PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-NINTH PARLIAMENT

FIRST SESSION

THURSDAY, 4 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, 4 August 2022

The PRESIDENT (Hon. N Elasmar) took the chair at 10.03 am and read the prayer.

Announcements

ACKNOWLEDGEMENT OF COUNTRY

The PRESIDENT (10:03): 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.

Bills

MULTICULTURAL VICTORIA AMENDMENT (INDEPENDENCE) BILL 2022

Introduction and first reading

Mr DAVIS (Southern Metropolitan—Leader of the Opposition) (10:04): I move to introduce a bill for an act to amend the Multicultural Victoria Act 2011 to enhance the independence of the Victorian Multicultural Commission and for other purposes, and I move:

> That the bill be now read a first time.

Motion agreed to.

Read first time.

Mr DAVIS: I move, by leave:

> That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Mr DAVIS (Southern Metropolitan—Leader of the Opposition) (10:06): 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 Multicultural Victoria Amendment (Independence) Bill 2022 (the Bill).
>
> In my opinion, the Bill, as introduced to the Legislative Council, is compatible with the human rights protected by the Charter.
>
> David Davis MP
> 3 March 2022

Second reading

Mr DAVIS (Southern Metropolitan—Leader of the Opposition) (10:06): I move:

> That the bill be now read a second time.

Victoria's broad multicultural community has strengthened our economy and social structure and the Victorian Multicultural Commission (VMC), a statutory authority established under the Multicultural Victoria Act 2011, provides advice to government on policies and programs that are relevant to multicultural communities.

As of December 2020, the total population of Victoria was over 6 661 700 people of which close to a third (28 per cent) were born overseas, in more than 200 countries. Nearly half of all Victorians (49 per cent) were born overseas or were born in Australia with at least one parent who was born overseas.

A quarter of Victorians (26 per cent) speak a language other than English at home. Three in five Victorians (59 per cent) followed one of more than 130 different faiths.

Victorians that came from foreign shores strengthened the Victorian economy and enriched Victoria's cultural life, arts and cuisine.

It is critical that the VMC is able to undertake its work independently, without external pressure through factional or other influences that detract from its ability to give independent advice to government. It is also critical that the grants programs it administers are not used for party political purposes or factional purposes and are beyond reproach and seen to be beyond reproach.

The VMC, established by the 2011 statute, had its operation changed in the period after Labor's election to government in 2014.

A review of the functioning of the VMC under Daniel Andrews and Labor was conducted in 2015 with subsequent changes which diminished the independence of the VMC, effectively absorbing its operations into the Department of Premier and Cabinet.

Prior to 14 November 2016, the VMC functioned as an independent business unit within the Department of Premier and Cabinet and had its own distinct operational budget. The VMC was also responsible for administering the VMC grants program.

From 14 November 2016, the office of the VMC was merged with the newly formed multicultural affairs and social cohesion (MASC) division within the Department of Premier and Cabinet.

The new MASC division merged the Office of Multicultural Affairs and Citizenship (which supported the minister's office), the community resilience unit and the office of the VMC into one.

The Andrews Labor government enforced a memorandum of understanding and protocols (MOU) to control how the VMC would be funded and how its functions would be delivered. Under Labor's MOU:

- The VMC no longer had its own distinct budget, its budget sat within the Department of Premier and Cabinet;
- the resources of the Communications, Corporate and Community Grants and the Community Participation Brach were to provide advice to the VMC in the form of research papers, submissions, event briefings, speeches and community messages and consultations;
- VMC requests were to be commissioned through the office of the VMC director to the relevant MASC or DPC director, and all briefs completed by the MASC must be approved and signed by the relevant MASC director, and where appropriate and previously agreed, by the MASC executive director.

Under Labor's new arrangements the VMC's independence—and its operational and budget integrity—was severely compromised.

Following the 2016 review and the introduction of the new arrangements, press stories emerged with commissioners and others expressing concern about the diminished independence of the VMC.

A further review into the governance of the VMC was conducted in 2019.

Key recommendations from the 2019 review to restore greater independence to the VMC were rejected by the Andrews Labor government:

- Recommendation 7, that full autonomy with full functionality be returned to the VMC. This was rejected. Instead, the government retained the integrated 2016 model;
- Recommendation 14, that there be designated staff to serve multicultural communities who associate with the commission and its role as a grant source and representative voice of the

multicultural community. This was rejected by government with the government retaining control of grants with the exception of the Chairperson's grants;

- Recommendation 15, that the Chair's autonomy as a public service body head in relation to persons employed by the commission be restored, was rejected;
- Recommendation 16, that the autonomy of the commission be restored similar to other statutory bodies, was rejected.

After the 2019 review, a series of public events threw a spotlight on the VMC and the VMC's grants programs. This included allegations of government interference and allegations about allocation of VMC grants to organisations with links to Labor Party staffers and Labor Party allies.

An Independent Broad-based Anti-corruption Commission (IBAC) investigation 'Operation Watts' conducted jointly with the Ombudsman was to investigate amongst other serious matters:

> Whether public money granted to community associations by the Victorian government has been misused to fund party-political activities or for other improper purposes and, if so, whether the Ministers or other public officers involved in granting the funds have dishonestly performed their functions as public officers or have knowingly or recklessly breached public trust.

In May 2021 in a letter to the Premier's office, Kaushaliya Vaghela MLC stated that multicultural grants and board positions were effectively offered as political currency raising concerns about how positions at the Victorian Multicultural Commission were awarded, and that people from the Premier's Socialist Left faction enticed allies by claiming influence over publicly funded roles.

The Vaghela letter said, 'The gang says if people do what they say, then in return the gang will advise the Premier or the relevant minister in deciding who should get such roles, in returning favours'.

The July 2022 the Operation Watts joint report by the Independent Broad-based Anti-corruption Commission and the Victorian Ombudsman, *Investigation into Allegations of Misuse of Electorate Office and Ministerial Office Staff and Resources for Branch Stacking and Other Party-Related Activities*, draws stark attention to the provision of grants inappropriately and improperly to certain community organisations aligned with factions within the Andrews Labor government.

Chapter 6 provides abundant evidence of improper grant allocation processes. Chapter 7, 'Conclusions and observations', particularly paragraphs 708 to 722, makes finding, conclusions and observations about grants that would cause a fair-minded member of the community enormous concern. Paragraph 710, for example, deals with evidence and concludes that 'people in the ML faction … sought to improperly influence the grant process'.

Decisions on grants of public money, and selection to serve on government bodies, including the Victorian Multicultural Commission, should be made on the basis of clear selection criteria, not on the basis of Labor Party alliances.

The Multicultural community in Victoria deserve fair access to grant funding that is genuinely independently determined and untainted access to advocacy leadership roles.

The independence of the VMC and the multicultural grants process must be restored.

This bill amends the Multicultural Victoria Act 2011 to enhance the independence of the Victorian Multicultural Commission.

The independence of the commission is strengthened by the insertion of an independence clause in the objectives of the act.

The bill also amends the act by inserting that a direction must not be given to the commission by the minister or on the minister's behalf with respect to any grants made by the commission and, further, any ministerial briefings provided to the minister by the commission in relation to any grants made by the commission are for noting only and are not subject to the minister's approval.

The government in machinery-of-government changes on 1 February 2021 moved the Victorian Multicultural Commission to be a responsibility of the Department of Families, Fairness and Housing.

This effectively downgraded the position of the VMC, which, in the view of the Liberals and Nationals, given the broad economic and social significance of multiculturalism to Victoria, should be located in the Department of Premier and Cabinet: a matter that can be changed by the Premier of the day through alteration of the administrative orders.

If elected, we would make this change, restoring the VMC to a central role in government but with enhanced independence, as proposed in this bill, and with appropriate checks and balances to ensure there is no misuse of VMC grants or inappropriate pressure to misallocate taxpayers money for party political purposes.

In conclusion, enhancing the integrity of the Victorian Multicultural Commission will strengthen multiculturalism in Victoria and ensure that taxpayers money is not misused or wasted on projects for party-political advantage, or to the advantage of one particular Labor Party faction over another.

I commend the bill to the house.

Mr TARLAMIS (South Eastern Metropolitan) (10:15): I move:

That debate on this bill be adjourned for two weeks.

Motion agreed to and debate adjourned for two weeks.

Committees

LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Children Affected by Parental Incarceration

Ms PATTEN (Northern Metropolitan) (10:15): Pursuant to standing order 23.29, I lay on the table a report from the Legal and Social Issues Committee on the inquiry into children affected by parental incarceration, including appendices. I further present transcripts of evidence, and I move:

That the transcripts of evidence lie on the table and the report be published.

Motion agreed to.

Ms PATTEN: I move:

That the Council take note of the report.

This is a really important report and it is a report that just fills me with the sense of privilege that we have in this place. Before I speak to the report, I would really just like to note that a number of the very important people that were part of creating this report are here in our chamber today. These are people who have had lived experience of incarcerated parents, and I would like to welcome to the chamber Holly Nicholls, Rachael Hambleton and Clarisa Allen, and also Glen Fairweather, who is the general manager of the Prison Fellowship. They really helped make this report the report that it is today.

I would also, before I forget, like to thank all of the staff that worked on this report. This report is a really special report, so I am really grateful for the work and dedication of the team and that was Lilian Topic, Meagan Murphy, Kieran Crow, Joel Hallinan, Jessica Wescott and Cat Smith. I just thank them so much for this report, because this report looks at a hidden group of children. No-one has line of sight on these children. These are the children of parents who have been incarcerated. Right now there are about 7000 children whose parents are in prison in Victoria. No department, as we found in this report, has line of sight on them, has any care for them, whether that is when the police arrest their parents, whether that is when their parents go before the courts or whether that is when their parents are then in the corrections system. No-one is seeing these children. Well, we saw them and we heard from them, and it was, I would have to say, an absolute eye-opener. We must protect these children. We are signatories to the United Nations Convention on the Rights of the Child, and these children

are protected under that convention, yet we have not done enough. We know that when their parents are incarcerated they can experience disruption to schools, isolation, stigma, the effects of a reduced family income and housing insecurity, and sadly many may be incarcerated themselves. Now, that is not a given, but we heard from some of those children who are adults now that that fear constantly lives with them.

I would have to say that what I am particularly ashamed about is the number of Aboriginal children that are taken into care as a result of their parents being incarcerated. In fact Aboriginal children are losing their parents at a greater rate than they were last century when we were removing them from their families. This is of immense concern to me, and it should be of immense concern to all of us. But there are things that we can do, and I think this report shines a light on that. We make nearly 30 recommendations. Certainly, look, if we wanted to fix this problem, let us fix inequality and disadvantage in our society. Obviously that is something that we at the Legal and Social Issues Committee have heard time and time again, whether that was spent convictions or whether that was the justice inquiry—that those are the main causes of people entering into our corrections system and being incarcerated.

But I think we need to allow our courts to consider dependent children. We are locking Aboriginal women up at an alarming rate at the moment, and many of them, in fact most of them, have children. We are not locking them up because they are violent or a risk to society, we are locking them up for non-violent crimes generally related to disadvantage and poverty. I think we can rethink that, and I think we can do far better in that area. That would be around rethinking sentencing. Some of my committee members may not agree with me, but I also think it is about rethinking bail. It is about rethinking what we do with parents and also then rethinking how we maintain that connection—that family connection. We know that family connections are the biggest protector against crime. I urge all members to read this, and I want to say to the people in this chamber today: thank you. We see you, we hear you and we must act on this. This report will be your legacy.

Dr KIEU (South Eastern Metropolitan) (10:21): I rise to speak to the Legislative Council Legal and Social Issues Committee report on the inquiry into children affected by parental incarceration. The children of incarcerated parents are a hidden and often vulnerable cohort. This inquiry stemmed from the committee's drive to bring the plight of children affected by parental incarceration into the spotlight to ensure that they do not remain invisible and that our justice system and social support systems reduce harm and promote protections for all affected children.

I would like to thank Mr Rodney Barton for initiating this inquiry, during which the committee conducted many hearings here in Victoria as well as in New Zealand. I would also like to thank all the organisations and government agencies but particularly the individuals who have shared with us their lived and personal experiences. It is a very difficult and courageous thing to do, so we acknowledge that. I also want to thank the committee secretariat team for their devotion, dedication and extremely hard work to bring this to the conclusion, particularly Meagan Murphy, who has been instrumental in bringing the report together.

Having a parent imprisoned does change a child's life, both immediately and in the longer term, impacting both emotional and physical health. They need to be made visible to better understand the challenges they may face and to respond to their needs. However, at present there is no exact figure for the number of children affected by parental incarceration in Victoria. Better data collection, collation and sharing practices and more systematic consideration are required to facilitate effective, proper and timely support in order to help reduce the risks of poorer outcomes for children impacted by parental incarceration.

Mr BARTON (Eastern Metropolitan) (10:23): This is very important to me. I want to thank our committee for referring this. This is a report for a boy that I know, my sister's boy, who we failed. The damage and the pain that these kids have damages them for life. I want to thank those who shared their stories and made me cry again. It is becoming a bit of a theme; I do cry a lot. But this is so important,

and we certainly felt no-one knew. These kids are the victims, the invisible victims, of crime, and we owe them. We cannot desert these kids, and I am so proud of the work they have done. I want to thank Ms Patten. I apologise to Ms Patten; I am a difficult unit to keep focused. But with everything that happens in this place and whatever happens after 26 November, I am really proud of this.

Motion agreed to.

Papers

PAPERS

Tabled by Clerk:

Melbourne Cricket Ground Trust—Report, year ended 31 March 2022.

Subordinate Legislation Act 1994—Documents under section 15 in respect of Statutory Rule Nos. 58 and 60.

Business of the house

NOTICES

Notices of motion given.

ADJOURNMENT

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (10:31): I move:

That the Council, at its rising, adjourn until Tuesday, 16 August 2022.

Motion agreed to.

Members statements

DRUG HARM REDUCTION

Ms PATTEN (Northern Metropolitan) (10:31): I do not know about others, but the last six weeks has been pretty busy. I was invited to Europe, Poland exactly, to share what not to do in regard to tobacco harm reduction. We used to be good on harm reduction and in some areas we still are: needle exchanges, naloxone and supervised injecting rooms all save lives. But we are woefully blind when it comes to preventing the deaths of smokers. Almost every country has taken a different path. The UK and New Zealand are exemplars of tobacco harm reduction, and their reduction in smoking rates attest to that. I also had the pleasure of visiting the Maltese Parliament while I was there and meeting with Ms Rebecca Buttigieg, the minister overseeing the rollout of quite unique cannabis legislation. Last weekend I attended a conference in Malaysia on harm reduction. Although they prefer the term 'sustainable recovery', Malaysia is set to decriminalise the use and possession of drugs—Malaysia! That is right. Malaysia will soon be more progressive than us on drug policy. We credit ourselves in this state as being progressive, but sadly we are falling behind the rest of the world.

HELEN CANTONE AND CHRISTINE BARRO

Mrs McARTHUR (Western Victoria) (10:33): Today I celebrate the achievements of two famous and amazing Melbourne businesswomen, Helen Cantone and Christine Barro. Both were honoured in the recent Lord Mayor's Small Business Awards—Helen for her 40-plus years and Christine for her 20-plus years of continuous operation of a business within the City of Melbourne. Helen started as a 15-year-old in a small manicure salon and at the age of 17 bought the business. Forty years on she has now located her You Day Spa at 15 Collins Street, and this is appreciated by her loyal and large clientele, including me. Christine started as a buyer for the legendary department store Georges before opening her namesake store on Flinders Lane in 2000 and then relocating to become Christine on Collins in 2019. Christine on Collins presents collections of fashion, fragrances and accessories by the world's most lauded design talents in a multistorey salon without peer or precedent. These two fabulous women understand what developing and maintaining a niche business in a very competitive

market is all about. I applaud their well-deserved City of Melbourne recognition, and I am happy to call both Helen and Christine my friends.

MAJOR EVENTS

Mr ERDOGAN (Southern Metropolitan) (10:34): I am pleased to report that Melbourne has shown once again that it is the major sports and events capital of Australia. I am the chair of the Economy and Infrastructure Committee, and we had an inquiry into the effects of the COVID-19 global pandemic on the events and tourism sectors and the concerns raised about the long-term prospects of the sector. But I can report that it is back.

One fine example was the recent match between Manchester United and Crystal Palace at the MCG on 19 July 2022. On a chilly Melbourne night—it was very frosty indeed—a crowd reported to be nearing 80 000 attended. Diehard football fans turned out despite this cold. It was fantastic to have an opportunity to attend but also to catch up with local sporting clubs that were in attendance from across Melbourne. I was joined by the Parliamentary Secretary for Sport, Danielle Green, as well as Crystal Palace owner Steve Parish, who had made the journey down from London. All in all it was a fantastic night and a great win by Manchester United. There were plenty of goals—for those of you that are football fans like me, you know you can sometimes have a game where there are no goals, so to have a few goals was quite enjoyable.

I would like to acknowledge the Minister for Tourism, Sport and Major Events, the Honourable Steve Dimopoulos, as well as the former minister, the Honourable Martin Pakula, for their work in securing this event and for the delivery of this great event. Victoria is back on the map as one of the world's sporting and major events capitals, and we are here to stay. Melbourne is back.

BALLARAT SEXUAL ASSAULT SURVIVORS MEMORIAL

Mr GRIMLEY (Western Victoria) (10:36): Thanks to a unanimous vote and a funding commitment by the Ballarat City Council, the community is one step closer to a public art memorial to acknowledge survivors of sexual assault. Continuous Voices has driven this project, with support by the City of Ballarat in collaboration with the Ballarat Centre against Sexual Assault, Loud Fence, Care Leavers Australasia Network, the Art Gallery of Ballarat and Beyond Empathy. More than 50 survivors explored ideas for the appropriate location and design. The memorial will acknowledge the full scope of the suffering and trauma caused by all forms of sexual violence, hopefully aiding some healing and facilitating ongoing conversations about change. But the project will not go ahead if we do not have funding from the state and federal governments. I implore both to pitch in the remaining money to bring this memorial to life and to help victim-survivors of sexual abuse to move forward on the path to recovery.

ELECTIVE SURGERY

Ms CROZIER (Southern Metropolitan) (10:37): The government continues to refuse to release the latest elective surgery waitlist numbers.

Mr Davis: Where are they?

Ms CROZIER: Where are they, Mr Davis asks. That is what I want to know and that is what I think every Victorian who is waiting on the elective surgery list wants to know too, because they are the ones that are impacted here, as well as our hardworking doctors and nurses in the system, who have been let down by the failures of the government to manage our health system crisis. It is worsening by the day. In March, when the last official figures were known, there were 89 000 people on the waitlist—almost 90 000. Well, we know it is more than 90 000, because the government is not even including hospitals like Bairnsdale and Mildura in the official figures. Bairnsdale have 1400 people waiting on their elective surgery waitlist. It is growing by 300 people a month.

These are people who are waiting in pain. There are Victorians who are speaking to me that need vital cancer surgery to remove tumours. They have been cancelled, deferred and put into the wrong hospitals with the wrong procedures. It is a debacle. These people's lives are at risk. In fact people are dying waiting to get their surgery. This is an absolute crisis, and we have got a government that refuses to release the numbers and refuses to come clean about exactly who is waiting on the elective surgery list and how many people have died waiting for surgery. I demand that they be released—released today. Stop the obfuscation. Stop the blame and the deflection. Give Victorians the truth.

DONATELIFE WEEK

Mr TARLAMIS (South Eastern Metropolitan) (10:38): Last week was DonateLife Week, a national awareness week that promotes the importance of organ and tissue donation and encourages more people to talk to their families and register. While the majority of Australians believe it is important to be an organ and tissue donor, only one in three is currently registered. This is despite the registration process being so easy and only taking 1 minute. The importance cannot be overstated. One organ donor can save up to seven lives, and there are currently 1750 Australians on the organ transplant waitlist. Thousands of Australians are living their lives to the fullest with a second chance at experiencing all the love, joy and adventure that life has to offer because of the generosity of organ tissue donors and their families. In our opt-in organ donation system we need everyone to make their intentions clear not only by registering but also by having the conversation with their family and friends so their intentions are known. If you have not already registered, do not wait any longer. Do it today. It only takes 1 minute. This simple act could mean that you too could one day save lives.

ARCHIE ROACH

Mr TARLAMIS: On another matter I want to commemorate the life of Archie Roach. Archie Roach was a remarkable musician, activist and storyteller, a remarkable man, a voice of his people, a campaigner for justice for First Nations peoples and a man of immense courage, compassion and truth. His music and his words changed and inspired lives, and through them we have gained so much more knowledge and understanding. He has left an extraordinary legacy that will leave an imprint on our nation forever. My condolences to his family, friends, community and all who cherished him. My thoughts are with you all. Vale, Uncle Archie Roach.

INDEPENDENCE PARTY

Dr CUMMING (Western Metropolitan) (10:40): The community are disillusioned with the major parties, and the community feel that the major parties do not represent them anymore. The community want to actually see individuals, independents, that represent them directly—locals that understand local needs and local issues.

I have actually convened the Independence Party, a party that will actually put the people first and the party second. Independence Party members will always be allowed a conscience vote and must always put their constituents first. The Independence Party is currently going through a registration process with the Victorian Electoral Commission, and I want to thank the current Independence Party members and welcome all new members that want direct representation here in Parliament.

True independents wear the colour purple with pride. With an open heart they listen to the community. The Independence Party will be a strong voice for the community. I want to give Victorians hope at this next election that we can change this government in November. This government has created our hard times, and this government must go in November. I will do everything in my power from now until November to get rid of this government, to sack Dan Andrews and to give Victorians change, and I look forward to doing this through the Independence Party.

LIFELINE GIPPSLAND

Ms BATH (Eastern Victoria) (10:41): Next year Lifeline Gippsland celebrates 60 years of serving the community. Last week Shadow Minister for Mental Health Emma Kealy, the Nationals candidate

for the seat of Morwell, Martin Cameron, and I sat with CEO Michelle Possingham to listen to where they are at in Gippsland. Lifeline certainly did the bulk of the heavy lifting during COVID and the COVID lockdowns, with a 45 per cent increase in calls throughout that period of time. Gippsland Lifeline have 75 dedicated volunteers, but they need many more, and this is a drive to encourage people to become world-class volunteers for Lifeline. The op shops that play an amazing role in servicing and providing that revenue raising for Lifeline have been under the pump during the lockdowns as well.

Michelle said it has been a privilege to be involved in an organisation which saves lives. No-one should go through their darkest moments alone, and we endorse all the work that Michelle does and all of her fabulous staff and volunteers do. They receive quite a pittance from the Andrews government—$150 000 a year—but receive around 11 000 calls. We have also lost two mental health providers this last week in Gippsland, and the money raised from the Mental Health and Wellbeing Bill 2022 must go to service providers, not just to funding the costs of departments and infrastructure in Melbourne.

PORT MELBOURNE SPORT

Ms TAYLOR (Southern Metropolitan) (10:43): It was a historic day last Saturday with the coming together of Port Melbourne Football Club and the division 1 seniors club Port Melbourne Colts Football Netball Club, sharing outstanding local facilities in the spirit of unity at ETU Stadium. I want to commend all those who made it possible.

MELBOURNE ARTS PRECINCT

Ms TAYLOR: As a long-time local arts admirer, it is pleasing to see really positive early consultation on a project that will transform Melbourne's arts precinct. Melbourne is the arts and cultural capital, and this project will take it to the next level. The Melbourne arts precinct transformation will include 18 000 square metres of public parkland, more space for outdoor art and performances, new connections into and through the arts precinct, improved all-abilities access—very, very important—new restaurants and bar spaces, significant upgrades to the Arts Centre Melbourne's theatres building and The Fox: NGV Contemporary gallery. And may I say a packed house of Southbank3006 members met on the weekend just past to be part of the process, and this bodes well for great outcomes in the local area.

FIREFIGHTERS PRESUMPTIVE RIGHTS LEGISLATION

Ms MAXWELL (Northern Victoria) (10:44): I had the opportunity on Friday, 29 July, to attend the District 24 CFA medal presentations. It was a great opportunity to thank the recipients of those awards for their contributions to assisting and supporting our local communities. Whilst I was there I was also able to have a discussion with CFA chief officer Jason Heffernan, emergency management commissioner Andrew Crisp and Volunteer Fire Brigades Victoria chief officer Adam Barnett. We spoke about presumptive rights for female-specific cancers for female firefighters. We had a great conversation about that. It was not our first conversation, and I have to say that they were incredibly supportive. We know now that there is also new scientific evidence which has come out of some other global jurisdictions, so I just want to say today: come on, Attorney-General, you said you would draft legislation and bring it to this Parliament so that females can have some equality in firefighting. We need those female-specific presumptive rights to come into this Parliament this year, before 26 November.

INTEREST RATES

Mr DAVIS (Southern Metropolitan—Leader of the Opposition) (10:46): Today I want to draw the house's attention to the very significant interest rate rises that we have seen in recent months. Indeed on Tuesday there was another 0.5 per cent rise in the overnight cash rate by the Reserve Bank, lifting the total increases in the recent period to 1.85 per cent. These are very significant increases. They not only hit small businesses and families, those who have got significant mortgages, but they also clobber the Victorian state government and our budget—the Victorian budget. Labor has left us with a massive

debt overhang, and this debt is out of control compared to other states and territories. It is clear—even on the budget figures that are now well out of date—that by 2025–26 the debt in Victoria will be $167.5 billion, greater than New South Wales, Queensland and Tasmania combined, to give some context. The increases that we have seen from the sensitivity analysis in the budget of a 1 per cent shift in interest rates over four years is likely to clobber the budget by about $2.55 billion. We are likely to see something north of $4.5 billion in the hit on the state budget. That is going to really put pressure on the budget. This is the terrible debt legacy, the debt timebomb, left by Daniel Andrews and Tim Pallas, amongst the worst economic managers in the state's history.

PORT MELBOURNE PUBLIC HOUSING

Mr HAYES (Southern Metropolitan) (10:48): Last month I visited the Barak Road public housing estate in Port Melbourne. As an unwanted Christmas present all tenants were told they were soon to be relocated due to government plans to redevelop the site under the new public housing renewal program. Residents are upset and disappointed by this eviction notice. Many of them have been promised Barak estate would be their forever home. Some have been moved twice in five years due to previous public housing redevelopments. There is no clear evidence on their future housing security or if they will ever return to Barak Road. It is clear the buildings are basically sound but have been left to fall into disrepair. They could easily be refurbished, and without disrupting and uprooting the lives of 200 residents. Also refurbishments may well be a much less expensive option. Each unit has access to open air and a tree-lined courtyard, giving children a place to play and tenants a place to meet. There have been no real consultations and no plans for when it will take place. We do not even know how many units will be built. It is likely that most of the site will be privatised to capitalise on the magnificent bay views. So where does this leave the tenants? Residents are devastated that they are not only to lose their homes immediately but also to lose the small community they have grown so fond of. We need to stop the privatisation of public housing estates and implement a more respectful solution for existing residents.

FEDERAL GOVERNMENT

Mr ATKINSON (Eastern Metropolitan) (10:49): The incoming federal government obviously has a great many challenges on its plate, and I certainly extend my congratulations to the Prime Minister and his team on their election. Can I indicate that there are two areas that I would like to see the federal government tackle as a matter of urgency in the interests of Victoria and indeed the nation. The first one is the visa system. Our visa system in Australia is totally broken. It is not working for anyone. It is not working for refugees, it is not working for business migrants, it is not working for casual employees, it is not working for international students and it is not working for family reunion. It is a broken system, it needs to be fixed and it needs to be fixed urgently. I urge the government to tackle that.

The second thing that I urge the federal government to do is to convene a royal commission into the COVID experience, and I do not seek it as a witch-hunt. I seek it as an opportunity to explore what we did right as much as what we have done wrong, and I seek an opportunity to approach it on a national level so that we can look at some of the international statistics and experience as well as what we have done in Australia. There is no doubt that there are issues in terms of the vaccination program and issues in terms of some of the curtailment of civil liberties during the period. They are the negatives. But there are also some positives to explore and certainly some real lessons in terms of workforce and so forth that we do need to tackle. A royal commission is warranted, and now.

ALS FRIEDMAN CONFERENCE

Mr LIMBRICK (South Eastern Metropolitan) (10:51): A few weeks ago I was honoured to be invited to give a keynote address to the Australian Libertarian Society's 2022 ALS Friedman Conference in Sydney. It had been two long years since we were all able to gather together, and I was very heartened to see a very large number of people in Sydney, many old and many new friends as well, people who were there who want to defend liberty in this country. Among them was one of my

heroes—and I got to meet him again—Mr Ted Hui. He was one of our guest speakers there. If you do not know Mr Hui, he used to be a Legislative Council member in Hong Kong, and although it is sad that he has had to flee Hong Kong, I was honoured to know that he now lives in Australia, in South Australia. I think he will be a wonderful addition to Australia, as sad as it is that he had to flee his home country. We are very fortunate to have him here.

LIBERAL DEMOCRATIC PARTY

Mr LIMBRICK: On another note, I was also able in Sydney to attend the Liberal Democrats AGM. It was our largest AGM ever. I was very heartened to see such a huge growth in membership in the party and our focus on the upcoming elections in Victoria and early next year in New South Wales. I would like to congratulate our new incoming national executive. Congratulations to them.

HOMELESSNESS

Mr BARTON (Eastern Metropolitan) (10:53): This week is national Homelessness Week. This is a time to raise awareness of the impact of homelessness in Australia. Everybody has seen the news. Everybody is aware that we are in the midst of a housing crisis. The theme this year is 'To end homelessness we need a plan', and in fact we need a long-term plan. We could not agree more. The stats are damning. In Australia there are 116 000 people experiencing homelessness on any given night. In 2021, 114 000 people seeking homelessness services had to be turned away because of the lack of resources. So what can we do this week to advocate for change? Everybody's Home will be launching a petition this week to call for additional investment in social housing. You can head to their website to sign and share. There are Homelessness Week events, and you can get involved by sharing the campaigns. Government responses to homelessness have typically been short-sighted. Of course there is a focus from budget to budget but no long-term planning. The Big Housing Build is great, but once these homes are completed we still will not have the national average of social housing dwellings, which is 4.5 per cent. Everyone working in this space is overwhelmed. We need a plan to end homelessness, and not just this week. We think everyone should get behind all these homelessness organisations.

Business of the house

NOTICES OF MOTION

Mr TARLAMIS (South Eastern Metropolitan) (10:54): I move:

That the consideration of notices of motion, government business, 683 to 746, be postponed until later this day.

Motion agreed to.

Bills

LOCAL GOVERNMENT LEGISLATION AMENDMENT (RATING AND OTHER MATTERS) BILL 2022

Second reading

Debate resumed on motion of Mr LEANE:

That the bill be now read a second time.

Mr DAVIS (Southern Metropolitan—Leader of the Opposition) (10:55): I am pleased to rise and make a contribution on the Local Government Legislation Amendment (Rating and Other Matters) Bill 2022. This is a bill some bits of which we like and others we have significant reservations about. In the circumstance, we will not oppose the bill, but I will mark out a number of areas where we have some significant reservations indeed. The bill contains lots of little housekeeping things. It removes the ability of councils to impose rates or charges for the provision of water supply or sewerage services. It ensures special rates and charges are levied within 12 months. It gives councils more power to grant rebates and concessions on rates that are being used for public benefit, and we have some serious

concerns about the way that certain councils may misuse this. I understand the intent here and I understand that there is a legitimate aspect of this, but we would be very, very concerned if councils were to use this as a way to cost-shift rates onto standard ratepayers and to standard business ratepayers. If they were to exempt a whole class—for example, social housing—that would concern us because it would shift the burden onto other ratepayers and would drive a surge in rates for many, and we are very concerned that that is the intent of the government in this matter.

I put on record the government's attempt last year to impose a big new housing tax, a massive new levy, on new subdivisions of 1.75 per cent, which would have equated to around $20 000 per household in metropolitan areas and about $12 000 in the country. I note the very significant imposition that that would have been. The government argued that that was balanced, although no-one knew about this so-called 'balancing' until it popped out publicly. It was to be balanced by some changes that would reduce red tape and other matters, and also as part of it councils were to be forced to forgive social housing projects their rating component. We think the rates need to be done in a way that is pretty even handed. We think that where you provide a benefit to one group of ratepayers it will inevitably be paid for by higher rates for standard ratepayers and higher rates for small businesses, and we think this is not the right time to do that—certainly not the right time. We think there is a problem in principle, but we also think it is a time when the cost of living is very significant for so many families and businesses. Many businesses are coming out of a period of real toughness, real struggle, through COVID, and clobbering them with more council rates is the wrong way to go. That, we would argue, also applies to the general ratepayer. Families I think have found it very difficult through this period. Cost-of-living pressures are becoming greater.

It allows for the minister responsible to make guidelines relating to payment of rates and charges, replacing the requirement for penalty rates to be calculated at a rate fixed under section 2 of the Penalty Interest Rates Act 1983. It gives councils more discretion as to a payment plan, duration amount and frequency. It amends the Local Government Act 2020 in a range of areas related to freedom of information and council integrity, mainly in relation to the disclosure of confidential information. We are very nervous about where some of those changes may go to. We note that the government seems to have had significant impact on many councils, and the government is routinely using secrecy provisions, gag clauses, gag agreements, to prevent local government from consulting fully and properly with its community. I can instance several examples of this with level crossing removals, where community reference groups are not able to consult properly with the community because of the gag orders. Councils are not able to consult properly with communities, and in the case of the Suburban Rail Loop all of those councils along that line have been forced to sign a gag agreement which prevents them discussing anything the government does not want them to discuss and prevents them effectively consulting with their communities.

Mr Atkinson interjected.

Mr DAVIS: Or indeed, as Mr Atkinson says, their elected representatives, unless they are one of those who have signed the agreement, are unable to consult properly with the whole council, and the officers are unable to present information to the council to inform its decision-making or indeed present equivalent information to the community. It is an absolute and utter outrage. It is Stalinist. It is actually just one of the most profoundly unsettling things that we have seen in many years, this increasing use of these gag orders, these gag agreements. Councils are told, 'If you don't sign the agreement, we won't even discuss this with your officers. We'll just build it, and off we go'.

In the case of the planning instruments, the minister has taken all these planning powers for himself. For example, if you look at VC170 on transport projects or 187 and 190 on social housing projects, they tear away the planning responsibilities from local government—rip them away and take them back to the minister, who also has powers to exempt himself from any consultation requirements whatsoever—and they are routinely doing it. It is an absolute outrage. This is one of the most undemocratic governments in the state's history.

The government says that one of the main reasons for the introduction of the bill is in response to the Ombudsman's report in May 2021, *Investigation into How Local Councils Respond to Ratepayers in Financial Hardship*, and the *Local Government Rating System Review*. We introduced an amendment to a bill in this chamber to try and provide some advice in effect to councils that they should be more open and direct with their ratepayers about the hardship provisions, because legitimately ratepayers from time to time need to access those provisions, and councils have been traditionally a bit secretive about that. That amendment, although defeated, certainly sent a clear message. But the Ombudsman's report made it very clear that the need was there to better deal with these hardship matters, so in that sense we support some of these points.

The reforms, as I say—rebates and concessions, the key changes in the bill—enable councils to grant rebates and concessions on land if it is used for public benefits, and I have made clear our serious concern. We think this is a cost-shifting provision. We think it is an attempt to clobber, to smash, everyday ratepayers. We are very worried about how this will be used, and I would welcome the minister's assurances that it will not be used in that way—it will not be used to oppose the provision of special arrangements for social housing which will shift the burden to everyday ratepayers and in particular too to business ratepayers as part of that arrangement.

The payment plans—we are actually just a bit concerned that there may be a drift out with a lot of these payment plans and that it may be that councils are very slow to collect. Now, there is obviously a balance to be struck there. We obviously understand what the Ombudsman has said. We understand about financial hardship and indeed that is why we moved that earlier amendment, but that needs to be done with great care. We do not want to see a situation where people are not paying their rates—where ratepayers are actually avoiding their responsibilities over the long term. I think they are the main issues that I really want to draw the chamber's attention to.

I am just going to make some general reflections on councils and where we find ourselves with councils. I say I am a strong supporter of councils and my local councils in particular. I believe they generally represent their communities pretty well. That is not to say that there are not some councils that go off beam from time to time, but I do believe in local democracy and the ability of local communities to express their broad views. I think equally it is true that a number of councils—and I want to instance Yarra but in particular the recent steps by the City of Melbourne—have moved to take a highly political position on Australia Day. I think this is beyond the purview of local councils. I think this is ultimately a matter for state and federal governments. It is not a matter for local councils, and I think that local councils have gone too far in this regard. I think the central city council and the Lord Mayor in this case have lost the plot on the matter. I think that in fact councils would be well advised to focus on their collection of rates, collection of rubbish and the basic duties that they have to look after—their parks, their spaces and their planning responsibilities. I strongly support all of those roles.

It is not as though the Melbourne City Council has covered itself in great glory in recent years through the period of the pandemic. I do not think they have led the way very well, and I do not think they have been prepared to stand up to the state government on behalf of their ratepayers. Again, there is a significant balance to be struck here—I understand that—but they have focused on closing down road access and closing down access for businesses to their premises. I have spoken to quite a number of small businesses that have had real trouble with the various road and bike works that have occurred in actually getting their goods into their premises. Nobody consulted them. Nobody spoke to them. Restaurants have struggled to be able to get small trucks to actually be able to do regular deliveries.

I mean, this is council failing at some of the basic tasks that it should have. It should be engaging with its community and listening to its community. Instead it appears to be hell-bent on a frolic very much against the broad public opinion that actually Australia Day is an important reflection of our history. In no way does that mean that we have to say there is no place for recognition of the impact of settlement. In no way do I say that there is no place for that recognition. But having a broad cultural day across the country—I accept that it relates to a date in 1788 that was in one sense a New South

Welsh date. I mean, in truth my own view of the date we as Victorians should be standing up for is 1 July 1851, Victoria Day, when Victoria got its self-government and broke free from New South Wales, but that is an aside. My central point here, in the context of this local government bill, is to say that I think the City of Melbourne has embarked on a wink and a nod on one hand as a stalking horse for other levels of government perhaps—or is it just so absorbed with these things that it really wants to run its own holiday regime? Holidays are usually gazetted by the state government and the responsibility of the state government. In this case it is a national holiday. I think most Victorians see the value of it. Many Victorians got their citizenship on that date, and I do not think we should diminish the significance of that.

People who have come from overseas do think of the day fondly because it has resonance for them after they have gone through their citizenship ceremonies, and Mr Atkinson and I over the years have been to many of these citizenship ceremonies and have watched the growth in the significance and importance of Australia Day. I for one think it is a divisive approach of the City of Melbourne. I think that it does not have a moral mandate to take this stance, and I think that it has actually lost its way on this. It has not focused on the key things that it should have been focused on, instead heading out into this territory which I think many would see as a frolic. With those comments I want to indicate again that we will not oppose the bill. We do have those areas of significant concern.

Ms WATT (Northern Metropolitan) (11:11): I rise to speak on the Local Government Legislation Amendment (Rating and Other Matters) Bill 2022, which most notably is a bill that makes rate collection fairer. With this bill the Andrews Labor government is ensuring that those who are struggling to pay their rates are not being driven further into debt or out of their home. This bill implements a range of recommendations from the *Local Government Rating System Review* and the Ombudsman's *Investigation into How Local Councils Respond to Ratepayers in Financial Hardship*. The bill will empower the minister in consultation with the Essential Services Commission to set a maximum amount of interest that may be levied on unpaid rates and charges, which currently can be as high as 10 per cent, and develop ministerial guidelines councils must follow in dealing with ratepayers experiencing financial hardship. Councils will be limited in using Magistrates Court orders for recovering unpaid rates in situations where rates or charges have not been paid for two years or more. This bill makes a range of improvements to the ability of councils to provide rate rebates and apply special rates and charges. It also makes technical changes to a number of acts.

In 2018 the government committed to a review of the local government rating system, involving extensive consultation with ratepayers, councils and peak bodies throughout our state. The government responded by supporting 36 of the review's recommendations and committing to prioritising the recommendations that relate to greater support for ratepayers in financial hardship. This bill is the first stage of these reforms and is focused on ratepayers experiencing hardship and improving the way rates are collected. The second stage of reforms, which relate to structural improvements to the way the rating system operates, will be further explored in 2023 in consultation with ratepayers and the local government sector.

The bill also implements the recommendations of the 2021 Ombudsman's report *Investigation into How Local Councils Respond to Ratepayers in Financial Hardship*, as I mentioned earlier. The Ombudsman report found that people who were struggling to pay their rates were often met with debt collectors, high penalty interest and in some cases costly litigation. This causes more stress and fears of losing their homes for those who are already struggling and may be dealing with a range of compounding and complex issues, including family violence and mental health challenges.

This bill is based on extensive consultation over the past three years with councils, ratepayers and local government peak bodies. Important stakeholders included Ratepayers Victoria and Financial Counselling Victoria. They have welcomed the move, saying it will help thousands of people across the state. It is also based on the Ombudsman investigation into all 79 councils and their rating of hardship policies and the experiences of ratepayers who were dealing with financial hardship in those municipalities. Throughout this process all key stakeholders have been consulted.

The bill expressly prescribes payment plans as a means by which councils can recover unpaid rates and charges. Currently councils are required to provide four instalments, and it is up to them to provide or not provide additional payment options. It creates a new power for the Minister for Local Government to ensure ministerial guidance to guide how councils deal with ratepayers experiencing financial hardship. The ministerial guidance will be developed in consultation with the Assistant Treasurer and the Essential Services Commission. These guidelines define financial hardship, require early engagement with people who are struggling to pay their rates and gets rid of debt collectors and legal action unless ratepayers refuse to engage and all other options have been explored.

There will also be a new power created by the Minister for Local Government in consultation with the Essential Services Commission to set out a maximum amount of interest that may be levied on unpaid rates and charges. This enables it to be set to a far more reasonable rate. As I mentioned, this can be in some cases across our state as high as 10 per cent. A council's use of Magistrates Court orders for recovering unpaid rates will also be limited to situations where rates or charges have not been paid for a period of two years or longer.

The bill will further explore changes to the local government rating system, including expanding the criteria for councils to provide rate rebates and concessions for properties that provide a public benefit; repeal redundant service rates and charges powers; amend the power for councils to declare a service rate or charge to ensure that services related to modern waste management activities are indeed covered; and ensure the timely levying of council special rates and charges to minimise delays between declaring special rates and charges schemes and the subsequent billing to ratepayers.

The bill also amends the Domestic Animals Act 1994 to facilitate reuniting lost pets and the scanning of deceased pets on council property for microchip identification and notification of pet owners. Let me just say this is really great news for pet owners, including those in this chamber, many of whom are pet owners, as we heard yesterday during the vet motion. I know that if my darling Pickles ever got lost, I would want to be safe in the knowledge that he could be found and reunited with my loving mum, who would be absolutely distraught, let me tell you.

The bill implements a range of recommendations from the rating system review and the Ombudsman investigation into how local governments respond to hardship, as I have mentioned—going back to the bill, because otherwise I will start talking about Pickles for far too long again. The rating system review involved consultations with industry bodies, ratepayers, councils and other important stakeholders across our state. The government response supported 36 of the review's recommendations and committed to implementing these recommendations in two stages, prioritising the recommendations that relate to greater support for ratepayers in financial hardship. The Ombudsman's 2021 *Investigation into How Local Councils Respond to Ratepayers in Financial Hardship* report made a range of recommendations in response to concerns from ratepayers, financial counsellors and community lawyers about the way councils treat people who cannot afford their council rates. The report found that people who are struggling to pay their rates were often met with debt collectors, high penalty interest and in some cases costly court proceedings, as I mentioned earlier. I cannot truly imagine the stress that must come upon somebody when fearing losing their home in some cases for such a small amount of outstanding rates. That is why I think this bill is so, so very important.

There are other entities that we should look to, including water corporations. It has been found that through implementing early intervention and flexible approaches to payment collection methods they reduced the outstanding debts and legal costs overall. So there are truly some things for us to consider here. By bringing debt collection back in house they are often able to work with people who are behind and to find a way forward. During the pandemic we have often seen councils adopt a far more flexible and compassionate approach to those experiencing financial hardship. These will be further strengthened and supported through this bill. The awareness of ratepayers about options when it comes to their hardship is something also worthy of consideration. This can be strengthened through a uniform approach to hardship.

The bill will empower the Minister for Local Government, in consultation with the Essential Services Commission, to set a maximum level of interest that can be levied for unpaid rates and charges and to develop ministerial guidelines for councils that they must follow in dealing with ratepayers experiencing these hardships. This truly will strengthen the limitation on councils using Magistrates Court orders. Also, can I just say that councils will retain the ability to pursue those who choose not to pay their bills despite having the ability to do so to prevent the rating burden unfairly falling on other ratepayers.

There are other changes relating to rates recommended through the rating system review that form part of this bill. The criteria for councils to provide rate rebates and concessions will be expanded to properties that provide a public benefit. Councils are apparently limited to providing rate rebates and concessions for the purposes of the preservation of buildings, protection of the environment and assisting in the development of the municipality. The power to declare a service rate or charge will be amended to ensure that services relevant to modern waste management activities are captured and also that this definition is consistent with the recently enacted Circular Economy (Waste Reduction and Recycling) Act 2021. There will be time limits put on the levying of councils' special rates and charges to minimise delays between the declaration of these special charges and rates and these schemes and the billing of ratepayers subsequent to that.

The bill also makes amendments relating to the implementation of the new Local Government Act 2020 to ensure it is operated as intended. This includes amendments to address concerns raised by the Victorian information commissioner, or OVIC, in relation to the processing and handling of freedom-of-information requests by councils. These amendments will ensure the confidentiality provisions in the Local Government Act 2020 are not contrary to the principles of transparency and accountability in the Freedom of Information Act 1982.

This bill will also expand the current exemption to entitlement under the Workplace Injury Rehabilitation and Compensation Act 2013 for a mental injury caused wholly or predominantly by the reasonable management of complaints. This includes an application for or proceeding in relation to serious misconduct by a councillor. This bill will also expand an application for proceedings relating to misconduct, which was strengthened under the Local Government Act 2020.

In 2018 the Victorian government committed to a review of the local government rating system, and, as I said, a ministerial panel was appointed to lead the rating system review in consultation with community ratepayers and councils. The government did support indeed all 36 of the panel's recommendations, either in full, in principle or in part. As part of this response the government committed to prioritising reforms that will support ratepayers in financial hardship, improving transparency and consistency in decision-making and building greater equity and fairness in the rating system. The bill implements many of the recommendations from this review, notably the ones around hardship provisions, debt recovery, billing and the use of legal action and debt collection.

In the Ombudsman report that I mentioned there was an investigation into each of the 79 councils and whether information about councils' financial hardship assistance is easily accessible for ratepayers; whether assistance is fair and reasonable; how council assistance schemes compare to best practice, including the energy, water and telecommunication sectors; and what councils can learn from the COVID-19 relief schemes implemented during the recent pandemic. The report found that most people who experience hardship do not apply for council assistance and the information about it is often really hard to find. Utility companies in fact have a far more proactive approach to identifying customers in hardship. They take steps to identify these customers themselves, whereas councils rely on people asking for help.

The report highlighted cases where interest charges have built up over time to the extent that it is 25 to 50 per cent of the total debt, creating an unimaginable poverty trap for those who are already struggling financially. The investigation found that improvements had occurred as a result of the pandemic and that all councils now attempt to contact ratepayers about unpaid rates before resorting

to legal action. The report noted that councils had shifted to a more proactive response in locating and contacting ratepayers. Also in that report was the finding that nearly all councils have a hardship policy in some form. However, only 77 per cent publish these standard policies on their website. Forty-eight per cent do not include rate waivers as part of their policy despite having the discretion to do so, and 26 councils limit the use of deferrals as part of these standard hardship policies. This is usually only applied to aged pensioners, as the debt can remain on the property until it passes to a new owner, and it is not used for those seeking short-term assistance.

Ninety-seven per cent of councils use debt collectors. Banyule City Council, which is part of my electorate but more substantially in Eastern Metropolitan Region, as I understand—and I am supported now by my colleague Ms Terpstra—is one of only two councils that do not use debt collectors. Councils sued ratepayers for unpaid rates more than 7000 times in 2018 and 2019, and only seven councils mention family violence in their hardship policies. At least 11 say that legal action is now a last resort in their policy, but truly there is more to be done.

This bill is about making rate collection fairer and ensuring people struggling to pay their rates are not being driven further into debt. Coercive tactics to collect local government debts are now legislated as being a last resort, and this bill is the first of those recommendations and is a starting point for legislating 36 recommendations of the rating system review. I commend it to the house.

Dr RATNAM (Northern Metropolitan) (11:26): I rise to speak to the Local Government Legislation Amendment (Rating and Other Matters) Bill 2022. Our local councils play such an important role in building local communities and providing essential services. They form an entire level of government and are frequently the ones left picking up the pieces and supporting communities when state and federal governments fail them. This bill is responding to recommendations from the Ombudsman's 2021 *Investigation into How Local Councils Respond to Ratepayers in Financial Hardship*. The Ombudsman found that while all councils had a hardship policy they varied greatly between councils, resulting in disparate outcomes for different residents. This inconsistency was heightened by a lack of guidance from the state government, who had effectively left councils to their own devices on hardship policies. The reforms in this bill are designed to rectify this and put some hardship provisions into legislation, which the Greens welcome.

