into the system to help care for Victorians.

Dr Astha Tomar, chair of the Victorian branch of the Royal Australian and New Zealand College of Psychiatrists, is reported as saying:

> … the $372 million committed to implementing and resourcing a stable and well-resourced workforce will be key to the success of the Government's ambitious reform agenda of the Royal Commission into Victoria's Mental Health System.

We are also investing $490 million into acute and inpatient care, which includes opening 82 new beds across the Sunshine and Northern hospitals, helping an additional 1600 Victorians get help at their most vulnerable time.

These are just a few items I have laid out about the foundational aspects, and this bill, as I said earlier, is one of the key pillars. We are starting on legislative reform, which, again, was recommended in recommendation 42 of the royal commission. So it is about legislative transformation, significant workforce expansion and sustainable ongoing investment. I will come back to those three key pillars that we are starting. There is lots of work to do, but as I said earlier in my contribution, we got in early with some early investment to get things underway and we are continuing to build on that investment as we go along.

Also, in their budget statement Mental Health Victoria commented that the budget:

> … builds on the $3.8 billion committed in the 2021/22 State Budget, and demonstrates the Victorian Government's ongoing political and fiscal commitment to implementing the recommendations of the Royal Commission into Victoria's Mental Health System … in full, and on time.

Professor Pat McGorry, executive director of Orygen, welcomed the investment and reflected:

> This approach will mean that Victorians, and in particular young Victorians, will be able to bounce back from the adversities experienced over the past two years and go on to lead healthy and contributing lives.

I reflect on the comments of experts in the field—expert psychiatrists—who treat people for a living. It is what they do. I reflect on the comments of the chief psychiatrist, who addressed the media at one of the conferences during the pandemic. The majority of people are well equipped to deal with adversities in life. Most of us will bounce back; it is what happens. There is elasticity in the way that we deal with trauma and problems that we encounter in life. There are some people who do not have that capacity and will need help when they need it. What has been said by Ms Crozier today is a sad reflection of her understanding of people's capacity to deal with trauma. This bill is an optimistic bill that provides all the framework and the support necessary for people to move forward and recover from mental ill health when they need to. I commend this bill to the house.

Ms MAXWELL (Northern Victoria) (10:56): I rise to speak on the Mental Health and Wellbeing Bill 2022. The Royal Commission into Victoria's Mental Health System was announced on 24 October 2018 as a pre-election commitment of the Andrews government. At the time, renowned and respected psychiatrist Pat McGorry described Victoria's mental health system as 'crumbling, threadbare, overwhelmed and obsolete'. Professor Ian Hickie said Victoria's mental health system has plunged from being regarded as one of the strongest in the 1990s to one of the most flawed. What a harrowing starting point for a review. I really despair for the thousands of people who needed help over two decades and could not access it. I despair for the families desperate for support who encountered long waitlists, were turned away from emergency departments or were stuck in a cycle of referrals to nowhere. I despair for the workers in the mental health sector who felt hamstrung, frustrated, overstretched and often unsafe, and I despair for the lives that were lost.

The chair of the royal commission, Penny Armytage, said when handing down the final report:

> Good mental health and wellbeing have been a low priority of governments for decades, despite the high prevalence of mental illness and poor mental health in our community.

She said the system had 'catastrophically failed'. How is it and why is it that a public system should get to such a low point before it becomes a priority? We are seeing similarities now with our child protection system and in our broader health system. We cannot let these systems continue to teeter on the verge of collapse and then expect the public to be grateful for the rebuild.

The bill before Parliament is considered to be delivering on the royal commission's recommendations for a new mental health and wellbeing act. With more than 600 pages to absorb, I must say that in many respects we have to take the government's word for it because to critically compare the bill to the existing act has been a fairly difficult exercise when so much of it is enabling legislation and questions we have raised point to yet-to-be drafted regulations and implementation, hence my motion this week.

I have no doubt that an enormous amount of work has been put into drafting this bill and that it is extremely complex work. I thank the people who are involved in redesigning the system and recognise that they have on their shoulders the weight of millions of Victorians who are relying on a better system being available in the future. I acknowledge the longstanding important role of mental health workers, paramedics, police and the alcohol and other drugs and social services sectors who work in this space every day. They have battled within a broken system for too long, so have the families and carers of people affected by mental illness. The system has to be better for all of them.

I would like to express my thanks to the people who engaged with us on this bill, including those with lived experience, sector workers, the great team at the Health and Community Services Union, the AMA, the Royal Australian and New Zealand College of Psychiatrists, paramedics' unions, community paramedics, police and health services. Given the size of this bill and the time available I will limit my focus to a few parts of the bill that hold particular interest for me as a member for

Northern Victoria and as a member of Derryn Hinch's Justice Party and that have been brought to us as concerns by stakeholders.

Stakeholders have expressed some frustration with what they consider was a rushed consultation process. The royal commission recommended a new act be delivered in 2022, and we respect that the government wants to meet this deadline, but it has put pressure on the consultation process and prevented stakeholders from properly engaging with their frontline workers and giving robust and detailed feedback.

The royal commission acknowledged the struggle that people in regional areas face every day in accessing services close to home. This is even more pronounced for those needing youth mental health services. The royal commission report noted that changes to the framework must consider the challenges of delivering services in rural and regional areas. Regional areas must not be left behind or be given lower priority or be put at the bottom of the funding list. I hope the new regional mental health and wellbeing boards and multi-agency panels will be strong advocates for regional areas and that their work and advice will be transparent to support public confidence.

There is also a sense of scepticism in how new models of care will be delivered in regional areas. Establishing health-led responses rather than relying on police is a positive aspiration: it is better for patient care and to focus police resources back on their core business. But we asked a few questions about how this would work in implementation in regional areas, and the reality is that it will fall back on police if a health-led response is not available. In regional areas a lot of police time is spent supporting the ambulance service to transport mental health patients to a hospital, which could be an hour away. Police then might sit with a patient for hours in the ED until they are seen, only to return them home and be called to do it all again in a few days time. This takes police away from other important work.

Our ambulance service is already stretched, and this takes our paramedics away from other code 1 call-outs. Regional areas are also particularly vulnerable to natural disaster, with substantial flow-on effects for the mental health of these communities. The royal commission said the system needs to reflect and provide for these vulnerabilities. This backs up research that was conducted after the Black Saturday fires, which identified a need for policymakers to strategically target regions with a high risk of persistent mental health distress and to ensure services are available to those communities.

The royal commission said the new system will be designed to attract, develop and retain a sustainable workforce. Professor Ian Hickie has noted that 80 per cent of people exiting a treatment centre will need ongoing care, but there is neither the workforce nor capacity at the state level to look after them. These shortages are keenly felt in many settings in regional Victoria: mental health, family services, child protection, alcohol and other drug services, aged care, nursing, GPs—the list is long. Where professionals are recruited there is now great pressure to house them, and I know that while the family services and AOD sectors are supportive of the mental health reforms, there is some sense of dread that their workforces are going to be depleted as a result, particularly in those regional areas. This will make their work even more challenging. Already stretched services in these sectors will be harder to access, the wait times will be longer, and this will have a roll-on impact on the future demand for mental health services.

The definition of 'paramedics' is limited in this bill to those who are employed by Ambulance Victoria. While I understand the arguments for this, I am told that there are around 3500 paramedics in Victoria who do not work for Ambulance Victoria and are a resource that we could tap into. I have been advocating for them to be utilised more broadly in regional Victoria to help take pressure off our hospitals and our ambulance service. Community paramedics want to be part of the solution and be part of the system where it is safe and appropriate to do so, but they say that this bill does not facilitate that potential.

This bill includes an aspiration to eliminate the use of restrictive interventions within 10 years, an ideal which is suggested by those working on the front line to be dangerously flawed. This was reflected in the department's report on its engagement process in 2021, where 58 per cent of respondents said the seclusion and restraint proposals do not meet the royal commission's recommendations. While I recognise this is an aspirational statement, we listened intently to a range of stakeholders—in particular frontline workers—about restrictive interventions and the important role they can play as a last resort to keep a patient, workers and the public safe. While we support endeavours to reduce removing restrictive interventions as much as possible, serious consideration of eliminating the use of restrictive interventions requires substantial consideration and consultation. The royal commission report noted that it is likely that demand for inpatient services, including more people presenting in crisis and pressure on the model of care, is contributing to the use of restrictive practices. So it is incumbent on the system to provide a safe environment and resourcing to reduce restrictive interventions rather than simply taking it all out of the toolkit.

Moving on to forensic mental health, as the Forensicare submission to the royal commission notes:

> Although the vast majority of people with mental illnesses do not offend or become violent, people with serious mental illnesses are three times more likely to engage in offending and four times as likely to commit violent offences compared to other Victorians.

The tragedy is felt from all angles when someone commits a violent offence, most notably the victims and their families. Our party works with a number of those families who are severely impacted, and their pain is raw and enduring. People living with severe mental illness are also 11 times more likely to be a victim of violent crime compared with the general population.

The royal commission heard that 56 per cent of offenders on a community correctional order had a mental health treatment rehabilitation condition. But the imposition of a mental health treatment condition does not mean that treatment is received. Lack of services means that offenders often complete a CCO without receiving treatment. As Ms Stitt said in her second-reading speech, it took many years of underinvestment to get the system to breaking point and it will take a decade of unwavering commitment to workforce, legislation and sustainable investment to rebuild.

I greatly respect the work of the royal commission. I have great confidence in the capable, dedicated people that are working to reshape our mental health system, and I hope for success. There are certainly many people who are counting on it so they can get the help they so deeply need. As chair of the royal commission, Penny Armytage, said when delivering the final report:

> I hope that with the full implementation of the reforms … an inquiry of this nature will never need to be repeated.

I commend this bill to the house.

Mr GEPP (Northern Victoria) (11:07): I am pleased to rise to speak on the Mental Health and Wellbeing Bill 2022. As has been said by many of the speakers, this bill is extensive, it is comprehensive and it contains a lot of technical and clinical aspects. But it is an important bill, isn't it? It is an important bill because here we are in 2022 going back to the royal commission in 2018, and we are starting to understand as a society and as a community the impact of mental health and how it touches just about all of our lives. I was interested when reading the notes for this bill to see that there are some 60 000 people being cared for by people in this state for their mental health issues. Some 5000 people each year will be impacted, and I think that is probably underestimating the impact of mental health and probably under-reporting.

I was just talking to Mr Barton about this—unfortunately while Ms Maxwell was making her contribution, so I apologise. We were talking about how you can see a broken arm and you can see a broken leg—there is a cast, there is a moon boot, there is a bandage—but those hidden illnesses for many, many years, certainly as I was coming through as a young union official, were dismissed by everybody. If you cannot see it, then surely it does not exist. But of course we know that that, sadly, is

not the case, that there are so many people in our communities that are battling with mental health and wellbeing issues.

As we know from the royal commission announced back in 2018, the system is broken. There can be no doubt that it is broken. As Ms Maxwell said and as was reported by many others, it was stated that for decades governments refused to acknowledge the impact of mental health and wellbeing and were very happy to leave that side of our health system sitting on the shelf, and inevitably we ended up with a system that was not functioning and was not working for everybody. It particularly was not helping those Victorians who were in desperate need of assistance in dealing with their health issues. That royal commission was such a landmark royal commission, and I think in years to come it will go down in history as one of the most important pieces of work that has been done in this state because it shone a light on a very, very complex and very, very difficult area of public health, one that had been neglected for such a long period of time.

I am very proud of the efforts of the Andrews Labor government in this space and the work that we have done in response to that royal commission—and not for the political kudos. That is not what I am proud of. I am proud that we have responded to an independent review of a part of our health system which said unequivocally, 'It is broken. It is in desperate need of attention, it is in desperate need of reform and it is in desperate need of investment'. I am proud that our government has taken up the challenge, and I hope that it gets the support of everybody in this place—not just now but in the decades to come—and that we all commit now and into the future to continue to fund this very, very important area of our public health system.

I do want to talk a little bit about some of the highlights of the record $3.8 billion that the government invested through the 2021–22 state budget. It is important because $3.8 billion is a lot of money, but it is the component pieces of that $3.8 billion which go directly to the recommendations made in the royal commission. It is targeted investment, and it is the beginning. It is not the end, it is the beginning. It is targeted at addressing those areas of the royal commission recommendations to ensure that we are improving the lives of Victorians.

I want to give some of the context and some of the breakdown of some of those services. There is $954 million to reform area services to better support the mental health and wellbeing of adults and older adults. There is $264 million for 20 new local services for adults and older adults, supporting people in their communities, and that is important. I said at the commencement of my contribution that 60 000 people are providing care in this state for people with mental health and wellbeing issues. There is $266 million for supporting the mental health and wellbeing of our young people. Many of us have spoken in this place, and it is interesting. I am as guilty as anybody. You know, you come in here and you talk, and in the hyperbole of the debate you talk as if you are talking on behalf of all Victorians, all young people. But we know it anecdotally—as we go around our various electorates we do talk to young people and they tell us the challenges that they have experienced just in the last few years, particularly in the last couple over the COVID period. We know anecdotally from those conversations that our young people need our support, and importantly through this program of investment they will get that support.

There is $196 million to support the mental health and wellbeing of infants, children and families, and $370 million for new models of care for bed-based services that are safe and compassionate. We have all seen some of those Hollywood movies, haven't we, about some of those institutions in the past, and they were frightening. And we all hoped that those films were just fabricated fiction from the minds of a producer or a screenwriter, but alas what we know from the royal commission is that unfortunately some of those horrific stories were absolutely true and occurring right under our very noses, so this important investment for those new models of care for those bed-based services is so welcome.

There is $173 million for government- and community-wide suicide prevention and response. It is heartbreaking when you read the newspaper just about every day and at the end of a story you see the

reference to Lifeline or Beyond Blue and you just know that somebody has taken their life, very sadly, and we cannot do enough in this space.

There is $218 million for mental health reform and education, setting up our children and our young people to thrive. There is $116 million supporting Aboriginal social and emotional wellbeing. I had the occasion recently of being in Robinvale and talking to our First Nations people in Robinvale—excellent people. They are fantastic people. What a wonderful community they are—and so supportive of each other. I was talking to the elders there about mental health and how young people in their community were doing, and they said, 'Well, often what we have to do when somebody is experiencing these sorts of issues is we take them off country, but the best place for them is on country, with the support of their community', and that is so important. The point here of course is that there have to be different models of service for different communities to fit their cultural circumstances.

There is $206 million to enable the mental health and wellbeing workforce to deliver a reformed system. I know it has been said on a number of occasions during the debate so far and will be said again, I am sure, that our workforce in the mental health and wellbeing space are fantastic people, as they are right across our health system. They are overworked. They are underpaid. They are stretched to the nth degree, but they pony up every day because they care. They are committed to their work. They are committed to supporting their fellow community, and they do an extraordinary job. There is also $141 million in asset funding to expand mental health treatment options for Victoria's youth.

The 2022–23 Victorian state budget is also investing $1.3 billion for brand new initiatives, which will build on last year's $3.8 billion. That investment focuses on funding for mental health services to provide a greater level of clinical care and community support to Victorians in need. Again, I want to give some of the breakdown of that expenditure, because it is important that people understand that this is not just a pot of money where you just dive in when somebody has a good idea—this is targeted investment.

There is $372 million for workforce initiatives, which include training an additional 1500 mental health workers, including 400 mental health nurses, 100 psychiatrists and 300 psychologists. There is $490 million for acute hospital-based care, including 82 new mental health beds in key growth areas at the Northern Hospital and the Sunshine Hospital. There is $9.1 million to establish social inclusion action groups in 10 LGAs. There is $12 million in mental health and wellbeing support for families whose infants or kids and young people are accessing acute care in regional Victoria. That is so important, because, as has been mentioned, particularly by Ms Maxwell, in regional Victoria they are not around the corner, some of these services. You need to travel a distance to get to them, and it is so important that we support the families of these young people who are experiencing mental health issues and in need of those services. It is important that we support them in providing support for their loved ones.

There is also $20 million to provide tailored support for people with eating disorders—we have all seen for many, many years some of those terrible stories, particularly amongst young people; $21 million to support suicide prevention; $3.5 million invested in partnership with Aboriginal community controlled health organisations to keep Aboriginal Victorians safe and well; and $29.3 million to support the implementation of the new mental health and wellbeing act, including training for the mental health sector to deliver those new models of care.

This is an ongoing area of public policy that I absolutely guarantee the Andrews Labor government is committed to. We have signed up for it. We are committed to delivering reforms so that for all Victorians suffering mental health and wellbeing issues, or those Victorians supporting those that are suffering those issues, we can improve their lives, we can improve the services and we can improve their circumstances. We are committed to this area of public policy, we are committed to this area of public health, and I commend the bill to the house.

Mr BARTON (Eastern Metropolitan) (11:22): I rise to speak on the Mental Health and Wellbeing Bill 2022. This bill is so very important, and I am proud to stand here and support it today. Though you may not believe it, I came to this Parliament at 60 years of age.

Members interjecting.

Mr BARTON: I know. I managed through those 60 years to accrue a bit of life experience. About 45 per cent of all Australian adults will be affected by a mental illness at some time in their life—almost one in two—and I am not immune from that. There have been times in my life when I had to reach out and ask for help. I have seen many family members and friends have to do the same. Mental ill health can affect anyone. You can never know truly what is going on in a person's life. If you need to reach out, you do not need to feel ashamed.

From a policy perspective, there are many changes to be made that can support the mental health and wellbeing of Victorians. The Royal Commission into Victoria's Mental Health System made 65 recommendations, and I am pleased to see some of these critical recommendations included within this bill today. And the timing is right: we need these changes now. Victorians have had it tough. COVID-19 has had an enormous impact on people's mental health. That harm continues today. We know that with restrictions it was a tricky balance between what was required to keep the community safe, people's mental health and the economy. We are recovering, but more always needs to be done.

The $1.3 billion investment made in the most recent budget to support our mental health and wellbeing system is a great start, and so is this bill. I look forward to seeing the rest of the royal commission's recommendations being implemented as part of the 10-year plan to rebuild our mental health system from the ground up.

This bill will replace the current Mental Health Act 2014, creating a new foundation for mental health support in Victoria. This bill acts as an enabling piece, establishing the principles of our new mental health as well as the powers and functions of entities and others in the system. Critical to this are the rights-based mental health principles. These are modern principles that will guide service providers, ensuring the dignity and autonomy of people living with mental illnesses are upheld. So it is important that people are involved in decisions about the treatment, care and support they receive while also recognising the role of their families, carers and supporters in their treatment journey. Victorians will have rights under this new system for their preferences and their needs to be heard, understood and acted on.

The bill also introduces a non-legal mental health advocacy service for people who may be subject to or at risk of compulsory treatment. This will be an opt-out service and will support consumers in understanding and exercising their rights with regard to their treatment. Of course this is an incredibly complex aspect of our mental health system, and this advocacy service, which was recommended by the royal commission, will increase the uptake of safeguards such as advance statements of preference and nominating support persons. These safeguards are there to protect some of our most vulnerable Victorians.

There are several new entities and offices established in this bill that will govern and provide oversight for the mental health and wellbeing system. These include the Mental Health and Wellbeing Commission, which will provide oversight of the system to manage complaints—this will be an independent body that reports directly to Parliament; the regional mental health and wellbeing boards, which are eight boards that will engage with local communities and provide advice to the minister regarding mental health services in their regions; and the chief officer for mental health and wellbeing, who will report directly to the Secretary of the Department of Health and will spotlight mental health within the department.

What we have learned in the last couple of years is that these young Victorians need more support when it comes to their mental health. More than one in four people aged between 16 and 24 are affected by mental illness at some time—I know about this—and 75 per cent of severe mental health problems

emerge before the age of 25. That is why early intervention is critical to an effective mental health system and can prevent lifelong mental health illnesses. This bill acknowledges and seeks to address this fact by introducing Youth Mental Health and Wellbeing Victoria. This entity will give young people agency to share their mental health experiences and through this process assist their peers. This platform will champion the voice of young people, with the membership of its board including young people with lived experience. Mental health services will not work unless they are tailored to suit the individual. Youth Mental Health and Wellbeing Victoria will be that voice for young people, ensuring their mental health system caters for their diverse and complex needs.

This new mental health and wellbeing system will be focused on ensuring there is a health-led response to mental health crises in the community. Unfortunately we have seen emergency services responses to people experiencing mental health crises led by the police rather than a health service. This will change. The bill will enable a number of functions that provide more options for how the system can respond to people in crisis. Provisions will better protect the rights of people who require emergency support as well as improve the efficiency of emergency services. This will go a long way to reducing trauma for those who need treatment and support.

When creating legislation it is of course important to listen to those in the industry. In this case the mental health nurses have identified a number of concerns that I will outline for consideration. Firstly, the bill states that it intends to ultimately eliminate the use of seclusion and restrictive intervention. They have raised some concerns that the pressure to not use restrictive interventions, for fear of repercussions, could potentially increase risks to mental health staff.

It has also been expressed to me that there may be a need for a chief mental health and wellbeing nurse that reports to the chief psychiatrist. This is to prevent mental health nursing being diluted under a general nursing structure. Lastly, mental health nurses want to see an accreditation process defined by the chief psychiatrist to ensure mental health workers have the skills and the competency to safely enact powers under the act. It is always important to consider the views of those who this legislation will impact. Our mental health workers play a really important role in our community and must be heard. I understand that Ms Patten will be moving some amendments to address some of these matters, and I will certainly be supporting those amendments.

This bill is the beginning, not the end, of the reform of our mental health system. It lays the foundation for a system that enables people to be involved in decisions around their care and treatment. It enables their ability to express their wants and their needs and puts lived experience at the centre of decision-making. I expect to see more conversations around what the future of Victoria's mental health and wellbeing services looks like.

On that note, I would like to bring attention specifically to the issue of men's mental health. We know that often men find it difficult to reach out and ask for help. Because of this men's mental health issues have gone undiagnosed, often for a very long time. Social norms, upbringing and role models have contributed to this issue. 'Toughen up, Princess' is a phrase that comes to mind from my generation. This culture of dismissal stops us from addressing what are truly serious issues. Every week a woman dies at the hands of a partner that once loved her—or does love her—and it is such a serious issue. I urge all men: if you are angry and you do not know why, if you are hurting the ones you love, you have to reach out. You are not tough by not doing it; you are a better man when you do it. Many fall through the cracks before being able to be access the support they need. In fact 75 per cent of those who take their own lives in Australia are male. The number of men who die by suicide in Australia every year is nearly double the national road toll. This is devastating and impacts families, friends and whole communities. This is an area that I hope to see prioritised in the new mental health and wellbeing system, as I look to our bureaucrats there to keep us going that way.

The system, yes, is there to provide treatment and support, but it also must focus on early intervention and engagement with those at risk of experiencing mental health issues. Not everyone knows how to

ask for help. It is something I struggled with. I am very happy to see this bill go through this place today, and I commend this bill to the house.

Ms BATH (Eastern Victoria) (11:34): I am pleased to rise to show my support this afternoon for the Mental Health and Wellbeing Bill 2022. If I had more allotted time, I would certainly take all of that allotted time to thank the various members, both paid and unpaid, of our community that support people with mental health. From the very acute and pointy end of Victoria Police and Ambulance Victoria, who pick people up on the side of the road or in dark places and who answer the call and go into people's homes or the streets to triage and send them, hopefully, to hospital, to the various and many organisations in my Eastern Victoria electorate, as I said both paid and unpaid, both government and non-government, there are many people out in our state doing the most amazing, heroic deeds every day under stress to support their fellow human beings' mental health and improve their fellow human beings' mental health. I want to speak to a couple of those today, but I want to put on the record my thanks to all in this space.

I would not be me if I did not start to talk about Gippsland, and I will. The *Gippsland Regional Mental Health and Suicide Prevention: Foundational Plan* provides an estimate in a 2019–22 report that almost 24 per cent of the Gippsland population had been categorised as at risk; almost a quarter of people in Gippsland in my electorate have either mild, moderate or severe mental illness, and that is both the reality and the unfortunate nature of mental health. For Latrobe the ABS statistics reveal that approximately 33 000, or 11 per cent of that population, suffer from a mental health condition, which includes depression or anxiety. That same report states that that is 11 per cent, but across the whole of Victoria the percentage of the Victorian population with a mental health condition is roughly 8.8 per cent. So unfortunately again central Victoria is represented in a higher capacity in terms of mental health vulnerability.

The Royal Commission into Victoria's Mental Health System was established in 2019, and my colleague the Shadow Minister for Health, Georgie Crozier, has really in her time advanced our position on a lot of those issues. I thank her for all the work she has done in this space and also our Shadow Minister for Mental Health, Emma Kealy, my Nationals colleague in the lower house. I thank them for their considerable time and effort in delving into this space but also in speaking with the sector, speaking with the very real and vulnerable people and working on solutions.

During the course of the royal commission, the commissioners—there were multiple—went out into the regions. I attended the Warragul roundtable session with a number of my constituents. We went together. There was nothing more tragic than seeing a father crying at one of those sessions because of his sincere frustration about his adult child over multiple years, the effect it had had on his family and the desperate desire he was trying to communicate—the need for these improvements. The fix needs to be long term, it needs to be focused and it needs to happen. I thank all the constituents who have come to me and shared their stories. As you can see, one sits very heavily, and I thank him for the work he has done in his own space and for his family.

Recommendation 42 is really at the heart of this very comprehensive bill today. Also I would like to put my thanks on record to a former minister, Mary Wooldridge, for the work that she did in terms of the Mental Health Act back in 2014 and in the lead-up to that. But this bill looks at improving on that. I know we all went to the Royal Exhibition Building and we listened; we saw the cameras, we saw the media, we saw the fanfare and we saw and listened to people talk about their lived experience of mental health. What this government and what the Liberals and Nationals government will do and commit to do is honour their need, honour their comments, honour their wishes and make improvements in this space. A 2019 Victorian Auditor-General's report states in conclusion:

> The lack of sufficient and appropriate system-level planning, investment, and monitoring over many years means the mental health system in Victoria lags significantly behind other jurisdictions in the available funding and infrastructure, and the percentage of the population supported.

We see that the government has failed in many, many respects, and they have admitted that. What we see on the ground is that our fantastic organisations such as Lifeline, such as Beyond Blue, such as services for kids' mental health are under pressure. Lifeline Victoria in their 2020 report stated there had been a 22 per cent increase in calls originating from Victoria, so in our region. The chairman said, and I quote:

> Our thoughts are with the people of Victoria. Lockdown means many of the important opportunities for people to connect with each other and do things they enjoy are being stopped. For someone who is already struggling, this can be a huge blow.

That was from the chairman of Lifeline Australia, John Brogden, and I thank him for sharing what many people know now and knew at the time.

I have often conversations—but recently we went back around to have a conversation—with the Gippsland Lifeline CEO, Michelle Possingham, and we appreciate the very hard work that she has given over successive years. In fact Gippsland Lifeline is about to next year celebrate I think 60 years of serving the community in the very, very dark corners where people are at their wit's end in terms of mental health. The Nationals candidate for Morwell, Martin Cameron, and the shadow minister, as I have said, Emma Kealy, went and listened. During that period of time, during the lockdowns, there was a 45 per cent increase in triage, an increase in calls to call centres.

We know that Lifeline Gippsland services the whole of Australia and calls do not come in from their exact area. There are rationales behind that—and we certainly accept those—so that you do not walk down the street and necessarily speak to the same person that you did on the phone. Each call costs around $39 and they received 11 000 calls. We are talking about almost half a million dollars worth of calls in one year. Lifeline Gippsland have state government funding of $150 000, and because of and through the COVID lockdowns their avenue for earning—their fantastic op shops—was curtailed. They are facing real problems. Certainly I put that to the attention of all governments, and we are very mindful of that as well. Barrier Breakers has unfortunately recently closed in Gippsland. This is a sign of the times, and unfortunately it is not good.

In relation to a constituent that I spoke about in this place in terms of an adjournment debate a little while ago, a mother of a 17-year-old son who was admitted to an adult bed in Flynn ward, upon him being discharged she went to consult the outpatient service. The member on the line, the service provider, whether it was out of sheer frustration or fact, their words to the mother were, 'You can get your next available booking in 2025'. We know from the royal commission report that regional Victoria has been severely disadvantaged, and I need to stand up for those people—and I will—in terms of getting our fair share.

The breadth of support services and commitment from our regional people is amazing. We have heard it in here today—old people, young people, men, women, youth and children as well. Heather Baird is based in Sale, and A Better Life for Foster Kids does an amazing job, again on the smell of an oily rag, if I can be so bold as to say that. She did a census of all her home-based carers a short time ago. The report showed that 69 per cent of these young people coming into kinship or foster care arrangements have a history of trauma. That is understandable. Unsurprisingly, 56 per cent have behavioural issues, 44 per cent have attachment issues and 40 per cent have mental health difficulties. That is unsurprising, but they are human beings—little human beings, vulnerable human beings—at the end of those statistics. What she wants to see I am putting on the record. When they come into the kinship foster care arrangement they have got a medical check, but she wants mental triage. She wants to see those little children have a mental health assessment at the very start and then a pathway to planning that healing and support and triage ongoing. If they come in with a bruise, a broken arm or something wrong with their eyes, ears, hearing or whatever, it is not good enough just to fix those. We must also fix the mental side, otherwise we are going to see a perpetuation of their condition throughout their life, and unfortunately they may well end up in the youth justice system and going down a path that serves no-one—not them or our society.

We have also seen that there have been cuts to the mental health programs, and indeed the Minister for Mental Health said at a Public Accounts and Estimates Committee hearing recently that these programs were 'no longer required'. But we have seen blowouts in a whole raft of things—in the Labor government's projects in the city—yet there is a severe need for a whole raft of programs, including for drug and alcohol abuse. Again I thank those people who are very much at the pointy end of dealing with this. Our constructive and very real amendment that Ms Crozier has flagged and will certainly move in the committee stage and speak to relates to alcohol and other drug services. Indeed it is one of the key issues that was raised in the *Review of the Pandemic (Visitors to Hospitals and Care Facilities) Orders* report. The Victorian Alcohol and Drug Association testified, they provided their feedback to the committee, and this is from the minority report:

> They shared key statistics regarding the impact of pandemic lockdowns and restrictions on use … of alcohol and other drugs … and demand for AOD treatment and support:
>
> • The number of people calling helplines for alcohol and other drugs doubled …

during the pandemic. And:

> • Worryingly, fatal overdose data from the Victorian Coroners Court revealed that 2020 had the highest number of women fatally overdose from alcohol and more generally, the highest number of overdoses where alcohol was the sole contributing drug.

We can see that there is a need in this space, and we can see that there is a need for better communications and to have that embedded into this legislation. So I thank both the crossbench and the government for considering our amendments in good conscience. The other final thing I would like to put on the record is that we will commit to drug and alcohol centres across the state. There is one in Latrobe Valley, and it has been very well received.

The other issue is Vietnam veterans. It is Vietnam Veterans Day today, and I commend the Honourable Tim Bull, the Shadow Minister for Veterans Affairs, for announcing that the Liberals and The Nationals will reinstate high-dependency beds with specialised support in Heidelberg to help address this sector and this need for our Vietnam veterans. We should respect them, honour them, thank them and serve their mental health and wellbeing. With this I commend this bill to the house.

Mr ERDOGAN (Southern Metropolitan) (11:49): I rise to also speak in support of the Mental Health and Wellbeing Bill 2022. This bill delivers on a key recommendation of the Royal Commission into Victoria's Mental Health System, in particular recommendation 42. It is an important milestone in the 10-year mental health reform program required to give full effect to the royal commission's vision.

The bill puts people with lived and living experience of mental illness and psychological distress and their families, carers and supporters at the centre of our mental health and wellbeing system. It does this through the establishment of new rights-based objectives and principles and the inclusion of designated lived experience roles at the highest levels of new and existing governance and oversight entities. The bill establishes key new elements of the system architecture, including the chief officer for mental health and wellbeing, statutory regional mental health and wellbeing boards to provide advice on the planning and commissioning of services at the local level, and the new Mental Health and Wellbeing Commission and Youth Mental Health and Wellbeing Victoria. The bill sets out the foundations for the future of mental health and wellbeing services across Victoria, one where lived experience voices are at the centre and mental health professionals are supported to deliver treatment, support and care in facilities that actually help people recover. The new system framework will ensure that the legislative mechanisms reach beyond merely authorising and regulating the use of compulsory treatment and restrictive interventions and enable a connected and coordinated system where people do not fall through the cracks but receive the treatment, support and care they need and deserve.

Before getting into some of the changes, I want to thank all the previous speakers and contributors who have touched upon the importance of this bill, in particular Mr Barton for sharing his lived

experience and informing the chamber about his experiences. It gave me an opportunity to reflect on my experiences growing up, when awareness of issues of mental health was not as widely spoken about. In particular male mental health was not at the forefront of many people's minds and did not have the attention or focus and resources we have now in addressing this issue. It is an issue that affects so many people—I can say me and my family as well. I know members of my family have had tough periods as well. It does not affect just the person experiencing it; it affects their family, their supporters and their friends. It is very difficult. It is important that this bill does get passed today and is implemented as soon as possible because it is an important piece in the whole raft of reforms that our government is making.

This has made me reflect on a topical discussion today about spending on mental health and health and having foresight that this is not just a quick fix. It is a 10-year program looking to the future. We want our system to be a lot better than what it is today, not just today but also 10 years into the future. That is what this is about. It is not just about people that are suffering today, it is about people in the future that will come across these issues of mental health so they have the resources and support needed. I like that this is just one part of a bigger program that we are implementing.

There are many significant changes from the Mental Health Act 2014. This bill has a wider focus. The 2014 act has a focus on people who appear to have mental illness and compulsory treatment. It does not deal necessarily with wellbeing. The bill remakes many aspects of the 2014 act. For example, it provides for the appointment of the chief psychiatrist and establishes the Mental Health Tribunal and the Victorian Institute of Forensic Mental Health. The bill will also continue the Victorian Collaborative Centre for Mental Health and Wellbeing.

Some of the key new developments under this bill are a stronger focus on the protection of rights; the introduction of an opt-out, non-legal mental health advocacy service; a focus on moving towards elimination of restrictive interventions and a reduction in the use of compulsory treatment; regulation of chemical restraint such as sedation; introduction of health-led responses to mental health crises; establishment of new roles and entities—a chief officer for mental health and wellbeing, the Mental Health and Wellbeing Commission providing independent oversight of the system, regional multi-agency panels and Youth Mental Health and Wellbeing Victoria, which I will elaborate on a bit later; a broader definition of 'mental health and wellbeing service provider', widening the range of organisations which fall under the act; extending the oversight of the chief psychiatrist to mental health and wellbeing services in custodial settings; and acknowledgement in statute of the harms that may be caused by compulsory assessment and treatment and requirements that these harms be balanced against the harms to be prevented by their use.

The bill in some respects goes beyond the royal commission's recommendations. In general, it does reflect the royal commission; however, it goes beyond them for a number of reasons and in a number of ways. The establishment of Youth Mental Health and Wellbeing Victoria responds to the significant mental health challenges faced by young people and the fact that the primary focus of Victoria's collaborative centre will be on adults and older adults.

There is the inclusion of specific decision-making principles in relation to compulsory assessment and treatment and restrictive interventions. Although this was not a direct recommendation, the royal commission did state that the bill should include principles that reflect concepts of autonomy, supported decision-making, recovery-oriented practice, the protection and promotion of human rights and the use of compulsory treatment as a last resort and that provide guidance for decision-makers and service providers on how treatment, care and support should be delivered. The royal commission recognised that specific principles and accountability mechanisms may also be needed for different parts of the new act—for example, compulsory assessment and treatment.

The reduced maximum duration of community treatment orders from 12 months to six months—a change which was on the recommendation of the expert advisory committee established to support development of the bill—will provide for more frequent oversight by the Mental Health Tribunal. This

is consistent with the royal commission's vision for a reduction in the use and duration of compulsory treatment and is considered more rights protective than allowing for community treatment orders to continue for 12 months without independent oversight.

There are changes to support a health-led response to mental health crises. The royal commission recommended that, wherever possible, emergency services responses to people experiencing a time-critical mental health crisis are led by health professionals rather than by police—a topic that some of our previous speakers have commented on. Implementation of this recommendation requires legislative changes to enable health professionals to respond to people experiencing a mental health crisis in the community. To this end the bill will enable more authorised persons to take a person experiencing a mental health crisis into their care and control for the purpose of arranging for a mental health examination. Initially this will be by registered paramedics employed by an ambulance service. The bill will also allow for more flexible options for examination locations and transport and modernised provisions to afford better protection of people's privacy and dignity when being searched.

One aspect that I stated I wish to touch upon is Youth Mental Health and Wellbeing Victoria. It is an important part of the jigsaw—a crucial part in fact—because in part of my work on the Pandemic Declaration Accountability and Oversight Committee I did hear about the disproportionate effect on young people that the pandemic has had. Obviously much-needed public health restrictions were in place, but as a result young people were disconnected from friends and family and from their school environment. Recognising the specific needs of young people, Youth Mental Health and Wellbeing Victoria is going to be established and will establish a response to some of the significant impacts of the pandemic but also the mental health impact on young people in general. Youth have been singled out because of the disproportionate impact of the pandemic and the initial primary focus of the Victorian collaborative centre. Youth Mental Health and Wellbeing Victoria will provide system leadership in youth mental health and wellbeing. This will complement the work of the VCC. The board of Youth Mental Health and Wellbeing Victoria will work closely with the VCC to identify and promote opportunities to increase collaborative translational research between multiple organisations and multidisciplinary experts and people with lived experience to improve the mental health and wellbeing of young people across Victoria.

The oversight functions in relation to declared operators will enable them to seek out and integrate a range of specialist youth mental health services and researchers in a way that is more adaptive than traditional hospital-like models. Our initial understanding is that the focus of this youth body will be on people aged between 12 and 25. That is, I think, a good catchment. You get a lot of the older adolescents, teenagers and a whole cohort of really—

Business interrupted pursuant to sessional orders.

Members

MINISTER FOR TRAINING AND SKILLS

Absence

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (12:00): I bring to the chamber's attention, as has been previously advised, that Minister Tierney is absent today, so any questions directed to her in her capacity as minister or representing minister I am more than happy to receive on her behalf.

Questions without notice and ministers statements

MEMBER CONDUCT

Mr DAVIS (Southern Metropolitan—Leader of the Opposition) (12:00): My question is to the Leader of the Government. Minister, on 19 November last year, after the Public Health and Wellbeing Amendment (Pandemic Management) Bill 2021 had stalled in this chamber, I asked you whether a deal had been struck or negotiations undertaken with the crossbench, including the Transport Matters

Party's Mr Rod Barton. You gave an inconclusive answer about whether a special side deal would be struck. Around the time that Mr Barton changed his vote on the pandemic legislation a donation of $3450 was made to his party by the Victorian Trades Hall Council, an arm of the Australian Labor Party, and I ask: were you, as Leader of the Government in charge of negotiations with the crossbench, including Mr Barton, aware of this crooked donation?

Ms Shing: On a point of order, President, if Mr Davis has specific allegations to put in relation to a member of this chamber, he should do so by way of substantive motion.

The PRESIDENT: While I had questions about the question myself—and I thank you for your point of order—I still call the Leader of the Government.

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (12:02): I appreciate the time to compose myself. The audacity of you guys to ask about secret deals and donations—the lack of self-awareness is just astounding. Probably what concerns me most about your question, and the substantive answer to your question is no, is the fact that you ask it makes me think that that is how you would behave—the fact that you even think to put that question. In government that is probably what you would think is an appropriate way to conduct yourselves. It is extraordinary.

The inference that you have made and the aspersion you have made against the character of Mr Barton is—I will let him perhaps defend himself. But I spent hours and hours with Mr Barton, Mr Hayes and other members in this chamber who wanted to understand the bill and the benefits to protecting the health and safety of Victorians. As we know, the bill came in and the subsequent amendments reflected those discussions. That bill passed as a matter of compromise, a matter of explanation and a matter of going through in detail the elements of the public health and wellbeing bill, which ended up producing legislation that passed this chamber. To suggest that there was an inducement, a deal, a bribe, to get people to support a bill that ultimately protected the health and safety of Victorians is outrageous and just a reflection on you.

Mr DAVIS (Southern Metropolitan—Leader of the Opposition) (12:04): I thank the minister for her answer, and I note the transaction with Mr Barton where money was provided to him and there was in fact a change in his position—

Mr Barton: On a point of order, President, there was no money that changed hands, Mr Davis. Once again you are just making things up—grandstanding again. There was no money. Trades Hall, who I have known for many—

The PRESIDENT: Order! Nothing further.

Ms Pulford: On a point of order, President, Mr Davis is making extraordinary allegations against a member of this chamber, and our standing orders require such things to be done by substantive motion, which would at the least, should the opposition actually have the guts to bring it on, which they would not—they never do—

The PRESIDENT: Thank you, Minister. I am having problems with questions and supplementaries. We go into debate and go again and again. Mr Davis, I ask you to ask your supplementary question, straight to the question.

Mr DAVIS: President, I take your guidance and I ask the minister to rule out the Labor Party preferencing Mr Barton as a further transaction for his tainted votes.

The PRESIDENT: Order! Mr Davis, I warned you before and I asked you to go straight to the question. The question is not related to the answer or anything, so I am going to rule it out.

ON-DEMAND WORKFORCE

Mr BARTON (Eastern Metropolitan) (12:06): Thank you, Mr Davis. You are more than welcome to have that outside if you like.

The PRESIDENT: Mr Barton, straight to the question, please.

Mr BARTON: My question today is for Minister Pulford, representing the minister for road safety and transport, and coincidentally is on the subject of Uber and the Transport Workers Union, who are also friends of mine. They signed an agreement earlier this month that established an agenda for the future working conditions of gig economy workers. That sounds familiar. After years of court cases and front-page scandals and now a change in federal government, thank goodness, Uber has had no choice but to come to the table. This is an attempt by Uber to shape gig economy regulation before it shapes them. Without these workplace so-called contractors, who I like to call employees, will the government be proactive and start legislating basic protections for gig economy workers?

Ms PULFORD (Western Victoria—Minister for Employment, Minister for Innovation, Medical Research and the Digital Economy, Minister for Small Business, Minister for Resources) (12:07): I thank Mr Barton for his question. Mr Barton is a fine member of this chamber who always acts with integrity, never leaves the government or anybody else wondering about what we should be doing for his people and has in every opportunity that has been presented to him in nearly four years in this Parliament stood up for workers, particularly those in vulnerable employment, insecure employment, in the gig economy. I will take your question on notice and provide that to Minister Carroll, and we will provide you with a written response in accordance with our standing orders.

Mr BARTON (Eastern Metropolitan) (12:08): Thank you, Minister. In May earlier this year I moved a motion in this house to establish an independent tribunal for transport workers. This tribunal would be an independent panel of industry experts who have the power to set minimum and enforceable standards, enter into enforceable and certified collective agreements, resolve disputes and review all unfair contracts. Given that now Uber also agrees that an independent tribunal should exist, will the government introduce an independent tribunal for transport workers?

Ms PULFORD (Western Victoria—Minister for Employment, Minister for Innovation, Medical Research and the Digital Economy, Minister for Small Business, Minister for Resources) (12:09): I thank Mr Barton for his supplementary question and again thank him for his interest in standing up for workers in the transport industry, and I will seek a written response from Minister Carroll for Mr Barton.

MINISTERS STATEMENTS: EARLY CHILDHOOD LANGUAGE PROGRAM

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (12:09): At the heart of the Andrews Labor government's Best Start, Best Life reform is the commitment that every child, no matter their background, should get the very best start in life. Last week I had the absolute joy of joining my friend and colleague Sonja Terpstra on a visit that showcased the creative ways that our kindergartens are implementing language programs right across kindergartens in Victoria. Our $26.2 million language program supports 8000 Victorian children to learn a second language across 220 kindergartens, and it supports the employment of dedicated language teachers right across our state.

Maroondah Pre-school is one of the centres benefiting from this program. Every three weeks Maroondah Pre-school, accompanied by their education leader, Zee Hewitt—what an absolute superstar Zee is—and her team, visit elderly residents at Donwood community aged care. It is all part of an intergenerational program where children get the opportunity to showcase their Auslan skills as well as engage in play-based learning alongside new friends. Learning another language not only is great for boosting kids' learning and development but also strengthens empathy and understanding.

The intergenerational program is creating a sense of belonging within the local community, which is only strengthened by links that already exist. Teaching student Tiani's grandmother is a resident, and some children have grandparents who are residents or staff at Donwood. It is clear that it is not just the children that benefit, it is also the residents, for many of whom this is a social event that brings great joy. One of the elderly residents said, 'I feel young again'. This is just one of the many ways our government is giving kids the very best start in life.

SEX OFFENDER REGISTER

Mr GRIMLEY (Western Victoria) (12:11): My question is for the Minister for Training and Skills, through the Attorney-General, representing the Minister for Police. I have become aware of a deficiency in the sex offender register, and it is not just that the register is not public. It seems that there is no power of entry without a warrant for a sexual offender case manager to enter premises or to search and seize if there is a reasonable suspicion of criminal activity occurring, including a registered sex offender concealing images on a mobile phone. Presently police can apply for a search warrant through the Magistrates Court, but this takes time. Section 459 of the Crimes Act 1958 allows for entry but only if a crime is being committed at that time, and again there is substantial evidence that needs to be gathered. This is ineffective if a paedophile decides to throw the phone out, hide the computers or otherwise destroy evidence. Minister, will your government investigate implementing these additional powers of entry and search and seizure powers for convicted child sex offenders whilst they remain on the register?

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (12:12): I thank Mr Grimley for his question, which I will pass on to Minister Tierney, who will pass it on to Minister Carbines, in relation to the warrant requirements in relation to the sex offender register. But the issues that you raise are also something that VicPol have raised with me in relation to warrants and digital images and things like that, so there is a bit of a conversation going on about this more broadly across both my portfolio and Minister Carbines's portfolios. We might be able to provide you with a bit of a joint response in relation to that.

Mr GRIMLEY (Western Victoria) (12:13): Thanks, Attorney. I appreciate that. If you are driving and you get pulled over and there is a reasonable suspicion of criminal activity, you can have your car searched, which could potentially be conducted by a police officer of low rank. The subject of a firearm prohibition order can be searched or have their house searched if it is reasonably required to determine if they possess a gun or similar, so why is it that convicted child sex offenders, class 1 and class 2 perpetrators on the register, cannot have their computers, phones or homes searched without warrant if there is a reasonable suspicion of a crime being committed? I have heard that in one instance a case manager had intel about a sex offender accessing child abuse material on his phone, but there was not enough evidence for a warrant. When the perpetrator died they found he had been accessing material for years. I could quote a number of other instances where a suspicion has later been deemed a reality. Minister, why is there a double standard in our laws in this aspect when it comes to police powers of entry and search and seizure?

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (12:13): I thank Mr Grimley for his question and his advocacy in this space. The behaviour you describe is obviously abhorrent and something that we always want to respond to appropriately. In relation to the specifics of your question, I will pass them on to ultimately Minister Carbines.

PORT MELBOURNE PUBLIC HOUSING

Dr RATNAM (Northern Metropolitan) (12:14): My question is for the minister representing the Minister for Housing. Minister, just weeks before Christmas the residents at Barak Beacon estate in Port Melbourne were doorknocked by department officers informing them that they would need to move from their homes urgently. Residents have felt pressured into moving without full information about what will happen to their homes, and they are deeply distressed at having to leave without

knowing whether they will be able to return to the estate. We know what is about to happen on this estate because it is part of the privatisation of public housing this government is pursuing. This is prime real estate close to Port Melbourne's beaches, and it is clear that the so-called ground lease model will siphon off part of this public land for private development. In a housing affordability crisis, with over 120 000 people on the waiting list, this is unconscionable. Residents report that their homes are in good functioning condition and they have not been provided with any rationale for why they will be destroyed. Minister, are these people's homes being demolished instead of being renovated so private investors can have waterfront views?

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (12:15): Thank you, Dr Ratnam, for that question. There is an awful lot in that, but I will pass it to the Minister for Housing in the other place and, pursuant to the standing orders, seek a response.

Dr RATNAM (Northern Metropolitan) (12:15): Thank you, Minister, for passing that on. Minister, we know the existing public homes will be replaced with a mix of new community, affordable and market rental homes, meaning that public homes are being replaced with privately owned and privately managed housing. There will be no public housing maintained on the site and a small uplift of only 10 per cent in community housing. We also understand that private affordable rentals are expected to be part of the government's affordable housing rental scheme. However, serious questions remain about how the model can be described as affordable and provide secure housing for people currently living in the public housing on the site. We have heard the government is defining 'affordable rentals' at this site as 90 per cent market rate with rental periods of three years. Is this correct?

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (12:16): Thank you, Dr Ratnam. Again, as with the substantive question, I will seek a response from the minister in the other place.

MINISTERS STATEMENTS: VIETNAM VETERANS DAY

Mr LEANE (Eastern Metropolitan—Minister for Commonwealth Games Legacy, Minister for Veterans) (12:16): On this day we reflect on and honour the service and sacrifice of those who served in the Vietnam War. This year marks the 60th anniversary of Australia's involvement. The Shrine of Remembrance is currently doing a commemoration service, which coincides with the 56th anniversary of the Battle of Long Tan. On this day in 1966, in a rubber plantation near the village of Long Tan, Australian soldiers fought the fiercest battles of the Vietnam War. Approximately 60 000 Australians served in the Vietnam War. Of these, 3000 were wounded and 521 were killed. I take this opportunity to thank all Vietnam veterans and their families for their sacrifice.

This story is told without fear or favour at the National Vietnam Veterans Museum at Phillip Island, and I would encourage anyone who has a chance to visit it to do so and learn more. I would like to give a special shout-out to the Vietnam Veterans Association of Australia Victorian branch president, Bob Elworthy, whose association we are proud to support. On Wednesday, alongside the member for Bass and a member of this chamber, Dr Kieu, I was proud to announce that our government will contribute $10 million to the Vietnam veterans museum for a new purpose-built facility. We are also proud to provide $50 000 to digitally record the stories and histories of Vietnam veterans and also $150 000 for new grants for ex-service organisations to support veterans wellbeing through supporting new programs.

We welcome these substantial investments for museums and veterans. We acknowledge that this is a group of Australians and Victorians that were treated very poorly on returning, and for that I am sure the whole chamber joins me in saying that we are sorry.

EARLY CHILDHOOD EDUCATION

Ms BATH (Eastern Victoria) (12:18): My question is to the minister for early childhood development. Minister, Jan and Gary run an independent child care with kinder centre in the Latrobe Valley. Suffering from a severe staff shortage and, despite going to great lengths, unable to recruit staff, their 30-year respected service is on the brink of closure. Your policy is having adverse negative impacts on regional businesses. Minister, what will you do to stop Gary and Jan having to close their childcare centre?

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (12:19): I thank Ms Bath for her question. I will need to understand whether it is a sessional kindergarten or a long day care centre, because the funding settings vary slightly, depending on what type of service is being provided. But if there are specific issues about difficulties in recruiting staff in regional and rural areas, I would really urge Ms Bath to provide me with some further details, and we can get some very intensive support around that service in that area through the department, who have obviously been assisting the whole sector in the rollout of three-year-old kindergarten, and that includes assistance with recruitment in hard-to-staff areas. So if that is a particular feature of this issue, then there is support there and I would urge you to provide me with the details.

In relation to the Best Start, Best Life reforms, with three-year-old kindergarten we already had $209 million worth of investment in workforce strategies. It is incredibly important to get a really strong pipeline of teachers and educators over the next decade to deliver on our three-year-old rollout, which is continuing, but also to support the significant reforms that we have recently announced around doubling the hours of four-year-old kinder between 2025 and 2032. We will have more to say about additional supports that will be available for attracting and retaining the incredible workforce in the early childhood sector. We could not have delivered these reforms without them. Free kindergarten is also a feature of our reforms, Ms Bath, as you would be aware, and there is also support available from the department to understand the way in which the guidelines operate for particular services. I would urge you to provide me with the details, and I will make sure that the department is in touch with this service forthwith.

This is a huge shot in the arm for early childhood education and care in our state. This is the single largest reform in our country to early childhood education, and this will set children up for life in Victoria. We are already seeing in some regional and rural areas the benefit where three-year-old has been offered for a couple of years now—the feedback from the sector, from professionals, about how amazing it is and the impact it is having on kids that then go into four-year-old. They are not just hitting their milestones; they are smashing them. This is all about giving children the very best start in life so that their education journey is a rich one.

Ms BATH (Eastern Victoria) (12:22): I thank the minister for her response. Minister, Gary and Jan's centre prioritises Department of Families, Fairness and Housing vulnerable, out-of-home care and child protection children. At any one time they have 12 of those children in their care. If Jan and Gary are forced to close, where will these children go?

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (12:22): Ms Bath, you are presenting a hypothetical situation to me. I know that there is a high degree of support available for our early childhood education and care services. You have not even been able to identify what type of service is being operated at this particular centre. I will point out that for children that are known to child protection or who are experiencing vulnerability there are additional supports available. They have been receiving free kindergarten for a number of years in our state. If the issue is about the viability of that service, my department deals with these issues regularly, particularly in rural and regional areas, and I would urge you to provide me with those details so we can support that service.

DUCK HUNTING

Mr MEDDICK (Western Victoria) (12:23): My question is for the Attorney-General, on behalf of Minister Tierney, the Minister for Agriculture. Earlier this month FOIs revealed the Environment Protection Authority Victoria has been aware of toxic levels of lead in Victorian ducks for the past four years, despite lead ammunition for duck shooting having been banned for over two decades. Lead poisoning puts protected species at risk of being paralysed and is extremely harmful to human health. Lead remains a contaminant for decades, impacting waterways, animals who are shot directly and birds of prey, including wedge-tailed eagles, who feed on the bodies of birds killed and abandoned by shooters. During the 2022 duck-shooting season six shooters were fined for using lead ammunition, but no public warning was issued and recreational shooting continued despite the risks. Is the minister confident that illegal lead use can be monitored across the hundreds of wetlands available to duck shooters in Victoria?

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (12:24): I thank Mr Meddick for his question for Minister Tierney in her capacity as agriculture minister, and I will endeavour to pass that on to her. But I would just ask also, in terms of the days, as Ms Tierney is on bereavement leave today and tomorrow, that we factor that in for her to be able to respond at her earliest convenience to Mr Meddick. I am sure she would be happy to provide you with as much information as possible.

Mr MEDDICK (Western Victoria) (12:25): Thank you, Attorney, for passing that on. This information was uncovered by volunteers using their own money to FOI documents from the department. It was not volunteered for public display by the department. The government claims to be unaware of scientific studies to determine lead levels in ducks, but the EPA received evidence back in 2018. Can the minister advise why information concerning health and safety was kept from members of the public?

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (12:25): I thank Mr Meddick for his supplementary question. Although I am happy to pass that on to Minister Tierney, you have referenced the EPA, which is obviously a matter for Minister D'Ambrosio predominantly. But we will see what information Minister Tierney's office can give you in relation to the information that they receive by virtue of their interaction with the EPA.

MINISTERS STATEMENTS: OLIVIA NEWTON-JOHN CANCER RESEARCH INSTITUTE

Ms PULFORD (Western Victoria—Minister for Employment, Minister for Innovation, Medical Research and the Digital Economy, Minister for Small Business, Minister for Resources) (12:26): I rise to acknowledge the passing of Olivia Newton-John (ONJ) and recognise some of the incredible work that continues in her name. The Olivia Newton-John Cancer Research Institute is one of the independent medical research institutes that our government has been supporting for many years through its operational infrastructure support program. The creation of the institute was inspired by Olivia Newton-John's own journey with cancer and her sister's death from glioblastoma multiforme in 2013, a disease that had seen little advancement in treatment in three decades. The institute is known for its leadership in the development of immunotherapies, targeted therapies and personalised cancer medicine. It is one of four medical research institutes in Australia that focuses entirely on cancer, and it is the only one that is embedded within a cancer centre, at Austin Health.

In recent years the government has continued to work with the ONJ centre to support their work. $1.2 million over two years was committed in December 2021 to support a COVID-19 research study led by the institute. Conducted as part of the Australasian COVID-19 trial ASCOT study, this new trial of lenzilumab in hospital COVID-19 patients will provide Australian patients with access to potentially impactful treatments. The study will also evaluate predictive blood markers to assist in identifying patients who have worse outcomes and would benefit from this treatment. Support has also been provided through the Victorian Cancer Agency, totalling close to $20 million.

Recent studies have included an early career research fellowship to develop targeted therapies for colorectal cancer, development of advanced molecular imaging biomarkers in lymphoma patients treated with novel therapies, new labelling strategies to study tumour cells and surrounding normal cells and identify new treatment options for aggressive breast cancers, and targeting mammary adipose tissue-resident regulatory T cells to improve immune checkpoint blockade therapies against breast cancer. My thoughts are very much with Olivia Newton-John's family and friends at this difficult time, and I hope that the recognition of her advocacy and the ongoing work of the institute are some comfort to them.

COVID-19 VACCINATION

Ms LOVELL (Northern Victoria) (12:28): My question is for the Minister for Emergency Services. How many firefighters, both volunteer and career, are still unavailable for work due to the COVID-19 vaccine mandates?

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (12:28): I thank Ms Lovell for her question. Ms Lovell, I do not have those figures at hand. They are also not necessarily verifiable in that they rely on individual branches being advised by particular members without self-identifying whether they are available for their volunteer duties or not for a variety of reasons. In terms of the numbers, I am unlikely to be able to provide them for you. In relation to career, the numbers are very small and I have been reassured by both agencies, FRV and CFA, that the operational impact of any absences has not been a factor in their ability to respond to community safety concerns.

As you know, under the pandemic orders emergency service agencies are obliged to ensure that all employees are vaccinated, and that extends to our volunteers. There have been a lot of conversations that I have had with career and volunteer firefighters. They are required to go into a lot of vulnerable settings—for example, in country areas. Those of us who represent country areas would be aware that if the fire alarm goes off in an aged care facility, for example, it is the CFA that would respond. Picking up on those issues, picking up on the concerns of the risk of COVID-19 to particularly vulnerable cohorts, the current requirement is that those people that would respond in those circumstances should be vaccinated.

In relation to training, we understand that, in line with updated health advice, critical training requirements for CFA, FRV and SES have been updated, so volunteers who are yet to be fully vaccinated are now able to undertake critical training to maintain their core skills. That is a direct response in relation to feedback, in relation to the high levels of vaccination, in relation to the availability of treatment for COVID and the like. As the risk changes, so does the advice, and we continue to have ongoing conversations with our emergency services providers to make sure that we are providing them with the best health and safety advice for their own protection and also for the cohorts that they come into contact with.

Ms LOVELL (Northern Victoria) (12:31): Minister, what is the cost of overtime to replace these firefighters in FRV, who can attend the MCG unvaccinated, can attend a cafe unvaccinated and can even continue to work in other roles in the community yet cannot attend a fire station or fight a fire to protect lives?

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (12:31): Ms Lovell, the advice that I have is that the mandatory vaccination requirements were well promoted within Fire Rescue Victoria and overwhelmingly the workforce were fully supportive of that and have complied. I am advised that less than 2 per cent of staff at FRV have not complied with vaccination requirements, which is a relatively small number of a workforce of 4000 people. So in relation to the advice that I have been given from FRV, there has been no impact on their ability to respond operationally to any of the emergencies that they have needed to do so for.

THURRA RIVER BRIDGE

Mr BOURMAN (Eastern Victoria) (12:32): My question is to the minister representing the minister for energy, environment and climate action or change or whatever, Minister D'Ambrosio. On 31 December 2019 the Thurra bridge located inside a national park in East Gippsland burnt down as part of the fires. Parks Victoria on their website stated that the scale and complexity of the bridge rebuild was taking longer than expected. Its planned completion at this stage will not be until summer 2023–24. In the three years since the Thurra bridge was destroyed by the Black Summer fires, the East Gippsland council have successfully prioritised the repair and replacement of more than 13 bridges throughout their region. The Thurra camping ground remains closed to tourists due to the bridge being down and will remain that way until the bridge is rebuilt. The camping ground is a popular tourist destination that is going to waste. Without a functional vehicular bridge, the township is missing out on the economic stimulus. I understand the issue has been raised in the other house, yet here we are three years after the bridge was burnt down and there is still no bridge. My question is: will the minister meet with me to discuss an accelerated action plan to have the bridge rebuilt?

Mr LEANE (Eastern Metropolitan—Minister for Commonwealth Games Legacy, Minister for Veterans) (12:33): Thank you, Mr Bourman, for the question, which was directed to Lily D'Ambrosio, the minister for environment. I understand your request to speak to her around this issue, so I will make sure that question is passed on to her. I can only reiterate today that she is the person to speak to. I have not been secretly sworn in to any other portfolio, which is sort of a weird custom and practice of coalition governments.

WRITTEN RESPONSES

The PRESIDENT (12:33): Regarding Mr Barton's question to Ms Pulford, two days for question and supplementary, transport and roads; Mr Grimley to Minister Symes representing Minister Tierney, two days for question and supplementary; Dr Ratnam, housing, Ms Shing, two days, question and supplementary; Mr Meddick to agriculture, and I understand the minister is not well today, but under standing orders it is one day, question and supplementary; and Mr Bourman, two days for the question.

Constituency questions

WESTERN VICTORIA REGION

Mrs McARTHUR (Western Victoria) (12:34): (1922) My constituency question is for the Minister for Planning and concerns the recent public hearing into Viva Energy's proposed gas terminal in Geelong. Absolutist opposition to using gas is a real danger to our energy security, our economy and even the ordered transition to a more renewables-reliant future. This government, which could hardly be described as pragmatic on energy matters, recognises in its recent gas substitution road map that gas must be a part of our energy mix until at least the 2040s. The current Victorian gas crisis and spiralling prices show not just the consequence of extraction and exploration bans but also what happens when a hostile activist mindset makes investment in pipeline and terminal infrastructure so difficult. Minister, will you take a step to repair the damage the Andrews government has done to Victoria's energy landscape and rapidly improve this important— *(Time expired)*

WESTERN VICTORIA REGION

Mr MEDDICK (Western Victoria) (12:35): (1923) My question is for the Minister for Mental Health. Last week one of our beloved native animals, a kangaroo, was found bound and decapitated in a Ballarat gutter. She was discovered by two street cleaners going about their normal employment, who were understandably distressed by the sight. Let alone the horror experienced by the kangaroo, coming across a headless and tortured individual can have significant mental health effects on those who witness such atrocities. A recent study conducted by award-winning parliamentary intern Kyahl Anderson determined that the effects of the killing of kangaroos reaches into 16 ministerial portfolios. One hundred per cent of participants in a University of Melbourne study experienced negative mental health states from witnessing kangaroo killing and its aftermath. What will the Minister for Mental

Health do to ensure that people in my electorate have the appropriate support to deal with the unique psychological impacts caused by witnessing animal cruelty, torture and death?

EASTERN VICTORIA REGION

Ms BURNETT-WAKE (Eastern Victoria) (12:36): (1924) My question is for the Treasurer. The Climate Council recently published a report that found one in 25 Australian properties will be uninsurable by 2030. Residents in the Dandenong Ranges and parts of East Gippsland have found it difficult to find insurance since the June 2021 extreme weather events. Most insurers have raised premiums to the point that insurance is simply unaffordable. My constituent and I understand that insurance is primarily a federal responsibility; however, there are things the state can do to assist. In 2017 the Victorian Department of Health and the Victorian Council of Social Service inquired into underinsurance in Victoria. The final report found that a reduction in or elimination of the stamp duty charged on all insurance policies would make insurance more affordable. The state also has the power to lobby for change, to raise awareness of the risk of underinsurance and to conduct inquiries. The question is: what is the state government doing to address rising insurance premiums and the looming risk that parts of Victoria will be uninsurable by 2030?

WESTERN METROPOLITAN REGION

Mr FINN (Western Metropolitan) (12:37): (1925) My constituency question is to the Minister for Roads and Road Safety. I was speaking this morning to a constituent in Point Cook, and she, like all of us, is astounded by the extraordinary blowout in the cost of the Suburban Rail Loop. She was particularly angry because, as she put it, 'The Andrews government is prepared to throw away hundreds of thousands of millions of dollars' on a railway line that she could not care less about but will not spend a cent to fix the daily debacle Point Cook residents have to put up with just to get from their homes onto the Princes Freeway. Point Cook Road is a disaster, but having to travel through the centre of Laverton just to get onto the freeway is far worse. Minister, what are you doing to ease the pain felt by motorists in Point Cook daily making their way to work?

NORTHERN METROPOLITAN REGION

Ms PATTEN (Northern Metropolitan) (12:38): (1926) My constituency question is for the Minister for Education. My constituent is a resident of Oak Park and a mother of two. She highlights that Glenroy College, John Fawkner College and Pascoe Vale Girls College are under-utilised and under-performing and have been that way for some time. She is one of many who believe that schools in this area need a strategic plan and a long-term vision to examine and improve enrolments, attendance, achievement and wellbeing outcomes. She asks: can the minister provide details of a combined education plan for these schools?

EASTERN VICTORIA REGION

Ms BATH (Eastern Victoria) (12:39): (1927) My constituency question is for the Minister for Emergency Services. Once again, 12 months after the last storms and floods in central Victoria, we are seeing people very nervous about the information flowing through, monitoring and response. The government's Emergency Management Victoria report into severe weather warnings had lots of learnings but no recommendations for community. My constituent lives in Traralgon, and he is on the Traralgon Creek. He wants to understand when the rain gauges—the only warning system on the Traralgon Creek from catchment headwaters to the lower Traralgon Creek—are going to be replaced. These gauges were destroyed many years ago. One of the learnings has been in relation to better preparedness and better monitoring, and he wants to know when these are going to be replaced.

WESTERN METROPOLITAN REGION

Ms VAGHELA (Western Metropolitan) (12:40): (1928) My constituency question is directed to the Honourable Anthony Carbines MP in the other house in his portfolio responsibilities as the Minister for Police. In May this year a nine-year-old child and a woman were assaulted during a

terrifying home invasion in Melbourne's west. Up to five males forced entry to the back door of her home, resulting in the woman being admitted to hospital with non-life-threatening injuries. In a separate incident in Altona a man entered a family home, stole the car keys and tried to flee the site. More recently a Point Cook resident was a victim, where her son's watch and her prized Holden Commodore were stolen. My question to the minister is: can the minister advise what actions the Victorian government will take to stop home invasions to ensure residents of the Western Metropolitan Region remain safe in their homes? There has been other reporting where three intruders were caught on camera in Truganina jumping a fence before looking for ways to get inside a house. They checked the locks and looked through the windows while the residents slept inside.

SOUTH EASTERN METROPOLITAN REGION

Mr RICH-PHILLIPS (South Eastern Metropolitan) (12:41): (1929) My constituency question is for the Minister for Higher Education and Minister for Training and Skills. It relates to Chisholm Institute's certificate IV course in mental health, which was suspended by Chisholm Institute about four months ago, disrupting the studies of students that were participating in that course and delaying the commencement for new students from the July intake, after the course was deemed not to be up to industry requirements. This is one of the courses covered by the free TAFE program. It is a course that has been pushed by the government, but it has clearly run into substantial issues at Chisholm, with students having to suspend their studies while the mess is sorted out. So the question to the minister is: what circumstances led to Chisholm offering a course which did not meet the requirements of certificate IV and which has led to the disruption of studies for a substantial number of students?

NORTHERN VICTORIA REGION

Ms MAXWELL (Northern Victoria) (12:42): (1930) My constituency question is to the Minister for Energy, regarding a triple-whammy shortage for constituents of mine in Rutherglen. Rutherglen has experienced three separate three-phase power outages in the last three weeks. The constituent who contacted me not only lost three days of income but had to pay staff and other outgoings. There was no EFTPOS for the whole town, and the local pharmacist could not dispense medication. For lost income of $3500 for just one day the maximum compensation my constituent can claim is $130. This represents only $7 per hour compensation, which covers only a third of the minimum hourly wage for just one employee. The government conducted a review of the Victorian electricity distributors guaranteed service level payment scheme back in 2015, but it gave no specific consideration to commercial operators. Will the government conduct a review of the scheme and ensure commercial businesses can receive appropriate compensation for interruptions to energy supply?

SOUTH EASTERN METROPOLITAN REGION

Mr LIMBRICK (South Eastern Metropolitan) (12:44): (1931) My question is to the Minister for Fishing and Boating. There are many great locations for recreational fishing in my electorate, and not just in the bay. Karkarook Park and Patterson River are favourable locations for many—indeed, one of my staff used to drop into Karkarook Park on his way home from work and demonstrate by example just how terrible I am at fishing. The proposed new metropolitan and regional parks regulations are causing a lot of concern with anglers, however, as the default position is to ban fishing unless specifically allowed, with a fine of 10 penalty units for a violation. They also grant the land manager the power to prohibit or restrict fishing in certain areas. Will the minister ensure that the final regulations allow the maximum opportunity for people to participate in recreational fishing?

NORTHERN VICTORIA REGION

Mr QUILTY (Northern Victoria) (12:44): (1932) My constituency question is for the Minister for Environment and Climate Action. Last week while meeting with Bendigo council I heard that the Eaglehawk landfill will reach capacity by the end of 2022. Alternative facilities are needed urgently. Rather than struggle through the bureaucracy involved in establishing a new landfill site, Bendigo council are proposing to establish a waste-to-energy facility. Councils around Victoria are complaining

about the way the EPA landfill levy is managed. The government takes the money, pockets part for admin and refuses to spend the rest. Bendigo have paid around $35 million in levies over the last five years for their own landfill site but have seen very little money returned. Only about 3 per cent of funds raised from this levy are returned to the regions—one more example of this government ripping money out of regional Victoria. Minister, will you support Bendigo council's new waste-to-energy project with money from the landfill levy? It is time that Northern Victoria councils got some value for money from the landfill levy that they pay.

EASTERN METROPOLITAN REGION

Mr ATKINSON (Eastern Metropolitan) (12:45): (1933) My question is to the Minister for Planning, and it concerns the development of Croydon shopping centre on Wicklow Avenue, where the owners of that centre, Haben, a New South Wales based company, has proposed 12-storey towers on that site. The planning scheme allows for four storeys. A four-storey process was agreed to by the council and the community, but Haben has put in a fresh application to VCAT, basically compromising all of the community engagement that occurred. Can I ask the minister if she will review this process, because it has implications for other planning issues as well as the Croydon one.

WESTERN METROPOLITAN REGION

Dr CUMMING (Western Metropolitan) (12:46): (1934) My question is to the Minister for Environment and Climate Action in the other place, and it is from Greg in Maribyrnong. When will this government recycle single-use plastic bottles? Greg walks around Maribyrnong and the Footscray area and sees a large number of these bottles that end up in our rivers and in our parks. He believes that Victoria and Tasmania are the only states that do not recycle these items. The government has issued a ban on single-use plastics from 2023 but has not stated if these bottles are on the banned list. While the container deposit scheme is also due to start next year, it is unclear if these bottles will be part of the scheme. Greg lives in Maribyrnong, but this affects the whole of Victoria. We need to have a clear list of what is going to be put into this container deposit scheme.

Sitting suspended 12.47 pm until 2.04 pm.

Bills

MENTAL HEALTH AND WELLBEING BILL 2022

Second reading

Debate resumed.

Dr RATNAM (Northern Metropolitan) (14:04): The Greens welcome the Mental Health and Wellbeing Bill 2022. For a long time Victorians facing a mental health challenge stood a very real chance of getting inadequate support or no support at all. Our mental health sector has been desperately underfunded, with very real consequences for our friends, neighbours and family and sometimes ourselves. The royal commission and big increases in funding have seen things start to change, and this bill is the next step in that journey. The bill implements some of the key recommendations of the Royal Commission into Victoria's Mental Health System. This landmark investigation was the culmination of decades of hard work by the mental health workforce and people experiencing mental health issues, who have known for years that the system was falling apart. As someone who previously worked in the sector, I experienced this firsthand.

The bill creates a new mental health act as recommended by the royal commission. This recommendation was made to redress the previously narrow focus on medication and compulsory treatment. This emphasis on medication and compulsory treatment combined with an underfunded, under-resourced sector led to many people having very negative and often traumatic experiences of mental health treatment. This new framework now emphasises having people with lived experience of mental health issues as part of the system to help address this. The bill seeks to address these concerns through a new set of principles which we support and are welcome.

We do note, however, that these principles can only be realised with proper funding and the cultural shift that is needed for governments to move away from only focusing on tertiary treatment to actually funding proper preventative and early intervention work, so we cannot rest here. These principles are a good start, but they must be met with the necessary funding support as well as the shift to proper preventative and early intervention care.

The bill also legislates a number of new entities that are welcome. The bill legislates a 10-year target for an end to seclusion and restraint, which the royal commission recommended, and I note the careful work that is needed to further consider the decisions concerning compulsory seclusion and restraint.

We also note that those on the ground in the sector have raised a series of concerns, and I will speak to these briefly. At the moment, if you have a psychotic episode in the middle of a shopping centre, it is the police who are to be called. The royal commission recommended that this shift to healthcare workers taking the lead instead. This is a sentiment that is widely supported, including by the Greens, but the practicalities of it are more complicated. Both the Health and Community Services Union and the Victorian Ambulance Union are concerned that health workers are already overstretched and need assurance that these shifts will be properly resourced with staff and other support. Others have questioned if the wording in the bill really reflects the royal commission's intent, given the commission called for responses to be led by health professionals, not for health professionals to be exercising these powers on their own.

The Victorian Aboriginal Legal Service is concerned that despite the shift away from police, this bill expands the power of PSOs to respond to mental health crises. They question if they have the training to be the right people to deal with someone in distress. The Aboriginal legal service has also raised other concerns, including about the statement of recognition and the cultural safety principle. They would also like to see rules on locking people in a room on their own not exceeding maximum solitary confinement periods in prisons. We hope that some of these concerns are taken on board in the debate in this chamber, in the writing of regulation and in the implementation of the bill.

While it is important to get the rules right around how our mental health system deals with people in distress, it is worth remembering that funding is also key. The last few budgets have included significant increases in mental health funding, which the Greens welcome; however, they are yet to make a real difference on the ground.

I recently had the pleasure of meeting with some of the mental health workers represented by the Health and Community Services Union, who described working in what is still a very challenging environment. Thank you to Liam, Lisa, Rachel, Kate, Jason, Clare, Lee, Phil, David, Marissa and Noah for taking the time to help me understand your experiences and for the work that you do. These workers told me that they are understaffed and working very long hours and struggling to find the time to take leave, and that is just in the city, with worse understaffing problems outside of Melbourne. People move out of the sector because they feel undervalued, and allied health staff do not get the pay they deserve.

The sector is gradually employing more people with lived experience of mental health issues but is still struggling to provide them with proper supervision. Without enough staff, mental health workers often find themselves unable to give the quality of care that helps avert a crisis, instead having to rely on physical restraint when things go badly to stop people getting injured. The mental health workers I met with also told me about people being discharged too soon from mental health wards into the under-resourced community mental health sector, which often sees them back in a ward before too long, and they told me about people being discharged into appalling rooming houses because there just is not enough affordable and public housing to look after people in crisis. They are putting forward suggestions to address some of these issues that we encourage the government to consider, including establishing a chief mental health and wellbeing nurse with delegated responsibilities relating to nursing that reports to the chief psychiatrist and also ensuring funded professional development for all staff so the reforms in the bill can be applied in practice with confidence.

It is also disappointing that some of the allied health professionals so important to providing care in our mental health system have been caught up in lengthy negotiations over pay and conditions. Fair pay and conditions for mental health workers will be crucial in making the mental health system work, yet some allied health workers working alongside nurses in the community—doing the same job—are paid significantly less. In fact, as I understand, there are some allied health workers who even manage nurses but get paid less. It is time allied health workers were no longer treated as the poor cousins in the system. Addressing these workforce issues to maintain and grow the allied mental health workforce will be necessary to the effective implementation of the reforms to improve the mental health system so people can get the care that they need. It is a challenging situation, but these are hardworking people who are doing what they can to look after the people they care for. I would like to thank them both for the work that they do and for taking the time to make sure people in this Parliament understand some of the realities of the sector.

While there are some issues with this bill, the Greens sincerely hope that the changes it makes as well as the extra funding which is working its way through the mental health sector will soon be making a really big difference, not just to workers but also to people seeking mental health support, whether they be our friends, neighbours, families or ourselves.

It cannot be overstated: our mental health support system is more important than it has ever been. After years of chronic neglect of the system by governments, coupled with structural forces such as rising inequality, precarious work and weakening universal health and community services that we know lead to poorer mental health, more and more people will require the support of our mental health system at some point in their lifetime.

The decision the government has before it now is whether to choose to rise to the opportunity that we have to help create a properly funded, well-staffed mental health care system that centres prevention, early intervention and lived experience and that cares for people when they need it the most.

Ms TAYLOR (Southern Metropolitan) (14:12): What is certainly unequivocal, amongst many things, with this bill and our approach as a government to the issue of mental health is a bold and aspirational commitment to the Victorian community to deliver on every single one of the recommendations of the Royal Commission into Victoria's Mental Health System. At its core we are looking at legislative transformation, significant workforce expansion and sustainable, ongoing investment, which are really critical elements if we are going to seriously tackle this issue, as we are, from the ground up. Noting that the system has well and truly been broken, we are not shying away in any way, shape or form. In fact reforms were being implemented even before the full recommendations of the royal commission had landed, acknowledging the crucial and critical elements and the demand and need for change in our system out of respect for the broader Victorian community, noting that, I am sure, everyone here in this chamber and beyond would know someone—and there may indeed be people here—who has experienced a mental health episode in their life, so it is certainly important.

Another limb to this, when you are looking at reforming the mental health system, is also seeking to diffuse some of the stigma that probably in times gone by has been associated with mental health conditions. It is about being very frank and candid about the issues that need to be addressed; tackling them head-on, as they deserve to be tackled; and really making sure that people with lived experience are at the heart of these reforms. A critical element of the royal commission was heeding the voices of those most impacted, most vulnerable, and continuing to take on board those voices, which are critical in order to deliver the best possible outcomes for our state.

With regard to the investment, certainly the $3.8 billion in 2021–22 was a record investment. I am not stating that just for the sake of saying it, so to speak, but because I know there were some questions in the chamber about how much investment there was. Well, that certainly sends a very strong signal—and beyond, because it is actually leading to very practical reforms—that this is of the highest priority for our state. Then in the 2022–23 the Victorian state budget is investing a further $1.3 billion for

brand new initiatives which will build on last year's record investment as well, and I only state that really out of respect for those who are working in the system and those who may be suffering from or have various mental health conditions and challenges. This is being taken very seriously, and we are proud to be able to deliver on these reforms, noting how fundamental they are to so many Victorians.

I did want to zone in on what the investment actually looks like, because I take on board some of the commentary around the mental health workforce, which is obviously critical in being able to really take the reforms forward and make sure that the system can function optimally. So I did want to zone in on in particular the $372 million for workforce initiatives which include training an additional 1500 mental health workers, including 400 mental health nurses, 100 psychiatrists and 300 psychologists, because obviously there have been huge demands on the system. I do not pretend that such demands will necessarily go away, and therefore we need an empowered and well-trained workforce and adequate numbers within that workforce to be able to handle the extraordinary workloads as well. I think it is always useful to be able to say, 'Well, okay, what is the financial investment actually delivering on?', and we can see that that is really a very pragmatic and very much needed element in order to be able to truly transform our mental health system.

There is a further $490 million in acute hospital-based care, which includes 82 new mental health beds, and these are in key growth areas at Northern Hospital and Sunshine Hospital. Again, you can see—and I think it is always good to be able to bring it down to that very human level—a translation of what the investment actually means for Victorians: $9.1 million to establish social inclusion action groups in 10 local government areas, appreciating that there is a huge demand at the community level and therefore bringing this help to the community in a way that is truly accessible makes good sense and certainly is delivering on outcomes of the report; $12 million in mental health and wellbeing support for families whose infants or children and young people are accessing acute care in regional Victoria; and $20 million to provide tailored support for people with eating disorders, including delivery of 15 mental health beds specifically for eating disorders—and this investment will support Eating Disorders Victoria and the Centre of Excellence in Eating Disorders—along with the development of a new Victorian eating disorder strategy.

I know I have reflected on this before, and there are so many different triggers and causes. I am certainly not an expert, and I should not speak with any kind of expertise on this subject, save to say that when I used to do ballet in my younger years there was a lot of pressure on young dancers to be very thin and there was some strange behaviour. Sometimes people were encouraged to actually shadow in some of their bones to make themselves look thinner. It really became quite bizarre. I am just reflecting on a personal tangent where you can see that there really is an acute need for this kind of long-term strategy in this space. I do not mean to zone in only on the world of dance or otherwise. I mean, I think this disorder can permeate so many different facets of life, but this is just to say that it can be quite destructive for a person's wellbeing and indeed unfortunately there is a significant death rate associated with it as well, which is very sad. It is very good to see that there is specific and targeted investment in this space, because there clearly is a need to have it.

There is $21 million to support suicide prevention initiatives, including after-care services and an 18-month pilot of a Victoria-wide peer call-back service for families, carers and supporters of people experiencing suicidal behaviour. I can only imagine how stressful that must be. Therefore having a service which targets that specific and vulnerable position and situation is absolutely vital.

We have invested $3.5 million in partnership with Aboriginal community controlled health organisations to keep Aboriginal Victorians safe and well and $29.3 million to support the implementation of the new mental health and wellbeing act, which includes training for the mental health sector to deliver new models of care, help for Victorians to understand their rights and an independent review of compulsory treatment orders. This goes hand in hand with some of the newer principles that are evolving in this space, with good reason, via the introduction of modernised rights-based mental health and wellbeing principles. These principles will guide service providers and decision-makers to support—and I particularly like this because I think that at its essence this is what

I would imagine contemporary treatment and management of mental health should incorporate—the dignity and autonomy of people living with mental illness or psychological distress. They will ensure people are involved in decisions about their treatment—anyone can understand as a layperson why that would be meaningful and appropriate—and care and support.

The principles recognise the role of families, carers and supporters, because obviously when someone is not feeling their best—and I am massively understating the various conditions and experiences that people can endure—it is generally speaking not necessarily only one person, it is all those people around them that are part of that experience. In fact as part of even helping someone to get to a healthier space and to feel more empowered in their lives, having carers, family and supporters also empowered with knowledge and understanding of the best way to manage those situations has got to be a positive thing. The principles will also ensure the service system responds to the diverse needs and preferences of Victorians. Again, even as a lay person one can see why that makes good common sense and should be an inherent element of the reforms underway.

There are system-wide aspirations for this bill that have been framed to support an overarching objective to pursue the highest attainable standard of mental health and wellbeing for the people of Victoria. I think that that is right and proper, and I think for everyone in this chamber that would be the goal. That is the outcome—not only a goal but actually the end-point outcome—that we are seeking here in the role of not only making an extraordinary and unprecedented investment in mental health but also making sure that there are appropriate legislative controls in place and that those principles are duly and appropriately honoured and acted upon so that every Victorian gets the care and support that they deserve.

When we look at this as a whole—I do not mean to overstate this, but out of respect for those who do work in the mental health space, noting that it is such critical work but also highly specialised, I have the greatest admiration for those who are doing this critical work for the benefit of fellow Victorians—if we look at what has taken place in terms of outcomes and deliverables in jobs created in this space, since the royal commission's report over 2500 mental health jobs have been created in Victoria. So that is beyond actual aspiration; that is actually seeing deliverables delivering on exactly our mental health workforce strategy, which was identified as necessary for this reform. We know that without caring mental health workers there just cannot be a mental health system. I know I am stating the obvious there, but that is absolutely a fact, and that is why it is a fundamental part of the reforms that we are absolutely backing in—because if our mental health workers are not appropriately supported, how can they then fully undertake their roles in that very critical space? We are completely cognisant of the incredible responsibility that they carry but also the compassion and the devotion that they show in undertaking what is such important work in our state, hence the absolute need for this investment in those jobs.

But I am glad to say that today is a discussion about not only what will be taking place but what has already taken place, because it also can give confidence to those in the community who may have in times gone by wondered where the system would go, when it would actually evolve, when it would get better, and probably despaired. That was only a human response, and hence it led to the impetus for the royal commission. Those who led to that impetus and who have advocated for so many years to bring about these changes should indeed be very proud of their commitment and their resolve. Certainly as members of Parliament being able to be part of a collective that is able to deliver on this and to improve in this vital space is something that underpins why we are here at the end of the day. These are the things that I think validate some of the work we do and our service to community. I cannot speak on behalf of everyone, but I know that certainly at the heart of our party and of our government is truly a genuine commitment, already seeing deliverables, to really bring about a better future in this space for the betterment of all Victorians.

Mr GRIMLEY (Western Victoria) (14:27): I rise to speak on the Mental Health and Wellbeing Bill 2022. It is a bill that was born out of the Royal Commission into Victoria's Mental Health System and acquits the government of its commitment to introduce the bill before the election, within the

recommended time line of the royal commission. Whilst it is slightly flawed in some areas, in the opinion of our party, we will still be supporting this bill. There are many things to be optimistic about with the passage of this bill, including a more therapeutic approach to mental health issues and significantly more investment in the sector. It was an ambitious task to have this bill consulted on and drafted in the short time frame stipulated by the royal commission. There are feelings out in the healthcare community that the government are pushing this bill through now because they are sticking to the somewhat arbitrary time lines provided by the royal commission, but they are doing it at the expense of getting the bill perfectly right. I appreciate the desire to pass these reforms and start implementing their contents, but the reality is that this bill does not actually come into effect until September next year, so there would have been some time to fix up some of these issues.

Regardless, this brings me to the first issue with the bill, which is around consultation—or the lack thereof. This bill had two years of consultation before it was introduced, but there is a difference between receiving feedback and actually putting that feedback into the bill. The government have had to deal with competing interests, naturally, between the healthcare sector and the lived-experience advocates and carers. This is unenviable, but it is clearly still flawed, and the review in five years should not be pointed to as the time to fix current issues. One stakeholder told us they had one weekend to look over a section of the draft bill before feedback was expected to be provided before the bill was introduced. This meant that non-lawyers had a weekend to look over 500 pages of legal jargon. I hope that in the future there is a political will to fix the bill, which will inevitably need to change.

In relation to the bill's move to the health-led response, as a police officer I had the frequent duty of transporting and sitting with mental health patients—or, as the force would be familiar with, section 351s. This refers to the part of the current act, the Mental Health Act 2014, that allows the apprehension of a mentally ill member of the community. The new health-led response will change the way that mental health episodes are responded to. Police will still have a role in the system—as they always will, in my opinion, as long as there are drugs and alcohol in the community—but this role will be complemented by others such as paramedics, psychiatrists, PSOs and future prescribed persons. This has not resulted in rejoicing from police officers saying, 'One less job to do', but police do recognise that they are often not the best people to deal with mental health patients. Many patients have had negative interactions with the force. Many police members, whilst they are trained, do not have the level of training required for some patients where they perhaps pose no physical danger to others and can be treated or transported without apprehension. Further, they are not equipped with knowledge of the sector and the broad available help. Our job has been to try to de-escalate, to apprehend where needed and to transport to hospital. From there it is up to the hospital to deal with the patient. Frequently police have been held up for over 6 hours waiting with a patient for an admission at a hospital. In real terms that is 6 hours that a divisional van is off the road, almost a whole shift consumed guarding a mental health patient and not being able to provide the community with any law and order response, a recipe for disaster. It needs to change sooner rather than later.

There are a million and one questions about how this bill will play out in practice. Who will be the first port of call to respond to these incidents once 000 is called? The ESTA call taker likely will not know how serious the situation is. How do we know if the person has been affected by drugs or alcohol and could therefore be unpredictable? Who does the risk assessment on the patient? Who transports them, what restraints are able to be used and at what threshold? Who takes on the indemnity in such potentially volatile situations? Are psychiatrists and nurses and others without weapons, such as OC sprays et cetera, happy and willing to take on this role? Are we likely to lose healthcare staff, which we are already struggling to keep, by keeping them as the first port of call for mental health patients? This shows that there are unknowns that we believe should be figured out before this bill passes. There are questions that need to be answered, and I hope the minister representing the Minister for Mental Health will be forthcoming and answer those questions in the committee stage.

One of the more contentious parts of the bill is the rhetoric around restrictive interventions. This includes restraints, both physical and chemical, and the use of seclusion. I have to say that the voice

from the healthcare sector has been united behind closed doors. While some of the public statements might be a bit more relaxed, they are collectively unsatisfied with the wording around elimination of seclusion and restraint and how it has been translated into the bill. They also reject claims in the bill that such practices serve no therapeutic benefits. What are the potential outcomes of these laws? Healthcare workers losing morale, walking off jobs potentially and refusing to deliver care? Unlikely. Mass resignations and/or increased healthcare worker injuries or deaths for those who run the gauntlet of providing care for what is being proposed? For instance, the AMA says:

> Eliminating these practices entirely will inevitably result in mental health services being unable to meet the health needs of a small but significant proportion of seriously mentally unwell people.

Further:

> In legislating on the reduction of restrictive practices, the support to mental health services and workforce needs to be considered and provided for.

This has not happened. The AMA called for the bill to be considered by a Legislative Council committee for further review and consultation. The National Association of Practising Psychiatrists was also very unsatisfied with this part of the bill.

Despite these bodies trying extremely hard to work with the government to make a few tweaks in respect to the above, the government has not introduced these as house amendments. Specifically, the clauses in the bill that they believe should have been reformed include the fact that the health secretary and chief officer for mental health and wellbeing are being tasked in the bill to set targets to reduce and ultimately eliminate the use of restrictive interventions in mental health and wellbeing services, as set out in clauses 254 and 261, and clause 81, which states:

> The use of restrictive interventions on a person offers no inherent … benefit to the person.

I would completely disagree on the latter as well. If a person is restrained to stop them from committing suicide, then I think it has a benefit. If a person is chemically restrained to prevent them from harming other patients or staff, that is absolutely of benefit. If a patient is secluded to calm down after a period of psychosis to prevent harm to themselves or others, once again there is a benefit. These restrictive interventions, whilst they should not be used as a first response, should not be condemned as having no therapeutic benefit. By preventing violence and harm and thereby preventing a criminal justice response, we are adding a huge benefit to the care of that patient. Put simply, it is the view of most healthcare bodies that Derryn Hinch's Justice Party has spoken to that some new clauses and references to restrictive interventions need to be reconsidered.

That brings me to my next point: such practices will be considered by an independent panel from October. But the recommendations of the panel will not be handed down until after the new laws are fully functional. This panel was created by the former minister and there were a lot of issues that had not been resolved from the royal commission and that were not going to be finished in time for the bill. The minister said in his second-reading speech:

> … one theme we heard very strongly was a need to delve deeply into the laws around compulsory treatment and restrictive interventions. Key stakeholders … called for more time to work through these complex issues, outside the tight time frames for introduction of this bill. For this reason, we announced in December that an independent review panel would be established to examine best practice in modernising these laws for a future amending bill.

This means restrictive interventions will be considered by the panel, right? Well, I cannot tell you for sure, because the terms of reference for the panel will come in in October, after this bill is passed, which is ridiculous given that the panel was established last December. Shouldn't the terms of reference have been established some time ago? Perhaps that is a question that can be asked in committee.

The government says that while the intention to conduct the review was announced in December 2021 the panel were only appointed recently, but they were announced in June and it is now August. Either things are moving slowly or there is something strategic, perhaps, about the timing of the release of

the terms of reference. The people in charge of creating the terms of reference include three former patients, two carers and one peer-experience worker, likely another former patient. The AMA said there was likely an inherent selection bias in the application and selection process for this committee, as those who have strong opinions on compulsory treatment would have applied. They said this does not represent a true cross-section of professionals involved in treating psychiatric illnesses under the Mental Health Act. The AMA has made sensible recommendations about increasing the diversity of the panel, including representation from the emergency physicians and nurses who have no voice on the committee, and I would say to the government it should absolutely consider this.

On the issue of the definition of 'paramedic', my colleague Ms Maxwell will likely ask some questions in committee about the implications for qualified paramedics who do not work for Ambulance Victoria. This bill limits their scope of practice despite them being qualified. Whilst we understand there is future scope to include such community paramedics, we think this should be done expeditiously, because not only are they qualified but in many circumstances they are more qualified than other healthcare professionals who will be required to attend acute mental health incidents. Further, the workforce will require a boost, with numbers already dwindling.

Lastly, my colleague Ms Maxwell raised the issue of Forensicare and the startling statistics that people with serious mental illnesses are three times more likely to engage in offending and four times more likely to commit violent offences compared to other Victorians. We hold concerns over day-release policies for places such as Thomas Embling Hospital and would make the point that victims and their families should always be consulted and informed about such decisions where they may be affected.

I would like to think some of the key stakeholders who we consulted on this bill, including the Health and Community Services Union, the Royal Australian and New Zealand College of Psychiatrists, the Victorian Alcohol and Drug Association, the National Association of Practising Psychiatrists, the Police Association Victoria and the Australian Medical Association's Victorian division. We also spoke to individuals in the healthcare sector who spoke in their personal capacity, some with over 40 years experience. I would like to thank all those who bravely contributed to the royal commission, including those who have lived experience and those who care for others with mental health conditions. You never know when you will be affected by mental health issues, either through our own experiences or someone we love, so this bill and the focus in Victoria are very much welcomed. I commend the bill to the house.

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (14:38): This is an enormously significant bill, not least because it creates the technical framework by which the recommendations of the Royal Commission into Victoria's Mental Health System can be established but also because it gives effect to an idea whose time has well passed here, and this is an issue which many, many Victorians and Australians and indeed people here and around the world live with and grapple with and all too often suffer with, and that is mental illness, whether of a mild or of an acute form, characterising the lives of a large proportion of the population.

The statistics here in Victoria are worth mentioning. One in five Victorians will live with or manage mental illness as a matter of course. One in two Victorians will experience in the course of their lifetime a form of mental illness. This may be reactive depression, it may be anxiety, it may be suicidal ideation or it may relate to self-harm or to an eating disorder. This is difficult terrain to discuss, and I suspect it is an area of public health that, because of its very sensitive nature, has been a challenge for lawmakers to lean into and to contemplate for a really long time.

When Victoria embarked upon the mental health plan, the 10-year plan, the objectives and the rationale were good. They were intended to achieve a wholesale improvement of the system by which consumers, clients, patients and carers could access services within community and within acute settings. These challenges have taught us a lot about the way in which the system needs to improve. This has not been an easy journey, and these are challenges which have been faced by governments of all persuasions for many decades now. We continue to evolve the way in which mental illness and

disease are managed within the community. We continue to work alongside peak bodies and organisations to better understand the lived experience of mental illness and the way in which it has far-reaching consequences for quality of life, for participation in workforces and for connection and engagement with activities that make being part of a community so wonderful and so validating.

The mental health royal commission was a process which, as we all know, set an historic narrative in train, and what it did was lean into the reality of a system which had failed too many people, which was stretched to capacity and which in many instances simply did not exist for the people who needed it most. We saw in the work of the royal commission and its 67 recommendations a range of findings informed by round tables, by submissions and by the evidence given by individuals and by groups and that there were significant inconsistencies in the system.

We know, for example, that people in rural and regional Victoria have comparatively greater difficulty in accessing specialist care and services. We know that eating disorder treatment, identification and care and the wraparound whole-of-person support that is needed in often very complex presentations did not have the resourcing, engagement and indeed understanding across medical and healthcare worker communities—not because of a lack of desire to become informed but as much as anything because of resourcing. We know also that with vulnerable cohorts—including LGBTIQ+ people, Aboriginal and Torres Strait Islander people and those in the adolescent youth and family space and in the geriatric space—there are a number of specific challenges that need an informed set of solutions as part of a wholesale rebuilding of the mental health system in Victoria.

We know that mental health challenges do not occur in isolation, which is where lived experience is such an enormously important part of giving effect to the royal commission's recommendations, and that where we can in fact learn from lived experience—and this can be at the heart of the work that is done to deliver on these reforms—there will be a system created that is durable, that is respectful, that is grounded in autonomy and self-determination, that is based in dignity and that is as much a part of validation as anything else.

This royal commission has specified the need to have this legislative framework in place in 2022. This is something which this bill gives effect to, but it is also worth noting that there are a range of other matters as part of reforms, rebuilding and resourcing of the mental health system here in Victoria that will take place over a considerably longer period of time, and that is exactly how it should be. When we have large-scale systemic change like this, we see that it is necessary to undertake these changes carefully and thoroughly and that it is necessary to continue through engagement, through discussion, through reflection and often through the challenge of understanding where perhaps governments of all persuasions have got it wrong to commit to long-term reform.

This is about workforce development, it is about retention, it is about recruitment, it is about professional and career development opportunities for people in this sector. It is about recognising the hard work that is undertaken, often with no expectation of recognition or reward, to safeguard the rights, the dignity and the identity of people in their care. It is about partnering between specialist and medical and allied health workers, peak bodies and those very organisations who have stood at the forefront of public discussions on this—the chief psychiatrist, Professor McGorry and the work of Mental Health Victoria and the Butterfly Foundation. The list is a very long one.

When I was Parliamentary Secretary for Mental Health, one of the things that was most compelling about the discussions relating to the terms of reference for the royal commission was the need to engage in the breadth and the complexity of mental health challenges from a variety of different perspectives. This is about understanding that the way in which service delivery occurs in the middle of Melbourne will be very, very different from the way in which it occurs in Mildura. It is about understanding the interrelated needs of clients, consumers and patients within the system in a range of ways that recognise comorbidities. This is about understanding that barriers to uptake of services include stigma, something which the royal commission has acknowledged and, indeed, which the Premier and the then Minister for Mental Health, Minister Merlino in the other place, acknowledged

when this report was tabled. But stigma is not the only thing—there are cultural and linguistic differences in the way in which mental health and wellbeing are discussed, and there are elements of nuance and of intricacies in communication which often limit or deter people from seeking support or assistance.

We need to understand that this bill is an enabling framework. This bill sets in train the work that will deliver on the 67 recommendations beyond what has already been done. This builds upon the work that this Andrews government committed to doing to implement all of those recommendations before the commission's report had even been begun. This is about understanding that the system must be improved in the interests of all Victorians, whether they are people who live with mental health issues or disease or illness themselves or their families—their kids, their parents—their colleagues or the people at their footy clubs. All of us know people who live with and struggle with, and try to get by despite, mental illness. We all know of somebody who has buckled because they cannot cope. Many of us are these people.

It is also about understanding that as we do this work it must translate from the statute book on the one hand to real and respectful outcomes and engagement on the other. This is about delivering on that framework. This is about making sure that the way in which we manage challenges to whole-person care is well understood. To that end I would commend the second-reading speech which Minister Merlino in fact read directly into the record when this bill was first tabled in the other place, and in particular the statement of compatibility—the requirement that the impact upon human rights be considered in the making of new law. This is where questions such as the harm minimisation principle and proportionality have been considered very, very carefully, particularly as they relate to chemical and physical restraints, particularly as they relate to the sharing or disclosure of health information by a mental health practitioner and particularly as they relate to the sorts of matters that are intended in good faith to reduce the silos that all too often prevent or deter people from accessing the care and support that they need. This is about understanding that if we do not set the right framework now, we cannot hope in all good conscience to achieve the ends of the royal commission's report and the objectives to make for a better system that accommodates and respects lived experience.

It is important to note that in replacing the Mental Health Act 2014 this bill, once enacted, will set a basis upon which further improvement can occur. There are a lot of similarities between the Royal Commission into Victoria's Mental Health System on the one hand and the Royal Commission into Family Violence on the other. One made 227 recommendations; it was about 1900 pages, the family violence royal commission. Again, this is wholesale, long-term, attitudinal, cultural, regulatory and legal change. The mental health royal commission, with its 67 recommendations, contemplates the very same difficulty of a new system to replace the old whilst also acknowledging that some of the very good, very well intentioned and very effective measures that already exist in the system can and indeed deserve to be preserved as part of these new reforms.

We need to make sure also that the work in this bill is given the commitments and the funding and the support that it deserves from any future Parliament. In this regard I note that the first set of findings from the interim report of the mental health royal commission foreshadowed a levy to meet the costs associated with implementing its recommendations and reforms. It would be a tragedy were it to unfold that the recommendations of the mental health royal commission could not be implemented because to do so would be inconvenient to a political narrative. These changes require investment. They require enormous investment in funding, in training, in recruitment and in wholesale change to the way in which community-based and clinical settings operate to provide services to people within the system and adjacent to it. We need to make sure that supported decision-making of individuals within the system is given the respect and the consideration that it deserves.

This bill is an inherently important part of an enormous level of change that will hopefully outlast all of us, that will ensure that those who never know our names will be better off for a system that we are taking the time now to improve. This bill has been developed in careful consultation with specialist and peak bodies. It reflects the will of the royal commission. It reflects the will and the desire of this

government to see that we effect and deliver a better mental health system. It contemplates the very best parts of our system and the most tragic parts of our system. It does so in a holistic, whole-person and lived experience way. It is an important bill, and I wish it a speedy passage.