However, what we do not welcome is the way the government has embarked upon and framed this reform. We know that our local councils have been at the forefront of supporting their communities, especially during the pandemic. They pivoted rapidly to providing material support to their communities, empowered their health and community care teams to be available to help with the broader public health campaign and stood with some of the most vulnerable members of their communities, advocating for their needs when no-one else would. I think of the City of Hume's work especially in my electorate, but I know of so many councils that went above and beyond to support their residents throughout some of the hardest times in the pandemic. However, the government does not seem to have recognised that and instead has chosen to misrepresent this vital sector yet again. In the second-reading speech for this bill the then Minister for Local Government said:

> Some councils have clearly improved their practices as a result of the pandemic, but overall, the local government sector has fallen behind other sectors in the compassionate and proportionate treatment of those who are facing financial difficulties.

Honestly, this is such an insult to the hardworking people in local government. This is a deliberate mischaracterisation of a sector that I know work so long and hard to look after their communities, and these days they are doing so in an increasingly challenging environment and with limited resources, largely due to ongoing cost shifting and funding cuts from the state government.

The majority of councils, if not all, have hardship policies and provisions in place. Officers work very hard to ensure that accommodation is made for those unable to pay their rates in a timely way and have developed compassionate pathways that respond to these issues. The Municipal Association of Victoria says that these reforms are too little too late. Councils have been asking for guidance from

the state government for years, yet the government has been largely silent since the passage of its Local Government Act 2020. And after the Ombudsman's report all councils used the report as a basis to rework their hardship policies, meaning many policies have already been improved and rolled out to residents.

While the government has tried to suggest that councils are frequently taking drastic measures to recover unpaid rates, deploying debt collectors and seizing property, the evidence on the ground suggests otherwise. In her investigation the Ombudsman found that in 2018–19, 28 properties were sold for debt collection, a minuscule 0.00001 per cent of all properties valued, and just 7000 cases involved debt collectors, approximately 0.002 per cent of all properties valued. So while the Greens welcome measures to help support residents in hardship, it is disappointing that councils have once again been thrown under the bus by this state government and held out to be the villain.

What is striking from this bill and the way that it has been introduced is that the state government seems to have no vision or overarching strategy to support local government beyond repeatedly cost shifting onto councils while cutting their funding, scapegoating problems onto them and not taking responsibility themselves. Early this year, for example, we saw the government attempt to pass responsibility for public housing maintenance onto local councils by exempting itself from paying rates on social housing properties. And next sitting week we are debating a bill that appears to push responsibility for addressing the combustible cladding crisis onto councils as well, a crisis that is very much the responsibility of the state government. The rate cap has had a detrimental impact on the local government sector. It suppresses wage and jobs growth and forces councils to cut overdue services, and it has had a particularly negative impact on the sector's predominantly female workforce—a rate cap this state government introduced onto local councils.

We have also seen democracy at the local level attacked by this government. Under previous local government minister Mr Somyurek, the government succeeded in gerrymandering local electorates by doing away with more democratic multimember ward structures in favour of single-member wards for all councils. The shift to single-member wards will stack our local councils with the major parties and shut out smaller parties and independents. It is an extremely poor model that has clearly been introduced to try and reduce the impact of Greens and independent councillors. And we are still waiting on the promised donations reforms at a local government level.

The last few weeks in Victorian politics have been dominated by issues of integrity and dodgy donations. The risk of donations corrupting decision-makers is not limited to state politics but is also a risk in local government. We have seen this all too clearly through IBAC's investigation into Casey council. For property developers in particular, councillors who have the power to make lucrative planning decisions that could hand them millions in profits are the perfect target for dodgy donations. The gambling industry is a prolific donor, giving over a million dollars to the major parties ahead of the last state election to help entrench their profitable yet hugely damaging poker machines throughout the community. Many local councils have been leading the fight against poker machines in their communities, knowing the damage they do. But without a ban on political donations from the industry, all that important work can be undone.

Yet the government has failed over the last eight years to tighten donation rules to limit what can be given to local councillors and candidates. It keeps saying it needs to wait for IBAC, but that is just an excuse. We do not need IBAC to tell us about the corrupting influence of donations—the evidence is writ large. New South Wales and Queensland have banned property developer and gambling industry donations from all levels of government. The least we can do today is to demonstrate a commitment to integrity in our politics by banning these dodgy donations from local government.

I also have amendments to lower the voting age to 16 for local government elections. These amendments represent a chance to genuinely engage young people in our democratic system, as I said when I introduced these same reforms back in 2020. Young people are now more than ever concerned about their future. Climate change, mental health, education and the cost of living are just some of the

big issues that young people are raising. They are engaging in our democracy and demanding change. They are working, volunteering, leading in their communities and contributing to their local areas, yet our leaders often let them down and do not represent their interests. Many young people are already politically active, taking to the streets in protest about the future that they see us creating for them and demanding a better one. They should, as many of us do, have a voice in choosing the representatives who make the decisions that will shape their communities—and what better place to start this reform than in the local government sector?

With a new minister, perhaps now is the right time to revisit our vision and strategy for the local government sector. The Greens have proposed amendments to improve local democracy and strengthen our local government sector, redressing the need for political donations, increasing voter participation and bringing back democracy to elections, and I wish to circulate my amendments now.

Greens amendments circulated by Dr RATNAM pursuant to standing orders.

Dr RATNAM: In conclusion, the Greens will be supporting this bill, but it does represent a missed opportunity for more important reform for the local government sector and strengthening of our democracy. I look forward to speaking in further detail to my amendments in the committee stage, and I urge everyone to support those amendments.

Ms TERPSTRA (Eastern Metropolitan) (11:36): I rise to make a contribution on this bill, the Local Government Legislation Amendment (Rating and Other Matters) Bill 2022. I have had the benefit of listening to Ms Watt's contribution and also Dr Ratnam's contribution. I will talk a little bit about the bill, and then I will talk about the instruction motion that Dr Ratnam has on the notice paper and also the amendments that she has proposed. My colleague Ms Watt did go to a lot of the detail about this bill, but I will just speak in broad brushstrokes for the moment. This is actually a good thing. You would think that what we are doing is a bad thing. If you listen to Dr Ratnam, we are just evil and bad, but what this is about is actually ensuring that people who are experiencing financial hardship can keep a roof over their head.

I will refer to Dr Ratnam's contribution for a moment in the sense that she mentioned that there were 7000 instances where debt collectors were involved and they were taken to court to make sure that they paid their rates and the like. What this bill does—and we have seen a similar approach taken with water authority companies—is rather than just assuming that people are bad and evil and just do not want to pay, there is a bit of an inquiry into their own personal circumstances about why it is that they cannot pay their bills, for example. This happened with Yarra Valley Water, a water company in my own electorate, in my own region. It is as simple as making a phone call to someone to check in with them to say, 'Hey, we've noticed that you haven't paid your bill. Is there anything going on?'. What they have found by taking that approach is oftentimes people are experiencing family violence. They may have lost their job. Sometimes it is a simple matter of saying, 'Look, I'm terribly sorry, I've forgotten to pay my rates, and I'll get onto that straightaway', and they do.

I think that is a much more compassionate and humane approach—to make the inquiry and establish a line of communication with that person and say, 'Hey, is there anything going on?'. It is much more compassionate than the other approach, which is just, 'Oh, we're getting the debt collectors onto you. We don't care about your circumstances, and we're going to make your life a whole lot more miserable and painful than it needs to be'. I do not know. What is wrong with that? Is that a bad thing? It seems to have been suggested by the Greens that that is a bad thing, and it is not. It is entirely appropriate. It is being more humane and compassionate towards people. The lecturing, the negativity, the constant carping by the Greens about anything the government does, 'Government: all bad, all negative, shocking, terrible. Local government—poor local government—is just such a victim of all of these terrible things'. I mean, local government can act on its own merits. Dr Ratnam talked about how councils do have some policies in place, but clearly it was not enough. Clearly there was a very mercenary approach to—

Mr Leane: Not according to the Ombudsman.

Ms TERPSTRA: Clearly not according to the Ombudsman.

Mr Leane interjected.

Ms TERPSTRA: That is right. Correct. Sometimes you give an industry an opportunity to act, and they fail to read the room and take those opportunities up. Then you get the Ombudsman making a report into these things, and the government has said, 'Well, yes, we'll implement all of the recommendations of the Ombudsman'. I am not sure how in any way the government can be blamed for that, so I just—

Mr Leane: The Greens know better, mate.

Ms TERPSTRA: The Greens the pure. There you go. I wanted to say that in my contribution today. I just said it, and I will say it again: the Greens the pure. Wouldn't it be a wonderful thing just to be completely unaccountable and say whatever you like whenever you like. But you know they will never be a party of government for this reason: there are no alternatives other than something that is very simplistic and unworkable and completely lacking in any reality, right?

What we were proposing, what we did say to people and what these reforms go to is to encourage councillors that have made councils. Have a conversation with people who are experiencing financial hardship. It is about being compassionate. But blow me down, here we are getting attacked by the Greens for being compassionate towards people. Well, I do not know—that is a new one for me. I would really encourage the Greens to just stop for a moment. There is no doubt everyone is under pressure financially and trying to manage things financially and the like, but it is really unhelpful for the Greens to continue to stoke division and divisiveness. Where is the encouragement for councils to actually take responsibility and be accountable for some of these things, rather than saying 'Government bad; you're making councils do all these things'.

I have never heard more rubbish from Dr Ratnam than I heard today. I am sorry, it was complete drivel. I just cannot take it this week. I have reached my limit on the 'Greens the pure' kind of attitude coming from over there today. And it is completely opportunistic. We have got amendments, we have got this instruction motion about all manner of things. Honestly, they bang on about, 'We need government now to act on donation law reform in local government'. Well, you know what? When you are a candidate you can actually pick and choose who you accept donations from. I do not know—would it be hard to say, 'I, candidate A in these elections, am never going to take money from a developer or a property developer' or whatever? That is not hard, is it? That can happen now, right?

Mr Leane: The election is three years away anyway.

Ms TERPSTRA: The election is three years away, but what happens with the Greens is they say, 'Government bad, because you're not doing this', and then when we do something good they go, 'Government bad, because you're doing something'. We can never win, and that is hypocrisy from them: like I said, complete unaccountability, completely hypocritical. As I said, the Greens the pure never will be a party of government—will never be in government—but they just constantly attack. Well, what are you offering as an alternative? Nothing other than negativity, other than carping, rather than encouraging different sectors and tiers of government to work together: 'No, we can't have that'.

I will tell you something else. Every time I go out to an opening of a sports field or whatever where the state government has contributed money to that facility and where the council has kicked in I always say the same comments, and I will say this again on the record here: each level of government gets a better outcome when we all work together in a constructive fashion. Dr Ratnam, as the leader of her party in Victoria, should be leading this as well and encouraging councils, Greens councillors. She has many on inner-city councils, because let us face it, that is where their stronghold is—inside the goat's cheese curtain, where you have got lots of Greens councillors. I am sorry, she should be leading the charge and encouraging all councillors from all stripes to work with government, because

that is when community wins. Otherwise, if you just encourage division and stupidity, then there is just a free-for-all and no-one wins and the community, most importantly, loses. A pox on anyone's house who keeps carrying on like this. I have had enough today, you can tell. My patience reservoir is zero today.

So back to this bill, which is a good bill. Like I said, we are implementing measures which go to hardship. We do not want to see people thrown out on the street because they have been taken to court by councils to get rates paid, okay? So we are implementing these changes. The government response is that we supported 36 of the review recommendations. We did a review into rates as well, so there are 36 review recommendations that we have committed to prioritising. The second stage of the reforms relate to structural improvements in the way the rating system operates, which will be further explored in 2023 in consultation with ratepayers and the local government sector. We have had plenty of consultation, extensive consultation, over three years with councils, ratepayers and local government peak bodies.

Honestly, like, it is a bad thing, right, what we have done. We are terrible: government terrible, government bad. They want to propose this instruction motion and these amendments today. Basically the scope of this bill is about hardship relief, but Dr Ratnam wants to try and go for a burger with the lot and just broaden the scope of this bill into being about something that it is not about. It is kind of weird. You want a bill to have a consistent theme around what we are trying to achieve. Like I said, the consistent theme in this bill is that we are trying to provide hardship relief. It has got nothing to do with donation reform or voting age. You just cannot chuck that stuff on the table and go, 'Quick, we've got an opportunity, let's throw all that on the table as well'. No, that is not how it works. That is called being opportunistic and annoying and frustrating—because it is; it is ridiculous. Again, just to stand up here and say 'Government bad' is ridiculous.

I would like to see the Greens encourage their own councillors and party members to work with the state government rather than taking every opportunity to fight with us on stuff that has been run and won. Dr Ratnam mentioned in her contribution—it is not in the instruction motion, I notice; it will be somewhere at some other point, I am sure, but this debate has been run and won, it is over—the issue of single-member wards versus multimember wards. This idea I find completely offensive, where the Greens are saying, 'But, you know, we won't have diverse representation in councils. We won't have the same number of women'. Well, rubbish, because at the last council elections we saw more women than ever being elected.

What it is about—rather than them actually being honest and transparent about what it is about—is they want to make sure they can get more of their Greens councillors on councils. That is what it is about. You can talk about independents and all the rest of it—and I will reflect on my own experiences when I ran for council once and just from watching council elections—but look at the number of independents saying they are true independents when they are not. They get assistance from other parties, whether it be the Liberal Party or others. I saw a candidate who barely even stood at a polling booth but was having Liberal Party helpers run around and help put the candidate's signs up at every house where someone knew someone who owned a property. There are candidates who do not have that level of help, and that needs to be clearly identified. Whilst there is a register where people are meant to disclose all this stuff, it does not happen. So I call 'complete and utter rubbish' on that, because if you are an independent and you want to act with honesty and integrity, you can do that anytime you like—you do not need government legislation to tell you to do it that way. You should disclose on the register whatever help you get. You do not have to take financial contributions from developers. You can make those decisions yourself. I am sick and tired of that, where you get the Greens lecturing government about how bad we are regarding all manner of things and about how when we do stuff it is bad and wrong and poor, but when we do not do something we are still bad, wrong and poor.

Mr Leane: They've taken the biggest donation in political history, the Greens Party.

Ms TERPSTRA: Correct, yes. Absolutely. So it is hypocrisy writ large over there. Like I said, I have got no time for it this week. I am completely over it. The biggest donation in history went to the Greens, so spare us all this rhetoric and complete and utter rubbish about the Greens being pure, because it is just complete and utter rhetoric, rubbish and drivel.

I will get back to the point of this bill. I hope my colleagues hook into the Greens. I say in honour of Jane Garrett, who we spoke about on the condolence motion yesterday, let us all hook into the Greens today, just in solidarity, because Jane was fantastic at calling out the hypocrisy of the Greens. I think today would be the day for that. Jane and I certainly shared a love of the lyrical jousting that used to go on in here and the take-downs of the Greens. I think this was remarked upon yesterday by other contributors in this place. Jane had an insightful and powerful intellect and a keen eye for rubbish when it came to the Greens. So let us continue that fine tradition in here today when we talk about this bill.

The Greens are not the champions of local government. They are not the champions of being pure. They are the champions of themselves, and it is all about what they want to do to advantage their own party, to get more councillors inside the goat's cheese curtain. Why don't you just come out and say it? Just come out and say it and be transparent: 'Actually, no, this is what we want to do'—because we all know it anyway. They think we have a cork brain or something and that we cannot see what they are trying to do and achieve. So spare us all, and do not insult the electorate. You think that the voters and the punters out there also do not know the true purpose behind some of these things. It is completely and utterly ridiculous.

Again, the purpose of this bill is to provide hardship measures. Oh, my goodness, is that a bad thing? No, it is not, and again I call out the complete hypocrisy and just simplistic approach to this: 'Let's have a bill that is about hardship measures—oh, but wait a minute, let's just throw all these other unrelated bits on it'. I can say as a lawyer and someone who used to read legislation for a living—I am doing it now too, but in a different context—you look at that and you go, 'I don't know what the legislators were thinking when they drafted this bill'. But that, again, does not matter, the complexities around that. They say, 'Oh, no, no, I just saw an opportunity and I want to take it today'. I will conclude my contribution there, and in saying so I commend this bill to the house but without amendment, and I encourage every other member in this chamber to also resoundingly reject these ridiculous amendments for what they are, which is opportunistic, simplistic and complete and utter drivel.

Mr HAYES (Southern Metropolitan) (11:51): I rise to speak on the Local Government Legislation Amendment (Rating and Other Matters) Bill 2022 today, and I will just say that I do support the intentions of the bill. I was at the Victorian ratepayers association convention over the weekend and quite a lot of discussion was about hardship and quite a few heartbreaking cases were brought up there, so I welcome these changes that the government is making in the bill.

But I would also like to mention Dr Ratnam's amendments, and I am particularly interested in the one which seeks to ban property developer and gambling industry donations in the local government process. Amendments such as these have already been enacted in Queensland and New South Wales, so I cannot really see why Parliament in Victoria is reluctant to enact them here. I congratulate the Greens on bringing them forward for discussion. Going back 30 or 40 years, Queensland and New South Wales were once states that Victoria looked down its nose at because of their perceived—and what was proved to be real—levels of corruption, yet here we are in 2022 with some of us hoping we could emulate their anti-corruption measures. Clearly donations from property developers to local government candidates really should be banned, and they should be banned at the state level as well, so that much of the Greens amendments I will be supporting.

I myself put forward a motion at the beginning of 2020 calling for property developer donations to be banned at both state and local levels of government, and the Greens supported me in that; however, the government and the opposition did not. Both of them said that the issue of property developer donations in particular was the subject of an IBAC inquiry into Casey council and they wished to wait

on the IBAC report before specifically commenting on the issue. And, guess what, the IBAC report has still not been released, so I wonder if that is what will be said again. It appears that that stance back then was really a matter of convenience, I think, rather than principle, and how convenient it was, because here we are at the end of 2022 approaching a state election in which the public will suspect that developer donations and gambling industry money are flowing into the coffers of big parties, and we have no IBAC report yet nor any suggestion of reform. Maybe they are planning to do that after the election. There is still no report from IBAC available to the public about goings-on at Casey council as the report is subject to ongoing legal challenge, so we are supposed to believe that for now there will be no change. The government and the opposition are capable of stating a position on property developer donations and gambling industry donations—whether they should continue—without having to wait for an IBAC report. This Parliament is the lawmaking body in Victoria. It is very capable of dealing with and speaking on these issues that face Victoria, very much of public interest at the moment, without waiting for reports from IBAC. Property developer donations need to be banned. New South Wales and Queensland say so and so does the Centre for Public Integrity. They are a corruption of the political process, they undermine people's faith in democracy and they should have been banned a long time before now.

Mr ERDOGAN (Southern Metropolitan) (11:55): It has been an entertaining debate so far, hasn't it? Local government always fires people up. I guess as someone who is a former local councillor and member of the Municipal Association of Victoria board I have heard my fair share of complaints and praise for local government. I have heard both sides of the argument, and on this issue—

Mrs McArthur: The Greens want a gerrymander.

Mr ERDOGAN: Well, that is right. The Greens contribution in this place is interesting. They complained about gerrymandering, but their solution is to create a gerrymander which favours their own constituency. They want to reduce the voting age to 16, hoping that might help them a little, but we cannot risk that, to be frank, because when the Greens get that little bit of power in local government we see what happens—indecision. But if there are any decisions in place, they are to block any social housing project or the resolution of any issues to do with hardship for people struggling, because the Greens want to just virtue signal and play to their base, it seems. It is unbelievable the way they operate. They come into this place holier than thou, and as my good friend Mr Leane pointed out, they are the party that has accepted the biggest single political donation in the history of this nation. The Greens accepted it from multimillionaires and billionaire mates of theirs. So when they talk about donation reform just remind them of that—a party that was built on billionaires' and millionaires' donations, the Greens party. It is interesting, and they have little regard for the concerns of average Victorians and Australians.

I am very pleased to rise to speak to this bill. It is a sensible bill. Anyone who read the Ombudsman's investigation into the way some local councils have treated people in hardship situations would understand why it is a necessary bill in this place. We have a current system which is inconsistent. Obviously it is not uniform, and it can be very heavy handed in many instances towards people facing hardship, where the methods used in terms of the ongoing use of debt collectors to chase up late rates is very unfair. The bill before us proposes sensible changes to make sure they are common and fairer for all Victorian ratepayers.

Obviously the bill before us has had broad consultation before coming to this place. I think the more technical elements of the bill I might get into after question time, because I do note we are quickly approaching question time in this chamber. But I was shocked to hear the Greens accuse others of demonising local government when I am proud of our government's record of investing in local government. No government in the history of this state has invested more in local councils in terms of infrastructure, libraries and sporting fields. Former minister Shaun Leane was fantastic, and he did a number of visits out to Southern Metropolitan, Bayside, Glen Eira and many other local councils, where he delivered and opened libraries and talked about the investment we are making. These are places of local learning—

A member: A great minister.

Mr ERDOGAN: A fantastic former Minister for Local Government, and he will surely be missed in that space by all the stakeholders—someone that was collaborative and heard everyone out. So when the Greens accuse us of not doing enough for local government it is just frankly dishonest. It is just dishonest, because we have done a lot, especially in rolling out the much-needed infrastructure.

But obviously there is more to do, and this bill is an important path to repairing and fixing the gaps in the sector and making sure we have a fair response to the way ratepayers are treated, especially where they have hardship. There are obviously many other aspects to this reform, and I will talk to them in more detail after question time, because it is important area and I am very passionate about local government. They did a lot of work. Most recently I spoke to their representatives, the Australian Services Union, who talked about some of the challenges the local government sector has faced through the global pandemic and how their members are fighting hard to make sure that services are delivered in a timely fashion for residents.

Whenever the Greens get up on their high horse and try to criticise I am not surprised, because they have tried to create a gerrymander to benefit themselves. A very self-serving bunch they are. It is a shame. On that point, I might continue after question time, because I can see the President is looking at his watch. I think that is a signal for me to sit down, so I will take my seat.

Business interrupted pursuant to sessional orders.

The PRESIDENT: Members, before we move to question time, we have in the gallery a former member of this house, Mr Ramsay. Welcome.

Questions without notice and ministers statements

EMERGENCY SERVICES TELECOMMUNICATIONS AUTHORITY

Ms CROZIER (Southern Metropolitan) (12:00): My question is to the Minister for Emergency Services. Minister, in the government's response to the Ashton review into 000, rather than addressing each individual recommendation they were grouped together and an explanation given for that group rather than each individual recommendation. For example, recommendation 8 is about improved industrial relations processes, but the response for the recommendations 5 to 10 group does not address at all how you would achieve recommendation 8. Minister, why wasn't each recommendation addressed individually?

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (12:01): Ms Crozier, isn't the important matter here that the government has accepted the Ashton review? We have thanked him for his work. We did not wait for that review to make significant investment in ESTA to respond to unprecedented demand caused by the pandemic. We have been supporting that workforce, that amazing workforce, who day in, day out go over and beyond to ensure that Victorians are safe and connected to emergency services that they need. In relation to Mr Ashton's report, we have agreed to progress all of the recommendations in his report in conjunction with ESTA and the relevant stakeholders, including industrial parties, and I think how that response has been structured indicates that we have got work to do within the department moving parts of ESTA closer to government, sharing services and the like. In terms of how we have responded, I think the positive message is that we have accepted the report and we are not wasting any time in making sure that ESTA have everything they need to provide a service Victorians can rely on.

Ms CROZIER (Southern Metropolitan) (12:02): Minister, sadly too many Victorians have died as a result of the ESTA failures. Minister, isn't it a fact that your government does not agree with all the recommendations, especially about improved industrial relations processes, and the response document is just more spin from your government at a time that families of those who have died waiting on hold deserve real solutions to these ongoing issues that are plaguing the system?

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (12:02): Ms Crozier, I do not accept that at all. We have accepted in principle all 20 recommendations, but there was not a playbook specifically for how to implement all of those recommendations. That has been left to government to do, and we are advancing those. We did not wait for this report to respond to unprecedented demand, because we knew people were experiencing unacceptable delays. I have been at pains to speak to families, apologise to families and give my commitment that I am motivated each and every day to support ESTA to do the very best they can with unprecedented financial support—$333 million to recruit more call takers—and I can report, as I continue to report, that the call takers are hitting the floor each and every week. We had to open a new floor to accommodate all of our call takers. We are experiencing improvements in call taking every week, and I am very proud of their efforts.

Ms CROZIER (Southern Metropolitan) (12:04): I move:

That the minister's response be taken into account on the next day of sitting.

Motion agreed to.

LEVEL CROSSING REMOVALS

Dr CUMMING (Western Metropolitan) (12:04): My question is to the Minister for Transport Infrastructure in the other place. When will the level crossing at Yarraville be added to the list? I have raised this matter of the level crossing numerous times. In 2015 the strategic framework for the prioritisation of level crossings revealed Yarraville and Spotswood level crossings were among the worst in the state for boom gate closures and safety risks. Both were listed amongst the 45 priorities, yet neither made the initial list of 50 grade separations. At that time the minister's spokesperson said they were not identified for removal in the first 50 but would be considered in the future. Seven years later and 85 crossings have been named for removal, yet Yarraville and Spotswood are still not on the list. When will the west be prioritised in the way of level crossings?

Ms PULFORD (Western Victoria—Minister for Employment, Minister for Innovation, Medical Research and the Digital Economy, Minister for Small Business, Minister for Resources) (12:05): I thank Dr Cumming for her question and her interest in transport infrastructure in the Western Metropolitan Region. I will seek a written response to that question from Minister Allan, the Deputy Premier, as requested, in accordance with our standing orders.

Dr CUMMING (Western Metropolitan) (12:05): I look forward to Minister Allan's response. It would seem that I get a lot of responses from you, Ms Pulford, rather than Ms Allan.

Ms Pulford: On a point of order, President, perhaps for clarification, when members seek a response to a question in a portfolio that a minister is representing in, it is the custom and the tradition—and I think even the rules of the house, in terms of our bicameral system—that the response comes in our name in our capacity of representing, in this instance Minister Allan. But I want to reassure you that that advice and that answer come from the minister through us, and that is how that happens. So they are not from me as such, though they are tabled in our house in my name.

Dr CUMMING: I appreciate that clarification because even the table office could not give me that level of detail. Will the minister consider providing a solution for the Yarraville level crossing similar to the one that was done at the North Williamstown station? Yarraville has also been shown to have the state's fourth-highest rate of fatalities, serious injuries, collisions and near misses. Yarraville boom gates are down for up to 30 minutes each hour during peak periods, with up to 20 trains passing through hourly—the third worst rate in the state. This government has conducted traffic studies on Anderson Street and has had police working with schools and pedestrians regularly for safety. We need action now in the west. We need this level crossing removed. We need an innovative solution. It should not be put in the too-hard basket. The west deserves the same level of attention as the eastern suburbs when it comes to level crossing removals. We have been forgotten far too often.

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): Thank you—

Dr Cumming: When will the level crossing at Yarraville be added to the list? That is my question.

Ms PULFORD: Right. I was looking for the question there, but I think by interjection we have just heard that. I will again seek advice from Minister Allan, and there will be a response provided in accordance with our customs and practice and standing orders.

MINISTERS STATEMENTS: LGBTIQ+ EQUALITY

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (12:08): Pride is almost everywhere; it has not quite made it to the opposition benches. But what I want to do with the time I have available today is talk to the enormous work that is going on across Victoria to make sure that our record of equality and commitment to equality not being negotiable is right there in every community, in schools, in workplaces and importantly across our statute book.

I want to pay tribute to my predecessor, Martin Foley, the best advocate for LGBTIQ+ people Victoria could ever have asked for, Australia's very first equality minister and somebody who has set the scene for a range of legislative reforms that have succeeded to make our state and our statute book fairer. That is despite the efforts of those opposite and those in the other place to vote them down time and time again. We now have an LGBTIQ+ strategy. We have Australia's first pride centre. We have developed and indeed committed $6.8 million towards events to celebrate pride and diversity around Victoria, including the recent announcement with the extraordinary candidate for Richmond, Lauren O'Dwyer, for a street party on 12 February next year. Those opposite should come along and see what it is all about. There will be a lot of glitter and perhaps enough even to thaw their cold and conservative hearts. It has been extraordinary also to see the partnership with Midsumma continuing.

Also I want to acknowledge Melbourne Grammar. This morning I went to their inaugural pride conference, bringing 16 schools together—students and staff from 16 schools—to talk about pride, diversity and what it means to tackle homophobia, transphobia, biphobia and intersex discrimination across our communities. We have also seen Mildura Senior College lead the way. The work of its captain, staff and students has been extraordinary and set the standard across regional Victoria. Our legal service also really puts the limp efforts of those opposite to shame. Long may our work in equality continue.

LOST DOGS HOME

Mr FINN (Western Metropolitan) (12:10): My question without notice is to the Minister for Agriculture. The Lost Dogs Home is an iconic organisation in this state, and it has been in its current location in North Melbourne for 112 years. It cares for more than 25 000 animals every year, and many thousands of families have found their pet through the home's adoption services, including mine. We adopted a gorgeous little fluffy white kitten called Yoda about seven or eight years ago—mad cat it is. The government has made it clear it intends to bulldoze the Lost Dogs Home to make way for its own plans. Alarmingly at this point there seems to be no central replacement site. Minister, what are you doing to provide the Lost Dogs Home with a new central location?

Ms TIERNEY (Western Victoria—Minister for Training and Skills, Minister for Higher Education, Minister for Agriculture) (12:11): I thank Mr Finn for his question and his new-found love of animals, and Yoda in particular. I am sure that he is a welcome addition to Mr Finn's family. The fact of the matter is that this government has been incredibly progressive when it comes to animal welfare issues, and we have got a program that has been backed up in relation to the last state budget. There was a significant allocation of moneys to animal welfare. In terms of the issue that you raise in

particular, I am currently asking for advice from the department in respect to the position that has been pursued, and I am more than happy to provide you with further information, Mr Finn.

Mr FINN (Western Metropolitan) (12:12): I hope that the minister will provide further information, because she certainly did not in that answer. My supplementary question, Minister, is: a relocation of this nature will involve significant expense through stamp duty and other taxes and charges. Can you give this house an ironclad guarantee that the government will not impose any such charges on the Lost Dogs Home, particularly given it is the Andrews government that is forcing the move?

Ms TIERNEY (Western Victoria—Minister for Training and Skills, Minister for Higher Education, Minister for Agriculture) (12:12): Again, similar to my answer to the substantive, that line of questioning will be covered off in respect to the answer. But the fact of the matter is that—

Mr Finn: You haven't given us an answer yet.

Ms TIERNEY: No, I have not given you the answer you want, Mr Finn.

Mr Finn interjected.

The PRESIDENT: Order! Mr Finn, you asked the question. The minister is done.

FOOT-AND-MOUTH DISEASE

Ms BATH (Eastern Victoria) (12:13): My question is to the Minister for Agriculture. Minister, the foot-and-mouth disease livestock standstill plan includes an immediate 72-hour halt of the movement of livestock in Victoria. All livestock in transit must go directly to saleyards and be put through a footbath and quarantined. Minister, how many saleyards across Victoria are equipped with quarantine facilities, including footbaths and separate watering and feeding systems?

Ms TIERNEY (Western Victoria—Minister for Training and Skills, Minister for Higher Education, Minister for Agriculture) (12:13): The first thing I would say is that foot-and-mouth disease is not in Australia. The second thing I would say is that the focus of the government is on preparation activities and planning, and that is well and truly underway. The other tranche of work that we are doing is what we do at the point of incursion and at the point of standstill, and that is the work that is being looked at very closely. At the moment we are finalising work in relation to workforce issues that are required in terms of preparedness but also in terms of incursion, and we are also of course doing a whole range of other works that are required in terms of preparedness.

What we are also doing is encouraging those opposite to work with the government as one as we work through this issue, and indeed I had a meeting this morning at 7.30 with Peter Walsh. We went through a number of issues, and I do appreciate the collaboration that he has demonstrated by bringing issues to me, many of which we are working on already. There were some other things that have also captured our thoughts, and we will work through those issues.

The fact of the matter is that what we have found in the last week or two is that because of the heightened awareness of biosecurity threats people are asking a lot of questions about what resources are on the ground. Even in terms of local government, they are not aware of what we have already got on ground, and that happened in my case even as recently as four days ago, where they did not believe that there were biosecurity practices and biosecurity officers at their local saleyard. They were asking me for them and they were already in their location.

These are the things that we are working through. The task force has met several times now, and of course we are looking forward to ongoing collaboration. And if Ms Bath wanted to talk to me about any of these issues at any time, as opposed to only talking to me in question time, I would be more than happy to do that, because that will progress the collaboration and the work in progress. Can I also call out the fact that responsible people like Simon Ramsay have said on ABC regional radio as

recently as last week that those opposite have got a lesson to learn and that they should be working with government as one, and I agree completely with that position.

Ms BATH (Eastern Victoria) (12:17): I acknowledge the minister's response. Indeed, Minister, you would be aware that there were many people who turned up to your offer of being on Zoom, where you were there and others, so we have been working collaboratively. My question, and very respectful question, was in relation to the Odysseus report that was out in 2015 that talked about the plan in relation to the livestock standstill plan. So my supplementary question is: what is the government doing to provide for saleyard operators to ensure that their yards have quarantine facilities, including footbaths, watering systems and feeding systems?

Ms TIERNEY (Western Victoria—Minister for Training and Skills, Minister for Higher Education, Minister for Agriculture) (12:18): This is an important issue. It is highly operational, and this is one of the many things that the task force is dealing with to make sure that we have got the right people with the right skills in the right places and the facilities that we need to fight off any incursion of foot-and-mouth disease. It is clear from the behaviour of those opposite—not necessarily you, Ms Bath, but others—that they have still got a lot to learn about getting on board and working on something that is more important than any one of us or any of the political parties that we represent.

MINISTERS STATEMENTS: EARLY CHILDHOOD EDUCATION

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (12:18): I am pleased to update the house on the work that is underway to give children in Victoria the best start and best life. Last month I had the pleasure of visiting Guardian Childcare & Education in Abbotsford, where I met educators Lily, Irena and Chetna. These three women have more than 25 years of combined experience working in early learning, and it was terrific to hear how they are progressing with their teaching studies at the Australian Catholic University.

The Andrews Labor government has partnered with three universities—ACU, Deakin and Vic Uni—to deliver the innovative initial teacher education program. It means that educators who already have a diploma and experience in the field can have that work recognised and take on accelerated bachelor degrees. The best thing is that we are supporting these students with scholarships worth $25 000 to cover course fees, along with support for paid study leave and course materials. Lily, Irena and Chetna told me that without the financial support and flexible ways to study they simply would not have been able to pursue their dream to become kindergarten teachers.

This is all part of a $209.9 million workforce package, and there will be more to come. The $9 billion we recently announced for early learning centres over the decade will create 5000 new jobs on top of the 6000 created through three-year-old kinder. I see firsthand as I visit kindergartens the pride that educators take in their work and the difference they make to the lives of young children and families. I thank them for that work, and I look forward to working with them, their unions and stakeholders on these important reforms.

CORELLA CONTROL

Mr MEDDICK (Western Victoria) (12:20): My question is for the minister for the environment in the other place. The government is soon to release a 10-year corella management plan. Corellas across Victoria are coming into areas uncharacteristically due to climate change, habitat destruction and scarcity of food sources. The perceived solution is almost always lethal, through poisoning or shooting, but is unnecessary, costly, ineffective and cruel. Just recently new technology has been put in place in South Australia, developed by a leading environmental organisation called Cherrp, which provides unique and customised wildlife management solutions. Cherrp identifies the type of bird present and, through AI technology, designs communication in response to deter the bird, with effective results, and the best part is nobody dies. Will the minister consider the implementation of this technology, which is cheaper and more effective, before the corella management plan is finalised?

Mr LEANE (Eastern Metropolitan—Minister for Commonwealth Games Legacy, Minister for Veterans) (12:21): On the list we have I have responsibility, but I am happy for someone else to take it off me if they please. Thank you, Mr Meddick. I really appreciate your consistent concern, particularly for wildlife in Victoria. That is a question for the minister for environment, and I will ensure that very important question gets to that minister and you get a response in accordance with the standing orders.

Mr MEDDICK (Western Victoria) (12:22): Thank you, Minister, for referring that on. My supplementary is that the state of the environment report revealed native animals, which corellas are, obviously, are facing an extinction crisis. What data does the government rely on to justify deploying lethal methods?

Mr LEANE (Eastern Metropolitan—Minister for Commonwealth Games Legacy, Minister for Veterans) (12:22): Thank you, Mr Meddick, for that question, and I will ensure the minister for environment gets that supplementary question and you get a response in accordance with what is prescribed in the standing orders.

FIREARM AND AMMUNITION SEIZURE

Mr QUILTY (Northern Victoria) (12:23): My question is for the minister representing the Minister for Police. In 2021 a financial dispute led to a false domestic violence intervention order against a Leigh Creek resident named Sam. Without any investigation, police from Ballan seized Sam's firearms and his store of ammunition. For firearm owners an accusation is all that is needed. Sam asked the police to count the ammunition they were taking, but they refused, so Sam took photos of the seized items as they were loaded into the police cars. The police property receipt for the seizures quotes 'various ammunition' but does not record the quantity or type taken. Police were forced to return Sam's firearms and ammunition when the allegations were proven to be false in court. Again he took photos to document what he got back. The firearms came back damaged, but more alarmingly over 60 000 rounds were missing without explanation. The missing rounds were more valuable, factory-loaded ammunition. Sam's lower power home reloads were returned. Minister, how did police lose tens of thousands of rounds, and where did this missing ammunition end up?

Ms Tierney: President, I seek your advice in relation to whether this is actually a matter for the Minister for Police.

The PRESIDENT: Can I have a look at the question, please? Minister, it is correct. The question is to police.

Ms TIERNEY (Western Victoria—Minister for Training and Skills, Minister for Higher Education, Minister for Agriculture) (12:25): Thank you, Mr Quilty. I note that this is a very detailed individual complaint where there are very serious allegations. You continually bring these individual complaints to the house, and in terms of this particular issue it is compounded by a number of allegations. So I will refer it to the Minister for Police, consistent with the President's ruling, and I am sure that he will provide a response within the standing orders.

Mr QUILTY (Northern Victoria) (12:26): Thank you, Minister. I brought a number of issues like this to the former minister's attention. Each time, then minister Lisa Neville responded with a dead bat: 'Nothing to see here; go lodge a formal complaint through IBAC'. Sam did lodge a complaint to IBAC. After months of inaction, Sam's case became one of the 70 per cent of police misconduct cases that IBAC refers back to the police. Without telling Sam, IBAC passed on a complete copy of the allegations and evidence to the professional standards command. PSC then handed the case back to the local police involved. Unsurprisingly the police investigated themselves and found they had done nothing wrong. There has been no further progress. Sam has written to Shane Patton, Victoria Police's chief commissioner, but has not even received a written acknowledgement. Sixty thousand rounds in police custody have gone missing and no-one seems interested in investigating where they went. There

is a systemic failure in holding VicPol to account. Minister, what will you do to address the clear cases of corruption like this, cases that VicPol just cover up?

Ms TIERNEY (Western Victoria—Minister for Training and Skills, Minister for Higher Education, Minister for Agriculture) (12:27): I will refer this supplementary to the minister.

MINISTERS STATEMENTS: VETERANS SUPPORT

Mr LEANE (Eastern Metropolitan—Minister for Commonwealth Games Legacy, Minister for Veterans) (12:27): Today I would like to update the house on the opening of the Anzac Day Proceeds Fund and the Victoria Remembers grants on 20 July. The Anzac Day Proceeds Fund provides practical support to the veteran community through funding of a range of wellbeing-related activities. To be eligible for the funding, an organisation must demonstrate that its principal objective is to provide wellbeing support for the ex-service community. Grants from this program can be used to direct welfare services, programs, assistance and welfare for those in the ex-service community who are socially isolated. Statewide organisations can apply for up to $150 000 and sub-branches for up to $50 000. With the Victoria Remembers grant program, organisations can apply for up to $30 000 for a project honouring and commemorating veteran services and educating Victorians about veterans' contributions. This funding is distributed through the Victorian Veterans Council, and can I say they are doing a fantastic job and wish them luck in their first ex-service organisations summit on the weekend. Funding for this grant comes from the Community Support Fund, which means organisations that receive revenue from this fund can apply. These grants close on 22 August, so I would encourage all organisations that do a great job in supporting veterans and their families to apply.

WATER SUPPLY

Mr DAVIS (Southern Metropolitan—Leader of the Opposition) (12:28): My question is to the Minister for Water. Minister, how much was spent in the last financial year on purchasing water from the AquaSure-owned desalination plant at Kilcunda?

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (12:29): Thank you, Mr Davis, for your late-breaking interest in the security and efficiency of water delivery to people across the grid and to those homes, businesses and industries that rely upon water, including manufactured water, to meet their needs.

It is really important to say at the outset that without the desalination plant, without the manufactured water which has flowed from it for a considerable amount of time, notwithstanding the narrative you would like to advance that it is sitting inactive somehow in Wonthaggi and Kili, while our water storages today are at 88.1 per cent, for your understanding, Mr Davis, without desalination they would be at 63 per cent. That is despite the fact that we are in the middle of some significant rainfall events. We are in the middle of plentiful rainfall, and our groundwater and surface water levels are looking healthy and well. We have got lots of water and it is cheap across regional and rural Victoria, but without the desalination plant we would be in significant difficulty. Last year we did see higher than average rainfall, and that had an impact on the way in which water was ordered. But inflows, as we know, have been on average for the last 16 out of 20 years lower than average, and before desal we were using between 50 and 70 gigalitres a year more than what comes into the Melbourne system.

Mr Davis, you should actually be paying attention to these statistics and this information, because it does actually directly concern a growing population with growing needs over time in increasingly hostile climatic conditions with more volatility as part of weather events and a diminishing supply. Much as you might like to carp about how the AquaSure consortium has not been a significant and positive contributing factor to water availability and to natural resource management across the state, it is simply not true. Your plan—and I suspect I know where this might be heading—in fact is the same that you had—

Mr Davis: On a point of order, President, the minister is a new minister but has had plenty of time to put context. It was a very specific question. It sought a figure, a number, an amount—dollars and cents. It was a very simple question. Please answer.

The PRESIDENT: You know I cannot direct the minister.

Ms SHING: After so long in this chamber, even by osmosis, to coin a water turn of phrase, Mr Davis, you have not yet absorbed the standing orders. But what I will say is that this year's 125-gigalitre desal order cost $77 million, but our bills will be stable for Melbourne's households and are lower than Adelaide, Canberra, south-east Queensland, including Brisbane, and Perth and equal to Sydney. Thanks very much, Mr Davis; I hope you will stick around for a supplementary.

Mr DAVIS (Southern Metropolitan—Leader of the Opposition) (12:32): The minister finally got there; $77 million is the amount. She could have just said that straight up. I too can look on the website, as can everyone in this chamber, and see that today 88.1 per cent is the water capacity in our major dams for Melbourne—$77 million at 88.1 per cent capacity. I ask therefore: will you rule out any desal water order this financial year?

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (12:33): Without desalination water, Mr Davis, we would be in a situation where we would run out in the coming years. Apparently Mr Davis is suddenly a climate change expert, suddenly a population growth and change expert. Next year's order is 15 gig. What we do know from those opposite is that when they were in government they held on to $30 million in the budget without actually allocating it to relieve water pressures in places like Korumburra—a place you have probably never heard of, Mr Davis—on permanent 3a water restrictions. There was $30 million that secured water storage opportunities in Korumburra, Loch, Nyora and Poowong—$30 million attached to the grid now. Cape Paterson, Inverloch and Wonthaggi are all attached to the grid now through Lance Creek. You have got a lot to learn about water supply and security, Mr Davis. I hope you will brush up on that between now and your next question.

SEXUAL OFFENDER IDENTIFICATION

Ms MAXWELL (Northern Victoria) (12:34): My question is to the Attorney-General regarding the rights for survivors of stranger sexual assault to know the identity of an alleged offender. Cathy Oddie is a member of the Victims of Crime Consultative Committee and is the survivor of an alleged historical rape by a stranger. In her case the alleged offender left the country before investigations were complete, and she has been lobbying the Department of Justice and Community Safety to know his identity. Survivors have been refused identity information on the basis that the charter of human rights states a person has the right not to have his or her reputation unlawfully attacked, and the agency said that sharing an alleged perpetrator's name would therefore be unlawful. Attorney, my serious misgivings about the department's argument aside, what action is the government taking to assist survivors in these circumstances to know the identity of their alleged attacker, even under strict conditions?

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (12:35): I thank Ms Maxwell for her question and at the outset acknowledge the fantastic work that Cathy Oddie brings to the consultative committee. I attend that committee on a regular basis, and her contribution is fantastic as an advocate for victim-survivors.

With the question that you specifically go to, and I will draw out the alleged offender component that you have brought to it, we certainly want to respond to sexual offending in the harshest possible way. We have got fantastic affirmative consent laws that have been introduced into the Assembly today, just the start of ongoing reform in this space. We want to look at our criminal response and our civil response to sexual assault and sexual offending in a broad nature, and victim-survivors' voices are at the front of that continuing consultation.

One of the issues that we have in the identity of alleged offenders goes to the root of the problems that it might cause with police investigations. There would be issues with potentially impacting proper identity procedures that might in fact ultimately harm a case. In terms of balancing the wishes of a victim to know the identity of an alleged offender before a charge versus making sure that the investigation is not hampered, that is something you have to be very, very careful about. Ultimately you want justice for a victim and you do not want to do anything that would hamper that end result.

I think it is important to put on record that there are protections for victims where the perpetrator is not known to them—the identity is not known to them. Police have the right to take out an intervention order on their behalf at any point or stage of an investigation if they think that there is a risk to that victim, and importantly there are no barriers to a victim who does not know the identity of their offender in accessing victims-of-crime compensation, both under our current scheme and under the future financial assistance scheme that we are moving to.

We want to have in place support mechanisms for victims, and we want to do everything we can to prevent and respond to sexual offending, which is a big part of my reform agenda, which is part way through today. Hopefully I get the opportunity to continue that for some years to come. But in terms of balancing those rights, we have to think very carefully before we make any decisions that ultimately might have unintended consequences and actually be at odds with seeking justice for victims.

Ms MAXWELL (Northern Victoria) (12:38): Thank you, Attorney. I really appreciate your empathy and kind words towards Ms Oddie, who has been a longstanding advocate. This matter was not examined as part of the recent Victorian Law Reform Commission review into improving the response of the justice system to sexual offences, but the commission chair indicated they would be happy to do so in the future, so my question is: will the Attorney ask the VLRC to review this circumstance and what potential changes could be made to the charter of human rights to enable survivors of stranger sexual assault cases to know the identity of the perpetrator?

Ms SYMES (Northern Victoria—Leader of the Government, Attorney-General, Minister for Emergency Services) (12:38): There is not a lot to add, I guess, based on the answer that I gave to your substantive question. I have indicated to you, without a firm commitment of timing or anything like that, that I am interested in looking at the victims charter into the future and what we can do in that respect. I am also not in a position to outline the forward plan of the VLRC in question time today, but I will certainly take on board your suggestions.

MINISTERS STATEMENTS: JOBS VICTORIA

Ms PULFORD (Western Victoria—Minister for Employment, Minister for Innovation, Medical Research and the Digital Economy, Minister for Small Business, Minister for Resources) (12:39): I would like to report to the house the important work of Jobs Victoria, supporting people into jobs and backing businesses to find much-needed staff. So far Jobs Victoria has assisted 20 000 Victorians into a job through the support of on-the-ground mentors and advocates and specifically through the jobs fund. The jobs fund is on track to reach its 10 000 jobs target, supporting many priority jobseekers into jobs including in manufacturing, logistics, hairdressing, social services, early childhood education, hospitality and other sectors. Over 90 000 contacts have occurred between the hotline and interactions with advocates, while over 40 000 Victorians have received personalised support from Jobs Victoria. Jobs Victoria is a key economic recovery driver in the private, public and community sectors, and we are supporting people into or back into work and businesses to find and employ staff.

Jobs Victoria is supported by an online presence that is award winning. Recently Brad Petry, executive director of technology and insights at the Department of Jobs, Precincts and Regions, was named the number one analytics leader of 2022 by IAPA, the Institute of Analytics Professionals of Australia, for his work with Jobs Victoria. Others in the top 25 included Bupa, DoorDash, Suncorp and the AFL.

It is a wonderful accolade for Brad and for the team that work with him in the department to be recognised in this way. In announcing the award, the IAPA managing director, Annette Slunjski, said:

> … data analytics, artificial intelligence, and machine learning to overcome biases to deliver more efficient employment services matching of applicants to vacancies—and positive feedback from both applicants, partners and employers …

It is a project that has showcased Brad's analytics leadership skills and strategy influence, advocacy, innovation and team collaboration. Brad considers it a privilege to be recognised in this way and is proud to have played a role at Jobs Victoria to create a culture where data is central to helping Victorians into meaningful work. Congratulations, Brad.

WRITTEN RESPONSES

The PRESIDENT (12:41): Regarding questions and answers today: Dr Cumming to transport, Ms Pulford, two days, question and supplementary; Mr Meddick to environment, two days, Mr Leane, question and supplementary; Mr Finn to agriculture, one day, Ms Tierney, question and supplementary; and Mr Quilty to police, two days, question and supplementary.