Ms PATTEN (Northern Metropolitan) (14:53): I am pleased to rise briefly to speak on this bill, and I will speak briefly because we have heard so many really terrific contributions to this legislation today. It is incredibly important work for this Parliament. As Ms Shing recently mentioned, it will set a new course in our approach to mental health and wellbeing, and not before time.

As someone who has been chairing the Legal and Social Issues Committee this term, I know the impact of mental ill health and the impact of a lot of our mental health policies are so broad reaching. We see that whether it is when we are doing an inquiry into homelessness and looking at the impact that mental health has on people's housing or whether it is recognising that two out of five people who enter our prison system have been diagnosed with mental health issues—and if it is women, two out of three women have been diagnosed with mental health issues. Nearly half of the women in our prisons are taking medication for their mental health. So the policies that we have made on mental health impact our justice system, impact our housing and the services that we offer people who are experiencing homelessness and impact a lot of our drug and alcohol policies. I think that the harm minimisation approach that is taken throughout this bill and is taken throughout the intentions of this bill is very good. I hope that that means we will start seeing a strong harm minimisation approach to alcohol and other drugs, not just in the services we provide but in the laws that surround drugs and alcohol in our community, particularly illicit drugs.

But as we know, we have been forever operating ambulances at the bottom of a cliff. We have constantly been in crisis mode. I know that all of us have had those desperate calls from constituents who just cannot get help for their loved one or are really struggling with their own mental health and there is nowhere for them to go. This bill and this approach, this plan, will enable far easier early intervention. It will also assist us in addressing stigma. We know of the stigma around mental health. We also know that people delay seeking help for their mental health because of the shame and stigma that they experience from having mental ill health.

The Royal Commission into Victoria's Mental Health System found all of this—that we need a complete rebuild. But I have never met more dedicated people than the people in the mental health sector. I was recently at Heidelberg at the Austin's acute mental health ward, and the dedication and the passion of the allied health workers there, of the nurses there, of the psychiatrists there and of even the receptionists there were quite overwhelming. But they were working with this incredibly dilapidated infrastructure and, to be honest, a fairly dilapidated system. There was a patient there who had an eating disorder, and I saw where she was staying and I could not help but think it was the last place that someone should be to get better. It was not conducive to making someone feel better and improving their health.

This legislation is really welcomed by our community. We commend the government on this work. It is well considered, and it is building from the base up. I was almost pleasantly surprised by the opposition's amendments, which I am supportive of for recognising alcohol and other drugs and recognising they are important components of this and having that recognition introduced to the bill. This legislation and the implementation of it, being the implementation of the recommendations of the royal commission, will absolutely save lives. I do not think there is a single one of us who has not been affected by suicide or who has not mourned the loss of someone because of mental ill health and because of the fact that they were not able to get the help that they needed when they needed it. I think this legislation creates a vision for what a compassionate mental health system can look like—something that is responsive, something that is flexible, something that recognises that it is people centric. Having people with lived experience, which is so crucial to the system and to the checks and balances of this legislation, is incredibly important.

I thank everyone who spoke to me, whether that was Professor McGorry, the college of psychiatrists, the Health and Community Services Union or even the individuals in my community who wrote to me. I am very grateful for all of the people who spoke to my office and who I met with as part of our consultation on this. But to that end, there were a number of concerns raised with me by the nurses and midwives union and the Health and Community Services Union, and this led us to drafting a series of amendments. I am wondering if we could circulate those amendments now.

Fiona Patten's Reason Party amendments circulated by Ms PATTEN pursuant to standing orders.

Ms PATTEN: These amendments establish a legislative basis for the Mental Health Workforce Safety and Wellbeing Committee. This is a committee that already exists, and it is currently established administratively via the secretary, so this is actually just embedding it into the legislation to ensure that this committee does continue to exist and continue to operate. Being a workforce safety and wellbeing committee, it will assist in some of the concerns that the workforce have about the implementation of various parts of the legislation and what impact they will have on the safety of their workplaces, and this ensures that there is transparent oversight of that. It flows from the royal commission's recommendation 59, and as I say, its purpose will be to look at the prevention of and responses to the occupational health, safety and wellbeing risk to the mental health and wellbeing workforce. I think this is very sensible. It is implementing something that already exists, and I hope that it will be supported here.

As I said, I support the amendments that the opposition has raised and introduced for this bill as well, because alcohol and other drugs should not be seen as either/or in mental health. An alcohol or drug use disorder is part of a mental health spectrum, and so often we have seen and heard of people saying 'I can't treat you for your mental health until you're treated for your drug use disorder' or 'I can't treat you for your drug use disorder until you have been treated for your mental health disorder'. It needs to be seen on the continuum, and we can do both. I think this legislation also enables that to happen. I hope this also means that we will see a lot more funding for alcohol and other drug services. I would like to see a lot more law reform in regard to alcohol and drugs because I think that actually would enable us to make far better early interventions before someone's drug use or alcohol use becomes a problem, but particularly their drug use.

Just finally, I would like to highlight something that the Health and Community Services Union sent to me. It is not in the legislation, but I think it is something that really should be considered. It is recognising the importance of our allied health workers, whether that is our occupational therapists, our speech pathologists or our art therapists. They have such a crucial role to play in our mental health systems, and that really should be recognised:

> HACSU believe that having access to the right intervention, at the right time, is integral to the experience of Consumers and the smooth functioning of the mental health system. We view Mental Health as a holistic service, rather than silos of disciplines. All professions must work hand in hand for the sector to work. Without one of the pieces the system falls apart. That is why we are advocating for staffing profiles across all disciplines …
>
> Staffing profiles historically only apply to nursing staff. HACSU members know that staffing profiles must extended to all those working in the mental health sector.

I concur, and I hope as part of the implementation of this legislation we will see staffing profiles being extended to allied health workers.

Again, I would like to extend my thanks and gratitude to the many people who reached out to me about this legislation. As I have said, it goes directly to harm reduction in our community. It will save lives, and of course in that important context it has my full support.

Mr LIMBRICK (South Eastern Metropolitan) (15:06): My office, like I imagine many MPs' offices, has had a large number of contacts from constituents who have had serious trouble navigating mental health services, with an enormous increase during the pandemic response—an explosion of

mental health issues unlike anything I have ever seen before. We are still learning about the damage done, but make no mistake: much of the current mental health crisis in Victoria was man-made, and it was made right here. Allow me to remind you of some real-world examples of how mental health issues have been treated in the state.

Around mid-2020 my office started to be contacted by people around what most considered to be a trivial thing: masks. There are many people that simply cannot wear masks, such as victims of trauma or some children living with autism spectrum disorder. Mandating masks, along with the severe messaging from the government, made these people outcasts. They suddenly became branded as anti-maskers and people who were not doing the right thing. We heard stories of survivors of sexual assault being scared to leave their houses because of fear of abuse in the street. We later heard stories of mothers with teenage children living with autism being scared to go to the supermarket for fear of people staring at them or saying things to them. I pleaded with the government and the Department of Health to back off and raised this issue many times, but my pleas fell on deaf ears.

In September 2020 a passer-by filmed a man by the side of the road in Epping being arrested by police. This man was returning from a hospital visit, where he had been waiting for 19 hours for treatment for a mental health issue. He had been reportedly knocked to the ground by a police vehicle when a passer-by managed to film what happened next. The man alleged that a policeman stomped on his head. The man suffered severe injuries and was not only under arrest but also placed into an induced coma. IBAC cleared the police officer who appeared to stomp on him but found the officers had failed to inform the man of the reason for his arrest or provide him with care after he was capsicum sprayed. The police officer who hit him with a car was barred from driving a police vehicle. Last year we heard there would been an internal police investigation, but I expect, as I have learned to expect when I ask questions about these things, absolutely nothing. There seems to be no government body or institution in this state capable of stopping it happening again. This was a visible example of what was happening in this state, but as I have said before, mental breakdowns are rarely seen in public.

While police helicopters hovered over their houses, thousands of men, women and children were locked up. Kids were eventually not even allowed to use playgrounds, others felt worthless because they could not cope with online learning and thousands of people were left to battle anxiety and depression in private, unable to even go for a walk and watch the sunset. Even worse, when many of these people decided that they had had enough of their businesses being shut down, being locked in their homes and their kids not going to school and they took to the streets in protest, they were derided by government cheerleaders as 'cookers', a term deliberately intended to stigmatise opponents of the government as mentally ill or suffering from drug-induced brain damage.

I am proud to say that at the time when it mattered the most we were talking about mental health. For example, we put forward a motion to allow children to go back to school. I invite members to look at my speech from 16 September 2020 where I told several harrowing stories from mums and dads who were naturally worried sick about their kids. I spoke about an article in the *Lancet* medical journal highlighting research by neuroscientists from Cambridge University. This showed adolescents who miss out on face-to-face interaction are more likely to have long-term mental health, behavioural and cognitive problems later in life. This built on numerous studies showing how socialisation impacts the developing brains of young people. The response from a government member was 'for some children adversity can be character-building'. It is still not clear what scientific study about the character-building characteristics of isolating children she was referring to, but this was illuminating. If you want to know what the government thought about mental health, you have it right there. Compared to much of the world, Victorians suffered from extreme lockdowns, and to get extreme lockdowns you need extreme callousness. The Liberal Democrats lost the motion to get kids back to school. And for those of you who are making speeches today but did not support us then, I will say this: you stood by and allowed Victorians to be subjected to this, and now you want to take credit for something to clean up the mess, which you partially created, which has resulted in a massive increase in demand and an overextended workforce unable to meet that the demand.

Our constituents told us in no uncertain terms they were not okay. It was not only children; it was single mothers, people living alone and the elderly. It is questionable that any amount of money or counselling, even if we can find the staff, will undo the damage that may have been done. The Liberal Democrats will not oppose moves to clean up this mess, but we will not forget who was responsible for adding to it in the first place.

Mr TARLAMIS (South Eastern Metropolitan)

Incorporated pursuant to order of Council of 7 September 2021:

I'm pleased to have the opportunity to make a contribution on the Mental Health and Wellbeing Bill 2022.

This bill is not only an important step in our state's reform journey but one of the most consequential pieces of legislation that has been put before this Parliament.

We know our mental health system is broken. We have all heard the lived experiences of our constituents and how, more often than not, the system failed them.

Today, we have the opportunity to take another important step in rebuilding our state's mental health system.

In March 2021, the Royal Commission into Victoria's Mental Health System released its final report.

The final report laid out a blueprint for building a more compassionate and effective mental health and wellbeing system from the ground up.

The report contained 65 recommendations that would be required to fix our system.

These recommendations gave us opportunities to change the system—not from within, but to rebuild it entirely.

They gave us an opportunity to rethink the way we distribute mental health knowledge, resources and services around the state so that they are fit-for-purpose and appropriately meet the requirements of those in need, providing quality mental health assistance for everyone when and where they need it.

The bill before us today is a direct response to recommendation 42, which called for the establishment of a new mental health and wellbeing act.

The bill before the house sets out the foundation for the future of mental health and wellbeing services in Victoria—one where lived experience is at the centre of decision-making and mental health professionals are given the support necessary to deliver treatment and care in fully resourced facilities.

This is on top of the work that has already been done by the government which has seen us deliver over 2500 mental health jobs since the royal commission's report, delivering exactly what our mental health workforce strategy identified as necessary for this reform.

I am also pleased to note that the bill includes a statement of recognition and acknowledgement of the treaty processes that we are currently undertaking here in Victoria.

It is one of the first pieces of health legislation that incorporates a statement of recognition.

This underscores the Andrews Labor government's commitment to Aboriginal self-determination in achieving positive health outcomes.

It recognises the key role of the Aboriginal health sector in the delivery of Aboriginal mental health and wellbeing services, and it supports healing, acknowledges trauma and provides a foundation for future legislative reform to strengthen Aboriginal self-determination within mental health and wellbeing processes.

It is also important to understand that some aspects of this bill do go beyond the recommendations of the final report.

This includes the establishment of Youth Mental Health and Wellbeing Victoria.

This is a significant inclusion as mental health is often identified by young people and youth organisations as a key challenge faced by our youth.

The bill also includes specific decision-making principles concerning compulsory assessment and treatment and restrictive interventions.

It provides for a reduced maximum duration of community treatment orders, from 12 months to six months, and changes to support a health-led response to a mental health crisis.

These changes are vitally important if we are to ensure that no stone is left unturned in our mental health reforms.

Importantly, the bill establishes key new entities and offices for the governance and oversight of the mental health and wellbeing system.

This includes the new Mental Health and Wellbeing Commission, regional mental health and wellbeing boards, regional and statewide multiagency panels and the chief officer for mental health and wellbeing.

The commission will be an independent statutory body reporting directly to the Parliament and comprising of a chair commissioner and three commissioners to be appointed by the Governor in Council.

The commissioners will include people with lived experience of mental illness and with lived experience as a family member, carer or supporter.

The commission will incorporate the existing complaints function of the mental health complaints commissioner and have a suite of broader powers, including an 'own initiative' investigation power.

The commission will be empowered to hold the government to account for the mental health and wellbeing system and its implementations of recommendations made by the royal commission.

This will ensure public trust in the government's reforms and the new system, which is integral to the process.

However, legislation alone cannot mend a broken mental health system. That is why I am proud to be part of a government that in the first 17 months since the release of the final report has acted on 90 per cent of the royal commission's recommendations.

This extraordinary outcome was achieved through the 2021–22 state budget where the Andrews Labor government invested $3.8 billion to kickstart the next decade of mental health reform and in this year's budget where the government invested an additional $1.3 billion to build the momentum necessary to fully deliver on the royal commission.

This achievement is a testament to the strength of the commitment to the delivery of tangible outcomes that will benefit Victorians.

It is worth noting the hard work that has gone into drafting this bill.

Not only has it been informed by the findings of the royal commission, but also an expert advisory group was appointed to support the bill's development and extensive feedback through engagement in 2021 and this year.

Remarkably, we received 283 written submissions to the discussion paper released last year, along with hundreds of direct engagements with stakeholders and sector leaders throughout the past 12 months.

The level of engagement from the community shows how eager Victorians are to help fix our system.

Those of us on this side of the chamber, along with our government colleagues in the other place, are incredibly proud of this bill.

It is the type of bold, landmark reform that only Labor governments have dared to implement.

It goes to the very heart of our values.

I'm extremely proud to be part of a government that is leading major reform that will make a real difference to Victorians—that listens to experts, consults with the community and puts those with lived experience at the centre of its reforms.

This bill is another step forward for Victoria.

I commend it to the house and I wish it a speedy passage.

Mr LEANE (Eastern Metropolitan—Minister for Commonwealth Games Legacy, Minister for Veterans) (15:11): The Mental Health and Wellbeing Bill 2022 delivers on key recommendations of the Royal Commission into Victoria's Mental Health System. It is an important milestone in the 10-year mental health reform program required to give full effect to the royal commission's vision. The bill sets out the foundations for the future of mental health and wellbeing services in Victoria, one where lived experience voices are at the centre and mental health professionals are supported to deliver the best treatment, support and care in facilities that actually help people recover. The bill puts people with lived and living experience of mental illness and distress, and their families, carers and supporters, at the core of the mental health and wellbeing system. It does this through new rights-based objectives and principles and the inclusion of designated lived experience roles at the highest level of government and oversight entities. The bill establishes key new elements of the system architecture, including the chief officer for mental health and wellbeing, statutory regional mental health and wellbeing boards

to provide advice on the planning and commissioning of services at a local level, the new Mental Health and Wellbeing Commission and Youth Mental Health and Wellbeing Victoria.

Of course the bill is just part of a broader context of reform that sits alongside record service investment—more than $5 billion in the past two budgets alone and a massive expansion of the workforce, with over 2500 more mental health workers in the next four years. The delivery of this bill acquits in full recommendation 42 of the royal commission's final report, getting us another step closer to full delivery of every single one of the royal commission's recommendations. To date work has commenced on over 90 per cent of the recommendations, generating real momentum and hope for a reimagined mental health and wellbeing system.

I understand Ms Patten has proposed an amendment to enshrine the requirement for a workplace safety and wellbeing committee in the bill, with its establishment to be a function of the chief officer. The government will support this amendment. We are committed to supporting those who work in the mental health and wellbeing sector and know that nothing can be achieved without a strong, committed and safe workforce. As the former Minister for Mental Health noted in his second-reading speech for the bill, the clinical, community and support staff that make up the mental health workforce are the true heroes. We have already established a mental health workforce safety and wellbeing committee in line with recommendation 59 of the royal commission. Enshrining this committee into legislation will ensure its important work of monitoring and providing advice about the physical safety and psychological wellbeing of the workforce continues throughout and beyond system reforms.

The opposition have proposed an amendment. I think it was proposed in the other place but of course it is being proposed here for the committee's consideration. The government will support this amendment. We are committed to ensuring mental health and wellbeing services are closely connected and work in coordination with alcohol and other drug services. This is consistent with our commitment to deliver on recommendation 35 of the royal commission, which called for integrated treatment, care and support for people living with mental illness and substance use or addiction. It also aligns with our commitment to establish a new statewide service for people living with mental illness and substance use and addiction. The proposed amendment is consistent with the existing health needs principle—clause 22—that requires that:

> The medical and other health needs of people living with mental illness or psychological distress are to be identified and responded to, including any medical or health needs that are related to the use of alcohol or other drugs.

I want to just quickly run through some responses to issues and concerns raised in the debate so far. I hope that these clarifications can assist members going forward. During the debate earlier today Ms Crozier asked whether the bill would provide a dedicated entity to address the mental health needs of older Victorians. I understand that this was a view emerging out of the creation of Youth Mental Health and Wellbeing Victoria in the bill and that perhaps more was needed to cater to the needs of older people. Whilst I do not agree that the needs of older Victorians should be prioritised with reforms, a separate entity would essentially duplicate the function of the Victorian Collaborative Centre for Mental Health and Wellbeing, the establishment of which is incorporated in this bill. As noted in the second-reading speech, the functions of the VCC include to provide, promote and coordinate the provision of mental health and wellbeing services. This will include providing a comprehensive range of multidisciplinary services to adults and older adults in the local community, and that is actually a statement in the speech. Dedicated consultation mechanisms to capture the lived experience and new mental health issues of older Victorians will be established through the support of the VCC in delivering on the functions without the need for an additional entity.

We also heard concerns from a few members that the translation of a health-led response, a very necessary and welcome policy change, is contingent on the mental health workforce. I would like to clarify that the current arrangements, which require Victoria Police to escort someone to an emergency department and wait for them until an emergency physician is available, are presently the law under

the Mental Health Act 2014. It is not a matter of workforce availability, and of course we can all agree the police have many other valuable activities to attend to rather than sitting in a busy emergency department with an unwell person who just needs help. At present police cannot hand over someone who is of risk to the community to someone like a paramedic or a mental health nurse. They absolutely should wait to do that, where it is safe to do so. That is exactly what this bill will deliver—a scaffolding necessary to transition to our health-led response over coming years in partnership with VicPol, Ambulance Victoria, the Royal College of Emergency Medicine and industry partners.

Finally, I just want to respond to some of the claims that the mental health workforce has not been supported by this government and that it has somehow left the workforce behind in these reforms. That is categorically not true. In the past three budgets alone, since the release of the royal commission interim report, we have invested over $600 million into workforce growth and development. As per the recommendations of the royal commission's final report, we delivered *Victoria's Mental Health and Wellbeing Workforce Strategy 2021–2024* in December last year. That strategy identifies the need for at least 2500 more mental health workers over the next four years. At the recent state budget the government delivered exactly that—a record $372 million package to deliver 1500 more workers on top of the 1000 workers already refunded in the previous year, more than 400 mental health nurses, 300 psychologists and more than 100 more psychiatrists just to start with. We are keeping on delivering the vital work on this workforce, who are the heart and soul of the mental health system. We could not do this reform justice without absolutely doing that.

I might just briefly go to a concern that Mr Grimley raised about the independent review panel. We waited until we had a final draft of the bill to develop the terms of reference as it is a consequential piece of work. There is no strategy behind this timing; it is merely how the work has been managed in the face of a huge deliverable. The panel is chaired by a judge with lived experience of mental illness. Justice Shane Marshall is joined by psychiatrists, a lived experience academic, a consumer with experience of compulsory treatment and a carer. This diverse and expert group will commence work later this year and will report back to the government on any appropriate changes to the bill based on their terms of reference. I will leave it at that and just thank everyone for their contributions in the second-reading debate.

Motion agreed to.

Read second time.

Committed.

Committee

Clauses 1 and 2 agreed to.

Clause 3 (15:22)

Ms CROZIER: Minister, this goes to the definition of 'registered paramedic'. Mr Grimley raised this in his contribution—I ran out of time in mine—around the community paramedics. When I was seeking feedback from the sector I had some feedback from the community paramedic sector saying essentially that the bill restricts a registered paramedic to working to their full scope of practice, and they are concerned that they will not be able to participate with what I think the intent of the bill is. They are not necessarily employed by Ambulance Victoria, but the bill states that they must be employed by Ambulance Victoria. Their comment to me in the feedback was:

> So all registered paramedics can be a mental health and well being professional but can not be an authorised person unless employed by an ambulance service and are excluded from being an authorised mental health practitioner …

For them that does not make sense. Could you explain to the house why they are not included in the definition?

Mr LEANE: Thank you, Ms Crozier. Registered paramedics are one of the many workforces that will be critical in the delivery of the reformed mental health and wellbeing sector. Registered paramedics are included in the newly classed mental health and wellbeing professional. Registered paramedics are also included as one of the professional groups that may inform the exercise of power by police or PSOs responding to mental health crises in the community. Some roles under the bill are limited to registered paramedics who are employed by an ambulance service under the Ambulance Services Act 1986. This includes the roles of authorised persons. This is consistent with the current act, which refers to ambulance paramedics, but it has been updated as paramedics are now a registered profession under the Health Practitioner Regulation National Law to ensure clarity in the drafting of interpretations. Limiting these powers in any way reflects the significant powers exercised by authorised persons, including powers to take people into care and control in the community and to transport them to designated mental health services. Other registered paramedics or other health professionals may be prescribed by regulation to fall within the definition of 'authorised person'. This is necessary to ensure there can be a health-led response to people experiencing mental health crises in the community. This will only occur after consultation with all affected stakeholders. No? Ask your question again.

Ms CROZIER: Thank you for that answer, Minister. From that answer, I still think they are excluded, but you did make reference to the regulation that they are under:

> ***registered paramedic*** means a person who is registered under the Health Practitioner Regulation National Law to practise in the paramedicine profession (other than as a student) …

So this definition confirms that a registered paramedic does not have to be employed by an ambulance service to provide the very real issues that the bill sets out in terms of restrictive interventions and sometimes assisting with the transfer of patients. So they are wanting to know—they are registered under the national law but they are not necessarily employed by Ambulance Victoria, and this legislation restricts their ability.

Mr LEANE: To use the powers prescribed in terms of transporting people in the fashion that is prescribed in this bill, they do have to be employees of Ambulance Victoria.

Ms PATTEN: I move:

1. Clause 3, page 18, after line 2 insert—

> "***Mental Health Workforce Safety and Wellbeing Committee*** means the Mental Health Workforce Safety and Wellbeing Committee established by the Health Secretary under section 327A;".

The amendment goes to, as I mentioned in my second-reading speech, establishing a legislative position for the mental health workforce safety and wellbeing committee. This goes to some of the concerns that we heard from the nurses and midwives and some of the concerns that we heard from the Health and Community Services Union, and even from the college of psychiatrists and the AMA. They were concerned about the workplace health and safety that the implementation of some parts of this legislation may put at risk. So the establishment of this committee within the legislation secures that oversight for it. The objectives, as I mentioned in my second-reading speech, would be the prevention of risks to health, safety and wellbeing in the mental health and wellbeing workforce, and monitoring and responding to risks to health, safety and wellbeing in the workforce. The committee may also appoint subcommittees, and the committee will consist of members appointed by the health secretary.

Mr LEANE: The government will be supporting Ms Patten's amendment, as I outlined in the second-reading summary.

Amendment agreed to; amended clause agreed to; clauses 4 to 11 agreed to.

Clause 12 (15:31)

Ms CROZIER: Minister, clause 12(c)(vi) states the following objective in pursuit of the highest attainable standard of mental health and wellbeing for the people of Victoria:

> provide culturally safe and responsive services to Aboriginal and Torres Strait Islander people in order to support and strengthen connection to culture, family, community and Country …

Whilst I understand that they are recognised as a vulnerable group of Victorians and that is why you have specifically put this paragraph into this clause, can I just ask why the CALD communities are not included similarly. They are also a vulnerable group and they can be subjected to stigma and a whole range of things and at times they do not have a good understanding of English and so confusion can occur with interpretation of certain things. I am just wondering why they are not identified as well.

Mr LEANE: Clause 17 contains a cultural safety principle, which does cover not only First Nations people but also those from CALD backgrounds.

Ms CROZIER: I would like now to move my amendment, if I may, because it follows on from that paragraph. I note from the minister's summing up that the government has indicated support for the amendment that I have proposed. In my second-reading contribution I spoke about this significant part of the sector who feel they need to be included in the reform because it is such a significant reform and they do such an enormous amount of work. I think Ms Patten referenced the sector as well. I do thank the government. I know there was some difficulty with the former minister because the government split the role—it was with Minister Merlino and then it went to Minister Foley—and there were some issues around drugs and the injecting room and all sorts of things. But for the purposes of this, I think, as highlighted by Ms Kealy in her second-reading remarks and others, this sector have done a significant amount of work and they are carrying a huge burden after the last 2½ years where they have seen significant demand. I move:

1. Clause 12, page 36, line 9, after "wellbeing" insert "including alcohol and other drug support services and treatment".

Mr LEANE: The government will support Ms Crozier's amendment for the reasons I outlined in the second-reading summary.

Mr HAYES: I just want to speak very briefly to support Ms Crozier's amendment, and I am very glad the government is going to support it too. I think it is very important that alcohol and other drugs (AOD) are recognised and included, and I note that she talks of the Victorian Alcohol and Drug Association (VAADA). I spoke to them earlier in the year, and they were worried precisely about the matter of this being recognised. As Ms Patten also talked about, alcohol and other drug addiction has to be treated often separately but parallel to other mental issues with mental wellbeing, and sometimes just treating someone for depression and thinking that you are treating the addiction problem as well is not enough. Addicts that are in recovery often need long-term support that is separate to their treatment for mental illness—you know, going to a whole lot of lifestyle issues and personal interrelationship problems with other people—and this takes time and resources.

Dave Taylor and Sam Biondo from VAADA came to speak to me. I also want to recognise the work that Windana does in our electorate, which Ms Crozier mentioned. This is really important work, and we need to see more targeted treatment facilities for alcohol and other drug addiction, not less. While we have seen an increase in the budget for mental health overall, we have seen a sliding back in separate funding towards alcohol and other drug issues. We need to see more treatment facilities, both private and public, and I would like to see more public intervention in this area. Support for community groups and public funding for facilities where these groups can meet would also help. We do have quite a problem with alcohol and drug addiction, and that has really come to the surface post pandemic. All the evidence suggests that the system seems to be under quite a bit of strain with huge needs in this area. So I support the amendment and I would like the government to look at increased funding in this area.

Ms MAXWELL: I would just like to make a couple of comments in relation to Ms Crozier's amendment. We know that the AOD sector plays a significant role in the recovery of people with mental illness. As Mr Hayes said, the emphasis and the resources are often not there, so whilst the mental illness itself may be being treated—whether it be through counselling or medication—often the cause and the comorbidity of AOD is not considered or not dealt with because we do not have the rehabilitation supports and resources that we need. So I think that this is an important amendment, and it is a little disappointing to see that there has not been more reference to the AOD sector in this bill.

Amendment agreed to; amended clause agreed to; clauses 13 to 17 agreed to.

Clause 18 (15:39)

Mr LIMBRICK: This clause relates to the principles under this bill, the least restrictive principle. Now, this is something that I have spoken about many times in the operation of the Public Health and Wellbeing Act 2008—the idea that any particular action is meant to be the least restrictive of rights—and I have been quite disappointed with the operation of this principle in the Public Health and Wellbeing Act. Under this bill how will the government ensure that the decision-makers—the public servants making the decisions—are aware of these new principles and how to apply these principles in their decision-making? I give the example: an action that is the least restrictive of rights implies that there are multiple options that a decision-maker could choose from and they would choose the option that is the least restrictive, so how will they ensure that they actually apply these decisions to their decision-making processes?

Mr LEANE: The decision-makers and others that Mr Limbrick has mentioned will have to apply all the principles prescribed in the bill, and guidance on those principles can be helped to be determined by the commissioner as well.

Mr LIMBRICK: I thank the minister for his answer. What measures will be employed to ensure that this test is appropriately applied on a case-by-case basis? What we have seen under the Public Health and Wellbeing Act is that the only real challenges to it came from legal challenges. I would hope that there are some mechanisms in place to ensure in an ongoing manner that all of these principles, including the least restrictive principle, are being applied consistently and methodically in each case.

Mr LEANE: As I stated, guidance on all the principles, including this one, can be assisted by the commissioner.

Ms MAXWELL: Minister, on clause 18, the least restrictive principle, what if any impact will that clause have on people who are either incarcerated or in Thomas Embling Hospital?

Mr LEANE: Thank you, Ms Maxwell. The principles will apply to Thomas Embling and also to mental health facilities within prison.

Ms MAXWELL: Thank you for that answer. In relation to that, Minister, will that impact things such as day release for those who are in Thomas Embling Hospital? Will that have any impact? Will it actually allow for earlier day release or more day release?

Mr LEANE: Thanks, Ms Maxwell. The status quo still applies. Decisions on leave will still be under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997.

Clause agreed to; clauses 19 to 327 agreed to.

New heading and new clauses (15:46)

Ms PATTEN: My amendments insert the heading 'Mental Health Workforce Safety and Wellbeing Committee', and the new clauses lay out the formation of the mental health workforce

safety and wellbeing committee—how it will be established—and then go on to lay out the objectives of it. I move:

2. Page 264, after line 24 insert the following heading—

"**Part 6.5A—Mental Health Workforce Safety and Wellbeing Committee**".

3. Insert the following New Clauses to follow clause 327 and the heading proposed by amendment number 2—

"**327A Mental Health Workforce Safety and Wellbeing Committee**

(1) The Health Secretary must establish a Mental Health Workforce Safety and Wellbeing Committee in accordance with the regulations.

(2) The Mental Health Workforce Safety and Wellbeing Committee consists of members appointed by the Health Secretary.

(3) The Health Secretary may appoint 2 of the members of the Mental Health Workforce Safety and Wellbeing Committee to jointly chair the Committee.

(4) Members of the Mental Health Workforce Safety and Wellbeing Committee must have experience, skills or knowledge that is relevant to the objectives of the Mental Health Workforce Safety and Wellbeing Committee.

(5) The regulations may make provision for or with respect to—

(a) the appointment of the Mental Health Workforce Safety and Wellbeing Committee, including the number of members; and

(b) the powers and procedures of the Mental Health Workforce Safety and Wellbeing Committee.

327B Objectives of the Mental Health Workforce Safety and Wellbeing Committee

(1) The objectives of the Mental Health Workforce Safety and Wellbeing Committee are to provide advice to the Health Secretary and the Chief Officer in relation to—

(a) the prevention of risks to health, safety and wellbeing in the mental health and wellbeing workforce; and

(b) approaches to monitoring and responding to risks to health, safety and wellbeing in the mental health and wellbeing workforce.

(2) The Mental Health Workforce Safety and Wellbeing Committee may appoint a sub-committee to assist the Mental Health Workforce Safety and Wellbeing Committee to achieve its objectives under subsection (1).".

Mr LEANE: The government supports the amendments.

New heading and new clauses agreed to; clauses 328 to 410 agreed to.

Clause 411 (15:47)

Ms MAXWELL: An objective of the Mental Health and Wellbeing Commission is to ensure the government is accountable for the performance, quality and safety of the mental health and wellbeing system, including the implementation of recommendations made by the royal commission. Integrated treatment is a recommendation of the royal commission. That will in part be delivered by the AOD sector. Will the AOD sector therefore be measured for performance, quality and safety as part of this objective?

Mr LEANE: Ms Maxwell, the answer is no because we do not regulate AOD services under this bill.

Clause agreed to; clauses 412 to 631 agreed to.

Clause 632 (15:49)

Mr LIMBRICK: I have a couple of questions on this one. Apparently the Scrutiny of Acts and Regulations Committee (SARC) found that in clauses 632 and 702 the Secretary of the Department of Health may issue directions, and the clauses provide that the directions do not constitute discrimination

on the basis of political or religious belief. Can the minister please clarify whether or not clause 632—and clause 702, but we are on clause 632—permits the health secretary to discriminate on the basis of political or religious belief or activity, therefore limiting the charter of human rights?

Mr LEANE: Mr Limbrick, the answer is no.

Mr LIMBRICK: I thank the minister for clarifying that. It is my understanding that SARC wrote to the minister seeking clarity on this but the minister has not yet responded. Is that the case, and if so, is the response of 'no' the answer effectively?

Mr LEANE: I am unsure of what has happened between SARC and the minister, but I can confirm that the answer is no.

Clause agreed to; clauses 633 to 639 agreed to.

Clause 640 (15:51)

Ms MAXWELL: Minister, the collaborative centre has a responsibility to 'provide or arrange the provision of specialist support services and care for persons who have experienced trauma' via the statewide trauma service. It is widely accepted that experiences of psychological trauma are a common vulnerability amongst those with AOD and mental health needs. Does this then suggest that the collaborative centre will offer support and oversight to that AOD sector on issues relating to trauma?

Mr LEANE: Thank you, Ms Maxwell. The VCC does not regulate the AOD sector or any of its services. It is there for research, and it is also there for guidance.

Clause agreed to; clauses 641 to 742 agreed to.

Clause 743—no question put pursuant to standing order 14.15(2).

Clauses 744 to 885 agreed to; preamble agreed to.

Reported to house with amendments.

Mr LEANE (Eastern Metropolitan—Minister for Commonwealth Games Legacy, Minister for Veterans) (15:54): I move:

> That the report be now adopted.

Motion agreed to.

Reported adopted.

Third reading

Mr LEANE (Eastern Metropolitan—Minister for Commonwealth Games Legacy, Minister for Veterans) (15:54): I move:

> That the bill be now read a third time.

I thank you, Deputy President, and Ms Crozier, Ms Patten, Mr Hayes, Ms Maxwell and Mr Limbrick for their contributions in the committee stage.

Motion agreed to.

Read third time.

The DEPUTY PRESIDENT: Pursuant to standing order 14.27, the bill will be returned to the Assembly with a message informing them that the Council have agreed to the bill with amendments.

CRIMES LEGISLATION AMENDMENT BILL 2022

Second reading

Debate resumed on motion of Ms STITT:

That the bill be now read a second time.

Dr BACH (Eastern Metropolitan) (15:55): It is really good to rise this afternoon to make a contribution on the Crimes Legislation Amendment Bill 2022. I dare say every member of this house and I dare say every member of the Victorian community is well acquainted with the appalling circumstances that ultimately proved the genesis for this legislation. The bill has been introduced by the government in very direct response to the actions of Mr Richard Pusey in the aftermath of the Eastern Freeway tragedy, when back in April 2020 a truck crashed into and, tragically, killed four members of Victoria Police who had been on traffic duty. Now, Mr Pusey himself—as is widely understood and widely known to the Victorian community—had been pulled over on the Eastern Freeway by police regarding a separate matter, and as it came to light in the days after these dreadful events, Mr Pusey was something of a recidivist when it came to utterly stupid endeavours in his various motor vehicles.

So he was there with the members of Victoria Police on that fateful night when the truck crashed into their cars and into them. This of course was widely reported. Here is a section of just one report from the Australian Broadcasting Corporation:

> As the police officers lay dead and dying, Pusey walked "slowly and purposefully" around the scene and began filming the dead and dying police officers, making two recordings lasting longer than three minutes.

It is still chilling, isn't it, even years later. We are so across the details of this matter. They have been discussed and debated and broached so widely across the Victorian community, but it is still sickening to recall them. 'I think everyone got cleaned up' is a quote from Mr Pusey. 'There's four people, four people, look at that', Pusey says in one of the recordings. He goes on to use the most foul and disgusting language, which I certainly will not repeat here, but he does repeatedly say that this is 'justice' and that it is 'absolutely amazing'.

Following this quite appalling and disgusting set of events and following his appalling and disgusting behaviour, Pusey was charged with the common-law offence of committing an act that outrages public decency. That was in addition to a number of other offences. This common-law offence is of course very little used and of some heritage. He pleaded guilty and was sentenced to 10 months jail, three months of which was attributable to the outraging of public decency offence. Now, family members of the deceased police officers, but in addition to that so many members of the Victorian community at large, expressed their outrage at that time at the leniency of the sentence. But to be fair, the leniency of the sentence was only as such because of the fact that our legal system was simply not geared really to deal with such a unique and bizarre offence as this.

And so the Andrews Labor government has responded with this bill. Despite some minor concerns that I will discuss briefly in the course of my contribution and the concerns of some other relevant bodies, I certainly commend them for doing so and note at the start of my contribution, as Mr O'Brien in the other place noted in his contribution, that we will certainly be supporting this legislation.

The legislation seeks to make a series of changes to our criminal statutes. First, a proposed section 195J abolishes the common-law offence of outraging public decency. Now, that is the offence that Mr Pusey was charged with and found guilty of. It inserts proposed section 195K, which creates an offence of grossly offensive public conduct. The elements of the offence are that the offender engages in conduct that 'grossly offends community standards of acceptable conduct'; the conduct is engaged in in a public place and is seen or heard by a person in a public place—of course Mr Pusey posted his appalling and abhorrent behaviour onto online forums; the offender knows that, or is reckless as to whether, the place at which the conduct is engaged in is a public place; and the offender knows, or a

reasonable person would know, that the conduct would likely grossly offend community standards of acceptable conduct.

This is an area of law which is complex and difficult. We understand that and we accept that, but I do feel that the government, and the Attorney specifically, have obviously done their very best to seek to come up with a new arrangement that would, should we see another offence that is not able to be captured by other criminal statutes, ensure that we do not again see somebody of Mr Pusey's ilk being let off with ultimately the slap on the wrist that he received, not because of any poor conduct from the judiciary in this case—not at all—but simply because our criminal law was not in a position at that time to allow proper recompense.

There are of course, given the nature of the type of provision that we are discussing, some different views from eminent bodies in the legal community whose advice I certainly respect, whose advice I know Mr O'Brien respects and, I know, whose advice the Attorney respects. I will just briefly quote from some of those, not to take away from the fact that, again, I do feel that in the circumstances and given the difficulty of dealing with some of these matters the Attorney and the government have done a good job in quickly and promptly responding to very deep community concerns about this specific matter to enable us to deal with any matters better in future.

The Law Institute of Victoria have made some comments. They have said:

> Legislation should be clear and not subject to the vagaries of public outcry or opinion.

And:

> … this new legislation may result in a disproportionate application of the law, adversely affecting vulnerable people, including those with mental health issues.

As members of the government have pointed out, there are some safeguards in this legislation. I would have hoped and indeed I would have thought that members of the judiciary would be well placed to seek to deal with some of those concerns. They are legitimate concerns, but obviously the Attorney in this process has sought to mitigate them as far as it is possible, noting the nature of the provisions that are before the house today.

Liberty Victoria has, perhaps understandably, perhaps obviously—again, given the nature of the provisions that we are discussing—expressed some concerns too. Liberty Victoria has said:

> Because the prohibited grossly offensive conduct is (deliberately) left undefined and ambiguous, the proposed offence will not act as a deterrent.

And in short:

> There is no demonstrated need for this new offence.

There are many reasons for passing new laws. There are many reasons for allowing the enactment of new punishments. One is deterrence. But let us say that in future we have to deal with another person of the ilk of Mr Pusey—heaven forbid. I like to think of myself as an optimistic person and somebody who sees the best in others. He strikes me as the most reprehensible of individuals, so I am not sure that it is always possible to deter somebody like that through the predicted—and, I dare say, predictable—and rational application of the law. Sometimes, I am afraid, the best we can do as a society is to deal with really dreadful matters after the fact. For that reason, while I respect the views of Liberty Victoria, I would much rather today see the Parliament support this legislation on the basis that of course in some respects it must be somewhat vague and then trust our judiciary so that the community can have confidence that—should we ever again have to deal with something as appalling as what the whole community had to deal with and of course, first and foremost, four police families had to deal with in 2020—we are equipped as a society to at least then mete out proper punishment. Punishment is one of the proper reasons for having a strong body of criminal law. Yes, if we can deter, that is a great thing. But of course we cannot deter all crime, and I am not sure anything would have deterred somebody as malevolent as Mr Pusey.

There are some other concerns that have been expressed by some other legal bodies. However, some of these matters have been noted and sought to be addressed by Mr O'Brien in the other place but also numerous members of the government in the other place. They may well be addressed by members of the government here. I do not want to go on at too much length regarding some of those concerns to take away from my support and the support of my colleagues for this measure. We think it is a necessary measure. We think it is a good thing that the government has sought to act quickly and the Attorney has sought to act quickly, because we wholeheartedly agree not only that what we saw on the Eastern Freeway was utterly appalling but also that the only punishment that could be meted out at the time was manifestly insufficient and so new legislation of this nature is necessary. It has our support, and we wish it a speedy passage.

Sitting suspended 4.06 pm until 4.24 pm.

Mr GRIMLEY (Western Victoria) (16:25): I rise to speak on the Crimes Legislation Amendment Bill 2022. This bill will introduce a new offence of engaging in conduct that is grossly offensive to community standards of behaviour. Those convicted under the offence will face a maximum penalty of five years imprisonment. My contribution will only be short and to convey Derryn Hinch's Justice Party's full support of this clearer, more serious offence.

The government often tell us that we should not be introducing new offences, penalties or responses in relation to one particular event, and this bill comes as a result of the campaigning of Stuart Shulze, Leading Senior Constable Lynette Taylor's husband, so here we have an example of doing just that, but we think it is entirely warranted. This extremely important bill means a lot to our blue family.

I also note that the government have included a deferral of the decriminalisation of public drunkenness. In a media release it was referred to as an 'unrelated item'. I just want to put this on record because we often have limited scope on when we can introduce amendments to legislation which we think is incredibly important but the government often rejects those amendments on the premise that they are not directly amending a particular bill.

On that note, I did have an amendment to this bill. You all know this. It had the numbers to pass, and I am very grateful for this. It was important. It related to the grabbing and dragging of people where they are apprehended and taken to a less public place like a laneway, for instance, or some bushes or similar. It usually happens to women, but it was certainly not gendered in text. It is something that has the support of Victoria Police formally, and I knew it would have the support of my ex-VicPol colleagues individually. They are all over seeing crimes like these against women with perpetrators getting away with it.

I have since withdrawn my amendment very reluctantly. I was told that this bill would be pulled in the Assembly if the amendment was to pass the house. The Attorney-General's letter, sent via email yesterday, requesting that I withdraw the amendment inferred, amongst other things, that the amendment I had drafted was too narrow for my intent. For the record, I intended to make the offence narrow so that it would not capture offences unintentionally. If it had been drafted too broadly, I am sure the response would have been that it was too broad. It seems it is very difficult to win. Also, I was asked to consult with departments like the Office of Public Prosecutions and VicPol on amendments such as these. However, as a crossbench member I am told that I cannot have contact with these departments as an MP and I have to go through the relevant minister's office to have any of those meetings in the first place, which makes it quite difficult. This was made quite clear to me when I was elected, but in my opinion it is not entirely correct. Instead I have to seek legal advice informally through colleagues and lawyers. It seems it does not matter that these amendments are drafted on the back of their advice to the commission.

Also, I am not too sure why I had to consult with VicPol, as their submission to the Victorian Law Reform Commission on grab and drag should have been enough. It recommended this amendment. I have been told that the department are looking at this offence but not that it will implement the offence,

which is disappointing. The government have had over six months to consider the VLRC report on grab and drag. Any accusation that I am rushing this amendment is simply not true. We have been looking at introducing it only because the government has not made a clear commitment to legislate it in the future. In question time earlier this year, on grab and drag the Attorney said, 'We are reviewing the VLRC's findings in detail', but without commitment. I call on the government to make this commitment. There is clearly a deficiency in the law at present, and I hope this aggravating circumstance for grab and drag can be legislated next year—the sooner the better. The message needs to be sent that we do not tolerate any assaults, especially on women and children.

As you can tell, I am disappointed. Because I was put in a position where I had to make a choice between what I see as the safety of the community and filling a gap in the law, and also the passage of this bill, which is also very important to the blue family—I should not have had to make this decision—I have made the decision very reluctantly to withdraw my amendment.

But back to the bill. What happened on 22 April 2020 was tragic. It was one of those moments where we all remember where we were and what we were doing when we heard the news. The lives of four of our finest were taken too soon, all because they went to work to do their job, to protect our community. I do not really have the words for the man they pulled over, Richard Pusey. The words 'scum', 'poor excuse for a human' and 'oxygen thief' come to mind and will suffice for now; the ones I really want to use would certainly be unparliamentary. However, we will never forget that this pathetic creature was not the one who caused the event. That was a truck driver, Mohinder Singh, who thought it was a good decision to go barrelling down the highway whilst being high on drugs and short on sleep, taking four lives with him—four outstanding humans just doing their jobs. As I understand it, he is currently appealing his 22-year prison sentence, saying it is too harsh. He should have got life for each life that he took; he should be serving 88 years minimum. He should never see the light of day beyond the prison walls. Even that is too good for him in my opinion.

Pusey was charged with grossly offensive conduct, but it was a common-law offence with an uncertain maximum penalty. Taking photos and videos of a dying person, let alone a police officer, and failing to render assistance is simply inhumane. It goes against every good fibre that we possess. And it would be an understatement to say that he has since continued to show his true colours in the community and in the courtroom. But rather than continue to talk about that sad excuse for a human being, I would like to speak about those whose lives were taken from us too soon.

Leading Senior Constable Lynette Taylor was remembered as a caring and dedicated police officer who took care of everyone. Senior Constable Kevin King was a devoted dad, a dedicated husband and a great cop. He loved music and cooking Italian food and held his family in such a high regard. Constable Glen Humphris was described by partner Todd Robinson as bubbly, outgoing and loving. Constable Josh Prestney played guitar, loved the Lakers, was an accomplished triathlete and a Collingwood supporter, and had only just recently graduated from the academy. These four officers, like we all do in the police force, saw the worst of people constantly. We put ourselves in harm's way to keep everyone else safe. That is just the nature of the job—it is tough, but we do it. But some pay with their lives. The state memorial was incredibly moving, and it was so nice to see many people from all walks of life come together to pay their respects and offer condolences for such an unprovoked and senseless act of criminality.

My sincere condolences to the families of Leading Senior Constable Lynette Taylor, Senior Constable Kevin King and constables Glen Humphris and Josh Prestney. Time might pass but the pain will still be incredibly raw. We are all with you in your grief and will be forevermore. I commend this bill to the house.

Mr ERDOGAN (Southern Metropolitan) (16:32): I rise to speak in support of the Crimes Legislation Amendment Bill 2022. With this bill the government is strengthening and clarifying our laws around extremely offensive public behaviour to better meet the expectations of our community. We are addressing a gap in legislation, one that was highlighted by the Eastern Freeway tragedy. As

the Minister for Crime Prevention stated in her second-reading speech, it is about protecting more fundamental values and ensuring that the criminal law can appropriately respond when these fundamental values are breached and significant social harm is caused. I guess that is the crux of the bill before us.

It proposes to create a new offence in the Crimes Act 1958 which applies to conduct that grossly offends community standards of acceptable conduct. It applies to conduct which occurs in a public place or is seen or heard by a person in a public place. It will not apply to online offensive conduct. It contains defences for good faith and reasonable conduct that is in the public interest, including genuine political activity, art or science. It has a maximum penalty of five years imprisonment. It includes a requirement that the Director of Public Prosecutions consents to any prosecutions. With the passage of this legislation, the common-law offence of outraging public decency will be abolished. The bill will also defer commencement of the Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021 by 12 months to November 2023. This will defer the repeal of public drunkenness offences by 12 months.

Firstly, I would like to speak to the aspect of the bill which relates to grossly offensive public conduct. The need for the reform in this area was highlighted in the aftermath of the Eastern Freeway tragedy. This horrific incident on 22 April 2020 resulted in the deaths of four Victorian police officers. They were Leading Senior Constable Lynette Taylor, Senior Constable Kevin King, Constable Glen Humphris and Constable Joshua Prestney. These officers died serving and protecting the Victorian community. We express our profound and deepest sympathies to the families of those killed in the line of duty that day and acknowledge any families or friends listening to this debate today.

Many Victorians were shocked by the actions of Richard Pusey, who recorded footage of the crash scene and made offensive commentary. This caused extreme distress to the families of the victims and their friends and colleagues. In a modern society we expect that public spaces are maintained as places of decency and dignity that all members of our society can safely enjoy. While we hope this offence will rarely or never be used, it is important that clearer guidance is set in law about how the conduct should be dealt with if it occurs. As has already been stated by some of the previous speakers, Richard Pusey was charged with the common-law offence of outraging public decency. This offence is archaic, unclear in its scope and does not have a clear maximum penalty. The old offence will be abolished. The proposed laws were developed after heartfelt campaigning by Stuart Schulze, whose wife, Leading Senior Constable Lynette Taylor, died in the crash. The government thanks Mr Schulze for his constructive and valuable feedback.

There are several key features of the offence. Some may seem technical in nature, but I believe they are important to address. 'Public place' is defined. The relevant conduct must occur in a public place or be seen or heard by a person in a public place. This includes parks, roads, sportsgrounds, public transport and both government and non-government educational settings. It reflects our society's expectation that public spaces are maintained as places of decency and dignity that everyone can safely enjoy, free from intimidation and distress. A relevant fault element is also included. The offender must know that, or be reckless as to whether, the place in which the conduct is engaged in is a public place or the conduct is likely to be seen or heard by a person in a public place. This recognises that there may be circumstances in which a person may not know or foresee the possibility of their conduct being public in nature.

Conduct must be grossly offensive. The offender must engage in conduct that grossly offends community standards of acceptable conduct. This relates to the physical act that must take place. 'Offensiveness' has a legal meaning, being behaviour calculated to wound feelings and arouse anger, resentment, disgust or outrage in the mind of a reasonable person. The bill uses the language of 'grossly offensive' to emphasise the extreme nature and high degree of offensiveness required to meet this threshold. The concept of community standards in the offence is intended to be understood as those of a multicultural, pluralistic and largely tolerant society rather than simply reflecting mainstream views. This draws upon the language used by Justice Harper in *Pell v. Council of Trustees of the National*

Gallery of Victoria. This acknowledges that any understanding of community standards must be nuanced and account for the views of all members of our society, including different faith and community groups. The policy intention is not to draw a dichotomy between the views of different groups of people or preference views of one over another. The finding will be a question of fact. A decision-maker, usually a judicial officer or jury, will need to weigh up the competing factors and determine whether the conduct was grossly offensive in the circumstances.

A further fault element of the offence is that the offender must know, or a reasonable person would know, that the conduct would likely grossly offend community standards of acceptable conduct. The first test is subjective—the prosecution must prove that the accused knew that their conduct was grossly offensive. But there is also an alternative objective test to recognise circumstances where the accused does not actually know their conduct would likely grossly offend community standards but a reasonable person would. Obviously the intention is to exclude certain behaviour, in particular low-level behaviour. The bill only targets extreme behaviour. It makes it very clear that conduct such as being intoxicated or just being indecent or obscene or using profane language is not considered to be grossly offensive and will be excluded from this offence.

Online—the bill also does not apply to conduct seen or heard by using electronic communication. This is because online behaviour is adequately covered by the commonwealth offence of using a carriage service to cause offence. The exclusion does not necessarily mean that any reference to an electronic device is completely outside the scope of the offence. Whether conduct is captured will depend on the particular circumstances, including the exact conduct alleged to be grossly offensive as well as contextual factors.

There are defences provided. We recognise that in some circumstances criminal sanctions for this new offence will not be warranted. A broad defence will apply to conduct committed reasonably, in good faith and for legitimate purposes. This includes conduct for any genuine political, academic, educational, artistic, religious, cultural or scientific purpose.

The Director of Public Prosecutions will need to provide consent to proceed with a prosecution under this offence. The DPP is responsible for conducting serious criminal matters in Victoria and plays a leadership role in the criminal justice system. The DPP's oversight will ensure that an offence will only be prosecuted where appropriate and if it is in our public interest. The DPP will consider this decision in accordance with a published policy. The factors that will be taken into account include the personal characteristics of the accused person, such as their age, physical health, mental health and whether they have a disability of any kind. The DPP policy notes that the prosecution of a child is a significant step and that first-time child offenders should only be prosecuted in serious matters. The offence will have a maximum of five years imprisonment. This provides guidance to sentencing judges. The offence will be an indictable offence, but it can be tried summarily in the Magistrates Court. The commencement is key here as well. There will be a default commencement date of 3 July 2023.

We acknowledge that some stakeholders have raised concerns about a potential disproportionate impact of the offence on vulnerable or disadvantaged cohorts. The bill includes important safeguards that address these concerns and prevent any such disproportionate effect, including by only targeting extreme behaviour; specifically excluding low-level behaviour, such as swearing or being intoxicated; and building in appropriate defences—critically requiring the Director of Public Prosecutions' consent to ensure only public interest prosecutions are brought forward.

We will monitor the impacts of the offence and consider any concerns that arise. I think that is important to understand. I am proud of our record of listening and acting, and this bill is a demonstration of that. But I think, like all good legislation, it will need review from time to time. I am looking forward to the implementation of this bill. Once it is in operation, whether there will be further amendments needed in the future, I guess time will tell.

In terms of consultation, like many other bills brought before this chamber, there has been broad stakeholder consultation. The Department of Justice and Community Safety consulted with the courts, Victoria Legal Aid, the Office of Public Prosecutions, Victoria Police, the Law Institute of Victoria, the Victorian Aboriginal Legal Service, the Federation of Community Legal Centres, the Victorian Bar, members of the Aboriginal Justice Caucus and the Victorian Disability Advisory Council. Mr Schulze, the husband of Senior Constable Lynette Taylor, provided critical advice to government and supported this new offence.

There is obviously another subset of changes with the bill before us. These relate to public intoxication and in particular the repeal of the public intoxication laws—or more so a deferral in that regard. This bill seeks to defer the repeal of public drunkenness offences by 12 months to November 2023. We have made the difficult decision to defer to facilitate the transition from a justice-based response to a health one. In February 2021 we passed reforms that enabled the repeal of public drunkenness offences. This followed decades of activism, including key recommendations of the Royal Commission into Aboriginal Deaths in Custody and the coronial inquest into the tragic death of Tanya Day. When the government introduced these, it was acknowledged that time was needed to properly design, implement and trial the replacement health-based response. This was in line with the recommendations of the expert reference group appointed to advise the government on this work. Unfortunately the impact of COVID-19 has delayed the establishment of trial sites, as health services deal with the unprecedented impact of the global pandemic. It has also placed significant demands on our health and community services sectors. These delays have meant it was not possible to roll out our health-based model by the intended commencement date of November 2022. A deferral will ensure that we have services in place for a rollout of a fit-for-purpose model, as initially envisaged.

Critically, deferral gives us more time to work with the Aboriginal community to co-design and implement culturally safe services in keeping with the commitment to self-determination and co-design of these matters. This decision to defer has not been made lightly. We as the government acknowledge the profound disappointment and frustration that we are not where we should be at this stage. However, this delay, while difficult, will result in a model that provides the necessary supports to people who are intoxicated in public.

There has been progress made since the introduction of the bill and the passing of the bill last year. Government is working with health services and Aboriginal service providers in the City of Yarra, Greater Shepparton, Greater Dandenong and Castlemaine to establish trials of health-based service responses. The trial implementation committees, including representatives from Victoria Police, health service providers and Aboriginal-specific services, have been established to ensure service providers are working together. The City of Yarra trial is well progressed. Interim outreach has commenced, with staff expected to transition to the sobering-up service once operational. Further details are being finalised which will enable Aboriginal-specific outreach in the Yarra trial to commence shortly. The remaining three sites are also being progressed. Through this bill the government is strengthening and clarifying our laws around extremely offensive public behaviour to better meet the expectations of our Victorian community.

On the preparation of this bill, from time to time as politicians we are criticised for the time it takes to consult, prepare and draft laws, bring them to this chamber and have them passed, but compared to many others, these laws' passage through this chamber has been relatively fast. It is fantastic, and I want to commend the Attorney-General and her team for bringing this work before the chamber in such a fashion. It is in response to a tragic event which deeply affected all Victorians. We were all disgusted by what we saw, and a gap was clearly identified. As legislators it is our role to respond and fill those gaps in the law, and this bill before us does exactly that. Much of the feedback I had from constituents was about the need for laws such as this, so I am proud to support this bill and I commend it to the house.

Mr BOURMAN (Eastern Victoria) (16:46): I rise to speak on the Crimes Legislation Amendment Bill 2022, and it still disgusts me that we needed to actually do this. The irony of it is that this has come about not because of the person that crashed into the police car but because a piece of excrement, who I will not name, because I do not want anyone to ever google him, did not have the normal human decency to at least try and help the people that were dead or dying and decided to film them instead. He was more worried about his car and whether he was going to get his sushi than the people. I understand that some people do not like police, and that is their prerogative, but to not actually do anything except carry on and give a tirade about his car shows, and his subsequent actions show, that he really is not fit for the population.

Frankly I have got to say the world is very lucky I am not a dictator, because that guy would be locked up forever and I would see just how far down the mine shaft I could chuck the key. But the world is lucky; it is not up to me. Four heroes went to work that day. They pulled someone over on the side of the road, and the rest is history. I still do not get how to this day this guy is carrying on and still sending the pictures to people, which obviously shows no remorse or anything like that. It is just one of those things that will forever elude me, but anyway.

I will keep that part of my contribution short, but I will keep my next part, on the public drunkenness part of this legislation, even shorter. It has been deferred. They were warned at the time they had put the cart before the horse, and here we are. They needed a solution before that legislation came in, because they just cannot fix it as easily as they thought. If they going to do it, they need to get it done soon, and I hope we are not here in another year just fixing this again.

Ms MAXWELL (Northern Victoria) (16:48): I rise to speak on the Crimes Legislation Amendment Bill 2022, which abolishes the common-law offence of outraging public decency and replaces it with a new one of engaging in conduct that is grossly offensive to community standards of behaviour. The catalyst for this new offence was the outrageous and deeply offensive behaviour of—and like Mr Bourman I cannot say that person's name, so I will just refer to him as 'RP'. It was in connection to the Eastern Freeway tragedy in 2020. That horrific incident took the lives of four loved and valued members of our community after a driver who was high on illicit drugs ploughed into them on the freeway. RP was sentenced to 10 months jail for his involvement in this incident, with just three months of his sentence attributed to his acts in outraging public decency. My colleague Mr Grimley has very aptly described our feelings about the two offenders, whose combined actions took four members from our police force and left four families to grieve.

In speaking today I acknowledge and remember those whose lives were lost: Leading Senior Constable Lynette Taylor, Senior Constable Kevin King, Constable Glen Humphris and Constable Josh Prestney. I also acknowledge the ongoing grief of their families and friends, and we continue to keep them in our thoughts.

While the government have been keen to point out that they do not introduce new offences in response to a single event, it is often traumatic events that expose the gaps in our justice system or illustrate the opportunity to help improve safety or shape societal norms through legislation. This is the case for the family of Joy Rowley, who have been campaigning for many years—too many—for the standalone offence of non-fatal strangulation. The government have reaffirmed their commitment to them to deliver on their promise for this offence; however, little progress has been made in this respect. I have been very pleased to advocate on behalf of this family, and I hope that next year this Parliament will be presented with legislation that, like today's, may not respond to one tragic incident but is drawn from the strong campaigning of families affected by crime.

Derryn Hinch's Justice Party is also advocating for grab and drag laws, and my colleague Stuart Grimley has done a power of work in this respect, including presenting an e-petition with more than 90 000 signatures seeking better from our justice system after an offender dragged a nurse into a laneway with what appeared to be an intention to commit sexual assault.

A small but important item tacked on to this bill defers the start date for public drunkenness laws that passed this Parliament last year. When this bill was debated in Parliament we noted our support for the shift to a health-based response to public drunkenness but also noted our serious concerns about its practical implementation. This includes careful consideration of how to mitigate risk for healthcare workers and the infrastructure and resources required, particularly in regional hospitals where emergency departments and waiting areas are not fit for purpose to cater for the diversity of cases that they have to deal with. Deferring implementation until the pilots are completed and have undergone rigorous evaluation, including any further consultation required, is a good thing, and I commend the government for being transparent about needing more time.

While the offence of conduct that is grossly offensive to community standards may only be used on a small number of occasions, that does not diminish its importance. As I said earlier, our laws should reflect the expectations of our society. Grossly offensive conduct should have no place and little excuse, and anyone who shows such arrogance and disrespect so as to blatantly disregard community standards should be held to account.

I would just like to leave you all with this statement by an unknown police officer. It is in memory of those who have died in this terrible, traumatic accident, but it is also for those who attended the scene:

> I am a Police Officer.
>
> That means that the pains and joys of my personal life are often muted by my work. I resent these intrusions but it is my job to do the things others fear to do. The label 'police officer' creates a false image of who I really am. Sometimes I feel like I'm floating between two worlds.
>
> My work is not just protecting and serving. It's preserving that buffer that exists in the space between what you think the world is, and what the world really is.
>
> My job isn't like television. The action is less frequent, much more graphic and it involves all my 5 senses. What I Smell, Taste, See, Touch and Hear at these horrific senses will stay with me long after I close the file. It is not exhilarating to point a gun at someone. Pooled blood has a disgusting metallic smell and steams a little when the temperature drops. CPR isn't an instant miracle and it's no fun listening to an elderly grandmother's ribs break while I keep her heart beating.
>
> I am flattered by your curiosity about my work. What you need to know is I don't keep a record of which incident was the most frightening, or the strangest, or the bloodiest, or even the funniest. I don't want to share the images that haunt me with others.
>
> But I do have some confessions to make: Sometimes my stereo is too loud. Music sometimes makes it easier to forget the wasted body of the young man who died alone in a rented room because he was hooked on crack. A hug erases the sight of the nurses who sobbed as they scrubbed layers of dirt and slime from a neglected 2 year olds skin. The anger that beats inside me assures me that it was ignorance that drove a young mother to not put her toddler in a car seat as she drove around today.
>
> Sometimes I might seem rushed or impatient. I am having trouble shedding the adrenaline that kicked in when I discovered that the man I handcuffed during a drug raid was sitting on a loaded 9mm pistol.
>
> Sometimes I'm not as attentive as you would like. I was distracted when you complained about your noisy neighbour because I was remembering the apartment of the elderly women who lay dead and decaying for a week because no one came to check on her.
>
> Sometimes I'm not as sympathetic as you would like. I'm not overly concerned about your ability to pay your speeding ticket, it's because I really wanted to tell you that I attended a call just yesterday where a speeding careless driver took the life of a child. I didn't sleep last night because I could still hear her mother's screams.
>
> Take a moment and remember what my job is and isn't. Police officers are needed but what we do can leave lasting effects on my family and I. Take a moment and tell an officer that you appreciate their work. Smile and say 'Hi' when I am getting coffee. Bite your tongue when you start to tell a 'bad cop' story. Better yet, find the time to tell a 'good cop' story. The family at the next table may be a cop's family.

I commend this bill to the house.

Ms TAYLOR (Southern Metropolitan) (16:56): We know that our government is strengthening and clarifying our laws around extremely offensive public behaviour, and it is really about better meeting the expectations of our community. The impetus was obviously extremely tragic. We have

already spoken in the chamber about the Eastern Freeway tragedy in 2020, which took the lives of four Victorian police officers, Leading Senior Constable Lynette Taylor, Senior Constable Kevin King, Constable Glen Humphris and Constable Joshua Prestney, who were just doing the job that they were paid to do with good intent and with honour. They all have, I am sure, many connections in their lives from family and friends and colleagues who will never forget that day and will probably have to manage the deep pain and emotion of that day for the rest of their lives as best they can.

I think perhaps an outcome that might be a positive in a very, very sad situation is that we could pass a reform that could somehow mitigate the risk of this behaviour ever happening again and also send a signal—'signal' is the wrong word because I think that 'signal' does not properly encapsulate what the purpose of this legislation is. I am trying to find the right word, but in any case what we are seeking through this legislation is to make very clear behaviour that is completely unacceptable with no validation and which falls within the ambit of the legislation we have here. I think it is very important to note, and it has been spoken about to some degree in this chamber, that there are very careful controls, I should say, or that the ambit of this bill has been very carefully consulted upon, for obvious reasons, because, yes, we want to curb what is—and I am going to be careful with how I describe it in the chamber, for obvious reasons—conduct that is grossly offensive. Well, what does that mean? That means the offender must engage in conduct that grossly offends community standards of acceptable conduct. This relates to the physical act that must take place. Offensiveness has a legal meaning, being 'behaviour calculated to wound feelings and arouse anger, resentment, disgust or outrage in the mind of a reasonable person', and the bill uses the language of 'grossly offensive' to emphasise the extreme nature and high degree of offensiveness required to meet this threshold.

I think a further comment I want to make on the tragedy that was chiefly the impetus behind this very important legislative change is that it does affect everyone when something as horrible as this occurs. It is not only but it is primarily and probably at its most potent point certainly for the family, friends and colleagues—absolutely. But I think as Victorians, we all feel—I will say broadly speaking—a deep sense of compassion. There will be other emotions as well—horror, disgust et cetera. But it is disappointment because I think there is a code amongst us and we do have expectations of reasonable behaviour, and clearly what occurred with this tragedy was far from reasonable and does not meet the standards of our community—not now, not ever, would it meet those standards. But that is why it is important to make these kinds of changes, and when we are thinking about the concept of community standards it is intended to be understood as those of a multicultural, pluralistic and largely tolerant society rather than simply reflecting on mainstream views. These are important caveats to make sure that the controls being implemented by this legislative tool are truly targeting behaviour that needs to be at worst curbed but at best completely stamped out.

This acknowledges that any understanding of community standards must be nuanced and account for the views of all members of our society, including different faith and community groups. The policy intention is not to draw a dichotomy between the views of different groups of people or preference the views of one group over another. The finding will be a question of fact. A decision-maker, a judicial officer or jury will need to weigh up the competing factors and determine whether the conduct was grossly offensive in the circumstance. A further fault element of the offence is that the offender must know, or a reasonable person would know, that the conduct would likely grossly offend community standards of acceptable conduct. Even though I know, as laypeople, we do have that generic sense, that code, that says, 'Oh, my goodness. How could anyone behave in that manner?', of course with legislation it has to be defined in a way that aptly encapsulates the ambit of the kind of behaviour that is sought to be deterred.

The first test is subjective—the prosecution to prove that the accused knew that the conduct was grossly offensive. But there is also an alternative objective test: to recognise circumstances where the accused does not actually know that their conduct would likely grossly offend community standards but a reasonable person would. I note that when we are looking at defences in this context, we recognise that in some circumstances criminal sanctions for grossly offensive conduct will not be

warranted. A broad defence will apply to conduct committed reasonably and in good faith and for a legitimate purpose. This includes conduct for any genuine political, academic, educational, artistic, religious, cultural or scientific purposes.

There is a further caveat or a protective element, can we say. The bill includes a critical safeguard requiring the Director of Public Prosecutions to consent to a prosecution of the offence before it is commenced. The DPP is responsible for conducting serious criminal matters in Victoria and plays a leadership role in the criminal justice system. The DPP's oversight will ensure that the offence will only be prosecuted where appropriate and if it is in public interest. The offence will have a maximum penalty of five years imprisonment, and this provides guidance for sentencing judges, and the offence will be an indictable offence but it can be tried summarily in the Magistrates Court. It will begin operating by the default commencement date of 3 July 2023.

I know my learned colleague Mr Erdogan did allude to some important elements, again with important caveats acknowledging that some stakeholders did raise concerns about a potential disproportionate impact of the offence on vulnerable or disadvantaged cohorts. The bill includes important safeguards that address these concerns and prevent any such disproportionate effect, including by only targeting extreme behaviour, specifically excluding low-level behaviour such as swearing or being intoxicated, building in appropriate defences and, most critically, requiring the DPP's consent to ensure only public interest prosecutions are brought—and we will certainly monitor the impacts of the offence and consider any concerns that arise.

In terms of the consultation that has helped inform this legislative change, in developing the bill the Department of Justice and Community Safety consulted with the courts, Victoria Legal Aid, the Office of Public Prosecutions, Victoria Police, the Law Institute of Victoria, the Victorian Aboriginal Legal Service, the Federation of Community Legal Centres, the Victorian Bar, members of the Aboriginal Justice Caucus, and the Victorian Disability Advisory Council. Mr Schulze, the husband of Senior Constable Lynette Taylor, provided critical advice to government and supported the offence, and we are truly grateful for that. It was essential, I would say, in informing the development of this very important legislative change.

Noting other aspects of this bill, we note that unfortunately the impact of COVID-19 has delayed the establishment of trial sites as health services deal with the unprecedented impact of the pandemic, and it has also placed significant demands on our health and community services sector. These delays have meant it is not possible to roll out a health model by the intended commencement date of 2022—and I am talking about the repeal of public drunkenness offences being deferred by 12 months to November 2023. It is very difficult to facilitate the transition from a justice-based response to a health one, noting we did pass reforms and noting that when government did introduce these it was acknowledged that time was needed to properly design, implement and trial the replacement health-based response. This was in line with the recommendation of the expert reference group appointed to advise government. The deferral will ensure that we have the services in place to roll out a fit-for-purpose model. Critically, deferral gives us more time to work with the Aboriginal community to design and implement culturally safe services in keeping with a commitment to self-determination and co-design.

The decision to defer has not been made lightly, and we certainly acknowledge the profound frustration and disappointment, particularly for members of the Aboriginal community, that we are not quite where we hoped we would be. However, this delay, whilst difficult, will result in a model that provides the necessary supports to people who are intoxicated in public, which surely lends itself to the purposive elements of that legislative change. Hence when you are going to implement a reform it is important to implement it fully and in a way that actually will achieve the desired outcome for which that reform was brought about in the first place. So we are not resiling from the frustrating elements of that modification but at the same time we note that there is a very good purpose behind the reforms. The government is working with health services and Aboriginal service providers in the City of Yarra, Greater Shepparton, Greater Dandenong and Castlemaine to establish trials of the

health-based service response, and trial implementation committees, including representatives from Victoria Police, health service providers and Aboriginal-specific services, have been established to ensure service providers are working together so we can see progress along the path in any case—and that is very, very important for such a fundamental reform.

To close out, I come back to the tragic impetus behind the very important reforms here that have led to this new offence, and I did refer to him before, but I would like to once again say that we owe a debt of gratitude to Mr Schulze. I understand that he has obviously been through a lot in light of the circumstances of the tragedy that has driven forward these reforms, but I am incredibly grateful that he has had the courage and the conviction to see that through. This is what I would say is a community-informed reform which is truly validated and important in terms of striving for better and more reasonable behaviour from our community into the future.

Mr LIMBRICK (South Eastern Metropolitan) (17:11): First of all I would like to acknowledge the circumstances that have brought us to this point, the tragic events on the Eastern Freeway in April 2020. I am sorry for the terrible loss and grief it caused families and the broader police family, who put themselves in harm's way to enforce the law. I understand why after such a terrible event we would want to do something to fix it, achieve something positive or make sense of the senseless. However, it is my job to look at this bill in the cold light of day and to figure out if it will be better for Victorians, if it will solve a problem and if there could be unintended consequences. There is a fundamental issue about whether it will actually solve a problem. The extraordinary circumstances that motivated this legislation mean that its application could be, and hopefully would be, extremely rare. Recently the Attorney-General acknowledged this when she was quoted in the *Age* newspaper saying she does not think this new offence will be used. It is not even clear to me that if this legislation had existed before the event this low-life would have been successfully convicted of this offence, because it does not apply to online spaces. This is arguable. But even without this law he was charged and pled guilty to other matters, he was jailed for 10 months and his name will be stained forever.

But then there is the issue of unintended consequences. A major problem with this law, as with government interventions regarding freedom of speech, is: who decides? Offending community standards means different things to different people at different times. Fifty years ago a Pride parade possibly would have transgressed this law according to the standards of the day. A law like this might just have added to the burden of oppressed minorities. We might well look back at this law in the same way in 50 years time.

This bill provides for a number of defences, but whether or not something applies as a defence must ultimately be decided by humans in a courtroom, and those humans inevitably have different values and come from different cultures. A religious judge would be more likely to be grossly offended by a Satanist, for example, or an atheist could be offended by a religious scripture, along the lines of what we saw with the controversy with the rugby player Israel Folau. I do not believe that show trials of these kinds would serve any purpose for Victoria.

Then there is the defence of conduct with a genuine political purpose. This might mean that a protestor burning an offensive effigy, for example, would be exempt, but it might not. I am not here to endorse that kind of behaviour, but I am here to prevent legislation that could give government the power to create political prisoners. What if a person desecrated a war memorial to protest a government-sponsored war? Some people would be grossly offended by this act and others might be offended by the war itself. Some would say that this is a political act and others not, but most likely they could be charged using existing laws anyway. Likewise, who is to define what is art? I think this question should be left to art critics, and judges have better things to do.

They say you cannot legislate against stupidity, but in some ways I feel this legislation is attempting to do just that. If you could legislate against stupidity, then the low-life who triggered this would be locked up for life, but I doubt that would solve anything. This is because this legislation is poorly defined. People need to know in advance what conduct is prohibited, but since everybody has different

standards, this is impossible. Clear laws that are knowable in advance are a cornerstone of an effective rule of law.

We are also concerned that this legislation could have a disproportionate impact on people having mental health and psychotic episodes, people suffering from alcohol and drug addiction, artists, homeless people, Indigenous people and potentially sex workers. We are concerned it could also be used to quell dissent. I believe the intention of this legislation is well meaning, but the Liberal Democrats believe it gives too much ambiguous power to the state, and we cannot support it.

House divided on motion:

Ayes, 29

Atkinson, Mr	Gepp, Mr	Pulford, Ms
Barton, Mr	Grimley, Mr	Rich-Phillips, Mr
Bath, Ms	Hayes, Mr	Shing, Ms
Bourman, Mr	Kieu, Dr	Stitt, Ms
Burnett-Wake, Ms	Leane, Mr	Symes, Ms
Crozier, Ms	Lovell, Ms	Tarlamis, Mr
Cumming, Dr	Maxwell, Ms	Taylor, Ms
Davis, Mr	McArthur, Mrs	Terpstra, Ms
Elasmar, Mr	Meddick, Mr	Vaghela, Ms
Erdogan, Mr	Melhem, Mr	

Noes, 3

Limbrick, Mr	Patten, Ms	Quilty, Mr

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1 (17:23)

Mr LIMBRICK: As I normally do, I will acquit all of my questions in clause 1 if that is to the agreement of the Attorney. One of the things spoken about in the second-reading speech refers to conduct that does not fall within the offence because it serves another legitimate purpose. Can the Attorney please advise what determines what is a legitimate purpose?

Ms SYMES: Thank you, Mr Limbrick, for your question. As the bill sets out in relation to what you have identified in the second-reading speech—and I think particularly the explanatory memorandum is helpful in this regard because it states the concept of community standards that is in the offence—they are intended to be understood as those of a multicultural and largely tolerant society rather than simply reflecting mainstream views. There is also a lot of information in the legislation around exceptions in relation to legitimate activities—artistic, cultural, educational and the like. So there is a lot of guidance about what would be the factors to consider when assessing whether something is grossly offensive or not.

As is very clearly set out and has applied in the common law for some time, it is a very high threshold, and this bill is trying to codify that in a way that is envisaging behaviour that is hard to envisage—so trying to provide a platform that enables it to capture a high threshold of extreme behaviour—but also make it very clear that behaviour such as profound language, urinating in public and the things that some people might find offensive are not intended to be captured by this legislation. That is why there are a lot of references to exclusions and considerations without being necessarily prescriptive.

Mr LIMBRICK: I thank the Attorney for her answer. The exceptions that the Attorney spoke of—the examples of art and political activity—imply that someone needs to decide what is art and what is political activity. Who is it that will be deciding what is and is not art?

Ms SYMES: Ultimately the police are responsible for bringing a charge in the first instance, so there will be a view taken at that point in time. This offence has a step involving the DPP office to make sure that they can have a look at it, so again that would be viewed in relation to the guidance in the legislation. Ultimately if it was to proceed to a court, then you would have a jury determining if conduct is grossly offensive to community standards, or indeed a judge alone if an order is made for trial by a judge alone, so there are a few different people that would look at that. There would be presentations from defence, for example, as well in relation to any of those exceptions. But the guidance in the legislation around art, education et cetera is designed to be informative.

Mr LIMBRICK: I thank the Attorney for her answer. If I am hearing you right, it would be effectively the DPP who would be figuring out before they decided to go ahead with the prosecution whether or not something was art, for example. Now, I have had lots of debates with people about what is and is not art. What capability does the DPP have to determine what is and is not art?

Ms SYMES: Well, it is not necessarily a definitive decision about what is art and what is not. What the decision is to be made about is whether the conduct is grossly offensive to community standards or not. It is designed to have exceptions for when it can be argued that it is in a different realm of art, as you have demonstrated. But the first question would be 'Is it offensive?', and then it would look at the context. With all of these cases, if they ever emerge, which I hope they do not—under the common law I think there have been seven of these cases—I am on the public record saying that just because we create offences does not mean we want people charged with them. This will be rarely used. It is designed to capture conduct as we have seen in recent times in relation to the incident on the Eastern Freeway.

We have tried to envisage a range of activities that might offend some people, and as you have identified, quite regularly somebody can be offended by a piece of art, whether it involves nudity or whatever, but they are not the types of behaviour that we envisage will be picked up by this behaviour; neither is prank-type activity like the *Jackass*-type offensive things that a lot of people would think are pretty out there, pretty gross and pretty offensive in a low-level sense. But they are just designed to provide a framework for this legislation to operate in. We are not concerned about that type of behaviour that some people think is not right. It is designed to pick up behaviour that is at an extreme level. It is difficult for me to articulate what that type of behaviour is because, as we know with the case with Mr Pusey, it is a kind of behaviour that no-one really predicted or anticipated, and I find it difficult to come up with another example of where this is going to apply because I would hope that no-one would behave in that sort of manner.

Mr LIMBRICK: I thank the Attorney for that explanation. Back to the Pusey case itself, if one breaks down the things that happened that were grossly offensive, one of the things that I am concerned about is that I am not certain that his actions would be picked up by this offence, because of the carve-out of online activity. I think it is potentially arguable that he would have been excluded from this offence because the act that was grossly offensive was broadcasting this, making commentary and this sort of thing. Is the Attorney confident that he would be picked up by this new offence if something like this was to happen again?

Ms SYMES: Mr Limbrick, I will avoid answering that directly because it is not my role as the Attorney-General to put myself in the shoes of the court necessarily, but what I would do is bring you to the elements of the common-law offence. There are two. It requires the prosecution to prove that the act is of such a lewd, obscene or disgusting character that it outrages public decency and that the act took place in a public place and must have been capable of being seen by two or more persons that were present. They are the common-law offence elements.

The new offence has four elements that the prosecution must prove, again beyond reasonable doubt. Firstly, the offender must engage in conduct that grossly offends community standards of acceptable conduct, so the physical act must take place. Secondly, the relevant conduct must occur in a public place or be seen or be heard by a person in a public place. Thirdly, the offender must know, or be reckless as to whether, the place the conduct is engaged in is a public place or the conduct is likely to be seen or heard by a person in a public place. The fourth element is that the offender must know, or a reasonable person would know, that the conduct would likely grossly offend community standards of acceptable conduct.

In relation to the incident that started the conversation around the laws and whether there are gaps and whether the common law should be brought forward into statute, we looked at that particular offence and the advice was that this crafting would be an applicable offence. I cannot say how it would be applied because, again, that is not my job, but it is not the online dissemination that would knock that conduct out in this instance. Because of the behaviour of engaging in filming, the commentary that went with that and the act of dissemination—the act of putting it online as opposed to the offence—the action can still be captured by this offence.

Mr LIMBRICK: I thank the Attorney for her answer. I am still not convinced on a number of things. With the idea of community standards, as I said in my second-reading speech, these things change over time. The thing I brought up in my speech was that things brought up many, many years ago back in England under the old common-law offence were things like same-sex activities. Things like this used to be considered grossly offensive, and now these days we consider people's rights. How do we maintain that sphere of what we know is grossly offensive? It is talked about in the legislation, and people spoke about it here, as if everyone just knows what is grossly offensive, but I am sure I could find many people that would disagree on what 'grossly offensive' actually means.

Ms SYMES: Mr Limbrick, I do not disagree with you outright, but that is a feature of our criminal justice system quite regularly regardless. The test of reasonableness is something that I get asked about a lot, and it is difficult to explain. It is incredibly difficult to craft black and white laws, black and white rules, and how they apply to society.

In relation to what is meant by 'community standards of acceptable behaviour', whether something is offensive enough to grossly offend community standards of acceptable behaviour will be determined by a reasonable person test—that is, what would a reasonable person consider to be extremely offensive to normal community standards. When applying a reasonable person test and interpreting the meaning of community standards, courts have looked to contemporary standards of a multicultural, partly secular and largely tolerant, if not permissive, society. This kind of objective test is common in the law and will allow the offence to stay relevant over time as social norms and attitudes change, and it is up to the judge or jury to apply that test.

Mr LIMBRICK: I thank the Attorney again for her answer. My next question is just on a totally different part of the bill—on the public drunkenness deferral. The Liberal Democrats were very supportive of this reform that the government did, but I am concerned about what happens in the interim while we are waiting for this new system to come into place. Could the Attorney please advise what sorts of interim measures are in place to prevent public drunkenness arrests and to support vulnerable people who might be caught by the current laws in this interim period?

Ms SYMES: I thank Mr Limbrick for his question and indeed his support of the substantive legislation. Indeed it was a really difficult decision to have to make, and I spent a lot of time talking to the relevant stakeholders, including members of the Day family, about the need to defer this. Obviously we wanted to make sure that we have a health system in place for the trials to make sure that we can get the evidence that we need to ensure that we can roll this out statewide.

In terms of the discussions that I have had in relation to the interim measures for the deferral period, since 2017 in fact measures have been taken to further safeguard the people placed in police custody

and to consider their wellbeing. The measures include updated guidance in the Victoria Police manual on the medical checklist and detainee risk assessment, additional and revised mandatory training and improved Aboriginal cultural awareness training. Between now and November 2023 Victoria Police will exercise its discretion to not arrest people for public drunkenness offences where a safe alternative response is available, ultimately hoping to avoid the need for a person to be placed in a police cell, which is consistent with current practice but is obviously something that is being discussed much more with police. The Aboriginal Justice Forum, for example, is a forum that I attend, and so does the Chief Commissioner of Police, and we talk about these issues regularly.

Funding has also been allocated to support the expansion of the custodial notification system, with funding provided to the Victorian Aboriginal Legal Service to ensure adequate resourcing to respond to all notifications from police where an Aboriginal or Torres Strait Islander person is taken into custody and to ensure that the service is aligned with the public intoxication health model.

Victoria Police also continue to work with Aboriginal community justice panels to provide direct support to Aboriginal people held in police custody, and government is funding the expansion of the ACJPs and the administrative support provided to them. This includes funding for them to transition from a volunteer model to a paid workforce at trial sites, in recognition of the significant role they play in the Aboriginal-specific model.

We know that these measures are an important step towards mitigating the risks of death in custody. They will be further complemented by the phased transition to the health-based services response, beginning with the rolled out dedicated health-based services in the four trial sites.

Clause agreed to; clauses 2 to 7 agreed to.

Reported to house without amendment.

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (17:40): I move:

That the report be now adopted.

Motion agreed to.

Report adopted.

Third reading

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (17:40): I move:

That the bill be now read a third time.

The PRESIDENT: The question is:

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

House divided on question:

Ayes, 29

Atkinson, Mr	Gepp, Mr	Melhem, Mr
Barton, Mr	Grimley, Mr	Pulford, Ms
Bath, Ms	Hayes, Mr	Rich-Phillips, Mr
Bourman, Mr	Kieu, Dr	Shing, Ms
Burnett-Wake, Ms	Leane, Mr	Stitt, Ms
Crozier, Ms	Lovell, Ms	Symes, Ms
Cumming, Dr	Maxwell, Ms	Tarlamis, Mr
Davis, Mr	McArthur, Mrs	Taylor, Ms
Elasmar, Mr	McIntosh, Mr	Terpstra, Ms
Erdogan, Mr	Meddick, Mr	

Noes, 4

Limbrick, Mr	Quilty, Mr	Ratnam, Dr
Patten, Ms		

Question agreed to.

Read third time.

The PRESIDENT: Pursuant to standing order 14.27, the bill will be returned to the Assembly with a message informing them that the Council have agreed to the bill without amendment.

ENVIRONMENT LEGISLATION AMENDMENT (CIRCULAR ECONOMY AND OTHER MATTERS) BILL 2022

Introduction and first reading

The PRESIDENT (17:47): 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 **Circular Economy (Waste Reduction and Recycling) Act 2021**, the **Environment Protection Act 2017**, the **Sustainability Victoria Act 2005**, the **Climate Change Act 2017** and the **Victorian Civil and Administrative Tribunal Act 1998** and for other purposes'.

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:47): I move:

> That the bill be now read a first time.

Motion agreed to.

Read first time.

Ms SHING: I move, by leave:

> That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:48): I lay on the table a statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006:

> In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006* (**the Charter**), I make this statement of compatibility with respect to the Environment Legislation Amendment (Circular Economy and Other Matters) Bill 2022 (**the Bill**). In my opinion, the Bill, as introduced to the Legislative Council, is compatible with the human rights as set out in the Charter. I base my opinion on the reasons outlined in this statement.
>
> **Overview of the Bill**
>
> The Bill makes amendments to the *Circular Economy (Waste Reduction and Recycling) Act 2021* (**Circular Economy Act**) and the *Environment Protection Act 2017* (**Environment Protection Act**) to further enhance the effectiveness of the regulation of the circular economy, environment protection and environmental sustainability.
>
> The amendments to the Circular Economy Act establish a cap on thermal waste to energy capacity in Victoria and provides the legislative framework for Recycling Victoria's functions including infrastructure planning and a risk management framework. The Bill also provides for an additional compliance tool through the introduction of monetary benefit orders, to restrict entities from profiting from breaches.
>
> It also establishes a mechanism under the Environment Protection Act to provide funding for Recycling Victoria using funding from the waste levy collected under the Environment Protection Act.

The Bill also amends the Environment Protection Act giving better effect to the intent of the Environment Protection Act and enhancing its operation and effectiveness and ensuring the smooth transition from the repealed *Environment Protection Act 1970*.

The Bill also makes reforms to the *Sustainability Victoria Act 2005* to allow for information sharing by Sustainability Victoria to carry out its' functions, and to work with Recycling Victoria and the Environment Protection Authority.

Human Rights Issues

Human rights protected by the Charter relevant to the Bill are: the right to privacy and reputation (section 13), the right to the presumption of innocence (section 25(1)), the right not to be tried or punished more than once (section 26) and the right to a fair hearing (section 24).

Right to privacy (section 13)

Section 13(a) of the Charter provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. An interference with privacy will be lawful if it is permitted by a law which is precise and appropriately circumscribed and will not be arbitrary provided it is reasonable in the circumstances and just and appropriate to the end sought.

Information sharing powers

The Bill introduces a range of new information sharing provisions between entities, principally information sharing between Sustainability Victoria, the Head, Recycling Victoria and the Environment Protection Authority.

Part 2 of the Bill includes amendments that expand the agencies to which an otherwise unauthorised disclosure of confidential information or commercially sensitive information is permitted under section 55 of the Circular Economy Act. The purpose of this expansion is to enable confidential or commercially sensitive information to be disclosed to specified oversight agencies to enable that agency to prevent, detect, investigate or prosecute an offence. The purpose of the amendments is to ensure accountability and oversight of government agencies regarding the provision of services, spending of public money under the scheme, as well as compliance with the Act and other requirements. I note that disclosure for law enforcement purposes is a recognised ground under the information privacy principles in the *Privacy and Data Protection Act 2014*, and that these agencies will each be subject to their own information sharing restrictions in relation to the information they receive. Accordingly, to the extent that disclosures under this clause relate to personal information, any such disclosure would not be arbitrary as it would be made for a legitimate purpose of ensuring oversight and accountability of government agencies, and be subject to existing protections on privacy.

Part 4 of the Bill also introduces new sections 19A to 19D into the *Sustainability Victoria Act 2005* enabling Sustainability Victoria to collect, use or disclose any information that is necessary for Sustainability Victoria to perform its duties or exercise its powers under any Act. Sustainability Victoria does not currently have a statutory information sharing scheme, and the objective of the clause is to remove information sharing obstacles that prevent Sustainability Victoria from carrying out its functions. These reforms in the Bill enable information sharing between Recycling Victoria and Sustainability Victoria to carry out each other's respective functions, including to support the centralised data and information system established by section 51 of the Circular Economy Act.

Most information encompassed by this provision would be of a commercial nature, and to the extent it relates to personal information, any collection, use or disclosure would not be arbitrary due to the safeguards provided. These safeguards include specifying the purposes for which information sharing can be conducted (involving functions connected to environment sustainability, environment protection and the circular economy), the persons or entities to which information sharing can occur, the requirement for information sharing notices to be issued and prohibiting unauthorised disclosure of confidential information except in limited circumstances.

Part 3 of the Bill also empowers the Environment Protection Authority or councils, in relation to licence or permit renewals and exemptions under sections 80, 82, 83, 84 and 90 of the Environment Protection Act to request any information it considers necessary from an applicant. To the extent that this would involve personal information, this may interfere with the right to privacy, however an applicant who voluntarily chooses to apply for a licence or permit under the scheme assumes various responsibilities and duties related to their participation in this regulated sphere, including the requirement to provide all necessary information for the Environment Protection Authority or council to be able to determine their application. The power to request information is still confined to 'necessary information' and must be relevant to the determination of the application. The Environment Protection Authority or councils will also be public authorities under the Charter and required to give proper consideration to, and act compatibly with, the right to privacy in making these requests for information. I therefore consider any interference with privacy to be not arbitrary and proportionate to the regulatory aims of the overall scheme.

Fit and proper person assessment

Part 2 of the Bill inserts new Part 5A of the Circular Economy Act that includes provisions to enable persons to submit an expression of interest for waste to energy licences to operate thermal waste facilities, with the condition that the Head, Recycling Victoria must determine whether the applicant is a fit and proper person to be issued with the licence.

For the Head, Recycling Victoria to satisfy themselves that relevant persons are 'fit and proper', the Head, Recycling Victoria may require the provision of personal information by applicants who are natural persons, such as criminal history, financial records and probity checks. To the extent that this may interfere with the privacy rights of such applicants, I consider it to be not arbitrary, in that there is a legitimate and important purpose in ensuring that only fit and proper persons hold these licences. The effectiveness of the thermal waste to energy scheme will depend upon the proper performance of roles as a licence holder, and there is a strong need to protect against the risk of any improper, negligent, or fraudulent conduct occurring. Additionally, as discussed above, an applicant has a reduced expectation of privacy in relation to this information, as they are voluntarily applying for a role in a regulated industry where it is a requirement that they demonstrate that they are a fit and proper person to assume that position of responsibility.

Presumption of innocence (section 25(1))

Section 25(1) of the Charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. The right is relevant where a statutory provision shifts the burden of proof onto an accused in a criminal proceeding, so that the accused is required to prove matters to establish, or raise evidence to suggest, that they are not guilty of an offence.

'Reasonable excuse' offence provisions

Part 2 of the Bill also inserts new offence provisions into the Circular Economy Act which provide for a 'reasonable excuse' defence (new sections 74D, 74G and 74O). This includes that a responsible entity must not, without reasonable excuse, fail to comply with a requirement of its Circular Economy Risk, Consequence and Contingency (CERCC) Plan or Responsible Entity Risk, Consequence and Contingency Plans (RERCC) Plan, or fail to notify the Head, Recycling Victoria as soon as reasonably practicable after becoming aware that it is unable to comply with a requirement of its respective plan. It also includes similar offence provisions relating to the failure to comply with a condition of a waste to energy licence.

As these offences are summary offences, section 72 of the *Criminal Procedure Act 2009* will apply to require an accused who wishes to rely on the 'reasonable excuse' exception to present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the excuse. By creating 'reasonable excuse' exceptions, the offences in the Bill may be viewed as placing an evidential burden on the accused, in that it requires the accused to raise evidence as to a reasonable excuse. However, in doing so, this offence does not transfer the legal burden of proof. Once the accused has pointed to evidence of a reasonable excuse, which will ordinarily be peculiarly within their knowledge (for example, why the accused failed to comply with a licence condition), the burden shifts back to the prosecution who must prove the absence of a reasonable excuse beyond reasonable doubt. I note that case law has held that an evidential onus imposed on establishing an excuse or exception does not limit the Charter's right to a presumption of innocence, as such an evidentiary onus falls short of imposing any burden of persuasion on an accused. Common law protections against self-incrimination remain unaffected. Accordingly, to the extent that these provisions may apply to a natural person, I consider that these provisions do not limit the presumption of innocence in section 25 of the Charter.

Accessorial liability of officers of body corporate for offences

Part 2 of the Bill also introduces a number of new offences under section 177(2) of the Circular Economy Act for which liability for certain offences committed by a body corporate or council is extended to the officers of that body corporate, including failure to comply with a CERCC or RERCC Plan or failure to submit a statement of assurance. These sections provide that liability will extend in certain circumstances under section 177 of the Circular Economy Act, including where the officer authorised or permitted the commission of the offence by the body corporate or council, or was knowingly concerned in any way whether by act or omission in the commission of the relevant offence.

This provision is relevant to the presumption of innocence as it may operate to deem as 'fact' that an individual has committed an offence based on the actions of another body, due to their association with that body. In my view, these provisions do not limit the presumption of innocence as the prosecution is still required to prove the accessorial elements of the offence—that is, that the relevant person authorised or was knowingly concerned with the commission of the offence, or failed to exercise the necessary due diligence to prevent the offending. In the event that this provision is considered a limit, I am of the view that any limitation is reasonably justified. As with any regulated industry concerning essential services to the public, there is a

strong need to ensure adequate deterrence of regulatory offences that may cause harm to industry participants or the public at large. Courts in other jurisdictions have held that the presumption of innocence may be subject to reasonable limits in the context of regulatory compliance. Common law protections against self-incrimination remain unaffected. These provisions only target persons who hold a position as an officer of a body corporate or council, which involves assuming the responsibilities and duties that apply to these roles, and who have the capacity to influence the conduct of the entity concerned.

The provisions ensure such persons are held responsible for all breaches that occur by or on behalf of the entity in which they have responsibility for, enabling offences to be successfully prosecuted. As officers of the body corporate, affected persons should be well aware of the regulatory requirements and, as such, should have the necessary processes and systems in place to effectively meet these requirements and not incur accessorial liability. In my view, there is no less restrictive way of ensuring accountability of officers of bodies corporate or councils for breaches of the Bill, and it follows that these provisions are compatible with the Charter.

Right to not be tried or punished more than once (section 26)

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 he or she has already been finally convicted or acquitted in accordance with law. This rule only applies in respect of criminal punishment. The principle does not prevent civil proceedings being brought in respect of a person's conduct which has previously been the subject of criminal proceedings, or vice versa. The imposition of civil penalties will not, generally, engage the right, unless the penalty is in the nature of a 'punishment', or a penal consequence.

Monetary benefit orders

Part 2 of the Bill also introduces monetary benefit orders as an additional compliance tool by inserting new Division 9A of Part 7 of the Circular Economy Act. This provides that a court can make an ancillary order, on the application of the Head, Recycling Victoria, following a person being convicted of an offence under the Act or breaching an enforceable undertaking, requiring the person to pay an amount that represents any monetary benefit acquired by the person as a result of the commission of the offence or breach of the undertaking. While a monetary benefit order may be made in addition to a sentence, in my view it does not constitute 'punishment' so as to engage this right.

The purpose of the monetary benefit order is protective and remedial in nature, and is akin to civil restitution. It is intended to deprive a person of the proceeds gained from the offence or breach and restore them to the position they were in prior to committing the offence. Notably, the provision restricts the court to only being able to make the order only if (1) there is an application from the Head, Recycling Victoria; and (2) the court order of payment of an amount does not exceed the amount the court is satisfied represents the monetary benefit acquired by the person as a result of the commission of the offence or breach of the enforceable undertaking. Accordingly, I consider the order is not punitive, and thus does not engage the right.

Civil penalty provisions

Part 2 of the Bill introduces a range of new additional civil penalty provisions. I note that sections 137 to 141 of the Circular Economy Act enable both civil and criminal proceedings to be brought in some circumstances against persons for contraventions of the Bill concerning the same, or substantially the same conduct. Accordingly, the introduction of further civil penalty provisions is relevant to this right.

The imposition of civil penalties will generally not engage the right under section 26 of the Charter, unless the penalty is in the nature of a punishment. The new provisions are all identified as civil penalty provisions and introduce penalties ranging from 120 penalty units to 1000 penalty units, for natural persons. These provisions are largely protective in nature, with the aim of ensuring compliance with the regulatory scheme. The provisions relate to compliance with CERCC and RERCC plans, and operating a thermal waste to energy facility without a licence, or failure to comply with a condition of that licence or operation using banned waste.

Therefore, the civil penalties serve the purpose of upholding duties on operators and responsible entities and serve the overall objective of protection of the environment and the effective delivery of services for the purposes of waste, recycling and resource recovery services. Moreover, these penalties apply to persons who have elected to participate in this regulated industry, and therefore such penalties could be viewed as disciplinary rather than punitive in nature.

While a penalty of 1000 penalty units is significant for a natural person, the penalty relates to a person operating a facility without a licence or using banned waste, in the context of large-scale commercial thermal waste to energy operators. Additionally, breaches have the potential to directly cause, or indirectly contribute to, significant and irreversible damage to public health and the environment. Therefore, given this scale, I consider the maximum penalty appropriate and not disproportionate given the central role these operators play in the regulatory scheme. Additionally, I note that section 138(2) of the Circular Economy Act provides that in determining the amount of a penalty, the court may have regard, amongst other things, to the nature

and extent of any loss or damage suffered as a result of the conduct and the cost of remedying the harm, and whether any enforceable undertaking is in place. I also note that the Environment Protection Act contains a comparable scheme targeting environmental harms, which imposes a maximum of 2000 penalty units on natural persons. Finally, no sanction of imprisonment attaches to failure to pay a civil penalty order. These provisions are largely protective in nature, with the aim of ensuring compliance with the regulatory scheme. Accordingly, I conclude that the penalties attaching to these new offence provisions are civil in nature and thus do not engage this Charter right.

Fair hearing (section 24)

Section 24(1) of the Charter provides, amongst other things, that a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Licence applications

Part 2 of the Bill inserts new Part 5A into the Circular Economy Act which contains a range of new provisions enabling the Head, Recycling Victoria to issue, vary, cancel, or suspend waste to energy licences, and impose conditions on these licences and disqualify persons from holding these licences. As discussed above, an applicant is voluntarily applying for a role in a regulated industry where it is a requirement that they demonstrate that they are a fit and proper person to assume that position of responsibility. The purposes of these provisions is to ensure the integrity of the licensing scheme with appropriate probity checks and safeguards, in particular that licence holders are and remain fit and proper persons, and licence holders comply with the conditions of their licences. The provisions aim to ensure that the integrity of licence scheme and that it furthers the purposes of the protection of the environment, maintenance of a circular economy and environment sustainability, with reasonable actions taken for that purpose by the Head, Recycling Victoria in cases where persons are not or no longer fit and proper, or do not comply with conditions of the licence.

While case law has interpreted 'civil proceeding' in section 24 of the Charter broadly, it does not extend to the kind of administrative decision-making that will be undertaken by the Head, Recycling Victoria pursuant to these provisions (in that the Head, Recycling Victoria is unlikely to be considered a 'tribunal' for the purpose of this right). However, to the extent that the right does apply, I consider that the scheme would be consistent with the right to a fair hearing, as the Bill provides for clear, accessible, reasonable and proportionate criteria for the determining of all applications, requirements for written notice and an entitlement to respond in relation to potential adverse decisions such as amending, suspending or cancelling, a licence or disqualifying a person from holding a licence.