Ms Bath: On a point of order, President, for my question in relation to the number and any assistance that saleyards could be offered, the minister did not have it at her fingertips, but I would request that if she had some additional information that would be helpful to saleyards—how many saleyards and what assistance?

The PRESIDENT: I believe the minister insists that she already indicated that.

Constituency questions

WESTERN VICTORIA REGION

Mr MEDDICK (Western Victoria) (12:42): (1888) My question is for the Minister for Roads and Road Safety. One of my constituents is an elderly pensioner who requires extensive trips to health providers. He contacted me because of the Victorian electric vehicle tax he must pay alongside the national fuel excise. Most city EV owners travel around 13 000 kilometres each year. However, many of my constituents live remotely and can travel over 70 000 kilometres per year to access health services. The per-kilometre EV road charge unfairly and disproportionally impacts regional Victorians who rely on their cars to access critical services. One idea my constituent offered is to amend the EV tax by setting a nominal limit, rather than a per-kilometre charge, for people who live remotely. Such an amendment would go a long way to incentivising people in western Victoria to take up electric vehicles. Will the minister make appropriate legislative changes to ensure that the EV tax does not adversely impact western Victorians who own EVs and/or hybrid vehicles?

WESTERN VICTORIA REGION

Mrs McARTHUR (Western Victoria) (12:43): (1889) My constituency question is for the Minister for Environment and Climate Action and concerns the inconsistency in Parks Victoria's approach to historic quarry sites in the Grampians National Park. No-one doubts that protection should be afforded to areas of important cultural heritage, but there is a complete failure to employ Parks' own much-vaunted evidence-based park management. In essence the loss of amenity caused by climbing bans is unfair and discriminatory. It is completely illogical that climbers are singled out and banned when no research indicates rock scars in hard sandstone are at risk from climbing. Worst of all, tourists are not excluded. These artefacts are at ground level, yet daytrippers are welcome. And no protection is in place against feral animal damage or bushfires. So, Minister, on what evidence-based grounds is this discriminatory approach taken?

WESTERN VICTORIA REGION

Mr GRIMLEY (Western Victoria) (12:44): (1890) My question is for the Minister for Disability, Ageing and Carers. Neighbourhood houses offer a valuable community service. Over the last few

weeks I have received many letters from neighbourhood house coordinators in my region who are all extremely concerned with ongoing government funding. These letters also coincided with a visit I made to the Hamilton Community House, where I met with Debra and she talked about the important work that her house and the volunteers undertake to help their community. It was here that I learned that our neighbourhood houses are in danger of losing long-term recurring funding. Neighbourhood houses are one of our major providers of adult and child services and employers of more than 5000 people, most of whom are women and are universally loved by their communities. But the most intriguing statistic I have been alerted to is that in 2020 every dollar invested in neighbourhood houses generated at least $22 in community value. Minister, will you commit to long-term ongoing funding for our neighbourhood houses, especially for those in my region of Western Victoria?

NORTHERN VICTORIA REGION

Ms LOVELL (Northern Victoria) (12:45): (1891) My question is for the Minister for Innovation, Medical Research and the Digital Economy and concerns the inadequate telecommunications coverage currently experienced by some of my constituents living in the Macedon Ranges shire. Mobile and broadband coverage has been an ongoing issue in the shire for many years, and many residents are without the telecommunication services that most of us take for granted. In particular, coverage in the Gisborne South, Woodend and Kyneton areas is extremely poor. While the minister has made some recent announcements on improving telecommunication coverage in other regions, Macedon Ranges residents continue to be ignored. Will the minister give an undertaking to meet and work with Macedon Ranges Shire Council to improve telecommunication coverage, including broadband services, within the local government area?

WESTERN METROPOLITAN REGION

Mr FINN (Western Metropolitan) (12:46): (1892) My constituency question is to the Minister for Health. I have received representations from a number of constituents in Deer Park. They are concerned about directives on mask wearing for their children at local schools. These parents have expressed deep concern about the deleterious effects masks may have on their children, and they have quoted evidence to support their concerns. As all good parents do, they want to protect their sons and daughters from what they see as a potential threat. Minister, what advice if any can you offer my constituents to allay their fears?

EASTERN METROPOLITAN REGION

Dr BACH (Eastern Metropolitan) (12:47): (1893) My constituency question today is for the Minister for Transport Infrastructure. Members of the house will be shocked to learn that the Hurstbridge train line duplication is well over budget and heavily delayed. However, more recent and new worrying information has come to my attention from the Liberal candidate for Eltham, Mr Jason McClintock. I have been informed that the footings for the bridge over the Plenty River that were laid only some time ago have had to be ripped up, re-engineered and redone and that this has caused the contingency budget to be significantly depleted. I have also been advised that the focus has been moved to the Greensborough station build in the lead-up to the election—the government's focus—ignoring the necessary changes at Montmorency station. Why is the government not providing an integrated bus and train station at Greensborough as originally planned?

SOUTH EASTERN METROPOLITAN REGION

Mr LIMBRICK (South Eastern Metropolitan) (12:48): (1894) My question is for the Minister for Roads and Road Safety. A constituent living adjacent to the roadworks happening on Hall Road between McCormicks Road and Western Port Highway in Skye has contacted my office regarding some concerns with the project. While some disruption is inevitable, this constituent has expressed concern that the current traffic management plan is contributing to car accidents at the McCormicks Road intersection and preventing access via Edinburgh Drive and Rangeview Drive. This constituent has suggested that shifting the temporary traffic lights to the other side of Edinburgh Drive might assist

in reducing accidents and improving road access while there are no roadworks in this section. Will the minister contact the project managers and request that the traffic management plan is reviewed to improve safety and road access?

EASTERN VICTORIA REGION

Ms BATH (Eastern Victoria) (12:48): (1895) My question is to the Minister for Housing. It is Homelessness Week this week, and as a result I had a very comprehensive conversation with local sector providers Chris McNamara and Mitchell Burney, and they raised a huge number of issues in this sector. One in particular is about the lack of intake officers and caseworkers in Gippsland in general, in my electorate. The other one was in relation to the big build. Apparently there are supposed to be 88 social housing blocks and houses built in Gippsland, but to date we do not know where they will be and when they will be built. So my question on behalf of the homelessness sector is: where will these houses be built and when will they be built? Also, the money is about to run out in this delivery; when will we actually get some more? Because 88 sincerely is insufficient.

NORTHERN METROPOLITAN REGION

Ms PATTEN (Northern Metropolitan) (12:49): (1896) My constituency question is for the Minister for Planning. The Preston Market, established in 1970, is the heartbeat of the northern suburbs and is known for the open-air atmosphere, cultural mix and fresh produce at great prices. It is a defining feature of Preston, and its bustling atmosphere and diverse outlets are loved by the surrounding community. As the minister will be aware, the market is subject to Victorian government planning authority plans for the redevelopment of 80 per cent of the site and construction of in excess of 1000 new apartments. My constituent, a member of Save the Preston Market, a community action group, asks: will the minister visit the market and meet with the members of the group to understand their perspective on this wonderful asset?

SOUTHERN METROPOLITAN REGION

Mr DAVIS (Southern Metropolitan—Leader of the Opposition) (12:50): (1897) I want to raise an issue with the Minister for Planning, and it concerns a development that Ms Crozier and I are both very concerned about, the Bills Street development, and the further developments that are being considered on the corner of Auburn Road. It is very clear that the government is intending to strip power from the local council and to make the decision itself—either the minister or the minister's lackey, proxy, who has to do half the work because of the Hawker Britton problems. But either way, what I am seeking from the minister, and it is a very simple question, is: will you release the advice on which you have made the decision to wrench planning control from the council? Will you release the information, in full, on which you relied to make the decision to tear away planning from the Boroondara community and the Boroondara council?

NORTHERN VICTORIA REGION

Ms MAXWELL (Northern Victoria) (12:51): (1898) My constituency question is to the Minister for Consumer Affairs, Gaming and Liquor Regulation on behalf of a number of retirees in my electorate but specifically Mr Scobie from Wangaratta. I have raised issues around retirement village reforms numerous times in the last three years, and the response has consistently been that concerns will be addressed in the current review of the Retirement Villages Act 1986. By the time we reach the next election it will be three years since the review published its options paper in consultation on this document, which closed more than a year ago. We are heading towards the fourth summer since I started raising these issues in Parliament and another fire season without a requirement on retirement villages to have an emergency evacuation plan. So my question is: could the minister advise when it expects to introduce the reforms for retirement villages, and will it include a requirement for all residential villages to have an emergency evacuation plan as requested?

WESTERN METROPOLITAN REGION

Dr CUMMING (Western Metropolitan) (12:52): (1899) My question is to the Minister for Disability, Ageing and Carers in the other place, and it is from Peter in Deer Park. The seniors card was a Victorian state government initiative. Why can't seniors who hold the card have free access to state government venues like they once did, such as Scienceworks or the Werribee Open Range Zoo? Until recently the museums offered free entry to holders of this card. This has now changed, and the museums no longer offer free entry but a concessional fee. The reason given was that the board decided that because other states do not give free entry to museums for holders of seniors cards, a reciprocal deal cannot be offered here as it would result in thousands of dollars of lost revenue. As a result, Peter from Deer Park is now not able to go to the museum as he cannot afford it. He would obviously love to go to Scienceworks and the Werribee Open Range Zoo in the west.

NORTHERN VICTORIA REGION

Mr QUILTY (Northern Victoria) (12:53): (1900) My constituency question is for the Minister for Water. As the minister will know, irrigation and the Murray-Darling Basin plan are critical issues in Northern Victoria. The most recent meeting of the Murray-Darling Basin Ministerial Council was in April 2021. Since that meeting four of the six ministers that sit on the council have been replaced. The MDBP is fatally flawed. We have had enormous amounts of rain over the last two years, but the plan does not account for floodwaters and environmental flows. Targets are not scientific but political. We are in the bizarre situation of having so much water in a system that cannot contain it, while at the same time we are committing to a plan saying we need to take more irrigation water out of the system. We should be building more dams instead of fiddling. The plan will not achieve its buyback targets. The problem is not the water, it is the plan. We have full dams and flooding rivers, and the MDBP says the environment still does not have enough water. The plan is broken and needs fixing immediately. Minister, will you call a meeting of the Murray-Darling Basin Ministerial Council and fight for the interests of northern Victorian irrigators?

NORTHERN METROPOLITAN REGION

Dr RATNAM (Northern Metropolitan) (12:54): (1901) My constituency question is for the Minister for Housing, and it concerns the redevelopment of the Abbotsford Street public housing estate in North Melbourne. Homes Victoria has established a consultative committee of key community members and representatives of local organisations to improve community engagement on the redevelopment. But members of the committee have repeatedly expressed concern at the lack of engagement from Homes Victoria, with few meetings held so far, limited opportunities to provide feedback and poor communication with committee members. The last three committee meetings have been cancelled, two on the day of the meeting. Despite multiple members writing to Homes Victoria and requesting a meeting, Homes Victoria have cancelled the next scheduled meeting and indicated that future meetings will be replaced with a mix of site visits and guest speaker events. Members are rightly concerned that this removes any opportunity to question Homes Victoria on progress on the redevelopment, especially about their poor engagement with previous tenants of the site. Minister, will proper committee meetings be reinstated to ensure members have the opportunity to provide input to the redevelopment?

Sitting suspended 12.55 pm until 2.04 pm.

Bills

LOCAL GOVERNMENT LEGISLATION AMENDMENT (RATING AND OTHER MATTERS) BILL 2022

Second reading

Debate resumed.

Mr ERDOGAN (Southern Metropolitan) (14:04): I rise to continue my contribution on this very important local government legislation amendment bill before the house. It is a very important bill because as a government we value the contribution that local government makes. It is a sector in which our government has, as I stated earlier, made record investments—in infrastructure, libraries, sporting fields. No government in the history of our state has contributed so much to the local government sector as the Andrews Labor government has. When Minister Leane was in the role of Minister for Local Government we visited a number of libraries locally where upgrades and investments had been made and community outcomes and support services provided through our state and local government partnerships. There is fantastic work being done in that field, and this bill before the house builds upon all of that and much more.

An important point of these reforms is about the way the local government sector deals with hardship. As we know, there is a social contract here where we expect our local governments to act with compassion, act fairly and provide natural justice to their residents and ratepayers. In that spirit the Ombudsman conducted an investigation, and some of their key findings included that almost all councils had a hardship policy but they varied greatly, so there was a lack of consistency across our state. Councils did offer some good relief to ratepayers affected by COVID-19 during the pandemic. An example that has already been highlighted is the work that Hume City Council did in terms of working with their community and ratepayers during that difficult period. But information about hardship relief can be difficult to find. Many councils encourage ratepayers in financial hardship to go on payment plans. Councils do not always tell ratepayers that their rates can be deferred or waived. Many councils charge high penalty interest—currently 10 per cent—on unpaid rates. Councils had an over-reliance on debt collectors. They were some of the key findings from the Ombudsman investigation.

Obviously with the findings come recommendations: capping councils' ability to charge high penalty interest; a stronger oversight of debt collectors; new laws requiring councils to publish hardship information, making it easier for ratepayers to know their rights; issuing standards for rates hardship relief, including where it is associated with family violence; and making legal action a last resort for councils—that was a key recommendation by the Ombudsman. She found that 48 per cent of councils did not include rate waivers as part of their hardship policies and 97 per cent of councils used debt collectors. That is appalling. What we would like to see is councils in the first instance trying to resolve the matters collaboratively in house with appropriately trained staff, and I think the amendments in this bill go towards that.

The issue of financial hardship can affect different demographics in different ways. I know from my experience on local council I found it quite a common issue with older retirees. They might have significant equity in their owned and occupied homes but there was no real way for them to use that wealth for their lifestyle or to live. As we know, house prices in metropolitan Melbourne have grown exponentially, but usually by the time someone is in retirement they might be asset rich but income poor, so the rates burden is quite significant, and obviously we do not want people losing their homes to the rating issue. Our government is committed to having a rating system that ensures ratepayers facing hardship are treated fairly and consistently, and I think these law reforms that we are bringing in will make sure that we have a uniform approach across our state.

I will stick to some of the more technical elements of the bill, because I think we have had a fantastic discussion to date about the broader issues of local government, but I want to stick to these exact reforms. What we will do is set a maximum amount of interest that may be levied on unpaid rates and charges, which currently can be as high as 10 per cent, so that will not be allowed. Councils will be limited in using Magistrates Court orders for recovering unpaid rates in situations where rates or charges have not been paid for two years or more—so, again, when someone does not pay rates for a few months, which has an added burden on the justice system as well. They cannot just take their ratepayer straight to court. We do not want that approach. The bill makes a range of improvements to the ability of councils to provide rate rebates and apply special rates and charges. It also makes

technical changes to a number of acts. So as to bring to fruition these changes a number of other acts have had to be amended.

In terms of consultation our government is proud of our record of listening and acting upon that consultation. The rating system review involved extensive consultation throughout the state with ratepayers, councils and industry bodies. The government response supported 36 of the review's recommendations and committed to implementing these recommendations in two stages, prioritising the recommendations related to the greatest support for ratepayers in financial hardship. This bill is the first stage of these reforms, with the second passage of the reforms to be progressed following the passage of this bill.

I have talked about the Ombudsman's 2021 investigation. Some of the findings I was quite shocked and horrified to read; others were not surprising. But I am pleased that we are acting on them promptly, and I know the Ombudsman will be pleased to see this bill pass this chamber.

Obviously part of the change we are making is providing greater definition and ministerial guidelines, which will require early engagement with people who are struggling to pay their rates and will get rid of debt collectors and legal action unless ratepayers refuse to engage and all other options have been explored first. The guidelines will also ensure councils are not charging interest for those who are under hardship arrangements. The bill will further strengthen this by limiting councils' use of Magistrates Court orders for recovering unpaid rates to situations where rates that are charged have not been paid for two years or more. Councils will retain the ability to pursue those who choose not to pay their rates despite having the ability to do so to prevent the rating burden unfairly falling on other ratepayers.

There are also a range of changes to rates recommended through the rating system review that form part of this bill. The criteria for councils to provide rate rebates and concessions will be expanded to properties that provide a public benefit. Councils are currently limited to providing rate rebates and concessions for the purposes of preservation of buildings, protection of the environment and assisting in the development of the municipality. The power to declare a service rate or charge will be amended to ensure that services relevant to modern waste management activities are captured and the definition is consistent with the Circular Economy (Waste Reduction and Recycling) Act 2021. There will be time limits put on the levying of council special rates and charges to minimise delays between declaring special rates and charges schemes and billing ratepayers. We noticed from the Ombudsman's investigation that different councils took different approaches in this regard, and these reforms will provide uniformity across the local government sector in the way councils deal with ratepayers across our state.

There are many other amendments in this bill as well. I have probably focused more of my attention on the local government sector because, as I stated at the beginning of my contribution, I am proud of our government's record of engagement with the local government sector and our ability to deliver services and much-needed infrastructure in local communities. In Bayside, which Mr Hayes would be familiar with, there have been a number of upgrades to some of the libraries and quite a few sporting precinct and pavilion works in partnerships between state and local government, and that is what we want to see. We want to see government that invests back in our communities, and local councils play a vital role in that. Local government workers are amazing. They are the front line. When you go to a library, you always see a happy face—the service, the connectivity. A lot of our community spaces—the COVID pandemic put them into light, the amount of space. The town halls are utilised. I was a councillor at Moreland City Council many years ago, and the Moreland council buildings, whether it was the Brunswick town hall or the Coburg town hall, were fantastic places where community came together. It was only through those facilities that we had that community feeling and cohesion. So I think councils play an important role in bringing communities together. Our government values them not just in words but in practice, through actual dollars. The money we are investing is proof of the level of engagement and the value we attach to councils, and record amounts have gone into those crucial infrastructure needs across local councils in our state.

There is obviously more to be done, and I think this bill is an important part in that piece. It is about addressing the hardship issues that all Victorians face and ratepayers face but also striking the right balance. I feel that this bill before the house strikes that right balance, and that is why I am commending it to the house. On that, I might conclude my contribution.

Dr CUMMING (Western Metropolitan) (14:14): I rise to speak on the Local Government Legislation Amendment (Rating and Other Matters) Bill 2022. This bill forms the first part of reforms coming from the local government rating review in December 2020 and the Victorian Ombudsman's report *Investigation into How Local Councils Respond to Ratepayers in Financial Hardship*, released in May last year. I am pleased to talk to this bill, having spent 20 years as a councillor in Maribyrnong.

Let me start by saying that the Ombudsman's report was welcomed by the local government sector. The report also provided context for clear facts around debt collection by councils and that the context is important. It stated that in 2018–19, firstly, 28 properties were sold for debt collection. That is approximately 0.00001 per cent of all properties valued. That is one in 10 million. Seven thousand cases involved debt collectors in 2018–19, and that is approximately 0.002 per cent of all properties valued, or two in 100 000. So, put simply, the sale of properties for debt collection and the use of debt collectors are used as a last resort. The report was the first clear direction to councils about matters to consider in a hardship policy—most councils.

All councils used the Ombudsman's report as the basis to rework the hardship policies during 2021. Not only have councils already improved their policies, but most have already been road testing during COVID and been found to be delivering for the affected residents. The president of the Municipal Association of Victoria, which is the MAV, Cr David Clark, had this to say about the bill:

> By contrast we still had a blank space when it comes to guidance from the State Government.

And that was not the only blank space. When you consider that rates are the biggest source of revenue for councils, you would have thought that this government would have engaged with them—or at least the industry body—about them. However, they found out when the minister issued a press release.

I did approach the councils in Western Metropolitan Region for their comments, and this is the feedback that they gave me. A reduced interest rate may encourage some ratepayers to not pay and fall further behind. Even under the current 10 per cent interest rate, the effective interest rate is around 4 per cent per annum, as interest is only charged from the instalment due date. The requirement to wait 24 months from a cancelled payment plan before issuing a complaint may have the unintended consequence of disincentivising ratepayers to make regular payments, causing them to fall further behind. Ministerial guidelines around payment plans, hardship and interest wrongly assume that that council's current practices are not in the best interests of the community.

Councils have been extremely accommodating to ratepayers, especially during COVID, as shown by not charging interest on outstanding rates, offering payment arrangements and ceasing debt collection. Even before COVID, for some councils the practice was to cease charging any interest at all if the payment arrangement was adhered to. In addition, they would also waive part of the interest owing where the ratepayer wanted to make a concerted effort to reduce their debt and offered a lump sum in good faith.

Restricting the use of debt collection agencies may be counterintuitive, as the intention of using their services is to provide gentle early intervention measures such as emails, letters and text messaging to encourage the establishment of payment plans before it even gets to court action. If this process was shifted back to councils, it would require additional resources and specialised training, which could be more efficiently handled by debt collection agencies.

Most of the recommendations outlined in the Ombudsman's report are largely embedded within current practices. This is shown by councils' extensive use of payment arrangements. For example, Hume City Council has approximately 6000 ratepayers on payment arrangements. It ceases to charge

interest where the arrangements continue to be adhered to, so debts can be extinguished quickly, and it only take legal action as a last resort.

The only reluctance by local government to adopt all the recommendations within the Ombudsman's report relates to the waiving of rates, as this would shift the burden onto other ratepayers. Waivers are not commonly offered by any government organisation, including the Australian Taxation Office, the State Revenue Office and Centrelink. The private sector, including banks, gas, electricity and telcos, also do not commonly give waivers to debt. This government has had 15 months since the Ombudsman's report and even longer since the rates review, so you would have thought they would have engaged with the sector, providing some guidance in the meantime, and got it right. I think the president of the MAV summed it up very well when he said that the government has:

> … once again shown itself to be big on blame and little on responsibility and leadership.

He also said:

> The proposed legislation will be as useful to the sector as arriving at the football at full time, the game has been won and everyone is heading home.

In other words, local governments are already doing this within their own practices. For me, with my experience in rates and trying to actually ease the burden to ratepayers, it would seem that there is more that could be done in the way of concessions, and the concessions desperately need more beefing up by this state government within legislation. My former council, Maribyrnong, actually gave a higher—almost matching, if not more—concession rate to pensioners. The state government gave a measly amount, a set figure. It was a measly, measly amount to pensioners. Maribyrnong City Council at that time wanted pensioners to stay within the city. They did not want the gentrification. They wanted our older residents to be able to stay in their own homes for longer and not be pushed out of areas due to the increased value of properties. There was gentrification, but they wanted people to stay in the homes that they had been living in for 50-plus years. Maribyrnong council gave a very high pensioner discount and concession. Why hasn't this state government actually raised that, if not doubled that? Why? I cannot see it here.

There needs to be a certain amount of flexibility when it comes to council rates and the percentage that they increase by. As you all know, the cost of living has gone up, and we need to keep in step with that. Like every other industry, local government has pressures in the way of the rising cost of petrol and the flow-on effects of that, so local council rates have to keep in step with that but also be very mindful of where they can actually make concessions. Also this state government has to look at that, and I think that the local government sector are very happy about spelling out special rates and charges and being very clear to their community when they could possibly apply, such as what was discussed earlier by the government around waste levies and being very clear and succinct. It is a wonderful way to go, to understand what the contract is for a municipality and then divide that up per property to give a fair and equitable service, very much a user-pays service that is transparent and everybody can see. But when you have the state government sticking their finger into the same pie and levy and actually taking the levy and putting it into a pool here at the state level and then not spending it equitably across the state, that is when the unfair burden occurs for ratepayers. Local governments then become just the tax collectors for the state government, and that has been shown time and time again.

But where the state government could actually ease the burden is within the rate rebates and within the concessions. It would be seen here that the only additional powers that you are looking at are in the way of a concession in the way of what the land is actually being used for—in the way of its public benefit, such as what I can see here as examples: charitable, religious, educational or support services. The local government sector is dubious about this state government, seeing that it was only six months ago that this government wanted to cost shift social housing and relieve themselves of paying rates to the local government for the services, for their own housing in their own area. It would be a good measure for this state government to respect the local government sector and understand that they are all about making sure that their local residents can afford and pay the local rates, and this government

should look more deeply into the concessions that they could possibly be giving to our pensioners to make sure that they stay in the communities that they have been in for the majority of their lives. This government should do this—look after our senior citizens.

I think I will leave my contribution there. Again, this state government pretty much let the community know this was occurring via a media release—media first, the sector second and the people that it actually affects, the local government, last. I believe that this state government could have done better in the way of making sure that the local government sector had the guidelines and was spoken to and consulted with before this came to this Parliament.

Ms TAYLOR (Southern Metropolitan) (14:27): The crux of this bill is really about making the collection of rates fairer and really about ensuring that people struggling to pay their rates are not being driven further into debt. It really is a very positive bill. It is delivering good things for the community, and there actually has been extensive consultation with all the relevant stakeholders, including ratepayers themselves—and I would have thought that ratepayers giving insight and having input into this was highly relevant, so I think that should not be dismissed as well.

So how did this legislation come about? We know that the bill implements a range of recommendations from the rating system review and the Ombudsman's investigation into how local councils respond to ratepayers in financial hardship. If we look at, therefore, who have been the drivers behind these changes—in the most positive sense I say that—ratepayers, so community, have been driving these changes. Financial counsellors have asked for them and so have community lawyers, really concerned about the way councils treat people who cannot afford their council rates. I think it is important to be clear about who has actually actively contributed to what are really, really positive, commonsense and practical outcomes for the community at large.

We know when you are looking at the issues around this bill and what has driven it, the report found—and I am talking about the Ombudsman's 2021 report—that people who were struggling to pay their rates were often met with debt collectors, high-penalty interest and in some cases costly court proceedings, and we all know that minimising the risk of having to go to court is a good thing because it is not in the interests of local councils or community to have to deal with such difficult, stressful and costly circumstances. So again, this bill has a very solid and sound rationale. It is really driving positive reform for the community at large, because we know if you are facing debt collectors, if you are facing high-penalty interest and maybe even some costly court proceedings, this creates more stress. On the one hand you might have the fear of losing your home, but on the other hand it has been found that there were compounding issues often—family violence and mental health matters.

So we can see that there really is a strong impetus for bringing through these reforms, contrary to some of the commentary we have heard in the chamber, which I find frankly astounding, because on the face of it these are very practical reforms and they have a very sound basis. By bringing debt collection back in house they were often able to work with people who were behind to find a way forward. I should say in other sectors—for instance, in the water sector and with utilities—they have found that that sort of early intervention, so very proactive intervention when you see that a particular client or customer is in trouble, can save a lot of problems in the long run. I am not sure why people would have an issue with that, but anyway that is why we have debates—so we can get clarity on these issues when we debate them in the chamber. Particularly when you are looking at issues of family violence and mental health, taking positive action here to pull back that stress and to create a more fair and reasonable process for getting to the end point, which is the collection of rates, has got to be a good thing.

Really, we are looking here fundamentally at a cultural change. It is not to slight councils in any sense. It is really about saying, 'Hey, there are other ways that we can do things in a very pragmatic way but also a compassionate way that is actually sound but also based on more recent experience'. Surely we should not just do the same old, same old. I think it is important that we be proactive and that we actually acknowledge the input of those who did put their statements on the table with the

Ombudsman's report—ratepayers themselves. I do not think we want to shy away from their contributions—the community at large—we want to actually listen and address, and that is exactly what is being done here.

The bill will support cultural change in how councils consider unpaid rates and financial hardship and work with ratepayers early and proactively as part of their core business. That seems to be a very sensible way of progressing with regard to managing something which would otherwise pose, and has otherwise posed, some significant stresses and pressures for communities when they are doing their best to get ahead. Of course I emphasise here that it is people who genuinely are struggling to pay their rates. We are not talking about people who can actually afford to pay their rates and maybe are choosing not to. This is about those who are going through perhaps a very difficult period in their lives and are needing another mechanism, a practical mechanism, to help everyone get to where they need to go.

Another benefit of these particular changes is some ministerial guidelines in terms of the maximum interest rate set, because what has been found is that the current maximum interest rate set by the Penalty Interest Rates Act 1983 of 10 per cent is deemed to be disproportionate for unpaid local government rates. While councils may levy interest that is lower, this is inconsistently applied by councils. So the government considers it more appropriate that the maximum interest rate is set by the Minister for Local Government, with guidelines to ensure councils reduce the maximum amount for ratepayers experiencing financial hardship. The Essential Services Commission will provide advice to the minister prior to setting the maximum interest rate.

Yet again we see a consistent theme through this legislation, and it is really about bringing forward some fairness and uniformity, because another issue which has been raised by a number of my learned colleagues is the difficulty—and they have found this statistically—that a lot of people have not known what to do next. If they are struggling to pay their rates, they are not actually going back to council and finding a way through that necessarily, and that suggests there really needs to be greater clarity, certainty and understanding across the state so the community is empowered in this situation. But also it is giving a clear pathway for councils as well so they know what they can do and, let us say, what they should do in order to enable a better outcome in terms of helping to get rates paid that are owed but in a way that is done with compassion, is sensible and can actually be achieved.

I know there was some conjecture about 'terrible government bringing forward this fairness and certainty and uniformity and making sure that the community are aware of their rights and what they can do to help them get through a period in their lives where they are struggling and battling to pay their rates', but I put it to you that these are actually very sensible and sound reforms. As I have a couple of times already, I am going to reiterate that ratepayers themselves have contributed to these outcomes in terms of informing the process behind this legislation. I do not think it would be appropriate for us to snub that. I think in fact we actually are taking it on board as well as the input of financial counsellors and community lawyers. So to suggest that there has not been consultation or that there has not been an understanding or input from community or otherwise does not actually quite fly. That does not pass the pub test. That is not actually accurate when we look at it. I am sure the Ombudsman's report has been accurate in terms of providing the community with data in terms of who had input into that particular report, so I am not sure why there is conjecture on those particular elements. But again this is the beauty of having a sound debate on these issues—so that we can provide clarity and make sure that any misconceptions are cleared up in front of us here and now.

Another important point about the ministerial guidelines is that they will define 'financial hardship', require early engagement with people who are struggling to pay their rates and get rid of debt collectors and legal action unless ratepayers refuse to engage and all other options have been explored. Yet again I think this is perfectly reasonable, and we can see this is a measured approach, it is a compassionate approach and it is one that is actually trying to work proactively but also collaboratively with the relevant residents who may be having difficulty in being able to fulfil their rate payments. The guidelines will also ensure that councils are not charging interest to those who are under hardship

arrangements. I would hope that there is no objection to these particular elements, because again that would seem to be a fair and reasonable outcome. Of course these are underlying values of our government. Fairness is certainly inherent in the way we operate, so it makes good sense that we would deliver upon fairness with legislation and these kinds of reforms, which are really addressing community needs that have been expressed overtly.

The bill will further strengthen this—I am talking about not charging interest to those who are under hardship arrangements—by limiting the use of Magistrates Court orders for recovering unpaid rates to situations where rates or charges have not been paid for two years or more. I do not think I need to reiterate—I think everyone would be perfectly aware—that any kind of litigation is inevitably going to be stressful. It is pressured. It can be very costly. I do not think it is in the interest of any council to be having to go down that path if they can avoid that. I do not want to speak on behalf of councils—they certainly can speak very well on behalf of themselves—but I am just putting myself in that situation. I was a councillor once upon a time with Glen Eira council, and I know that it certainly would not be a desire of any council to have to have litigation in order to be able to recover rates. Therefore putting these measures in place means that everyone knows where they stand and we have got that uniformity and certainty and fairness.

The criteria for councils to provide rebates and concessions will be expanded to properties that provide a public benefit as well. I know one of my learned colleagues, I think it was Mr Erdogan, was talking about the fact that this bill has other elements which are actually very helpful in terms of delivering, again, on fairness. Councils are currently limited to providing rate rebates and concessions for the purposes of the preservation of buildings, protection of the environment and assisting with the development of the municipality. The power to declare a service rate or charge will be amended to ensure that services relevant to modern waste management activities are captured and the definition is consistent with the Circular Economy (Waste Reduction and Recycling) Act 2021. We know when we are looking at waste we all like to think that we look at it in a much broader and more contemporary manner in the sense that we can see it as something that is actually able to be recycled. In many instances we have organic waste, and I would like to think that we are developing a much healthier attitude to not simply accumulating and dumping waste but actually seeing and repurposing waste. Hence it makes good sense to be updating the definition of 'waste charges' so that we are really clear about what a contemporary council is having to deal with in terms of waste collection. There will also be time limits put on the levying of council special rates and charges to minimise delays between declaring special rates and charges schemes and billing ratepayers.

The bill also makes amendments relating to the implementation of the new Local Government Act 2020 to ensure it is operating as intended. And this includes—this is the other point that I wanted to get to in the minute that I have—amendments to address concerns raised by the Office of the Victorian Information Commissioner in relation to the processing and handling of freedom-of-information requests by councils. These amendments will ensure that confidentiality provisions in the Local Government Act 2020 are not contrary to the principles of transparency and accountability in the Freedom of Information Act 1982.

I will proceed to close at this point, but suffice to say this is delivering something that the community have actually requested. These reforms have been driven by the community and other professionals who have had to see the downside, the very negative side, of debt collection and otherwise to create a fairer, more compassionate system that is uniform across the state.

Mr QUILTY (Northern Victoria) (14:41): I will be brief. Last Saturday I spoke at the conference of Ratepayers Victoria. The ratepayers of Victoria should perhaps be referred to as 'the great ignored'. They stump up the cash to pay for everything that councils do, more and more every year, but then they get pushed to the back while small but vocal interest groups advocate for how the money should be spent. As a former councillor myself, this is an area I take special interest in. When you vote for Liberal Democrat candidates in local government elections, you know you are voting for someone who will always oppose wasteful spending and rate hikes and will not participate in woke or culture

war nonsense or pander to special interest groups. Our focus will always be the ratepayers and fighting to get them value for money. Lib Dems is a brand you can trust. Some other major party brands have become tainted; there is a smell, a stink, about them, like someone left prawn heads stuffed into the air vents some time ago and now they cannot get the smell out.

Local government in Victoria is a disease-infested swamp that needs to be drained, and that will only be achieved by both legislative reform and a better class of councillors being elected who are not beholden to special interest groups or funded by developers to ensure that the supply of land is kept artificially low to inflate profits. The Local Government Act introduced by this government in 2020 is seriously flawed legislation. It has stripped even more power from elected councillors and handed it to unelected staff. Councils are increasingly expected to be just a forward-facing rubber stamp for the decisions made by CEOs and senior staff. The new act also increased the tools of secrecy used to hide from ratepayers what is going on and how money is being squandered, and it fiddled with the electoral system to make it harder for minor party and independent candidates to be elected. When the bill was being introduced, the Liberal Democrats proposed amendments, sadly defeated, including ones that would have stopped councils using commercial in confidence to hide the details of pretty much every contract they enter into. Far too many decisions are hidden in commercial-in-confidence meetings. Until we can shine sunlight on the dodgy decisions councils make, bad behaviour will continue to thrive in the shadows.

Now, the thrust of this bill is to set up a standardised hardship payment plan for rates. In general the bill will make it more difficult for councils to go after people's property when they fail to meet rate payments on time. This change feels a bit like the short-term registration payment option the government implemented a few years ago. It is a good change, but it speaks to a more worrying underlying problem: payment plans and short-term payment options are necessary because fees and charges are not affordable. The problem being addressed here is that people are going broke and cannot pay their taxes. The better solution here would be to reduce taxes, but that is an option that this government does not like to consider.

Aside from rating changes, the bill makes some small improvements around freedom of information. The changes clear up a legal ambiguity that councils were using to keep information confidential, but it is just a small tweak at the edge of a pile of bad behaviour. Councils continue to keep far too much information secret from the public. As I said, commercial in confidence is routinely used to cover up expenses and to obscure blunders. Councils are pushed aside, with decisions being made by CEOs and senior staff, and are silenced by codes of conduct that prevent them from expressing any dissent to decisions that are made. Is it really a representative government when your representative is not really making decisions and is not allowed to talk publicly about those decisions?

Local government needs an overhaul in Victoria. This bill is not the overhaul we need. We will support it, but you are just tinkering around the edges of an out-of-control problem. We need serious local government reform, and this is not it. Local government is a swamp that needs to be drained. I note the Greens proposed amendments to the act. The Greens are not usually known for wanting to drain the swamps. They are more generally into preserving the wetlands instead, and some of these amendments can be seen as an attempt to preserve their own little corner of the muck; however, we will support their move to return councils to multimember wards. We believe this is definitely needed. The Liberal Democrats will support any measure that makes councils more transparent and more responsive to the views of the ratepayers of Victoria.

Dr KIEU (South Eastern Metropolitan) (14:46): I rise to speak to the Local Government Legislation Amendment (Rating and Other Matters) Bill 2022. Someone sometime in their life may experience some hardship and some difficulty and may fall into financial hardship, in particular falling into debt, including owing rates to the council. So this local government legislation amendment bill is about making rate collection fairer and ensuring people struggling to pay their rates are not further driven into debt or do not have to sell their house to repay the debt. The government is committed to

having a rating system that ensures ratepayers facing financial hardship are treated fairly, equitably and with certainty, and this bill will do just that.

In 2018 the Victorian government committed to a review of the local government rating system in order to ensure rates are fair and equitable for all in the community. A ministerial panel was appointed to lead the rating system review in consultation with the community, the ratepayers, the councils and all key stakeholders. The review reaffirmed the importance of the local government rating system to fund essential infrastructure and local services, as they are tasked to do. It found that the rating system is not broken and is in line with many of the principles underpinning a good taxation system. The government in response has supported 36 of the panel's recommendations in full, in principle or in part. As part of the response, the government committed to prioritising the reforms that will (1) support ratepayers in financial hardship, (2) improve the transparency and consistency of decision-making and (3) build greater equity and fairness into the rating system.

Following on from that, in 2020 the Ombudsman also commenced an investigation into how local councils respond to ratepayers in financial hardship. The investigation looked into each and every one of the 79 councils and whether information about council financial hardship assistance is easily and readily accessible for ratepayers, whether assistance is fair and reasonable, how council assistance schemes compare with best practice and what councils can learn from the COVID-19 relief schemes. The report from the Ombudsman found that most people who experience financial hardship do not apply for council assistance and that information about applying is often hard to find and understand.

In contrast, take the example of some of the utility companies: they have a more proactive approach to identifying customers in financial hardship. They take steps to identify customers themselves, whereas councils rely, on the other hand, on people asking for help. The report also highlights cases where the interest charged built up over time to the extent that it was 25 to 50 per cent of the total debt, creating a poverty trap for those who had already been struggling financially. So this bill is the first step in implementing a range of recommendations from the rating system review and the Ombudsman's investigation. The second stage of reforms will be progressed following the passage of this bill in the next term.

The report, as I mentioned, found that people who were already struggling to pay their rates would often meet with debt collectors, high penalty rates, high penalty interest and, in some cases, costly court proceedings. Of course this created more stress and even fear of losing their homes for those who were already struggling and maybe dealing with a range of compounding issues, including family issues, including family violence and including mental ill health. In comparison, some of the utility companies, including water corporations, found that implementing early interventions and flexible approaches to payment collection methods reduced outstanding debts and overall legal costs.

Mr Leane: They have a business plan.

Dr KIEU: They have a business plan. Thank you, Minister Leane.

During the pandemic, which was a very challenging time for many of us, some of the councils adopted more flexible and compassionate approaches for those who were particularly experiencing financial hardship. Now the bill will further strengthen and support those measures. First of all, the awareness of ratepayers that they can approach the council and seek assistance will also be strengthened with a uniform approach to hardship. The bill will empower the Minister for Local Government, in consultation with the Essential Services Commission, to set a maximum amount of interest that may be levied on unpaid rates and charges. Currently the interest on some of those rates and charges can be as high as 10 per cent. Even though it is not uniform, that is how much it could go to.

The bill will also develop ministerial guidelines councils must follow in dealing with ratepayers who are experiencing financial hardship. What has been lacking so far is what is meant by 'financial hardship'. The ministerial guidelines will clearly define what is meant by financial hardship and require early engagement with people who are struggling to pay their rates and get rid of debt

collectors, who are very intimidating to many people. Councils will not take legal action unless ratepayers refuse to engage and all other options have been considered and still not produced a result. The ministerial guidelines will also ensure councils are not charging interest to those who are under hardship arrangements. We do not want compounding interest on compounding financial hardship, affecting the difficulties and also even the mental health of the person in question.

The bill will further strengthen this by limiting councils' use of Magistrates Court orders so they can go through the Magistrates Court to recover unpaid rates only in situations where rates or charges have not been paid for two years or more. Of course councils will retain the ability to pursue those who choose not to pay their rates despite having the ability to do so to prevent the rating burden unfairly falling on other ratepayers.

The criteria for councils to provide rate rebates and concessions—on another matter—will be expanded to properties that provide a public benefit. Currently councils are limited to providing rate rebates and concessions only for the purposes of preservation of buildings, protection of the environment and assisting in the development of the municipality. The power to declare a service rate or charge will be amended to ensure that services relevant to modern waste management activities—namely, waste reduction and recycling—are captured and the definition is consistent with the Circular Economy (Waste Reduction and Recycling) Act 2021. Also there will be time limits put on the levying of council special rates and charges in order to minimise delays between declaring special rates and charges schemes and billing ratepayers.

This bill also has some other elements; in the time remaining I would like to quickly go through them. The bill also includes amendments to address concerns raised by the Office of the Victorian Information Commissioner in relation to the processing and handling of freedom-of-information requests by councils. These amendments will ensure the confidentiality provisions in the Local Government Act 2020 are not contrary to the principles of transparency and accountability in the Freedom of Information Act 1982. Also the bill will expand the current exemption to entitlement under the Workplace Injury Rehabilitation and Compensation Act 2013 for a mental injury caused wholly or predominantly by the reasonable management of companies. This includes an application for a finding of or proceedings in relation to serious misconduct by a councillor. Lastly, the amendments to the Domestic Animals Act 1994 create regulation-making powers to facilitate the return of lost pets and the scanning of deceased pets on council property for microchip identification and notification of pet owners.

The Andrews Labor government is committed to ensuring people struggling to pay their rates are not being driven further into debt and/or out of their homes and to creating a more fair, equitable, consistent and transparent system. The bill makes a range of improvements to the ability of councils to provide a few other things like rate rebates and apply special rates and charges. I commend the bill to the house.

Mr LEANE (Eastern Metropolitan—Minister for Commonwealth Games Legacy, Minister for Veterans) (14:59): There have been a lot of contributions on the details of this bill, and I thank everyone that has spoken in the second-reading debate. I think there is global support across everyone about this being an important bill. The intent of this bill is to replicate what is already happening, as Dr Kieu said, in water agencies—and it has been proven to be a better business model because they have actually saved money since it has been implemented—where if someone is late on a bill, they get a phone call from the water agency asking them if everything is okay.

For someone like me that sometimes forgets to pay the bill, I say, 'Sorry, here's my credit card—paid'. If it is someone that is in distress for certain reasons, they treat them with respect and they say to them that maybe they can make a follow-up call in a couple of months when they are in a better position. If it is someone that has been identified by the water agencies time and time again—and they have had a number of referrals of people that have been victims of family violence—they have supported those people. Under this business model they have actually saved money from not having debt collectors,

from not going to the Magistrates Court and from not sending endless red pieces of paper. They actually treat people as human beings and respect them—and they have saved money.

This also comes out of the rates review, where there was a lot of consultation, and the Ombudsman's report. I congratulate the Ombudsman for her report. She had a lot of consultation, and she had some horrifying examples of how some people had been treated by some councils—horrifying examples—where their interest rate bill debt was higher than their council rates. Then today we have people come into this chamber and say, 'The councils are already doing all this'. Well, that is not true, and the Ombudsman proved that.

The glaring bit of evidence for this chamber today is where councils are saying they are charging 10 per cent interest on late rate payments because they can—under another act. Only a couple weeks ago in a local paper a council in the south-east of Melbourne said, 'We're going to continue charging 10 per cent because we can'. Well, I will give them a tip. After everyone has indicated they are going to support this bill today, they are not going to keep doing it. They blatantly came out and said they should be able to. So spare me everyone in here saying that all the councils are already doing it and they are all fantastic citizens. There are some fantastic citizens among the councils—the same councils that urged me to bring this bill to the chamber, councils that have already been doing this and are concerned about the bad name their fellow councils are getting because of the horror stories that the Ombudsman had written into her report and more.

I think on principle, too, every time a bill comes that might have the words 'local government' in it or anything else, for a member of this chamber to get a reasoned amendment to be able to talk past the scope is a really bad way for this chamber to act. Every time someone can come in and say, 'I want to talk about something outside the scope of the bill in committee stage', it is a bad precedent and also a way of putting a bad light on a good bill. This is a good bill—and even, Mr Davis, you said you kind of support it.

Mr Davis interjected.

Mr LEANE: Well, I think you do. You know you have got some concerns. You can ask questions. That would be great.

We are not going to support the reasoned amendment. We are not going to support the other amendments that have been proposed by Dr Ratnam. It is very disappointing that we cannot get a consensus without grandstanding on a really, really important bill. All the welfare agencies have come out in support of this bill because their clients are still suffering now. So spare me anyone who said, 'Oh, they're all doing it now', because they are not. There are some councils that have done a fantastic job in this area, but there are still examples where ratepayers who have found themselves in hardship are getting treated very, very poorly.

As far as consultation goes, someone is on the record saying there was not consultation. Well, I can give the dates that the Municipal Association of Victoria had consultations, and I can say who was actually at those consultations. I know that MAV have a role and a few of their members get upset and then they feel that they have to act in a certain way, and I respect that. I also respect Cr Clark. I think he is a very good man. I have a great working relationship with Cr Clark, 100 per cent, probably better than you would, Mr Davis. But anyway—

Mr Davis: No, I have a reasonable relationship with him too.

Mr LEANE: I do not know. That is not what he told me, but anyway. I understand their responses on behalf of some of their members and I respect that. My ego can take that. But as far as the consultation goes, if anyone wants to know, I have got it all documented there. The Essential Services Commission met with the 79 CEOs, and we actually gave them consultation before that. If I seem a bit underwhelmed by some of the contributions on this particular bill, forgive me, because this is a very good piece of legislation that takes up the recommendations of the Ombudsman. The

Ombudsman actually put out a media release after we put out the legislation to congratulate us on picking up all her recommendations, and we thank her for that.

Motion agreed to.

Read second time.

Instruction to committee

The ACTING PRESIDENT (Mr Gepp) (15:06): I have considered the amendments proposed by Dr Ratnam: sets SR111C and SR112C. In my view, these amendments are not within the scope of the bill. They therefore require an instruction motion pursuant to standing order 15.07.

Dr RATNAM (Northern Metropolitan) (15:07): I move:

That it be an instruction to the committee that they have power to consider amendments and new clauses to:

(a) amend the Local Government Act 2020 to prohibit donations from property developers and gambling industry business entities to candidates and councillors; and

(b) amend the Local Government Act 2020 and the City of Melbourne Act 2001 to enable a person who has attained 16 years of age to enrol on the voter's roll and the Electoral Act 2002 to enable a person who has attained 16 years of age to provisionally enrol on the register of electors.

If I may speak briefly to my instruction motion, I understand that the government is unwilling to support instruction motions anymore despite a long-held convention for a number of years that allowed these to be passed and for individual amendments to be debated and voted upon their merits following debate. The government always had the opportunity if they disagreed with the amendments, as did every other person in this chamber, to vote against the amendments should they not support them.

I appreciate that out-of-scope amendments need to be raised judiciously. However, they do remain an important opportunity, especially for we crossbenchers here who have so little opportunity otherwise to put matters before the Parliament. Denying the ability to even debate amendments is really regressive and limits what are already limited opportunities for a number of us. Denying this on procedural grounds must be seen for what it is: an attempt to shut down debate on issues that in this case the government does not even want to debate or declare its position on. My amendments today are a case in point.

The government has been promising reform on local government donations for years. I have asked repeatedly about it and they kept saying that it had to wait for the IBAC report. But we only have three weeks left to go of this Parliament and we have no indication of when the IBAC report will be tabled nor when the government will introduce its long-promised reform. But we know everything we need to know already, particularly as all the hearings have been completed for IBAC, about why we have to get on with this reform urgently. We cannot hide behind excuses when it comes to improving integrity, which is what—

Members interjecting.

The ACTING PRESIDENT (Mr Gepp): Order! Sorry, Dr Ratnam. There is a lot of chatter in the chamber. Can Dr Ratnam be heard in silence, please.

Dr RATNAM: We cannot hide behind excuses when it comes to improving integrity, which is what part of my amendments seek to achieve. Not a week goes by in Victorian politics without another scandal about the integrity of this Parliament and the conduct of politicians.

My amendments will ban political donations from property developers and the gambling industry to candidates in local council government elections and elected councillors. This is an extremely straightforward anti-corruption and integrity measure such as already exists in New South Wales and Queensland. While we have reformed political donations at the state level to cap donation amounts and improve disclosure, local government elections have no such rules. At the local government level

the only requirement is for a post-election disclosure 40 days after the election, which I noted in this chamber earlier this year many candidates in the 2020 election simply did not comply with, yet they faced no consequences for breaching it—the only transparency measure in place.

We also know that local government is at risk of corruption, with property developers seeing the potential profits to be made from influencing council planning decisions. We only have to look at Casey council and John Woodman and the evidence that has emerged from IBAC's Operation Sandon to see how property developer money can be used to distort planning decisions and influence outcomes. The simplest way to get dodgy money out of local government is to ban property developer and gambling industry donations, and given the stories we have heard in the media this week about attempts to subvert the donation rules, now is the right time for the government to show that it is serious about integrity in politics and to support this move to improve our donation system.