There is a right to apply to Victorian Civil and Administrative Tribunal (VCAT) for review in relation to a certain decisions, including decisions in the waste to energy scheme grant with conditions or to vary, suspended, cancel or disqualify a waste to energy licence. Decisions to refuse to grant cap licences will be reviewable, but VCAT will not have the power to issue a cap licence following that review if to do so would breach section 74T, which sets a cap on allocation across all licences. Similarly, conditions pertaining to cap allocation of waste to energy amounts under the licence are not reviewable decisions in order to ensure the integrity of the maximum cap amount specified by the regulations and contravene new section 74T. These provisions ensure that the waste to energy cap is not undermined.

Accordingly, I am satisfied that the Bill is compatible with the Charter.

The Hon Shaun Leane MP
Minister for Commonwealth Games Legacy
Minister for Veterans

Second reading

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:48): I move:

That the second-reading speech be incorporated into *Hansard*.

Motion agreed to.

Ms SHING: I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Victorian Government has committed to legislate a state-wide circular economy, generating jobs, meeting climate change targets, and ensuring Victorians have a reliable recycling system. Our waste and recycling system plays a vital role in the functionality and livability of our city and regions.

The Environment Legislation Amendment (Circular Economy and Other Matters) Bill amends the *Circular Economy (Waste Reduction and Recycling) Act 2021* to continue the Victorian Government's delivery of this once-in-a-generation reform of Victoria's waste and recycling system, making it more transparent, accountable and reliable. The Bill includes interrelated reforms to infrastructure planning, and risk and contingency planning, to encourage investment and market stability, and improved market reporting to increase transparency across the system. The Bill includes consequential amendments to the *Environment Protection Act 2017* and *Sustainability Victoria Act 2005*, to reflect changes in portfolio roles and responsibilities in relation to infrastructure planning, and to enable Sustainability Victoria to share and receive information to perform its functions.

A significant reform in the Bill is to allow an annual cap on the waste that can be used in Waste to Energy facilities in Victoria.

The Bill will also make amendments to the *Environment Protection Act 2017* to enhance its operation to better effect the intent of that Act, ensuring the smooth transition from the old *Environment Protection Act 1970* which was repealed on 1 July 2021.

Background to the Bill

The Victorian waste and recycling sector is entering a stage of exciting positive change that will help Victorians reduce, reuse, repair and recycle waste while strengthening the economy and setting up a more sustainable future for our state.

On 2 December 2021, the Circular Economy (Waste Reduction and Recycling) Bill 2021 was passed by Parliament giving effect to important components of *Recycling Victoria: A new economy*, the Victorian Government's policy and action plan, delivered in February 2020, to transition Victoria to a circular economy and reform our waste and recycling system over the next decade. This policy and legislation demonstrated the Victorian Government's comprehensive response to major disruptions caused by the China Sword policy implementation in 2018 and the collapse of SKM Recycling in 2019.

The Government also undertook extensive consultation with the community and industry on the Waste to Energy Framework, which outlines the scope and operation of the cap. This was released in November last year. The framework provided certainty to industry seeking to invest in waste to energy facilities as well as those currently operating in Victoria.

The *Circular Economy (Waste Reduction and Recycling) Act 2021* established the foundational powers and functions of the Head, Recycling Victoria, a dedicated business unit within the Department of Environment, Land, Water and Planning. Recycling Victoria will commence its operations from 1 July 2022 and includes staff transitioning from the former Waste and Resource Recovery Groups, and from a part of Sustainability Victoria. In introducing the statutory framework to support our transition to a circular economy, I noted it was part of a series of coordinated measures that will support Victoria's transition to a circular economy, and pledged that the Victorian Government would continue working alongside stakeholders in developing additional reforms, including further legislative change. This Bill comprises the next significant tranche of these previously foreshadowed further legislative changes, which build on and complement the already legislated functions and powers of the Head, Recycling Victoria.

The *Environment Protection Amendment Act 2018* took effect on 1 July 2021, repealing the *Environment Protection Act 1970*, amending the *Environment Protection Act 2017* and introducing the new environment protection framework. The Bill contains amendments to the *Environment Protection Act 2017* to ensure that it operates as intended following the commencement of the new framework.

Overview of the Bill

The Bill gives effect to key commitments of our action plan *Recycling Victoria: A new economy* by amending the *Circular Economy (Waste Reduction and Recycling) Act 2021* to:

- introduce a single consolidated Victorian Recycling Infrastructure Plan ensuring long-term strategic planning to support decision making for waste and resource recovery infrastructure at State, regional and local levels;
- establish a waste to energy scheme to ensure residual waste that would otherwise go to landfill is utilised to create valuable energy, while ensuring we maximise the recycling of materials first and foremost;

- provide for market oversight, to enhance transparency and accountability, including the introduction of a Risk, Consequence and Contingency Planning framework, the ability to develop and publish market strategies, and a requirement for the Head, Recycling Victoria to produce an annual Market Report; and
- add an additional compliance tool in the form of monetary benefit orders, and make other miscellaneous, minor and technical amendments.

The circular economy elements of the Bill will amend the *Sustainability Victoria Act 2005* to transfer responsibility for statewide infrastructure planning from Sustainability Victoria to Recycling Victoria and to enable Sustainability Victoria to share information with its portfolio partners. The Bill will also amend the *Environment Protection Act 2017* to allow for funding of Recycling Victoria from the waste levy.

The Bill also gives effect to several amendments to the *Environment Protection Act 2017* that will enhance the efficacy of the Act.

The majority of the Bill will come into operation on dates to be proclaimed, and at the latest by 1 June 2023. Some of the amendments to the *Environment Protection Act 2017* which concern the transition of permissions issued under the *Environment Protection Act 1970* to the new environment protection framework will apply from 1 July 2021 when the new framework commenced. However, in relation to the circular economy components, the new regulator—Recycling Victoria—will be involved in establishing supporting regulations and other subordinate instruments following consultation with local government, industry and community, in the months and years to come.

Circular economy reforms

Since the passage of the *Circular Economy (Waste Reduction and Recycling) Act 2021*, the Victorian Government has continued to develop reforms that require further legislative change, including enhanced statewide infrastructure planning, and a cap on thermal waste to energy processing in Victoria. The Government has also developed a Risk, Consequence and Contingency Planning framework, to be embedded in legislation, to support the important role of Recycling Victoria in identifying, monitoring, managing and mitigating risks and consequences impacting the delivery of waste, recycling or resource recovery services, and developing contingency plans to minimise impacts from serious failures, disruptions or hinderance in the sector.

The additional circular economy reforms introduced through this Bill are complementary to those already in the legislation and will fully equip Recycling Victoria to exercise its statutory functions and powers.

Thermal waste to energy scheme

The Bill establishes Victoria's thermal waste to energy scheme in legislation. The scheme will ensure appropriate waste to energy investment and help Victoria transition to a circular economy, support new jobs and reduce the waste sent to landfill.

The Bill outlines a scheme which will cap the amount of "permitted" waste able to be processed by thermal waste to energy facilities. The cap amount will be prescribed by regulations following passage of the Bill and will be 1 million tonnes per year, in line with previous commitments. The Head, Recycling Victoria will have power to issue, revoke, suspend and transfer waste to energy licences under the scheme. Use of recyclable materials in waste to energy facilities will not be permitted, and penalties can be issued by the court for those that are found to be in contravention of the scheme.

This scheme is designed to maximise our recycling of materials, ahead of using them to recover energy. By recycling greater quantities of materials, we are creating more jobs and better valuing our precious resources. The scheme will ensure we are maintaining a focus on innovation, new ways to recycle and the manufacture of new recycled products. It responds to clear evidence in parts of Europe that over-commitment of waste into thermal waste-to-energy facilities has undermined efforts to recycle materials.

However, waste to energy facilities are an important alternative to landfills for residual waste, and our scheme will encourage an appropriate level of investment in these facilities to avoid landfilling while maximising recycling.

Transitional arrangements will be in place for those waste to energy facilities possessing the necessary approvals before the scheme was announced on 1 November 2021. To provide investment certainty, these "existing operators" will not have to fit within the cap, but will be required to have a licence under the scheme to ensure a level playing field.

Under the scheme, the Head, Recycling Victoria will be able to ensure waste to energy projects built in Victoria create clear net benefits and complement efforts to reduce and recycle waste, through the competitive issue of licences.

A new state-wide infrastructure planning framework

The Bill introduces a new single Victorian Recycling Infrastructure Plan (VRIP) in the *Circular Economy (Waste Reduction and Recycling) Act 2021* to replace the current eight documents made under the *Environment Protection Act 2017* and repeals the existing infrastructure planning framework under the *Environment Protection Act 2017*.

Recycling Victoria will deliver the VRIP as a single, streamlined plan with a 30-year horizon that will provide long-term strategic planning, guide and inform decision making and drive private sector investment in waste and resource recovery infrastructure at state, regional and local levels. The development of the VRIP will be strongly informed by regional and local engagement.

The Bill makes provisions for the responsibility of infrastructure planning to transition from Sustainability Victoria to Recycling Victoria and contains consequential amendments to the *Sustainability Victoria Act 2005* to give effect to this.

The VRIP will enable waste and resource recovery infrastructure planning to have regard to land use and development planning and policy, environmental regulatory approvals and policy, and transport planning and policy.

The VRIP will support effective risk management and contingency planning across the waste and resource recovery infrastructure network. The Bill will require Recycling Victoria to review the VRIP at least every three years, and to produce an annual VRIP progress report. These requirements will ensure the VRIP is up-to-date and enable the identification of early signals of industry change, contingency planning, and coordination.

The VRIP will also support market investment and provide for long term strategic planning of Victoria's waste and resource recovery infrastructure needs for the next 30 years, providing for a stable and reliable sector.

The provisions enable the flexibility for the VRIP to shift away from a plan where government determines what specific infrastructure is required and where it should be located to a more strategic approach that identifies infrastructure needs and gaps and provides that information to the market to drive innovation and investment where it is needed.

A new risk, consequence, and contingency planning framework

In recent years the Waste, Recycling and Resource Recovery sector, and the wider Circular Economy have gone through significant growth and development; however the sector has also faced significant volatility and the realisation of various significant risks, that have resulted in consequences including major service disruptions. This has included:

- the impacts of national and international policy changes (including the China Green Sword Policy implementation) on the delivery of kerbside recycling services
- Natural emergencies (such as fires and floods) resulting in rapid increase in wastes and regional scale impacts to key infrastructure
- Human health emergencies (COVID-19), resulting in significant sector wide impacts, including significant and rapid increase in clinical waste generation, workforce challenges, changes to operations and protracted interruptions to international logistical networks impacting access to end markets and key products
- significant incidents and failures of key operators and facilities (for example, the SKM company closure).

The establishment of the risk, consequence, and contingency planning framework recognises the significant benefit of preparedness in mitigating risks and minimising consequences. The risk, consequence, and contingency planning framework closely aligns with wider emergency management approaches and current requirements for a number of other sectors including critical infrastructure sectors.

The Bill will establish a new risk, consequence, and contingency planning framework that will ensure that risks and associated consequences are identified and managed, and that contingency plans are implemented to minimise the impact of any serious failures, disruptions and hinderances on waste recycling or resource recovery service delivery.

The Bill introduces an annual Circular Economy Risk, Consequence and Contingency Plan to be prepared by Recycling Victoria. The annual CERCC Plan will:

- outline emerging or continuing risks, performance issues or supply issues within the circular economy, with a focus on waste, recycling and resource recovery parts of the circular economy
- identify risks of serious failure, disruption or hinderance to the provision of waste, recycling or resource recovery services

- outline the consequences of the risks identified, including the severity of the harm that may result; and
- specify any actions or measures proposed or required to be taken by regulated entities and/or government to mitigate any risks identified, mitigate consequences and ensure suitable contingencies are in place.

The CERCC Plan is to be published annually subject to publication being deemed in the public interest.

The Bill also introduces a statutory requirement for responsible entities to develop and maintain Responsible Entity Risk, Consequence and Contingency Plans (RERCC Plan) and to report annually to Recycling Victoria via a Statement of Assurance on their implementation and compliance with this Plan. Who will be considered a 'responsible entity' will be set out in regulations, which are to be developed in consultation with industry, and is expected to focus on entities with significant responsibilities in the waste, recycling and resource recovery sector.

In developing and maintaining a Responsible Entity Risk, Consequence and Contingency Plan, responsible entities will ensure they have identified and are managing their risks and have implemented appropriate contingency plans.

The Bill also provides offence provisions for failure to comply with the CERCC Plan, failure to submit a Statement of Assurance, or failure to comply with a RERCC Plan. Offences relating to the provision of false and misleading information will be specifically covered by section 115 of the *Circular Economy (Waste Reduction and Recycling) Act 2021*.

The Bill provides the Minister the power to direct the Head, Recycling Victoria to review the RERCC Plans of any specified entity or class of responsible entities. The Bill also provides for specific information gathering powers, and for the development of guidance materials related to the implementation and administration of the Risk, Consequence and Contingency Planning framework.

Market strategies and an annual Market Report

The Bill will add a new requirement for the Head, Recycling Victoria to produce an annual Market Report. The purpose of this new report is to provide a regular update about the state of the waste, recycling, and resource recovery market in Victoria. The report can include information on the stability and performance of the market, as well as any emerging trends or issues, and potential actions that might address these issues. This will support risk, consequence, and contingency planning, but also provide valuable intelligence and transparency about the market to industry, the community, and to government.

The Head, Recycling Victoria will also have a new function to prepare and publish market strategies to foster sustainable markets for recycled materials and resources recovered from waste. These strategies can be statewide, or focussed on particular regions, and are aimed at further strengthening the waste, recycling and resource recovery sector to assist Victoria's transition to a circular economy.

Amendments to the Environment Protection Act

In addition to the reforms above, the Bill will introduce the following amendments to the *Environment Protection Act 2017*to ensure the Act operates as intended.

The Bill clarifies how licences issued under the repealed *Environment Protection Act 1970* transitioned to the *Environment Protection Act 2017*. This includes aspects such as the transfer, amendment and revocation of permissions, as well as review periods, expiry timeframes and offences for breaching conditions. These amendments will apply from 1 July 2021, when the licences transitioned, to ensure these transitioned permissions continue to operate as intended.

The Bill enables the Environment Protection Authority and councils to appoint independent contractors with specialist skills as authorised officers. This aligns with the approach taken under the *Local Government Act 1989* and the now repealed *Environment Protection Act 1970*.

The Bill enables councils and officers appointed by public sector bodies to take court proceedings and retain revenue from fees and fines related to their delegated functions. It also enables motor vehicle noise testers to retain fees related to their services rather than the fees being paid into consolidated revenue.

The Bill clarifies certain processes under the *Environment Protection Act 2017* associated with administering permissions, other types of applications and waste levy.

The Bill strengthens the power of the Environment Protection Authority to make determinations under the Environment Protection Regulations 2021. It also gives the Environment Protection Authority powers to incorporate extrinsic material into determinations, designations and class exemptions and to set a maximum fee for vehicle noise testers in the Environment Protection Regulations 2021.

The Bill clarifies that the *Environment Protection Act 2017* contains a head of power enabling the Environment Protection Regulations 2021 to prescribe certain noise prescribed as not unreasonable.

The Bill also clarifies that the burial of all industrial waste will trigger the deposit of industrial waste offence and enable the Environment Protection Authority to respond accordingly.

The Bill protects the ability of the Environment Protection Authority to recover site clean-up and other associated costs from a previous owner or occupier. It introduces a provision in the *Environment Protection Act 2017* displacing the *Corporations Act 2001 (Cth)* provisions that allows a company to disclaim company land, including any liabilities associated with that land, such as obligations to clean up the land or comply with remedial notices.

The Bill also contains amendments to the *Environment Protection Act 2017* to support the circular economy reforms. These include moving legislative provisions relating to infrastructure planning from the environment protection legislation to the Circular Economy Act, which reflects Recycling Victoria's new roles and responsibilities in this area.

Additionally, the Bill contains amendments to the *Environment Protection Act 2017* to enable Recycling Victoria to be funded directly from the waste levy trust account. Funding Recycling Victoria's activities in this way is consistent with the historical use of this account, which is to fund entities with specific legislative functions for environmental and sustainability outcomes, including waste and recycling.

Conclusion

The Victorian Government remains committed to pursuing an ambitious waste and recycling agenda. This Bill represents the continuation of this Government's major transformational reform of the waste and recycling sector, built on community and industry consultation over a number of years.

These reforms deliver a further milestone in Victoria's transition to a circular economy. Given the scale of these reforms and the adjustments required by all participants in this transition, it is appropriate to build the functions and capabilities of Recycling Victoria over time. The Victorian Government will continue to work alongside stakeholders as these reforms progress to deliver a stronger and more resilient recycling system and support our transition to a circular economy, which will support Victoria's economy while protecting the environment. I commend the Bill to the house.

Mr RICH-PHILLIPS (South Eastern Metropolitan) (17:48): On behalf of Mr Davis, I move:

That debate on this bill be adjourned for one week.

Motion agreed to and debate adjourned for one week.

JUSTICE LEGISLATION AMENDMENT (POLICE AND OTHER MATTERS) BILL 2022

Introduction and first reading

The PRESIDENT (17:48): I have another message from the Assembly:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to amend the **Sex Offenders Registration Act 2004**, the **Victoria Police Act 2013** and the **Aboriginal Heritage Act 2006** and for other purposes'.

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:49): I move:

That the bill be now read a first time.

Motion agreed to.

Read first time.

Ms SHING: I move, by leave:

That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:49): 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 Justice Legislation Amendment (Police and Other Matters) Bill 2022.

In my opinion, the Justice Legislation Amendment (Police and Other Matters) Bill 2022, 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 makes amendments to a range of Acts, including to the:

1. *Aboriginal Heritage Act 2006*
2. *Victoria Police Act 2013*
3. *Sex Offenders Registration Act 2004*.

Human Rights Issues

The Bill engages the following human rights under the Charter:

- the right to freedom of movement (section 12)
- the right to privacy and reputation (section 13)
- the right to freedom of expression (section 15)
- the right to peaceful assembly and freedom of association (section 16)
- cultural rights (section 19)
- the right to a fair hearing (section 24).

For the reasons outlined below, I am of the view that the Bill is compatible with each of these human rights.

The right to freedom of movement

Section 12 of the Charter provides that every person lawfully within Victoria has the right to move freely within Victoria, to enter and leave Victoria, and choose where to live in Victoria. The right extends, generally, to movement without unnecessary impediment throughout the state, and a right of access to places and services used by members of the public. The right is directed at restrictions that fall short of physical detention (restrictions amounting to physical detention fall within the right to liberty, protected under section 21 of the Charter).

Security powers on police premises

Clauses 10, 12, 14 and 15 of the Bill amend the Victoria Police Act to establish new powers to assist Victoria Police to maintain the security of police premises. Clause 10 of the Bill defines police premises as any premises occupied or used by Victoria Police, on a permanent or temporary basis, for any purpose related to the functions, duties, or powers of Victoria Police. The definition provides an inclusive list of police premises, and explicitly excludes PSO pods.

New section 59A authorises police officers and PSOs to request that a person on or in the vicinity of police premises provide their reason for being there. If the person provides a reason that the police officer or PSO considers is not a legitimate reason, the police officer or PSO may request that a person provide their name and address. A police officer or PSO may direct a person to leave or not enter premises if they believe on reasonable grounds that the person does not have a legitimate reason for being on or in the vicinity of police premises, and the direction is necessary to preserve the peace or maintain the security of police premises. This may include a direction not to return to police premises for a period of up to 7 days without the permission of a police officer or PSO, unless the person has a legitimate reason to return, or it is not practicable to first request permission.

New section 59B further authorises a police officer or PSO to remove a person from the premises if they: fail to comply with a direction to leave the premises; obstruct an entry to or exit from, or access to the premises; or if the police officer or PSO believes on reasonable grounds that the person has committed an offence.

These powers may limit the right to freedom of movement to the extent that they interfere with the right to access places that members of the public ordinarily have access to, such as a police station. However, the exercise of these powers in relation to places where members of the public do not ordinarily have access, such as a private office building or carpark occupied by Victoria Police, will be beyond the scope of the right. In my view, any limit of this right is reasonable, necessary, justified and proportionate in all the circumstances. The purpose of these powers is to protect the security of police premises. Victoria Police premises may present security risks due to the sensitive information held at the premises and the nature of work undertaken by Victoria Police. There have been numerous security incidents at a number of police premises over the past four years, including antagonistic persons attending police premises in the absence of a legitimate reason and harassing police officers and other employees. Exchanges with police officers, photographs of them or their vehicles are frequently uploaded onto social media. This creates a risk for police employees seeking to peacefully enter and leave police premises. New sections 59A and 59B will enable Victoria Police to better respond to and mitigate risks to safety and privacy for police members, other employees and community members in attendance at police premises.

The limitations new sections 59A and 59B place on the right to freedom of movement are proportionate to the identified risks to safety and security at police premises, and include appropriate exceptions. For example, a police officer or PSO may direct a person not to return to police premises for a period of up to 7 days, however the person is not prevented from returning to the premises during that time for a legitimate purpose, for example to report a crime or comply with a court order or conditions of their bail.

New section 59A distinguishes between police premises and the surrounding area, as a person may not be directed to refrain from returning to the vicinity of police premises. Section 59A ensures police officers and PSOs can respond to any immediate security risks in the vicinity, while recognising that individuals may need to attend the surrounding area for purposes unrelated to policing once the immediate risk has been addressed.

In my opinion, any limitation on the right to movement occasioned by these amendments are reasonable and proportionate in all the circumstances, and therefore compatible with the right to freedom of movement under the Charter.

The right to privacy and reputation

Section 13(a) of the Charter provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Section 13(b) states that a person has the right not to have their reputation unlawfully attacked. A number of amendments in the Bill may engage this right.

An interference with the right to privacy and reputation is justified if it is both lawful and not arbitrary. An interference will be lawful if it is permitted by law which is precise and appropriately circumscribed and will be arbitrary only if it is capricious, unpredictable, unjust or unreasonable, in the sense of being disproportionate to the legitimate aim sought.

Security powers at police premises

Clauses 10, 12, 14 and 15 of the Bill engage the right to privacy as this reform allows police officers and PSOs to request that a person provide personal information. The security powers at police premises enable police officers and PSOs to request a that a person provide their name and address. The power to request personal information aims to support police officers and PSOs to keep good order and maintain security at or near police premises.

The power to request a person to provide their name and address is not arbitrary as new section 59A makes it clear that police officers or PSOs may only request this information if the police officer or PSO considers that a person has failed to provide a legitimate reason for being on or in the vicinity of police premises.

The power is proportionate to the need to protect the security of police premises as new sections 59A and 59B allow Victoria Police to inquire about information which may assist them to understand the security risk, for example if the person is of interest to police, or to follow up with the person if a security risk eventuates. However, the new sections do not allow a police officer or PSO to direct a person to leave police premises, remove the person or arrest the person if they do not share their personal information.

In my opinion this amendment is therefore consistent with the right to privacy and reputation.

Amendments to the Sex Offenders Registration Act 2004

The Bill amends the Sex Offenders Registration Act 2004 to support Victoria Police to continue to actively monitor registrable sex offenders and to reduce the risk of reoffending. Clauses 3 and 4 make amendments to clarify a registrable offender's existing reporting requirements, and to reduce the period a registrable offender may drive a vehicle before being required to report the details of the vehicle to the Chief Commissioner of Police.

Clauses 3 and 4 engage the right to privacy of a registrable offender to the extent that it expands a registrable offender's existing duty to report personal details to the Chief Commissioner of Police. Whilst the Bill provides greater clarity and precision to registrable offenders regarding their reporting obligations, it is possible that these amendments may lead to an increase in the number of reportable incidents when a registrable offender drives a vehicle more than seven days but less 14 days in any twelve month period, and in relation to a child with whom a registrable offender maintains a personal relationship. However, I am of the view that any interference with a registrable offender's right to privacy will be neither unlawful nor arbitrary and therefore does not limit the right to privacy protected by the Charter. Accordingly, I am satisfied that these amendments are compatible with the right to privacy in the Charter.

Establishing a legislative framework for the Victoria Police Restorative Engagement and Redress Scheme

Clause 20 of the Bill inserts new Part 9A into the Victoria Police Act to establish a legislative framework for the Victoria Police Restorative Engagement and Redress Scheme. The Scheme has been operating administratively since December 2019. New Part 9A outlines the objectives of the Scheme, the functions of the Secretary of the Department of Justice and Community Safety in administering the Scheme, and establishes a framework for participation in the Scheme, the application and assessment process, and the types of redress which may be provided to an applicant who is found suitable to participate in the Scheme.

The legislative framework for the Scheme engages the right to privacy and reputation; however, in my view it does not limit the right as none of the relevant amendments are unlawful or arbitrary.

New section 174Q provides that some material prepared or provided as part of a person's participation in the Scheme may be admissible in future court proceedings, and that other material will not be. Admissibility of this material may interfere with the right to privacy, whereas inadmissibly may interfere with the right to fair hearing (discussed below).

New section 174Q provides that the following documents are not admissible in any civil or criminal proceedings:

- documents prepared by the Secretary in connection with the administration of the scheme or an application to the scheme
- documents prepared by a person (other than the applicant) in connection with an action to give effect to a scheme determination (such as the records of a restorative engagement facilitator)
- anything disclosed or received by a person in connection with an application, or the provision of redress to the applicant. This includes any records of discussions with or about the applicant or the redress they are receiving.

The following documents are admissible in criminal proceedings, but not admissible in civil proceedings unless the applicant consents to their disclosure:

- a written application
- statutory declaration
- any application for an internal review; and
- any document prepared by an applicant in response to a request for further information are admissible in criminal proceedings.

New section 174Q promotes the right to privacy and reputation by ensuring, to the extent appropriate, that participants can describe their experiences openly to ensure they can be assessed for the provision of suitable redress and participate freely in any restorative engagement conference. Material that may be admissible may interfere with the right to privacy and reputation of both the applicant and the alleged perpetrator; however, if the information is materially relevant to the proceedings at hand, this will be appropriate. The legislative framework for the Scheme aims to ensure that any victims of sexual harassment or sex discrimination have the ability to elect to take one or more actions as a result of their experience. For example, they may wish to apply to the Scheme and also commence related proceedings about the same conduct. New section 174Q ensures applicants are not limited in their participation in other proceedings because they disclosed information to the Scheme, which is also relevant to other proceedings.

As noted above, new section 174Q does, however, provide that statutory declarations and any other documents prepared in the context of a redress application are admissible in criminal proceedings. This balances the participant's right to privacy, with an alleged perpetrator's right to a fair hearing (discussed further below). A participant in the Scheme may also elect to make a criminal complaint relating to the same conduct. New section 174Q ensures that a defendant in any criminal complaint about conduct for which a person also applied to the Scheme, can consider all evidence available, including a statutory declaration detailing the complainant's experience, to assist them to prepare their defence.

In my opinion these amendments are consistent with the right to privacy and reputation.

Establishing a clear obligation for police personnel to only access, make use of, or disclose police information if connected to their current duties

Clause 21 substitutes section 226 of the Victoria Police Act to provide further clarity about the circumstances in which Victoria Police personnel can access, use or disclose police information. Such information can include highly sensitive information about members of the community including their personal details, their location, information about alleged criminal activity and information about the experiences of witnesses and victims of crime.

In its 2016 report on *Operation Dawson—An investigation into alleged misconduct by a former Victoria Police Superintendent*, the Independent Broad-based Anti-corruption Commission (IBAC) recommended that section 226 be amended to clarify its intention. IBAC considered that it is a common assumption that police officers have the authority to access sensitive information which is not connected to their current duties, by virtue of their general duty to prevent and detect crime. IBAC determined that this assumption is held in circumstances where accessing the information is motivated by private interests rather than official police duties.

Amended section 226 provides that a current or former member of Victoria Police personnel must not, without reasonable excuse, access, use or disclose police information unless it is directly related to their current functions or duties, or is otherwise authorised under provision of the Act. In determining whether access, use or disclosure is directly related to a member's current functions or duties, regard may be had to the Chief Commissioner's instructions.

This amendment promotes the right to privacy and reputation by ensuring highly sensitive information is kept confidential. However, to ensure police personnel can perform their law enforcement functions and duties, the access, use and disclosure of information will be permitted where required to support the performance of relevant functions and duties. To the extent that such access, use and disclosure interferes with the right to privacy, in my view any such interference is neither unlawful nor arbitrary. New section 226 provides clarity about the circumstances in which information may be accessed, used and disclosed, and these circumstances are clearly and appropriately confined. It is therefore compatible with the right to privacy.

The right to freedom of expression

Section 15(2) of the Charter provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. However, section 15(3) provides that the right may be subject to lawful restrictions reasonably necessary to respect the rights and reputations of others, or for the protection of national security, public order, public health or public morality.

Security powers at police premises

This reform may engage the right to freedom of expression as the powers to direct a person to leave or not re-enter police premises, leave the vicinity of police premises and remove a person for failing to comply with a direction, may limit a person's ability to express their opinions freely in or around the vicinity of police premises.

However, police officers and PSOs will only be authorised to direct a person to leave or not enter police premises if they are satisfied on reasonable grounds that a person does not have a legitimate reason for being there, and the direction is necessary to preserve the peace or protect the security of the premises. The exercise of these powers does not prevent a person from expressing their views in the vicinity of police premises on any matter including criticism of police.

This reform prioritises the safety and security of police premises, employees of Victoria Police and any members of the community in attendance at police premises, over an individual's freedom of expression. I am of the view that this is a lawful restriction reasonably necessary to protect the rights of others, and for the protection of public order. Any interferences with the right to freedom of expression therefore fall within the scope of the internal qualifications on this right as contained in section 15(3) of the Charter.

The right to peaceful assembly and freedom of association

Section 16 of the Charter provides for the right to peaceful assembly and freedom of association. The right to peaceful assembly is considered essential for the public expression of a person's views and opinions.

Security powers at police premises

The powers to direct a person to leave or not re-enter police premises, leave the vicinity of police premises, and to remove a person for failing to comply with a direction, may limit a person's right to peaceful assembly in or around the vicinity of police premises. In my view, any such limits are reasonable and justified for the same reasons as set out above in relation to freedom of expression.

Further, new section 59C of the Bill clarifies that it is not intended that the powers established by new sections 59A and 59B of the Victoria Police Act limit the right of peaceful assembly or the right to take part in public life by means of lawful protest, advocacy or industrial action.

Cultural rights

Clause 25 of the Bill amends the *Aboriginal Heritage Act 2006* at section 156(2)(b) to clarify that "administration" is not "special administration" as described in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*. The clause may engage the Charter rights to culture (s 19). For the reasons set out below, however, it is my opinion that this Charter right is not limited.

Section 19(2) of the Charter states that Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community—

(a) to enjoy their identity and culture; and

(b) to maintain and use their language; and

(c) to maintain their kinship ties; and

(d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

Insofar as the clause engages this right, it does so in a positive way, by clarifying for Traditional Owners that when their representative Registered Aboriginal Party is placed under special administration by the Office of the Registrar of Indigenous Corporations for the purpose of assisting that Party, that that Party's registration under the Principal Act will not be automatically revoked. This creates certainty for Traditional Owners that, at the end of the period of special administration, their representative Registered Aboriginal Party will be able to continue to work to maintain the enjoyment of their identity and culture, and their distinctive spiritual, material and economic relationship with the land and waters and other resources.

The right to a fair hearing

Section 24(1) of the Charter provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

As set out above, clause 20 of the Bill establishes a legislative framework for the Victoria Police Restorative Engagement and Redress Scheme and limit the admissibility of some information disclosed for the purposes of the Scheme.

New section 174Q provides that documents prepared by the Secretary in the administration of the scheme or an application for a scheme determination; anything disclosed or received by a person (other than the applicant) in connection with an action to give effect to a scheme determination; and anything disclosed or received by a person in connection with an application or the provision of redress; are inadmissible in any proceedings, civil or criminal. This includes any records of discussions about the applicant or the redress they are receiving. Further, a participant's application for a redress determination, any statutory declaration accompanying an application, any application for an internal review of the Secretary's determination and any document prepared by the applicant following a request from the Secretary for further information are inadmissible in civil proceedings, without the applicant's consent. However, these documents are admissible in criminal proceedings. New section 174Q provides that a person cannot be required by subpoena, summons or otherwise, to produce a protected document, or a copy of or extract from that document, or to give evidence that is inadmissible under this section.

New section 174Q may interfere with the right to a fair hearing, insofar as it may limit the requirements of discovery and production of documents for inspection in a civil proceeding related to the same conduct which an applicant in the Scheme referred to in their application or discussed as part of their participation the Scheme. This may limit the ability of a civil litigant to obtain or rely on information or documents material to issues in dispute. New section 174Q may also limit the requirements of discovery and production of any documents which were prepared by the Secretary or others in the administration of the Scheme, including any records of verbal discussions with or about the applicant. However, this limitation is balanced against the need to protect the right to privacy of applicants to the Scheme in relation to material they have produced for the purpose of their application, and any discussions during the provision of redress, including about their health needs, to ensure the Scheme remains therapeutic and victim focused. It is considered that the documents which are inadmissible in any proceedings are likely to be of less relevance to parties in any proceedings related to the same conduct than other documents, as the documents inadmissible in any proceedings cover the department's internal records.

The scheme was established to provide current and former members of police personnel who have experienced sexual harassment or sex discrimination in connection with being a current or former member,

to apply to the Scheme to obtain a therapeutic outcome. This provision aims to allow current and former members to document their experience without fear that they will not have control over whether their record of their experience will be disclosed in any related proceedings which are commenced for a different purpose.

New section 174Q distinguishes between the admissibility of this information in civil and criminal proceedings, however, to ensure a defendant in a related criminal proceeding can access this information to assist with the preparation of their defence, given the nature of criminal proceedings (namely, the significance to a defendant of an adverse decision).

In my opinion these amendments are therefore compatible with the right to a fair hearing.

The Hon Gayle Tierney MP
Minister for Training and Skills
Minister for Higher Education
Minister for Agriculture

Second reading

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:49): I move:

That the second-reading speech be incorporated into *Hansard*.

Motion agreed to.

Ms SHING: I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Bill before the House introduces a range of policing reforms which are aimed at keeping the community safe and protecting the privacy of applicants to the Victoria Police Restorative Engagement and Redress Scheme. The policing reforms include amendments to the *Victoria Police Act 2013* and the *Sex Offenders Registration Act 2004*. I will outline each of the main reforms.

1. Productivity and revenue initiatives related to event cost recovery

The Victoria Police Act 2013 (VPA) authorises Victoria Police to impose costs on event organisers for the deployment of police officers and protective services officers (PSOs) at large commercial events, where Victoria Police determines that policing services are necessary to maintain community safety. However, Victoria Police can only recover costs for services provided inside the venue or event area. Victoria Police cannot recover costs for the services provided outside the event area. These services may be required to manage the general traffic build up and maintenance of good order as a result of the event.

The Bill amends the VPA to allow Victoria Police to prescribe fees or charges for the provision of services outside a venue or event area and in the nearby area or community affected by the event, from the promoter of the event or the person or body conducting it. This will only include charges necessitated by the event. For example, if additional officers need to be deployed to respond to an unforeseen emergency at an event, the amendment will not allow Victoria Police to recover the cost of these services from an event organiser, as these services would fall within the ordinary obligations of the police force.

Victoria Police has established a clear process for determining the level of resourcing needed to support the safe operation of an event, and for discussing the amount and type of resources with an event organiser. Costs are agreed in advance and are not altered in response to any conduct or incident which occurs at the event.

The Bill also amends the VPA to provide Victoria Police with the power to waive all or part of the fees where appropriate.

The Bill will amend the VPA to authorise Victoria Police to enter into agreements with commercial enterprise operators, such as shopping centre operators, to provide policing services beyond regular policing services at certain venues, if a venue operator considers this useful. Notwithstanding an agreement having been entered into, the Bill confirms that the Chief Commissioner is authorised to redeploy police services and goods for any purpose that the Chief Commissioner considers necessary.

2. Enhancing the powers of police officers and protective services officers (PSOs) to protect the security of police premises

Victoria Police premises can present security risks due to the sensitive information held at the premises and the nature of the work undertaken by Victoria Police. A number of incidents of concern have occurred at police premises in the past five years including:

a. persons antagonising police officers entering or leaving a police station while an accomplice filmed the encounter

b. a person filming a regional police station and the car park where police officers' private vehicles are parked and "baiting" police officers nearby

c. a person following a police vehicle into the Victoria Police Centre car park on the premise of inspecting the retractable bollards at the entrance and exit points

d. a person regularly entering the foyer of a police station with a recording device although claiming to have no business there.

Exchanges with police officers, and photographs of them or their vehicles are frequently uploaded onto social media. This creates a risk for police personnel seeking to peacefully enter and leave police premises.

Currently there are no specific powers for police officers and PSOs to protect the security of police premises. They do not have the power to stop individuals filming police personnel or their vehicles, or parts of police premises, or to remove antagonistic persons from police premises. Due to the risks to safety and privacy for police personnel and community members in attendance at police premises, the VPA will be amended to provide police officers and PSOs with powers to:

a. request a person on or in the vicinity of police premises, or about to enter police premises, to provide their reason for being there, and if they do not provide a reason, to provide their name and address

b. direct a person to leave or not enter police premises if the police officer or PSO reasonably believes that they do not have a legitimate reason for being there, and the direction is necessary to keep the peace or maintain the security of the premises

c. direct a person not to return to police premises for up to seven days, without the permission of a police officer or PSO, unless they have a legitimate reason to return or it is not feasible to seek permission in the circumstances

d. remove a person from police premises or the vicinity of the premises if the person has failed to comply with a direction to leave, not enter or not return hindered or obstructed police officers or PSOs, or committed an offence under the VPA or

e. arrest a person on, or in the vicinity of, police premises, or attempting to re-enter police premises, who has not complied with directions to leave or not enter, hindered or obstructed police officers or PSOs exercising powers under those provisions, or committed an offence under the VPA.

Police officers and PSOs will exercise their discretion in determining whether it is necessary to remove or arrest a person, balancing the need to maintain the security of police premises and the need to keep the peace, with the need to ensure police premises are accessible to the public for legitimate reasons.

The Bill also establishes offences for failing to comply with a request to provide a reason for being on or in the vicinity of police premises or to provide a name and address, providing false or misleading information to police officers or PSOs, failing to comply with a direction to leave or not enter police premises, or hindering or obstructing a police officer or PSO in exercising these powers. The powers are confined to security risks and the Bill confirms that it is not intended that the powers limit the right of peaceful assembly or the right to take part in public life by means of lawful protest, advocacy or industrial action.

In exercising the power to direct a person to leave police premises, not enter police premises or not return to police premises without the permission of a police officer or PSO, police officers and PSOs will apply their discretion to ensure a person is allowed to attend police premises for a lawful reason, such as to report a crime, to comply with a court order or comply with bail conditions. Further, a person will be authorised to return to police premises if they have a legitimate reason to return and it is not feasible to seek permission before returning.

3. Clarifying the places where PSOs may exercise special powers under Part 3A of the *Terrorism (Community Protection) Act 2003* (TCPA)

The TCPA allows PSOs to exercise special police powers within the target area specified in an authorisation under the TCPA. The *Review of the Terrorism (Community Protection) Act 2003* recommended that

legislative amendments should be made to clarify that PSOs may exercise special police powers anywhere within authorised areas, consistent with the broader role of PSOs and subject to the provision of appropriate training (Recommendation 12). This recommendation reflects concern that the VPA may limit the use of special police powers by PSOs to designated places prescribed by regulation, so that where an authorisation under the TCPA does not overlap with a designated place (such as a train station) PSOs cannot exercise the special powers.

The Bill amends the VPA to clarify that PSOs are authorised to exercise the special police powers at any authorised targeted location across Victoria, regardless of whether a PSO is at, or in the vicinity of, a designated place.

4. Establishing a legislative framework for the Restorative Engagement and Redress Scheme (the Redress Scheme) to support current and former Victoria Police employees who have experienced workplace sex discrimination or sexual harassment

In 2015 the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) released the *Independent Review into sex discrimination and sexual harassment, including predatory behaviour within Victoria Police* which recommended that Victoria Police and government undertake work to deliver an independent redress scheme for Victoria Police employees who have experienced past workplace sex discrimination and sexual harassment.

Redress schemes are a way to acknowledge past harm and to provide support to eligible applicants without the requirement of a high evidentiary threshold or other legal requirements. The focus of redress is on healing and recovery for the person harmed, through access to counselling and therapeutic services and an opportunity to participate in a restorative engagement conference.

The Redress Scheme was established by Government and has been operating under an administrative model since 12 December 2019. The Redress Scheme acknowledges the experiences, and associated impact and harm, of current or former members of Victoria Police personnel who have encountered workplace sex discrimination and sexual harassment. It provides eligible participants assistance and support to recover from these experiences through access to redress in the form of financial redress, access to counselling and therapeutic services and the opportunity to participate in a restorative engagement process where they can share their experiences and the associated impact and harm with senior Victoria Police representatives in a safe and supportive environment. Some of the guiding principles of the Redress Scheme are to minimise further harm as a result of participation in the Redress Scheme, to be independent from Victoria Police, to keep participant information confidential and to protect participant privacy, and to provide support and assistance that is victim-centred, trauma-informed and accessible.

The Bill amends the VPA to establish a legislative framework for the Redress Scheme to:

a. vest key functions and decision-making powers related to eligibility requirements, the application process and redress determinations and reviews in the Secretary of the Department of Justice and Community Safety and

b. strengthen protections for the privacy and confidentiality of highly sensitive and personal information that is provided by participants and in internal documents, to ensure the Scheme is victim focused and reduce the potential for re-traumatisation.

The proposed reforms will provide greater protection for the personal and sensitive information shared by participants (including health information) and protect privacy and autonomy in the reporting of their experiences. A key finding of the VEOHRC Review was that there was significant underreporting of sexual harassment and sex discrimination within Victoria Police due to lack of trust in that organisation to respond in a sensitive and trauma-informed way to reports of such conduct. The Redress Scheme provides a safe and supported environment to enable eligible victims to share their experiences of harm and seek support. If not for the existence of the Redress Scheme, many participants would not come forward to seek support and acknowledgement of their experiences. Redress Scheme participants retain their existing legal rights to voluntarily report wrongdoing within Victoria Police or to IBAC, or take other legal action as appropriate.

5. Amendments to the drug and alcohol testing program for Victoria Police personnel

The VPA establishes a drug and alcohol testing regime for Victoria Police personnel. This includes random drug and alcohol testing. The current provisions create operational challenges for Victoria Police in conducting random testing, as when randomly selecting people to participate in random testing, all personnel rostered on across Victoria at that time are eligible for selection. This can result in participants who are located across the state being randomly chosen, and testing staff needed to visit all of those locations on the same day to conduct the resting.

In 2016, IBAC published a *Special report concerning illicit drug use by Victoria Police officers*. The report indicates that for drug testing to be an effective deterrent, the chances of being randomly tested must be

increased. The VPA will be amended to allow Victoria Police to select a Victoria Police workplace or work unit from within which a random sample can be drawn. Selecting the random sample from a narrower portion of the organisation will increase a person's chances of being randomly tested when their workplace or work unit is chosen, and will encourage Victoria Police to increase the frequency of testing across the organisation as the current operational barriers to testing will be removed. This amendment will be supported by operational instructions about the process by which a workplace or work unit can be chosen, to ensure the process remains random.

The VPA allows the Chief Commissioner to consider positive results of drug and alcohol tests in certain circumstances. The VPA will be amended to allow the Chief Commissioner to consider a positive test result returned by a police recruit who has participated in designated work unit testing, designated work function testing or targeted testing, when determining whether to terminate the recruit's employment under section 36 (5) of the VPA. Similarly, the Chief Commissioner will be authorised to consider a positive result when determining whether to terminate the appointment of a PSO under section 38 (6) of the VPA, at any time before the PSO takes the oath or affirmation of office.

6. Providing a clear obligation for police personnel to only access, make use of, or disclose police information if required by their current duties

In December 2021, IBAC tabled a special report in Parliament on *Operation Dawson—An investigation into alleged misconduct by a former Victoria Police Superintendent'*. The investigation found that it is a common assumption that police officers have the authority to access sensitive information which is not connected to their current duties, by virtue of their general duty to prevent and detect crime. IBAC determined that this assumption is held in circumstances where accessing the information is motivated by private interests rather than official police duties, and a much clearer legislative requirement is necessary to provide certainty about the limits of an employee's authorisation to access and use information.

The Bill amends section 226 of the VPA to impose a clear, standalone obligation on police personnel to maintain the confidentiality of police information, without reference to separate policy documents, and with a clear instruction that access must be directly related to their current duties and functions.

7. Other miscellaneous amendments to the VPA

The Bill also amends the VPA to address inconsistencies between sections 32 41 and 146 relating to the process for promoting police members and PSOs. The Bill will enable the Chief Commissioner to take more than one disciplinary action to a police officer or PSO who is found guilty of a criminal offence. This will align the approach to criminal offences with the approach to a breach of discipline, by ensuring the Chief Commissioner can take all actions considered appropriate.

8. Amendments to the *Sex Offenders Registration Act 2004* (SOR Act)

The Bill amends the SOR Act to support Victoria Police to continue to actively monitor registerable sex offenders and to reduce the risk of reoffending.

The SOR Act requires registrable offenders to report to Victoria Police at the commencement of their registration period, and periodically over that time to allow Victoria Police to record the personal details of a registrable offender. This includes information such as a registrable offender's primary place of residence, the place where the person usually sleeps, any vehicle the registrable offender usually drives, and the details of any children with whom a registrable offender has a personal relationship.

The SOR Act requires registerable offenders to make certain reports in person. The 2019–2020 Victorian Bushfires and COVID-19 pandemic have demonstrated that there are exceptional circumstances where in-person reporting by registrable offenders presents a health or safety risk to the registrable offender and to Victoria Police employees. The SOR Act will be amended to allow the Chief Commissioner of Police to direct or permit a registrable offender to report by audio link, audio visual link or electronic communication during a state of emergency, a state of disaster or where a pandemic declaration is in force.

The Bill also amends the personal details that a registrable offender is required to provide in their initial report, to improve the quality of up-to-date information received by Victoria Police. The amendments clarify that a registrable offender is only required to provide information sufficient to identify where the person sleeps on a regular basis if the person has no fixed address. The period of time that a registrable offender may drive a vehicle before reporting it as a vehicle that the person usually drives will be reduced from 14 days to seven days in any 12-month period. This will bring the 'usually drives' period in line with other seven day reporting periods in the SOR Act and reporting periods in other Australian jurisdictions.

The Bill amends the SOR Act to clarify that a registrable offender must report the details of any child with whom they engage in any form of actual physical contact, or oral or written communication for the purpose of maintaining a personal relationship at initial report, annual report, and if the registrable offender ceases to maintain a personal relationship with the child. The proposed amendment specifies the mode of contact

(physical contact, or oral or written communication) and the circumstances in which that contact occurs (for the purposes of maintaining a personal relationship) to be reported. The design of the amended definition of child contact is consistent with the VLRC recommendations in chapter 7 of the 2012 Final Report on Sex Offenders Registration. Consistent with current reporting obligations, a registrable offender will not have to report the details of each and every occasion on which the offender has contact with each of those children for the purpose of maintaining a relationship. This reform clarifies that a registrable offender who has formed a personal relationship with a child before being registered must report that relationship to Victoria Police. These amendments support Victoria Police to reduce the risk of reoffending and to facilitate the investigation and prosecution of any offences that a registrable offender may subsequently commit.

The Bill makes amendments to improve the operation of the SOR Act in respect of the classification of certain offences under that Act. The SOR Act prescribes four classes of offences for the purposes of the Act. A Class 2 offence is committed against a child, whereas a Class 4 offence is committed against an adult. A person sentenced for a Class 2 offence is automatically registered as a registrable offender and must comply with the reporting requirements under the SOR Act. By contrast, a court has a discretion to make a sex offender registration order against a person sentenced for a Class 4 offence committed against an adult.

The offence of 'sexual assault of a person with a cognitive impairment or mental illness' is currently listed as both a Class 2 and a Class 4 offence. The Bill amends the SOR Act to clarify that the offence of 'sexual assault of a person with a cognitive impairment or mental illness' is a Class 2 offence if it is committed against a child. An appropriate transitional provision is included to provide for a registrable offender who has been found guilty of committing an offence against an adult to apply to the sentencing court for an order to consider whether it would have made a sex offender registration order if the offence committed against an adult were a Class 4 offence. It is estimated that less than three people could be eligible to apply for an order under this transitional provision.

The Bill also lists as a Class 2 offence the Commonwealth offence of using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16 except if the offence does not involve an act in preparing or planning to engage in sexual activity with a person under 16 years of age or an act in preparing or planning to procure a person under 16 years of age to engage in sexual activity. This offence is established by section 474.25C of the *Criminal Code Act 1995* (Cth). In practice, the Bill excludes conduct constituting an offence against paragraph 474.25C(a)(i) of the Criminal Code Act of the Commonwealth as this conduct is not sexual in nature.

I commend this Bill to the House.

Mr RICH-PHILLIPS (South Eastern Metropolitan) (17:49): I move, on behalf of Dr Bach:

That debate on this bill be adjourned for one week.

Motion agreed to and debate adjourned for one week.

JUSTICE LEGISLATION AMENDMENT (SEXUAL OFFENCES AND OTHER MATTERS) BILL 2022

Introduction and first reading

The PRESIDENT (17:50): I have another message from the Assembly:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to amend the **Confiscation Act 1997**, the **Crimes Act 1958**, the **Criminal Procedure Act 2009**, the **Evidence (Miscellaneous Provisions) Act 1958**, the **Jury Directions Act 2015** and the **Summary Offences Act 1966** in relation to sexual offences, evidence and procedure, to amend the **Court Security Act 1980** and the **Open Courts Act 2013** to extend the operation of certain temporary provisions and to make consequential amendments to other Acts and for other purposes'.

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:50): I move:

That the bill be now read a first time.

Motion agreed to.

Read first time.

Ms SHING: I move, by leave:

That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:51): I lay on the table a statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006,* (the Charter), I make this Statement of Compatibility with respect to the Justice Legislation Amendment (Sexual Offences and Other Matters) Bill 2022 (the Bill).