This excuse from the government about needing the Independent Broad-based Anti-corruption Commission or a royal commission before it can act is wearing thin. We saw with Crown that, after decades of Crown running rings around the government, it took a New South Wales inquiry to push the government to hold a Victorian inquiry before the government would act, despite knowing for years that the regulator was not doing its job properly. Similarly, the government did not need an IBAC report to know that Victoria needs an independent parliamentary integrity commissioner. It was apparently proposed by Gavin Jennings back in 2016. Similarly, today we do not need an IBAC to tell us that there needs to be political donation reform for local government. It is plain as day that this needs to happen. So I just do not buy this excuse.

I urge everyone to support this instruction motion. Do not make this instruction motion a proxy for the government to avoid debating and declaring its position on matters that go to the heart of the integrity of our Parliament and that Victorians want urgent reform on.

Mr LEANE (Eastern Metropolitan—Minister for Commonwealth Games Legacy, Minister for Veterans) (15:12): I just want to thank Dr Ratnam for admitting that her amendments are outside the scope of the bill. Like I said in my second-reading summary, just because there is one word in the title of the bill it does not invite someone in the chamber to suggest we should talk about many, many things outside the scope of the bill. That is not the intent of these sorts of instruction motions. So for that and a number of other reasons, we will not be supporting it.

House divided on motion:

Ayes, 19

Atkinson, Mr	Finn, Mr	McArthur, Mrs
Bach, Dr	Grimley, Mr	Meddick, Mr
Bath, Ms	Hayes, Mr	Patten, Ms
Burnett-Wake, Ms	Limbrick, Mr	Quilty, Mr
Crozier, Ms	Lovell, Ms	Ratnam, Dr
Cumming, Dr	Maxwell, Ms	Rich-Phillips, Mr
Davis, Mr		

Noes, 17

Barton, Mr	Leane, Mr	Tarlamis, Mr
Bourman, Mr	Melhem, Mr	Taylor, Ms
Elasmar, Mr	Pulford, Ms	Terpstra, Ms
Erdogan, Mr	Shing, Ms	Tierney, Ms
Gepp, Mr	Stitt, Ms	Watt, Ms
Kieu, Dr	Symes, Ms	

Motion agreed to.

Committed.

Committee

Clause 1 (15:20)

Mr DAVIS: I have only got a very small number of questions, which I kindly flagged for the minister. Minister, this bill provides the capacity for councils to allow certain groups to not pay rates, and I wonder if you would indicate to me whether the government has done any analysis of what that might mean in different municipalities or whether you have proceeded on this in the abstract without such analysis.

Mr LEANE: Mr Davis, if a council chooses to apply different rebates, that will be up to the council. We have not done any sort of analysis council by council, but I will say that if a council decides to apply a new rebate, which I think your concern is about, the cost of that will come out of the council's consolidated revenue. It does not allow for rates to be redistributed, so there will be no cost shifting. There will be no shifting of the rate burden to other ratepayers, and I understand that was your concern in your second-reading address.

Mr DAVIS: I thank the minister for his answer, but I would put it to him that what he said is not quite right. I know that might be the government's intent, but if the council was to strike just a slightly higher rate and then to exempt one particular group from the rate it would have the practical effect of increasing the rates paid by others within the municipality.

Mr LEANE: Mr Davis, the rate-capping policy—and I assume the coalition have assumed the same policy going forward—will be in place, so no council can go above a certain rate cap anyway, and as I said, any rebates will have to come out of the council's consolidated revenue. It does not allow for rates to be redistributed, and no shifting of the rate burden will be applied.

Mr DAVIS: Again I thank the minister for his answer, but I would put it to him that it is not quite the full story. Whilst the rate cap is there, that relates to the aggregate take of rates across the municipality, and if the aggregate take has only gone up by the CPI or a small amount near the CPI but the rates to particular ratepayers have gone up higher, with another group exempted, I put it to him that actually there will be a redistribution of rate burden.

Mr LEANE: I stand by my previous answer.

Mr DAVIS: I do not intend to press the point, and I thank the minister for his answer. But I think he has answered enough and it is clear that a de facto redistribution of rates can occur and that rates may well rise in some municipalities to, in effect, even if it is not the government's intent, cover the rebate arrangements.

Mr LEANE: I will take that as a comment and disagree.

Dr RATNAM: I move:

1. Clause 1, page 2, line 13, omit "owners." and insert "owners; and".
2. Clause 1, page 2, after line 13 insert—

> "(e) to amend the **Local Government Act 2020** and the **City of Melbourne Act 2001** to enable a person who has attained 16 years of age to enrol on the voter's roll; and
>
> (f) to amend the **Electoral Act 2002** to enable a person who has attained 16 years of age to provisionally enrol on the register of electors.".

These amendments will lower the voting age in local council elections to 16. Voting will be voluntary for 16- and 17-year-olds, but I know that many will take the opportunity to have their voices heard. Our young people are our future. The consequences of decisions we make here as elected representatives will be borne by the young, and yet while they are actively fighting for their futures, marching in the streets and demanding better from their governments, they have no say in who their governments are until they turn 18. The Greens want to give the vote to all 16- and 17-year-olds, and we think local government elections are the perfect place to start.

Mr LEANE: I have got no questions. If I was going to try and be flippant, I would say that this may be a punishment for people that are 16 and 17, making them vote in a council election. We do not support the amendments. And I think that there has got to be a lot more consultation with the community before a step like this is taken.

Mr DAVIS: The Liberals and Nationals will oppose this for many of the same reasons as the government. I note that the government, I think, has brought in a 16-year-old voting threshold for the Indigenous assembly. I am not sure how they arrived at that. I think it is quite inconsistent to bring in these different ones. I always thought that we had settled these things at about 18, when people could get their drivers licence, join the military and do all of the long list of other things. They are treated as adults from that point forward. So that is the reason we support the 18-year-old threshold. But I would, by way of a question perhaps, ask Dr Ratnam how she arrived at 16. Why not 15 or 12 or 10? What is magical about the number 16? I know it divides by four, four times. I am just trying to work out the other qualifications.

Dr RATNAM: Thank you, Mr Davis, for that question. It is a very good question. Similar to the process at which you arrive, for example, at the age of 18, a question could be raised: why isn't it 19 or 17 or 21? Different countries do have different age thresholds for a range of things. Some of the most complicated systems are where there are really inconsistent thresholds. The response to 'Why 16?' is similar to how 18 is arrived at on the balance of a number of considerations. We see more and more young people who are expressing to us as parliamentarians—they are certainly out on the streets more—and saying, 'We want to have a say in the decisions that affect our lives'. They are getting really disenchanted with the types of people who are elected to represent their positions and who are trashing their futures on so many fronts. So we are hearing more and more from younger people, particularly 16- and 17-year-olds, who are saying, 'Please give us the vote so we can shape our governments and we can see the type of action that we want to see happen to guarantee our futures'—and so that they can get elected and they too can represent their constituencies. So it is based on a balance of considerations, similar to how other age thresholds are arrived at, and is in response to community feedback to us from when we have talked to the community. I welcome this debate. I think it is really important we think about how we make decisions for other people and how all groups of people are represented in that decision-making. And sometimes it is about enfranchisement, of which this is taking the next step.

Mr DAVIS: I thank Dr Ratnam for the response, and I understand the point she has made. We will not support it. I am not persuaded.

Mr LIMBRICK: The Liberal Democrats also will not be supporting this amendment, for many reasons similar to the government and the opposition. It may be a fair enough debate to say, 'Is 18 the right age or not for someone to become an adult?'. But arbitrary or not, our laws basically for most things have it so that we can drive a car, we can purchase alcohol, we can join the military and we can do all of these things at 18. We can stand as a member of Parliament once we are 18, and we can vote. I think also that being unable to stand as a candidate when you are 16 is problematic as well. And it is unlikely that someone at 16 would be a taxpayer, whereas once they are 18 they become a taxpayer and they become engaged.

Dr Ratnam interjected.

Mr LIMBRICK: Yes, they can work younger, but they are unlikely to be a ratepayer. I think the main argument here is that we have a line, whether it is arbitrary or not, at 18 for most of these functions where we declare that, 'You're an adult and you have all the rights and responsibilities of becoming an adult'. I think that moving that for one particular function, which is voting in local council elections, is problematic without more widespread consultation.

Dr CUMMING: I support Dr Ratnam's amendment. I do believe that it would be great for us to bring down the age for people to be able to enrol to vote. I think it is something that has been lost, this

opportunity. What I hear from my community is that younger people are screaming out to have lifelong skills within their high school. They would like to be taught how to vote. So allowing 16- and 17-year-olds to enrol to vote would be a way to get them to be part of our democratic process. There is younger and younger representation on local councils. We have younger and younger mayors and local council representatives. You do not have to be a ratepayer to run for council; you only need to be a resident. Our younger teens are able to learn how to drive. They are able to have a learners permit. They are able to work. They are able to actually become apprentices. So why can't they start the process of being involved in voting and understanding our democratic process? I think it would be great. I cannot believe the Labor Party is not supporting this, seeing that they use local councils as a kindergarten for politics. They could start using high schools as their kindergarten—looking forward to the Labor branch of each high school. So they could start putting little seedlings in our high schools. I am looking forward to that.

Ms PATTEN: I found myself nodding with Dr Cumming. It has not happened for quite some time, Dr Cumming. But when she started talking about partisan politics, she lost me. However, I do support the notion of young people having their say at local government levels. As Dr Cumming mentioned, these young people are paying taxes. As Mr Limbrick forgot to mention, they own guns. They can have licences for guns. They have learners permits. I think also when you look at things like Youth Parliament, which I know many of us have been engaged in, you see the sophistication of the arguments that those young people are presenting to this Parliament and the urgency of young people when they are marching in the streets, whether it is on climate change or even on reproductive rights—we saw a whole bunch of young women marching. This is not compulsory voting, it is about enabling them to have a say in their local community and start engaging with this. I cannot think of anything more that we would want from our young people than to be engaged with our processes. So I support this amendment.

Mr ATKINSON: I would have more sympathy with this particular amendment if in fact there was also a commitment to introducing it at state and federal level. The fact is I do not see that local government ought to be an experiment in whether or not young people are interested in politics, the political process and voting. In fact I am engaged in the arguments that have been put by Dr Ratnam. But the interesting thing is that the issues that are likely to most interest young people are not local government issues. The issues that young people are most interested in are far more likely to be state issues and, more importantly, federal and international issues than they are the service delivery that is so much a fundamental part of local government. Climate change is obviously a crucial one and no doubt is paramount in some of Dr Ratnam's presentation to the Parliament today.

As I said, I am engaged with that issue, and I think that it is true that it is probably a strong motivator for many young people in terms of having their say and casting a vote. But climate change is really an issue that is for state and national governments in particular rather than for local government. It is true to say that many local governments have taken up that issue and many other issues such as homelessness, social services and so forth—programs that are important in terms of supporting people's lives. That is true, but the reality is that we ought to be having a conversation, if this is where we want to go, about all levels of government and not simply introduce a differential voting age for local government compared to state and national governments. It needs to be across the board, it needs to be a longer conversation and it needs to be a conversation that involves a lot more people, including a lot more young people. I, no doubt like Dr Ratnam, have spoken to a number of youth justice organisations who are keen to pursue this particular initiative. In the conversations that I have had with them, they see that that initiative ought to be explored at all opportunities to vote, not simply at local government. I do not want to create a differential.

Mr MEDDICK: I will be supporting Dr Ratnam's amendments, and I just want to explain why. Young people for many, many years—and it is intergenerational, between certain age groups—have viewed politics with disdain. They are disengaged with the system, and the number one comment when you ask them why is that we do not listen. We do not do what they want us to do. They view

very much even today that politics at the state and federal level is still the domain of, to coin a phrase, the pale, stale male. Very much so they view it in that way. Now, I do not disagree with Mr Atkinson's comments that they should be engaged at both the state and federal level as well—I completely agree with that. But I disagree that not involving them at local government level is the way to go. I do not see them as mutually exclusive, I see them as complementary. Young people today—and it is very evident in terms of what young people have been engaged with, with marching in the streets on climate change et cetera—are very much engaged at a grassroots level. They are engaged with their communities. They want to see change locally at that level in their communities, and engaging them in the political process at grassroots level, which is councils—local councils are the service delivery at grassroots level; we make the laws up in this house, but it is usually up to councils to deliver a lot of those programs—is the ideal entry point in my opinion for younger people to be engaged and elected into the system and then progress and make their way up through the state and federal levels. I see the whole thing as complementary, and that is why I will be supporting Dr Ratnam's amendments.

Dr RATNAM: I will just respond briefly to the contributions, firstly, to thank everyone for their really considered contributions to this debate, which extended beyond what I thought it was going to be. I really, really welcome it. We do not talk enough about these issues in this chamber, so I really welcome everyone's contributions, whether you agree with my amendments or not.

Just in response to a couple of contributions: Mr Atkinson, I absolutely agree this needs to be considered carefully in terms of consistency, in terms of which level of government we are asking to reform, in terms of the issues that we canvass at different levels. Yes, perhaps some of those issues that young people have expressed their concern about are more in state and federal jurisdictions. I think my colleagues would be pretty upset and really think it was out of scope if I tried to bring amendments to federal and state legislation—I would if I could, but I cannot in this case—but I would also argue that progress starts somewhere. You have to start progress somewhere. You do not always have the ideal position to start that progress consistently across every area that you need to achieve the final outcome of that progress, but that progress starts somewhere. It starts in conversations like this, in canvassing debates even if it is not going to get supported. It starts with socialising the idea, priming the idea, bringing those different thoughts into people's consciousness so that they talk about it with young people the next time they are in their electorates as well—and I hope that is what happens and what is generated from this discussion.

Local government does do a lot of work on climate action. Certainly my council did. It has pushed a lot of state and federal action because it has started at a grassroots level. Our state and federal governments have often lagged behind a lot of the work that local governments have done in this domain—and hats off to their work spearheading pilot initiatives, working with the community and building momentum and support for really significant reform that has then been easier for state and federal governments to push through at that level because of the work of local governments. I would argue that if younger people had the vote at different levels of government, I think the decisions we would see on some of the issues that are really worrying young people would be vastly different. I think we would have well advanced our action on climate change if politicians knew they would have to answer to the 16-year-olds in their electorate who are saying to them, 'Do not screw up our future', because that is what they are telling me they are feeling—they feel totally dismayed that action is not happening fast enough. Within their lifetimes they are going to see the ecosystem degrade to a point that is going to mean drastic climate events and really significant disruption to their lives.

So I really welcome this debate. I thank everyone for their contributions. Minister Leane, with all due respect, I understand and heard your exasperation and frustration about the concept of out-of-scope amendments, but if this had been ruled out of scope by the chamber, we would not have been able to have what is a debate we do not have enough of in this chamber. I really welcome the opportunity that this Parliament, through democracy and through democratic levers, allows us to canvass issues that the public care about and want us to talk about. We do not have enough opportunity often to talk about these issues, but this procedure allowed us to do so. So thank you, everyone, for your support for that.

Committee divided on amendments:

Ayes, 4

Cumming, Dr	Patten, Ms	Ratnam, Dr
Meddick, Mr		

Noes, 32

Atkinson, Mr	Gepp, Mr	Quilty, Mr
Bach, Dr	Grimley, Mr	Rich-Phillips, Mr
Barton, Mr	Hayes, Mr	Shing, Ms
Bath, Ms	Kieu, Dr	Stitt, Ms
Bourman, Mr	Leane, Mr	Symes, Ms
Burnett-Wake, Ms	Limbrick, Mr	Tarlamis, Mr
Crozier, Ms	Lovell, Ms	Taylor, Ms
Davis, Mr	Maxwell, Ms	Terpstra, Ms
Elasmar, Mr	McArthur, Mrs	Tierney, Ms
Erdogan, Mr	Melhem, Mr	Watt, Ms
Finn, Mr	Pulford, Ms	

Amendments negatived.

Clause agreed to; clauses 2 to 18 agreed to.

Heading preceding new clauses (15:49)

The DEPUTY PRESIDENT: I now invite Dr Ratnam to move amendment 1 only, please, from her amendment sheet SR113C. We have to do them separately. This first one will test your second one.

Dr RATNAM: I move:

1. Page 15, after line 2 insert the following heading—

"**Division 1AA—Constitution of a Council—multi-member wards**".

This amendment, which connects to a series of other amendments, reverses the changes made in the Local Government Act 2020 that require almost all councils to shift to single-member wards. Our amendments would allow councils to select the ward structure most appropriate for them, including multimember wards, single-member wards and single wards covering the whole council.

I have spoken at length in this chamber previously about the undemocratic and unrepresentative nature of single-member wards. The 2020 reforms were clearly designed to rig local council elections to keep out minor parties and independents. It is a terrible model for our local government sector which has been rejected multiple times before, including by the Victorian Electoral Commission (VEC), yet it was brought back at the behest of the then Minister for Local Government, Mr Somyurek. With a new minister on board, I urge all members of this chamber, itself a multimember electorate chamber, to get rid of the mandated single-member wards and restore choice in council structure.

In conclusion, I really urge all members of this chamber to consider this very seriously. We had a very robust and lengthy debate when these reforms were brought before us in 2020, and there were a number of us who argued so strongly out of deep concern about what this would do and how regressive this was for local government given years and years of reform and VEC expert advice provided to councils that suggested time and time again after each and every review that multimember wards were a more democratic and appropriate ward structure that led to much greater diversity of representation across the board in local governments.

We know now that the previous minister, Mr Somyurek, had a number of agendas, and I knew then during that debate that something sinister was occurring. We did not know then what we know now, but with the information that we have now about the actions of that minister, I think it is really incumbent on all of us to think deeply about the decisions that were made during that time, the motives

that ran through those decisions and what we need to do to reverse a number of those decisions that did undermine the health of our democracy, and in this case the health of our democracy at a local government level. So I urge all members to give this serious thought, because it was a really regressive reform that was made in 2020 that we argued very, very strongly against. The local government sector argued so strongly against it and were ignored at that time. This is a chance to reverse that really devastating decision and restore democracy at a local government level once again.

Mr LEANE: The government will not be supporting this amendment. As Dr Ratnam has said, there was a lot of debate on the Local Government Bill 2019 at the time, and the position I think from many in this chamber was that with the single-member wards ratepayers, constituents, knew that there was one person that they could be represented by. They knew who that person was. Dr Ratnam, you have kind of disappointed me, because I was all ready for an argument. A mayor who aligns themselves with the Greens party said that the multimember wards promote diversity more as far as women and LGBTIQ+ people go, which has been proven wrong in the election. So it is the wrong argument; it is just false. Also there is the work that we have endeavoured to do with groups like the Australian Local Government Women's Association, supporting them with funding, and with the Victorian Pride Lobby as far as LGBTIQ+ councillors go. There are more women councillors and LGBTIQ+ councillors since the last election, a record number of mayors that identify that way, and a record number of First Nations people. So you have disappointed me because I thought you were going to run the other argument. But I thought I would take the chance to put that on the record anyway and just say we do not support the amendment.

Mr DAVIS: The coalition also does not support the amendment. We understand the arguments in many directions on different electoral systems. The decision was made in 2020, and we supported some of the changes then—not all of the changes in the bill, but some of them at the time. There are many councils that much prefer the single-member ward system, and there are cogent arguments in favour of it. I note the points made by the minister, which we actually concur with, in terms of the fact that diversity is not necessarily advantaged by any one model.

Mr LIMBRICK: I do feel like we have had this debate before. The Liberal Democrats also opposed the removal of multimember wards in the 2019 bill; therefore we will be supporting Dr Ratnam's amendment to reinstate them as a matter of consistency. But I would just also like to reiterate our belief that it does increase diversity, although I may be thinking differently in terms of diversity—diversity of views and representation. I understand some of the arguments that have been made about having a single member making it easier for accountability, but I also think that there should have been more thought put into the removal of the multimember wards. We support reinstating them.

Ms PATTEN: Likewise, as did Mr Limbrick, I supported multimember wards and I supported Dr Ratnam's amendment to maintain them in the last debate, so my view has not changed on this.

Dr RATNAM: If I could just respond briefly, thanks everyone once again for your contributions on this proposed amendment. Just in response to Minister Leane in terms of the argument around diversity—and Mr Limbrick has also alluded to this point—diversity is measured on a number of fronts. It can be diversity of demographics; it can be diversity of political representation. We know proportional representation increases the diversity particularly, one, demographically but also of political views and independents and minor parties. That allows and gives voters a choice beyond the duopoly that are joined together to keep those parties out, which is no surprise when you really think about who stands to benefit from disproportionate and not proportionate representation, which is what single-member wards do.

In terms of the argument about what the 2020 election result meant in terms of diversity, we have not yet implemented the single-member ward reform across all local government areas. That is to come. There is a partial implementation. So it is false to measure the impact on diversity of a system which has not implemented the full reform. In the upcoming elections we will see the full impact on diversity.

I am not saying this just from my own viewpoint and my experience as a councillor in a multimember ward electorate where it worked just fine when you could work collaboratively with your councillors, compared to the competition set up between single-member ward councillors. This is based on VEC advice after years and years of electoral reviews they have conducted—the VEC, who maintain the expertise on looking at election systems. We canvassed this in depth during the original debate, so I will not canvass it in depth once again, but this is based on the people we charge with providing advice to governments about how to conduct elections to make sure that they are most democratic. To go against that advice speaks to the real agendas driving this really regressive, once again, reform.

Committee divided on amendment:

Ayes, 5

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

Noes, 30

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

Amendment negatived.

Clauses 19 to 41 agreed to.

Sitting suspended 4.06 pm until 4.22 pm.

Heading preceding part 4 (16:22)

Dr RATNAM: I move:

1. Page 22, after line 16 insert the following heading—

"**Division 4—Gifts from prohibited donors**".

These amendments speak to donations reforms to ban political donations from property developers and the gambling industry. I have spoken at length twice before in this debate: (1) during my second-reading contribution and (2) during the procedural debate about the instruction motion, given that I was not sure whether I would have the chance to do so again. So I will take those comments as read and will not repeat them. But just to reiterate, this integrity reform is long overdue. We understand the government has been promising this reform but also wanting to wait for IBAC to report on its outcomes. But what we have seen is unfortunately IBAC, despite completing its hearings and being well advanced in its report, is not able to table its report because of action that is being taken by people who are part of that inquiry. That opens up all sorts of questions as well about who gets to hold up these really important investigations that go to the heart of corruption and integrity—in this case in local government, but we know it goes right across the board, because it also involved state political donations.

As I have referred to previously in this debate, we are hearing week after week stories of impropriety, dodgy donations and corruption. We saw at the federal level that voters are really sick and tired of it. They want change. They want our parliamentarians to take this reform seriously, and that means backing in legislation. The Greens introduced an integrity bill earlier this week which would introduce a number of integrity reforms that the Victorian Parliament has not even considered yet despite other jurisdictions—neighbouring jurisdictions in states north and east of us—having implemented them.

The sky has not fallen in. In fact they have improved their integrity as a result of those really important reforms.

So there is precedent. We are able to do this. We know it will clean up politics. It will mean that we have much better decision-making. We will have removed that grey cloud on decision-making where we are unsure about whether impropriety has occurred because we will have strengthened our laws and we will have strengthened the transparency. It is really important that we take every opportunity that we have to improve integrity in our Parliament, and here is one such opportunity. 'Sorry, it's not the right time', 'Sorry, it's not exactly perfect' or 'Sorry, it doesn't do this and that' are really excuses. If you want to improve it, if you think there is room for improvement, move amendments and improve things. We should all be working on these things together, because I think that is what the people of Victoria want us to do.

They want us to work together to improve the health and strength of our institutions—the institutions that they rely on for their essential services and so much of their lives and livelihoods. They want us to work well together, and they want to know that we are acting in good faith, above board and not corrupted by self-interest and vested interest, and that is essentially what these amendments do, which is take this corrupting money out of local government. We have seen thousands, if not millions, poured into elections at local and state level for years in Victoria, and we know what that means—it means more favourable decision-making towards those interests. We have had politicians say, 'I've never done a quid pro quo', but we know what has happened: it has opened up access to ministerial offices, to meetings, to discussions, to things being put on the table that would have otherwise not have seen the light of day. And in the worst case it has intrinsically and fundamentally impacted the outcome, where people have changed their decision-making because they have something to lose, like a donation to lose, or something to gain, which is promised donations from particularly wealthy vested interests and corporations. So it is really important that we take on this reform very seriously. This is a way to restore faith and trust back to parliaments and elections across the board. I urge everyone to support these really overdue reforms.

Mr LEANE: The government has committed to donation law reform in the local government sector. There has been work done in this particular area, and my colleague the Minister for Government Services has been progressing that work. We will not be supporting this amendment, given that it is probably not aligned with a lot of the work we are doing currently that we hope to produce in the near future. I accept Dr Ratnam's argument, and I am on the record as hopeful that the IBAC report would be out. I actually expected it a year ago. Obviously I was wrong—and I accept that—but I was hoping that those recommendations could be in line with further forming a piece of legislation.

The local government elections are at the end of 2024, so we feel that there is a period of time before then. Issues that we have with this proposal from Dr Ratnam are that we are not sure if there are any avoidance measures as part of what has been proposed, and we are also looking further than the two areas of property developers and the gambling sector. Talking to Mr Tarlamis, who did a lot of good work in the donation law reform that we have at state level, there are a number of other areas of influence that could be taken into consideration. I am not an ex-councillor, but I appreciate there are some ex-councillors here. There are IT contracts that could be huge contracts, as could waste contracts. There could be a number of areas of influence for people who donate to a councillor that could be seen as problematic down the track—even if it is perceived, not actually enacted.

I think, Dr Ratnam, you mentioned about doors being opened and certain other things. I take that quite personally. I have never met anyone who thought they had something due to them because of whatever relationship I have or whatever party I am in. I am pretty conscious that there are certain types of people that I just will not meet if I think they may be looking for some sort of advantage for themselves, personally or financially. I accept, Dr Ratnam, that it is fair enough to have some level of cynicism, but I reject personally that belief about what drives us in the positions that we are in.

Mr DAVIS: We have very similar views to the government on this matter. We think there is scope for reform. We are not persuaded by the exact mechanisms that are put forward here by Dr Ratnam. There may well be broader areas for reform. We do seek to see that Sandon report, and I note in the chamber recently we had a bill to give the IBAC greater capacity to table reports and to avoid excessive and unconscionable delays that may be occurring, and we have reason to believe they are occurring, at the Supreme Court. We tried to strike a balance in that bill. It fell very narrowly short—18 to 17 here—and for the record the government did oppose that.

Leaving that aside, I also think the Greens like to lecture other parties, but I think it is still a fact that the biggest donation in Australian political history that was a non-related party donation—so, yes, Malcolm Turnbull gave $2 million of his own money to a party he was associated with, but the largest donation, and I still believe this is true, in Australian political history—was by the Wotif group to the Greens, the largest non-related party donation in Australian political history. So let us just not be casting aspersions elsewhere. I mean, what if a group that ran hotels was to give a massive multimillion-dollar donation to a political party and then start pulling strings? What if that were to happen? What if? I am not going to say more, but I just do not think that the Greens political party is in any position to lecture anyone on any of this. I hope there is further reform in this area, and we have incrementally put in a series of bills to improve matters. We put a bill in the chamber today about the Victorian Multicultural Commission. These are all important steps. None of these in and of themselves deal with every matter—of course they do not—but we are probably closer to the government on this particular point today.

Mr LIMBRICK: The Liberal Democrats will also be opposing this motion, for slightly different reasons. We see these sorts of things as tinkering around the edges, and the real issue here is the sugar that is on the table. The sugar needs to be taken off the table here. The things that are the honey pot of corruption are massive government spending, planning controls, at a state level drug prohibition, grants—all of these sorts of things that create massive government and create massive incentives for people who are corrupt to get involved. We think these things need to be taken off the table. It would remove a lot of the corruption. Indeed much of the corruption that we have seen in the last few decades in Victoria has been due to our drug laws, but I think that if there is reform to our planning controls, drug laws and many of these other things, the opportunities for corruption will disappear and that will make a lot of these sorts of things redundant. So we will not be supporting this amendment.

Mr HAYES: I thank the minister for what he said about change coming and that they are looking at other entities that might be donating. I am very glad to hear that. I would really like to see the end of all corporate donations to parties. Only individuals should be allowed to make donations, and those donations should be capped and the obscene amounts of money that are spent on election campaigns be cut right back, but that is not what we are talking about today. I support Dr Ratnam's amendment today.

I did raise this whole issue back at the beginning of 2020 when I moved that political donations from property developers be banned, but I also think that should apply to the gambling industry too and all other industries really—they should not be donating to political parties. There is a huge amount of distrust in the public about the political process, and in Victoria, as we see in the news, both sides are copping it now and people are very concerned about undue influence in government decision-making where government licence is required to carry out business. Of course it looks suspect that big donations are going into government hands and people do not know what is going on behind closed doors. So I think any step in this direction would be a positive move for a major party to support.

This whole thing about waiting for IBAC is ridiculous; we could be waiting forever. These property developers have got deep pockets and they can keep going to court for as long as they like. We have got to wait for that to resolve itself before we have a report from IBAC about a matter of public importance—like what happened in the Casey council and with the politicians, both state and local, that were involved in that matter or have been mentioned as being involved in it. So we cannot sit around waiting for that; we have got to make a move. I challenge the major parties to support this and

do something in this area. It would be a win for them. It would be a positive to show the public that they do care about corruption, because everybody knows it is happening.

Committee divided on amendment:

Ayes, 7

Cumming, Dr	Maxwell, Ms	Patten, Ms
Grimley, Mr	Meddick, Mr	Ratnam, Dr
Hayes, Mr		

Noes, 27

Bach, Dr	Finn, Mr	Rich-Phillips, Mr
Barton, Mr	Gepp, Mr	Shing, Ms
Bath, Ms	Kieu, Dr	Stitt, Ms
Bourman, Mr	Leane, Mr	Symes, Ms
Burnett-Wake, Ms	Limbrick, Mr	Tarlamis, Mr
Crozier, Ms	Lovell, Ms	Taylor, Ms
Davis, Mr	McArthur, Mrs	Terpstra, Ms
Elasmar, Mr	Melhem, Mr	Tierney, Ms
Erdogan, Mr	Quilty, Mr	Watt, Ms

Amendment negatived.

Clauses 42 to 48 agreed to.

Reported to house without amendment.

Mr LEANE (Eastern Metropolitan—Minister for Commonwealth Games Legacy, Minister for Veterans) (16:44): I move:

That the report be now adopted.

In doing that, can I thank the Deputy President, Mr Davis, Dr Ratnam, Mr Limbrick, Mr Meddick, Dr Cumming, Ms Patten, Mr Atkinson and Mr Hayes for a robust but very respectful committee stage.

Motion agreed to.

Report adopted.

Third reading

Mr LEANE (Eastern Metropolitan—Minister for Commonwealth Games Legacy, Minister for Veterans) (16:45): I move:

That the bill be now read a third time.

Motion 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 gone through the bill and agreed to the same without amendment.

SUSTAINABLE FORESTS TIMBER AMENDMENT (TIMBER HARVESTING SAFETY ZONES) BILL 2022

Second reading

Debate resumed on motion of Mr LEANE:

That the bill be now read a second time.

Ms BATH (Eastern Victoria) (16:45): I am really pleased to rise this afternoon to make a contribution on behalf of The Nationals and the Liberals on the Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Bill 2022 and to put on the record that The Nationals and the Liberals will certainly be supporting this bill and its passage through the house. We will also be proposing three amendments during the debate to further strengthen the measures and protect both the physical health and the mental health of timber industry workers, contractors and their staff.

This bill is overdue. It is overdue in a very significant way. In the previous Napthine-Ryan government move-on laws were instigated and established to really reject those illegal protesters having a free-for-all in a variety of capacities and a variety of situations. When I first came in here early in 2015 the move-on laws had just been repealed by the government. I have been speaking with industry since that time, and they signified that it felt like the government had just disarmed doors and crosschecked and that protesters then felt that it was open season for being able to go on to coupes and create havoc—and havoc they have created.

I note that in the lower house the then Minister for Agriculture, Mary-Anne Thomas, made some comments, and I agree particularly with her quote from the second-reading speech:

> Forestry workers, like other workers, are entitled to be mentally and physically safe as they go about their work regardless of how people may view that work.

Indeed she went on to identify a number of occasions where protesters have really reduced the health and safety of the timber harvesters on timber coupes but also potentially their own health and safety. Minister Thomas went on and spoke about tree-sits, protesters attaching themselves to harvesters or machinery—skidders or headers or whatever it would be—and also the black wallaby tactics. This is one of those tactics that I have spoken about directly with timber harvesters in Eastern Victoria Region and central Victoria—about the fear that goes through a worker as he is going about his legal duty in his workplace, the fear of people in camouflage gear stepping out from behind a tree as a harvester is conducting its work and harvesting trees. The fear that they have is absolutely palpable, and that is not fair. This is a workplace. They should be able to conduct themselves without fear of injuring or, even worse, killing a protester. The bill before us today goes some way certainly towards beefing up protections and beefing up penalties in relation to those.

Another thing that I wish to raise—and this can happen outside a timber safety zone—is spikes on roads like access roads and roads into coupes. It is well documented, and again I have spoken with industry members who have experienced this, where activists actually put spikes on the roads where people either drive to work or drive equipment, which can cause serious damage and endanger life.

I have also spoken with people who were connected when in April last year a young child was brought onto a timber coupe. That is atrocious. It is atrocious as a parent that you would consider it okay to take a child onto any construction site or workplace of danger, but to do that—I think you have just left reality. These are some of the things that this bill seeks to address, and it is addressing them by certainly beefing up some penalties. Deb Kerr, who is the CEO of the Victorian Forest Products Association, has said in public:

> The Bill is an important step towards ensuring the safety of forestry workers—but also importantly, the safety of protesters …

Industry and rural Victoria know that the next step in supporting a native timber industry is actually to overturn the ban, and we The Nationals and the Liberals have made a firm commitment. Come 26 November, we will hold that ironclad commitment and overturn the ban to provide hardwood timber flow to the much-needed markets domestically in our regions and in our state to create downstream milling and products that are so needed in construction, in flooring—in a whole raft of areas that we use them in in Victoria. We have made that commitment.

I look and see that we are now up to agriculture minister or forestry minister number 4, so in seven years we have had four ag ministers. To my mind, that shows the level of perhaps lack of appreciation

that the Andrews government places on the agricultural sector. We know during COVID, and I will not extend the conversation further, the agricultural sector, when everything was shutting down, fed, clothed and kept us going, and we are very thankful for it. The food and fibre part of that—the fibre is certainly our high-end products that the native timber industry produces.

The purpose of the bill is to amend the principal act, which is the Sustainable Forests (Timber) Act 2004. It is to strengthen the regulatory framework around timber harvesting safety zones by increasing the penalties for existing offences, by introducing some new offences and by introducing a banning regime about keeping people off. What we have seen in the past is if a protester has been caught out, they can actually just go around the block or go to the next coupe. So there is a ban of a maximum of 28 days, which we certainly endorse.

The Nationals and the Liberals seek to improve this bill through our amendments, which strengthen the powers of police and authorised officers in certain search and seize criteria in clause 13 and also carve out an exception for authorised timber workers, so people who work there, to bring their companion dogs onto a coupe and keep them there. We feel that this is most appropriate.

During the course of debate I am sure we are going to hear things like, 'Oh, no, but just trust us. The Andrews government is looking after this industry'. They are not, and the key factor that says that they are not is they are shredding the mental health of this sector. I will share three different ways that they are actually shredding mental health. The Minister for Environment and Climate Action, Minister D'Ambrosio, certainly has to wear a large section of blame for the shredding of the mental health of our timber harvesters and our industry as a whole. We can see by the fact that we are up to the fourth ag minister that ag ministers, forestry ministers, have not made any inroads into standing up for this industry. They have rolled over.

The first one was in the Wombat State Forest and involved windblown timber. Twelve months ago we had a massive number of trees falling over. Dja Dja Wurrung traditional owners there contracted VicForests, who then went on and contracted Jim Greenwood to salvage that fallen timber. Again, and we could go on, this industry operates under legislation and strict regulation, but we have seen when Minister D'Ambrosio, the environment minister, pushed through the Forests Legislation Amendment (Compliance and Enforcement) Bill 2019 recently, she said, 'Trust us. The regulator has new powers, but they won't be overstretched'. Well, we have seen in this example that they have been. The Office of the Conservation Regulator demanded Mr Greenwood produce a raft of documentation or face an $18 000 fine. Straightaway we saw that. That was challenged. The Office of the Conservation Regulator was just absolutely out of line. I spoke with Jim just a couple of weeks ago, and he was still so very frustrated. It was costing him solicitors fees—he was very concerned—and accountants fees. This information does not contribute to the lawful activity of salvaging that timber on behalf of VicForests for the Dja Dja Wurrung. That was their clear choice, and we have heard the Dja Dja Wurrung speak about their decision to clean up the Wombat State Forest.

The second part in relation to how this industry is being shredded is the green lawfare being waged by third-party litigators, because the timber code of practice still has loopholes. We have seen in the Supreme Court only now that due to Labor's failure to close off those loopholes we have got small business operators, contractors and mill operators who are being subpoenaed by the litigators to provide a raft of ridiculous information in a very short space of time. I spoke to one of them today. The litigators are subpoenaing information about their profit and loss statements for the past two years, their interest on paid loans for equipment and their payroll figures. The court case is about a court injunction about native animals. It does not need to look down to somebody's 14th bottom line about profit and loss for the past two years. This has all been brought about because this government will not close ambiguities in the timber code of practice.

The final one is about the frustration—and this is a wider context—about the environment. The decisions this government is making, through the Department of Environment, Land, Water and Planning in this instance, are actually deteriorating our environment—not only our native timber

harvesting coupes but the larger sphere in relation to DELWP burns. I will give you an example. The other day I was at Kenny Road near Nowa Nowa in East Gippsland. I was speaking with Ian Cane, who happens to be in the apiarists, and we were talking about how apiarists and timber harvesting can work together in the future and what that would look like. And I appreciate his comments. We were standing in a coupe, and there was the humped, cut-end product of the timber harvesting coupe, and it looked terrible. There it was. There were mounds of stumps and the like, the leftover. I have since had a conversation with industry, and Minister D'Ambrosio, through DELWP, has stopped all of those regenerative burns after coupes. No regenerative burns have occurred this year after any coupes have been harvested, so you cannot have proper regeneration. You cannot have the ash bed created in order for those beds to produce new hardwoods in a sturdy and healthy state, and you are also leaving fuel load on the ground. That does not serve anyone, and this is coming through the government's own directives.

In terms of the specifics of the bill, the timber harvesting safety zones are defined. They talk about active signage around them so people understand that there is a timber harvesting zone and that authorised persons can enter there and others cannot. This bill is an important step, but it is not the final step. And there is still more work to be done.

Often people in the industry in my Eastern Victoria Region feel that courts have a slap on the wrist effect. We have even seen larger fines paid through crowdfunding. And we also saw an example in the Public Accounts and Estimates Committee the other day where my colleague Mr Danny O'Brien asked the Minister for Agriculture about a $2 million court debt that MyEnvironment now does not have to pay because the government said, 'Look, we'll just let it go'. They cautioned VicForests to say, 'We're not going to pursue that $2 million'. That is $2 million worth of taxpayers funding that they are no longer going to bother pursuing. You know, other people—as I just mentioned—are having to show their laundry basket in order not to get a fine and MyEnvironment can get off scot-free. There are winners and losers in this race, and it is highly unfair from a government that purports to serve all Victorians. It is laughable.

In relation to some of the clauses, I am interested in the prohibited thing. They talk about PVC pipes and metal pipes. I want the minister at the table to identify whether a metal spike is also considered a prohibited thing. That might be something that the advisers in the box will be able to share with us.

A lot of the clauses in this bill look at beefing up penalties. Clauses 4 to 9 and 18 look at increasing those penalty units from 20 up to 60, so around $3500 up to $11 000, and there is a raft of those 'failure to comply' offences, which I will not go through in great detail. Clauses 8, 9 and 17 look at beefing up the various penalties in relation to infringements up to 120 units—you are looking at roughly $22 000 or 12 months imprisonment. So it is putting that bar up higher, and that again is a reasonable and appropriate thing to do. Also if you are trying to get out of providing your name and address, you have got some higher penalties there as well. Clause 13 talks about search and seizure of a prohibited thing and lists the various activities that they apply to. We certainly endorse those, and I am going to speak to our amendments shortly, which identify how that is going to be improved. Clauses 19 and 20 look at miscellaneous changes around a banning notice—a stay away notice, we will say—and a keep out notice, and there are penalties there.

Opposition amendments circulated by Ms BATH pursuant to standing orders.

Ms BATH: Speaking to the amendments that have just been circulated, the first one seeks to allow an authorised person, so a forestry worker, someone who is allowed to be on that coupe and that timber zone, to have their companion animal in the form of a dog—and it specifies 'dog'—in those timber safety zones. What we know in other capacities and on other worksites is that on a building site it is not uncommon for workers, for tradies, to sometimes bring their companion animal there for the day, and I will provide an example in this case that would be appropriate. Many coupes are far away, are remote, and there are workers who are single and who, if they are up on those coupes for extended periods of time, would certainly have a caravan there and that companion animal can certainly be tied

up and appropriately tethered during activity but at smoko, at lunch and at the end of the day they can be released as their companion animal. They can also act as a level of security so that in the middle of the night if protesters come onto that worksite they can bark and provide some level of security for the harvester. We think that that is appropriate, so that is the first amendment to clause 6.

The second two relate to clause 13, and these amendments will remove the restriction on the search and seizure powers of police and authorised officers to only work in timber harvesting safety zones—so expanding that power for authorised officers to actually conduct seize and search and interrogation discussions under the law outside the zone. Now, protesters are very smart and coordinated, and I know, having spoken with timber contractors, it is quite often that they will stand 1 to 2 metres or a short way out of that timber zone and authorised officers have no authority at all to check their bags, check their cars or conduct any sort of search upon their body. The second part looks to allowing those police officers to conduct a body search in circumstances where they reasonably believe that the person is in possession of a prohibited item in or near a timber safety zone. What happens, again, is that people are clever and they can have a metal spike in their bag, an authorised officer is approaching them and they insert it up the sleeve of their jumper or the like. Certainly then the authorised officers know that there is intent, but there is no action and they have no jurisdiction to remove that implement that could be seen as endangering either themselves or the harvester. So these are our amendments. I have had some discussions with some of the crossbenchers—and thank you very much for that discussion—and I would hope that the government will consider these amendments as a quite sensible carve-out and giving increased effect.

Finally, in the last few minutes I would just like to cover off on the issue around wood flow. The government is closing the industry, and if that continues, in the very near future we will run out of our valuable source of hardwood timber and indeed plantations. At the moment there is a chronic shortage. I have been speaking with Fenning in East Gippsland. They were on standdown and were doing some repair work, but they have very limited flow, very limited wood supply. That is going to have ramifications downstream without a doubt. These are our small communities who employ mill workers. It is very, very serious. But the grand plan for the forestry plan in terms of plantation is just a furphy. Indeed Philip Hopkins, who is a well-known timber reporter, went into some detail about plantation supply. In essence it is just insufficient to be able to take up that slack. So the government can spin all it likes about that, but genuinely we will come to a cliff and the only thing that we will be able to do is to import. Victoria will have to import further from countries that do not have the strict regulations, code of practice and high standard of environmental protections that Victoria does.

Finally, if you listen to the Greens and various other environmentalist groups you would think that the whole of our state was under threat from native timber harvesting. It is not. The greatest threat to our forest systems is indeed bushfires. We have seen that—1.5 million hectares to bushfires. That is the biggest threat that we face. We only use 5 per cent; 95 per cent of our state forest is locked up in national parks and state reserves and is excluded from harvesting. Of that, only a small amount is harvested and regenerated annually—that is if DELWP do the burns right and we get proper regeneration.

Two more points: the Intergovernmental Panel on Climate Change's fourth report, back in about 2019, clearly stated that a well-managed forest system provides mitigating effects for climate change. So all the bunkum that we hear about how we need to lock it up because we are locking in our carbon—once you harvest a tree and put it on your hardwood timber floor, it is locked there and that forest can grow new timber and capture new carbon dioxide, making it safe and secure. Planet Ark have a slogan, 'Make it Wood'—make it with wood—and that is what we should be doing well into the future.

As I said, our timber harvesters during the fire season are on the front line, clearing pathways. Indeed in many ways they are also clearing pathways for environmentalists who are trying to shut them down. When those harvesters are no longer there, who will clear our roads and who will protect our towns? This bill goes some way, and as I said, we will be supporting its passage through the house, but we also want to strengthen it with those amendments.

Dr CUMMING (Western Metropolitan) (17:11): I rise to speak on the Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Bill 2022. I believe that everyone should have the right to protest, but I also believe that protesting should be done in a way that is safe for everyone—that does not endanger the lives of protesters or workers. Everyone is entitled to a safe workplace, and for too long our forest workers have not had that. They just want to go to work and do their job. They understand the dangers of the work that they do, and timber harvesting coupes are hazardous worksites. But a number of the protesters obviously do not see the risk that they are placing themselves and the forest workers under. Indeed their actions are putting workers under undue stress. It has an effect on their mental health, and some forestry workers have said they are constantly looking over their shoulder. It costs them time, it affects productivity, it affects their pay packets, it affects their health and it affects their safety. So I agree with the intent of this bill.

Having said that, in September last year we passed the Forests Legislation Amendment (Compliance and Enforcement) Bill 2019. That bill created offences for workers, and now we have this bill protecting the safety of workers. It is a shame that this government did not put the safety of the workers first last year. This is an example of the government's piecemeal approach to legislation. They could have done it right the first time.

After listening to the amendments, I will be supporting the amendments today. I have no problem with people bringing their dogs to work, especially for their own safety and for their own mental health. We all love a little dog alarm. Especially in isolated situations, it is great to have a little dog in those places. Also, it would seem that there should be the right to search protesters if they feel the protesters are carrying weapons such as spikes. They are just not needed, and we need to make sure that the safety of people is adhered to in such isolated places, where you cannot just ring up 000 and get the police there.

Here in Victoria we are watching people going bankrupt in the building industry consistently at the moment. We obviously need timber for our buildings. This government wants to build more homes. We need to build more homes here in Victoria, and we need timber to be able to do that. So we need to rely on local Victorian timber to build Victorian homes. It is really sad to see the building industry suffering the way that it has been. So many have gone under at this time. If this bill makes things easier by making sure that we have local timber, we need to make sure that that is the case.

Mr MELHEM (Western Metropolitan) (17:15): I also rise to speak on the Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Bill 2022. This bill proposes a number of amendments to the Sustainable Forests (Timber) Act 2004 which aim to improve workplace safety for forestry workers. The proposed amendments are in response to the increase in dangerous forest protest activities in the safety zones since the announcement of the government's plan back in 2019 to end native logging in Victoria by 2030.

The most common dangerous tactics being employed include the erection and occupation of tree-sits at hazardous heights. My understanding is that sometimes they are erected about 40 metres high, and we all know, for example, that if someone falls from that height basically their chances of survival are very minimal. My understanding is that if you fall from less than 15 metres you might have a slight chance of staying alive, but these are very dangerous activities, and they need to stop. They also include protesters locking themselves onto active harvesting machinery and black wallaby tactics, which Ms Bath talked about, involving camouflaged, masked protesters running in and out of timber harvesting safety zones. These dangerous tactics create the risk of serious injury or death for forest workers, authorised officers and protesters alike.

As a former union official I always, for 25 years, supported the right of people to protest, and I will continue with that approach—that people are entitled to protest peacefully without infringing on others' safety or putting the lives of others in danger. That is the only problem I have got with what is happening in the timber harvesting industry—some of these protesters are putting workers at risk of injuring themselves in some of the examples I talked about. I do not believe these sorts of behaviours

should continue. Now, their right to protest should be protected and is paramount. This legislation does not prohibit or try to stop that from happening. In fact I respect the right of activists who want to voice their opinion about policies, whether it is the government's forest policy or any policy in relation to forests or timber harvesting et cetera. But that right stops at the exact point where someone else's rights start.

When these workers go to work they are entitled to work in a safety zone without being harassed, without being intimidated. In some of the examples we have talked about they use UHF radios to try to find out their names and their families et cetera. That puts enormous stress and mental pressure on these workers. They should not be subjected to those sorts of pressures. We have a responsibility as legislators and as a government to make sure that workers are not being subjected to this sort of behaviour. That behaviour should be stamped out and people should be called out and punished should it occur, because, as I said, every Victorian is entitled to a safe workplace. No worker or their family should have their livelihood and wellbeing adversely impacted by illegal—and I underline the word 'illegal'—activities in their legitimate workplace. When harvesting is taking place in accordance with the law of the state of Victoria, that should be allowed to continue uninterrupted. That does not mean that people cannot protest to change that law; it is people's right to do that, and I respect that. But whilst Victorians—whether they are companies or workers—are carrying out a lawful task, they should not be prevented from performing that task or going about their job.