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

Overview

The Bill seeks to protect and promote the rights of victims of sexual offences by implementing the following reforms:

- Expanding the definition of consent in the *Crimes Act 1958* and the circumstances where consent is deemed not to be given
- Amending the *Crimes Act 1958* to include a requirement that a person must say or do anything to find out if the other person was consenting in order to have a reasonable belief in consent
- Relocating relevant image-based sexual offences from the *Summary Offences Act 1966* to the *Crimes Act 1958*, making them indictable offences triable summarily and improving their operation
- Amending the definition of 'sexual offence' in the *Criminal Procedure Act 2009* to extend protections such as alternative arrangements for giving evidence to complainants of image-based sexual offences
- Amending the *Jury Directions Act 2015* in relation to sexual offences, including with regard to consent and reasonable belief, and explanations of 'beyond reasonable doubt' in criminal trials
- Amending the *Criminal Procedure Act 2009* to limit the circumstances in which vulnerable witnesses can be cross-examined and to expand the use of ground rules hearings; and
- Expanding the confidential communications scheme in Division 2A of Part II of the *Evidence (Miscellaneous Provisions) Act 1958* in criminal proceedings to better protect complainants' health information.

The Bill will also extend certain temporary provisions in the *Court Security Act 1980* and the *Open Courts Act 2013* to assist the courts to operate effectively and efficiently.

Human Rights Issues

The following rights are relevant to the Bill:

- Equality (s 8)
- Right to life (s 9)
- Freedom of movement (section 12)
- Privacy and reputation (s 13)
- Freedom of expression (s 15)
- Rights of children (s 17(2))
- Property rights (s 20)
- Fair hearing (s 24)
- Rights in criminal proceedings (s 25)
- Retrospective criminal laws (s 27)

Affirmative consent (Part 2)

The Bill will implement the Government's commitment to legislate a stronger model of affirmative consent and to clearly prohibit the removal of, tampering with or refusal to wear a condom without consent (a practice sometimes known as 'stealthing').

The Bill amends the definition of consent in the *Crimes Act 1958* (Crimes Act), to clarify what consent is and the circumstances where consent cannot be assumed. It also clarifies what consent is not, by drawing attention to the non-exhaustive list of circumstances in which a person is deemed not to have consented. While some of these consent vitiating circumstances replicate existing law (in current section 36(2)), the Bill adds new circumstances (for example, to effectively codify the conduct often referred to as 'stealthing' as a circumstance vitiating consent) and amends some others.

The Bill also provides that a person's belief in consent is not reasonable if 'within a reasonable time before or at the time the act takes place' they do not do or say anything to find out whether the person is consenting to the act. There is an exception to this requirement for those with a cognitive impairment or mental illness that is a substantial cause of them not saying or doing anything to find out whether a person consents to the act. The onus of proving the matters relevant to the exception is on the accused, to the balance of probabilities.

General promotion of rights

The new consent provisions implement recommendations of the Victorian Law Reform Commission report 'Improving the Justice System Response to Sexual Offences' (the VLRC report) to deliver a stronger model of affirmative consent. Key to this is requiring a person to have said or done anything to ascertain consent. By requiring participants in sexual acts to take active steps to confirm the other party is consenting, and by focusing on the actions of the accused, rather than the victim-survivor, the reforms will promote victim-survivor's rights, and aim to reduce the prevalence of sexual offending through improved community understanding about consent in this context and the risk of traumatising victim-survivors through the criminal process. It is hoped that this will lead to fairer and more effective sexual offence prosecutions.

The provisions also promote the right to equality under section 8 of the Charter by using gender inclusive language, and by providing an exception to the requirement to say or do anything to ascertain consent for persons with a cognitive impairment or mental illness. I consider new subsections 36A(3) and (4) to be special measures under section 8(4) of the Charter, in that they are measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination, being persons with a cognitive impairment or mental illness who are overrepresented in the criminal justice system and may otherwise be disproportionately and unjustly impacted by these changes to consent laws.

As such, I consider these measures promote equality and do not constitute discrimination under section 8(3).

Limitation of rights

The Bill engaged the right to the presumption of innocence (section 25(1)) and the right against self-incrimination (section 25(2)(k)) under the Charter through the following provisions:

- the requirement of new section 36A that an accused must have said or done anything to find out if the other person consents in order for them to have a reasonable belief in consent (the absence of which is the key fault element of many sexual offences), and
- the requirement for an accused to establish evidence of a cognitive impairment or mental illness in order to avail themselves of the exception in new subsection 36A(3)

Rights to be presumed innocent and to not be compelled to testify against oneself

Section 25(1) of the Charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. The right is relevant where a statutory provision shifts the burden of proof onto an accused in a criminal proceeding, so that the accused is required to prove matters to establish, or raise evidence to suggest, that they are not guilty of an offence. This includes where a provision deems a fact to be proved in certain circumstances.

The right to be presumed innocent is closely related to the protection against self-incrimination contained in section 25(2)(k) of the Charter. This right provides that a person charged with a criminal offence is entitled not to be compelled to testify against themselves or to confess guilt. This right is at least as broad as the common law privilege against self-incrimination. It applies to protect a charged person against the admission in subsequent criminal proceedings of incriminatory material obtained under compulsion, regardless of whether the information was obtained prior to or subsequent to the charge being laid.

Both the presumption of innocence and the protection against self-incrimination encompass the right to silence, which includes the right of an accused to be free from adverse inferences drawn from their silence. It is considered a fundamental rule of the common law.

Affirmative consent provision (New section 36A(2))

Under new section 36A(2), if it is established that an accused did not say or do something to ascertain consent, they will be deemed to not have a reasonable belief in consent (the fault element of Victorian sexual offences where consent is relevant). This is effectively a 'deeming' provision. While the prosecution must prove beyond reasonable doubt the accused did not say or do anything, this may be easier in the absence of any evidence from the accused and the accused may deemed to have the requisite fault element as a result.

This may limit the right to be presumed innocent and the right against self-incrimination because the practical effect of the provisions may be that, even though not required by the legislation, an accused may need to lead evidence of certain matters as part of their defence—in this case, whether they said or did something to ascertain consent. This may in turn abrogate their right to silence and freedom from adverse inferences being drawn from their silence, as well as expose them to broader cross-examination, including in relation to other elements of the relevant offence.

While I accept that these provisions may limit what are considered fundamental criminal process rights of the common law, I am satisfied that these limits are reasonably justified, for the reasons that follow.

The nature of the right

As discussed above, the right to be presumed innocent until proven guilty according to law reflects a fundamental principle of common law that imposes on the prosecution the onus of proving the elements of an offence beyond reasonable doubt. Section 25(2)(k) of the Charter then outlines the specific right of an accused not to testify against or incriminate themselves, which the High Court has found reflects not only the privilege against self-incrimination, but is an aspect of the fundamental common law principle that the onus is on the prosecution to prove a criminal offence, and is an important feature of the accusatorial system of criminal justice. The rights are considered fundamental due to the gravity of consequences faced by an individual charged with a criminal offence, including potential loss of physical liberty, subjection to social stigma and ostracism from the community, as well as other social psychological and economic harms.

Further, the High Court has found in a related context (in *X7 v Australian Crime Commission* (2013) 248 CLR 92) that a change in the legal system which did not directly abrogate the right to silence in a criminal proceeding, but merely affected the decisions an accused would make about how to defend a charge, gave rise to a fundamental alteration of the accusatorial process of criminal justice. This illustrates that even indirect effects on how an accused conducts their defence may limit their right to the presumption of innocence and the right against self-incrimination.

Relevant matters to assessing the proportionality of any limits on these rights include the seriousness of the sentence likely to be imposed on conviction for such an offence, whether the nature of the offence makes it very difficult for the prosecution to prove an element of the offence, the gravity of the social problem or the extent of suffering caused by the offence, and whether the provision requires the accused to prove or lead evidence to support an exception, proviso or excuse (rather than an element of the offence) that is within the accused's own knowledge. To be justified, there must be a compelling reason advanced as to why it is fair and reasonable to deny an accused person the protections normally guaranteed to everyone by these rights.

The importance of the purpose of the limitation

I consider that a compelling justification exists in this case. These measures serve an important and pressing objective of addressing the prevalence of sexual violence in Victorian society, and its devastating and lifelong impact on the safety of women and children in particular. The VLRC report found that sexual violence is serious, and widespread, and is estimated to affect one in five women, and one in 20 men, although such figures are considered to understate how common sexual violence is in the community due to under-reporting. In relation to the most serious of sexual offences, only one in 23 rape cases that are reported result in a conviction. Sexual violence has the capacity to cause long-term negative impacts for victim-survivors, including serious emotional and psychological distress. It affects people's relationships, sense of wellbeing and lifestyle, trust in others, ability to engage in education and work, and their financial status.

The VLRC report also found that the justice gap in relation to sexual offences is real, and that charges were laid for only one-quarter of all incidents recorded by police. For many sexual offences involving adults, a lack of consent is a key part of the offence. The VLRC report found that there were challenges with how consent laws were interpreted and operate in practice, and that victim-survivors are still often required to demonstrate they did not consent through 'active resistance'. This is reflected both in the decisions to continue investigations and in court processes, especially cross-examination. The VLRC report considered that recent case law has set a low bar for communicating consent that is arguably not within the spirit of the sexual offences legislation.

Having clearly defined sexual offences supports an effective justice system response to sexual violence. The way sexual offences are defined also sets standards for behaviour, shapes the community's understandings of sexual violence and sets the boundaries for what sexual interactions are acceptable in society.

By providing for this deeming provision the reforms legislate a strong model of affirmative and communicative consent and send a strong message about what consent means and how it must be obtained by participants in a sexual act. The reforms in this Bill urgently address continued societal misconceptions and myths about sexual violence that have affected the effectiveness and fairness of prosecutions of sexual offences. Consistent with the recommendations of the VLRC report and reflective of a contemporary and holistic understanding of consent, the new model focuses more squarely on the actions of an accused ("What did the accused person do to make sure they had consent?"), rather than those of the victim-survivor ("What did the complainant do to say no?"), the latter of which is so often the focus currently. These reforms will collectively strengthen and clarify the provisions of the Crimes Act that relate to consent and reasonable belief in consent, and align Victoria's laws with contemporary understandings and expectations of sexual consent—namely, consent can never be assumed, consent must be actively sought and positively expressed.

Nature and extent of the limitation

I accept that the nature and extent of the limitation is serious, in that it limits the criminal process rights of an accused in relation to serious offences which attract consequences of high gravity, including, in the case of the sexual offence of rape, Level 2 imprisonment (of up to 25 years maximum).

However, the extent of the limitation is mitigated by the fact that the Bill does not place any burden on an accused in relation to disproving the essential elements of the offence. New section 36A(2) still requires the prosecution to establish the negative proposition that an accused did not say or do something to ascertain consent. The provision does not require the accused to testify, and any evidential burden on them is voluntary; it remains open to them not to give evidence, and to test the prosecution's case by other means.

I do accept that the effect of the affirmative consent provision may in practice result in an accused, who is intending to claim they mistakenly believed a victim-survivor was consenting, to be compelled to lead evidence that they did or said something to justify that belief, contrary to their right to silence, and leaving them subject to cross-examination. However, I do not consider this to be too burdensome a requirement given the pressing objective it serves. Once such evidence is adduced by an accused (evidence which will often be peculiarly within their knowledge), the burden remains on the prosecution to prove the elements of the offence to the legal standard. Courts in other jurisdictions have generally taken the approach that an evidential onus on an accused does not limit the presumption of innocence. There is legislative precedent for an evidential onus on accused person in Victorian law. For example, section 16 of the Crimes Act, which provides for the offence of causing serious injury intentionally, imposes an evidential burden on an accused person with respect to 'lawful excuse'. I also note the Queensland Women's Safety and Justice Taskforce considered that a similar affirmative consent deeming provision was not too onerous and constituted a justifiable limit on the human rights of an accused.

The relationship between the limitation and its purpose

The consent reform provisions of the Bill and the associated potential limitation on the right to the presumption of innocence and the right against self-incrimination under sections 25(1) and (2)(k) of the Charter, is directly connected to the purpose of the provisions. This purpose is to legislate a strong affirmative consent model for sexual offences that focusses on the actions of an accused, rather than those of the victim-survivor.

Availability of less restrictive means

In my view there are no less restrictive means available to achieve affirmative consent and make the new fault element in respect of reasonable belief in consent clear and robust. The reforms have been the subject of significant consultation to ensure they reflect community attitudes about sexual relationships and the broad range of contexts in which sexual activity can occur. The VLRC received 71 written submissions and conducted 99 consultation sessions across a range of issues, including consent. The Department of Justice and Community Safety has conducted an additional 40 consultation sessions with over 120 different stakeholders specifically on the consent reforms, including with victim-survivor groups, advocates, and legal stakeholders and service providers.

The requirement for an accused to say or do anything to ascertain consent is the clearest and simplest method for objectively establishing whether there is in fact a reasonable belief in consent on the part of an accused. The requirement to merely say or do anything maintains flexibility as to the steps an accused may take in the relevant circumstances.

I consider alternative means that might place fewer restrictions on the rights of an accused would leave open the possibility that an accused can maintain a reasonable belief in consent, despite not have taken any steps to ascertain such consent. This runs counter to the central tenet of these reforms, which is that consent cannot be

assumed. It will not reflect community expectations and be insufficient in shifting the focus of onto the behaviour of the accused.

The amendments do provide exceptions to prevent disadvantage to persons with cognitive impairment and mental illness, which I discuss further below. As such, I am satisfied that new section 36A(2) is compatible with the Charter, in that, although it may limit rights in the Charter, those limits are moderate and reasonably justified to achieve a critically important aim.

Cognitive impairment or mental illness exception (New section 36A(3) and (4))

New section 36A(3) and (4) require an accused to prove, on the balance of probabilities, that they have a cognitive impairment or mental illness that was a substantial cause of their failing to say or do anything to ascertain consent.

By creating an exception, these provisions place a legal burden on the accused, in that they require the accused to prove they have a cognitive impairment or mental illness and that it was a substantial cause of them not saying or doing anything to ascertain consent. As the provision only places the burden on the accused to establish an exception, and does not transfer to the accused the legal burden of proof to establish the elements of the relevant sexual offence, I do not consider that the right limits the presumption of innocence under section 25(1) of the Charter.

In the alternative, if this provision is considered to limit the right of an accused, I am satisfied that this limit is reasonably justified under section 7(2) of the Charter. This provision ultimately serves an important protective purpose of ensuring that persons with a cognitive impairment or mental illness are not disadvantaged by the requirement to say or do anything to ascertain consent, in circumstances where they are unable to meet this requirement due to the impact of their illness or impairment. This seeks to avoid the criminalisation of persons with a cognitive impairment or mental illness, groups that are already overrepresented in the criminal justice system. In doing so, this promotes the right to equality under section 8 of the Charter, as discussed above.

While imposing a legal burden, as opposed to an evidentiary burden, is more onerous to an accused, I consider it appropriate in this circumstance. The subject matter which the accused must prove is one peculiarly within their knowledge and within their capability to adduce supporting medical evidence. An evidential onus would be too easily discharged and then require the prosecution to prove an absence of a cognitive impairment or mental illness beyond reasonable doubt, where the required evidence to do so would not be readily available or ascertainable by the prosecution. This would in turn risk obstructing the overall aims of the Bill to strengthen consent provisions. I note that this burden is also consistent with the burden on an accused to establish existing defences at law, such as the defence of mental impairment.

While an accused person will bear the legal burden of proving the matters outlined in section 36A(3), there is no legislative requirement for them to give evidence as to all the events and circumstances surrounding the alleged offence. Their evidence will only need to relate to their condition and its impact on their ability to say or do anything. While this burden can be discharged through adducing medical expert evidence, I accept there may be instances where an accused may need to testify to establish these matters or as part of the expert evidence, and this may engage the right not to be compelled to testify. However, for the reasons above, I consider that there is no less onerous manner in which this protective provision can be provided for without obstructing the overall aims of the Bill.

Accordingly I am satisfied that new section 36A(3) and (4) are compatible with the Charter.

Image Based Sexual Abuse Offences (Part 3)

The Bill will strengthen the justice system's response to the growing problem of image-based sexual abuse (IBSA) which includes the production or distribution of intimate images without consent, and can include revenge pornography and the production or distribution of digitally altered or manipulated intimate images (also known as 'deepfakes').

The Bill will relocate four IBSA offences from the *Summary Offences Act 1966* to the Crimes Act, and consolidate them into three new indictable offences triable summarily, each with a maximum penalty of three years imprisonment. This will better reflect the seriousness of this behaviour and remove the 12-month limitation period that applies to commencing proceedings for summary offences. Moving the offences to the Crimes Act, thereby making them indictable, will also give police more powers to investigate these offences, which again better reflects the seriousness and prevalence of this type of offending. Additionally, the Bill improves these provisions e.g. by broadening the definition of an 'intimate image' to be more gender diverse.

General promotion of rights

As well as promoting the rights of victim-survivors, and implementing the VLRC recommendations on IBSA offences, this Part of the Bill promotes a number of rights under the Charter, including:

- the right to equality (s 8), to be discussed in more detail below;

- the right to life (s 9), which encompasses a general obligation on the State to take positive steps to protect life, including by enacting legislation that upholds public welfare and safety. The Bill does this by strengthening the IBSA offences to deter and punish this particularly intrusive and anti-social behaviour, which can affect a victim-survivor's quality of life. It also does so by providing procedural protections to victims and witnesses when giving evidence in criminal proceedings for an IBSA offence;
- the right to privacy and reputation (s 13), which is wide in scope, and includes protecting a person's interest in the freedom of their personal and social sphere, including their personal development, identity, social relations and psychological integrity, personal security and mental stability, as well as informational privacy such as an individual's control over their own image. This right is promoted by the strengthening of IBSA laws to better deter and punish the taking and/or sharing of intimate images without consent, and to empower courts to order the disposal of intimate images; and
- protection of children (s 17(2)), to be discussed in more detail below.

Equality

Section 8(3) of the Charter relevantly provides that every person is entitled to equal protection of the law without discrimination and has the right to equal and effective protection against discrimination. The purpose of this component of the right to equality is to ensure that all laws and policies are applied equally, and do not have a discriminatory effect.

'Discrimination' under the Charter is defined by reference to the definition in the *Equal Opportunity Act 2010* (EO Act) on the basis of an attribute in section 6 of that Act. Direct discrimination occurs where a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute. Indirect discrimination occurs where a person imposes a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging persons with a protected attribute, but only where that requirement, condition or practice is not reasonable.

Clause 22 of the Bill inserts a new subdivision (8FAAB) into Division 1 of Part I of the Crimes Act which concerns the offences of producing, distributing or threatening to distribute intimate images. New section 53O(d) broadens the definition of 'intimate image' to include an image of the breasts of a transgender or intersex person identifying as female. This promotes the right to recognition as a person before the law under section 8(1) of the Charter, by ensuring that transgender and intersex people are included in, and protected by, the legislation. The use of gender inclusive language also promotes the right of every person to enjoy their human rights without discrimination, and to protection from discrimination (sections 8(2)–(3)).

Clause 24 of the Bill amends the definition of 'sexual offence' under the *Criminal Procedure Act 2009* (CPA) to include the new IBSA offences in the Crimes Act. This promotes the right to equality as it allows complainants and witnesses in proceedings relating to an IBSA offence to access the same procedural protections, such as alternative arrangements for giving evidence, that other sexual offence complainants currently possess.

Rights of children

Section 17(2) of the Charter provides that every child has the right, without discrimination, to such protection as is in their best interests and is needed by them by reason of being a child. This right recognises the special vulnerability of children, and requires states to adopt social, cultural and economic measures to protect children and to foster their development and education. The scope of the right is informed by the United Nations *Convention on the Rights of the Child,* which requires that in all actions concerning children, the best interests of the child shall be the primary consideration.

As noted by the VLRC, children and young people use technology often, so are therefore at considerable risk of falling victim to IBSA offences. Further, IBSA offences are often linked to family violence, cyber-bullying and child sexual offences such as child pornography. The consequences for victim-survivors can be devastating and lifelong, resulting in complex trauma and broader impacts affecting a victim-survivors future employment and other pursuits, social interactions, family, and relationships. Accordingly, I consider that the Bill, in strengthening and emphasising the seriousness of IBSA offences, promotes the protection of children under section 17(2) of the Charter.

Limitation of Rights

The new IBSA offence regime further engages the right to equality (section 8) and the rights of children (section 17) as discussed below, as well as engaging the right to privacy (section 13), the right to freedom of expression (section 15) and property rights (section 20) under the Charter.

Equality

As discussed above, section 8(3) of the Charter protects the right to equality before the law and ensures equal protection of the law without discrimination. Discrimination may be direct or indirect and must be because of a protected attribute.

New section 53V will require the DPP to consent to the prosecution if the accused is under the age of 16 years at the time of the alleged commission of an IBSA offence. This may limit the right to equality on the basis of direct discrimination as persons aged over 16 may be treated unfavourably because of their age, by not benefiting from this additional safeguard prior to prosecution for an IBSA offence.

However, I consider that any limit on the right to equality effected by new section 53V is reasonable and justified in accordance with section 7(2) of the Charter, because the provision is designed to protect children from being criminalised for mistakes made during their development and is the least restrictive means of achieving this legitimate and important aim. The age threshold reflects the greater vulnerability of younger children, as well as the fact that children and young people over the age of 16 have a greater capacity to make choices in relation to issues such as sexual relationships and technology. This is consistent with the recognition in the *Convention on the Rights of the Child* of the 'evolving capacities of the child' and that the level of protection required will differ depending on the age of the child.

Accordingly, I am of the view that new section 53V imposes a reasonable and justified limit on the right to equality under section 8(3), and therefore is compatible with the Charter.

Privacy

Section 13(a) of the Charter provides that a person has the right not to have their privacy unlawfully or arbitrarily interfered with. An interference will be lawful if it is permitted by a law which is precise and appropriately circumscribed, and will be arbitrary only if it is capricious, unpredictable, unjust or unreasonable, in the sense of being disproportionate to the legitimate aim sought.

The new IBSA offence regime engages the right to privacy, in that it seeks to regulate and prevent certain private behaviours that could be considered part of someone's personal identity and social relations, which are both aspects that are protected by the right to privacy under the Charter. However, the right will not be limited if any interference is pursuant to properly prescribed legislation that it sufficiently accessible, predictable and is not unjust or unreasonable. The new IBSA regime is appropriately precise and is proportionate to the aim of protecting members of society from having intimate images produced or distributed without their consent, which in turn would constitute a breach of their right to privacy.

Accordingly, I am of the view that the right to privacy is not limited by the new IBSA offences inserted by clause 22 of the Bill.

Freedom of Expression

The criminalisation of the taking, production and distribution of intimate images and the provision for the disposal of such images (new sections 53W–Z) engages the right to freedom of expression.

Section 15(2) of the Charter provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. However, section 15(3) provides that special duties and responsibilities attach to this right, which may be subject to lawful restrictions reasonably necessary to respect the rights and reputations of others, or for the protection of national security, public order, public health or public morality.

The purpose of clause 22 and the new IBSA offence regime is to protect the privacy rights of the public, and particularly women and children who may be particularly vulnerable to IBSA, by criminalising and punishing such conduct and deterring future harm being committed. I consider that this falls within the internal qualification of section 15(3) of the Charter, including the protection of the rights and reputations of others, public order and public morality, such that the right to freedom of expression is not limited by clause 22.

Protection of children

The amendments in the Bill are primarily intended to protect victim-survivors including children, however at the same time these offences will apply to children. Due to a child's evolving capacity and maturity as they age, there is a risk of over criminalising the mistakes and misunderstandings children may make in developing their sexual identities alongside their prolific use of technology.

To appropriately reflect a child's vulnerability and stage of development, and consistent with recommendation 54(a) of the VLRC report, new section 53V requires the consent of the DPP to commence a prosecution of a child under the age of 16 at the time of the alleged offending. I consider that this measure will ensure that the Bill does not unduly limit the rights of children under section 17(2) of the Charter, by ensuring that prosecutions against children under 16 years of age for the new IBSA offences only proceed with DPP approval.

While this safeguard is not afforded to children over 16 years, this is in line with the approach recommended by the VLRC report. It is also noted that there is no DPP consent requirement for children charged with a current IBSA offence. In addition, existing prosecutorial guidelines will still apply requiring any such prosecution to be in the public interest (taking into consideration the accused's age). Accordingly, I am satisfied this reform strikes the appropriate balance.

Property

New sections 53W–Z (inserted by clause 22) allow for the court, on application of the DPP or a police officer, to make an intimate image disposal order to effect the destruction of a seized thing (such as a laptop computer) or the removal of an intimate image contained in a seized thing (such as the removal of an intimate image saved on a mobile phone). The Bill also amends the *Confiscation Act 1977* in relation to the disposal of an intimate image if a person is convicted of an offence set out in Schedule 1 to that Act. These reforms engage the right to property under the section 20 of the Charter.

Section 20 of the Charter provides that a person must not be deprived of their property other than in accordance with law. This right requires that powers which authorise the deprivation of property are conferred by legislation or common law, confined and structured rather than unclear, accessible to the public, and formulated precisely. To the extent that these provisions may result in the deprivation of property, I am of the view that they do not limit the right to property as the deprivation would be accordance with accessible and precise statutory criteria and subject to the oversight of a judicial officer.

Jury directions reforms (Part 4)

Part 5 of the Bill amends the JDA to reform jury directions in trials, particularly sexual offence trials, to assist juries in better assessing the evidence and reaching a verdict. These reforms promote the right to a fair hearing under section 24 of the Charter. They do so by introducing amendments and enhancing existing directions that will make it easier for juries to apply the law, particularly with regard to consent and the determination of a reasonable belief in consent.

For example, the Bill adds new directions to address misconceptions in relation to personal appearance and irrelevant conduct (new section 47G), and non-consensual sexual acts occurring between all sorts of people, such as those who know each other or are in a relationship with each other (new section 47H). These new directions reflect extensive research on common misconceptions about sexual offence victim-survivors, as discussed in the VLRC report.

Clause 51 amends section 51(1)(c) of the JDA to prohibit additional statements in respect of the credibility of complainants who provide commercial sexual service or, have a particular sexual orientation or gender identity. This promotes the right to equality under the Charter (section 8) by seeking to prevent unfavourable treatment on the basis of a protected attribute (such as gender identity), as well as the rights of victim-survivors in the criminal process more generally.

Clause 56 inserts new Divisions 4 and 5 into Part 5 of the JDA. Division 4 requires a judge, if appropriate, to give directions regarding the continuation of a relationship between the accused and the complainant after the alleged sexual offence. New Division 5 requires a trial judge to give a direction on the complainant's distress or emotion while giving evidence, unless there are good reasons for not giving the direction. This will guard against a jury making incorrect assumptions as to these issues, promoting victim-survivors' rights and achieving fairer outcomes in proceedings for sexual offences. Again, these new directions reflect extensive research on common misconceptions about sexual offence victim-survivors, as discussed by the VLRC.

Clause 57 of the Bill requires a trial judge to give the jury an explanation of the phrase 'proof beyond reasonable doubt' unless there are good reasons for not doing so, having regard to any submissions from parties. Currently, such a direction may only be given in response to a question from the jury. I am of the view that this promotes an accused's fair hearing rights and rights in criminal proceedings (particularly the presumption of innocence) under sections 24 and 25 of the Charter respectively.

Limitation of Rights

Retrospective criminal laws

Given new Division 1A (inserted by clause 48), which relates to directions regarding consent and reasonable belief in consent, is applicable to offences before, on or after 1 July 2015, clause 48 may engage the right against retrospective criminal laws under section 27 of the Charter. The transitional provisions inserted by clauses 92 (new section 638 of the *Crimes Act 1958*), and clause 95 (new clause 6 to Schedule 1 of the JDA) also apply some of the amendments to proceedings where the offences may have been committed prior to the commencement of the new provisions.

As above, section 27(1) of the Charter provides that a person must not be found guilty of a criminal offence because of conduct that was not an offence at the time the conduct was engaged in. Accordingly, while

section 27 prohibits the imposition of criminal liability where previously there was none, it does not prohibit retroactivity in respect of procedural laws. This includes changes to the rules of evidence or other procedural elements such as, in this case, the content of jury directions, given they relate to how the trial is conducted, and do not themselves impose criminal liability. This is consistent with the operation of the equivalent provision of the *International Covenant on Civil and Political Rights,* whereby article 15(1) does not extend to changes in procedural law. This also reflects the statutory interpretation principle that the presumption against retrospectivity does not extend to laws that are merely procedural.

Accordingly, I am of the view that Part 5 of the Bill, and in particular clause 48, does not limit the right against retrospective criminal laws under section 27 of the Charter.

Ground rules hearings and cross-examination—(Part 5)

Part 5 of the Bill enacts various amendments to the CPA to improve the experience of complainants and other vulnerable witnesses in giving evidence in sexual offence proceedings.

Uncertainty about time when sexual offence occurred

Division 1 of Part 5 of the Bill seeks to address the difficulties that the prosecution faces when new sexual offences are introduced, and the laws do not explain how the prosecution should proceed when they cannot establish whether the alleged conduct occurred before or after the commencement of the new offences.

Clause 60 of the Bill inserts new section 7B into the CPA, which provides a substantive, interpretive provision to address these problems. New section 7B applies when conduct is alleged to have occurred at some time during a period; the conduct, if proven, would constitute a sexual offence at all times during that period; there is uncertainty as to when, during that period, the conduct allegedly occurred; and because of a change in the law during that period, the conduct, if proven, would constitute one sexual offence before the change and a different sexual offence after the change. It applies to any sexual offence as defined in section 4 of the CPA.

This provision implements recommendation 56 of the VLRC report. The VLRC found it unacceptable that a technical gap in the law has led to cases being discontinued, or charges not being filed, and people falling through the gaps of the laws designed to protect them.

As well as promoting the rights of complainants, the new provision also promotes the protection of children under section 17(2) of the Charter, which includes a positive duty on the state to provide measures to protect children and recognises their particular vulnerability. This is because uncertainty about when alleged offending occurred is a particular feature of historical child sexual abuse.

Limitation of Rights

While this provision will promote the rights of victim-survivors, it has implications for the criminal process rights of an accused, including their right to a fair hearing (section 24) and to protection from retrospective criminal laws (section 27).

Right to a fair hearing

Section 24(1) of the Charter provides that a person charged with a criminal offence has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The Charter right under section 24(1) is in essence the right of an accused to know the prosecution case against them so that they can respond to that case. I am of the view that new section 7B does not limit the right to a fair trial under the Charter. The prosecution will still be required to inform the accused of their case, and to prove the elements of the offence to the criminal standard, including the particulars of the period in which the alleged conduct is said to have occurred. I consider that these particulars will enable an accused person to meet the case made against them. Further, the right to be informed of the particulars of a charge only extends to particulars that are available. Where the evidence does not enable the prosecution to provide more particularity, as is often the case with charges involving sexual offending over a period of time, the right is not considered to be engaged.

To the extent that this right may be limited by new section 7B, I consider that any limitation is reasonable and justified under s 7(2) of the Charter. This is because it is the least restrictive means of achieving the important and pressing aim, as identified by the VLRC, of addressing the obstacles to prosecuting a person for alleged sexual offending spanning a period of time where there has simply been a change in the laws. Importantly, it will ensure that prosecutions are not discontinued or not pursued for alleged criminal offending simply due to a technicality. Ultimately, this should result in fairer outcomes in the criminal justice system.

Retrospective criminal laws

Section 27(1) of the Charter provides a person must not be found guilty of a criminal offence because of conduct that was not an offence at the time the conduct was engaged in. Subsection 27(2) further provides

that a penalty must not be imposed on any person for a criminal offence that is greater than the penalty applied to the offence when it was committed.

New section 7B expressly provides that the provision relates to any 'sexual offence', which is defined in section 4 of the CPA and includes historical conduct. Accordingly, section 27 of the Charter may be engaged.

However, the new section does not, in my view, retrospectively impose criminal liability for conduct that was not criminal at the time it was committed. New section 7B(1)(b) specifically states that for the provision to apply, the conduct, if proven, would have to constitute a sexual offence at all times during the period that the conduct is alleged to have occurred. The provision provides a mechanism by which a prosecution can proceed in these very specific circumstances.

New section 7B(2) provides that, where the circumstances in subsection (1) are met, a person may only be charged with whichever of those sexual offences has the lowest maximum penalty; or if both of the sexual offences have the same maximum penalty, the offence that the conduct, if proven, would have constituted before the change. This ensures that an accused will not be disadvantaged in relation to maximum penalties due to the operation of the provision.

Accordingly, I am satisfied that new section 7B does not limit the right against retrospective criminal laws under section 27(1) or (2) of the Charter. However, to the extent that this right may be limited, such limitation is justified and proportionate to achieving the purpose of the provisions; namely to effectively charge and prosecute alleged instances of sexual offending, which have been difficult to prosecute where these very specific circumstances arise.

Cross-examination

Clause 62 introduces the concept of 'specified witness' into section 124(5) of the CPA, which is defined as a child, a person with a cognitive impairment or a complainant in relation to a charge for a sexual or family violence offence. In considering whether to grant leave to cross-examine a 'specified witness' in a committal hearing, the court will be required to have regard to certain additional factors, such as minimising trauma to the witness, an additional protection which currently only applies to child witnesses.

Clause 63 inserts new section 124A, which requires the Magistrates' Court to give reasons for granting leave to cross-examine a witness at a committal hearing, including stating the reasons for granting leave and identifying each issue on which the witness may be cross-examined. This aims to improve the application of the test for granting leave and to therefore minimise the unnecessary exposure of vulnerable witnesses to cross-examination in committal proceedings.

Clause 66 amends section 198A of the CPA, to reflect that the considerations in section 124(5) must be applied to a 'specified witness', not only child witnesses, when determining whether cross-examination is to be ordered pre-trial under section 198A.

These amendments promote the rights of sexual offence complainants, as well as protecting children and persons with cognitive impairment from unnecessarily being exposed to the trauma of cross-examination in pre-trial proceedings.

Ground rules hearings

Clause 69 of the Bill provides that ground rules hearings are to consider the communication, support or other needs of witnesses and to decide how the proceeding is to be conducted to fairly and effectively meet those needs, and that ground rules hearing *must* be held if the witness is a complainant in relation to a sexual offence charge.

These amendments expressly promote the rights of complainants in relation to sexual offence charges. They seek to ensure that questioning is fair and appropriate, and that these complainants are supported to give their best evidence.

Limitation of Rights

Fair hearing and rights in criminal proceedings

Expanding the application of protections for the cross-examination of witnesses, including potentially prohibiting their cross-examination in pre-trial proceedings, will necessarily limit the rights to fair hearing (section 24) and rights in criminal proceedings (section 25).

The nature of the right

As outlined above, the right to a fair hearing encompasses the right to have a charge determined by a competent, independent and impartial court or tribunal after a fair and public hearing. The requirement for a fair and public hearing includes the principle of equality of arms, and the right of an accused person to obtain the attendance of, and examine, witnesses under the same conditions as the prosecution. This right is expressly

provided for in section 25(2)(g) of the Charter, which guarantees an accused's right to 'examine, or have examined, witnesses against him or her, unless otherwise provided for by law.'

Importance of the purpose of the limitation

The purpose of the limitation on cross-examination through the requirement to seek leave to cross-examine, and via the broader imposition of ground rules hearings that may limit the subject matter and style of cross-examination, is to protect complainants in sexual offence proceedings from unnecessarily stressful or intimidating questioning, and irrelevant questioning.

The nature and extent of the limitation

Any limitation on cross-examination of witnesses occasioned by Part 5 of the Bill would be 'provided for by law' and therefore would not interfere with the express right to examine witnesses at section 25(2)(g). In relation to the broader impact on fair hearing rights under section 24, the broadening of the application of protective factors in the test for leave to cross-examine under sections 124(4) and (5) (as amended) does not equate to a blanket prohibition on cross-examination. The accused may still make submissions as to why cross-examination should be allowed, and the court must have regard to factors such as whether the prosecution case is adequately disclosed, the evidence is of sufficient weight to support a conviction for the offence with which the accused is charged, that a fair trial will take place if a prosecution proceeds (including that the accused is able to adequately prepare and present a defence), and that the interests of justice are otherwise served.

The mandating of ground rules hearings for complainants in relation to sexual offence charges means that the style, parameters, and content of questioning for these complainants must be discussed by counsel for the prosecution, counsel for the defence and the judicial officer, prior to the complainant giving evidence. Following that discussion, the court will set 'ground rules'. Both prosecution and defence are limited to examining the witness on the same topics, although the accused is limited in the manner and extent to which they may cross-examine the witness. The judge may make various directions, including to exclude the rule in *Browne v Dunn* that contradictory evidence must normally be put to a witness in cross-examination, although this may not result in any disadvantage to an accused, as they may still include such evidence as part of their defence.

Relationship between the limitation and purpose

The limits occasioned by Part 5 of the Bill are rationally connected to the purpose of minimising the traumatisation of complainants and certain witnesses in sexual offences proceedings in relation to giving evidence.

Furthermore, any limits on cross-examination imposed through ground rules hearings may assist in eliciting relevant and clear responses from sexual offence complainants at trial, thereby helping to establish the facts of a case and promoting fair and efficient hearings.

Availability of less restrictive means

In my view, Part 5 of the Bill enacts the relevant reforms via the least restrictive means; there is no blanket ban on cross-examination and no set rules in respect of how a witness' evidence is taken following a ground rules hearing—these being agreed between the parties and the judge at the ground rules hearing. The accused has the opportunity to seek leave to cross examine and to make submissions with respect to the topics they would like to cross-examine a witness on in a ground rules hearing.

Accordingly, I am of the view there are no less restrictive means available to achieve the purpose of the reforms, which implement the recommendations of the VLRC report with respect to the treatment of sexual offences complainants in the criminal process.

I am therefore satisfied that Part 5 of the Bill in respect of ground rules hearings and cross-examination is compatible with sections 24 and 25 of the Charter.

Retrospective Criminal Laws

Clause 93 inserts section 462 into the CPA, with subsections (2) and (3) stipulating that the Bill's changes to committal proceedings only apply to proceedings to which no committal mention hearing or committal hearing has been held prior to the commencement of the new provisions. Accordingly, the new changes will apply to some committal proceedings for offences allegedly committed before the provisions commenced. Similarly, new section 462 also provides that the amendments to section 198A of the CPA (regarding cross-examination) applies to criminal proceedings that have not commenced at the time Part 5 commences.

Section 27(1) of the Charter prohibits a person from being found guilty of a criminal offence because of conduct that was not an offence at the time the conduct was engaged in. However, as discussed above, the right does not extend to procedural changes that govern how a trial is conducted. Given Part 5 does not impose criminal liability for conduct that was previously not unlawful, and relates to procedural aspects of how a trial is conducted, I am satisfied that the right against retrospective criminal proceedings is not limited by this Part.

Confidential communications and protected health information (Part 6)

Part 6 of the Bill amends Division 2A of Part II of the *Evidence (Miscellaneous Provisions) Act 1958* (EMPA) which prohibits the production and admissibility of confidential communications in a sexual offence proceeding without leave of the Court. The Bill makes two main reforms to the scheme for the purposes of criminal proceedings only:

- expanding the confidential communications scheme to include protected health information; and
- strengthening the procedural protections in applications for leave to compel, produce or adduce a confidential communication and/or protected health information, including giving complainants a right to appear, requiring them to be notified of an application and advised of specified matters, and allowing them to submit a confidential statement to the court.

The Bill stipulates that protected health information will only be part of the scheme in respect of criminal proceedings, and defines protected health information as health information about a person against whom a sexual offence has been or is alleged to have been committed, and the health information (including an opinion) was recorded, collected or formed by a person in a professional capacity.

The strengthened procedural protections include requiring the prosecuting party to ensure notice is given to a protected person in criminal proceedings of such an application and that the protected person is given specified information, including that they may:

- appear in the proceeding and make submissions;
- wish to consider obtaining legal advice; and
- provide a confidential statement (see new section 32CE).

The confidential statement will allow the complainant to describe the harm that is likely to be caused to them if the application is granted. Subsections 32CE(3)–(4) require that the court not disclose the confidential statement unless it considers that it is in the interests of justice to do so.

General promotion of rights

The effect of this expansion of the confidential communication scheme is to protect a broad category of documents and information from disclosure in criminal proceedings; namely protected health information. More generally, the purpose of the amendments is to better protect the right to privacy of sexual offence complainants in respect of sensitive health-related information. New section 32CE, in allowing protected persons to provide the court with a confidential statement in criminal proceedings, also aims to protect and promote the rights of victim-survivors and to ensure their views are taken into consideration by a court in deciding to grant leave for production or the admission of that information. These reforms implement recommendations made by the VLRC in respect of the rights of complainants of sexual offences in the criminal process.

Limitation of rights

However, the imposition of barriers to production and admissibility of potentially relevant documents and evidence in criminal proceedings, in respect of both the protected health information and the confidential statement by protected persons, engages the rights to fair hearing (section 24) and rights in criminal proceedings (section 25).

Right to fair hearing (s 24) and criminal proceedings rights (s 25)

As discussed above, the right to a fair and public hearing under section 24 of the Charter encompasses the right for each party to have a reasonable opportunity to present its case, and this includes being informed of the opposing party's case and to respond.

This in turn overlaps with the section 25 of the Charter, including:

- section 25(2)(b), which provides that an accused has the right to adequate time and facilities to prepare one's defence; and
- section 25(2)(g), which provides that an accused has the right to examine witnesses against them, unless provided for by law.

I am of the view that any limits on the disclosure of material upon which an accused might then use in cross-examination of prosecution witnesses would not limit these rights, as any interference with section 25 is in accordance with provisions that are precise and accessible.

As these provisions may have the effect of limiting the disclosure or admissibility of evidence that may be relevant to a criminal proceeding, and which may adversely impact the accused's defence in that proceeding, Part 6 of the Bill may impose a limit on the right to a fair hearing under sections 24 of the Charter.

The nature of the right

The Supreme Court has recognised that the right to a fair hearing under s 24 of the Charter incorporates the right of an accused person to know the case which the prosecution seeks to advance at trial and to seek information and documents from the prosecution as well as any exculpatory material.

Bound up in the fair hearing right is the duty of prosecutors to disclose relevant material to an accused in criminal proceedings that may assist in their defence, as well as through the subpoena process in seeking relevant information from non-parties.

However, the High Court has acknowledged that, in some circumstances, the requirements of procedural fairness may be qualified to protect important countervailing interests, including the protection of the privacy rights of sexual offence complainants.

Importance of the purpose of the limitation

As foreshadowed above, the purpose of the expansion of the confidential communications scheme, to include protected health information and to allow protected persons (that is sexual offence complainants) to provide confidential statements to the court to describe the harm that is likely to be caused if the application is granted, is to protect the privacy rights of these persons, and to ensure that complainants' views are taken into account before such documents are disclosed or evidence is adduced.

The VLRC (in both its 2021 report and 2016 report on *The Role of Victims of Crime in the Criminal Trial Process*) highlights how criminal proceedings can be traumatising for complainants, particularly in the context of the intrusion of privacy occasioned by the subpoenaing and subsequent admission into evidence of their private medical records, which are often then used to undermine their credibility. The VLRC considered that the confidential communication scheme is not functioning in practice as intended, with victim-survivors rarely able to resist a subpoena despite the statutory protections, and often remaining unaware that an application under current section 32C is even on foot.

The Part 6 reforms are consistent with the VLRC's recommendations that a broader range of health records be protected from production and admission into evidence and the need for complainants to have the opportunity to participate in the decision making about their confidential records.

The nature and extent of the limitation

The right to a fair hearing is context dependent, but ultimately would be infringed where the provisions would lead to a 'substantial disadvantage' for an accused in preparing their defence for a criminal proceeding.

Protected health information

In respect of the prohibition from production or admission of protected health information, this could include, for example, material such as hospital notes pertaining to a contemporaneous hospital admission which might contain inculpatory or exculpatory evidence (such as evidence of the complainant's physical injuries), and might have more probative value than just the records of a doctor or counsellor taken during a consult for treatment of a victim-survivor's mental health injuries resulting from an alleged offence.

While there is a risk that an accused might be prohibited from accessing information that could assist their case, the confidential communication and protected health information scheme (as amended) contains a significant safeguard in section 32C of EMPA, which allows an accused to seek the leave of the court for the production and/or admission of such evidence. The court must consider several factors in section 32D of EMPA (as amended) including whether the evidence has substantive probative value, and whether the public interest in preserving the confidentiality of the information is substantially outweighed by the public interest in admitting into evidence, evidence of substantial probative value. The court's discretion in this regard, and the public interest balancing exercise it must undertake in considering an application under section 32C, affords considerable protection to the fair hearing rights of an accused. Further, the court must, in making a decision to grant leave under section 32C, apply and give effect to relevant Charter rights, including the right to fair hearing.

There are also additional safeguards in section 32E of the EMPA, which specifies that Division 2A of Part II EMPA will not prevent the production or adducing of protected evidence in certain circumstances, including for example with consent of the complainant or if the protected evidence was made or prepared for the purpose of a legal proceeding arising from the commission or alleged commission of the sexual offence.

Confidential statement

Despite its limited scope, a confidential statement from a complainant describing the harm that is likely to be caused by the grant of leave might also contain information that is relevant to an accused's defence at trial. The inclusion of the 'interests of justice' exception will allow for disclosure of the confidential statement to the accused in limited circumstances and will require the court to consider the interests of the parties and

larger questions of legal principle, such as the public interest and policy considerations. This will safeguard the accused's right to a fair trial.

The relationship between the limitation and its purpose

The reforms in Part 6 of the Bill and the associated interference with fair hearing rights under section 24 of the Charter are rationally connected to the legislative purpose of protecting the privacy of sexual offence complainants, and minimising the harmful effects of criminal proceedings upon them.

Availability of less restrictive means

This Part seeks to protect and promote the right to privacy of sexual offence complainants, and to improve their experiences of the criminal justice process and justice outcomes more generally. This is effected by the Bill protecting a broader range of health information from production and use in criminal proceedings, and by giving complainants the right to be heard in decisions regarding the use of their sensitive material, including by provision of a confidential statement

I am of the view there are no less restrictive means available to achieve these important aims, given an accused may still seek leave to compel, produce or adduce the protected evidence and the court may disclose a confidential statement if it is in the interests of justice. This is the best way to balance the rights of complainants with the rights of the accused in criminal proceedings.

Accordingly, I am satisfied that Part 6 of the Bill is compatible to the right to fair hearing under the Charter.

Retrospective criminal proceedings

Clause 94 of the Bill provides that that amendments to Division 2A of Part II of EMPA apply to a proceeding irrespective of when the proceeding commenced, except where an application for leave under section 32C is already ongoing and has not been determined. While this would appear to give the changes to the confidential communications regime retroactive effect, there is a carve out; no information constitutes protected health information where the proceeding commenced prior to the amendments to EMPA taking effect.

The effect of these transitional provisions is that the EMPA reforms could apply to a proceeding for an offence alleged to have been committed prior to the provisions commencing. I am, however, satisfied that section 27 of the Charter—the right against retrospective criminal laws—is not limited, because the provisions do not retrospectively criminalise behaviour that was not previously unlawful, relating instead to procedural changes regarding the laws of evidence, which fall outside of the scope of the right.

Extension of temporary measures (Part 7)

Amendment of Court Security Act 1980

The Bill amends the *Court Security Act 1980* (CSA) to extend the operation of temporary provisions that give courts and tribunals the ability to effectively manage their premises in response to the COVID-19 pandemic.

Right to life

The CSA amendments promote the right to life as the purpose is to ensure that courts and tribunals have the necessary powers to respond to the risks posed by the COVID-19 pandemic. These powers include restricting physical access to the court or giving reasonable directions for the health of persons at the premises. This will ensure that courts and tribunals can respond adequately and in-line with relevant public health advice. These measures protect the health of persons at the premises by minimising the potential of COVID-19 transmission, and thereby promote the right to life.

Right to freedom of movement and right to fair hearing

These amendments engage sections 12 and 24 of the Charter by clarifying that authorized officers may refuse a person access to, or to remove a person from, the court or tribunal premises. Refusing access may be seen as restricting access to a public hearing, thereby impinging on the right to a fair hearing and the principle of open justice. Further, refusing access may also prevent a person from attending their own hearing, thereby potentially restricting their right to a fair hearing.

However, the temporary provisions provide that authorised officers can only exercise these powers to protect the health of persons at court and tribunal premises during the COVID-19 pandemic, or to follow the relevant pandemic orders or public health directions in relation to COVID-19. In addition, the amendments aim to promote the right to life, by ensuring that persons who may present a health risk do not compromise the health of staff and other court users. Further, courts and tribunals currently have alternative measures in place to facilitate virtual hearings, which is likely to minimise the potential impacts of a person being refused physical access to court premises. Accordingly, any impact the right to freedom of movement and right to a fair hearing is reasonable and justified by the underlying intention to protect the right to life and to minimise disruption to the administration of justice by courts and tribunals.

Right to freedom of expression

These amendments engage section 15 of the Charter by clarifying that authorized officers can exercise their power to give reasonable directions for the health of persons on court or tribunal premises during the ongoing COVID-19 pandemic. As the forms of protected expression are broad, some directions (such as requiring a person to wear a face mask) may be seen to impinge on a person's right to freedom of expression. However, the Charter provides that the right can be subject to lawful restrictions, including for the protection of public health. Any impacts on the right to freedom of expression are justified as they are reasonably necessary for the protection of public health while the effects of the COVID-19 pandemic are ongoing.

Amendment of Open Courts Act 2013

The Bill amends the *Open Courts Act 2013* (OCA) to extend the temporary provision which clarifies that providing remote public access to proceedings (through contemporaneous audio or audio-visual broadcast or by subsequently providing an audio recording or transcript) does not contravene any rule of law relating to open justice, and to clarify that the provision applies if the remote method of access is in the interests of justice.

Right to life

The OCA amendments promote the right to life by enabling courts and tribunals to continue to limit the ongoing risk of COVID-19 transmission to judicial officers, staff and the community, during the administration of justice. The amendments provide for continuing clarity about the ability of courts and tribunals to provide public access to proceedings remotely, ensuring that the administration of justice continues while balancing the public health risks associated with physically open courtrooms.

Right to a fair hearing

The OCA amendments engage this right as the right to a public hearing may be limited where remote public access to proceedings is provided (such as when livestreaming proceedings).

The Bill contains safeguards to ensure that the right to a fair hearing is not unduly limited.

The amendment relating to providing audio or audio-visual broadcasts, audio or audio-visual recordings or transcripts, is temporary. This provides clarity on access arrangements used in place of physically open courtrooms, for a defined period, to limit the risk of COVID- 19 transmission when the pandemic is likely to have ongoing implications, and to enable courts and tribunals to efficiently manage the backlog of cases.

Further, the new 'interests of justice' requirement confirms the legislative intent that courts' and tribunals' discretion to provide remote access must be exercised compatibly with the Charter.