Some of the amendments that are part of this bill will increase penalties for most offences related to the timber harvesting safety zone, prohibit more things from being able to be possessed in the zone and clarify the offence of interference with timber harvesting operations, including interfering with authorised personnel and machinery. That is another example: locking yourself onto machinery. It is heavy machinery we are talking about. You could be playing with some hydraulics and then getting that machine rolled over, killing yourself or killing other people. That is dangerous. I know how to deal with heavy machinery. It is not a small toy to play with; it is very dangerous machinery. And protesters should not be allowed to get away with interfering with heavy machinery. The bill includes a new banning notice power for authorised officers and police officers and also gives new search powers to authorised officers and police officers for them to enforce the law in Victoria.

Some of these examples, I have been advised, have been happening. I have had a number of meetings in last few months with both workers from the timber industry and contractors, and they have raised all of these concerns with me. I think some of these concerns are addressed by this bill before the house, and hopefully that will go a long way to addressing these safety concerns.

This is not about debating whether or not we should stop timber harvesting today or tomorrow or the day after. The government has the 2019 plan which we set out—that by 2030 native timber harvesting will cease in the state of Victoria—but this bill is not about debating whether we should continue harvesting of native wood or not. This is a specific amendment, very narrow, which relates to the protection which we owe to workers in the industry to make sure their lives are not put at risk as a result of some irresponsible protesters. It is not all—I am sure most of the protesters mean well and want to raise their issues, and I respect what they are doing—but a small number could put workers at risk, and that is what this legislation is about. It is about making sure that workers are not put at risk.

The penalty increases are in line with what is happening in other states like Queensland. I will not go through go through them all, but there is a significant increase, for example, for refusing or failing to comply with a direction to leave a timber harvesting safety zone; that penalty will increase from $3634 to $10 900. The list goes on about the various offences. There is a substantial increase in penalties. Hopefully that will stop people from behaving the way they are behaving.

I will conclude by saying this, and I mentioned it earlier: unsafe workplaces can have significant mental health impacts, especially when the illegal activities making them unsafe are also potentially endangering others. There is enough stress already on workers in the industry about the fact we are going to stop harvesting by 2030. There is the issue about job security: 'Where's the next job going to

be?'. We do not want to add another worry, another risk, that they could lose their lives or they could be seriously injured as a result of some of the actions of some protesters—not all protesters, as I said earlier. I think it is very important that we give them a bit of comfort that we will make sure that when they go to work to perform their work in accordance with the law in Victoria they will be protected and that if people break these laws they will be dealt with. It is all about protecting the safety and wellbeing of these workers in the sector, and I support the bill before the house.

Mrs McARTHUR (Western Victoria) (17:24): I rise to make some comments on the Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Bill 2022, which I can say from the outset I will be supporting. By and large this is a good bill. It is overdue recognition of the damage protesters are doing to legitimate business, of the stress and danger they are choosing to inflict on timber workers and of the threat their extremist ideological beliefs pose to individual livelihoods and to the entire forestry industry. Let us not pretend they are campaigning against individual infringements or isolated acts of bad practice. Their approach is total. They are protesting to stop timber harvesting completely, and they believe it is within their rights to use any means possible to achieve that end. Now, while much of this behaviour is already illegal, it is evident that some activists are not deterred, and those who bear the brunt of their self-indulgent ideological arrogance are timber workers just trying to do their jobs.

Operating heavy machinery in the darkness and in sometimes obscure terrain is inherently stressful, but when you add protesters chained to equipment or marauding around active sites camouflaged in dark clothes and balaclavas, you begin to understand the nightmare it presents. The provisions in this bill which allow police and authorised officers to issue on-the-spot bans to individuals are therefore welcome, as is the prohibition of items including metal pipes and PVC, and of course so is the increase in fines and potential prison sentences for existing offences. On this point I would just note that the government is extending more protection to the timber industry here than it does to farmers suffering from the trespass and criminal behaviour of animal activists. On this side we argued for the fines present in this legislation to be levied on those offenders too, but sadly the government failed to listen. Overall, however, I welcome the step this bill represents towards preventing this intimidatory, illegitimate economic warfare.

I would like to take a moment, however, to address another reason why I would welcome an end to these protests. It is not just about the methods used; it is the arguments themselves. In important ways these activists are just wrong. Their preconceptions about the timber industry and forestry workers are so strong that they see only a caricature of the reality. I support this industry, not just because of the livelihoods provided, the regional economies supported, for the high-quality local timber resource produced or for their essential firefighting efforts; there are also ecological and environmental arguments for sustainable forestry. These operations are nothing like the wholesale deforestation, denuded landscapes and scorched earth nightmare scenarios painted. When Labor seeks to buy the votes of urban environmentalists conjuring up images of Brazilian rainforest-style logging operations, they are dishonestly and emotively exploiting ignorance, not pursuing science-led policy to improve forest ecology.

A few weeks ago I presented a petition here which eloquently explained how wrong it is that contemporary environmentally sustainable forestry operations are blamed for the damaging ecological legacies of wildfire, past land clearances, invasive species and historical harvesting. It went further in noting that locking up forests and throwing away the key is the very opposite of supporting the environment. To quote:

> … contemporary timber harvesting is a valuable tool that creates mosaic disturbances—increasing species richness, biodiversity and ecosystem resilience.

The idea that disturbance is devastating is unscientific. It ignores the evidence as well as maligning the motives of those involved in the Victorian native timber industry.

Ecological thinning is of positive benefit to ecosystems. It promotes greater diversity. Trees of different sizes and ages provide different habitats, for example. We know about the importance of hollow-bearing trees, and it has been demonstrated that thinned plantings, where a smaller number of trees grow more rapidly due to increased competition for light and nutrients, more quickly produce these essential old-growth characteristics. We also know that larger trees are less susceptible to drought, so in a world with higher temperatures and more frequent drought, areas with diverse tree stocks, including larger trees, will survive. Those with overstocked, denser, uniform plantations will not, with catastrophic consequences for the rest of the ecosystems which rely on them.

This is a small fraction of the science behind this basic truth, but I would also like to add a couple of interesting cultural considerations. The government's own *Biodiversity 2037* strategy notes that one way of increasing biodiversity is to get people involved in nature. Who would have thought? That is actually quite a profound truth for a government report, and it is totally contradicted by locking up forests. We care about the things we are involved with, the things we have contact with. That is one reason why, contrary to what some in Fitzroy might think, farmers care about their land and animals and timber workers care about the health of their forests. This government also claims to recognise the importance of Indigenous knowledge and cultural fire practices, yet given the decades of fuel supply built up in national parks and other areas, where harvesting has been prevented, slow burns are no longer possible. Proper management, including selective harvesting, would slowly remove this oversupply and enable cultural burns in the future.

In summary, I reject not just the methods of the protesters but their essential arguments too. They are hopelessly preconceived and automatically assume that any human interaction with the environment is by definition harmful, especially when there is—shock, horror—some commercial element.

What this bill does not do, however, is deal with the single-biggest threat to the timber industry, and that, I am afraid, is not the protesters at all; it is the government. We have spoken at length in this chamber about the absurdity of the *Victorian Forestry Plan* and the damage its ban on native timber harvesting will do. In my view, it is this ban which the environmentalists should be protesting against. Selective, careful forest management operations will be outlawed, yet the demand will not disappear. Instead we will have the environmentally unfriendly importation of inferior timber from different parts of the world with much lower ecological standards, and we will shut out the generations of knowledge of those stewarding the forest today.

I have mentioned before James Kidman and his father, Murray, who together run an extraordinary business called Otway Tonewoods. They source and prepare limited quantities of carefully selected high-grade local blackwood, satinwood and mountain ash. Much goes to Melbourne's celebrated Maton Guitars, who make instruments with a worldwide reputation and whose customers include internationally famous musicians. The remainder goes to other specialist instrument makers in our state and sustains an industry with generations of knowledge. What is the alternative here if we trash this supply chain? Would the government and the environmentalists prefer them to import the wood from mega plantations halfway across the world? Or perhaps make the guitars out of plastic? Victorian wood is not just a beautiful and sustainable material, it is a natural carbon store. It is exactly the sort of business which those who care about the environment should be supporting, not destroying.

My final point here is to point out the hypocrisy or the incompetence of a government which claims to protect the timber industry with this legislation and yet not only outlaws significant chunks of that industry but fails even to deliver the transition policy it promises—namely, investment in plantations. My coalition and Public Accounts and Estimates Committee colleague the member for Gippsland South has done much to establish this. We have heard at PAEC that, despite the 2017 budget's allocation of $110 million to new plantations in the Latrobe Valley, not a single new tree has yet been planted—$110 million, and not a tree planted. All that has happened so far is the replacement of 500 hectares of existing plantation land—in itself an absolute fraction of the total timber requirement. The harm this does extends way beyond the timber industry and out into the wider economy. Already we know how badly the shortage of available timber is affecting house building and how the growing

waitlists for deliveries and spiralling material prices are beginning to impact housing supply and property prices. This can only continue to get worse, and the consequences will be deeply damaging.

In conclusion, while I support this bill, it does very little to repair the damage this government is doing to the forestry industry. It is not so much giving with one hand and taking with the other as patting on the back with one and knifing in the chest with the other. While the bill quite properly further discourages illegal protest, the government's ban on native timber harvesting perpetuates the ignorant preconceptions of these same protesters and in fact encourages them further. While I will vote yes today, reversing the ban on native timber harvesting will be one of the greatest privileges, and I hope one of the measures, of the new coalition government in November.

Mr MEDDICK (Western Victoria) (17:37): Let me begin by sharing part of an open letter that was written to the government on 7 June this year. It was sent to the Premier, the Minister for Agriculture and the Minister for Workplace Safety and was signed by 12 respected and democratic institutions that do not support this bill. They are: Environmental Justice Australia, the Victorian Aboriginal Legal Service, the Australian Democracy Network, the Victorian Forest Alliance, Environment Victoria, the Victorian National Parks Association, Friends of the Earth Melbourne, Liberty Victoria, the Human Rights Law Centre, Friends of Leadbeater's Possum, Act on Climate and the Wilderness Society. I quote:

> Victorians have a long and proud history of peaceful protest. The freedom to protest sits at the heart of our democracy. It allows those without financial means or access to politicians and platforms to be able to be heard and effect change. In the context of a climate crisis, continued destruction of First Nations Country, and collapsing ecosystems, we need to protect this right more than ever.

Non-violent protest and the ability of people to speak up for justice is the cornerstone of a progressive government. So it surprises me that the government is criminalising protest, particularly when that protest is grounded in social and environmental justice. People are protesting to protect our home. Yes, our forests are wildlife habitat; yes, they are core to biodiversity; yes, they are crucial to the future of our species, but the forests breathe for us too. Nature is our home. There is a reason that people protest. In this case they do so because the government—all governments—are not doing enough; they are not doing their job.

Australia is seen as one of the most shameful examples of bad environmental management around the world, and Victoria is complicit in our international reputation. We have the worst record of species extinction. VicForests, the government's logging agency, is currently subject to nine community legal cases because it keeps breaching environmental laws. VicForests continues to act on the instructions of the government to log native habitat, seriously and irreversibly harming greater gliders, Leadbeater's possums and other small animals by destroying their homes. Whilst governments usually look only to the current election cycle and budget cycle, the burden caused by the destruction of our forests will not be carried by us but laid upon our great-great-grandchildren. This is why more than ever people must have the right to freely and safely protest the felling of forests, especially when bills such as this make it easier than ever for bulldozers to mow down the homes of native animals and destroy the lungs of this land.

The government, like all governments since 1788, see native forests as a resource to exploit rather than a source of life, particularly for native animals. Native animals and the forests that they live, love and play in rely on us to be their voice, whether in this chamber or in the forests themselves. People usually protest out of desperation, when all other alternatives—conversation, deliberation and negotiation—have been sought and failed. Rather than make it more difficult to protest, why not remove the reason people are protesting in the first place by bringing forward the time frame of the government's commitment to end old growth logging of Victorian native forests and also bringing forward the transition packages for just transitions for these workers?

If the government is serious about guarding against environmental collapse and biodiversity decline, the people would no longer need to protest. They could go home to their families and get on with the

other things they would rather be doing. Without the logging there will be no need for protest. Without protest there will be no need for these heavy-handed laws. As a long-term advocate for workplace safety I support any clause in any bill that makes work environments safe. I will support any clause in any bill that prohibits actions that could injure or kill any worker in any environment. That in this bill is where my support ends. This legislation in the view of many in the community undermines our democratic processes, specifically the right to protest. Nowhere else do we see penalties applied simply for protesting against policy. What we see in this bill is that fines are tripled simply because of the geographical location of where that protest takes place. Where is the evidence that this extreme increase is required? And what about the expanded search and seizure powers that officers have, which use intimidation in logging areas to keep people from protesting?

This bill also introduces banning notices. The previous minister explained that these banning notices mirror the ones in the Wildlife Act 1975. I do not support those and I do not support these. Those banning notices stop people from rescuing injured ducks and these banning notices stop people from protecting forests. These bans criminalise compassion and courage. People who protest on behalf of forests, oceans and animals do so to prevent harm, not to cause it. People expect the government to act in the best interests of the people, which means the environment on which we all depend for life and health—everyone, without exception, including all of us in this chamber—yet the bottom line is the excuse for all manner of environmental devastation and animal cruelty no matter the cost.

Just like our rights must be tempered with responsibility, our freedoms must be tempered with respect for the freedoms of others. I am specifically referring to the rights of non-human native animals, many of whom are now facing extinction in the very areas we are seeking to log. Now, I realise I am but one voice here, but I will make sure that my voice speaks for those who are so often ignored, particularly when their lives and habitats come into conflict with the human desire to make money. Our forests, when seen through this lens, are at the mercy of economic expediency.

Further in her second-reading speech the previous minister asserted that this bill is to prevent people protesting in a way that places themselves and others at risk of death or injury. Let me state very clearly once again that I support all rights of all workers to undertake their work safely and I support all laws and clauses that enshrine workplace safety. I always have, I always do, and I always will. But this bill is not just about workplace safety. Rather it removes the civic guard of protest, which facilitates the destruction of forests, and this places everyone at risk—workers, protesters, animals and the public alike. But because the harm is invisible to the eyes of the government, they ignore it, and because the ones most immediately at risk are other than human—they are animals and their forests, ecosystems, habitats and landscapes—they are considered expendable. We continue to sacrifice our diminishing and endangered native wildlife for the sake of our short-term interests at the long-term expense of this continent. This bill is not in the interests of non-human animals, of Aboriginal nations or the health of our landscape, waterways and forests. As is often the case, narrow economic interests are once again prioritised over the health and wellness of country, which is ultimately the health and wellness of all of us.

The workplace safety clauses I support, but this bill as a piece of legislation simply streamlines the destruction of country. For this reason I cannot support this bill.

Mr BARTON (Eastern Metropolitan) (17:47): I rise to speak on the Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Bill 2022. I will always stand up for the rights of workers to be safe and secure at work. Today is no exception. This bill will introduce harsher penalties for the public entering timber harvesting zones. Under these changes members of the public who enter timber harvesting zones could face 12 months in jail or $21 000 in fines. This is not about the right to protest but rather the health and safety of our forestry workers. Clearly the current penalties are failing to deter protesters. These sites have incredibly dangerous machinery. Interference with these machines has consequences that cannot be overstated. It is mere luck that we have not seen severe injuries as a result of these protesting methods as yet. It is my understanding that in recent years the number of

workplace invasions has increased significantly, and timber workers face greater safety risks because of this.

I support the right to peacefully protest, but many of these protests have been far from peaceful. Many tactics have been used, including protesters hiding in undergrowth and jumping in front of operating machinery, children being brought into timber harvesting zones and steel spikes left purposely on forestry roads. These tactics are ruthless and dangerous, and they must stop. We cannot wait for the worst before taking action. Timber workers deserve a safe workplace today. Of course I understand the good intentions behind many members of the public who choose to peacefully and legitimately protest forestry logging. However, we already have a transition plan in place right now for the Victorian government to cease harvesting native forests in Victoria.

At this time we are experiencing extreme timber shortages which, combined with a number of economic factors, have left the building industry in mayhem. We have a housing crisis in Victoria. The existing housing stock is not enough. We must continue building more social and affordable housing. For that we need more timber. This is not the time to be putting the safety of timber workers at risk. Of course turning up to work each day knowing the tactics that have been used in the past is tough on mental health for our timber workers. This bill will protect and support the physical and mental health of our timber workers, so I commend this bill to the house.

Mr BOURMAN (Eastern Victoria) (17:50): About time.

Mr HAYES (Southern Metropolitan) (17:51): That beats 'I will be brief', I suppose. He did say he would be brief, so he is a man of his word.

This legislation really can only be described in a few terms—an overreach, undemocratic, authoritarian. I am honestly shocked and dumbfounded that we are here today debating a bill that threatens to send people to jail for protesting, let alone protesting about issues of national and global importance. The right to protest is a healthy and thriving part of our democracy. Suppressing it under any circumstances sets a very dangerous precedent.

You may be surprised, but I support some of what Mrs McArthur was saying tonight. What we really need to be doing and what we should have been doing for many, many years is establishing new timber plantations and reforesting areas that have already been decimated—well, not decimated, just devastated. This is where Australia should be going: creating a high-value timber industry, not raiding old-growth forests, and protesters that are pointing towards the destruction we are carrying out are really helping us today. These people are not criminals. I mean, climate change—the state of the environment report and our own report into ecosystem decline point out that we are going in the wrong direction. We are clearing trees at a great rate. We are not replanting and revegetating. We are not creating a new timber industry, which we should be doing. Anyway, I just think that we are going the wrong way and that we are going to punish the wrong people.

This bill proposes doubling the penalties for non-violent direct action and citizen science surveying. Citizen science surveying, really—jail? Send people to jail for citizen science surveying in areas designated for logging? Under this bill protesters attempting to prevent or disrupt native forest logging in Victoria will face a staggering 12 months jail or $21 000 in fines. How is this proportionate? There are many well-documented cases of violent criminals convicted of assaults and muggings sentenced to a year in prison. Does the government seriously think that peacefully protesting logging carries the same severity as violent crime? I remember there was a guy that was stopped the other day bringing Macca's and stuff like that through customs—illegal meat through customs—without declaring it and is likely to be face up to $3000 in fines. I mean, this guy could have brought foot-and-mouth disease into Australia. He is going to cop $3000 in fines maybe, and here we are talking about $21 000 fines for people protesting. The bill is a dangerous attack on democracy.

The government's rationale for this legislation is, to paraphrase, 'We want to make sure workers go home to their families each day'. Well, yes, of course we do. Every worker should be able to go home

to their families, as Mr Meddick just said. Yes, of course we want to send people home in good health, yet as Daniel Cash, barrister and president of Lawyers for Forests, wrote in the *Age*:

> … I have handled dozens of cases involving protest activity in Victoria's native forests for over a decade and I am not aware of a single instance of protesters preventing forestry workers from going home safely to their families.

To push forwards with erroneous and overreaching punishment is one thing, but to let hyperbole run wild and depict these protesters as reckless thugs is truly shameful. Remember the extraordinary fines and prison sentences proposed in the first edition of the pandemic legislation? Well, these fines and jail sentences should go the same way.

These are not people protesting because they want more money. These are not people protesting with ulterior political motives. These are people protesting because they care about the health and wellbeing of our state, our country and our planet. Consider the recently released state of the environment report that I mentioned before. These are people who care about climate change. They care about habitat destruction and the protection of native wildlife. Above all they care about future generations. They are not criminals, and to treat them as such would be just wrong—plain wrong. The government wants to pick on logging protesters. Well, will they be imposing these excessive fines on other protesters, such as those who block the West Gate Freeway? I am quoting a paramedic's viral post on social media from when there was a blockade of the bridge by construction workers:

> It took me over an hour and a half to move 10km to hospital. And tonight, hours after we expected these protests to end, the freeway was still shut. All of these extra delays are to your family members, your friends. People genuinely needing attendance for emergencies.

So why is there one rule for presumably government-sanctioned protesters and another rule for other protesters? When this government announced it would ban forthwith logging old growth and phase out native forest logging by 2030, it seemed to be taking a fair dinkum step towards protecting the environment. Since then it appears that there has been somewhat of a reluctance to stick to that promise. In recent Environment and Planning Committee hearings we have been told of the goalposts being shifted as to what actually constitutes old-growth forest now. Seemingly the government is providing itself with some wriggle room to at least partially renege on that commitment if they have not done so already.

So unfortunately a great deal of goodwill from the government's phase-out has been lost, especially when you consider that VicForests itself is at the centre of controversy. The bureaucracy has been the defendant of lawsuits pertaining to unlawful logging and has even referred itself to the anti-corruption watchdog over spying allegations. Government ministers would have received a joint letter by a range of key stakeholders on this issue—mentioned by Mr Meddick too—including representatives from Environmental Justice Australia, the Victorian Aboriginal Legal Service, Environment Victoria, the Victorian National Parks Association and the Human Rights Law Centre, just to name a few, and I would like to quote a powerful excerpt from their joint letter, which is rather relevant and very powerful:

> While you work to further criminalise protest, VicForests—your government's logging agency—has repeatedly broken logging laws. The recent decision of the Full Federal Court in *Friends of the Leadbeater's Possums v VicForests* confirmed that VicForests contravened six state environment laws in 66 areas of forest and unlawfully logged, including by failing to avoid serious and irreversible damage to the vulnerable Greater Glider, failing to protect the critically endangered Leadbeater's Possum and destroying protected tree species.

You can forgive the community for wanting to keep a close eye on their conduct. If anyone needs a watchful eye cast on them, it is not the community, it is not protesters, it is this bureaucracy. I will not support those who wish to scapegoat protesters who seem to be trying to protect our environment, and I vehemently oppose this bill.

Ms PATTEN (Northern Metropolitan) (17:59): I rise to speak to the Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Bill 2022, a bill that purports to improve Victoria's legislative framework for safe timber harvesting. The bill is said to respond to increased dangerous forest protest activity in timber harvesting safety zones, but the government have not been able to document evidence of increased OH&S incidents in their briefing to my office. Rather, it seems like it was a vibe thing, that we are worried that this could be. Well, my vibe is that this is not an OH&S bill at all. Rather, it is the corruption of an OH&S framework for the primary purpose of criminalising peaceful protest. It is crude. It does not have my support.

I have spoken in this place many times in criticism of native logging. It is unnecessary and there are far better options. We are already seeing native timber plantations; there is hemp for paper et cetera. It seems quite absurd to me, these repeated legislative efforts to shore up an industry which is being completely phased out by 2030. So laws like this where the consequences could also be the permanent phasing out of some of our most precious endangered species also set a dangerous precedent, and we heard that from Mr Hayes—that we start herein using OH&S as a form of stopping protests, and where do we stop?

Forest protests are not arbitrary. As we have seen in court cases like *Friends of Leadbeater's Possum v. VicForests*, there have been numerous contraventions of environmental laws in numerous forest areas where unlawful logging occurred that failed to avoid serious and irreversible damage to the greater glider, which was less than a month ago listed as an endangered species. I think it is important to understand—and I have met with them—that the average protester is a 60-year-old woman taking a photograph of a habitat tree with a GPS location in shot to document that that particular tree should not be cut down. Freedom to protest sits at the heart of our democracy. It is enshrined in our charter of human rights. It is a right that we should be protecting, just like the species that are placed in jeopardy by unlawful logging, on which this type of protest is an important check and balance. We have seen this play out clearly in our courts many times, and as Mr Hayes mentioned, this was not once, this was not twice—there have been at least 66 incidents that were alerted by so-called protesters in the forest. You may ask: if a tree with a greater glider in it falls in the forest but there is no protester around to hear it, did it really happen?

I do not support the bill. The Reason Party does not support the bill. In that context I thank Ms Bath for providing me with some information about her amendments on this bill, but I cannot support those either.

Mr LIMBRICK (South Eastern Metropolitan) (18:03): This bill is going to present a unique situation for the Liberal Democrats, in that I am speaking for myself and not for the Liberal Democrats in this situation. When the Liberal Democrats come to a position on pretty much anything that comes through this place or any of our policies we always base it on our underlying principles, and most of the time that is clear cut. People may not know that all of our votes are essentially conscience votes in the Liberal Democrats. I also acknowledge that sometimes the workings on how we get to those conclusions can have alternate paths, and Mr Quilty and I have come to different positions on this. I respect Tim's position. He is coming at it from a property rights position. But I am coming at this from a different position, and that is the position of government power. I will be opposing this bill.

When we look at what is happening here I differ from the Greens and some of the other speakers that we have had today in that I am very sympathetic to the timber workers. I think that they have gotten a raw deal in many ways. I think that the shutdown of their industry is horrific, as is the way that they have been treated, and I am very sympathetic to their concerns. Similarly, although I may not agree with many of the activists' concerns and I also do not like some of the tactics that they have been using, I do support their right to protest. One of the first remarks I will make is that it is absolutely incredible to me that in the statement of compatibility put forward by the Minister for Agriculture with this bill apparently this bill does not engage the right to peaceful assembly and freedom of association in section 16 of the Charter of Human Rights and Responsibilities. Considering that ostensibly the bill

is meant to crack down on some of these protests, the idea that it does not engage that right seems ludicrous to me.

But secondly, I have seen suppression of protests over the last two years. I have seen how protests have been suppressed. I have seen the lengths that the government will go to to stop people protesting for all manner of reasons, and it is for that reason that I cannot and will not give one extra inch of power to the government to suppress protest. Some of the things in here are pretty severe. They are talking about massive increases in fines and penalties for people who protest. They are talking about prohibited items like pieces of pipe and things like this that they suspect that protesters are going to use in ways that they do not approve of. I get it. People chaining themselves to machinery interrupts work and it interferes with what these workers are trying to do. I get it. It is inconvenient, they do not like it and it is bad, but we already have rules against trespass and we already have a bunch of other rules. The way that I am looking at this is they are increasing the penalties—they are not changing the penalties in many cases, they are increasing them—in order to make it financially more difficult for these organisations to operate, because the penalties will be higher and therefore the threshold for them to be able to conduct their protests will make it much more difficult.

It is pretty basic, to my mind, that this is an expansion of the government's power to suppress protest. Again, given what we have seen over the last two years, I cannot in good conscience support any decrease in the right to protest. In fact I have been a strong voice, as have Mr Quilty and others, to support the right to peaceful assembly, and I think that we should be focusing on how we can facilitate that in many ways, including in this situation. I would much rather see an approach where they can figure out ways to facilitate it. Again, I cannot support this bill, which increases penalties and suppresses the right to protest, so I will leave my contribution there.

Dr RATNAM (Northern Metropolitan) (18:08): The right to peaceful protest is at the heart of our democracy, and it is under attack right across Australia. For those without deep pockets or access to politicians and platforms, protest can be the only tool many in our communities have to be heard and to secure change, yet anti-protest laws have already been passed in New South Wales and Queensland. They look set to become a reality in Tasmania, and now they are before us here in Victoria. Let us be clear: this crackdown on protest is being executed by both Labor and Liberal-National governments. The old parties are in lock step, captured by destructive industries and their donation dollars. It is a dangerous double act designed to silence communities speaking up for a better, fairer future.

That such draconian anti-protest laws are being rammed through our Parliament here in Victoria, through this bill, just months out from an election, is something all Victorians should find deeply disturbing. Four years ago on election night Labor proudly called themselves progressive, yet today Labor gives us these fundamentally anti-democratic, anti-progressive laws. Progressive governments do not introduce laws like these. This is devastating for our democracy, for forests and for all the life that depends on them, and these laws truly demand some soul-searching from Labor MPs. Have you forgotten that the labour movement was born out of protest, that Victoria is the birthplace of the 8-hour working day, won through protest, or that protest has secured women's rights, racial justice, LGBTQI+ rights and environmental justice? Without the activists, protesters and environmental defenders the government is seeking to criminalise today, the Franklin River would be dammed, the Tasmanian wilderness would be drowned, the Daintree forest would no longer exist, Kakadu would not be a place to visit to wonder at the world and of course we would no longer be able to marvel at the magnificence of our precious old-growth forests around the country.

I also note the significance of the fact that today a number of unions have recognised the threat of these laws. The United Workers Union, the Maritime Union of Australia and the Australian Services Union have come out today urging the bill to be scrapped. They know that, firstly, the logic behind this bill

is a threat to unions, their members and any workers who want to fight for a better life. As they said in their letter to the Premier:

> Any stripping away of the right to protest eventually finds its way to further limiting workplace action …
>
> Already Australia has some of the most restrictive laws around industrial action in the world. In the context of a climate crisis, the right to protest must be advanced not diminished.

Secondly, as indicated by that quote, these unions recognise the threat of climate change. Workers across our economy are already facing the impacts of the climate crisis. More frequent and intense heatwaves will become an increasing problem for workers in a whole range of industries. The ability of workers to protest, strike and fight for a livable world and workplace rights in a time of climate change is under threat with laws like these. This bill levels draconian penalties—fines of up to $21 000 or 12 months jail—at members of our community for defending precious native forests from destruction. Protesters will face up to triple the existing penalties, including jail time, for many current protest offences. Search and seizure powers will be increased and broadened in scope, allowing the seizure of any 'prohibited thing'. Most worrying is the introduction of banning notices, which can be issued by an authorised officer should they deem someone likely to commit an offence in the next 28 days. This is Orwellian in its true sense.

These laws also target the vital work of citizen scientists. These are the dedicated volunteers who have been doing the work our governments fail to do. They are the people surveying the forest to identify threatened species ignored by the government's own logging company, VicForests. The amazing greater glider, essentially a flying koala, was once common across Australia. In just six years a unique and beautiful creature has gone from threatened to endangered. It now faces extinction. Logging and the climate crisis are the unequivocal drivers of this decline. Time and again citizen scientists identify gliders and other threatened species and protesters defend the forest habitat on the front line while grassroots community groups fight to secure their protection in the courts. A good government would see this often-repeated cycle and make the call: native forest logging needs to end now. Yet Labor is instead choosing to, piece by piece, remove the tools our community has to keep forests safe. First it was laws trying to stop the court cases, now it is these laws to block citizen science and frontline actions.

That logging is unashamedly propped up by both major parties is a clear sign of the sway that the logging industry and their donation dollars have over both parties. Logging is taking place on First Nations land—country where sovereignty has never been ceded—without consent from traditional custodians. Not only does logging destroy habitat and push plants and animals to extinction, it destroys cultural heritage, threatens our water supply and is making the climate crisis worse. Logging makes our forests more fire prone, and it costs us public money every single year.

Just this month the long-delayed state of the environment report was released, finally. It shows us what the Greens have known and Labor and the Liberals have refused to address: our environment is in crisis, and that crisis is accelerating. Logging and climate change are two of the biggest drivers, yet protesting for action on both these issues is exactly what the nationwide crackdown on protest is targeting.

It is truly gobsmacking, the lengths to which Labor and the Liberals and Nationals will go to keep afloat an industry that has no place in the 21st century. They are on a unity ticket with their digging-it-up and chopping-it-down mentality. We cannot go on as we are and expect to have a livable planet for ourselves, our children, our grandchildren and all the precious life that shares this world with us. The vast majority of Victorians want to see an end to native forest logging. This bill is a disgrace and should be scrapped.

I will finish by saying the Greens are not alone in our fierce opposition to this bill, alongside my colleagues who have spoken out strongly in this place. I want to thank all those groups from across civil society who have taken a strong stand against this. I am proud to be amplifying the voices of opposition to this bill from Environmental Justice Australia, the Victorian Aboriginal Legal Service,

the Australian Democracy Network, the Victorian Forest Alliance, Environment Victoria, the Victorian National Parks Association, Friends of the Earth, Liberty Victoria, the Human Rights Law Centre, the Wilderness Society, Friends of Leadbeater's Possum, Act on Climate, Melbourne Activist Legal Support, Doctors for the Environment, the Australian Conservation Foundation, the Bob Brown Foundation and CounterAct. Finally, I wish to express my deep gratitude personally and on behalf at the Greens to all the brave activists, volunteers and dedicated grassroots groups who are doing everything within their power to keep our forests safe. You are on the right side of history, and I thank you from the bottom of my heart.

Mr QUILTY (Northern Victoria) (18:16): I will be brief. The Victorian native timber industry is well managed, sustainable and essential to maintaining our national parks. When this industry is gone, our parks will be increasingly degraded. Without timber workers and their equipment managing things, species will be pushed out, monocultures will emerge and fires will wipe out whole species of plants and animals. It will be a complete disaster.

The bill today is to increase penalties for protesters going into logging areas. Frankly I am somewhat incredulous that this government—the same government that is destroying the Victorian timber industry and destroying the communities that depend upon the industry in the pursuit of some ideological position—wants us to believe that it is the defender of the industry. We will not be fooled. You hate regional timber workers. Their votes do not matter to you.

To the lunatic anti-timber, anti-job, anti-worker protesters who define their lives around this holy war to save the trees: you can stop now. The war is already over. This government has rolled over. The industry is doomed. Jobs in regional communities will be lost. You have already won. Instead of a well-managed, sustainable local industry, you are supporting the destruction of rainforests overseas. Timber use will not drop, but environmental damage will go through the roof—so well done there. Go find something else useful to do with your life. Opposition to nuclear power, which is the only way to effectively decarbonise the economy, in favour of environmentally destructive renewables would seem to be on brand. Hydropower, like damming the Franklin River, is the only other sustainable solution for baseload power, but of course you oppose that.

I also just note that some of the loudest voices against this legislation, against this attack on protesters, were hot to crack down on protesters during the last two years. It is hypocrisy.

On this bill the Liberal Democrats do not have a single party position. As David has said, in the Liberal Democrats every vote is a conscience vote. But because classical liberalism is a coherent, internally consistent philosophy, unlike most others represented in this place, we almost always arrive at the same answer to questions. Today I plan on supporting the bill, and I understand David is taking a different view. For the first time in this Parliament's term we will vote in different ways. I certainly understand his position, but he is of course wrong.

I believe this bill is about property rights. The protests are not taking place in public national parks; they are happening on land leased to logging companies. Just as with any private workplace, there is no right for protesters to come barging in. Timber workers who have a lawful right to go about their business are continually harassed and interrupted by protesters. People who chain themselves to machinery and camp out in trees in logging coupes are trying to force them to down tools and sabotaging their work.

This bill increases penalties for people engaging in this disruption. Specifically, protesters have been bringing in PVC pipes and chaining themselves to machinery with their limbs hidden in the pipes to make it difficult to safely remove them. The protesters are employing tactics that rely on the restraint of the people they are attacking. In a just world, when you attach yourself to someone else's bulldozer and refuse to leave, the owner would have every right to remove you. If you intentionally make it unsafe to do this, then you should wear the consequences of that.

But this bill takes a milder approach. The state is apparently eager to avoid protesters being crushed by logging machinery or having their arms sawn off by angle grinders. Instead it is making the penalties for violating property rights a bit more severe. Now, I believe in protest. As part of our fundamental right to free speech I believe in the right to free assembly. Yell and shout, post on social media, hold up signs, publish your pamphlets, march in the street and lobby your politicians, but do not damage other people's property, harass individuals and sabotage their work. Just as we do not let protesters into office buildings in the city to chain themselves to printers or across workers' desks, we should not allow them into licensed timber coupes where logging is underway.

To be clear, I understand my colleague David's position. I am not at all comfortable giving Victoria Police increased powers or increasing penalties for protesters. We have seen how this government uses the power of the state to crush legitimate protest—it uses police brutality. It disturbs me to give any aid or comfort to this attitude. But at least the timber protesters are the government's fellow travellers; they are unlikely to unleash the full fury of their paramilitary units on them.

The timber industry in Victoria is already being hammered by government-mandated closures and red tape. The least the government can do is properly enforce their lawful rights over their own property. At the end of the day I will stand with the timber workers and regional Victorians involved in the industry. I support this bill.

The ACTING PRESIDENT (Mr Bourman): Just as a reminder to everyone, it is customary to use either someone's title or something rather than just their first name even if they are a party colleague. We will leave it at that.

Ms TIERNEY (Western Victoria—Minister for Training and Skills, Minister for Higher Education, Minister for Agriculture) (18:22): The position of the government is that every Victorian has the right to a safe workplace and workspace. The proposed amendments build on existing laws focused on protecting the safety of all persons who enter into timber harvesting safety zones. These zones are inherently dangerous workplaces where heavy machinery is used and unauthorised entry runs the risk of serious injury or death. The bill does not criminalise protest activity, nor does it alter the places where a person can protest. The Andrews Labor government supports the right to peaceful protest outside the timber harvesting safety zones.

In any democracy the right to protest and engage in demonstration is subject always to reasonable limitations. Timber harvesting safety zones simply are not a safe or appropriate place for protests to occur. It is currently unlawful for members of the public, including protesters, to be inside a timber harvesting safety zone, and this will remain the case. I understand that some in the community are opposed to our native forest industry, but dangerous protest activity presents an unacceptable risk to the safety of workers, authorised officers, police officers and the protesters themselves. We are very fortunate that we have not seen serious injury or death in the timber harvesting safety zones, but this government will not wait for a serious injury or death to occur before acting.

Dangerous protest tactics such as physical interference with moving forest machinery, sitting at heights where a fall would cause death and intentionally camouflaged protesters have had a detrimental effect on the mental health of some native forest contractors and their families, who are put at risk of hurting themselves or others. I know that some have thought overnight that they have hurt someone and have gone out looking for them. It has distressed them, and the anxiety has been significant on them.

In addition to the safety risks, the impact of dangerous forest protest behaviour within the timber harvesting safety zones causes extreme psychological stress. That is due to people just not being clear about whether they have accidentally injured someone else at the workspace. This bill proposes penalty increases to existing offences—they are not new, but they are increases. The already existing exclusion orders will be bolstered by new banning notice provisions. This mirrors other current legislation, namely our Wildlife Act 1975, and only applies to areas of state forest which are timber harvesting safety zones and therefore where access is already restricted.

The bill's proposed amendments broadly align with approaches that other jurisdictions have adopted, including Queensland and New South Wales, and I understand there is draft legislation circulating in Tasmania that is similar. Overall, some comparable offences in other jurisdictions have higher penalties while others have lower. While there may be variations in these reforms, the trend is towards reforms aimed at addressing dangerous protest behaviour, and the increases are designed to make people think more than twice about undertaking activities that may lead to a situation where a workplace is unsafe.

In terms of the issue of unreasonable interference with the democratic right to protest, the freedom to protest is protected by the implied freedom of political communication in the Australian constitution and Victoria's Charter of Human Rights and Responsibilities. Charter rights relevant to the right to protest, such as the rights to freedom of expression and peaceful assembly and freedom of association, are not diminished, we believe, by this bill. Nothing in this bill has the effect of banning protest activity which is currently lawful. That is a mischaracterisation of the effect of the bill, this government would argue.

To those who propose that the powers are excessive and could be misused, I reiterate that all measures in the bill were chosen to manage the safety risks in timber harvesting safety zones but go no further than what is necessary. All new powers are subject to appropriate limitations and accountability. For example, in order to prescribe additional prohibited things—items that just simply cannot be brought into the timber harvesting safety zones by an unauthorised person—regulations need to be made. Of course the regulations would need to be tabled in Parliament, and this would provide an opportunity to disallow the regulations. The power to search is subject to strict legal limits: it is limited to particular receptacles such as vehicles, bags and containers; it does not permit body searches; it can only occur within timber harvesting safety zones; and it can only occur when the officer has a belief on reasonable grounds that the search is warranted.

In respect to the amendments pertaining to dogs that have been put forward by Ms Bath, the government will not be supporting these amendments. To a certain extent we understand why they may be put, but the fact of the matter is what we are doing tonight is attempting to create safer workspaces, and to introduce dogs, in the opinion of this government at this time, is to introduce a potential additional factor that could give rise to further unsafe situations in the workplace and create unacceptable risks in controlled environments. So that is essentially the position in respect—

Business interrupted pursuant to sessional orders.

Mr TARLAMIS: I move:

That the meal break scheduled for this day, pursuant to sessional order 1, be suspended.

Motion agreed to.

Ms TIERNEY: There are a number of other matters that I do not have time to go into in this summing-up, matters that have been raised by a number of members, not just in the chamber this afternoon but earlier in discussions with a whole range of people. I am sure that I will be able to deal with those issues, and I am sure that we will not necessarily agree and come to a solution in the committee stage, because I think we have all got our stated positions. They are fairly polarised, but nevertheless this is an ability for the chamber to ask questions of the government, and I am ready to assist in that process in whatever way I can.

I thank members for their contributions so far in this debate. It is an interesting one in that we have, as I said, clearly divergent views. On one hand we would say that certain groupings have overreached, and then there are other groups that say that the government has overreached. It is definitely the position of this government that this is all about the safety of the workplace, and it is about increasing certain penalties, but it is not about creating anything particularly new in terms of— *(Time expired)*

House divided on motion:

Ayes, 29

Atkinson, Mr	Erdogan, Mr	Pulford, Ms
Bach, Dr	Finn, Mr	Quilty, Mr
Barton, Mr	Gepp, Mr	Shing, Ms
Bath, Ms	Grimley, Mr	Stitt, Ms
Bourman, Mr	Kieu, Dr	Symes, Ms
Burnett-Wake, Ms	Leane, Mr	Tarlamis, Mr
Crozier, Ms	Lovell, Ms	Taylor, Ms
Cumming, Dr	Maxwell, Ms	Terpstra, Ms
Davis, Mr	McArthur, Mrs	Watt, Ms
Elasmar, Mr	Melhem, Mr	

Noes, 5

Hayes, Mr	Meddick, Mr	Ratnam, Dr
Limbrick, Mr	Patten, Ms	

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1 (18:41)

Mr LIMBRICK: This is my first question and one of the very few questions that I have. Anyone that has spoken to me over the last year or so will know my despair and dismay with the Charter of Human Rights and Responsibilities. One of the things that strikes me in the statement of compatibility submitted with this bill by the government is that it does not engage section 16, the right to peaceful assembly. Can the minister please explain why they believe that this bill does not engage that right. It would seem to me that it is fundamental to this bill that it is talking about peaceful protest. Therefore it should engage that right—that would be my thinking. I would like to hear the government's answer on and why they believe it does not engage it.

Ms SHING: I will seek an answer for you on that one if you can indulge me for a couple of moments.

Thank you for that, Mr Limbrick. The bill itself does not actually impact upon any right to legally protest, given that that right is already proscribed in areas that are not affected by this bill.

Mr LIMBRICK: I thank the minister for her answer. Just to clarify for my understanding, then, the government is saying that because it is already illegal and this is not affecting the legality it is therefore not engaging that right and not limiting the right to protest. Is that what the government's position is on this?

Ms SHING: Yes. Thank you, Mr Limbrick. The places where you can currently legally protest are not affected by this bill.

Mr BOURMAN: This is more a statement than a question. I heard a lot of banging on about how VicForests are breaking laws and all this and how bad it is. Yet all I hear from the people opposed to this bill is how those other people that are breaking other laws should be getting away with it. Frankly it makes me want to gag—the hypocrisy.

Ms BATH: Minister, this applies to timber harvest safety zones, which sit over the top of timber coupes. Can you please tell me what area, maybe in hectares, these timber harvesting safety zones occur in today and what proportion of the total forest area that is?

Ms SHING: Thank you, Ms Bath. I will be with you in a moment.

Ms Bath, I do not have the figure to hand for the area that you are referring to, so I am happy to take any other questions in terms of how you might wish to get the information that you are after. I assume that you are referring to the entire state, or have you got a specific area in mind?

Ms BATH: This bill applies to timber harvesting safety zones. Approximately what proportion of the entire forested area of the state would they sit on—the current timber harvest safety zones?

Ms SHING: Thanks for that clarification. This bill is limited to working coupes as they are defined. That will change over time depending on what is a working coupe at any one time. So they are small areas, but the location and the area will vary.

Ms BATH: That is absolutely right. Thank you, Minister. The areas will vary, but at any one time—so for the next six months or the like—they will be coupes and they will be specified now as timber harvest safety zones. The point I am seeking to make is that at any one time as a proportion of the entire forest—the forest estate including reserves, national parks and the like—the overwhelming majority, 90 per cent or greater, do not have a timber harvesting zone on them and therefore are entirely excluded from this bill. So the area that is under consideration in this bill—I am trying to get an understanding of the quantum as a per cent—is very, very small.

Ms SHING: They are very small areas. The bill only applies to working coupes.

Ms BATH: Therefore, Minister, any citizen scientist activity or any lawful protest, any protest in any part of the rest of the state's forests, is entirely separate to and excluded from any of the clauses of this bill.

Ms SHING: This bill only applies to working coupes.

Ms BATH: Thank you, Minister. So therefore all of those citizen scientist activities can occur on thousands and thousands of hectares that are separate to these particular coupes and timber harvesting zones.

Ms SHING: This broader statement depends upon other access arrangements that might exist otherwise in the rest of the state. So simply because an area is a working coupe and therefore these provisions in the bill apply, that does not therefore by extension mean that any citizen scientist can go anywhere else on land throughout the state to do whatever they choose, if that is where you are heading.

Ms BATH: But they are not captured in this bill.

Ms SHING: This bill only applies to working coupes. There are around 7 million-plus hectares of state forest. So they are not captured in any part of the bill that deals with working coupes.

Ms BATH: My next question is: could you provide a list or an example of the list of prohibited things, Minister, noting that PVC pipe is newly included in that and also metal pipes. I did during my speech talk about metal spikes, so I am interested to know a list of prohibited things, like metal spikes, the likes of which have been in access roads outside timber coupes, put there by protesters.

Ms SHING: Thanks, Ms Bath. The definitions at clause 3 include a list of prohibited things, so that means a bolt cutter, or a cement or mortar mix, or a constructed metal or timber frame, or a linked or a heavy steel chain, or a shackle or a joining clip, or a polyvinyl chloride pipe—so PVC pipe—or metal pipe, or any other prescribed prohibited thing.

Mr LIMBRICK: I note that the government has a target for the end of this native timber industry, yet this bill for whatever reason was not drafted with a sunset clause. What was the reason? If the government was confident that the industry would be shut down by a certain date, why wasn't the bill set up with a sunset clause to coincide with the end of that industry?

Ms SHING: Mr Limbrick, it is amending an existing framework which itself does not sunset, if that provides assistance to you in that regard.

Dr RATNAM: I will acquit all my questions in clause 1. These are some general questions across the bill. Minister, the government is arguing this bill is warranted because peaceful protesters are putting the health and safety of forest workers at risk, yet I note both the people involved in forest protests and indeed the unions I mentioned earlier during my second-reading contribution say there is no evidence of peaceful protest activities actually putting workers at risk. How many OH&S incidents due to the presence of forest protesters have there been?

Ms SHING: Dr Ratnam, can I get some clarity from you as to what you mean by 'OH&S incidents', please?

Dr RATNAM: So incidents that have impacted the workplace health and safety of workers, which has been alluded to as the rationale for this bill. Throughout the rationale for this bill it talks about how these laws are needed to protect the workplace health and safety—in other words the OH&S—of forestry workers and cites incidents caused by protesters that have put workplace health and safety at risk. Yet despite repeated requests for material evidence or examples of actual incidents, we are yet to hear of a concrete example from government. I am just curious to know: exactly how many incidents have there been that have justified this bill?

Ms SHING: Dr Ratnam, there are a number of rationales that underpin this bill, including the requirement and obligation to provide safe systems of work and for the management of safe operating environments that are constituted as workplaces under relevant legislation. If I take you to appendix 2, there are examples of activities that may well and indeed would reasonably have an adverse impact upon the occupational health and safety of workers within working coupes. I will not go through the entire context that is in the bill at appendix 2, but the examples include dangerous tree-sit activity within timber harvesting safety zones, physical interference with timber harvesting machinery, further dangerous activity within timber harvesting safety zones, psychological harm, property damage and reasons to believe that the risk is escalating. If I can again give you a couple of specific examples—I am trying to take you to things that will make a practical context to this a bit clearer.

Dangerous tree-sit activity—for example, within a timber harvesting safety zone in September 2020 there was a tree-sit erected approximately 20 metres high in a single messmate stringybark type tree, with several sheets of plastic netting erected on the branches of the tree, and that prevented Victoria Police search and rescue from using a device to safely launch a rope over a branch near the tree-sit to get their initial anchor line established to remove the tree-sitter.

Physical interference with the timber harvesting machinery—by way of example, in April 2020 an unauthorised individual within a timber harvesting safety zone locked themselves onto machinery and could have been killed or seriously injured had the hydraulics on the machine failed, which is known to occur. In June 2020 a protester threw themselves under a logging truck leaving a timber harvesting safety zone. In 2021 two unauthorised individuals within a timber harvesting safety zone chained themselves to an excavator during a sustained four-day protest while also engaging in verbally abusive behaviour towards contractors.

As far as dangerous activity goes, which again goes to the nature of the OH&S incidents as you have described them, in 2019 a 30-tonne tree was felled and narrowly missed four unauthorised individuals within a timber harvesting safety zone. The contractor was unaware that anyone was in the timber harvesting safety zone, and if the tree had fallen 10 degrees to the side, four deaths would likely have occurred. In 2019 a contractor suffered significant psychological harm after narrowly avoiding seriously injuring or killing several protesters who leapt in front of his moving vehicle within a timber harvesting safety zone. The contractor also saw images of himself on anti-logging social media posts, following a drone presence in the area.

Again, to continue with property damage, between 17 and 30 June 2020 a TAFE training coupe which was an active timber harvesting safety zone at the time was impacted by forest protest activity whereby surveillance cameras were damaged and camera chips were corrupted to remove visual evidence, and

as it relates to reasons to believe that the risk is escalating, in December 2021 a new black wallaby group was established in Toolangi. Black wallaby-style protests are extremely dangerous because they involve protesters running in and out of active timber harvesting safety zones, often at night and with minimal visibility, which significantly increases the risk of accidental death or serious injury involving heavy machinery.

So I hope that gives you a sense of the sorts of matters that are contemplated by way of examples of dangerous and high-risk incidents, and they are serious matters. It also bears mentioning that all incidents that involved tree-sit activity, physical interference in timber harvesting machinery and further dangerous activities within the timber harvesting safety zones were responded to by Game Management Authority (GMA) authorised officers or members of Victoria Police and the unauthorised individuals within those zones were issued with infringement notices or charged with offences under the Sustainable Forests (Timber) Act 2004.

Dr RATNAM: Thank you, Minister. I appreciate that level of detail. I want to capture some of what you said, just to make sure I have got some clarity. A number of the incidents you mentioned were talking about theoretical risk, so it did not sound like there had been material injury to the worker. There were concerns about the wellbeing of the protesters in some of those instances. There was perceived, projected or probable impact, should things have gone wrong. It sounds like some of those incidents were caught early, and it was the scenario being played out of, 'What happens if that happened?'. A number of those activities you outlined were activities that were intended to disrupt the activity which was the source of the protest. You mentioned one which was psychological injury. Was that a documented case of psychological injury, or was that a potential psychological injury?

Ms SHING: Thank you, Dr Ratnam. Firstly, I would disagree with the characterisation of not having occasioned harm as a consequence of these sorts of incidents occurring. The occupational health and safety legislative framework makes it very, very clear that there is an obligation to establish and maintain, wherever practicable, safe systems of work. Safe systems of work involve creating and maintaining an environment within which safety is a priority whether or not such injury occurs, but in addition to that the sorts of examples that I have just read to you demonstrate very clearly the risk to safe systems of work where those activities occur in the timber harvesting safety zones. The example that you have referred to on psychological harm indicated that a contractor actually suffered that psychological harm after narrowly avoiding serious injury or killing protesters who had leapt in front of a moving vehicle within a timber harvesting safety zone. Analogously, this is not dissimilar to, in my view, the trauma or distress that is contemplated or experienced by somebody operating heavy machinery or large plant. Train drivers spring to mind as a group that is frequently devastated and traumatised because of unexpected activity that involves a risk to the life and or safety of others.

Dr RATNAM: Thank you, Minister. I appreciate that response. So just to confirm: there has been one case of documented psychological harm and the remaining instances that you listed are cases of potential harm.

Ms SHING: No. Just for avoidance of any doubt, the example that I have given you of psychological harm is one example. There are many, many more, including a number of other matters. I am happy to go through them specifically now if you would like. But the point of psychological harm is that where the harm is sustained it is immaterial as to whether or not it was contemplated—if it is in existence—so this is where again the safe system of work, if it is not operating as intended, will mean that psychological harm as it occurs does not then require the investigation of a contemplated psychological harm. So the instances whereby psychological harm has been sustained relate as much to the safe systems of work and to the way in which they operate whereby, as far as practicable, workplaces have not been secured to contemplate and prevent that harm from occurring. In the black wallaby situation that I referred to earlier, it is that surprise element that leads by extension to a sense of shock, a sense of distress and often a sense of trauma as a consequence of either hitting or narrowly missing somebody in that context. So we need to actually understand and address the general risk that is identified, that is a general risk, and where that general risk has by extension an element of

psychological harm to it, then it very clearly falls within the obligations that are established to create and maintain safe work practices.

Dr RATNAM: Thank you, Minister. One of the reasons I am asking about the actual examples and the quantity—some sort of quantification for what has occurred—is that consistently since this bill was introduced in the lower house and through the public commentary, particularly that which has occurred and the debate that happened in the lower house prior to this date, the government has continually said that the rationale for introducing this bill is because of a workplace health and safety risk. It is our duty to understand the nature of that risk and the quantity of that risk to warrant this level of intervention, because I am so concerned and a number of us are so concerned about this extreme level of response to what has not yet been a quantified risk that has been communicated. It might exist. All we are asking for is the detail to justify this level of extremity of response. Hence why I am asking for the actual detail. I understand that the assessment of general risk occurs when you are looking at matters of workplace health and safety. What I am asking for, beyond what you mentioned—you said this was one example but there are many more—is can you give us the figure of how many more and how that assessment of general risk was compiled to reassure the community, particularly sections of the community who are rightly concerned about what level of risk we are talking about and whether it justifies the draconian response that we see in this bill.

Ms SHING: There are a number of things in that question which I think are important to counter in the context of what loss or injury is acceptable. A proactive approach is taken in all other elements of our occupational health and safety legislative framework because the law contemplates that in order to have a successful framework for deterrence and for enforcement rules need to be put in place to prevent activity occasioning loss or injury before that occurs. This is not a unique circumstance.

Where those examples have been documented, which they have, to my mind the quantum of instances does not help with a conclusion that this bill is not warranted. If we were to fail to act where there was an appreciable risk of physical or psychological harm or damage in a workplace, then there would be not just a legal culpability but a moral culpability in terms of knowing the possibility of injury occurring and failing to do something about it. This is also where employers, as members would know from the occupational health and safety framework, face enormous penalties for reckless endangerment whether that has not been contemplated as a risk or whether action has not been taken because of wilful blindness. What I would say in this context is if we were to continue not to appreciate the risk of what might occur in the sorts of circumstances that I have outlined today, then we would be failing to acquit our obligation to provide safe systems of work to the people who are operating in working coupes. There have been a range of instances. Again, I would just perhaps invite the member to consider what is enough in order to warrant these changes contemplated by the bill.

Dr RATNAM: Thank you, Minister. Is there any analysis or data that the government has relied upon; for example, a workplace health and safety assessment report that documents the number of actual incidents and the number of near misses? I used to be a councillor at Moreland council, and one of my domains was to oversee governance around occupational health and safety—that was something that we were liable for as well. We would get regular reports about occupational health and safety issues, what matters were on the radar, what risks had emerged, what incidents had occurred and how many near misses there were, and that would give us cause to think about what types of interventions we needed to think about. Is there analysis to that effect in this circumstance? You have referred to examples. There are a number of examples. You have talked about one case of psychological harm. Is there any report that backs this up in terms of looking at near misses, the number of threats and the number of perceived risks that have been used to justify this bill?

Ms SHING: Again, thank you, Dr Ratnam, for that question. It would appear that we are covering ground that has already been covered, but the example that you have talked about in terms of your work at Moreland City Council—it is quite a distance away from Toolangi—looks at the way in which breaches might occur within an existing system of workplace health and safety regulation, where there might be provisional notices issued, where there might be an assessment as to the safety of a

workplace. This bill contemplates unlawful activity which occurs in a way that sustains loss, damage or harm to people on that particular site, namely, a working coupe.

So I have given you an example of psychological harm. That is not the only example of psychological harm. The GMA logs all of those examples, but we did not make a decision based on the quantum of matters that had occurred in the circumstances that I have described. VicForests does keep an OH&S register, but the fact of the matter is these are matters in which, but for intervention as described and contemplated by this bill, workers in these working coupes would be exposed, based on what has already occurred, to significant and avoidable levels of risk of injury, whether physically or psychologically. So we are acting to in fact prevent psychological and physical harm. We have identified the risk of that harm as it may arise in a range of circumstances that have been discussed in the course of the second-reading debate, and the role of legislation like this is to prevent, through proactive amendment of the statute book, the sorts of risks that may lead to serious injury, whether physically or psychologically, or indeed even loss of life.

Dr RATNAM: Thank you, Minister. Thank you for that response. I still think it would have been helpful if the government had furnished all of us members of this chamber and the public with more information about how that level of risk was assessed—the quantum, the type of thinking that has gone behind the types of responses that we see that are going to be legislated through this bill. I think that would have been really helpful to reassure the public that there is not a smokescreen occurring here, because there are a lot of people rightly very concerned about why significant—

Ms Symes interjected.

Dr RATNAM: Can I please continue my contribution in silence?

The DEPUTY PRESIDENT: We will just have a bit of silence for Dr Ratnam.

Dr RATNAM: I think it would have been helpful to reassure people, particularly people who are really concerned, about what is driving this bill, because it is not very clear cut. It feels like there are a number of agendas occurring here. It would have been really helpful to have that information, and this is not—

Ms Symes interjected.

The DEPUTY PRESIDENT: Dr Ratnam is to be heard in silence.

Dr RATNAM: It would have been really helpful to have that information to reassure those who have been very concerned about what is really driving some of these changes, because there has rightly been very significant conjecture about what is actually going on here when we have had bill after bill now over the last few months cracking down on the right to lawful protest. Minister, in terms of following up—

Ms Symes interjected.

The DEPUTY PRESIDENT: It is late on a Thursday, and we are trying to get through this, so if we can have Dr Ratnam in silence, that would be great.

Dr RATNAM: Minister, you talked about, throughout the OH&S framework, assessing general risk, and that has been used to rationalise the measures that have been introduced in this bill. Was any consideration given to how the risk could be minimised without punitive measures on protesters? So what other interventions were contemplated, as does happen when you are developing workplace safety programs to minimise risks that are identified in a workplace? What other actions, levers and measures were contemplated to minimise the risk to workers, apart from increasing fines and introducing jail terms for protesters?

Ms SHING: Thanks, Dr Ratnam. Again, just to pick up on the first part of your contribution—which may well have been more of a statement, but I will take an opportunity here if I may—this is

about managing risk, and it is a risk management framework which informs the way in which this legislation, the way in which occupational health and safety legislation and the way in which some parts of our criminal code operate around obligations that exist for safe management of worksites. But to in fact talk about the management of risk without penalty is to, I think, ignore the nature of illegal protest. This bill does not affect lawful protest occurring. What it does do is sanction unlawful protest, namely activities which occur to impact upon working coupes in a way that falls within circumstances contemplated and relating to physical or psychological harm.

To go back to the example that I talked about before, which was a contractor who narrowly avoided killing or seriously injuring protesters, I am not quite sure how it is that you would imagine there to be a situation whereby that protest in and of itself, either intended to harm or reckless as to the risk of harm to the person operating a vehicle, could have taken place where the intention of that activity may well have been to disrupt the operation of that vehicle and to do so with an element of surprise. There are a range of things here that I find somewhat confusing as to how you are wanting to preserve the right to act in a way which is intended to disrupt or surprise or engage in conduct that may well present a risk to contractors or to people on a site but you also want a means by which that can continue to occur without sanction. I am just asking for some clarity.

Dr RATNAM: For the sake of clarity, my question was: what other levers, actions, workplace safety improvements were contemplated other than the imposition of really significant and increased fines and jail terms for protesters?

Ms SHING: Thanks, Dr Ratnam, for that clarification. The risks were sufficient to justify the action that has been incorporated into this bill by way of sanctions and fines. There was a lot of internal consultation that took place. That was consultation which included Victoria Police, agencies and departments and a comparison with comparable frameworks in other jurisdictions—Queensland, for example. This is, again, work which has been geared towards better health and safety protections for workers in working coupes, and it has been deemed necessary to proscribe certain conduct and to do so with penalties where necessary to prevent or to deter that sort of conduct from happening because of the dangerous nature of that activity and the risk of injury where it occurs.

Dr RATNAM: Just in response to my question, I still do not believe you have answered my question. I was asking about what other types of workplace safety improvements were considered in considering the package of this legislation prior to arriving at penalties and jail terms as the only response to improve workplace health and safety. Are you saying that there were no other initiatives contemplated or that you are not going to reveal what those initiatives were that were ruled out before jail terms and exorbitant fines?

Ms SHING: Dr Ratnam, there are already frameworks that exist within OH&S legislation. The fact of the matter is that this legislation does not limit lawful activity. What it does do is seek to actually provide a framework for sanction of unlawful activity within those timber harvesting safety zones and in fact to make sure that illegal protests, which are outside the control of VicForests, are able to be eliminated or otherwise prevented through that system of fines and of penalties that will operate. There is not actually any alternative for VicForests to enforce the law itself, which is why as a complement to the OH&S framework this bill is a reasonable and proportionate response to the sorts of practical issues and risks that are being experienced or indeed have been experienced by workers in the timber harvesting safety zones.

Dr RATNAM: Thanks, Minister. I still do not believe you have responded to my question, and I think there has been a conflation of now moving into talking about legality and illegality of certain actions with workplace health and safety issues. The government repeatedly has justified the introduction of this bill and these draconian fines and jail terms because of what they claim are workplace health and safety issues, and why these fines are needed to deter protesters and improve workers health and safety. So I have been asking about the arrival of that framework and the responses

that are legislated and codified in this bill which are seemingly actions that would improve workers health and safety, which is why I have been asking about what assessment of the threat has occurred.

In the arrival of the general risk assessment, what other levers of improving workers health and safety were contemplated to ensure that they were appropriately considered? So if the government is saying, 'This was the last resort; we tried everything else and nothing else worked', I would like to know that. But if you are saying to us that nothing else was contemplated, that this has just been talked about in terms of legality and illegality of actions, essentially the government in this case is deciding what is legal and illegal, and it does that through new laws. Those things move. Things that were once considered lawful protests have been made unlawful by successive governments who want to crack down on activities they do not like that are interrupting activities that they do not want to be held to account for, so it is really important that we question what is actually occurring here.

Why is this being brought before us? This is unprecedented and dangerous. It cannot be overstated how dangerous this is, which is why it is important we interrogate what has gone behind this. What justification is there? What other work occurred prior to this intervention being justified and proposed through this legislation? So my question is: were other measures to improve workers health and safety—if that indeed is the issue driving this bill—contemplated, considered, ruled out for various reasons? Is there any way the public could get hold of that information so they can be more assured that this is happening for genuine reasons and not for other motives that we are not aware of?

Ms SHING: Thank you, Dr Ratnam. There are a range of activities that have been undertaken which themselves go beyond the reach of protocols that are there to manage unauthorised persons. In eliminating or indeed reducing so far as possible inherent risk it has been necessary, for example, to go beyond processes such as locking down and turning off machinery when there is a protester identified in a timber harvesting safety zone. But we still come up against the example that I referred to before, the black wallaby tactic, which involves that camouflaged masked protester activity running in and out of timber harvesting safety zones, and that disruption has included reported instances of protesters shining torches on timber harvesting workers and using radios to obtain the names of harvesting workers. The very nature of intentional camouflage creates a risk which itself is beyond the scope of VicForests to manage where it involves deliberate concealment of the human form in a way that presents a surprise and therefore distress, if not serious injury of a physical nature or even the risk of a fatality.

Beyond that, what I would say is that tree-sitting along with chaining by protesters to active timber harvesting machinery and physical interference with machinery have been part of the range of factors that have been in play. Again, use of a range of other tactics has included psychological stress on timber harvesting contractors, who are actually scared that when they go to work they are going to accidentally injure or kill somebody while they are there. So WorkSafe has reviewed these incidents and was satisfied that the VicForests safety system was doing all that it possibly could within those protocols, but it is now up to the government to step in to actually introduce and implement those sanctions that tackle the further harm that is beyond the reach of VicForests to manage within what it can do as far as eliminating inherent risk goes.

Dr RATNAM: Minister, in a letter to the Premier today the three unions who penned that letter argue that the bill makes a mockery of psychosocial safety in the workplace. These are three unions whose coverage of workers across the Victorian economy is significant and whose understanding of workplace safety should be listened to. What is the government's response to that critique?

Ms SHING: As I understand it, we are waiting on some information and detail from Dr Ratnam given that I am just not across the context of the quote that Dr Ratnam has just placed on the record. So I will wait for that, and then perhaps we can provide a response. Thanks.

Dr RATNAM: Thank you, Minister. Minister, our offices have been contacted by citizen scientists concerned that these new laws will prevent citizen scientists surveying for threatened species in public

forests. We share the concerns that these laws could be used against members of the public simply looking for endangered greater gliders, powerful owls or other threatened species, putting them at risk of $21 000 fines and time in jail. What guarantees can the government give to citizen scientists that their work will continue?

Ms SHING: Citizen science can in fact occur in other places around the state. There are 7 million-plus hectares of forest. There may well be other rules or restrictions in place for a range of other reasons, particularly if there are unsafe physical environments due to rockfall or land movement—subsidence et cetera. But the bottom line is: citizen science can take place across the state forest in places other than working coupes where other rules are not in place to prevent that from happening.

Dr RATNAM: Just to clarify, Minister, within the coupes that this bill does cover, the government cannot guarantee that the citizen scientists will not be hit with the same really significant penalties and jail terms. Is that the response?

Ms SHING: Thank you, Dr Ratnam. Working coupes are working coupes, which means that it is not an option for anyone to enter a working coupe unless they are authorised to do so. Citizen scientists present the same risk in a range of circumstances—not all, because presumably there is not a black wallaby component to citizen science activities. But where those circumstances involve, for example, contractors not knowing that there are people on the working coupes and therefore narrowly missing them with trees, which was one of the examples that I read out earlier because a contractor was unaware that there was anybody there, that is a matter that is captured by the nature of this legislation, whether somebody is a citizen scientist or a protester dressed in camouflage gear springing out in front of a piece of machinery at night.

Dr RATNAM: Thank you, Minister. We have had instances previously where citizen science that has occurred within coupes has been so important that it has led to court challenges and contests about the legality of the logging and whether the logging should continue in that coupe because of new data that has emerged about threatened species, for example. We are talking here about species on the brink of extinction, right? So finding a few of them in a logging coupe is really, really significant if you do not want to drive that species to extinction. Has the government contemplated how it is going to manage the value of that citizen science in stopping a number of species from being pushed to the brink of extinction? A number of those species are actively the subject of what is happening in coupes, and it is the reason why there are so many protests. Logging companies have been given the go-ahead to log areas where there are known to be threatened species, so here lies the tension. How is the government going to manage that tension when citizen scientists have been at the forefront of revealing really significant evidence which has at times led to logging being ceased in those areas to protect those threatened species? How is it going to manage that valuable information that citizen science brings, even to working logging coupe areas?

Ms SHING: Thank you, Dr Ratnam. This bill does not actually change the places where citizen science can take place. The bill itself is about addressing safety risks. So the intention of the bill is to actually manage the risk of physical or psychological harm in working coupes where there are activities taking place, including unlawful protest, that compromise the safety of people on that site. It is not dissimilar, by way of example, to somebody walking across a forklift track, an identified track where heavy machinery can operate inside a factory. The bottom line is that whether somebody is gathering information about a particular matter or indeed seeking to disrupt the movement of machinery, it presents a risk that requires management because of its inherently dangerous nature and the possibility of physical or psychological injury or even death.

Dr RATNAM: Thank you, Minister, for that response. I find it deeply concerning that consideration has not been given to how you preserve that citizen science and do not deter it, like the protesters you are attempting to deter through this bill, because we will lose so much valuable knowledge. We sat through a parliamentary inquiry into extinction for months on end, the largest of its kind and the largest this Parliament has undertaken this term, which highlighted how precarious the

situation is and how important citizen scientists have been to uncovering really significant information about where species are and where logging needs to be halted because a species has been found, for example, where it has not been found before through previous surveys. That has been really valuable, and if this government values protecting our biodiversity and stopping these species from being pushed to extinction, I would have thought it would have given every consideration to how it can make sure that citizen scientists are not inadvertently captured through these really draconian measures that deter them from doing their really important work, because we are going to lose species when these kinds of laws are just slapped across huge areas. It is going to have a really significant impact, so I am really concerned about that. Minister, given the intended chilling impact of these laws on citizen scientists, being threatened with fines and jail, what additional resources will be provided to make up for the work they will no longer be able to do as a result of these laws?

Ms SHING: There is a measure of biosecurity work being done on the protection of species, and to that end we note recent reports from the commonwealth which indicate the list of threatened or extinct species and the vulnerability that is increasing in area across Australia, particularly when we compare our performance here as far as species protection goes in Australia and more broadly. It is one of those areas, though, where we need to make sure that citizen science does not take place at the expense of the health and safety of either those citizen scientists or of people who are working on coupes as contemplated within the timber harvesting safety zones. So we need to again be very clear about the importance of making sure that people are not being seriously injured or being killed in working coupes because of activity that places them at risk, and again that goes back to a number of the comments that I have made in earlier answers to your questions.

Clause agreed to; clause 2 agreed to.

Clause 3 (19:37)

Mr MEDDICK: Minister, clause 3 expands the definition of 'prohibited thing', and I note that in your answers to Ms Bath you gave some descriptions there and some further descriptions about other things that were prohibited things as well. I note that there is another example in clause 3, which speaks about specialised climbing equipment, for instance, and chains and locks. Can the minister describe what the practical limits are on the new definition of 'any other prescribed prohibited thing'? Are there any further things that we are not seeing here in the bill that might be included later on, for instance, or should they be in the bill now?

Ms SHING: Thanks, Mr Meddick, for that question. One of the things that this list does is provide an inclusive range of things which are prohibited, and that contemplates the sorts of articles that have been referred to in a number of contributions in the second-reading debate. In not confining that to just that list the intention is that where there are other objects that present a risk of harm, they would then be able to be included by way of regulation as prohibited things within the meaning of clause 3 and the definitions in subclause (2).

Mr MEDDICK: Thank you, Minister, for that answer. My other question would be then, in that instance: if they are prescribed in the regulation at a later date, for instance, in a practical sense out on the ground at a logging coupe on the day when an incident is occurring what would be the process of ascribing the term 'prohibited thing' to something? Is it an arbitrary decision of the authorised officer that they consider that something that a person is carrying is a prohibited thing and that that thing represents a danger? Or will they be limited to what is strictly within the regulations as they are prescribed?

Ms SHING: I will take you to clause 1 of the bill, Mr Meddick, which refers to expanding the definition of 'prohibited thing' in a timber harvesting safety zone to include the items that I referred to earlier or another item used in the commission of an offence. So in all of the circumstances it would depend upon whether that item was used in the commission of an offence. That necessarily requires a consideration of the circumstances in play in each individual situation. There may well be prohibited

things which are in play in certain circumstances which in and of themselves might otherwise not be prohibited things. But that would be informed by the way in which that commission of an offence has occurred such as to bring them under the scope of the new and amended clause 3.

Mr MEDDICK: Thank you, Minister, for that clarification because that is an important clarification to make, I believe, because it speaks to an offence being committed rather than something pre-emptive in terms of a search. That officer, for instance, might look at that thing and go, 'Well, I believe that you are about to use that thing in the commission of an offence' rather than an offence having already occurred. So that is a really important definition.

I thought I would let you know that Dr Ratnam did not have your number to forward to you what she was looking for before, and I have sent that to you on your phone.

Ms SHING: Thank you, Mr Meddick, for this collective approach to the use of technology here this evening. It has been a long week, and I am grateful for your real-time assistance in this matter. If you would like to perhaps tag team with Dr Ratnam on asking that question now, I would be happy to go to it should that be something that you wanted to deal with now. Alternatively, we can come back to it later. But please be aware that I have got the letter from a range of people, including you, Mr Meddick, and I am now in a position to provide some further information in the context of that particular quote which I had not actually seen before. So thanks, Mr Meddick. Thank you, Dr Ratnam.

Clause agreed to; clauses 4 and 5 agreed to.

Clause 6 (19:42)

The DEPUTY PRESIDENT: I invite Ms Bath to move her amendments 1 and 2, which are a test for her amendments 3 and 4.

Ms BATH: I move:

1. Clause 6, line 22, omit "In the" and insert "(1) In the".
2. Clause 6, after line 24, insert—

'(2) After section 77F(2) of the **Sustainable Forests (Timber) Act 2004 insert**—

"(3) Subsection (1) does not apply to a dog owned by an authorised person engaged in timber harvesting operations in a timber harvesting safety zone.".'.

I went through this in a fairly substantial way in my second-reading speech, but in the end both these amendments relate to dogs owned by authorised timber workers being allowed to be on the coupe. I have cited an example, as there are occasions where timber harvesters are in remote areas for a long period of time. On the worksite there is a landing, and on that landing there is some form of accommodation. It can be a caravan, and they would live there for a period of time because coupes can take up to six to eight weeks. And this would just enable a dog to be on that site under the responsibility of the harvester and all that entails: (1) for companionship and (2), say, if it is tied up in the evening, it could actually act as some security because if it hears something that should not be there, as in a person or a protester, it could alert the owner.

The DEPUTY PRESIDENT: Thank you, Ms Bath. Just before I ask someone to respond, I remind the crossbench that they like to be heard in silence and they should extend the same courtesy to other speakers in the chamber. Does anybody have any questions of Ms Bath or wish to make a statement?

Ms SHING: Thank you, Ms Bath, for that question and also for the way in which you have advocated for the position of dogs being able to provide companionship to people who are working on those coupes in the timber safety harvest zones.

I am not going to quibble with you about the importance of dogs to people's psychological health and wellbeing. My views on the importance of our canine friends are very well known in this place and indeed the world over, to the point where I suspect people would quite like me to stop talking about

them. But one of the things I also know as a dog owner is that I would hate to expose any of my animals, as I am sure other pet owners would hate to expose their animals, to risk of injury or death. When you are on a worksite that involves heavy machinery, tree fall and indeed many other risks it is not reasonable to accommodate that risk by allowing a dog to be in a working coupe. Tying the dog up during the day is not a way to manage risk where in fact there is a possibility that that dog may be untethered, may get away and may run in front of machinery, thus causing the same sort of risk or injury as other circumstances referred to earlier.

Dr RATNAM: Just responding to Ms Bath's amendments—and there are two sets of amendments that the opposition are moving, so this speaks to both sets of those amendments—the Greens will be opposing both these sets of amendments.

It is incredible that the opposition can still manage to try and make this bill even worse. How out of touch they are with the majority of Victorians who want to end native forest logging and for our precious forest to be protected for the future. It is very easy to see why they are becoming very irrelevant when they bring before us things that will make—and I am talking to the whole set of amendments, the subsequent amendments as well, which I will not make a later contribution on. It is really obvious that they do not contemplate and recognise the threat of climate change, the biodiversity loss and the habitat loss that we have spent months in a parliamentary inquiry researching in great depth. Particularly this next set of amendments undermine a bad bill even further. We will not be supporting either set of amendments.

Mr MEDDICK: I just want to thank Ms Bath for contacting me and running through these particular amendments that she has. I also just want to sort of echo the statements of Minister Shing. I share those concerns about dogs being in that particular zone, regardless of whether they are with a protester or a timber worker. I am also concerned about the fact that should a dog become loose the danger to native animals is also still there in equal measure, whether it is a protester's dog that is loose in that coupe or whether it is a timber worker's dog, and I want to protect the safety of both of those classes of animals.

Committee divided on amendments:

Ayes, 16

Atkinson, Mr	Crozier, Ms	Limbrick, Mr
Bach, Dr	Cumming, Dr	Lovell, Ms
Barton, Mr	Davis, Mr	Maxwell, Ms
Bath, Ms	Finn, Mr	McArthur, Mrs
Bourman, Mr	Grimley, Mr	Quilty, Mr
Burnett-Wake, Ms		

Noes, 18

Elasmar, Mr	Meddick, Mr	Stitt, Ms
Erdogan, Mr	Melhem, Mr	Symes, Ms
Gepp, Mr	Patten, Ms	Tarlamis, Mr
Hayes, Mr	Pulford, Ms	Taylor, Ms
Kieu, Dr	Ratnam, Dr	Terpstra, Ms
Leane, Mr	Shing, Ms	Watt, Ms

Amendments negatived.

Clause agreed to; clauses 7 to 10 agreed to.

Clause 11 (19:55)

Mr MEDDICK: In the previous minister's second-reading speech she asserted that all offences are only applicable in an exclusion zone—in a timber harvesting zone. In regard to the hindering offence, if a lawful picket line is then established outside the timber harvesting zone and prevents entry to that zone, would that be considered a hindrance offence under this legislation?

Ms SHING: If it is lawful, it remains lawful under the bill. I know that sounds like I am speaking in riddles, but the way in which the question has been asked invites me to just put that answer to you, if that assists, Mr Meddick.

Clause agreed to; clause 12 agreed to.

Clause 13 (19:56)

Mr MEDDICK: Minister, clause 13 introduces new section 88A and expands the search and seizure powers in a timber harvesting safety zone. Can you confirm that the extended search and seizure powers issued to authorised officers will allow those officers to search someone's personal property on the mere suspicion that the person could possibly have something and possibly use that thing to try and stop the process of cutting down native forests?

Ms SHING: Mr Meddick, vehicle and personal property searches will be allowed to be undertaken if a vehicle or personal property, such as bags, are within a timber harvesting safety zone and the authorised officer or police officer believes on reasonable grounds that they may contain a prohibited thing or an item being used or about to be used in the commission of an offence. Sorry, I am happy to add, if this might assist you, Mr Meddick, that the circumstances of what constitutes 'on reasonable grounds'—again, to come back to what I said to you earlier—will depend upon the circumstances in play in any given situation.

Mr MEDDICK: Thank you, Minister, for your answer. Will the reasonable belief or reasonable grounds, as you have said, have the opportunity to be tested in a court of law?

Ms SHING: Thanks, Mr Meddick. The answer is yes.

Mr MEDDICK: Thank you, Minister. My next question has already been answered by something else that you have already answered, so I will move on to the next one. What burden of evidence will be placed upon the authorities at the moment the officer claims a reasonable belief a crime will be committed?

Ms SHING: Thank you, Mr Meddick. The authorised officer or indeed police officer must have a reasonable belief, which involves that consideration of the relevant circumstances in play. Again, it is not an unusual circumstance in the exercise of judgement as to whether a crime or an offence has been committed or may be about to be committed.

Mr MEDDICK: Thank you, Minister, for that. The next two run to that thing that you have already answered as well about the powers only being used in a timber harvesting safety zone and that they will not be enacted outside of a timber harvesting safety zone. So my next question then will be: can you confirm that if the extended search and seizure powers do occur outside of a timber harvesting safety zone all the subsequent charges and fines will be determined to be invalid?

Ms SHING: Thank you, Mr Meddick. Again these are circumstances which would be subject to judicial review and therefore could be interpreted and determined by the courts, so that burden of evidence would be on the prosecution to establish compliance within the terms of the bill as it relates to conduct that interferes with, obstructs or hinders timber harvesting operations, including through use of a prohibited thing or anticipation that the commission of an offence might occur by reference to that prohibited thing.

Ms BATH: I went through this in great detail in my substantive contribution to the second-reading debate. I move:

5. Clause 13, line 26, omit "**in timber harvesting safety zones**".
6. Clause 13, lines 27 to 31, omit all words and expressions on these lines.
7. Clause 13, page 6, line 6, omit "Act." and insert 'Act.".'.
8. Clause 13, page 6, lines 7 to 9, omit all words and expressions on these lines.

Ms SHING: Thank you, Ms Bath, for your very pithy contribution and summary. Given the late hour, I am sure we are all grateful. The government will not be supporting your amendments, Ms Bath.

Mr LIMBRICK: The Liberal Democrats will not be supporting these amendments, and I am glad to say that Mr Quilty and I are united on this once again. The concept of property rights outside of the coupe does not apply; therefore we are united in our opposition to expanding these search powers outside of the coupe.

Committee divided on amendments:

Ayes, 13

Atkinson, Mr	Burnett-Wake, Ms	Grimley, Mr
Bach, Dr	Crozier, Ms	Lovell, Ms
Barton, Mr	Davis, Mr	Maxwell, Ms
Bath, Ms	Finn, Mr	McArthur, Mrs
Bourman, Mr		

Noes, 20

Elasmar, Mr	Meddick, Mr	Stitt, Ms
Erdogan, Mr	Melhem, Mr	Symes, Ms
Gepp, Mr	Patten, Ms	Tarlamis, Mr
Hayes, Mr	Pulford, Ms	Taylor, Ms
Kieu, Dr	Quilty, Mr	Terpstra, Ms
Leane, Mr	Ratnam, Dr	Watt, Ms
Limbrick, Mr	Shing, Ms	

Amendments negatived.

Clause agreed to; clauses 14 to 21 agreed to.

Clause 22 (20:09)

Mr MEDDICK: Minister, new division 2 allows authorised officers to issue banning notices. These banning notices appear to be a form of arrest, charge, conviction and penalty in one fell swoop. Can you confirm that the penalty will not be determined by a court of law but rather by an officer acting under the auspices of the regulations?

Ms SHING: Thank you, Mr Meddick, for that question around division 2. This division allows an authorised officer to issue banning notices, as you have indicated, and these penalties and any sentence for breaching a banning notice would in fact be determined by a court.

Mr MEDDICK: Thank you, Minister, for your answer. Can I ask, then: does the magistrate have any role in regard to banning people from entering timber harvesting zones in protest of logging native forests?

Ms SHING: Thanks, Mr Meddick. Part 9B of the Sustainable Forests (Timber) Act already in fact gives the courts the power to make exclusion orders, which can exclude a person from entering a timber harvesting safety zone specified in the order. A court can make this order if they have found a person guilty of a specified offence and the court is satisfied that the order may be an effective but also reasonable means of preventing the offender from committing a further specified offence. That is actually separate to the banning framework in the bill.

Mr MEDDICK: Thank you, Minister, for that answer, because it does take care of the next question that I had in that line, so I will go to the last question that I have on this clause. Can you confirm that these powers to issue banning notices will not be misused by pre-emptively banning potential protesters who are approaching a logging area?

Ms SHING: Thanks, Mr Meddick. The person has to have grounds to make the notice. It is a legal requirement. It is in fact a precondition of using the power at all that those grounds exist. That then includes having the reasonable belief that the person has committed or is committing a specified

offence and that the banning notice may be effective in preventing that person from committing the specified offence, continuing to commit that offence or committing a further specified offence or that the continuation of the offence may give rise to a risk to the safety of a person or indeed hinder the work of a person within the timber harvesting safety zone.

Mr HAYES: Minister, just on that, on Mr Meddick's line of questioning about the banning notices, can a court of law remove a banning notice that has been applied by an officer?

Ms SHING: Thank you, Mr Hayes, for that curveball at 12 minutes past 8 on a Thursday night. I can confirm that a court could technically address this matter in relation to a banning notice under the broader framework of judicial review but that there is also a capacity for another police officer or indeed the secretary of the department to remove that ban. Does that help?

Mr HAYES: Yes. Thank you, Minister.

Clause agreed to; clause 23 agreed to.

Clause 24 (20:14)

Mr MEDDICK: I note that the intent of the bill here is that protesters will now be subject to increased penalties when they refuse to comply with an exclusion order. How does that affect a person who is subject to other orders?

Ms SHING: Thanks, Mr Meddick. Increasing the penalty for breach of an exclusion order should not affect or impact upon any other orders that a person might be subject to.

Mr MEDDICK: Thank you, Minister, for that answer, and it does answer the next part of that question. I will move to my last question, if that is okay. Minister, can these people continue to protest—despite the fact that they are subject to an exclusion order inside the safety zone—outside of that exclusion zone?

Ms SHING: Thanks, Mr Meddick. Exclusion orders that are made by courts can potentially exclude a person from entering an area of state forest specified in the order, in addition to those timber harvesting safety zones. That is in fact Victoria's current law. So that is not impacted by the changes that are set out in this bill.

Dr RATNAM: I wish to come back to my previous question that you were going to take on notice. We might as well acquit it in this last clause, given that it is open. So, Minister, by way of repetition, in their letter to the Premier today the three unions argued that the bill 'makes a mockery of psychosocial safety in the workplace'. These are three unions whose coverage of workers across the Victorian economy is significant and whose understanding of workplace safety should be listened to. What is the government's response to that critique?

Ms SHING: Thank you, Dr Ratnam, for coming back to this question, and to the 590 people who have since sent me this letter that appeared in the paper today. I am grateful for the opportunity to inform myself on the hop. In relation to the point that you have made by way of extracting the reference to 'a mockery of psychosocial safety in the workplace', I have taken you through, Dr Ratnam, a range of the examples of psychological harm and also the impact of certain actions, whether it relates to physical injury or serious injury or indeed death—so fatalities in the workplace—or in fact that psychological harm and distress. By reference to the practical application of this bill, I would just note that there has also been an endorsement of the bill by the wooden pulp fibre industry of Victoria and the Victorian Forest Products Association, including as it relates to the management of psychosocial health in the workplace and therefore of workplace systems that contemplate safety at their heart in risk management.

Clause agreed to; clauses 25 and 26 agreed to.

Reported to house without amendment.

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (20:19): I am nothing if not nimble tonight, it would appear. I move:

That the report be adopted.

Motion agreed to.

Report adopted.

Third reading

Ms SHING (Eastern Victoria—Minister for Water, Minister for Regional Development, Minister for Equality) (20:19): I move:

That the bill be now read a third time.

In doing so I want to take a moment to thank Minister Tierney, who has put an awful lot of work into this bill, into the stakeholder engagement and the work that has led to this bill being brought before the house tonight. I also want to place on the record my thanks and gratitude to Veronica, to Zane and to Daniel, who have provided me with real-time assistance in the course of this quite impromptu process, and I also thank the house for the latitude afforded to me this evening in assisting with that.

The PRESIDENT: The question is:

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

House divided on question:

Ayes, 30

Atkinson, Mr	Erdogan, Mr	Pulford, Ms
Bach, Dr	Finn, Mr	Quilty, Mr
Barton, Mr	Gepp, Mr	Rich-Phillips, Mr
Bath, Ms	Grimley, 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	Melhem, Mr	Watt, Ms

Noes, 5

Hayes, Mr	Meddick, Mr	Ratnam, Dr
Limbrick, Mr	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 same without amendment.

VICTORIAN ENERGY EFFICIENCY TARGET AMENDMENT BILL 2022

Introduction and first reading

The PRESIDENT (20:26): 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 **Victorian Energy Efficiency Target Act 2007** and the **Essential Services Commission Act 2001** and for other purposes'.

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (20:26): I move:

That the bill be now read a first time.

Motion agreed to.

Read first time.

Ms STITT: I move, by leave:

That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (20:27): I lay on the table a statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006* (**Charter**), I make this statement of compatibility with respect to the Victorian Energy Efficiency Target Amendment Bill 2022 (the **Bill**).

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

Overview of the Bill

The main purposes of the Bill are to—

(a) amend the **Victorian Energy Efficiency Target Act 2007** to—

(i) expand the powers and functions of the Essential Services Commission under that Act; and

(ii) introduce new requirements relating to accreditation, including annual review and fit and proper person requirements; and

(iii) extend the operation of the Victorian energy efficiency target scheme; and

(iv) provide for the grant and administration of accounts for transferring certificates under that Act; and

(v) make further provision for the internal review and provide for the external review of certain decisions made by the Essential Services Commission; and

(vi) make further provision for matters relating to the enforcement of that Act and the regulations made under that Act, including by introducing new offences and engaging with the civil penalty requirement regime under the **Essential Services Commission Act 2001**; and

(vii) provide for the conduct of compliance audits and assurance audits of accredited persons; and

(viii) make other miscellaneous and consequential amendments; and

(b) make a consequential amendment to the **Essential Services Commission Act 2001**.

Human rights issues

The VEET Act established the VEET scheme, which promotes activities that will contribute to a reduction in greenhouse gas emissions by consumers of electricity and gas. The VEET scheme operates so that individual consumers who undertake activities to abate the use of energy can create energy certificates, which can then be sold to retailers who are required to produce a certain number of certificates each year to the Commission. Under the VEET scheme, businesses, body corporates or sole traders may become 'accredited persons' who are authorised to create energy efficiency certificates. Insofar as a natural person may, however, become an accredited person under the VEET scheme, a number of human rights issues arise.

The Charter rights to privacy (section 13(a)), property (section 20), and fair hearing (section 24(1)), as well as the presumption of innocence (section 25(1)), protection against self-incrimination (section 25(2)(k), and protection against double punishment (section 26), summarised below, are relevant to the Bill.

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 accessible and

precise, 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 of the Charter provides that a person must not be deprived of their property other than in accordance with law. The right will not be limited where the law (whether legislation or the common law) authorising the deprivation of property is clear and precise, accessible to the public, and does not operate arbitrarily.

Section 24(1) of the Charter provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The concept of a 'civil proceeding' is not limited to judicial processes, but may encompass the decision-making procedures of many types of tribunals, boards and other administrative decision-makers with the power to determine private rights and interests. The right may be limited if a person faces a procedural barrier to bringing their case before a court, or where procedural fairness is not provided. However, the entire decision-making process, including reviews and appeals, must be examined in order to determine whether the right is limited.

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 the offence.

Section 25(2)(k) of the Charter provides that a person charged with a criminal offence is entitled not to be compelled to testify against themselves or to confess guilt. This right is at least as broad as the common law privilege against self-incrimination. It protects against the admission, in subsequent criminal proceedings, of incriminatory material obtained from a person under compulsion, regardless of whether the information was obtained prior to or subsequent to the criminal charge being laid.

Section 26 of the Charter provides that a person must not be tried or punished more than once for an offence in respect of which they have already been finally convicted or acquitted in accordance with law.

Requirements to provide information to the Commission

Clauses 7, 9, 10, 24 and 38 of the Bill (described below) each require certain persons to provide information to the Commission.

Clause 7 of the Bill amends section 9 of the VEET Act, which relates to applications to the Commission to become an accredited person or to renew an existing accreditation. Relevantly, new section 9(2) requires an applicant to declare that they are a 'fit and proper person' and a 'competent and capable person' and, when applying for renewal, to include a declaration and a report as to the person's compliance or non-compliance with any CPD obligations, or conditions or restrictions on accreditation. In addition, new section 9(4) provides that an applicant for renewal of accreditation must provide evidence to the Commission to support the person's declaration, where the Commission so requires under new section 10A (inserted by clause 9). New section 11(4) inserted by clause 10 provides that in determining an application for the grant or renewal of accreditation, the ESC may have regard to any available information about any previous conduct of the applicant in exercising powers and performing duties as an accredited person

Clause 9 of the Bill inserts new sections 10A, 10B and 10C into the VEET Act. Under new section 10A, the Commission may require an applicant for accreditation or renewal to provide evidence as to whether they are a fit and proper person, and a competent and capable person, and to provide any other information relevant to the application. New sections 10B and 10C set out the kinds of matters which the Commission may consider, including whether the person has been found guilty of, or has a pending change in relation to, certain offences.

Clause 24 of the Bill inserts new Division 6 into Part 3 of the VEET Act, which relates to applications to the Commission to open a VEET scheme registry account. New section 26A(2)(a) provides that an applicant must include a declaration that they are a fit and proper person, and new section 26A(2)(c) requires an applicant to provide any other information requested by the Commission. Clause 24 also inserts new section 26H also powers ESC to request by ESC for further information may request a person who holds a VEET scheme registry account to provide within a period (not less than 14 days) specified in the notice—

(a) evidence as to whether the accredited person is a fit and proper person for the purposes of holding a VEET scheme registry account;

(b) any other information relevant to whether the person should hold a VEET scheme registry account.

Clause 38 inserts new Division 3 (suspension and cancellation of accreditation) into Part 3 of the VEET Act. New section 14AD(1) provides that the Commission may, by written notice, request an accredited person to provide evidence as to whether they are a fit and proper person, and a competent and capable person, and to provide any other information relevant to the accredited person.

Privacy

To the extent that the information which a person must provide to the Commission under clauses 7, 9, 10, 24 and 38 may include personal information, these clauses may interfere with the right to privacy in section 13(a) of the Charter. In my opinion, any interference with privacy effected pursuant to these clauses will be lawful, as the amended or new provisions of the VEET Act are accessible and precisely formulated. I am also satisfied that any interference with privacy made in accordance with these sections will not be arbitrary, as it is reasonably necessary to support the Commission's ability to ensure that only fit, proper, competent and capable persons receive accreditation, which in turn supports the integrity of the VEET scheme.

In particular, any interference with a person's privacy will be modest, as there is a reduced expectation of privacy in the context of a regulated industry like the VEET scheme. Persons participating in the scheme do so voluntarily, and so any decision to disclose information to the Commission is ultimately at the discretion of the applicant.

In addition, the kinds of matters the Commission may consider in relation to a person's accreditation (and therefore, the information which may be 'relevant' to an application or to accreditation) are carefully tailored to the legislative objective of ensuring accredited persons are fit, proper, competent and capable.

Furthermore, existing section 65 of the VEET Act contains an important privacy safeguard, by making it an offence to disclose confidential information obtained during the exercise of powers or functions under, or in connection with, the VEET Act, except in limited circumstances.

Offence for failure to disclose adverse matter without reasonable excuse

Clause 13 of the Bill inserts new Subdivision 4 into Division 1 of Part 3 of the VEET Act. New section 14D provides that it is an offence for an accredited person to fail, without 'reasonable excuse', to disclose to the Commission any adverse matter as defined in new section 10B(2) to mean any matter that is likely to impact on the ESC considering the person to be, for the purposes of accreditation—(a) a fit and proper person, having regard to the matters specified in section 10B; or (b) a competent and capable person, having regard to the matters specified in section 10C.

This clause engages the Charter right to privacy (section 13(a)), the presumption of innocence (section 25(1)), and protection against self-incrimination (section 25(2)(k)). However, for the reasons set out below, I do not consider that clause 13 limits these rights.

Privacy

The requirement in new section 14D for an accredited person to disclose any 'adverse matter' to the Commission may interfere with an accredited person's privacy (where they are a natural person). However, for the reasons set out above in relation to clauses9, 10, 24 and 38, any such interference will be lawful (new section 14D is accessible and precise) and reasonably necessary to the objective of safeguarding the integrity of the VEET scheme. Therefore, clause 13 does not limit the right to privacy.

Presumption of innocence

New section 14D engages the presumption of innocence because the 'reasonable excuse' exception places an evidential burden on a person accused of the offence. However, it does not transfer the legal burden of proof to the accused. Once the accused has adduced (or pointed to) evidence of a reasonable excuse, which will ordinarily be particularly within their knowledge, the burden shifts back to the prosecution to prove the essential elements of the offence. I do not consider that an evidential onus of this kind limits the right to be presumed innocent in section 25(1) of the Charter.

Protection against self-incrimination

New section 14D requires an accredited a person to disclose any adverse matter (as defined in new section 10B(2)) to the Commission, which includes whether the person has been found guilty of certain criminal offences (new section 10B(a) to (c)), whether the person has a pending charge for an alleged commission of an offence specified in new section 10B(a) to (c) (new section 10B(d)), whether the person has engaged in any improper or adverse conduct (new section 10B(f)), and whether the person has failed to comply with a court or tribunal or ESC order (new section 10B(k)). Failure to disclose, without reasonable excuse, is an offence.

To the extent that a person may be required to disclose information which could tend to incriminate them, new section 14D may engage the protection against self-incrimination under section 25(2)(k) of the Charter. In my view, however, the right is not limited because the duty to disclose is subject to a 'reasonable excuse' defence, which expressly includes under new section 14E that that it is a reasonable excuse for the purposes of section 14D(1) for a person to refuse or fail to disclose an adverse matter within the meaning of that section if the disclosure of the adverse matter would tend to incriminate the person.

This is also consistent with existing protections against self-incrimination contained in sections 52 and 62 of the VEET Act.

Commission's power to suspend or cancel accreditation or VEET scheme registry account

Clause 38 replaces sections 14 and 14A of the VEET Act with new Division 3 (suspension and cancellation of accreditation) of Part 3. New section 14 empowers the Commission to suspend (for a period not exceeding 12 months) or cancel a person's accreditation, or cancel a person's accreditation and disqualify them from reapplying for renewal (for a period not exceeding 5 years), where it believes on reasonable grounds that any of the grounds set out in subsection 14(1) are met. The grounds include that the accredited person has committed an offence against the VEET Act, failed to comply with the requirement of the VEET Act or regulations relating to the recording or undertaking of prescribed activities, or obtained accreditation improperly. New section 15A(c) (inserted by clause 39) provides that it is an offence for a person to undertake a prescribed activity if their accreditation is suspended or has been cancelled. New section 14AB provides that the Commission may suspend the accreditation of an accredited person without notice if the Commission considers immediate suspension necessary, having regard to whether the person is a fit and proper person, whether the person is a competent and capable person, and the purposes of the VEET Act.

Clause 24 of the Bill inserts new Division 6 (VEET scheme registry accounts) into Part 3 of the VEET Act. New section 26D provides that the Commission may suspend a VEET scheme registry account for a period of up to 12 months if the Commission determines that the account holder is not a fit and proper person, or the account holder breaches a condition of the account. New section 26F empowers the Commission to suspend an account without notice where it considers that immediate suspension is necessary, having regard to whether the account holder is a fit and proper person, and the purposes of the VEET Act. New section 26I provides that the Commission may cancel an account if the Commission has suspended the account on 3 occasions. A person must not trade or surrender a certificate if the person's account is suspended or cancelled, unless the Commission has granted them permission (new section 26K(2)).

For the reasons set out below, I consider that clauses 24, 38 and 39 may engage, but do not limit, the Charter rights to privacy (section 13(a)), property (section 20) and fair hearing (section 24(1)), and the protection against self-incrimination (section 25(2)(k)) and double punishment (section 26).

Privacy

Restrictions upon a person's ability to work may engage the right to privacy in circumstances where they have a sufficient impact upon a person's capacity to experience a private life, maintain social relations or pursue employment. Therefore, clauses 24, 38 and 39 may empower the Commission to interfere with a person's right to privacy.

However, any interference will be neither unlawful (because it is authorised by an accessible and precise law) nor arbitrary.