Any restriction of the right to a fair hearing is reasonably necessary and justified by the need to protect the right to life and to continue the administration of justice during the ongoing COVID-19 pandemic, and to enable courts and tribunals to efficiently manage the backlog of cases.

Right to freedom of expression

The right to freedom of expression includes the freedom to seek, receive and impart information about public and political issues (section 15 (2)). Part 15 engages this right as courtrooms may not be physically open where digital technology is used to provide public access to proceedings. This may impact the ability of the media and the public to seek and obtain information by physically attending court.

There are safeguards to ensure that this right is not unduly limited. The provision is temporary and, as noted above, the new 'interests of justice' requirement enhances Charter compatibility by confirming the legislative intent that courts' and tribunals' discretion to provide remote access must be exercised compatibly with the Charter.

This right may be subject to lawful restrictions reasonably necessary to protect public health (section 15(3)). The provision will protect judicial officers, court staff and the community from undue exposure to the ongoing risk of COVID-19 transmission during the pandemic, and enable courts and tribunals to efficiently manage the backlog of cases. To the extent that this right is limited, these amendments are lawful as they are reasonably necessary to protect public health.

Other rights

These amendments may also engage the right to freedom of movement (section 12), peaceful assembly and freedom of association (section 16) and rights in criminal proceedings (section 25).

To the extent the OCA amendments limit any of these rights, I consider the limitations to be necessary, justified and proportionate for the reasons outlined above.

Jaclyn Symes MP
Attorney-General
Minister for Emergency Services

Second reading

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:51): I move:

That the second-reading speech be incorporated into *Hansard*.

Motion agreed to.

Ms SHING: I move:

That the bill be now read a second time.

Incorporated speech as follows:

Sexual violence remains a prevalent social, criminal, and human rights issue in Victoria. It affects community safety, particularly the safety of women and children, and causes long-term, serious harm to victim-survivors. Conviction rates for sexual offences remain unacceptably low. Only 1 in 23 rape cases that are reported result in a conviction. The time for change is now. In the wake of reform in other jurisdictions, and strong and powerful advocacy for sexual offence reform from brave women such as Saxon Mullins, Grace Tame and Brittany Higgins, we must act decisively to protect the community from sexual violence and ensure the criminal justice system can respond effectively to these abhorrent crimes.

The reforms in this Bill will deliver critical improvements to the way in which justice is delivered for those who are the victim of sexual violence. It will strengthen our sexual offence laws, provide additional protections for victim-survivors, and ensure that those who perpetrate sexual abuse are held to account for their actions. In particular, it will deliver on the Government's commitment to introduce legislation to deliver affirmative consent laws and make it explicit that stealthing is a crime.

These reforms represent the first stage of the Victorian Government's legislative response to the Victorian Law Reform Commission's 2021 *Improving the Justice System Response to Sexual Offences* report, which contains 91 recommendations to improve the way the justice system responds to sexual offences.

This Bill marks the beginning, rather than the end, of a reform journey. The Government acknowledges there is more work to be done and commits to continuing this reform process in consultation with victim-survivors, victim-survivor advocates and key stakeholders.

Affirmative consent and non consensual non-use, removal or tampering of a condom

Part 2 of the Bill will reform the consent and reasonable belief in consent provisions in the *Crimes Act 1958* to introduce an affirmative model of consent. This will implement recommendations 50 and 51 of the VLRC report.

In some sexual offences, including rape and sexual assault, the prosecution must prove that the physical act occurred without consent and that the accused person did not have a reasonable belief that the complainant consented. The definition of consent and how this concept is understood and applied by juries is therefore of critical importance, as it is the presence or absence of consent and a reasonable belief in consent that turns a lawful sexual act into a serious criminal offence.

While there have been significant efforts to reform Victoria's consent provisions, most recently in 2014 and 2016, research shows that sexual offence laws are often misunderstood, and rape myths and stereotypes, including narratives of 'implied consent', still feature heavily in trials. In its report, the VLRC said that Victoria's consent provisions are strong, but there is room for improvement. The Bill will strengthen the consent provisions to ensure our laws around sexual offences and consent are clearly defined, reflect modern standards and community expectations, and can be appropriately and fairly prosecuted.

In response to the VLRC's report, the Victorian Government committed to adopting an affirmative consent model and amending the law to make it clear that the conduct colloquially known as 'stealthing'—that is, the non-use, removal of or tampering with a condom without consent—is a crime. Similar reforms have recently been introduced in New South Wales and the Australian Capital Territory and are being considered in other jurisdictions. Many features of the Bill align with these reforms, which will help us collectively move towards a more consistent national approach in this important area of law.

Under an affirmative consent model, consent must be actively and positively expressed, not assumed. The people involved in the sexual act are required to take steps to make sure that the other person, or people involved, are consenting. An affirmative consent model will put greater scrutiny in trials on the actions that the accused person took to obtain consent and move away from reliance on preconceived ideas and outdated notions highlighted by the VLRC report. In a trial, it shouldn't be a matter of just "what did the victim-survivor

do to say no?", but more importantly "what did the accused person do to make sure the other party was consenting, both before and during the sexual act?"

The reforms have been the subject of significant consultation to ensure they reflect community attitudes about sexual relationships and the broad range of contexts in which sexual activity can occur. The VLRC received 71 written submissions and conducted 99 consultation sessions across a range of issues, including consent. The Department of Justice and Community Safety has conducted an additional 40 consultation sessions with over 120 different stakeholders specifically on the consent reforms, including with victim-survivor groups, advocates and legal stakeholders and service providers. I want to sincerely thank all stakeholders who have been involved in this process for sharing your lived experiences and considered views, and for being instrumental in shaping these important reforms.

Put simply, the Bill makes it clear when there is consent, when there is no consent and what is required of a person to make sure there is consent. The requirements of the Bill are not onerous and will not interfere with consensual activity. Strong laws around sexual offending and consent are vital to ensuring it is clear what we as a community expect of people engaging in sexual acts and relationships. The Bill promotes healthy sexual relationships that are based on the principles of mutual respect and bodily autonomy.

Definition of consent

The Bill makes a series of reforms relating to the meaning of consent. Collectively, these provisions provide a holistic understanding of sexual violence and the role consent plays in sexual relationships.

The Bill will update the definition of consent in section 36 of the Crimes Act to 'free and voluntary agreement' which promotes consistency with the definition of consent in most jurisdictions. The word 'voluntary' makes clear that agreement cannot be obtained through coercion, threats or other inappropriate means, and will reinforce that involuntary bodily reactions are not an indication of consent.

Two new provisions will be added to section 36 that will provide further qualification to the definition of consent and make it clear that consent can never be assumed.

First, the Bill provides that a person does not consent to an act just because they do not resist the act verbally or physically. We know freezing is a common response to sexual violence. Basing a lack of consent on the amount of resistance offered rather than a lack of positively communicated consent is outdated and has long since been replaced by communicative standards in Victorian legislation.

Second, the Bill makes it clear that a person does not consent just because of previous sexual behaviour. Consent is required for each separate sexual act and cannot be assumed just because a person has previously consented to the same act or a different act with the same person, or the same act or a different act with a different person. No one is obliged to say 'yes' just because they have said 'yes' before. The new provisions will help to overcome pervasive rape myths and stereotypes that the research has shown still impact assessments of consent.

The Bill also inserts a new objective to apply across sexual offence provisions and which the court must have regard to as part of the definition of consent. The new objective promotes the principle that consent to an act is not to be assumed and that consent involves ongoing and mutual communication and decision making between each person involved. That is, each person should seek the consent of each other person in a way and at a time that makes it clear whether they consent. This additional objective will reinforce two critical points in relation to consent. First, that assumptions have no place in consent or sexual offence trials—consent can only be based on a person's clear communication of their willingness to engage in the act. Second, that sexual acts and relationships require reciprocated agreement between the people involved in the act—consent isn't just one conversation before an act, but an ongoing one throughout the act.

Circumstances where there is no consent

In addition to defining what consent means, the Crimes Act already sets out circumstances where there is no consent. These are known as consent vitiating circumstances, and support decision-making in sexual offence cases by highlighting instances where a person does not consent, such as due to the inappropriate actions of the accused (e.g. where force or threats are used to make the person submit) or because they were incapable of consenting in the circumstances (e.g. because they were asleep or unconscious).

The Bill will introduce a new provision which re-enacts and builds upon the existing consent vitiating circumstances. Separating these circumstances from the definition of consent in section 36 will make it clear what consent is and what it is not. The list of circumstances has also been re-ordered to ensure the existing concept that a person does not consent if they do not say or do anything to indicate consent is more prominent. This principle is central to the communicative model of consent and reinforces that silence or 'freezing' is not consent.

The Bill will add five new circumstances where there is no consent. These will address cases where a person submits to or engages in the sexual act due to:

- force, harm or fear of force or harm of any kind
- coercion or intimidation
- abuse of a relationship of authority or trust
- false or misleading representations about payment for commercial sexual services
- agreement that a condom will be used, when in fact it is not used, removed or tampered with (known as 'stealthing').

Force, harm, fear of force or harm

The Bill makes clear that there is no consent if a person submits because of force, fear of force, harm of any type, and fear of harm of any type. This combines and strengthens the consent vitiating circumstances currently outlined in section 36(2)(a) and (b). This new provision makes clear what may be a type of harm, and when and how it may occur.

Harm is not just physical. It can include psychological and economic or financial harm and subtle emotional manipulation. These varied types of harm are particularly apparent in situations of family violence, where perpetrators may use coercive and controlling behaviours over an extended period of time. However, they are not exclusive to family violence, and may be a feature of sexual violence that occurs in other settings.

The provision sets out a non-exhaustive list of examples of the type of harm that may cause a person to submit to a sexual act to give a sense of the breadth of harm that could be captured. Other types of harm that are not included in the examples can still be relied on in prosecutions. The examples of harm provided for in the legislation include:

- Economic or financial harm, such as loss or withdrawal of housing, food or other financial support.
- Reputational harm, which may include fear of public humiliation. For example, a person who submits to an act because the other person has threatened to release disparaging information or a person's sexual or gender history.
- Harm to a person's family, cultural or community relationships may cover a broad range of situations. For example, submitting to a sexual act because it is culturally expected or there would be repercussions if a person did not submit such as being cut off or ostracised from their community or family.
- Harm to a person's family, cultural or community relationships may cover a broad range of Harm to employment, which may extend to loss of a job, a reduction in income or job prospects.
- Harm to a person's family, cultural or community relationships may cover a broad range of Family violence involving psychological abuse or harm to mental health may include, for example, verbal aggression, emotional manipulation or controlling behaviour. This could also include threats to withdraw care or medication, or sponsorship for a visa.
- Harm to a person's family, cultural or community relationships may cover a broad range of Sexual harassment, which includes when a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, or engages in any other unwelcome conduct of a sexual nature towards the other person.

The provision makes clear that it does not matter when the force, harm, or conduct causing fear occurs, provided it is the reason for submission. For example, a person may submit because of a threat made at the time of the act or because the other person has previously harmed them and they are afraid that they will be subjected to harm again if they do not.

The Bill also makes it clear that submission to an act can result from a single incident or be part of an ongoing pattern involving this conduct or fear. An ongoing pattern of behaviour could be made up of individual instances of harm, for example, that on their own may seem subtle or minor and may not have resulted in submission to the sexual act. These provisions are also consistent with the recent reforms commenced in New South Wales.

Coercion and intimidation

The Bill provides that a person does not consent if they submit to the sexual act because of coercion or intimidation. As with the provisions dealing with the use of force and harm, similar provisions are included about the timing of the coercion or intimidation, and whether it is a single incident or is part of a pattern of behaviour.

Collectively, these provisions better reflect the complexity of consent, particularly in relationships characterised by family violence or situations where the accused person is known to the complainant. Force, harm, fear of force or harm, coercion and intimidation in these relationships is often ongoing and part of an established pattern or cycle of coercive and controlling behaviour. This can create a constant environment or state of fear.

We have heard that victim-survivors often adopt strategies to manage their safety or the safety of others in this environment by submitting to sexual acts regardless of when the behaviour or conduct that caused the fear occurred. The new provisions in section 36AA(1)(b) and (c) better reflect these family violence dynamics and how the ability to give free and voluntary agreement is negated in these situations.

Overborne by the abuse of a relationship of authority or trust

The Bill provides that a person does not consent if they submit because they are overborne by the abuse of a relationship of authority or trust. A similar provision is provided for in other jurisdictions, including the Australia Capital Territory and New South Wales, and has been used in successful prosecutions.

This provision will capture situations where a person abuses their position of power in a relationship in such a way as to cause the other person to submit to the sexual act or to feel they have no choice but to submit. For example, this may be because of the power or control the other person holds over them and because they fear they will suffer an adverse consequence if they do not submit. In these situations, a person cannot give free and voluntary agreement.

The phrase 'overborne by the abuse of a relationship' is consistent with the language used in the equivalent provision in New South Wales. 'Abuse' is not defined in the Bill but is an understood term in the common law. That is, the accused person must have taken advantage of the relationship or misused their position of power within the relationship.

Abuse of a relationship could result from explicit behaviour, such as threats about consequences if the person does not submit to the sexual act or reminders about the power imbalance. For example, an employee who submits to an act with their employer because the employer told them they would not receive a promotion if they did not. A person could also abuse their position within the relationship by implicit behaviour that may create fear of repercussions in the complainant. For example, where the complainant cannot leave in an institutional setting or may have limited options to make a complaint. In each situation, the result of the accused person's behaviour is that the complainant is overborne into submission and cannot give free and voluntary agreement.

A relationship of authority generally exists where a person has the right (legal or otherwise) to direct or control the other person's actions. Some types of relationships of authority that may be covered by this provision include employers or persons in management and employees, employees of a prison or detention facility and prisoners/detainees, or a sporting coach and athlete.

A relationship of trust goes beyond any ordinary relationship where trust may be present. The provision is intended to capture relationships involving an obligation of care and protection. For example, a healthcare professional and patient, a person who provides care or support to a person with a disability, or a lecturer or teacher and adult student. Relationships of trust could also extend to cultural or religious relationships such as a kinship relationships in Aboriginal or Torres Strait Islander culture. Some relationships may cover both authority or trust, such as an on-duty police officer and a member of the public, or employees of a mental health facility and involuntary patients of the facility.

We recognise that power imbalances exist in many relationships and that these can involve sexual acts that are loving and consensual. The presence of a relationship of authority or trust, or a relationship where there is a power imbalance, is not enough to negate consent on its own. There must have been an abuse of the relationship by the person in the position of power that caused the complainant to be overborne for the circumstance to apply.

False or misleading representation about payment of commercial sexual services

The Bill makes it clear that a person does not consent if the act occurs in the provision of commercial sexual services and the person engages in the act because of a false or misleading representation that they will be paid.

Sex work is contingent on payment. Making a false or misleading representation about payment to a sex worker who then engages in the act therefore makes it non-consensual. This conduct is currently only captured by the lesser offence of procuring a sexual act by fraud. The Bill makes it clear that in some situations, this conduct could be rape or sexual assault.

What constitutes a false or misleading representation about payment will depend on the circumstances. The circumstances could include prior conversations between the accused person and the complainant about payment. For example, if an accused person says they will pay the complainant a particular price for a sexual

service and does not make the payment. A false or misleading representation could include providing false bank details to the complainant, falsifying proof of payment or otherwise pretending to make payment but failing to do so. Consideration could be given to an accused person's actions after the sexual act to determine whether representations they made before the act were false or misleading. For example, if a person made an electronic payment before the sexual act but reversed or withdrew the payment after the act without reason this may be evidence that the original electronic payment and any associated representations about making payment were false or misleading.

False or misleading representation can be by words or conduct (including omissions) and be implicit or explicit. An implicit representation could include agreeing to the sexual service but not explicitly saying they will pay.

Payment is not defined but could include a non-monetary payment, benefit or reward on the basis of which the commercial sexual service is provided. Partial payment would not satisfy the requirement to make payment, unless it was agreed on by both parties.

Non-use or removal of or tampering with a condom

In response to the VLRC's recommendation, the Bill will make it clear that a person does not consent to an act if they engaged in the act on the basis that a condom is used and:

- either before or during the act any other person involved in the act intentionally removes the condom or tampers with it, or
- the person who was to use the condom intentionally does not use it.

The VLRC noted that this conduct is mostly perpetrated by men against women, as well as by men who have sex with men. There is limited research about how prevalent this behaviour is, but one study conducted at the Melbourne Sexual Health Clinic in 2018 found that nearly one in three women and one in five men who have sex with men reported having experienced non-consensual condom removal. The study also found that women who were subjected to this behaviour were more likely to be a sex worker.

It is clear this conduct can cause significant harm and trauma, including sexually transmitted diseases, unplanned pregnancy and psychological distress or fear. But more than this, the non-use, removal or tampering of a condom without consent is a violation of bodily and sexual autonomy. It is a violation of consent, as the act has changed without the person's free and voluntary agreement.

The VLRC noted that the law in Victoria does not make it clear that this conduct is a criminal act and it has been prosecuted inconsistently. This has likely contributed to poor reporting rates and an unsatisfactory response from the criminal justice system. The same study at the Melbourne Sexual Health Clinic suggested that only 1% of patients in the study reported the event to the police.

Explicitly providing the non-use, removal or tampering of a condom without consent as a circumstance where there is no consent will empower victim-survivors to identify it as a criminal act and encourage reporting. It will enable the conduct to be prosecuted as rape or sexual assault. It is also broadly consistent with the approach in other jurisdictions such as the Australian Capital Territory and Tasmania who have also included the conduct as an explicit circumstance where there is no consent.

The provision will only apply where there has been explicit or implicit agreement to use a condom prior to the act taking place. The provision will only capture intentional non-use, removal or tampering of a condom, not accidental conduct or consensual acts.

Reasonable belief in consent—requirement to take steps to ascertain consent

The Bill will establish a new requirement for a person to take a step to ascertain consent for their belief to be reasonable. A step must involve saying or doing anything to find out if there is consent. This is a critical part of an affirmative consent model.

These reforms will make clear that, if you want to engage in a sexual act with someone, you have to say or do something to find out whether they also want to engage in the sexual act with you. This is an entirely reasonable expectation and will reflect the existing practices of most people in respectful sexual encounters. Under this new law, assumptions about whether a person consents or ambiguity about whether they want to be involved in the sexual act are not enough to satisfy the requirement to have a reasonable belief in consent.

Under the existing law, for offences such as rape and sexual assault, the prosecution must prove that the accused person did not have a reasonable belief that the complainant was consenting. Reasonable belief focuses on the accused's actual belief and whether the belief was reasonable in the circumstances. This involves considering some of the accused's particular characteristics and the circumstances of their situation. Guidance is provided in the *Jury Directions Act 2015* about what the circumstances may or may not include. For example, it may include the personal characteristics of the accused person. It then becomes a matter of what would be reasonable for a person with those relevant characteristics and in that situation to believe.

These reforms will elevate the taking of active steps to a requirement in every case. Importantly, this will put greater focus on the accused person's actions in sexual offence trials, rather than focusing on what the victim-survivor did to indicate they did not consent. The VLRC found that whether an accused person had taken any steps to find out whether the other person consented was rarely considered in trials. Analysis of transcripts from rape trials after 2015 showed that instead of questions about what the accused person said or did to obtain consent, complainants continued to be questioned on outdated notions such as whether they fought back or said 'no'.

The Bill provides that the accused person's belief that the complainant was consenting is not reasonable if, within a reasonable time before or at the time the act takes place, the accused person does not say or do anything to find out if the complainant is consenting. This is consistent with legislative reforms in New South Wales and the Australian Capital Territory.

What must be said or done to check if the other person consents will depend on the circumstances. The provision is flexible to cater to different styles of communication, including verbal and non-verbal. For example, saying or doing anything could include asking questions or using touch, gestures or body language. If they meet this requirement, the trier of fact may then consider what was said or done. This may be different depending on the type of relationship. For example, what is said or done to find out if there is consent in a long-term relationship, where there may be an established style of communication, may be more subtle and nuanced. Regardless of the situation or the type of relationship, there will now always be a requirement to take an active step, by saying or doing anything, to find out whether the other person consents. This means it should be more than a thought process or assumption.

A person must say or do anything a reasonable time before or at the time the act takes place. In most situations, there is an expectation that the person will say or do anything immediately before or at the time of the sexual act. It is unlikely that saying or doing anything to find out if the other person consents at a much earlier time, for example at a party that took place hours before the sexual act, would be considered reasonable. However, in limited circumstances it may be appropriate to say or do anything at an earlier time, so long as consent continues to be present at the time of the act.

The onus is on the prosecution to prove, beyond reasonable doubt, that the accused person did not say or do anything to find out whether the complainant consented. If it is established that nothing was said or done to ascertain consent, the accused's belief cannot be considered reasonable, and this element of the offence will be made out. If, however, the accused did say or do something to ascertain consent, they may still be found guilty if the prosecution establishes that their belief in consent is not reasonable in the circumstances.

The Bill provides a narrow exception to the requirement to say or do anything, to address cases where the accused person's failure to do this was substantially caused by a cognitive impairment or mental illness. This is consistent with the exception provided for in New South Wales. This will ensure that accused people whose capacity to say or do anything to find out if there is consent is impaired because of a serious, diagnosed cognitive impairment or mental illness will not be unfairly disadvantaged by the new affirmative consent requirement. The exception will not apply where the cognitive impairment or mental illness is the effect of self-induced intoxication (i.e. caused by alcohol or drugs), in line with section 36B of the Crimes Act.

To be clear, the exception is not a loophole or a "get out of jail free" card. It will not automatically apply to every accused person with a cognitive impairment or mental illness—only in those cases where this illness or impairment is a substantial cause of their failure to say or do anything to ascertain consent. The accused person will bear the legal onus of proving, on the balance of probabilities, that the exception applies. This is appropriate, as evidence about their impairment or illness is a matter that is peculiarly within the knowledge of the accused and would be too difficult for the prosecution to prove, particularly if the accused exercises their right to silence. Even if the exception is made out, the decision-maker will still have to consider whether, in all the circumstances, the accused person had a reasonable belief in consent. This means that an accused person may prove the exception, but still be found not to have had a reasonable belief in consent, and therefore be found guilty of the offence.

Together, these reforms will strengthen and provide clarity on the provisions in the Crimes Act that relate to consent and reasonable belief in consent. The reforms will bring Victoria's laws in line with contemporary understandings and expectations of consent and will create long-lasting change to the way Victorians participate in sexual activity.

Given their significance, the government will review the operation of the consent reforms. It is important to allow the new provisions to be applied in practice before a meaningful review of their effectiveness can be undertaken. This review will also be able to draw upon experiences and learnings in other jurisdictions that have recently undertaken affirmative consent reform, including New South Wales and the Australian Capital Territory, which have committed to their own reviews.

To realise the ambition of these reforms and effect change across the Victorian community, we will work with local organisations and specialist services to deliver community-based consent education, as announced in the recent 2022–23 State Budget, to ensure affirmative consent is understood, supported and adopted by Victorians. Ultimately, our goal is to stop sexual violence before it happens in the first place. When well understood, these reforms have enormous potential to change people's behaviour and attitudes, profoundly supporting our efforts to prevent sexual violence. This will complement existing education initiatives, like Respectful Relationships in schools, to embed a culture of consent and respect in young people and across the community.

Image-based sexual offence reforms

Image-based sexual abuse (IBSA) involves the non-consensual creation and/or sharing of intimate images or threats to do so. Victoria has historically been a leader in addressing this insidious and widespread form of abuse which, as of 2019, almost one quarter of Australians aged 16 to 49 had experienced. In 2007, Victoria was one of Australia's first jurisdictions to specifically criminalise IBSA through the creation of new offences in the *Summary Offences Act 1966.*

Almost 15 years after these offences were introduced, the VLRC recommended updating Victoria's IBSA laws to better reflect the seriousness of this offending and respond to advancements in the technologies used to commit it. The VLRC also recommended criminalising the taking of an intimate image without a person's consent in recognition that victim-survivors can suffer harm through knowing that an intimate image of them exists, even where distribution has not occurred or been threatened.

The Bill implements the VLRC's recommendations by consolidating Victoria's main IBSA offences and moving them to the Crimes Act. The three new offences cover producing, distributing and threatening to distribute an intimate image.

Moving the IBSA offences into the Crimes Act will mean that these crimes will now be classified as indictable, rather than summary offences. This will strengthen the criminal justice response by enhancing police search and arrest powers in relation to this type of offending. Additionally, the Bill will introduce a new, higher maximum penalty of three years' imprisonment to better recognise the seriousness and harmful effects of this type of offending. This reform brings Victoria's maximum penalties in line with other comparable jurisdictions.

The Bill expands the definition of 'intimate image' to include digitally created images in order to capture 'deepfake porn', where an image is generated, manipulated or altered to appear to depict the victim-survivor. The Bill also amends this definition to better cover persons of diverse genders. Under the change, in line with legislation in New South Wales and other jurisdictions, an intimate image will include an image that depicts the breasts of a transgender or intersex person identifying as female. While this will achieve the intended purpose, the government acknowledges that there is more work to be done to improve the inclusivity of language relating to gender and gender identity in the Crimes Act and Victorian legislation more broadly. This will be a longer term project.

In line with Victoria's current laws, the new offences will include an exception if the person depicted in the image has provided their consent to it being produced or distributed. However, in line with Victoria's affirmative consent model, these provisions have been strengthened. For example, the Bill specifies that the fact a person consents to one act, such as the production of an intimate image, does not mean they have consented to another, such as distribution of that image.

Research shows that women, First Nations Australians and lesbian, gay and bisexual people are more likely to be victims of IBSA. The Bill will extend procedural protections to IBSA complainants to ensure they are better supported during criminal proceedings, including alternative arrangements for giving evidence and suppressing a complainant's identity unless they wish to be identified. These measures and aim to reduce the risk of traumatising victim-survivors through the criminal process and promote their right to privacy.

The Bill will also assist complainants by empowering the courts to make a 'disposal order' for the destruction or disposal of an intimate image. This will help address the long lasting and recurring harm image-based sexual abuse can have if intimate images are allowed to remain in the possession of an accused person.

While these reforms to strengthen Victoria's IBSA laws are appropriate, the VLRC noted that these changes may result in over-criminalising mistakes made by children, who frequently use technology and may have a less developed understanding of what constitutes IBSA offending. To address this risk, the Bill implements the VLRC's recommendation of requiring the Director of Public Prosecutions to consent to commencing a prosecution against a person who was under 16 years old at the time of the alleged offending. This procedural safeguard will help ensure that children are only prosecuted for this type of offending in appropriate cases.

Facilitating prosecutions for historical sexual offending

The Bill will facilitate the prosecution of historical sexual offending, addressing recommendation 56 of the VLRC report. New section 7B of the *Criminal Procedure Act* will address the difficulties that currently arise for the prosecution where offending is alleged to have taken place during a period but the applicable offence changes during that period.

Problems can arise when the prosecution is unable to pinpoint the exact time of the alleged conduct—which is all too common in these cases, particular for historical sexual offending against children—and it is not clear which offence should apply. A recent example of this problem is where an offence is alleged to have been committed during the period when new, modernised sexual offences laws were introduced in 2017 by the *Crimes Amendment (Sexual Offences) Act 2016*. In this example, it may be unclear whether the old or new criminal offences apply, due to the lack of certainty about the precise time when the offence was committed. In some instances, this uncertainty has resulted in cases being discontinued, or charges not being filed, despite the alleged conduct being a criminal offence at all times during the period.

New section 7B will address this gap in the law. It will ensure that the prosecution can rely on whichever offence carries the lesser maximum penalty, and can rely on this offence in relation to the entirety of the period.

Strengthening protections for confidential communications of sexual offence victim-survivors

To protect the privacy of victim-survivors and ensure that they are not discouraged from seeking counselling, the law already prohibits a 'confidential communication' from being compelled, produced or used in a proceeding, without leave of the court. 'Confidential communication' covers communication made confidentially by a victim-survivor to a registered medical practitioner or counsellor in the course of the client-practitioner relationship.

Despite this protection, the VLRC found that many victim-survivors are not made aware of applications for disclosure of their confidential communications and highlighted the importance of their participation in these applications.

In line with recommendation 87 of the VLRC report, the Bill will expand and strengthen protections in criminal proceedings, including expanding protections to include 'health information' (such as personal information about a sexual offence victim-survivor that is collected in providing a health service).

The Bill will make it clear that victim-survivors' concerns regarding the use of their sensitive records are heard and considered, including by:

- requiring the prosecuting party to ensure victim-survivors are notified about applications to access their information, and are advised that they have a right to appear and may wish to consider obtaining legal advice; and
- providing victim-survivors a clear right to appear in applications and permitting them to provide a confidential statement describing the harm they are likely to suffer if the application is granted. The court will only be able to disclose this statement in very limited circumstances, where doing so would be in the interests of justice, such as where necessary to ensure the accused's right to a fair trial is upheld.

Consistent with the VLRC recommendation, the Bill confines these reforms to criminal proceedings. Expanding these reforms to civil proceedings will be subject to further consideration by the Government and may be considered in future legislative reform.

These amendments fulfil the commitment made earlier this year, when similar house amendments were proposed by Mr Grimley MP. I thank Mr Grimley for agreeing to withdraw his amendments at that time, which has allowed the Government to consider these reforms in the context of this broader Bill, with the benefit of stakeholder feedback.

Improving criminal procedure protections

The Bill will make a range of improvements to criminal procedure, to better protect victim-survivors and witnesses from unnecessary additional distress and trauma.

The Bill better protects young complainants by clarifying the scope of a *Criminal Procedure Act 2009* (CPA) provision that prevents the cross-examination of witnesses in certain proceedings. It specifies that the provision applies if a complainant for a sexual offence charge was a child or person with a cognitive impairment when the relevant proceeding commenced. This removes uncertainty by confirming that a child complainant who turns 18 prior to a committal hearing is still protected from being cross-examined.

The Bill also strengthens other pre-trial cross-examination protections. The VLRC found that cross-examination is particularly stressful for victim-survivors of sexual or family violence and witnesses with a cognitive impairment. To address this, it reaffirmed recommendations made in its 2020 report on *Committals*

(Committals Report) to strengthen measures in the CPA that protect witnesses from being unnecessarily traumatised through pre-trial cross-examination. The Bill implements recommendation 45 of the Committals Report by requiring the court to have regard to additional considerations when determining whether to allow the pre-trial cross-examination of a witness who:

- has a cognitive impairment, or
- is a complainant in a proceeding that relates to a charge for a sexual or family violence offence.

This requirement is already in place in relation to child witnesses. The additional considerations include the need to minimise trauma that might be experienced by the witness, and any relevant condition or characteristic of the witness.

The Bill also addresses recommendation 46 of the VLRC Committals Report by requiring magistrates to provide reasons for granting leave to cross-examine a witness and identify each issue on which the witness may be cross-examined. However, magistrates will not be required to provide the reasons in writing to prevent an undue burden being placed on the court.

The Bill will make ground rules hearings mandatory for all sexual offence complainants, implementing recommendation 84 of the VLRC report. At ground rules hearings, the court and counsel discuss the questioning of witnesses, to help ensure questioning is respectful and fair, and to encourage the best evidence from the witness. They are currently only available in sexual offence and other limited matters that involve a witness (other than the accused) who is a child or has a cognitive impairment. Expanding the availability of these hearings will fairly and effectively meet the needs of a broader cohort of complainants.

Jury directions

The Bill will strengthen and improve jury directions laws applying to sexual offence trials by implementing recommendations 78, 79 and 82 of the VLRC report.

Addressing misconceptions about sexual violence earlier and more often

Jury directions are an essential feature of the criminal justice process. They ensure the jury is provided with appropriate guidance in its decision making, such as in relation to the meaning of certain terms and the matters it should and should not take into account. They also help to address common misconceptions that may otherwise lead to flawed decision-making and unfair outcomes.

The Bill will introduce a clear process that requires trial judges to give misconception directions at the earliest opportunity and at any time in the trial, if the judge considers there are good reasons to do so. This will ensure that directions are given at the earliest appropriate opportunity, but also only when needed so that juries are not overwhelmed by information. The Bill will also encourage early discussions between the judge and counsel about the jury directions that may be required to be given in a trial, to further streamline this process.

To ensure there is greater clarity about the giving of directions, the Bill will provide that both the new misconception directions introduced by this Bill, as well as some existing misconception directions, will apply to any sexual offence, regardless of when it was alleged to have been committed. These changes will simplify jury directions law for judges and practitioners.

Addressing further misconceptions about sexual violence

The Bill will build on the strong foundation already provided in the *Jury Directions Act 2015* by introducing new directions to counter a broad range of misconceptions relating to sexual violence that may lead to jurors inappropriately assessing the facts in a trial. Some of the new directions are similar to directions recently introduced in New South Wales and New Zealand, and all have a strong evidence base.

The directions will address a range of misconceptions, including about a complainant's behaviour or appearance. For example, the Bill will make clear that an accused cannot rely on an assumption that a person who dresses provocatively or drinks alcohol with someone is consenting to sex. It will also, in appropriate cases, require the judge to direct that both truthful and untruthful accounts of a sexual offence may be given with or without obvious signs of emotion or distress, to address the misconception that a genuine victim-survivor would always appear distressed when giving evidence and that the absence of such emotion indicates they are not being truthful.

To further improve the fairness of sexual offence trials, the Bill will prohibit statements that diminish the credibility of complainants just because they are sex workers or have a particular sexual orientation or gender identity, or suggestions that these complainants require more careful scrutiny by the jury. This will build upon reforms undertaken by the government to de-stigmatise sex work and protect against damaging stereotypes.

Explaining 'proof beyond reasonable doubt'

The *Jury Directions Act* currently allows a trial judge to explain the phrase 'proof beyond reasonable doubt' to a jury, if the jury asks a question which raises the meaning of it. The Bill will require judges to explain the

'beyond reasonable doubt' phrase in all criminal trials unless there are good reasons not to. This reflects the fundamental importance of this concept in criminal trials, while still allowing judges an appropriate discretion. Judges will be required to explain this before any evidence is presented, unless there are good reasons to give it later. This will ensure juries are assisted in understanding this concept at the earliest possible opportunity, while retaining appropriate flexibility to adjust the timing of the explanation to best suit the needs of the trial.

Extending temporary measures to assist the efficient operation of the courts.

Finally, the Bill will assist the courts to operate efficiently and safely, by extending temporary provisions in the *Court Security Act 1980* and the *Open Courts Act 2013* by 12 months to allow courts and tribunals to effectively manage their premises and address court backlogs. The provisions:

- allow authorised officers to restrict access to court and tribunal premises and give reasonable directions for the health of all persons on the premises, and
- clarify that giving the public certain methods of remote access to court proceedings (for example, by providing a livestream) does not contravene any rule of law relating to open justice if it is in the interests of justice.

These reforms will support the courts and tribunals to continue managing their premises safely and using digital technologies to administer justice effectively and efficiently.

I commend this Bill to the house.

Mr RICH-PHILLIPS (South Eastern Metropolitan) (17:51): I move, on behalf of Dr Bach:

That debate on this bill be adjourned until the next day of meeting.

Motion agreed to and debate adjourned until next day of meeting.

STATE SPORT CENTRES LEGISLATION AMENDMENT BILL 2022

Introduction and first reading

The PRESIDENT (17:51): I have another message:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to amend the **State Sport Centres Act 1994**, the **Melbourne and Olympic Parks Act 1985**, the **Australian Grands Prix Act 1994**, the **Albert Park Land Act 1972**, the **Major Events Act 2009** and for other purposes'.

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:52): I move:

That the bill be now read a first time.

Motion agreed to.

Read first time.

Ms SHING: I move, by leave:

That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:52): I lay on the table a statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006*, (the **Charter**), I make this Statement of Compatibility with respect to the State Sport Centres Legislation Amendment Bill 2022 (the **Bill**).

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

Overview of Bill

The Bill amends the *State Sport Centres Act 1994* (the **SSC Act**) to provide for the State Sport Centres Trust (**Trust**) to manage and operate the Knox Regional Sports Park, the Knox Regional Sports Park land, the Lakeside Stadium, and the Lakeside Oval Reserve land, and make other minor changes to improve the efficiency and effectiveness of the Trust's operations. Both the Knox Regional Sports Park land and the Lakeside Oval Reserve land are Crown lands reserved under the *Crown Land (Reserves) Act 1978* (the **CLR Act**), which are currently managed under that Act and reserved for the purposes of public park(s). The Trust is currently appointed as committee of management of the Lakeside Oval Reserve land under the CLR Act. The Bill revokes that appointment and provides for the Lakeside Oval Reserve land to be managed by the Trust under the SSC Act, exercising its statutory functions and powers conferred on it by the Bill under that Act, rather than as a committee of management under the CLR Act.

The Trust has recently been granted a lease under the CLR Act to manage the Knox Regional Sports Park land. The Bill provides for that lease to be preserved and survive commencement of the Bill until (the lease) is terminated or would have otherwise expired. Upon termination of the Lease, the Bill provides for the Knox Regional Sports Park land to be managed by the Trust under the SSC Act, rather than under the lease granted under the CLR Act.

The Bill also amends the *Melbourne and Olympic Parks Act 1985* (the **MOP Act**) to excise a parcel of the national tennis centre land following road widening at Hoddle Street, and makes consequential amendments to the *Australian Grands Prix Act 1994* (the **AGP Act**), the *Albert Park Land Act 1972* and the *Major Events Act 2009* (the **ME Act**).

Human Rights Issues

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

- section 12 Freedom of movement; and
- section 20 Property rights.

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

Freedom of movement

Section 12 of the Charter provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live. The Bill engages the right to freedom of movement by—

- establishing requirements for entering Crown land and varying reservations over the Crown land;
- amending existing consultation requirements in relation to roads and road closures; and
- varying use of reserved land for use as a road.

However, for the reasons set out below, I am satisfied that the Bill does not limit the right to freedom of movement.

Crown land

The Bill provides for the Trust to be responsible for the State Sport Centres land, including the Knox Regional Sports Park land and the Lakeside Oval Reserve land, which are Crown lands reserved under the *Crown Land (Reserves) Act 1978* (**CLR Act**) for the purpose of public parks.

Clause 7 amends section 22 of the SSC Act and provides that the Trust may charge fees for entry to the State Sport Centres or any part of the State Sport Centres land or for the use of any facilities or services at the Centres or on the land. Clause 8 inserts new section 23A into the SSC Act which provides that if the Trust is appointed as a committee of management under the CLR Act over any other land then the Trust may exercise its powers and functions under the SSC Act in relation to that land as if it were State Sport Centres land, including charging fees for entry to that land.

The amendments provide clarity and express provision for the Trust to charge fees as a trustee under the SSC Act, rather than as a committee of management (or any other power exercised) under the CLR Act.

The amendments in clauses 7 and 8 engage the right to freedom of movement by providing a framework to manage the movement of individuals on Crown land by allowing the Trust to charge fees for access to the Crown lands that it manages. Permission for committees of management or trustees to charge fees for entry exists in other Crown land legislation, such as the CLR Act. Charging fees for entry and use is necessary for the Trust to uphold its statutory duties of managing the land, including financial management, use, operation and promotion of the State Sports Centres and the State Sport Centres land. Managing access and use of the

land and facilities promotes permitted uses of the land, for example, the purposes of sporting activities; by managing the use and access by way of charging fees for volume control, sporting activities undertaken using the fit-for-purpose facilities are promoted, and the risk of overcrowding and misuse of facilities is minimised.

For these reasons I am of the view that clauses 7 and 8 do not further limit the right to freedom of movement, and to the extent that may be limited, the limitations are lawful and not arbitrary and are balanced with promoting the right.

Clause 11 of the Bill varies the reservations made under the CLR Act in relation to the Knox Regional Sports Park land and the Lakeside Oval Reserve land, and provides that the land may be used for—

- the purposes of sporting, education, recreational, social or entertainment activities, or purposes connected with those purposes; or
- the erection of buildings or structures or the carrying out of works for those purposes.

The amendments in clause 11 engage the right to freedom of movement by varying the purposes that the Crown land may be used, which also engages how individuals may move through, remain in, enter or otherwise access the land. However, to the extent that the freedom is engaged by varying the reservations, the variations are for the public benefit and in the public interest. For this reason I am of the view that clause 11 does not limit the right to freedom of movement.

Temporary closure and modification of roads

Part 4 of the Bill makes consequential amendments to other Acts, relevantly, the AGP Act and the ME Act.

Clause 23 amends section 33 of the AGP Act to provide that the Corporation or the Trust may temporarily close any road or part of a road in the part of Albert Park that is Lakeside Oval Reserve land, with the consent of the Minister administering the SSC Act and the Minister administering the CLR Act, for the purpose of carrying out the Corporation's or the Trust's functions or exercising its powers. These are the same terms as currently provided for by section 33 of the AGP Act in relation to Melbourne Sports and Aquatic Centre land.

Division 3 of Part 4 of the Bill amends sections 109(3) and 110(4) of the ME Act, which concern the temporary closure of roads, and temporary modification of roads respectively.

Divisions 1 and 3 of Part 4 of the Bill engage the freedom of movement by providing requirements that the Minister administering the SSC Act, the CLR Act, and the ME Act must adhere to before temporarily closing or modifying roads which are part of reserved Crown land, and which would otherwise be accessible to the public (for the purposes for which they are reserved). It is my view that though the freedom is engaged, it is not limited by the Bill as the amendments provide clarity on pre-existing legislative requirements for the land and roads on the land, and any new requirements are limited to consultation with the particular ministers prior to the road closure or modification. Therefore the amendments provide no further limitation of the right.

National tennis centre land

Part 3 of the Bill amends the MOP Act excises a parcel of land from the National Tennis Centre Land, which is Crown land temporarily reserved as a site for public purposes, being, in particular, the purposes of the National Tennis Centre pursuant to the provisions of section 30E(2) of the MOP Act. The reservation over the excised land was revoked in 2020 and is to become a road.

The amendments to the MOP Act engage the freedom of movement as the way in which the public may access or move through the National Tennis Centre Land is different to how the public may access or move through a road. However, the land has been excised pursuant to an agreement to provide a portion of National Tennis Centre land to the Department of Transport for the purposes of the Hoddle Street Streamlining Project. Though the way individuals may access and move through the land will be different when the land is a road, it is not arbitrary, and promotes the use of and movement through the land as a road by increasing the volume of individuals who have access to that road. The reservation has been revoked prior to commencement of the Bill, and the amendments to the MOP Act are administrative in nature and do not further limit the right. For this reason I am of the view that Part 3 of the Bill does not limit the right to freedom of movement, and further, promotes that freedom.

Right to property

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

- permitting the Trust to grant leases and licences over Crown land; and

- providing for certain existing property rights to prevail to the extent of any inconsistency with the Bill.

Clause 11 inserts new section 26FD into the SSC Act, which permits the Trust to grant leases over the Knox Regional Sports Park land and the Lakeside Oval Reserve land, or any parts of those lands. Clause 11 also inserts new section 26FE which permits the Trust to grant licences over the Knox Regional Sports Park land and the Lakeside Oval Reserve land, or any parts of those lands. Any leases or licences granted are subject to any covenants, exceptions, reservations and conditions that are determined by the Trust and approved by the Minister, and will have effect despite anything to the contrary in the *Land Act 1958* or the CLR Act.

It is possible that clause 11 could have the effect of limiting lessees' and licensees' property rights by restricting the use of their property subject to any covenants, exceptions, reservations or conditions. However, to the extent that these clauses may cause a deprivation of property, I consider that any deprivation is permitted because it is expressly and clearly authorised under the SSC Act (as amended by the Bill).

Clause 17 inserts new section 41 into the SSC Act which provides for particular leases and licences granted under the CLR Act prior to commencement of the Bill to continue and have effect for the duration of the terms of those leases or licences. Clause 17 promotes the right to property by providing for these existing property rights to prevail to the extent of any inconsistency with the Bill.

The Hon. Jaala Pulford
Minister for Employment
Minister for Innovation, Medical Research and the Digital Economy
Minister for Small Business
Minister for Resources

Second reading

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:52): I move:

That the second-reading speech be incorporated into *Hansard*.

Motion agreed to.

Ms SHING: I move:

That the bill be now read a second time.

Incorporated speech as follows:

It is with pleasure that I introduce this Bill amending the *State Sport Centres Act 1994* to extend and improve the management arrangements under which the State Sport Centres Trust operates. The Bill also amends the *Melbourne and Olympic Parks Act 1985* to excise a parcel of National Tennis Centre land following road widening on Hoddle Street.

The State Sport Centres Trust has management responsibilities over the Melbourne Sports and Aquatic Centre, the State Netball and Hockey Centre and is the committee of management for Lakeside Stadium.

In 2019, these facilities attracted more than 2.5 million total visits, contributed $164.6 million in economic benefits to Victoria and provided over 1000 jobs. The State Sport Centres Trust provided further support to Victorian sport by hosting over 100 significant events in 2019, 20 professional and semi-professional or representative teams, and 32 sports tenants including 20 state sporting associations, the Victorian Institute of Sport, four national sporting organisations and eight other sporting tenants.

The Andrews Government made an election commitment in 2018 to redevelop the State Basketball Centre at Knox Regional Sports Park. When complete, the $132 million project will be one of Australia's leading basketball centres and include training and administration facilities for the South East Melbourne Phoenix and upgraded facilities for Women's National Basketball League team, the Deakin Melbourne Boomers, who are based there. It will also include 12 new community courts for local basketball competitions and regional facilities for gymnastics at local and elite levels.

It is fair to say we have delivered on our election commitment. Victoria is the epicentre of basketball in Australia and our state centre will become Australia's premier facility. It is a great result for players of all ages and standards and means the future of the game in Victoria is strong. The $105 million contribution from the Andrews Government made to this redevelopment has supported more than 500 jobs in construction and when completed in 2023, will host up to two million visitors a year and support more than 100 ongoing jobs.

To protect the investment made by the State, this Bill expands the responsibilities of the State Sport Centres Trust to include the management of the Knox Regional Sports Park. The State Sport Centres Trust plays a vital role ensuring our top facilities operate successfully and serve the needs of the Victorian community.

This Bill makes the State Sport Centres Trust directly responsible for Lakeside Stadium and Lakeside Oval Reserve under the State Sport Centres Act rather than as a committee of management under the *Crown Land (Reserves) Act 1978* as is currently the case. This will resolve difficulties with leasing and licensing the Lakeside Stadium due to ambiguity in exercising powers under the two Acts.

The Bill also clarifies that the State Sport Centre Trust can manage any land and facilities for which it is a committee of management under the Crown Land (Reserves) Act in the same way it manages facilities under the State Sport Centres Act, including leasing and licensing arrangements.

Importantly, the Bill inserts a new provision into the State Sport Centres Act to specify that the trust must maintain the Lakeside Oval Reserve land and facilities to a standard that complements Albert Park. I wish to reassure members of the house that there will be no loss of public open space because of these changes.

Other minor changes to the management arrangements under the State Sport Centre Act include:

- improving the efficiency and effectiveness of the Trust's operations including allowing the preparation of a single business plan and the holding of a single bank account for all entities
- changing the membership structure of the State Netball and Hockey Centre Advisory Committee to require that both a State Sport Centre Trust member and the State Sport Centre Trust Chief Executive Officer (CEO) be appointed. Currently either a member or the CEO is to be appointed to the Advisory Committee. This change reflects the importance of the supervisory role played by the State Sport Centre Trust board and the day-to-day operational knowledge of the CEO. The State Sport Centre Trust member will be elevated to Chairperson of the committee.

Finally, the Bill amends the Melbourne Olympic Park Act to reflect the new boundary of the national tennis centre land following the reservation of a strip of centre land as a road in the 'Streamlining Hoddle Street' project.

I commend this Bill to the house.

Mr RICH-PHILLIPS (South Eastern Metropolitan) (17:53): I move, on behalf of Dr Bach:

That debate on this bill be adjourned until the next day of meeting.

Motion agreed to and debate adjourned until next day of meeting.

RESIDENTIAL TENANCIES, HOUSING AND SOCIAL SERVICES REGULATION AMENDMENT (ADMINISTRATION AND OTHER MATTERS) BILL 2022

Introduction and first reading

The PRESIDENT (17:53): I have a further message:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to amend the **Residential Tenancies Act 1997** in relation to rented premises which are public housing for which Homes Victoria is the residential rental provider, to amend the **Housing Act 1983** and the **Residential Tenancies Act 1997** in relation to the provision of affordable housing, to amend the **Housing Act 1983** to provide for Homes Victoria, to extend the default commencement date of the **Social Services Regulation Act 2021** and amend the **Supported Residential Services (Private Proprietors) Act 2010** to extend the operation of expiring regulations under that Act, to consequentially amend other Acts and for other purposes'.

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:54): I move:

That the bill be now read a first time.

Motion agreed to.

Read first time.

Ms SHING: I move, by leave:

That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:54): I lay on the table a statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006* (**Charter**), I make this Statement of Compatibility with respect to the Residential Tenancies, Housing and Social Services Regulation Amendment (Administration and Other Matters) Bill 2022 (**Bill**).

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

Overview of the Bill

The Bill amends the *Residential Tenancies Act 1997* to broaden the definition of common areas and provide for Homes Victoria (formerly the Director of Housing) to provide community impact statements with certain applications for a possession order in relation to rented premises which are public housing. It amends both the *Housing Act 1983* and the *Residential Tenancies Act 1997* in relation to provision of affordable housing to renters. It also amends the *Housing Act 1983* in relation to the functions and constitution of Homes Victoria as well as establishing the Homes Victoria Advisory Board. It also amends the *Social Service Regulation Act 2021* and *Supported Residential Services (Private Proprietors) Act 2010* to delay commencement of the new social services regulatory scheme to 1 July 2024.

Human rights issues

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

- The right to recognition and equality before the law (section 8);
- The right to privacy (section 13);
- The right to take part in public life (section 18); and
- Property rights (section 20).

Homes Victoria Advisory Board

Clause 20 of the Bill inserts new Division 3 of Part II into the *Housing Act 1983*, which establishes the Homes Victoria Advisory Board to provide strategic advice in relation to the direction and performance of Homes Victoria. New section 11D provides that, in appointing members of the Advisory Board, the Minister must have regard to the diversity of members of the Advisory Board, including gender, disability and sexuality. The Minister must also ensure that Aboriginal persons are represented on the Advisory Board. This provision engages the right to equality in section 8 of the Charter and the right to take part in public life in section 18 of the Charter.

Section 8(3) of the Charter provides that every person is entitled to equal protection of the law without discrimination and has the right to equal and effective protection against discrimination. Section 18(2)(b) of the Charter provides that every eligible person should have the opportunity, without discrimination, to access the Victorian public service and public office. 'Discrimination' under the Charter means discrimination within the meaning of the *Equal Opportunity Act 2010*. Under section 8 of that Act, direct discrimination occurs if a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute.