In particular, the Commission may only suspend or cancel a person's accreditation, or cancel an accreditation and disqualify the person from seeking renewal, for one of the reasons listed in section 14(1). These grounds are appropriately tailored to the objective of enabling the Commission to ensure accredited persons are of good character and to protect the reputation and integrity of the VEET scheme. There are express time limits on suspension or disqualification. Similarly, the Commission may only suspend or cancel a VEET scheme registry account where the holder is no longer a fit and proper person (for example, because they have been convicted of an offence involving dishonesty or fraud), or has breached a condition of the account. This power is reasonably necessary to uphold the integrity of the accounts, and the effective operation of the certificate market more broadly.

Moreover, a person may apply for the Commission to reconsider a decision made under new sections 14 or 26D (section 56(2), replaced by clauses 25 and 42) and apply to VCAT for review of any such decision (section 56B, inserted by clauses 26 and 43). This offers further protection against any arbitrary interferences with privacy under clauses 24, 38 and 39.

Property

Insofar as an accreditation or a VEET scheme registry account could be characterised as 'property' under section 20 of the Charter, the Commission's powers to suspend or cancel an accreditation or account may be considered to affect a deprivation of a person's property.

However, I do not consider that clauses 24, 38 and 39 limit the Charter right to property because any deprivation of property made pursuant to the sections inserted into the VEET Act by those clauses will be 'in accordance with law'. In particular, the detailed list of grounds pursuant to which the Commission may suspend or cancel an accreditation or VEET scheme registry account protects against arbitrary exercises of the Commission's powers.

Fair hearing

Insofar as clause 38 provides for the immediate suspension of an accreditation (new section 14AB), and clause 24 provides for the immediate suspension of a VEET scheme registry account (new section 26F), the right to a fair hearing in a civil proceeding (section 24(1)) may be engaged. While there is doubt under the current case law as to whether the Commission would be considered a 'tribunal' so as to enliven this right, or whether 'civil proceeding' extends to administrative decision-making of this nature (involving determination of provisional and conditional interests such as accreditation or registry accounts), I will nevertheless consider this right.

The concept of a fair hearing encompasses procedural fairness, which requires a party to a proceeding to have a reasonable opportunity to put forward their case under conditions which do not place them at a substantial disadvantage to their opponent. Absence of notice prior to suspension may therefore engage this aspect of the right.

However, having regard to the entirety of the process for suspensions of accreditation or VEET scheme registry accounts, I am satisfied that a person who is a party to those proceedings will be accorded a fair hearing. In particular, new section 14AB(2) provides that the Commission must give a person whose accreditation is immediately suspended written notice stating the grounds for the suspension, and inviting the person to make a submission to establish why their accreditation should not be suspended. This allows affected persons to be properly informed of the case being advanced by the Commission, and provides them a reasonable opportunity to respond. New section 14AF(1) provides that, after considering any submissions made by the person and any other available information, the Commission may revoke a suspension under new section 14AB(1), take any action under new section 14, or take no further action. A similar process is set out in new sections 26F(2) and 26H(1) in relation to immediate suspensions of VEET scheme registry accounts. Last, as discussed above, a person may apply to the Commission to reconsider any decision of the Commission under new sections 14 or 26D (section 56(2), replaced by clauses 25 and 42) and may apply to VCAT for review of any such decision (section 56B, inserted by clauses 26 and 43).

Accordingly, I am of the view that clauses 24 and 38 are compatible with the right to a fair hearing.

Protection against self-incrimination

New sections 14A and 14AB(2) (inserted by clause 38) provides for a person whose accreditation is proposed to be suspended or cancelled, or who may be disqualified from seeking renewal, or whose accreditation has been immediately suspended, to make submissions to the Commission to establish why the action should not be taken. A similar process for submissions is included in new sections 26E and 26F(2) (inserted by clause 24), in relation to the suspension or cancellation of VEET scheme registry accounts. To the extent that the submission may relate to conduct that could also be the subject of a criminal charge against the person (for example, improper or adverse conduct, or failure to comply with a court order), clauses 24 and 38 may engage the protection against self-incrimination in section 25(2)(k) of the Charter.

While it is not mandatory for an accredited person to make a submission to the Commission, a person may nevertheless be considered to be 'compelled' (in a practical sense) to make a submission in order for the person to retain their accreditation or their VEET scheme registry account, especially where this may be critical to their livelihood.

Nevertheless, I do not consider that these provisions limit the protection against self-incrimination, because new section 14AE it is a reasonable excuse for the purposes of section 14AD(1) for a person to refuse or fail to disclose an adverse matter within the meaning of that section if the disclosure of the adverse matter would tend to incriminate the person. This is also the case in new sections 14E, 26I, and 55P. In other words, information submitted by a person to the Commission cannot subsequently be used against them in a criminal proceeding.

This is also consistent with existing protections against self-incrimination contained in sections 52 and 62 of the VEET Act.

Protection against double punishment

Clauses 24 and 38 may engage the protection against double punishment insofar as a natural person who has been previously been tried and convicted of a criminal offence may have their accreditation suspended or cancelled, and be disqualified from applying for reaccreditation, or have their VEET scheme registry account suspended or cancelled, on the basis of the same underlying conduct.

In my view, however, these clauses do not limit the protection against double punishment in section 26 of the Charter, because they do not impose penal consequences. Rather, the legislative purpose is to enable the Commission to ensure accredited persons are of good character, and to protect the integrity of the VEET scheme and the effective operation of the certificates market.

This may also apply to clause 41 in so far as a natural person is liable to an offence for not complying with a shortfall statement issued to the person under section 36. In my view, however, these clauses do not limit the

protection against double punishment in section 26 of the Charter, because the consequence from the new offence in section 37A under clause 41 is distinct and independent as a failure to comply with the statement issued by the ESC under section 36, as distinct from the civil pecuniary penalty which is a kind of restitution type payment required under section 28.

Compliance audits

Clause 52 of the Bill inserts new Part 7A into the VEET Act, which is intended to strengthen the legal framework that applies to compliance and assurance audits. New section 55A provides that, if the Commission has reasonable grounds to suspect that an accredited person has contravened a provision of the VEET Act or regulations, the Commission may conduct a compliance audit of the accredited person, or require the accredited person to arrange for a compliance audit by an independent auditor. Similarly, new section 55G provides that the Commission may require an accredited person to arrange for the conduct of an assurance audit by an independent auditor. New section 55R allows the Commission to publish information about compliance and assurance audits for accredited persons on the Commission's internet site.

This clause engages the Charter right to privacy (section 13(a)), the right to property (section 20), and the protection against self-incrimination (section 25(2)(k)). However, for the reasons set out below, I do not consider that clause 52 limits any of these rights.

Privacy

To the extent that the information that may be published on the Commission's internet site pursuant to new section 55R may include personal information, clause 52 will engage, but not limit, the right to privacy. Any interference with privacy will be lawful, as new section 55R is accessible and precisely formulated, and will not be arbitrary as it is reasonably necessary to achieve the purpose of maintaining the integrity of and maintaining public confidence in the VEET scheme.

In particular, any interference with a person's privacy will be modest, as there is a reduced expectation of privacy in the context of a regulated industry like the VEET scheme and persons participating in the scheme do so voluntarily. Also, new section 55R limits the type of information which may be published: the Commission may not publish information about an accredited person where the auditor identified significant issues.

Lastly, the Commission is a 'public authority' under the Charter, so it must act in accordance with human rights (including the right to privacy) when disclosing personal information (s 38 of the Charter).

Property

It is possible that clause 52 may be considered to result in a deprivation of property insofar as an accredited person is required to bear the costs associated with the conduct of a compliance or assurance audit (new sections 55F(2), 55J(2)).

However, I do not consider that clause 52 limits the Charter right to property because any deprivation resulting from an audit required by the Commission, in accordance with new Part 7A, will be 'in accordance with law'. In particular, the requirement for an accredited person to bear the cost of an audit is reasonably necessary to support the objective of maintaining the integrity of the VEET scheme.

Protection against self-incrimination

New sections 55B(c) and 55F(1)(b) (inserted by clause 52) require an accredited person to comply with the Commission or independent auditor in the conduct of a compliance audit. Similarly, new section 55J(1)(b) requires an accredited person to cooperate with an independent auditor in the conduct of an assurance audit. Under new section 55O, it is an offence for a person who is required to disclose information to an auditor for the purposes of a compliance or assurance audit to withhold the information or otherwise fail to disclose it. To the extent information which an accredited person must disclose to an auditor may relate to a matter which may also be the subject of a criminal charge against that person, and therefore compel the person to incriminate themselves, the protection against self-incrimination in section 25(2)(k) may be engaged.

Nevertheless, I do not consider that these provisions limit the protection against self-incrimination, because new section 55P provides it is a reasonable excuse for the purposes of sections 55N and 55O for a person to refuse or fail to disclose information or produce a document to an auditor or withhold the information, if the disclosure of the information or production of the document would tend to incriminate the person. In other words, information required to be submitted by a person to an auditor cannot subsequently be used against that person in a criminal proceeding.

This is also consistent with existing protections against self-incrimination contained in sections 52 and 62 of the VEET Act.

Application of civil penalty regime

Clause 45 inserts new section 6A into the VEET Act, and clause 46 inserts new Part 6A. Together, these clauses apply the *Essential Services Commission Act 2001* enforcement and civil penalty regime to provisions of the VEET Act specified as civil penalty requirements in the Schedule (inserted by clauses 29, 37, 44, 46, and 47).

The possibility that a natural person who has been tried and finally convicted of an offence may be subsequently tried for a civil penalty and/or punished for the same underlying conduct, engages the right not to be tried or punished more than once under section 26 of the Charter.

However, in my view, the protection against double jeopardy is not limited because new section 40D expressly provides that a contravention of a civil penalty provision is *not* an offence. Moreover, I do not consider that a penalty imposed for breach of a civil penalty requirement under the *Essential Services Commission Act 2001* serves a punitive function, so as to limit the protection against double punishment. For example, section 54(2) requires a person who is subject to a civil penalty order to pay the civil penalty amount into the Essential Services Commission Enforcement Fund, which supports the regulatory functions of the Commission (section 54ZR).

Expansion of the Commission's power to disclose information

Clause 65 amends section 66 of the VEET Act to expand the range of persons and bodies to whom the Commission (or a person authorised by the Commission) may divulge or communicate information.

To the extent that the information which the Commission may provide to these persons and bodies includes personal information, clause 65 will engage the right to privacy in section 13(a) of the Charter. However, in my opinion, the right is not limited as any interference with privacy effected pursuant to section 66 (as amended) will be lawful, as the section is accessible and precisely formulated, and non-arbitrary.

More specifically, amended section 66 only permits the Commission to share information with persons and bodies who are listed, and only for specific purposes that are reasonably connected to the VEET scheme. For example, the Commission may disclose information to a public sector body or Council for the purposes of administering a program related to prescribed activities (new section 66(j)) or to a distribution network service provider for the purpose of assessing the impact of prescribed activities on energy demand (new section 66(l)). In other words, any interference with privacy will be reasonably necessary to achieve specified purposes.

Furthermore, any interference with a person's privacy will be modest, as there is a reduced expectation of privacy in the context of a regulated industry like the VEET scheme. Persons participating in the scheme do so voluntarily, and so any decision to disclose personal information to the Commission is ultimately at the discretion of the participant. In addition, the Commission is a 'public authority' under the Charter, so it must act in accordance with human rights (including the right to privacy) when disclosing personal information (section 38 of the Charter).

Shaun Leane MLC
Minister for Commonwealth Games Legacy
Minister for Veterans

Second reading

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (20:27): I move:

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

Motion agreed to.

Ms STITT: I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Victorian Government has been a leader in taking strong action on climate change, while saving Victorian households and businesses money. Energy efficiency is at the heart of this approach, not only saving consumers money, but making them more comfortable in their homes and businesses and supporting jobs and innovation.

The Victorian Energy Upgrades program is the largest energy efficiency initiative in Victoria and is also a major contributor to the achievement of Victoria's interim emissions reductions targets established under the *Climate Change Act 2017*. Since the program commenced in 2009, over two million households and 141,000

businesses have participated in the program, and it has reduced Victoria's greenhouse gas emissions by over 73 million tonnes.

The Victorian Energy Efficiency Target Act 2007 establishes the regulatory framework for the Victorian Energy Upgrades program. Under the program, 'accredited providers' provide Victorian households and businesses with energy saving products and services at discounted prices or, in some cases, at no cost, by selling certificates which represent these energy and greenhouse savings. Discounts on energy saving products and services encourage more households and businesses to save energy, which reduces overall energy demand and therefore reduces prices for everyone. Energy retailers are obligated to buy certificates to meet the energy saving target for the year. To date, the cost of meeting the target has been more than offset by the impact of reduced demand reducing prices—meaning all consumers save money, even those who do not participate.

This Bill will ensure the Victorian Energy Upgrades program has an appropriate legislative framework and strong consumer protections as it transitions to higher targets, more installations of energy saving equipment and greater energy savings for Victorian households and businesses. Strong consumer protections, compliance and consumer trust in the program is essential to ensuring the benefits will continue to be realised.

This Bill will ensure that the accredited providers under the program are appropriately qualified—through requirements to demonstrate they are a fit and proper person and a competent and capable person. They will need to annually renew their accreditation and undertake independent assurance audits. And the regulator, the Essential Services Commission, will be able to reject applications to renew an accreditation and revoke, suspend or impose conditions on accreditations.

This Bill will strengthen consumer protections by introducing penalties for all businesses providing services under the program, including subcontracted telemarketers or installers (rather than just accredited providers). This with strengthen the Essential Services Commission's powers to enforce the Code of Conduct for the program.

Finally, the Bill will empower the Essential Services Commission to take strong action to ensure compliance. The Bill introduces of new offences, enforcement tools and greater flexibility. The Essential Services Commission's enhanced powers will be balanced by greater accountability—to ensure stakeholder can be confident this important program is operated by a strong regulator.

I commend the Bill to the house.

Mr RICH-PHILLIPS (South Eastern Metropolitan) (20:27): I move:

That debate on this bill be adjourned for one week.

Motion agreed to and debate adjourned for one week.

CRIMES LEGISLATION AMENDMENT BILL 2022

Introduction and first reading

The PRESIDENT (20:27): I have a second message:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to amend the **Crimes Act 1958** to create a new offence of engaging in grossly offensive public conduct and to abolish the common law offence of outraging public decency, to amend the **Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021** to extend its default commencement date and for other purposes'.

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (20:28): I move:

That the bill be now read a first time.

Motion agreed to.

Read first time.

Ms STITT: I move, by leave:

That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (20:28): 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 Crimes 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

The Bill will create an indictable offence in the *Crimes Act 1958* targeting grossly offensive public behaviour with a maximum penalty of five years' imprisonment. The new offence in new section 195K will—

- apply to conduct that occurs in a public place or that is witnessed by a person in a public place;
- require that the accused knows or a reasonable person would know that their conduct is grossly offensive to make out the offence;
- provide defences for good faith and reasonable conduct that is in the public interest, including political, artistic or educational work;
- impose a requirement that the Director of Public Prosecutions (DPP) must agree that the offence can be charged before a prosecution can be commenced.

The Bill will also amend the *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021* to defer commencement of that Act to November 2023.

The *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021* passed Parliament in February 2021, repealing public drunkenness offences in the *Summary Offences Act 1966* and associated arrest and infringement provisions. The Act is set to come into effect on 7 November 2022.

The Bill will defer commencement of the *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021* by one year, to November 2023 to allow for the establishment, trial and evaluation of a replacement health model, to facilitate a successful and safe transition to a health-based response to public intoxication.

I wish to acknowledge the legacy of the public drunkenness offences and the disproportionate impact they have had on Aboriginal and Torres Strait Islander people as well as members of other culturally and linguistically diverse communities. However, to the extent that the Bill extends the operation of existing public drunkenness offence provisions in the *Summary Offences Act 1966*, it is compatible with the Charter.

Human Rights Issues

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

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

a. right to freedom of expression (section 15);
b. right to privacy and reputation (section 13);
c. right to freedom of thought, conscience, religion and belief (section 14);
d. right to peaceful assembly and freedom of association (section 16);
e. right to take part in public life (section 18);
f. right to culture (section 19); and
g. right to be presumed innocent until proved guilty according to law (section 25).

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

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

Right to freedom of expression

Nature of the right

Section 15(2) of the Charter provides the right to freedom of expression includes the freedom 'to seek, receive and impart information and ideas of all kinds'. The right protects criticism and protest as well as offensive,

disturbing or shocking information or ideas, rather than merely favourable or popular expressions (*Sunday Times v United Kingdom (No 2)* [1992] 14 EHRR 123).

The Bill limits the right by restricting a person's ability to engage in conduct in public that is grossly offensive.

Importance of the purpose of the limitation

The right contains an internal limitation that allows freedom of expression to be limited where it is reasonably necessary to respect the rights and reputation of others, or for the protection of national security, public order, public health or public morality.

This internal limitation has been held to extend to 'laws that enable citizens to engage in their personal and business affairs free from unlawful physical interference to their person or property' (*Magee v Delaney* (2012) 39 VR 50).

It is important in a diverse and pluralistic society that all members of the public can go about their business in public with the expectation of peaceful enjoyment of public spaces. Grossly abhorrent or offensive conduct can undermine this expectation and disrupt public order by making public spaces feel unsafe and unpredictable, particularly for more vulnerable people.

For example, in the English case of *The Queen v Anderson* {2008} EWCA Crim 12, which held that the accused had committed the common law offence of outrage public decency, the accused came across a helpless, sick woman dying on the street. He threw water over her and urinated on her body as his friend filmed the event. He also sprayed a can of shaving cream over her and covered her with a pack of flooring, then photographed her. Such conduct is degrading to the individual, but also harms the community by undermining standards of acceptable behaviour in an extreme, distressing and public way.

Given how deeply upsetting and harmful abhorrent public behaviour can be, this limitation is considered lawful and reasonably necessary to protect people's rights not to be intimidated or distressed, to feel safe, and to maintain public order in public spaces or in circumstances where private conduct is witnessed by persons in public spaces.

Nature and extent of the limitation

The Bill limits the right by restricting a person's ability to impart certain information and ideas through public conduct that they know, or that a reasonable person would know, is grossly offensive.

The Bill limits the right by restricting a person's ability to engage in conduct that is grossly offensive in a public place or that is seen or heard by a person in a public place. Conduct that occurs in public places does not need to be witnessed by a person. This reflects the purpose of the offence, which is to prevent and punish any grossly offensive conduct that occurs in public spaces and, in turn, ensures that these spaces are preserved as free from exposure to disruption or distressing behaviour that causes significant harm.

In contrast, conduct that occurs in a private place must be witnessed by a person. This recognises that where private conduct is not witnessed, no social harm occurs and it would be inappropriate and disproportionate for a person to be prosecuted. It also underlines that any encroachment on the rights of people in private places must be limited as much as possible.

At common law, offensiveness is understood to mean the type of behaviour calculated to wound feelings and arouse anger, resentment, disgust or outrage in the mind of a reasonable person (*Worcester v Smith* [1951] VLR 316). The case law, however, recognises that not all conduct that elicits this response will be considered offensive within the meaning of a criminal offence (*Ball v McIntyre* (1966) 9 FLR 237). While the concept of offensiveness is well-understood, the law recognises that offensive behaviour occurs on a spectrum. The new offence is intended to capture serious conduct of such a magnitude that it meets the standard of an indictable offence and cannot adequately be punished by the existing offensive behaviour offences.

Whether conduct is offensive enough to reach this threshold will be determined by an objective test. In *Pell v Council of the Trustees of the National Gallery of Victoria* [1998] 2 VR 391, Justice Harper noted that in determining if a matter is obscene or indecent under section 17 of the *Summary Offences Act 1966*, 'the court must have regard to contemporary standards in a multicultural, partly secular and largely tolerant, if not permissive, society'. It is intended that the objective test in section 195K(1) will reflect this concept by ensuring that the offence is able to reflect evolving attitudes and community standards as to what kinds of conduct is acceptable.

In line with the purpose of the Bill, the application of the offence is further confined by a list of defences at section 195K(5), which protect conduct that is engaged in reasonably and in good faith:

- in the performance, exhibition or distribution of an artistic work;

- in the course of any statement or publication made, or discussion or debate held, or any other conduct engaged in, for—
    - a genuine political, academic, educational, artistic, religious, cultural or scientific purpose; or
    - a purpose that is in the public interest; or
- in making or publishing a fair and accurate report of any event or matter of public interest.

Furthermore, the Bill provides at section 195L that the Director of Public Prosecutions must provide consent for prosecution of the offence, based on whether there are reasonable prospects of conviction and whether the prosecution is in the public interest. This additional safeguard aims to ensure the offence is only prosecuted where appropriate and in the public interest to do so.

In addition, by abolishing and replacing the outdated and poorly understood common law offence of outraging public decency, the Bill provides more guidance, consistency and certainty as to what kind of conduct is unlawful.

Finally, section 195K(4)(a) provides that a person will not commit the offence merely by using profane, indecent or obscene language, highlighting that the offence is targeted at extreme conduct rather than, for example, offensive speech.

Relationship between the limitation and its purpose

The limitation is consistent with the Bill's purpose to protect the community from the harm and distress caused by grossly offensive behaviour in public, while also ensuring that conduct done reasonably and in good faith for legitimate purposes is adequately protected.

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

The offence is clearly targeted at extreme examples of offensive behaviour. The broad defence provision, as well as the safeguard of requiring DPP consent to prosecute, ensures that the offence restricts only a small and targeted subset of grossly offensive conduct.

To be less restrictive, the offence could be cast less broadly—for example, by specifying the exact kinds of behaviour envisaged to be captured, or by stating what community standards of acceptable conduct are. However, this would mean the offence would not be sufficiently flexible to capture unforeseen types of conduct. Additionally, if the Bill articulated specific community standards, the offence would not be adaptable to changing societal attitudes and values. This would mean that the offence could continue to capture conduct that the broader community has come to find tolerable or less offensive—effectively becoming more restrictive over time.

In these ways, the offence seeks to balance the right of a person to hold and express an opinion with the countervailing duty to respect the rights and reputation of other persons as well as protecting public order and public morality. Any limitation on the right to freedom of expression is therefore reasonable and justified in the circumstances.

Right to privacy and reputation

Nature of the right

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 195K(1)(b)(ii) of the Bill limits the right to privacy by interfering with a person's ability to engage in certain grossly offensive behaviour in private, if that behaviour is witnessed by a person in a public place.

The importance of the purpose of the limitation

This limitation supports the Bill's purpose to protect the community from the harm and distress caused by exposure to grossly offensive or abhorrent conduct. Acts may occur in an ostensibly private place but still be clearly seen or heard by a person in or from a public place—for example, a person committing a grossly offensive act in the public lobby of a private building that was then visible to any people walking past on a public thoroughfare. The requirement that a person actually see or hear the conduct is more onerous than what is imposed on acts committed in public places, where no person is required to see or hear the conduct. This recognises that for conduct to be harmful in a private place it must actually be witnessed and it would be inappropriate and disproportionate to prosecute a person otherwise.

Nature and extent of the limitation

It is not the intention of section 195K(1)(b)(ii) of the Bill to arbitrarily restrict the private behaviour of a person in their home and other private spaces.

In situations where a person commits an act in a private place that is witnessed (seen or heard) by a person in a public place, the prosecution will need to prove that the accused knew or was reckless as to whether the act was likely to be witnessed in this way. This limb offers protection against any infringement on an individual's right to privacy, ensuring that private conduct is only captured by the offence in circumstances where the accused knows, intends or was reckless as to whether their conduct was likely to be witnessed by a person in a public place. This ensures the Bill is not more restrictive than necessary to fulfill its purpose.

Relationship between the limitation and its purpose

These limitations are intended to ensure the intended scope of the offence is clear and it can be prosecuted consistently, while upholding the intent of the Bill to protect the public from the distress and harm caused by exposure to grossly offensive conduct in public spaces.

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

The application of the offence could be narrowed to apply only to conduct that occurs in a public place according to the definition in the *Summary Offences Act 1966*, which sets out a list of locations and includes a broad 'catch-all' that captures any public place. However, this would mean that the public is not protected from grossly offensive conduct that is done intentionally or recklessly in a place where they may be exposed to it.

Alternatively, the offence could require that offensive conduct that occurs in a public place must actually be witnessed. However, this would undermine the purpose of the offence to prevent grossly offensive conduct from occurring in public spaces, where the potential to cause harm or distress is significant. Such a change would only be marginally less restrictive, as it is unlikely that unwitnessed conduct would be reported or otherwise come to the attention of police.

Given the limited scope of this provision and the harm the offence is seeking to prevent, this limitation is lawful and does not arbitrarily or unreasonably limit the right to privacy.

Right to freedom of thought, conscience, religion and belief and right to culture

Nature of the right

The right to freedom of thought, conscience, religion and belief, including to adopt the religion or belief of their choice and to demonstrate their religious belief in public or private, is contained in section 14 of the Charter. It provides that a person must not be coerced or restrained in a way that limits their freedom of religion or belief in worship, observance, practice or teaching. Historically, the right to have or adopt a religion or belief has been held to be absolute and unqualified (e.g. *Eweida v The United Kingdom* (2013) 57 EHRR 8); however, limitations on the right to *demonstrate* religion or belief have been found to be reasonable and justified *Victorian Electoral Commission* [2009] VCAT 2191.

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

The Bill could limit a person's freedom to demonstrate their religion, culture or belief in public (e.g. where a person demonstrates their adherence to a particular cultural practice, belief or religion in public in a way they purport is acceptable in accordance with their faith or religion, but others consider offensive).

The importance of the purpose of the limitation

The purpose of the limitation is to ensure that the public is protected from the harm and distress that result from exposure to grossly offensive public behaviour that is not done reasonably and in good faith for legitimate purposes.

Nature and extent of the limitation

The Bill potentially limits this right by placing an evidential burden on people who seek to rely on a defence when engaging in a range of conduct reasonably and in good faith, including for genuine political, artistic, educational, cultural and religious reasons. There is also a broad defence category of conduct that is in the public interest. These defences are intended to ensure any limitation of religious or cultural rights is the least restrictive possible.

By creating a reasonable and in good faith defence, the offence places an evidential burden on the accused, requiring them to raise evidence that their conduct was for a genuine religious purpose. For example, whether a

person is engaging in certain conduct for a religious purpose is a matter peculiarly within the knowledge of that person, and that person is best placed to provide evidence as to whether the display was for a religious purpose.

However, this offence does not transfer the legal burden of proof. Once the accused has pointed to evidence of an exception, the burden shifts back to the prosecution to prove the essential elements of the offence beyond reasonable doubt.

Relationship between the limitation and its purpose

The limitation imposed by section 195K(5) supports the Bill's purpose of protecting the public from exposure to grossly offensive conduct, while also ensuring conduct engaged in reasonably and in good faith for a variety of reasons is permitted.

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

The Bill could leave the onus to raise and disprove all defences with the prosecution, thereby removing the evidential burden from the accused person. However, this would make the offence largely unworkable, as the circumstances listed in section 195K(5) are likely to often be within the peculiar knowledge of an accused person.

For these reasons, the narrow limitation on these rights imposed by section 195K(5) is reasonable and justified in the circumstances.

Right to peaceful assembly and freedom of association and right to public life

Nature of the right

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

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

The offence limits the right to freedom of association and right to public life by preventing people from displaying their personal or political views in public, such as at protests or demonstrations, or while attending a local government meeting, in grossly offensive or abhorrent ways.

The importance of the purpose of the limitation

The purpose of the limitation is to uphold the Bill's intent to protect the public from the harm and distress caused by exposure to grossly offensive public behaviour that is not done reasonably and in good faith.

Nature and extent of the limitation

New section 195K(1) provides that a person commits an offence if they engage in grossly offensive conduct in a public place, or where the conduct is witnessed by a person in a public place, while knowing or being reckless as to the public nature of the conduct.

The narrow scope of the offence, which is targeted at extreme examples of offensive public behaviour, means that people who hold controversial and even offensive views may still assemble in public or participate in the conduct of public affairs. People with such views will therefore remain free to express their opinions in gatherings or demonstrations, or at council meetings, subject to existing laws. They will also be able to publicly display their association with or support for certain ideologies or beliefs as long as they do not do so in a grossly offensive manner.

Additionally, the defences available at section 195K(5) protect conduct that is engaged in reasonably and in good faith for a broad range of reasons, including political conduct, or conducted engaged in for discussion and debate that is in the public interest.

Relationship between the limitation and its purpose

The purpose of the Bill is to protect the public from grossly offensive behaviour in public spaces, where there should be a reasonable expectation of peace and safety. The application of the offence to conduct that occurs in public is therefore fundamental to the purpose of the Bill. The harm and distress caused by grossly offensive public conduct can only be prevented if the offence applies to conduct that occurs in a public place.

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

The offence could not be modified to entirely exempt protests, demonstrations, or participation in public life. Grossly offensive behaviour that occurs in these circumstances, where none of the defences in section 195K(5) apply, cannot be justified because it exposes members of the public to harm and undermines the sanctity and decency of public places, which need to be maintained for the safety and enjoyment of all.

The limitations on both rights are reasonable and justified given the potentially significant harm caused by grossly offensive public behaviour.

Right to be presumed innocent until proved guilty according to law

Nature of the right

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 in section 25(1) is relevant where a statutory provision shifts the burden of proof onto an accused in a criminal proceeding, so that the accused is required to prove matters to establish, or raise evidence to suggest, that they are not guilty of an offence.

The Bill imposes an evidential burden on the accused for the defences outlined at section 195K(5), which may appear to limit the right to be presumed innocent until proven guilty according to law.

The importance of the purpose of the limitation

The purpose of the evidential burden is to support the proper operation of the offence by ensuring that the public is protected from exposure to grossly offensive public behaviour that is not done reasonably and in good faith, and to allow for the offence to be workably prosecuted.

Nature and extent of the limitation

Victorian courts have held that the right to be presumed innocent until proven guilty according to law is not limited by the imposition of an evidential burden on the accused (*R v DA & GFK* [2016] VSCA 325). The defences outlined at section 195K(5) merely impose an evidential burden rather than a legal burden.

By creating a defence where the accused engaged in the conduct reasonably and in good faith, the provisions place an evidential burden on the accused in that they require the accused to raise evidence of the defence. However, in doing so, this offence does not transfer the legal burden of proof. Once the accused has pointed to evidence of one of the reasonable conduct defences listed in section 195K(5)—which will ordinarily be peculiarly within their knowledge—the burden shifts back to the prosecution to prove the essential elements of the offence.

Relationship between the limitation and its purpose

The imposition of an evidential burden ensures the offence created by the Bill can be effectively and consistently prosecuted, thereby protecting the public from public displays of grossly offensive conduct.

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

The Bill could leave the onus to raise and disprove all defences with the prosecution, thereby removing the evidential burden from the accused person. However, this would make the offence largely unworkable, as the circumstances listed in section 195K(5) are likely to often be within the peculiar knowledge of an accused person, and it is therefore appropriate that the accused should be required to raise or point to evidence that a defence applies.

In these circumstances, and as courts have held, it is reasonable and proportionate to shift the burden of proof to the accused, because only they may know and be able to articulate why their conduct did not breach community standards.

Conclusion

I consider that the Bill is compatible with the Charter because, to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

Jaclyn Symes MP
Attorney-General
Minister for Emergency Services

Second reading

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (20:28): I move:

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

Motion agreed to.

Ms STITT: I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Bill creates a new statutory indictable offence in the *Crimes Act 1958* of engaging in conduct that is grossly offensive to community standards of acceptable conduct. This will provide a modern and fit for purpose offence to appropriately respond to public acts that are grossly offensive and cause significant harm and distress to members of the public who are exposed to that behaviour. In this way, the offence seeks to preserve the dignity and peace of public places for the benefit of all. The new offence will replace the outdated and uncertain common law offence of outrage public decency, which will be repealed by the Bill.

The need for reform was highlighted in the aftermath of the Eastern Freeway tragedy. This tragic incident occurred on 22 April 2020 and resulted in the untimely deaths of four Victoria 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. I express my profound and deepest sympathies to the families of those killed in the line of duty that day.

The offensive commentary directed towards these officers and the filming at the collision scene caused extreme distress to the families of the victims and their friends and colleagues. It also shocked and appalled the wider Victorian community.

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 free from intimidation and distress. This reform is not about punishing low level offensive behaviour that might simply be annoying or mildly offensive to some people, and not concern others at all. 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.

The Eastern Freeway tragedy highlighted that there is a gap in responding to instances of grossly offensive conduct. Relying on an archaic common law offence of outraging public decency that was developed in another century to fill this gap is not a desirable outcome. That offence does not have a maximum penalty and its application and scope are uncertain. Consequently, the government committed to introducing a new statutory indictable offensive behaviour offence to ensure grossly offensive acts can be prosecuted and appropriately punished. This Bill delivers on that commitment.

While the types of circumstances to which this new offence might apply are expected to infrequently arise, it is important that Parliament provide guidance about how this grossly offensive conduct should be dealt with.

I will now explain the key features of the new offence.

Public conduct

The new offence applies to conduct occurring in public places as defined in the *Summary Offences Act 1966*. This definition includes, for example, parks, roads, sports grounds and public transport. It also adopts a 'catch-all' that captures any public place. While this definition is broad it does not clearly include non-government schools or post-secondary education institutions, while government schools are expressly listed. To ensure grossly offensive conduct in educational settings is consistently captured, the Bill extends the public place definition for this offence, which is consistent with the approach in the recent Nazi Symbol Prohibition Bill.

Conduct occurring in a private place, such as the home and other private spaces, is generally excluded from the scope of the new offence. However, the new offence also applies to private conduct that has been seen or heard by a person in a public place. This recognises that a person who is in a public place might be exposed to grossly offensive conduct occurring in private places. For example, a person committing a grossly offensive act in the foyer of a private building (that is not within the Summary Offence Act definition) could still be captured by the offence if it was seen or heard by a person in a public place, such as where the act can be easily observed through glass panels from the public footpath outside the building.

Both limbs of the offence are inherently linked to the concept of public places; whether it be that grossly offensive conduct occurs in a public place or is able to be witnessed by a person in a public place. The central purpose of the offence is to maintain the dignity and decency of public places. This upholds the expectation that all people enjoy can enjoy public places peacefully and without the risk of exposure to distressing behaviour that causes significant harm.

The new offence will not include conduct that has been seen or heard by a person using electronic communication. This is because offensive online conduct is already adequately covered by Commonwealth law through the operation of section 474.17 of the *Criminal Code Act 1995*, which relates to using a carriage service to menace, harass or cause offence.

The conduct must be grossly offensive to community standards of acceptable conduct

Public indecency and offensive behaviour offences capture a spectrum of behaviour. The new offence is intended to capture serious conduct of such a magnitude that it meets the standard of an indictable offence and cannot adequately be punished by the existing offensive behaviour offences.

The Bill provides that a person commits an offence if they engage in conduct that grossly offends community standards of acceptable conduct. Offensiveness has a legal meaning at common law. It means the type of behaviour calculated to wound feelings and arouse anger, resentment, disgust or outrage in the mind of a reasonable person (*Worcester v Smith* [1951] VLR 316). Not all conduct that elicits this response will be considered offensive enough to warrant criminal punishment.

Building on this, the words 'grossly offensive' are intended to emphasise the high degree of offensiveness that is required to meet the threshold for this offence and to distinguish it from equivalent low-level offences. Conduct that is merely offensive, shocking or insulting would not reach the threshold for the offence. Grossly offensive conduct is exceptional and unique by nature, as evident in the abhorrent conduct committed during the Eastern Freeway tragedy.

It is a question of fact whether the conduct is grossly offensive to community standards. The concept of community standards is an open and objective one. Recognising that community standards change and evolve over time, and that offensive conduct must be considered in its context, the Bill does not include any specific standards or factors. The courts have applied a reasonable person test when interpreting the meaning of community standards and have looked to contemporary standards of a multicultural, partly secular and largely tolerant, if not permissive, society (*Pell v Council of the Trustees of the National Gallery of Victoria* [1998] 2 VR 391).

However, to provide greater clarity about the scope of the offence, the Bill provides some guidance about conduct that would not meet the threshold for gross offensiveness. For example, section 17 of the Summary Offences Act applies to low-level offensive conduct like obscene, indecent, or threatening language and behaviour in public. Other offences in the Summary Offences Act deal with low-level offensive conduct such as being drunk and disorderly in a public place. It is not the intention of the new offence to reinforce or supplant existing behavioural offences like these, or to provide an alternative charge for offences that are intended to be repealed. The type of conduct sought to be captured by the offence must reach a much higher level of offensiveness than this type of low or mid-level offensive conduct.

The fault element

The first part of the fault element requires that to be found guilty of the offence, the accused must know, or be reckless, about whether their conduct occurs in a public place or 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, and in such circumstances it would not be appropriate to find them guilty of the offence.

The second part of the fault element requires that the accused must know, or a reasonable person would have known, that their conduct would likely grossly offend community standards of acceptable conduct. The first test in this part of the fault element is a subjective one, requiring the prosecution to prove that the accused knew that their conduct was grossly offensive. In contrast, the second test is an objective one, requiring the prosecution to prove that a reasonable person would have known that the conduct was likely to be grossly offensive. The objective test recognises that there may be circumstances in which the accused does not subjectively know that their conduct would likely grossly offend community standards of acceptable conduct, but they can still be found guilty if objectively, according to the reasonable person test, this was the case.

A broad defence will be available for good faith and reasonable conduct

The Bill recognises that there are circumstances in which grossly offensive conduct does not warrant criminal sanction because it serves another legitimate purpose in an open and democratic society with values such as freedom of political communication, and freedoms of expression and assembly.

Consequently, the Bill provides that it is a defence to a charge to engage in conduct reasonably and in good faith:

a. in the performance, exhibition or distribution of an artistic work; or

b. in the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in, for:

    i. a genuine political, academic, educational, artistic, religious, cultural or scientific purpose; or

    ii. a purpose that is in the public interest; or

c. in making or publishing a fair and accurate report of any event or matter of public interest.

The requirement that the conduct must be engaged in reasonably and in good faith is intended to ensure that an accused can only rely on the defence if their conduct was genuinely undertaken for one of the above reasons.

The defence places an evidential burden on the accused. This requires an accused to adduce or point to evidence that suggests a reasonable possibility that the defence exists. The prosecution is then required to disprove the defence when proving their case beyond reasonable doubt.

There will be a DPP consent requirement

The Bill provides that a prosecution of this offence must not be commenced without the consent of the Director of Public Prosecutions. This safeguard ensures the offence will only be prosecuted where appropriate and if it is in the public interest to do. The DPP exercises their discretion in accordance with a published policy, which requires them to take into account an accused person's age and other characteristics when considering whether there is a public interest in prosecutions. This type of requirement is used in legislation to provide an oversight mechanism for offences that may be particularly complex to prosecute.

The maximum penalty responds to the seriousness of the offending

The new offence will have a maximum penalty of level 6, five years imprisonment. This reflects the extremely high degree of offensive conduct which the offence intends to capture and the harm to the community such conduct would cause. Importantly, a clear maximum penalty can better guide sentencing judges when compared to the common law offence which had a penalty at large.

Abolition of the common law offence

The Bill abolishes the common law offence of outraging public decency, ensuring that grossly offensive conduct is dealt with and punished according to contemporary understandings of the law.

Conclusion

The government recognises the harm grossly offensive and abhorrent conduct can have upon the community, as evident in the lasting impact of what occurred during the Eastern Freeway tragedy. The new offence responds to the circumstances of this event but also seeks to go beyond it; creating a contemporary public decency offence targeted at behaviour that is grossly offensive and abhorrent to community standards of acceptable conduct. It is considered that through it public places will be maintained as places of decency and dignity, free to be used and enjoyed by all, in peace and in comfort.

Finally, 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 have the effect of deferring the repeal of public drunkenness offences by 12 months.

I wish to acknowledge the tragic legacy that has led to these reforms and the longstanding advocacy of the Aboriginal and Torres Strait Islander community and their ongoing contribution to these reforms, including the family of Aunty Tanya Day who tragically died after being held in police custody in December 2017.

The decision to defer decriminalisation of public drunkenness has not been made lightly. It reflects the need to establish a suitable, culturally safe health model and to ensure the necessary services are in place to support people who are intoxicated in public once decriminalisation takes effect.

While significant groundwork has been laid, the impact of the COVID-19 pandemic over the past two years has meant we are not as far along in establishing the necessary health model as hoped. We want to get it right in Victoria, and the delay of 12 months is going to enable us to be in the best position to achieve a successful and enduring transition from a justice-based response to public intoxication, to a health one.

I commend the Bill to the house.

Mr RICH-PHILLIPS (South Eastern Metropolitan) (20:29): I move:

That debate on this bill be adjourned for one week.

Motion agreed to and debate adjourned for one week.

BUILDING, PLANNING AND HERITAGE LEGISLATION AMENDMENT (ADMINISTRATION AND OTHER MATTERS) BILL 2022

Introduction and first reading

The PRESIDENT (20:29): I have a further message:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to amend the **Building Act 1993**, the **Architects Act 1991**, the **Heritage Act 2017**, the **Planning and Environment Act 1987**, the **Surveying Act 2004**, the **Domestic Building Contracts Act 1995**, the **Building and**

Construction Industry Security of Payment Act 2002, the **Victorian Civil and Administrative Tribunal Act 1998**, the **Sale of Land Act 1962**, the **Owners Corporations Act 2006**, the **Cladding Safety Victoria Act 2020** and for other purposes'.

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (20:30): I move:

That the bill be now read a first time.

Motion agreed to.

Read first time.

Ms STITT: I move, by leave:

That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (20:30): 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 Building, Planning and Heritage Legislation Amendment (Administration and Other Matters) Bill 2022.

In my opinion, the Building, Planning and Heritage Legislation Amendment (Administration and Other Matters) Bill 2022 (**Bill**), as introduced to the Legislative Council, is compatible with the human rights protected by the Charter. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

Parts 2 to 6 of the Bill amend the *Building Act 1993* (**Building Act**), the *Architects Act 1991* (**Architects Act**) and other Acts to implement several recommendations of the Expert Advisory Panel that was appointed by the government to review the Victorian legislative and regulatory framework for the building sector. These Parts of the Bill will—

- establish a statutory position of State Building Surveyor to be appointed by the Victorian Building Authority (**VBA**). This position will provide technical expertise on building and plumbing codes for the building sector and regulators and act as the State's leading building surveying technical expert;
- establish a statutory position of Building Monitor to collect, analyse and publish information, and provide advice to the Minister and others, regarding systemic issues affecting domestic building consumers and to represent, at a systemic level, domestic building consumer interests;
- broaden the Victorian Building Authority's power to enter into information sharing arrangements with other persons and bodies who exercise functions related to the building sector;
- amend two categories and insert two new categories of building practitioner, who will be required to be registered before they can carry out a prescribed kind of work in relation to building;
- require a relevant building surveyor to provide an information statement to an owner of land or a building, for which an application for a building permit has been made in relation to a prescribed class of building, with prescribed information relating to the surveyor's role and responsibilities, when issuing the building permit;
- require municipal building surveyors to cause an inspection of a prescribed class of building work before the construction of certain buildings is completed;
- provide a process for, and requirements relating to, the preparation and approval of a building manual for a prescribed class of building before an occupancy permit may be issued for the building;
- enable a wider range of circumstances in which the cladding levy can provide financial or other support to owners who are not eligible to receive funding under the current cladding rectification program;
- support the operation of automatic mutual recognition under the *Mutual Recognition (Victoria) Act 1998* with respect to land surveyors, building practitioners, plumbers and architects;

- enable the Victorian Building Authority to issue restricted plumbing licences for more than one classes or particular types of plumbing work, which licences can be issued for private plumbing work on residential properties owned and occupied by the plumber or relatives of the plumber;
- make other technical or minor amendments to the Building Act; and
- improve the governance arrangements for the Architects Registration Board of Victoria under the Architects Act.

Parts 7 to 10 of the Bill amend the *Heritage Act 2017* and the *Planning and Environment Act 1987* (**PE Act**) to:

- increase protection of metropolitan green wedges and amend the distinctive areas and landscapes statement of planning policy endorsement process;
- modernise requirements in relation to notices, the publication and inspection of documents and hearings under the Heritage Act;
- provide for the making of exclusion determinations; and
- make general amendments to improve the operation of the Heritage Act.

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

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

- right to privacy and reputation (section 13);
- freedom of expression (section 15); and
- cultural rights (section 19).

For the following reasons, I am satisfied that the Bill is compatible with the Charter and, if any rights are limited, those limitations are reasonable and demonstrably justified having regard to the factors in section 7(2) of the Charter.

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) provides that a person has the right not to have their reputation unlawfully attacked. An interference with privacy 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. An interference with privacy will not be arbitrary provided it is reasonable in the particular circumstances.

Building Act amendments

In Part 4 of the Bill, clause 57 will replace section 259AB of the Building Act to widen the circumstances in which the Victorian Building Authority (VBA) can enter into information sharing arrangements with one or more persons or bodies. Such persons or bodies are defined as a "relevant agency" in new section 259AB(7). The Bill will enable one or more relevant agencies to enter into an information sharing arrangement, provided the VBA is a party to the arrangement.

To the extent that the information shared between the VBA and any relevant entities includes personal information, the Bill will engage the right to privacy.

Any limit on the right to privacy by Part 4 of the Bill is reasonable and justified

Although these provisions require and permit the VBA and relevant agencies to deal with personal and identifying information, I do not consider these dealings are unlawful or arbitrary.

The purposes of these amendments are to: (a) ensure the VBA and each relevant agency has access to the information it requires to perform its functions effectively; (b) support a cohesive approach to provision of government services to building consumers, including regulation, by empowering agencies to share information in an efficient and effective way; and (c) to enable information to inform a robust understanding of trends and issues in the building system.

Clause 57 of the Bill imposes several limitations on how information can be shared under an information sharing arrangement made under substituted section 259AB(1) of the Building Act. Under new section 259AB(2) and (3)(a), if the information is to be shared between the VBA and a relevant agency, the information must be reasonably necessary to assist in the performance of the Authority's functions under the Building Act or the functions of the relevant agency. Under new section 259AB(2) and (3)(b), if the information is to be shared between two relevant agencies, it may only be information that: (a) the receiving relevant agency could have requested from the Authority under section 259AB(3)(a); or (b) is reasonably necessary to assist in the performance of the relevant agency's functions under the Building Act.

Further, the VBA and each relevant agency that is a public entity within the meaning of the *Public Administration Act 2004* is bound by the requirements of the *Privacy and Data Protection Act 2014* and must ensure that any collection, use or disclosure of information is undertaken in accordance with the Information Privacy Principles set out in Part 3 of that Act.

In my view, these provisions will not be an arbitrary or unlawful interference with privacy, as any disclosure of personal information authorised by these amendments will only occur to the extent necessary to perform the functions of the Victorian Building Authority or relevant agency and, for the sharing of information between relevant agencies, the functions of the relevant agency are confined to any functions the agency has under the Building Act.

Accordingly, I consider that these provisions under clause 57 of the Bill are compatible with the right to privacy under section 13 of the Charter.

Part 3 of the Bill will provide for the appointment of a Building Monitor to (amongst other objectives) improve the experiences of domestic building consumers and affected parties of the building system by advocating for their interests at a systemic level and providing independent expert advice on these issues to the Minister and to persons and bodies involved in the building industry. The Building Monitor will be empowered under new section 208K of the Building Act to require, by notice in writing, a person or body to give the Building Monitor information specified in the notice. The purpose of this power is for the Building Monitor to gather and analyse information from certain building system entities to identify issues affecting domestic building affected parties. Under new section 208P of the Building Act, the Building Monitor will also be required to annually publish a Building Monitor Issues Report that is to specify the systemic issues that the Building Monitor has identified as affecting domestic building affected parties and make recommendations to the Minister on ways to address these issues.

To the extent that the information obtained by the Building Monitor includes personal information, the Bill will engage the right to privacy.

Any limit on the right to privacy by Part 3 the Bill is reasonable and justified

Although these provisions require the Building Monitor to gather and analyse personal and identifying information, I do not consider these functions are unlawful or arbitrary.

The types of information that can be requested are limited under section 208K(1) of the Building Act to information that is relevant to the performance of the functions of the Building Monitor. The functions of the Building Monitor, to be specified in new section 208F of the Building Act, relate to matters of concern to domestic building affected parties. Clause 18 of the Bill will also insert a definition of "domestic building affected parties" into section 3 of the Building Act to further contain the functions of the Building Monitor.

Under new section 208K(1), the Building Monitor is also required to consult with a person or body before giving them a notice under that section to provide information or data. This is intended to enable the Building Monitor to gain an understanding of what information is held by the person or body who will receive a notice and to ensure the notice does not unintentionally gather information that the Building Monitor does not need for their functions.

The persons or bodies from whom or which the Building Monitor may require information be provided are limited to those listed in new section 208K(3) of the Building Act and they are confined to public sector persons or bodies.

Further, under new section 208P, the Building Monitor will be required to gather information transparently, by including in an Issues Report information about when and to whom a notice under section 208K(1) was given, the type of information or data required under the notice and whether the Monitor is a party to any information sharing arrangements or agreements.

Clause 25 of the Bill will also insert new sections 208L and 208M in the Building Act to limit how the Building Monitor may use the information it gathers. Under new section 208L, the Building Monitor must not publish or authorise the publication of any personal information or data or commercially sensitive information or data that has not first been de-identified or aggregated with similar information (as the case requires) before it is published.