New section 11D will engage the rights to equality and to access public office without discrimination where a person is not appointed to the Advisory Board, or not considered for such an appointment, on the basis of a protected attribute, such as gender, race or sexuality. However, the rights will not be limited by this provision, which is designed to ensure that the Advisory Board reflects the diversity of the Victorian community and that historically underrepresented groups are included in the membership of the Board. Section 8(4) of the Charter makes clear that measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination. Further, section 11D does not prevent persons with particular attributes from being appointed to the Advisory Board, but simply makes the diversity of the Board a consideration when appointing new members. Accordingly, any interference with the rights in section 8 and 18 of the Charter will be reasonable and demonstrably justified having regard to the purpose of the provision.

Affordable Housing

Clause 26 of the Bill inserts new Part VIIIB into the *Housing Act 1983* which establishes the Victorian Affordable Housing Programs. This empowers the Minister, by order published in the Government Gazette, to declare an affordable housing program to be a Victorian Affordable Housing Program, with the declaration describing the scope and purposes of the program. Homes Victoria is then empowered to operationalise a declared Victorian Affordable Housing Program through a VAHP determination, which could set out details of the program including eligibility requirements, selection processes for participation in the program, rent settings, tenancy management, tenure length, record keeping requirements, requirements for information collection, dispute resolution processes and other necessary or relevant matters.

The Bill also makes amendments that affect housing allocated under the National Rental Affordability Scheme. While the Charter does not protect rights to housing, these amendments to the *Residential Tenancies Act 1997* have scope to engage various rights under the Charter.

Notices to vacate

Clauses 12 and 13 of the Bill insert new sections 91ZZEA and 91ZZEB respectively into the *Residential Tenancies Act 1997*, which, in the context of rented premises which are subject to a current allocation under the National Rental Affordability Scheme or are provided under the Victorian Affordable Housing Programs, empower a residential rental provider to provide a notice to vacate in relation to a renter who no longer meets the eligibility criteria of the respective scheme. To facilitate this, the provisions require renters to submit documentation at the request of the residential rental provider for the purpose of assessing the renter's ongoing eligibility for such housing. If the renter does not provide the documentation within 60 days, or no longer meets the eligibility criteria, the provisions enable the residential rental provider to give the renter a notice to vacate.

Section 13(a) of the Charter provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. An interference will be lawful if it is permitted by a law which is precise and appropriately circumscribed, and will be arbitrary only if it is capricious, unpredictable, unjust or unreasonable, in the sense of being disproportionate to the legitimate aim sought. Section 20 provides that a person must not be deprived of his or her property other than in accordance with law. While the Charter does not define the term 'property', it is likely to include an interest in property pursuant to a residential tenancy agreement.

The right to privacy will be engaged by the requirement in new sections 91ZZEA and 91ZZEB for a renter to disclose personal information (such as their income) to a residential rental provider. However, in my view, any interference with the right will be lawful and not arbitrary. Any request for documentation must be made in accordance with the requirements under the National Rental Affordability Scheme or the relevant Victorian Affordable Housing Program (as the case may be) and for the sole purpose of assessing the renter's ongoing eligibility for such housing. I note that an individual participating in an affordable housing scheme such as the National Rental Assistance Program or Victorian Affordable Housing Programs would have a limited expectation of privacy in the context of relevant information necessary to satisfy that person's eligibility for the scheme. These provisions ensure that the important objective of providing needs-based affordable housing is able to be fulfilled, and that available housing stock under these schemes are utilised appropriately.

The right to privacy will also be engaged by new sections 91ZZEA and 91ZZEB to the extent that issuing a notice to vacate will have the effect of interfering with a person's home. The circumstances in which a renter may be issued with a notice to vacate are clearly set out in the Bill and are appropriately circumscribed. Importantly, the provisions only apply where a renter is no longer eligible for the National Rental affordability Scheme or Victorian Affordable Housing Programs (or fails to provide documentation demonstrating their eligibility) both of which are subject to the limits described above and additional safeguards outlined below. The provisions are necessary to protect the integrity of those schemes and ensure the availability of affordable housing under these schemes for targeted cohorts. For these reasons, I am of the opinion that these provisions are compatible with the right in section 13(a) of the Charter. Further, to the extent that a notice to vacate may constitute a deprivation of property pursuant to section 20 of the Charter, any such deprivation will be in accordance with law and therefore compatible with the right to property.

Clause 14 amends section 91ZB(1)(a) to extend the reduced period for notice of intention to vacate to include sections 91ZZEA and 91ZZEB. Clause 15 expands section 91ZZI to expand circumstances in which notice will have no effect to include sections 91ZZEA and 91ZZEB. Clause 16 expands section 91ZZU(1) to expand circumstances in which a renter may challenge notice to vacate on grounds of family violence or personal violence to include sections 91ZZEA and 91ZZEB. These new clauses extend existing safeguards and beneficial provisions to renters under the National Rental Affordability Scheme and Victorian Affordable Housing Programs, and mitigate the extent of the interferences with privacy or property rights that may result from the giving of notices to vacate in certain circumstances under new sections 91ZZEA and 91ZZEB. Accordingly, I am satisfied that these new provisions are compatible with the Charter.

Withholding consent to an assignment or sublet

Clause 63 amends section 83 of the *Residential Tenancies Act 1997* to permit a residential rental provider of affordable housing under the Victorian Affordable Housing Programs to withhold consent for assignment or subletting to prevent disadvantage to persons eligible for affordable housing under the Victorian Affordable Housing Programs.

This engages the right to property under section 20 of the Charter, as it may interfere with a tenant's enjoyment of a proprietary right by restricting their ability to sublet or assign a residential rental agreement, albeit the ability to do so is already qualified under the Act.

However, to the extent that this does constitute a deprivation of property, the right will not be limited where the provision authorising the deprivation of property is clear and precise, accessible to the public, and does not operate arbitrarily. In this case, the power to withhold consent for assignment or subletting in these circumstances is consistent with the purpose of ensuring that affordable housing under the Victorian Affordable Housing Programs is provided to those who meet the eligibility criteria for such housing, and that the objects of the scheme are not frustrated. Further, a person entering into a residential rental agreement with a provider of affordable housing under the Victorian Affordable Housing Programs will be aware of these limits on assigning and subletting. Accordingly, I am satisfied the right is not limited by this provision.

Requesting information from renters or applicants

Clause 11 of the Bill amends section 30C of the *Residential Tenancies Act 1997* to introduce a new exception to the prohibition on a residential rental provider requesting prescribed information from renters. The subsection provides that nothing in existing section 30C prevents a residential rental provider from requesting a renter or applicant for affordable housing or social housing to provide any statement from an authorised deposit-taking institution containing credit transactions. Given such statements contain personal information in relation to financial transactions, this engages the right to privacy under section 13(a). However, as above, there is likely to be a reduced expectation of privacy in the context of engaging in social or affordable housing programs, where certain personal information will be required to be disclosed in order to ascertain eligibility for the program. The ability to request financial information is confined to requesting a statement of credit transactions only, and does not extend to debit transactions (these can be redacted unless a renter or applicant chooses to provide such information).

Therefore, to the extent that s 13(a) is limited, I consider limits are proportionate and consistent with the purpose of ensuring the appropriate allocation of social and affordable housing stock.

Exception to anti-discrimination provisions

Clause 10 amends section 30A(4) to add an entity that provides rented premises as affordable housing in accordance with the Victorian Affordable Housing Programs, as an entity exempted from the requirement not to unlawfully discriminate against another person by refusing to let premises. Clause 10 also adds new section 30A(6) which provides that if Homes Victoria makes a VAHP determination that relates to a protected attribute, then that VAHP determination is not a contravention of section 30A.

These amendments engage the right to equality and non-discrimination under section 8 of the Charter, because this clause has the effect of removing a mechanism for certain renters to access redress for unlawful discrimination for breaches of section 30A. This clause also engages this right as it proposes to treat renters under the Victorian Affordable Housing Programs differently to other Victorian renters, as they are excluded from redress under the *Residential Tenancies Act 1997*.

In many cases, persons with the greatest need for affordable housing are likely to be persons with a protected attribute under the *Equal Opportunity Act 2010*, for example, persons experiencing family violence, who are most likely to be women and children, people with a disability, or a person aged 55 or over. Accordingly, this amendment is capable of constituting a special measure under section 8(4) of the Charter taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination, and is thus not discriminatory.

However, to the extent that this amendment is not considered to be a special measure, I consider any limit on the rights in section 8 of the Charter is demonstrably justifiable on the basis that clause 10 of the Bill is designed to address the risk of section 30A obstructing the purpose of the Victorian Affordable Housing Programs. The risk is that, absent amendment, these sections may prevent the allocation of housing to eligible applicants intended to be prioritised under the program. This amendment enables the Victorian Affordable Housing Programs to serve targeted groups—who may, for example, comprise low and moderate income earners and essential government funded service delivery workers—without contravening anti-discrimination provisions.

I am therefore of the opinion that any limit on the right to equality under section 8 of the Charter is reasonable and justified.

Common areas

Clauses 6 and 7 amends sections 3(1) and introduces new section 3C of the *Residential Tenancies Act 1997* respectively, which broaden the definition of 'common areas' to allow Homes Victoria to prescribe certain areas as common areas in relation to rented premises which are public housing, by notice published in the Government Gazette. This in turn broadens the scope of various provisions under the *Residential Tenancies Act 1997* that concern common areas, including the obligation not to cause property damage (s 61), circumstances in which a notice to vacate can be issued for drug related conduct (s 91ZR) and circumstances in which a notice to vacate can be issued for committing prescribed indictable offences (s 91ZS). To the extent that these provisions apply to natural persons, they may engage the right to privacy under section 13(a) and property rights under section 20, in that they may broaden the scope of existing conduct obligations on a renter in relation to common areas (a failure of which may enliven the giving of a notice to vacate).

The purpose of this amendment is to provide greater certainty about the areas to which these various obligations apply (which are largely aimed at ensuring a safe environment and preventing anti-social behaviour), and to ensure that certain common areas which previously were not captured by the existing definition are covered by these protective provisions. To ensure these amendments are accessible, Homes Victoria will, under new section 3C(4) be required to take all reasonable steps to ensure that renters are aware which areas are specified to be a common area. This may include providing information directly to the renter, for example, in the form of a notice provided when the person enters into a residential rental agreement, using signage or providing notices or letters to residents if an area relevant to their rental premises has been gazetted to be a common area. Given these safeguards and the overarching protective purpose this amendment serves, I believe that any limitation of rights to privacy or property are reasonable and justified in the circumstances.

Community impact statements

Clause 4 introduces new section 322A of the *Residential Tenancies Act 1997* which allows Homes Victoria to provide the Victorian Civil and Administrative Tribunal with a community impact statement when applying for a possession order. The statement must contain information relating to the impact of the renter's conduct on affected persons which led to the notice to vacate, and a copy must be given to the renter or their legal representative if made. To the extent this may involve the use and disclosure of personal information from other persons, this may engage the right to privacy under section 13(a) of the Charter. However, this use and disclosure of information would not be arbitrary, as the information is being provided for a protective purpose that promotes the rights of others (being to satisfy the Tribunal of the grounds of a possession order involving prohibited conduct or behaviour of a renter that threatens the safety and welfare of other persons) and would concern information that would largely have been voluntarily reported to Homes Victoria. The provision does not require a person affected by the renter's conduct to give this information. Accordingly, I am satisfied that any interference with privacy effected by this provision is compatible with the Charter.

Ingrid Stitt MLC
Minister for Workplace Safety
Minister for Early Childhood

Second reading

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:54): I move:

That the second-reading speech be incorporated into *Hansard*.

Motion agreed to.

Ms SHING: I move:

That the bill be now read a second time.

Incorporated speech as follows:

This Bill makes amendments to the Residential Tenancies Act 1997 and the Housing Act 1983.

Amendments to the Housing Act 1983

In November 2020 the government announced the creation of Homes Victoria as part of its $5.3 billion Big Housing Build. The Big Housing Build is the largest investment in housing in Victoria's history and will deliver over 12,000 homes including 2,400 affordable housing properties.

This Bill will establish Homes Victoria as a strong, sustainable and contemporary housing agency underpinned by a robust and enduring governance structure.

Enshrining key governance reforms to position Homes Victoria as a strong, sustainable and contemporary Victorian Government housing agency

Key to Homes Victoria's role as a strong, sustainable and contemporary Victorian Government housing agency are governance changes contained in the Bill. These include strengthening the accountability and oversight over delivery of Homes Victoria's strategic objectives and reforms through a skills-based Homes Victoria Advisory Board.

The Bill will establish a Homes Victoria Advisory Board to provide strategic advice to the Minister and the CEO, Homes Victoria in accordance with written terms of reference. This embeds the Board as an enduring structure to provide the governance and oversight of Homes Victoria.

Alongside the professional experience and expertise of the Board, the membership will also embed representation of Victoria's Aboriginal citizens.

The Bill will formalise the transition of the Director of Housing to Homes Victoria. The Director of Housing is a unique body corporate structure in Victoria functioning as both a body corporate sole and as an appointed individual. The Bill will make a distinction between these roles by changing the name of the statutory office to Chief Executive Officer, Homes Victoria, and changing the name of the body corporate sole to Homes Victoria.

Enabling streamlined delivery of the Big Housing Build by embedding and clarifying the transaction structures available to Homes Victoria

Homes Victoria was established to bring a more commercial way of operating to Victoria's housing system. Renewing and substantially expanding Victoria's social and affordable housing stock is critical to make sure we have a sustainable housing system that can deliver for generations to come. Key to this will be Homes Victoria's capacity to implement innovative financing models.

The Bill will enshrine an enabling legislative framework for Homes Victoria to identify the most appropriate models and transaction structures to support a range of options used typically in the property investment and financing market. These will include the establishment of companies, joint ventures, trusts, partnerships to invest, lend and contribute funds that support the Big Housing Build.

The Bill will equip Homes Victoria with the rights, functions, powers and flexibility required to participate in the property development market in the ways in which the market most often transacts.

These powers are based on the model of Development Victoria, including learnings from the implementation of the *Development Victoria Act 2003* and the *State Owned Enterprises Act 1992*.

Legislative framework for affordable housing

The Victorian Government is committed to supporting low to moderate income Victorians to access quality housing options that are within their means. To deliver on our commitment we have created Homes Victoria to deliver affordable housing and funding the first 2,400 properties in the Affordable Housing Rental Scheme.

The Bill will establish a legislative framework for Victorian Affordable Housing Programs, which includes the Affordable Housing Rental Scheme as the first Program.

More Victorians than ever are renters, including many of the people who helped Victoria survive the pandemic. They are the essential workers who run our supermarkets, hospitals, schools and aged and disability care facilities, deliver us water and power, take away our rubbish and recycling, and make our cities, suburbs and towns work.

There is a growing gap between the existing private market and social housing. Many working households are being priced out of private rental and are unable to access home ownership. More than 162,000 households, or one-in-four of the 650,000 households in the private rental market, are experiencing rental stress. That means more than 30 per cent of their income is spent on rent, which reduces the money available to pay for other essential items and expenses.

The Victorian Government is responding to the growing gap in housing affordability and supply for many low to moderate income households. This includes essential government funded service delivery workers such as nurses, police, teachers and care workers—who are experiencing rental stress and may be struggling to access home ownership.

The first Victorian Affordable Housing Program will be the Affordable Housing Rental Scheme which will deliver an initial 2,400 affordable rental homes to address affordability pressures in metropolitan Melbourne and regional city centres, and supply and affordability issues in regional Victoria as part of the $5.3 billion Big Housing Build.

This Bill establishes the framework for creation and implementation of these types of programs to support low to moderate income Victorian renters to access quality housing options that are within their means.

Amendments to the Residential Tenancies Act 1997

Through amendments to the Residential Tenancies Act 1997 the Bill also clarifies certain requirements for providers and renters of affordable housing.

The government recognises there are features which differentiate the social and affordable housing model from the private rental market, including the application of eligibility criteria for prospective and ongoing renters that are based on income thresholds.

Preserving the integrity and sustainability of the National Rental Affordability Scheme (NRAS) and Victorian Affordable Housing Programs

One such affordable housing program is the National Rental Affordability Scheme or NRAS. NRAS is a Commonwealth Government affordable housing program. It seeks to address the national shortage of affordable rental housing by offering financial incentives to organisations that provide renters on low to moderate incomes with homes at a rate at least 20 percent below market value rent. To remain eligible, NRAS providers must ensure the income of the renters in their properties remains below the NRAS cap.

Recent reforms to the Residential Tenancies Act have resulted in NRAS investors having no means to ensure their properties are only rented to eligible renters.

The Bill ensures continuity of the NRAS scheme in Victoria, by ensuring that NRAS providers can continue to house renters who satisfy the NRAS income criteria, request key income documentation and remove renters who have become ineligible for NRAS housing.

To protect the rights of NRAS renters who do provide evidence of their eligibility, the Bill will deem a notice to vacate to have no effect where a renter provides evidence of their eligibility prior to the date on the notice.

The Bill also contains similar provisions for Victorian Affordable Housing Programs to enable providers of affordable housing under a declared Victorian Affordable Housing Program to continue to house renters to satisfy that Program's criteria, request key income documentation and remove renters who have become ineligible.

Ensuring the voices of public housing renters are considered by VCAT

Our Government is committed to making public housing a safe and productive community for all residents. There is no place in our public housing communities for renters who engage in anti-social behaviour, including those who engage in illegal drug dealing and who threaten and intimidate their neighbours.

A key theme of feedback received by the Director of Housing by neighbours impacted by anti-social behaviour is a reluctance to provide evidence at VCAT due to fears for their safety and concerns of reprisal.

This means that the human rights, dignity and respect of neighbours impacted by ant-social behaviour is not being adequately protected and considered. All renters, regardless of whether they are private renters or public housing renters, must be able to feel safe and free from intimidating and threatening behaviours in their own homes. Being a public housing renter should not mean having to live in fear and put up with behaviours that we all find intolerable.

The Bill will ensure there is an appropriate balancing of the rights of the renter, and those of the renter's neighbours and community by requiring that VCAT must take into account a community impact statement, if provided, when considering granting a possession order in cases of serious anti-social behaviour. The Bill does not limit VCAT's discretion as to the weighting it places on the community impact statement.

The Bill will provide an important avenue for those impacted to have their voices heard within VCAT proceedings, with an opportunity for those impacted to provide de-identified evidence in certain cases. The submission of community impact statement will safeguard the rights of the renter, as well as the community.

The community impact statement's core purpose is to assist VCAT to understand the impact of anti-social behaviour the individual and the wider community, maximising both parties' safety and well-being through well-integrated support. This can inform decision making alongside increasing public confidence in balancing the human rights of both parties.

Changes to the definition of common area in relation to public housing estates

The Bill builds on the existing definition outlined in section 3(1) of the Act as the current definition of common area is quite broad.

The Bill will clarify gaps within the legislation by providing a pathway to pursue a legal response in cases of anti-social behaviour which occurs in areas associated with rented premises, including areas of public access.

It intends to uphold the rights of residents to enjoy and feel safe in their communities. The gap in current settings interferes with the ability to adequately protect these rights, with the potential to limit an effective response to incidents which occur on Director-owned land.

This amendment is targeted at high-rise public housing estates, with legal action only available if a connection exists between the rented premises and the specified common area.

Amendments to the Social Services Regulation Act

The Bill also amends the Social Services Regulation Act to delay commencement of the social services regulatory scheme for 12 months, to 1 July 2024.

That Act introduces a comprehensive regulatory framework for Victorian social services, with significantly enhanced protections for service users to keep them safe from harms such as abuse and neglect. Many services that will be within the scope of the new regulatory framework have not previously been regulated and require additional time to operationalise the new requirements. In addition, all service providers will be required to implement new requirements such as the six social services standards set out in the new regulatory scheme and require additional lead time to ensure a smooth transition to the new arrangements.

I commend this Bill to the house.

Mr RICH-PHILLIPS (South Eastern Metropolitan) (17:54): I move, on behalf of Mr Davis:

That debate on this bill be adjourned for one week.

Motion agreed to and debate adjourned for one week.

Adjournment

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (17:55): I move:

That the house do now adjourn.

GREENING EUROA PROJECT

Ms LOVELL (Northern Victoria) (17:55): (2068) My adjournment matter is for the new Minister for Water, and she is at the table tonight, so that is great. I would like to bring to her attention a droughtproofing project currently being undertaken by the Strathbogie Shire Council. The action that I seek is for the minister to support Strathbogie shire's Greening Euroa project by providing funding of $3.8 million for stage 3 of the project, which will construct a pipeline from the wastewater management facility to allow for the use of treated recycled water in the Euroa township.

The Greening Euroa project is an initiative of the Strathbogie Shire Council to help address the impact of chronic water shortages in the town during autumn and summer. The project will see the use of recycled rather than potable water to irrigate Euroa's school ovals, sporting fields and parks and gardens to ensure that they remain green through the drier months. The project will see the treated water from Euroa's wastewater management facility upgraded from class C to class B water quality and piped to underground storage tanks located around the town.

Stages 1 and 2 of the project have been completed, and the third and final stage involves the construction of the pipeline to convey the water. In October 2021 I raised the merits of the Greening Euroa project with the then Minister for Water, as the funding is required for construction of the water infrastructure. The minister's response to my request for funding was less than enthusiastic for what has become one of Strathbogie shire's priority projects. The project is being driven by the local Euroa and district community, with the Greening Euroa committee having worked for the past three years to make the project a reality. The committee includes representatives from various sporting clubs, user groups and oval committees of management working together to virtually droughtproof their town. Goulburn Valley Water have also been wonderful supporters of the project and have already installed a standpipe near the Euroa Golf Club to allow access to the treated water.

Strathbogie shire believe that the Greening Euroa project is the first of its kind in Victoria and will completely change the management of water in the town. Born and bred in the local area, the Liberal candidate for Euroa, Brad Hearn, knows the importance of droughtproofing regional communities and is also a big supporter of the project. I urge the minister to support the transformational Greening Euroa initiative and commit funding of $3.8 million to construct the pipeline and complete the project.

CHILD SEX OFFENDERS

Mr GRIMLEY (Western Victoria) (17:57): (2069) My adjournment debate is for the Minister for Police, and the action that I seek is for the minister to refer to the Victorian Law Reform Commission (VLRC) an inquiry into the circumstances in which a limited public disclosure scheme for registered sex offender information could be trialled in Victoria. This was a recommendation of the Legal and Social Issues Committee's inquiry into management of child sex offender information, which I established. The government only supported the recommendation in principle, which in layman's terms means we probably will not be doing anything about it. The government's response to this recommendation was:

> The Act already includes measures for the public disclosure of information relating to a registrable offender in limited circumstances.
>
> The Victorian public disclosure scheme was introduced in 2017, five years after Western Australia and nine years after the United Kingdom introduced their limited child sex offender disclosure schemes.

Victoria does not have a limited disclosure scheme like those jurisdictions, and any suggestion that we do is entirely misleading—and it certainly is not public. The UK scheme allows members of the public to make an application to find out if a particular person in contact with children is a registered sex offender.

In the media this week a federal public register of child sex offenders has again been advocated for. This would have regard to limited disclosure schemes operating in the United Kingdom and Western Australia as well as relevant federal laws and regulations. This came after an Australian Institute of Criminology report, *Exploring the Role of Opportunity in Recidivist Child Sexual Offending*, that concluded we are only seeing the tip of the iceberg in relation to how extensive recidivist offending is. It found that even after having contact with the criminal justice system offenders still have access to children.

Scott Weber, the CEO of the Police Federation of Australia was scared by the findings and called for a national child sex offender register. He said, and I quote:

> … it'd be great if parents or guardians can … go and speak to police and … get the information to make sure their children are safe.

Yes, he called for a limited disclosure scheme. But once again it seems as though the rights of convicted child sex offenders are put ahead of the victims or community safety. Therefore, Minister, I request again that you refer a limited disclosure scheme for child sex offenders to the VLRC to investigate further.

BUILDING REGULATION REFORM

Mrs McARTHUR (Western Victoria) (17:59): (2070) My adjournment matter is for the Minister for Planning, and considers the Building, Planning and Heritage Legislation Amendment (Administration and Other Matters) Bill 2022 and specifically the increased burden it may place on rural and regional councils. One element of the bill provides that the relevant council's municipal building surveyor must inspect certain classes of private building projects which have already been approved by a commercial building surveyor. There is real concern about what this may mean for smaller councils. What classes of building will be included? Will it simply apply to multistorey developments and therefore be of little impact, or will it require them to recruit additional surveying capacity or expand the operations of their own municipal building surveyors? Skills shortages are a massive problem for Victorian councils outside the tram tracks of Melbourne, and this government seems completely oblivious to this fact. How will costs be recovered? Councils already operate in a rate-capped environment, and local ratepayers should not have to subsidise a building regulation system which ought to be paid for by the user—the property developer.

Another unknown surrounds liability. Requiring a council building surveyor to check the work of a private building surveyor is likely to expose the council to liability should the worst later happen. Furthermore, as local councils will often have no direct involvement with each construction project, to ask them to come on site just before completion and assess at first sight compliance for the entirety of the preceding building work is potentially problematic. Why can't the Victorian Building Authority do this? Why are local councils and the ratepayers who fund them now facing yet another burden? As ever with this government's legislation, we do not know the answer to these questions of costs, of liability and indeed of which buildings will actually be covered. This will come in regulations. We have seen that before in this place—a bill passed in its general form and promised regulations emerging months down the line with much-watered-down democratic scrutiny.

So the action I seek is for the minister to meet me to discuss comprehensively his view on this matter and explain where he believes rural and regional councils' responsibilities for building regulations should lie.

SEYMOUR COMMUNITY WELLBEING HUB

Ms MAXWELL (Northern Victoria) (18:02): (2071) My adjournment is to the Minister for Health, and the action I seek is for the government to support and provide funding for the establishment of the Seymour community wellbeing hub. The Seymour community wellbeing hub is a partnership between the Mitchell Shire Council, Seymour Health, Goulburn Valley Health and Nexus Primary Health. The Seymour community was identified in the *Dropping off the Edge 2021* report as being one of Victoria's most disadvantaged communities. The index of relative socio-economic disadvantage for this community rates Seymour at 897. Their economic and social challenges are entrenched and intergenerational: 18 per cent of children are developmentally vulnerable in two or more domains; family violence occurs at a level that is three times the state average, with an incident rate of 4018 per 100 000 people; one in three school leavers do not complete year 12; one in six young people are not participating in work or study; 20 per cent of homes in Seymour have no internet connection; almost 8 per cent of dwellings are social housing; and 7 per cent of people in Seymour require assistance with core life activities. Despite these troubling statistics it is not all doom and gloom in Seymour. This is a community that is doing it really tough, but it is also a community with vision, determination and committed stakeholders and community leaders—but they cannot do it alone.

The community have a strong concept for their community wellbeing hub. They want to deliver integrated health and mental health support for people in Seymour and the surrounding areas, knowing that a no-wrong-door and multidisciplinary approach will help meet the needs of their community in an efficient and supportive way. The hub would be home to a range of services, such as community mental health, space for a veterans mental health and wellbeing service, a centre against sexual assault, health promotion, dental care, primary health services, a Youth Assist clinic and flexible consulting rooms. The location for the hub is really important, and the Seymour community has identified an ideal location that will connect to the library and link to other educational and creative spaces.

This is a project for the Seymour community and the Mitchell shire more broadly. Seymour is an area with profound need, yet they have a massive struggle accessing health and social services. Many people in the Seymour region cannot afford private psychological or medical consultations. If the services are available, they often have to travel to other regions, sometimes hours away, to get the help they need. The Seymour revitalisation project conducted extensive community consultation, and this project was identified as a top priority. The Seymour community wellbeing hub is estimated to cost $23 million and requires a state government investment of $9 million towards the project. I look forward to the government's support on this serious and urgent matter.

WHITE HILL ROAD, DROMANA

Ms BURNETT-WAKE (Eastern Victoria) (18:05): (2072) My adjournment matter is directed to the Minister for Transport Infrastructure. The action that I seek is for the minister to work with Torello Farm and the Department of Transport to come to an agreement on sharing the costs of road upgrades

to White Hill Road, Dromana. I thank Liberal candidate for Nepean Sam Groth for raising this issue with me. Torello Farm is a local produce business that prides itself on its organic agriculture processes. It employs many locals and sells fruit and vegetables on behalf of around 70 local farmers. On top of this the business is plastic bag free and has a strong focus on giving back to the community. They have participated in the farm to schools program and frequently donate to food banks to support disadvantaged Victorians.

A few years ago Torello Farm changed its operational permits and notified all stakeholders. As the business is located on White Hill Road, this included notifying the Department of Transport. Torello management was informed it would need to install a slip lane outside the entrance at its own cost. They had plans developed by the Department of Transport's engineer and took those plans to an asphalting company, where they were quoted just over $50 000 for the works. They were happy to do this. The plans were then passed on to the department to be signed off. However, at this stage the department added an extensive list of new specifications that had to be included in the design. These things ranged from traffic management to drainage works, signage and pavement design. The department also insisted that lights be installed despite the fact the farm only has a permit to open until 6.00 pm all year round. Torello Farm had the updated plans quoted again by multiple companies and were told the works would now cost over $240 000.

In June Torello's management was informed that the department is now planning upgrades on the same road and that roadworks will end exactly where the Torello roadworks start. Management feels that specifications were added to their original plans in order to cover some of the department's planned upgrades to White Hill Road rather than things directly relevant to their slip lane. There is no way Torello Farm can afford up to $240 000 for road upgrades. They would have no choice but to close their business, which would be a huge loss to the Mornington Peninsula community. They would ideally like to reach a solution with the department on sharing the costs that are reasonable and affordable for their small business. They have been advised there is no budget to share the cost and that no revisions to the plans can be made.

I call on the minister to work with Torello Farm and the Department of Transport to come to an agreement on sharing the costs of road upgrades to White Hill Road, Dromana. Otherwise this valued local business and employer will be forced to close its doors.

BULLA-DIGGERS REST ROAD

Mr FINN (Western Metropolitan) (18:07): (2073) I wish to raise a matter—actually, I was debating which minister I would raise it with, whether it be the Minister for Local Government or the Minister for Roads and Road Safety, but I will go with the minister for roads and maybe they can work together on this particular project. It concerns the Bulla-Diggers Rest Road, which has come to be in quite a state of disrepair. Being the main road between the Calder Highway and Melbourne Airport, it carries significant traffic already. But what is happening now is, because of the works to relocate a bottleneck on Sunbury Road, we are seeing many more vehicles—trucks and cars—travelling on this particular road, and the road surface is crumbling. We are seeing the trucks in particular, the B-doubles—the big ones; you know what I am talking about—and they are carrying very heavy loads of soil to dump at Sunbury Road, and they are causing significant damage to the road as well. Of course we also have the bridge there, which is a single-lane bridge, so only one vehicle can pass at any one time. All in all, it is a very, very unsatisfactory situation.

This is a road, as I understand it, which is under the control of the Hume council. I would expect that if I were to ask the Hume council to do what needs to be done on this road, they would throw their hands up in horror and say, 'We haven't got the money. Go away and leave me alone'. Well, the fact of the matter is that this road desperately needs attention. What I am asking the minister for roads to do is speak to his colleague the Minister for Local Government and try to get to a conversation with the Hume council so that some arrangement can be come to so that they can have a situation where the government and the council can perhaps share the outlay of money that needs to be spent on this

road to bring it up to scratch. I sincerely hope that that will happen before there is a major accident on this road. There are potholes that are almost as big as spud boxes. They are significant and they are dangerous, and I ask the minister to take this on board, to take this matter under advisement and indeed to fix the surface of Bulla-Diggers Rest Road before we have a major tragedy on that road.

A KINDER CUP, MORWELL

Ms BATH (Eastern Victoria) (18:10): (2074) My adjournment matter this evening is for the Minister for Disability, Ageing and Carers in his capacity as the minister in charge of neighbourhood houses, and the action I seek is for the minister to work with A Kinder Cup cafe in Morwell and provide bridging funding for the next few months until the GovHub in Morwell's workers return to onsite work. Last October as an initiative of the amazing Morwell Neighbourhood House the A Kinder Cup cafe and catering operation was opened in the GovHub. It is in Church Street, Morwell.

Ms Shing interjected.

Ms BATH: The minister today actually called for quiet while people are speaking, so I suggest she take her own advice. Hailed as a project that will revitalise Morwell—and I quote the minister, who was a member for Eastern Victoria Region at the time, on 24 May 2018:

> We are really looking forward to revitalising Morwell through these … initiatives and continuing our work to make sure that facilities are centralised …

As well as supplying healthy meals and coffee to the 300-odd onsite GovHub workers, A Kinder Cup was also established as a training initiative for locals to learn hospitality in a supported environment. At the time manager Tracie Lund told the *Latrobe Valley Express* on 11 October:

> We are here to support people in their work life journey and getting them where they need to go.

The cafe's mission was around fostering companionship, contribution and connection to provide meaningful work experience opportunities. Now we see this is not a revitalised project. There is less than 10 per cent of the 270 staff coming into the GovHub, and Tracie has told me today through a discussion that they will be forced to close on 25 August. The workforce landscape in the Morwell CBD is predominantly government and government agencies. Local shops and cafes are on their knees due to work-from-home options. During the pandemic, as Tracie has said today, neighbourhood houses were open all the time. They were on the front line of service. Other essential workers were turning up to work. Small business owners and cafes are today trying to make a buck and continue to survive in a very quiet environment in the CBD. On top of that, it seems that this problem is Victoria's. Tracie has again told me today that the GovHub's developer, Castlerock Property, has a similar premise in New South Wales. They have 90 per cent occupancy, and people are turning up.

GOVERNMENT PROCUREMENT POLICY

Ms PATTEN (Northern Metropolitan) (18:14): (2075) My adjournment matter is for the Assistant Treasurer, and the action I seek relates to government procurement. Recently I visited Etiko clothing in Brunswick on Sydney Road. It is part of our office's F*** Fast Fashion campaign. The campaign is highlighting the unsustainable textile waste in Australia, and the primary solutions are pretty simple: buy local; buy ethical; buy less; and stitch, don't ditch. Etiko are a champion in these areas, and I was really pleased to meet with Nick Savaidis and his team to discuss their wonderful sustainable practices. There is no child labour, no underpaid workers, no wrecking of the environment, and they are completely transparent in their supply chains.

It is an issue that we can address as individual consumers by buying ethically, but it is also an issue that we can tackle in a bigger way at the procurement level. As we know, staff in various branches in departments and statutory authorities are wearing workplace uniforms, and it is this area where the government can have the greatest impact. Unfortunately in this tender space price still seems to be king, and Etiko related to me how they went for a tender process with another couple of local businesses. They are a social enterprise, they are a local business and yet the winner of that tender was

an international company that did not have ethical practices, and it would appear that the price was what won the bid. Despite what the government is saying about procurement, it is not acting on this and we are not supporting our local manufacturers. So the action I seek is that the minister expand our procurement rules around social enterprise and local manufacturing to include ethical sourcing of clothing as well. But also could they explain a little bit further to my office how businesses like Etiko can be more successful in the tender process?

SUBURBAN RAIL LOOP

Mr DAVIS (Southern Metropolitan—Leader of the Opposition) (18:16): (2076) This is an adjournment for the attention of the Minister for Transport Infrastructure but of interest to the Treasurer too. Many this week have looked at the costings and issues around the Suburban Rail Loop with concern and horror. The Parliamentary Budget Office—and I do not take these as absolute gospel, but they are a genuine indication and an attempt to work out the costs—have worked out that stages 1 and 2 of the government's circular rail proposal would cost $125 billion. They have also worked out that the operating costs would be another $75 billion, bringing it to $200 billion over the forward period. At the same time we know that the third part of it would also cost an enormous amount, perhaps $60 billion or $70 billion. That has not been costed and we could only work from the costings of the other two parts to get a rule-of-thumb-type estimate, but it too could easily take the total cost to $200 billion for the mere infrastructure provision.

At the same time as the Minister for Transport Infrastructure pooh-poohed the Parliamentary Budget Office—and they are working within the parameters that they have—the Minister for Transport Infrastructure would not release the details of the costs, and I put on the record that we have a number of FOIs with the Department of Transport and its plethora of agencies, which are all being frustrated and pushed back. The government does not want to release the details of the costs or other matters around this particular proposal. The truth is that it is not $50 billion, as the government promised and Jacinta Allan herself specifically said before 2018. She said the total cost of three parts was $50 billion. We now know it is at least $125 billion—likely $200 billion—for the project. But instead of pooh-poohing the Parliamentary Budget Office, she should simply release the full costings that the government has—all the detailed costings for all of these parts. When asked what the total cost was, she would not answer that question, so what I am asking for the Minister for Transport Infrastructure to do today is release the costs. We know with this government every project blows out. We know the government is secretive. They will not release the cost of the level crossing removals. We know the Metro Tunnel has blown out. We know the West Gate Tunnel is $5 billion over target. *(Time expired)*

BRAYBROOK REGENERATION PROJECT

Dr CUMMING (Western Metropolitan) (18:19): (2077) My adjournment matter is to the Minister for Housing, and the action that I seek is for the minister to provide an explanation of the delay in the Braybrook regeneration project and to provide a revised time line, including completion of construction. Public housing in Braybrook has been a matter close to my heart for many years. As the mayor I released the *Revitalising Braybrook Action Plan* and built the Braybrook Community Hub, the heart of the community. Last year the Victorian Planning Authority released their *Towards a Braybrook Urban Design Framework* and sent it out for community engagement. The results of the engagement were published in July last year. According to the VPA website, a draft urban design framework and a draft planning scheme amendment were to be done in January this year. Neither of these appear to have been completed.

The public housing in Braybrook urgently needs to be replaced. We are talking about asbestos- and mould-ridden housing, much of which is now boarded up. In June I questioned the minister about when the first round of construction projects would be completed for Western Metropolitan tenants to move into. He has not answered my question, yet last week he announced:

> The Andrews Labor Government has hit the halfway milestone in its unprecedented Big Housing Build, delivering more social and affordable homes to those who need it most right across the state.

> More than 6,300 homes have been completed or are underway, with more than $2.8 billion of investment funds already poured into new and secure homes under the program. This is the largest single investment in social and affordable housing by any state or territory government in Australia's history.

Yet nothing has been delivered in Braybrook despite the project being identified as a project on the VPA's fast-track program. We have approximately 12 000 people in the west on the social housing list. We want affordable housing in the west. The state government just announced 92 apartments in Footscray with only 60 car parks, putting pressure on other high-rise apartments in the area. Twelve thousand people on a list in the west and 92 apartments in Footscray just does not cut the mustard.

FRANKSTON CBD CRIME

Mr RICH-PHILLIPS (South Eastern Metropolitan) (18:22): (2078) I wish to raise a matter for the attention of the Minister for Crime Prevention in the other place, and it relates to in particular youth crime in the Frankston CBD, which has again become an issue particularly for Frankston traders. Over recent years a lot of work has been done by Frankston businesses, by the Committee for Greater Frankston and by the council to revitalise the Frankston CBD to make it an attractive retail and business environment. But those efforts are being undermined by a resurgence in criminal activity. We have seen in the last couple of months in particular a major escalation in concern about youth crime among traders. We have seen reports of children as young as 10 years old being regularly involved in theft from shops in Frankston and being regularly involved in fights and gang-type activities around Wells Street, which is undermining confidence in the local community.

In June we saw an 11-year-old girl stabbed in Frankston CBD. Subsequently two children, a 12-year-old and a 14-year-old, were charged with armed robbery and assault. These are very significant activities and very significant crimes which undermine confidence in the CBD. Victoria Police in Frankston have quoted Crime Statistics Agency data showing a reduction in crime in Frankston over a period of time. It does include the COVID period but shows a reduction in crime statistics. The problem, though, is VicPol can talk about whatever statistics they like, but when traders are seeing 11-year-old children being stabbed in the street outside their shops and seeing 12-year-olds and 14-year-olds being charged with assault and armed robbery that absolutely undermines confidence. There are traders in Frankston who report:

> "Groups of kids, many of them who look like they should be in primary school, come in and steal things all the time …
>
> "They know they can't be arrested. There's nothing I can do."
>
> …
>
> He said: "We're open 24 hours. I see it all".
>
> "Our door and windows are always getting smashed. (The door) was kicked in again last week …

and on it goes. Confidence is being undermined by this criminal activity. The action I seek from the Minister for Crime Prevention is to work with the traders to look at whether it is additional police patrols, whether it is support for private security patrols or whether it is support for additional CCTV coverage that is needed to restore the confidence of traders in Frankston CBD and to ensure that it can be revitalised as a retail centre.

REGIONAL RAIL

Mr QUILTY (Northern Victoria) (18:25): (2079) My adjournment matter is for the Minister for Transport Infrastructure. As I travel through my region of Northern Victoria I like to indulge in a hobby—taking photos of abandoned and stranded rail infrastructure, railway lines and stations. Regional rail in Victoria is still crumbling despite the hundreds of millions of dollars squandered on the Murray Basin rail project. Key pieces of infrastructure are missing, and services that should be offered are lacking. This government is prepared to spend hundreds of billions of dollars on its Melbourne rail fever dream projects while regional Victorian rail rusts away.

While spending time in central Victoria last week there was a lot of talk around rail, the need for reconnecting towns and reopening stations and railway lines that have been left to rot. A meeting with the Rail Revival Alliance and also the Bendigo council highlighted a particular concern around the section of line between Eaglehawk and Inglewood. This 50-kilometre section of line was closed in May 2007, and flood damage in 2011 saw several sections of the track and bridges on the line suffer damage. Sections of the rail have been pulled up and reused elsewhere. It saddens me that this government cannot see the value of keeping and maintaining rail links to rural and regional areas. Reconnecting the line between Eaglehawk and Inglewood will provide access from Sea Lake and Manangatang to Bendigo. It will also bring passenger services to outlying areas of Bendigo, opening housing and employment opportunities for those communities, and provide freight rail services for the Bendigo regional employment precinct.

The need to dual gauge the Maryborough to Geelong line was also raised in meetings. This missing link from the regional Victoria standard gauge rail network is degrading the efficiency of rail. Dual gauging this line will dramatically shorten trip times, increase the freight transport options from the Mallee and remove thousands of trucks from our crumbling, narrow rural and regional roads.

It is time for this government to remember that Victoria extends beyond the outskirts of Melbourne and reinvest in rail in our regions. It is time to give regional constituents the same travel options our city counterparts have. Minister, the action I seek is for the government to urgently invest in regional rail, including reactivating the Eaglehawk to Inglewood railway line and dual gauging the Maryborough to Geelong line.

WEST GATE TUNNEL

Dr RATNAM (Northern Metropolitan) (2080)

Incorporated pursuant to order of Council of 7 September 2021:

My adjournment is to the Minister for Transport Infrastructure and relates to the West Gate Tunnel Project.

Residents in my electorate have been dealing with the negative impacts of this toll road for five years, and while the project was originally due for completion in 2023, it now won't be finished until at least 2025.

When the project was first proposed, my colleague the member for Melbourne spoke out fiercely against it, but the government pushed ahead in spite of community opposition.

Residents living in North Melbourne, West Melbourne, Docklands and Kensington will not benefit from the toll road, but they will be the most affected.

More than 10 000 extra vehicles a day will pass through these suburbs, polluting the area, creating traffic bottlenecks and pushing trucks onto local roads.

For years, my office, alongside the member for Melbourne, has been raising concerns about the project on behalf of the community. Yet residents still report that their concerns have been largely ignored and that no meaningful action is being taken to address the very serious issues they are raising.

The Wurundjeri Way extension will pass within 100 metres of residents' homes on Railway Place in West Melbourne, but the government refuses to acknowledge the need for a noise wall. Instead, residents have been offered tube stock plants which would take years to grow and do little to mitigate the road's noise impacts.

Parents and staff at Docklands Primary have raised fears about the extra bike traffic which will be funnelled from the project's new veloway onto the footpath outside the school. However, calls to separate the path or move the exit closer to Spencer Street, which could help keep students and families safe, have been disregarded.

The community are also concerned about the various impacts to the lower Moonee Ponds Creek and surrounding wetlands, which have already been eroded over the years by projects such as CityLink.

Residents have suggested positive solutions to increase green space, such as the realignment of veloway bridge 75 to allow for more planting at ground level. This would increase biodiversity and improve amenity. But despite the proposal being widely accepted by the community and the contractors responsible for building it, community groups have waited almost a year without any confirmation of the final design.

All of these issues and more have been raised multiple times by the project's community liaison group. Members of the group feel disrespected and ignored and are understandably frustrated by the lack of meaningful engagement from the relevant authorities.

The action I seek is for the minister to meet with the project's community liaison group and take meaningful action to address the concerns that residents raise in this forum.

RESPONSES

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (18:27): We have had 12 adjournment matters this evening, and they are as follows: Mr Grimley to the Minister for Police, Mrs McArthur to the Minister for Planning, Ms Maxwell to the Minister for Health, Ms Burnett-Wake to the Minister for Transport Infrastructure, Mr Finn to the Minister for Roads and Road Safety or the Minister for Local Government, Ms Bath to the Minister for Disability, Ageing and Carers, Ms Patten to the Treasurer, Mr Davis to the Minister for Transport Infrastructure, Dr Cumming to the Minister for Housing, Mr Rich-Phillips to the Minister for Crime Prevention, Mr Quilty for the Minister for Transport Infrastructure and lastly Ms Lovell for my attention as Minister for Water.

Turning now to the substance of what it is that you have talked about today, Ms Lovell, I note the merit and the effort that has gone into the Greening Euroa project, which itself is a pacesetting initiative and intended to create a model by which other parts of rural and regional Victoria, and indeed Australia, can assist in a more efficient and a more integrated framework for using water for a range of purposes. This is an issue which has gotten significant public coverage. The mayor, Laura Binks, who I was delighted to meet with recently at Lake Nagambie when we opened the further works on the pathway that has been developed—she talked about what it is that council has been doing to develop a critical momentum around improving streetscapes and landscapes and also managing an increasingly scarce resource—has in fact been a strident advocate of this project.

I know also that this is a project which has enjoyed widespread community support. It has also been a project that has received funding from the Strathbogie Shire Council but also from Goulburn Valley Water and from the Department of Environment, Land, Water and Planning (DELWP), which has assisted in some of the feasibility work for the purpose of that initial stage of developing the business audit and the facilities audit necessary to proceed beyond stage 1. This is a three-stage project, and it is currently at the second stage, which is treatment plant and root capital infrastructure design and quantity surveyor analysis.

As Ms Lovell indicated in her adjournment matter, this is a project for which a total of around $3.8 million is being sought for the purpose of capital upgrades. This is not something which is solely within the remit of the state government. There is also a push for federal government water funding to be made available to assist with delivery of this project. I note that we in fact have a new commonwealth government which is far more interested in water infrastructure than its predecessor. We have most recently had a grants round, which you, Ms Lovell, may be aware of, which was available to a range of stakeholders across Victoria to apply for capital grants of up to $1 million, and I know that the Strathbogie Shire Council was in fact encouraged to apply for a grant under that.

Ms Lovell interjected.

Ms SHING: It is really interesting, Ms Lovell, that you talk about—and I will take up your interjection—it not being enough. Well, the fact of the matter is that when the former coalition government was in power there was scant regard for capital upgrades and infrastructure developments. There was scant regard for partnerships to be had and maintained with water authorities and with catchment management authorities and community groups. And in addition to that, the former—

Ms Lovell interjected.

Ms SHING: It is interesting to see just how exercised Ms Lovell becomes about this issue when it is called upon her to justify the fact that the former coalition government was missing in action. And in addition to that—

Ms Lovell: On a point of order, President, the minister should be responding to an issue that has been raised in 2022 by the Strathbogie shire. Instead she is just attacking the opposition, dragging up something from eight years ago. This project had not been proposed then, and I would ask you to bring the minister back to the subject, based on relevance.

The PRESIDENT: Ms Lovell, first of all there was an interjection and probably she was responding to the interjection. But, Minister, please come back to the answer.

Ms SHING: Thank you, President. I look forward to not needing to take up any further interjections from Ms Lovell or indeed anyone else. The former federal government very recently—very, very recently—also failed to invest in critical infrastructure for integrated water management not just across Victoria but around Australia. And what we see at last is a commonwealth government that is actually interested in engaging with communities, including those in rural and regional Victoria—for the first time in nine years—on the sorts of projects which communities have been crying out for. Your federal counterparts—

Ms Lovell interjected.

Ms SHING: More interjections, Ms Lovell. I can keep taking them up if you would like.

Ms Lovell: Oh, keep going, smugness. Keep going.

Ms SHING: Can I ask you to withdraw that, please?

The PRESIDENT: Ms Lovell?

Ms Lovell: President, you have not asked me anything. She has not asked anything through the Chair.

Ms SHING: President, I would ask that you request that Ms Lovell withdraw that comment.

The PRESIDENT: Ms Lovell?

Ms Lovell: I withdraw.

The PRESIDENT: Thank you. And, please, no more interjection. And, Minister, can you please only answer briefly—no debate.

Ms SHING: Sure. What I would like to actually just confirm is that since the engagement has been continuing with the Strathbogie Shire Council and with DELWP there has been a lot of work that has happened with the water authority to understand what those needs might be. Those grants that were available and open until 7 June allowed for funding of up to $1 million for capital projects, and as people might know, there are a range of grants funding sources that can be available to meet the staged needs of projects like this one. So on that basis I am very, very happy to look at what the outcome of this grants round might well be. It may well change the landscape of the discussion which has been put to me in the adjournment this evening, and we may well then be in a position to see what the new commonwealth government is prepared to do given that it has a much greater appetite for actually engaging with communities on the sorts of water infrastructure matters that are of greatest importance to them.

On that basis I am delighted to confirm, as I have already indicated to the Strathbogie shire, including its CEO and mayor, that I look forward to continuing discussions about the critical water infrastructure that they need and indeed that this particular LGA deserves, particularly as it relates to long-term climate change, to meeting the needs of a growing population and to also making sure that we are engaging in innovative and effective efficiency matters now and into the future.

Ms Lovell: Smug, smug, smug.

Ms SHING: On a point of order, President, 'Smug, smug, smug', I think it was, again. It is the same. She has repeated the same insult.

The PRESIDENT: Ms Lovell, I did not hear it, but if you did, please withdraw.

Ms Lovell: I withdraw.

The PRESIDENT: Thank you. The house stands adjourned.

House adjourned 6.35 pm.