Further, new section 208M makes it an offence if the Building Monitor or any person assisting or acting on behalf of the Building Monitor uses or discloses information (including personal information) obtained in the course of performing the functions of the Building Monitor other for the purposes of performing the Building Monitor's functions.

Clause 25 of the Bill will also insert new section 208G to provide that the Building Monitor, when exercising its powers, must comply with any relevant requirements specified by or under any other Act. The purpose of this provision is to restate, for the avoidance of doubt, the obligation of the Building Monitor, as a statutory

entity, to comply with legislation such as the *Victorian Data Sharing Act 2017* and its de-identification guidelines issued under section 33 of that Act and with the Information Privacy Principles set out in Schedule 1 of the *Privacy and Data Protection Act 2014*.

These provisions establish an appropriate balance between enabling the Building Monitor to perform its functions and achieve its statutory objectives, by ensuring it can transparently gain access to the information needed to understand where the issues in the building system exist for domestic building consumers and affected parties, while protecting the rights of individuals to have their privacy and reputations protected.

Consequently, I consider that these provisions under the Bill are compatible with the right to privacy under section 13 of the Charter.

Heritage Act amendments

Part 8 of the Bill inserts a new exclusion determination process into the Heritage Act, which requires applicants for exclusion determinations to provide information to the Executive Director of Heritage Victoria. To the extent that the information collected by the Executive Director includes personal information, the right to privacy will be engaged. However, the collection of information will be permitted by law and will be confined to information that is necessary for determining applications. Accordingly, I consider that any interference with a person's privacy resulting from the exclusion determination provisions will be lawful and not arbitrary.

The Bill also requires the publication of information in certain circumstances. Amendments to the Heritage Act provide that certain notices and registers may be made available online, which mean that any personal information they contain may be more easily accessible by a wider audience. However, the Bill specifies that personal information must not be disclosed without the applicant's consent, thereby reducing any potential interference with an individual's privacy. While the address of land the subject of a permit application may be published, that will not necessarily be personal information. To the extent it is, I consider that this interference is lawful and appropriately confined, as this information is necessary to understand the application being considered. In my view, having regard to the circumstances in which information is disclosed, these provisions are compatible with the right to privacy.

Powers of entry

The Bill amends section 201 of the Heritage Act to permit an inspector or authorised person, when exercising entry powers for the purposes of investigating the cultural heritage significance of a place or object or determining compliance with the Act, to enter an unoccupied residence without written consent provided two days' clear notice is given to the owner of the residence.

While the exercise of this power may interfere with the privacy of an individual in some cases, any such interference will be lawful and not arbitrary. The power must be exercised with clear notice, at a reasonable time and for specific purposes connected with the enforcement of the Heritage Act. Further, entry to an unoccupied residence is likely to constitute a lesser interference with privacy than a residence that is occupied. In cases in which a residence is occupied, an inspector or authorised person will not be permitted to enter the residence without the occupier's written consent. Accordingly, I consider that this provision is compatible with the right to privacy under the Charter.

I therefore consider that the amendments made by Part 8 of the Bill will be compatible with the Charter right to privacy because any limitation on the right is not arbitrary and is reasonable and justified.

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.

Clause 113 of the Bill inserts new section 254F in the Heritage Act, which provides that the Heritage Council or the Executive Director is not required to make a document, the Heritage Register or the Heritage Inventory available on request if it is not reasonably practicable to do so as a result of an emergency or serious risk to public health in respect of which an emergency declaration has been made. While this amendment engages the right to freedom of expression, which includes the right to receive information, any interference will be minimal as many documents (including the Heritage Register and the Heritage Inventory) will continue to be accessible electronically. Further, I consider that the exception in section 15(3) of the Charter will apply to the provision, as a lawful restriction that is reasonably necessary to respect the rights of other persons and for the protection of public health.

Access to hearings

Section 248 of the Heritage Act provides that Heritage Council hearings, on whether a place or object is to be included in the Heritage Register, are to be conducted publicly. Clause 116 of the Bill amends this provision to enable the Heritage Council to close a hearing, or part of a hearing, to the public if a person making a submission

objects to doing so publicly and the Heritage Council is satisfied that the submission is of a confidential nature. By impeding a person's access to information, this provision engages the right to freedom of expression.

However, the right of a person to receive information is not absolute. These measures strike an appropriate balance between making submissions publicly available and ensuring that the Heritage Council has access to all relevant information on which to base its decision. Accordingly, I consider that clause 116 of the Bill is compatible with the right to freedom of expression under the Charter. I note that, to the extent that a hearing of the Heritage Council may be a civil proceeding under section 24 of the Charter, the right to a fair hearing will also be engaged. However, the right will not be limited because section 24(2) of the Charter provides that members of the public may be excluded from a hearing if permitted under legislation, as would be the case here.

Clause 116 of the Bill also inserts new section 248A in the Heritage Act to allow Heritage Council hearings to be conducted by audio link or audio visual link, as an alternative to in-person hearings. New section 248A provides that a hearing that is conducted in this manner must be made available to the public either while the hearing is being held or as soon as reasonably practicable afterwards. If a person or their representative do not attend the hearing, the Heritage Council may make a determination or recommendations without hearing from them. The purpose of this amendment is to provide the Heritage Council with greater flexibility in conducting proceedings and, in turn, better equip it to continue to perform its legislative functions and obligations. While these provisions have the potential to engage a number of rights under the Charter, including the rights to equality, freedom of expression, participation in public life and a fair hearing, any limitation on these rights will be reasonable and demonstrably justified. The option to conduct hearings by audio link or audio visual link provides an alternative mechanism to facilitate the hearing process; however under section 249 of the Heritage Act, the Heritage Council will still be bound by the rules of natural justice and required to consider all written submissions made pursuant to section 44 of the Heritage Act.

I therefore consider that the amendments made by Part 7 of the Bill will be compatible with the Charter right to freedom of expression because any limitation on that right is not arbitrary and is reasonable and justified.

Cultural rights

Section 19 of the Charter protects the cultural rights of all persons with a particular cultural, religious, racial or linguistic background, and acknowledges that Aboriginal persons hold distinct cultural rights that should be protected.

Part 8 of the Bill inserts new section 36A into the Heritage Act to enable a prescribed person or body to apply to the Executive Director for an exclusion determination that a place or object, or part of a place or object, not be included in the Heritage Register. If the Executive Director makes an exclusion determination, it prohibits that place or object (or part thereof) from being considered for inclusion in the Heritage Register for five years following the determination.

To the extent that an exclusion determination prevents culturally significant places or objects from being protected by inclusion in the Heritage Register, cultural rights under the Charter will be engaged. However, under new section 36C, the Executive Director can only make an exclusion determination if satisfied that the place or object (or part thereof) has no reasonable prospect of inclusion in the Heritage Register. Further, a person who has a real and substantial interest in the place or object has the right to request a review of the decision by the Heritage Council. The provision does not alter the standard for inclusion of matters in the Heritage Register. It is a procedural provision to provide certainty about an outcome that would be the case in any event (e.g. if another person nominated a place during the course of a development).

For these reasons, I am satisfied that the making of an exclusion determination is compatible with cultural rights under the Charter because any limitation on those rights is not arbitrary and is reasonable and justified.

Harriet Shing MLC
Minister for Water
Minister for Regional Development
Minister for Equality

Second reading

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (20:30): I move:

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

I advise the Council that a government amendment was passed in the other place for the Building, Planning and Heritage Legislation Amendment (Administration and Other Matters) Bill 2022. The amendment corrects an incorrect cross-reference in the bill. Clause 205 inserts section 296(2)(b) into

the Heritage Act 2017. This transitional provision should refer to section 133 of the amending act; however, subsection (2)(b) refers to the commencement of section 31. The amendment replaces the reference to 'section 31' with 'section 133' to correct this. If this were not corrected, nominations to include places and objects in the Victorian Heritage Register made prior to the amending act coming into force may be at risk of judicial review. If these registrations were challenged, it would be for the court to decide if the registrations were valid.

Motion agreed to.

Ms STITT: I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Victorian Government is committed to delivering a building system that provides safe, compliant and durable housing and buildings. This requires a workforce of skilled and experienced practitioners and a strong and viable system of regulation to enforce compliance. This Bill makes a series of legislative amendments that will implement reforms to reshape the regulatory landscape in Victoria, with a key focus on consumer protection, which the Government has placed at the centre of the process, heralding a new era for the integrity of building regulation in Victoria.

Legislative changes

The Bill will amend the *Building Act 1993*, the *Architects Act 1991*, the *Domestic Building Contracts Act 1995*, the *Building and Construction Industry Security of Payment Act 2002*, the *Cladding Safety Victoria Act 2020*, *the Owners Corporations Act 2006*, *the Sale of Land Act 1962*, the *Surveying Act 2004*, the *Victorian Civil and Administrative Tribunals Act 1998*, the *Planning and Environment Act 1987* and the *Heritage Act 2017*.

These legislative amendments will create the following reforms:

- Establish a Building Monitor;
- Formalise and strengthen the role of the State Building Surveyor;
- Strengthen and improve the governance arrangements of the Architects Registration Board of Victoria under the Architects Act;
- Strengthen information sharing between statutory entities with a role in the building regulatory framework;
- Expand the categories of building practitioner that will be required to be registered;
- Enhance the building approvals process by introducing further safeguards to better inform consumers and provide better assurance that building work is compliant;
- Strengthen legislative protection of Melbourne's green wedges;
- Support the introduction of Automatic Mutual Recognition in Victoria;
- Clarify the power to issue restricted plumbing work licences;
- Amend the distribution of the cladding rectification levy;
- Streamline the endorsement process for a distinctive area and landscape;
- Clarify and improve the operation of the Heritage Act;
- Provide for online access to heritage documents and notices and Heritage Council hearings;
- Allow for applications to exclude places and objects from the Heritage Register.

Building Monitor

In order to better protect the interests of building consumers and put them at the centre of our legislative framework, the Government has established a Building Monitor, tasked with representing and advocating for domestic building consumers at a systemic level. The Building Monitor will be a statutory appointment made by the Governor in Council who will advise the Minister for Planning on systemic issues and risks facing domestic building consumers.

The Building Monitor will also collect and analyse information and data to identify issues facing domestic building consumers and work collaboratively with building system entities to improve the coordination of information and better target support services. Most significantly, the Building Monitor will publish an annual Building Consumer Issues Report that will identify critical issues within the building sector. Preparation of

this report will involve direct and ongoing engagement with domestic building consumers to ensure the experience of those navigating the building sector from end to end is better understood.

Establishing a statutory role for the State Building Surveyor

The State Building Surveyor (SBS) was established by the Government as an executive staff member of the VBA to provide authoritative compliance advice, technical guidance and interpretation of relevant building standards. The Government now seeks to strengthen this role through recognising it in legislation with statutory objectives and functions.

The creation of a legislated role for the SBS will enable greater focus on critical functions and thereby bolster support for industry practitioners. The legislated role will remain within the VBA to enable economies of scale, facilitate information sharing and avoid further fragmentation of oversight within the regulatory system.

Under this Bill, the SBS will be positioned as the primary source of technical expertise and guidance for the building and plumbing industries. The SBS will encourage improvements to regulatory oversight and practices within these industries, with a particular focus on the building surveying profession and councils.

The SBS will have the power to issue binding determinations relating to technical interpretation of technical building and plumbing standards and requirements. Industry practitioners will be required to ensure that they carry out building work or plumbing work or exercise particular functions in accordance with any relevant binding determination.

Improvements to the Architects Registration Board of Victoria

To ensure the Architects Registration Board of Victoria (ARBV) is well-placed to be a modern, fit-for-purpose regulator of the architecture profession in Victoria, amendments to its institutional and governance mechanisms are required. The Bill will amend the Architects Act to ensure appointment requirements for the ARBV and its Tribunal reflect best practice governance standards for a skills-based board. The nominations process will be replaced with an open and merit-based recruitment procedure overseen by Minister for Planning, to secure a board that has the knowledge, experience and expertise required by a professional regulator.

The ARBV will be required to prepare and implement a four-year strategic plan approved by the Minister to strengthen decision making and enhance operations. The amendments provide for an increase in the maximum appointment term of board members from three to five years to support the board's ability to engage with the strategic planning cycle. The amendments will modernise and streamline the governance arrangements for the ARBV to ensure it is equipped to respond to the challenges of a reforming building environment.

Strengthening Information Sharing

The Victorian building sector is made up of myriad agencies, each with an important role to play in maintaining a safe and well-regulated industry. The Government is taking steps to enhance the ability for these agencies to better share information and improve collaboration. By integrating building system information, clarifying information sharing arrangements and making that information accessible through clear pathways, participating agencies will have the opportunity to aggregate data to better inform targeted and evidence-based decision making. This will also enable better transparency and reporting on the health of the building system by clarifying the information that can be shared.

Expanding the registration framework for building practitioners

The Bill will expand the practitioner registration system in a nationally consistent way, thereby improving compliance with national building standards and facilitating national labour mobility. It is anticipated that the expanded practitioner registration system will not only strengthen practitioner competence, accountability and regulatory oversight, but improve consumer protection. Gaps in Victoria's building practitioner registration framework will be addressed initially by establishing the following categories of building practitioner:

- Building Designer;
- Project Manager;
- Building Consultant; and
- Site Supervisor.

Follow-on regulation would then prescribe the authorised work and registration requirements of these practitioners. This is consistent with how existing categories and classes of building practitioner are set.

The new 'Building Consultant' category could support follow-on regulation to introduce practitioners who perform:

- pre-purchase due diligence inspection work;
- essential safety measures maintenance work;

- disability access work; and
- energy efficiency work.

Building Manuals

The Government is committed to improving consumer confidence in the building industry and enhancing transparency. To this end, this Bill will amend the Building Act to introduce a requirement that a draft building manual be prepared by the applicant for an occupancy permit and provided to the RBS for approval. Building manuals are intended to be a single repository of all relevant information relating to the design, construction and ongoing maintenance of a building.

The building manual will address a significant hurdle for owners and owners corporations in accessing information about their building. By making information about the design, construction and maintenance of a building more readily accessible, the building manual will aid not only owners and owners corporations but also other parties such as building practitioners and regulators in future.

Once the draft building manual has been approved by the relevant building surveyor, the manual will be provided to the owner or the owners corporation, who will be responsible for maintaining and keeping the documentation current.

Minor amendments are being made to the Owners Corporation Act and the Sale of Land Act to require that the building manual is provided at the first meeting of a new owners corporation and also to future purchasers of the land.

Subsequent amendments to the Building Regulations 2018 will prescribe a number of matters necessary to operationalise the building manual requirements including what classes of buildings and building work will require a manual to be prepared or updated, the digital format of the manual, and the information that must be contained within a manual.

Building surveyor obligation to provide information statement

Consistent with the Government's commitment to promote and protect the interests of consumers of building work, this Bill will require the relevant building surveyor to provide, at the time of issuing the building permit, a document that clearly details their roles and the responsibilities. This will increase transparency and assist consumers to be fully informed about the critical role that their appointed building surveyor plays in their building project, as well as the broader approvals process for the work. Regulations will prescribe the building work to which this new requirement will apply, as well as the form of the information statement and the information it must contain.

Final inspection by Municipal Building Surveyor before occupancy permit can be issued

Currently, an occupancy permit can be issued for a building even though the building work is not complete or compliant. In a measure to strengthen the process and documentation requirements for the issue of occupancy permits, this Bill will improve checks of the as-constructed building against the building permit. The municipal building surveyor will be responsible for causing the pre-occupancy permit inspection and may engage others, such as a fire safety engineer, to assist in this task. A pre-occupancy compliance assessment by an independent municipal building surveyor will ensure oversight before the relevant building surveyor issues the occupancy permit. At this stage it is intended to only prescribe a subset of building work, such as for class 2 buildings, that being residential apartments for which this additional inspection will be required.

Automatic Mutual Recognition

The *Mutual Recognition Act 1992* (Cth) was amended in 2021 to introduce an Automatic Mutual Recognition (AMR) scheme to be adopted by all States and Territories. AMR is intended to create a 'drivers' licence' model for occupational licensing, enabling a person to use the occupational licence issued by their home state to carry out the same activities authorised under it in other participating Australian jurisdictions.

The Government agreed to participate in the AMR scheme last year. The Bill makes amendments to ensure that important consumer protection requirements that apply to Victorian workers also apply to workers using AMR to carry out building and plumbing work in Victoria. The changes enable regulators to regularly check if both Victorian and AMR workers are covered by any required insurance.

Consumers will also benefit from improvements to information on the VBA register of building practitioners and plumbers and the register of architects maintained by the ARBV. Consumers will be able to make more informed choices before engaging practitioners, using the register to check if any Victorian or AMR worker they have engaged is appropriately registered for that work.

Restricted Plumbing Licences

Minor amendments are being made to the Building Act to provide certainty regarding the Victorian Building Authority's continuing ability to issue restricted licences in multiple work classes for private plumbing work.

Amendments to the distribution of the cladding rectification levy

Amendments to the Building Act will also allow the Government greater flexibility to determine how the cladding levy should be directed to support rectification of buildings found to have non-compliant combustible cladding. The cladding levy was introduced by the *Building Amendment (Cladding Rectification) Act 2019* and came into effect on 1 January 2020. Currently, the levy is collected by the VBA and paid to Cladding Safety Victoria (CSV) under the Cladding Rectification Program.

This Bill will ensure that buildings that fall outside of the funded cladding rectification activity are able to be supported through remediation, with funding able to be directed to councils and other organisations to deliver programs to facilitate cladding rectification.

Protection of Green Wedge Land

The Victorian Government is committed to protecting Melbourne's green wedges for current and future generations. The Bill articulates the Victorian Government's objectives for green wedge land and introduces a legislative requirement for municipal councils to prepare and review Green Wedge Management Plans. Furthermore, the Bill will enable the Minister for Planning to issue directions in relation to the preparation and content of green wedge management plans, which will provide improved guidance to councils on the structure, form and content of Green Wedge Management Plans.

Distinctive areas and landscapes

Part 3AAB of the PE Act, introduced in 2018 enables the Governor in Council, following the recommendation of the Minister for Planning, to declare an area of Victoria to be a distinctive area and landscape. Macedon Ranges, Surf and Bass Coasts and the Bellarine Peninsula have already been declared under this legislation. This experience has repeatedly shown that it is difficult to prepare, consult on and obtain the endorsement and approval of a Statement of Planning Policy within the timeframe specified in the PE Act. The Bill streamlines the process for endorsement by responsible entities of a Statement of Planning Policy for a distinctive area and landscape.

Changes to the Heritage Act 2017

The Bill will make changes to the Heritage Act:

- Allow applications to be made to exclude places and objects from the Heritage Register.
- Allow for the inspection of documents by means of electronic publishing and for the Heritage Council to conduct hearings in person or by audio or visual link.
- Improve the overall operation of the Heritage Act.

Amendments in relation to the nomination of places and objects for inclusion in the Heritage Register

Government agencies tasked with delivering major transport projects in Victoria have sought greater certainty on their obligations under the Heritage Act. Under current legislation, there is a significant risk that major transport projects will be disrupted or delayed by the receipt of a new nomination after works have started.

The Bill will create greater certainty for these projects while maintaining the integrity of the Heritage Register. This is achieved through a provision that allows agencies to apply to the Executive Director for a decision that a place or object can be excluded from the Heritage Register. If an exclusion is granted, agencies will be able to plan projects on this basis over the five-year period that the decision applies.

The integrity of the Heritage Register is maintained by the requirement that applications for exclusion will only be granted if the Executive Director is completely satisfied that the places and objects do not and will not meet the threshold for registration. This decision can be reviewed if significant new information is forthcoming. The robustness of the decision-making process is supported by allowing the Heritage Council to receive requests to review the decision within the first 28 days.

Notices, publication and inspection of documents and hearings

The Bill modernises the legislation and increases public visibility of Heritage Act processes by allowing online access to key documents and notices via the Heritage Victoria or Heritage Council websites. Public access to Heritage Council hearings will also be enhanced by the new provisions outlining the process for hearings to be held using audio or visual links. The amendments also require searchable versions of Heritage Register and Heritage Inventory to be made available online.

General Amendments to the Heritage Act 2017

The Bill will improve Heritage Act processes. Key changes include:

- Streamlining the processes for amending permits.
- Allowing permit exemptions to be revoked if they do not reflect best heritage practice.

- Increasing consistency across the Heritage Act.
- Clarifying timeframes for decisions and notifications.
- Introducing offences to improve the operation of the archaeological provisions.

The Bill also introduces several practical changes. These include:

- Clarifying how and when to draw on security to ensure permit conditions are met
- Where places have multiple owners, ensuring only those directly affected by Heritage Act processes need to be involved
- Preventing people from being guilty of an offence when acting in accordance with a notice or order served on them.

Conclusion

I commend the Bill to the house.

Mr RICH-PHILLIPS (South Eastern Metropolitan) (20:31): I move:

That the debate on this bill be adjourned for one week.

Motion agreed to and debate adjourned for one week.

MENTAL HEALTH AND WELLBEING BILL 2022

Introduction and first reading

The PRESIDENT (20:31): I have another message:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to re-enact, with amendments, the law relating to the treatment of persons living with mental illness or experiencing psychological distress, to repeal the **Mental Health Act 2014** and the **Victorian Collaborative Centre for Mental Health and Wellbeing Act 2021**, to consequentially amend other Acts and for other purposes'.

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (20:32): I move:

That the bill be now read a first time.

Motion agreed to.

Read first time.

Ms STITT: I move, by leave:

That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (20:32): 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 Mental Health and Wellbeing 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 replaces the *Mental Health Act 2014* and implements the recommendations of the Royal Commission into Victoria's Mental Health System, released in February 2021, insofar as it recommended a new statute for mental health in Victoria. The philosophy behind the Bill is to empower and engage with all the people who use it. The new scheme will make the mental health and wellbeing system accessible to people across Victoria, with restrictive interventions and compulsory treatment no longer being its focus. The Bill aims to support the agency and autonomy of people who engage with the mental health and wellbeing system.

Some of the safeguards that had been introduced into the 2014 legislation were found not to be working as well as they could, such as the introduction of advance statements and the provision for a nominated person. This Bill aims to improve the uptake of those safeguards by consumers and to increase their impact.

A primary concern of many of the recommendations of the Royal Commission was to better ensure that legislative human rights protections were fully and properly implemented in practice. This has been achieved in the Bill by introducing greater detail with respect to the objectives and principles that are to guide decision-making by all persons exercising functions and powers with respect to compulsory assessment and treatment decisions and other significant decisions and functions under the Bill.

The objectives of the Bill are set out in clause 12 and include many objectives that promote human rights, including to:

- promote the conditions in which people can experience good mental health and recover from mental illness or psychological distress;
- reduce inequities in access to mental health and wellbeing services;
- provide for comprehensive, compassionate, safe and high-quality mental health and wellbeing services that promote the health and wellbeing of people living with mental illness or psychological distress;
- protect and promote the human rights and dignity of people living with mental illness by providing them with assessment and treatment in the least restrictive way possible in the circumstances;
- recognise and respect the right of people with mental illness or psychological distress to speak and be heard in their own voices; and
- recognise and promote the role of families, carers and supporters.

The Bill provides in clause 29, that mental health and wellbeing service providers exercising functions under the Bill must make all reasonable efforts to comply with the mental health and wellbeing principles, and give proper consideration to them when making decisions. The mental health and wellbeing principles are set out in clauses 16 to 28 of the Bill. They are:

- the **dignity and autonomy principle**—which provides that the rights, dignity and autonomy of a person living with mental illness or psychological distress is to be promoted and protected, and the person is to be supported to exercise those rights;
- the **diversity of care principle**—which requires a person living with mental illness or psychological distress to have access to a diverse mix of treatment, care and support services determined by their needs and preferences;
- the **least restrictive principle**—which requires mental health and wellbeing services to be provided with the least possible restriction on rights, dignity and autonomy;
- the **supported decision-making principle**—which requires that supported decision-making practices are to be promoted and persons receiving services are to be supported to make decisions and be involved in decisions about their assessment, treatment and recovery and that their views and preferences are to be given priority;
- the **family and carers principle**—which provides that families, carers and supporters are to be supported in their role in decisions about the person's assessment, treatment and recovery;
- the **lived experience principle**—which provides that the lived experience of a person with mental illness or psychological distress and their carers and supporters is to be recognised and valued as experience that makes them valuable leaders and active partners in the mental health and wellbeing service system;
- the **health needs principle**—which requires the medical and other health needs of a person with mental illness or psychological distress to be identified and responded to;
- the **dignity of risk principle**—which recognises that a person with mental illness or psychological distress has the right to take reasonable risks in order to achieve personal growth, self-esteem and overall quality of life;
- the **wellbeing of young people principle**—which provides that the health, wellbeing and autonomy of children and young people receiving mental health and wellbeing services are to be promoted and supported, including by providing treatment and support in age and developmentally appropriate settings and ways;
- the **diversity principle**—which provides that the diverse needs and experiences of a person receiving mental health and wellbeing services is to be actively considered, including needs relating

to their particular attributes, and that services are provided in a manner that is safe, sensitive and responsive;

- the **gender safety principle**—which recognises that people receiving mental health and wellbeing services may have specific safety needs or concerns based on their gender and that consideration is to be given to these in providing services;
- the **cultural safety principle**—which provides that mental health and wellbeing services are to be culturally safe and responsive to people of all racial, ethnic, faith and cultural backgrounds; and
- the **wellbeing of dependents principle**—which requires protection of the needs, wellbeing and safety of children, young people and other dependents of people receiving mental health and wellbeing services.

The decision-making principles for treatment and interventions that apply to decision-making under both Chapters 3 and 4 of the Bill are set out in clauses 79 to 83 of the Bill. They are:

- the **care and transition to less restrictive support principle**—which provides that compulsory assessment and treatment is to be provided with the aim of promoting a person's recovery and transitioning them to less restrictive treatment, care and support;
- the **consequences of compulsory assessment and treatment and restrictive interventions principle**—which recognises that the use of compulsory assessment and treatment or restrictive interventions significantly limits a person's human rights and may cause possible harm;
- the **no therapeutic benefit to restrictive interventions principle**—which recognises that the use of restrictive interventions on a person offers no inherent therapeutic benefit to the person;
- the **balancing of harm principle**—which provides that compulsory assessment and treatment or restrictive interventions are not to be used unless the serious harm or deterioration to be prevented is likely to be more significant than the harm to the person that may result from their use; and
- the **autonomy principle**—which provides that the will and preferences of a person are to be given effect to the greatest extent possible in all decisions about assessment, treatment, recovery and support, including when they relate to compulsory assessment and treatment.

Chapter 2 sets out additional safeguards for patients' human rights, including by providing (in clauses 32 to 35) for the steps that need to be taken to provide treatment, care and support consistently with any advance statement of preference made by a person under clause 58. The Bill also sets out (in clauses 36–40) requirements for a statement of rights to be provided to a person in a broader range of circumstances than under the current Act, including when a person is admitted to bed-based services at designated mental health services and when a person's consent to ECT or neurosurgery for mental illness is sought. This is in addition to existing requirements under the Act that a statement of rights be given to people who are subject to orders under the Act. A statement of rights explains the rights that a person has under the Bill and the Bill includes requirements that the person providing the statement must also take reasonable steps to ensure the statement is understood.

Clause 41 provides for the establishment of a primary non-legal mental health advocacy service provider and other suitable providers of these services to promote and support the human rights of people experiencing, or at risk of, compulsory treatment in mental health care. Consumers advocated for the inclusion of this kind of service in the Bill based on the Independent Mental Health Advocacy Service provided by Victoria Legal Aid.

Clause 45 provides for non-legal mental health advocates to provide assistance to consumers of mental health and wellbeing services to enable them to understand and exercise their rights under the Bill, including to participate in the making of decisions regarding their care. The advocacy model adopted in the Bill is based on an "opt-out" system, which will ensure that the primary service will be notified of every consumer that is being compulsorily treated and of other significant events with respect to the person. Clause 51 provides that the primary non-legal mental health advocacy service provider will maintain an "opt-out" register to allow people to register their preference not to be contacted by a non-legal mental health advocacy service provider.

Clause 53 provides inpatients with the right to communicate lawfully with any person, including for the purposes of seeking legal advice and representation or seeking the services of a mental health advocate, and to be assisted to do so. Clause 58 provides for the making of advance statements of preference setting out a person's preferences in relation to their treatment, care and support in the event that they become a patient. Clauses 61–62 provide for a person to nominate another person to be their nominated support person whose role, amongst other things, is to advocate for the views and preferences expressed by the patient, including those in the advance statement of preferences and to support the patient to communicate their questions, preferences and decisions and to exercise their rights under the Bill. Although nominated support persons are a part of the existing legislation, the role of such a person in the Bill clarifies that their role is to ensure the patient's views and preferences are heard, and not to advocate for their best interests

Clause 67 provides patients with a right to seek a second psychiatric opinion as to whether the relevant criteria for any relevant order applying to the patient (with the exception of forensic patients) are met and to review the treatment provided to the patient. Clauses 73–76 respectively provide for a further review of the patient's treatment by the authorised psychiatrist and the chief psychiatrist in specified circumstances following a second psychiatric opinion.

Although the Bill, like the existing *Mental Health Act 2014*, contains many provisions that will limit human rights under the Charter in significant ways, it is intended that the Bill will better ensure that these limitations are proportionate and the least restrictive measures required to ensure that mental health treatment is provided to those who need it. This has been informed by the Royal Commission and the input of people with lived experience of mental illness, in particular those who have received compulsory treatment, to the Royal Commission's inquiries.

I consider that the Bill has achieved its aim of better protecting and promoting the human rights of people with mental illness and promoting their recovery and wellbeing. In particular, the requirement for service providers to make all reasonable efforts to comply with the Mental Health and Wellbeing Principles when exercising a function and give proper consideration to those principles when making a decision and the introduction of the Decision-making Principles for treatment and interventions, and information sharing principles will ensure that the primary decision-making powers and functions in the Bill will be exercised in a manner that is compatible with Charter rights.

Human Rights Issues

The Bill engages a number of rights which are protected and promoted by the Charter. Various provisions of the Bill engage Charter rights in similar ways and these will be considered together to avoid repetition. I consider below each of the kinds of measures adopted by the Bill, and whether those measures limit Charter rights.

To the extent that Charter rights may be limited by each set of measures, I consider whether such limitations are reasonable and can be demonstrably justified in a free and democratic society, having regard to each of the factors in s 7(2).

Compulsory treatment measures

In the context of this Statement, unless otherwise identified, treatment means treatment for mental illness as set out in clause 5 of the Bill.

Under clause 85 of the Bill, people will continue to be presumed to have capacity to give informed consent to any treatment or medical treatment and their informed consent must be sought before treatment is given. This aligns the Bill with the *Medical Treatment, Planning and Decisions Act 2016*, the *Powers of Attorney Act 2014* and the *Guardianship and Administration Act* 2018, which all include a presumption of capacity as required by the *Convention on the Rights of Persons with a Disability*. Clause 86 provides when a person may give informed consent, including that they have been given adequate information about the proposed treatment or medical treatment, been given a reasonable opportunity to make a decision and given their consent freely without undue pressure or coercion by any other person. The clause clarifies that a person has been given reasonable opportunity to make a decision if they have been provided with 'appropriate supports'. Appropriate supports are defined in clause 6 and are the measures which can reasonably be provided to a person to assist them to make decisions, understand information and communicate their views and preferences. Clause 87 provides that a person has capacity if they are able to understand the information they are given for the purposes of deciding whether or not to consent, and are able to remember that information, and are able to use or weigh that information in deciding whether or not to consent, and are able to communicate the decision they make by any means.

However, the Bill does allow for the use of restrictive interventions and intensive monitored supervision and for assessment and treatment without the consent of the patient in specific, limited circumstances, even where that patient has capacity. This aspect of the Bill, like the existing mental health legislation, allows for a person who has capacity to be treated for mental illness without their consent. Clause 89 provides that if a patient does not have capacity to give informed consent to treatment proposed by an authorised psychiatrist, or has capacity to give informed consent but does not give it, and the authorised psychiatrist is satisfied that the treatment is clinically appropriate and there is no less restrictive way for the patient to be treated, they may make a treatment decision for the patient (other than in respect of ECT or neurosurgery). At common law, all persons who have capacity can refuse medical treatment. The *Convention on the Rights of Persons with a Disability* expresses this in the "right to respect for his or her physical and mental integrity on an equal basis with others" in article 17. The other Victorian legislation relating to medical decisions generally reflects this.

In deciding whether there is no less restrictive way for the patient to be treated, the authorised psychiatrist must consider and give appropriate weight to a range of specified matters, including the patient's views and preferences, the views and preferences of the patient expressed in their advanced statement of preferences or

the patient's views expressed by their nominated support person, and the likely consequences for the patient if the treatment is not administered. Further, clause 82 introduces the balancing of harm principle with respect to treatment and interventions, which provides that compulsory assessment and treatment or restrictive interventions cannot be used unless the serious harm or deterioration to be prevented is likely to be more significant than the harm to the person that may result from their use.

The provisions on capacity and informed consent are largely the same as those in the existing legislation. Those provisions were examined in *PBU & NJE v Mental Health Tribunal* (2018) 56 VR 141 ***(PBU)*** and no Charter incompatibility was found with respect to them. In that case, the Supreme Court observed that the compulsory treatment regime in the existing Act represented a paradigm shift away from best interests paternalism to the least restrictive kind of treatment, which draws on elementary human rights concepts (PBU (2018) 56 VR 141, [101]).

Clause 92 provides for certain other people to consent to **medical treatment** (which is defined in clause 3 so as not to include "treatment" under the Bill as defined in clause 5 of the Bill) if a patient does not have the capacity to give informed consent. This aligns the Bill with the *Medical Treatment, Planning and Decisions Act 2016*.

Part 3.5 regulates the use of electroconvulsive treatment (**ECT**). Clause 98 provides that ECT can be performed on an adult patient without their consent by order of the Mental Health Tribunal (**MHT**). An application to the MHT can only be made by an authorised psychiatrist where the patient does not have capacity to give informed consent and the authorised psychiatrist is satisfied that in the circumstances there is no less restrictive way for the patient to be treated. In deciding whether there is no less restrictive way for the patient to be treated, the authorised psychiatrist must consider and give appropriate weight to a range of specified matters including the patient's views and preferences, the patient's views expressed by the patient's nominated support person and the likely consequences for the patient if ECT is not administered. Division 3 of Pt 3.5 provides for applications with respect to adults who are not patients. As an additional protection, an order of the MHT is required for the performance of ECT on a young person regardless of whether that young person consents or not. . Division 4 of Pt 3.5 provides for applications to be made to the MHT with respect to young patients and Division 5 provides for applications with respect to young persons who are not patients. Before granting an application, the MHT must also be satisfied that there is no less restrictive way for an adult or young person who does not consent to ECT to be treated (clauses 100, 105, 110 and 115). Clauses 105 and 115 provide that for adults and young people who are not under compulsory orders (i.e. who are not patients) to receive non-consensual ECT their medical treatment decision-maker must give informed consent in writing or an adult can give an instructional directive consenting to ECT. These clauses invoke the decision-making rules in the *Medical Treatment, Planning and Decisions Act 2016* that prioritise the wishes of the proposed recipient in decision-making. There are safeguards in clauses 102, 107, 112 and 117 to deal with changing circumstances which require that ECT must end.

Part 3.7 regulates the use of **restrictive interventions** (which are defined to include seclusion, bodily restraint or chemical restraint) and contains a number of important safeguards to ensure that their use is justified and proportionate in each case. It implements the Royal Commission recommendation to recognise that chemical restraint is the giving of drugs for non-therapeutic purposes and to regulate it like other forms of restraint. Clause 125 requires service providers to aim to reduce the use of restrictive interventions and eventually eliminate their use. Clause 126 provides that restrictive interventions may only be used in designated mental health services (**DMHS**) in accordance with Division 1 and 2 of Part 3.7. Clause 128 provides that restrictive interventions can only be used on a person if necessary to prevent imminent and serious harm to that person or another person (and in the case of bodily restraint to administer treatment or medical treatment to the person) after all reasonable and less restrictive options have been tried or considered and found to be unsuitable. The authority to carry out a restrictive intervention ends if a person who may authorise it is satisfied that the use is no longer necessary (clause 129).

Division 2 of Pt 3.7 contains authorisation, notification, monitoring and reporting provisions with respect to restrictive interventions. Clause 133 provides that the other less restrictive means tried or considered for the person in seeking to achieve the purpose of the restrictive intervention must be documented, including the reason why the intervention is necessary, all the other less restrictive means tried or considered and the reasons why those less restrictive means were found to be unsuitable. Persons who authorise the use of restrictive interventions on a person must ensure that the person is provided with facilities and supplies that meet their needs and maintain their dignity (clause 136).

Clause 140 allows for the use of chemical restraint during transport if all reasonable and less restrictive options have been tried or considered and found unsatisfactory and it is necessary to prevent serious and imminent harm to the person or another person.

Chapter 10 regulates compulsory mental health treatment for security patients, including persons on court secure treatment orders made by a court and secure treatment orders made under this Chapter. The Chapter

also provides for leave of absence, monitored leave, transfer to other designated mental health services and also pathways for security patients to have their orders revoked.

Chapter 11 deals with forensic patients—it includes provisions regarding leave for forensic patients, security conditions and transfer of a forensic patient to another designated mental health service. Clause 575 authorises security conditions that the authorised psychiatrist considers necessary to protect the health and safety of the forensic patient and the safety of any other person.

Chapter 4 of the Bill provides for **compulsory assessment and treatment**. Clause 144 provides for the making of assessment orders by medical practitioners or authorised mental health practitioners, if satisfied that the compulsory assessment criteria (as set out in clause 142) apply to the person. Assessment orders authorise an authorised psychiatrist to compulsorily examine the assessment patient to see whether the compulsory treatment criteria apply to them. Clause 142 provides that an assessment order can only be made where the person appears to have a mental illness and because of that they appear to need immediate treatment to prevent serious deterioration in their mental or physical health or serious harm to the person or another person. Importantly, that clause provides that the compulsory assessment criteria are only met where there are no less restrictive means reasonably available to enable the person to be assessed. Assessment involves an examination and an inpatient assessment order authorises a person being detained for the purpose of transport to a DMHS and for the purpose of assessment in a DMHS (clause 146). Treatment can only be given to a person on an assessment order with informed consent or if a registered medical practitioner is satisfied that urgent treatment must be given to prevent serious deterioration in the patient's mental or physical health or serious harm to the patient or another person (clause 160). Part 4.3 provides additional provisions that facilitate assessments with respect to court assessment orders made under the *Sentencing Act 1991*.

This assessment may result in a person being treated without their consent if the compulsory treatment criteria (set out in clause 143) apply to the person. If an authorised psychiatrist is satisfied that the treatment criteria do apply, the person may be made subject to a 28 day temporary treatment order pursuant to clause 180. A treatment order may subsequently be made in respect of the person by the MHT pursuant to clause 192. In both cases, the Bill is prescriptive about what matters must be considered, including the person's views and preferences including those expressed in any advance statement. The compulsory treatment criteria contained in clause 143 require that the person has a mental illness, because of which they need immediate treatment to prevent serious deterioration in their mental or physical health or serious harm to the person or another person. These criteria are the same as those under the current Act and their operation will soon be reviewed as part of a planned independent review of the compulsory treatment criteria and alignment of decision making laws under the Bill with those of other decision making legislation. Importantly, clause 143 provides that the criteria are only met where there are no less restrictive means reasonably available to enable the person to be given immediate treatment. Compulsory treatment can involve inpatient treatment, which will involve transportation to and detention at a DMHS under clauses 185 and 197. An inpatient temporary treatment order or treatment order may only be made if the authorised psychiatrist or MHT as applicable is satisfied that treatment cannot occur in the community, otherwise a community temporary treatment order or community treatment order must be made. Where the current Act allows for community treatment orders to be made for up to 12 months, the Bill provides for more frequent oversight by the MHT by limiting these orders to a maximum duration of 6 months.

Clause 535 (in Pt 10.2) allows for the making of secure treatment orders by the Justice Secretary with respect to people who are detained in prison or other place of confinement, where conditions that are the equivalent of the compulsory treatment criteria are met, including that there is no less restrictive means reasonably available to enable the person to receive immediate treatment. The MHT must review that order within 28 days of its making and at least every 6 months after that (clause 538). Clause 560 provides for the authorised psychiatrist to specify any security conditions that they are satisfied are necessary to protect the health and safety of the patient or any other person.

Where a person is being assessed or treated without their consent, there are various safeguards requiring the provision of information (clauses 150, 156, 186 and 198) and the notification of relevant people and entities (clauses 151, 152, 157, 158, 187, 188 and 199). Importantly, a person may apply to the MHT for revocation of a temporary treatment order or a treatment order, and the MHT must hear and determine that application as soon as practicable (clause 206). Clause 395 provides for the appointment of community visitors, who must be independent of the Department and from providers of services and under clause 399 are able to visit prescribed premises and assist people who are receiving mental health and wellbeing services there. A person may request to see a community visitor and this request must be passed onto the community visitors within 2 days.

Chapter 12 of the Bill introduces a new type of order—the **intensive monitored supervision** order to respond to the needs of a small group of patients already in a secure setting that present an ongoing serious risk of harm to others. Clause 578 provides that the use of intensive monitored supervision is confined to people who present an ongoing unacceptable risk of seriously endangering the safety of another person and the person requires an

immediate period of supervision in a supervision unit that limits contact with others to mitigate that risk. For an intensive monitored supervision order to be made for a person, all less restrictive options must have been tried to mitigate the risk posed by the patient and been found to be ineffective. Clause 577 provides that these orders can only be used by Forensicare, the service that deals with the small number of patients who present such a risk, and only in a supervision unit at its premises where secure services are provided.

In recognition of the facts that limiting a person's contact with others by physical separation or "isolation" can have a compounding impact and that its impacts become harsher the longer they are in place, the use of intensive monitored supervision is subject to rigorous oversight and review mechanisms to safeguard against unjustifiable limitations on a person's human rights by carrying out the order in an excessive way or failing to release a person where the relevant threshold is no longer met. In order to use intensive monitored supervision, an application must be made to the MHT, which may grant an order of the type described in clause 583, which may authorise the placing of the patient in a supervision unit and limiting their contact with others for a period of not more than 28 days. An order must immediately be revoked by the authorised psychiatrist if they are satisfied that the relevant criteria no longer apply (clause 588). Such an order does not prevent a person from moving outside the supervision unit or having contact with other people if permitted to do so by the authorised psychiatrist.

This Chapter contains specific safeguards to ensure that the use of intensive monitored supervision is justified and does not become disproportionate, including by enabling a person subject to an order to apply to the MHT for revocation of the order (clause 89), by requiring people to be provided with facilities and supplies that meet their needs and maintain their dignity (clause 585), and by the provision of separate and specific authorisation, monitoring and reporting provisions. The supervision unit in which a patient will be placed pursuant to an intensive monitored supervision order must meet the specifications set out in the Bill, including that it has bathroom facilities, a space for sleeping and a separate space for sitting. Patients subject to these orders must be permitted to spend time outdoors every day. The Chapter also requires Forensicare to establish a clinical committee to review the progress of a person's treatment and their progress towards no longer needing intensive monitored supervision (clause 586).

Mental Health and Wellbeing Commission

Chapter 9 of the Bill establishes the Mental Health and Wellbeing Commission, an independent oversight body, and a complaints handling system to provide redress where consumers have complaints about services provided under the Bill. The Commission is charged with gathering information and data about the system, and has the power to conduct investigations and inquiries. Clause 420 requires that of the four Commissioners, at least one of the Commissioners must be a person with lived experience of mental illness and one must have lived experience of caring for a person with mental illness. Appointing people with lived experience will promote human rights compliance by ensuring the Commissioners properly understand the human rights limits faced by mental health service consumers.

Rights engaged

Although the purposes of the Bill are beneficial and aim to promote mental health and wellbeing, the provisions authorising compulsory treatment measures (including restrictive interventions, intensive monitored supervision and compulsory assessment and treatment) are nevertheless likely to either engage or limit the following Charter rights: equality (s 8); the rights not to be subjected to cruel, inhuman and degrading treatment (s 10(b)) or medical treatment without consent (s 10(c)); freedom of movement (s 12); privacy (s 13(a)); freedom of thought, conscience, religion and belief (s 14); the right to the protection of families and children (s 17); cultural rights (s 19); liberty (s 21); the right to humane treatment when deprived of liberty (s 22); and the right to a fair hearing (s 24).

Equality

Section 8(3) of the Charter relevantly provides that every person is entitled to the 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 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 s 6 of that Act, which includes mental illness (within the definition of a disability).

The compulsory treatment provisions may potentially amount to direct discrimination on the basis of disability. Direct discrimination occurs where a person treats a person with an attribute unfavourably because of that attribute. The provisions treat people with mental illness *differently* from other people on the basis of their mental illness. The provisions also treat people with a mental illness differently from people with a physical illness because the Bill allows treatment without consent in circumstances where the *Medical Treatment, Planning and Decisions Act 2016* does not—namely where a person has capacity.

Cruel, inhuman or degrading treatment

There is no definition of what constitutes "cruel, inhuman or degrading" treatment or punishment in the Charter. Whether a particular act will amount to torture or to cruel, inhuman or degrading treatment or punishment will depend on all the circumstances, including the duration and manner of the treatment, and its physical or mental effect on the person, and the purpose for which the treatment was imposed. Treatment must reach a "minimum level of severity" to meet this description (*Certain Children v Minister for Families and Children (No 2)* (2017) 52 VR 441, [250]).

The use of restrictive interventions and intensive monitored supervision, where there is not a pressing and beneficial need for their use, or without safeguards against abuse, could notionally limit the right in s 10(b). However, as discussed, the Bill contains a number of rigorous, improved safeguards. In particular, the Bill imposes an appropriately high threshold for the use of such practices—including that they can only be used where it is necessary to protect the person concerned, or other persons, from imminent and serious harm—and also requires that people who are subject to restrictive interventions and intensive monitored supervision be provided with the facilities and supplies needed to meet their needs and maintain their dignity. The balancing of harm principle with respect to treatment and interventions, requires that compulsory assessment and treatment or restrictive interventions not be used unless the serious harm or deterioration to be prevented is likely to be more significant than the harm to the person that may result from their use. In light of the protective purpose of the powers and the associated safeguards, I do not consider that the Bill limits the right in s 10(b) of the Charter.

Protection from medical treatment without consent

Section 10(c) of the Charter provides that a person must not be subjected to medical treatment without their full, free and informed consent. The right is concerned with personal autonomy and dignity. The Bill contains many provisions designed to promote the autonomy and dignity of patients and consumers of mental health and wellbeing services. However, the compulsory treatment provisions authorise the medical assessment and treatment of people without their consent, even where they have capacity, which will limit this right.

Freedom of movement

The right to freedom of movement is contained in s 12 of the Charter and applies generally to a person's movement within Victoria. The right has been described as providing protection from unnecessary restrictions upon a person's freedom of movement. It extends, generally, to movement without impediment throughout the State and a right of access to places and services used by members of the public, subject to compliance with regulations legitimately made in the public interest (*Gerhardy v Brown* (1985) 159 CLR 70, 102, cited in *DPP v Kaba* (2014) 44 VR 526, [100]).

Relevantly, the right to freedom of movement will be engaged where a person is required to move to or from a particular place or is prevented from doing the same, is subjected to strict surveillance or reporting obligations relating to moving, or directed where to live. Some of the ways that restrictive interventions are likely to be used will limit people's freedom of movement. However, the right is directed at restrictions that fall short of physical detention coming within the right to liberty under s 21 (see *Kracke v Mental Health Review Board* (2009) 29 VAR 1, [588]). Accordingly, the intensive monitored supervision and the compulsory treatment of a person as an inpatient will be considered under the right to liberty in s 21.

Rights to privacy, family and home

Section 13(a) of the Charter provides, relevantly, that a person has the right not to have their privacy, family or home unlawfully or arbitrarily interfered with. Section 13(a) contains internal qualifications; namely, interferences with privacy only limit the right if they are unlawful or arbitrary. An interference will be lawful if it is permitted by a law which is clear, 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. This requires a broad and general assessment of whether any interference on a person's privacy extends beyond what is reasonably necessary to achieve the lawful purpose being pursued (*Thompson v Minogue* [2021] VSCA 358, [55], [56]).

'Privacy' is a right of considerable amplitude. The fundamental values which the right to privacy expresses are the physical and psychological integrity, individual and social identity, and autonomy and inherent dignity, of the person. It protects the individual's interest in the freedom of their personal and social sphere. Relevantly, this encompasses their right to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009) 29 VAR 1, [619]–[620]).

The 'family' aspect of s 13(a) is related to s 17(1) of the Charter, which states that families are entitled to protection by society and the State. However, whilst the two rights overlap, they are not co-extensive. Section 13(a) is a negative obligation that only prohibits unlawful or arbitrary interferences with family; whereas s 17(1) is a positive obligation on society and the State.

The 'home' aspect of s 13(a) refers to a person's place of residence, regardless of whether they have a legal interest in that residence (*Director of Housing v Sudi* (2010) 33 VAR 139, [32]). What constitutes an interference with this aspect of the right to privacy has been approached in a practical manner and may cover actions that prevent a person from continuing to live in their home (see *Director of Housing v Sudi* (2010) 33 VAR 139).

All three aspects of this right are engaged by the compulsory assessment and treatment measures, which could affect personal autonomy and private relationships, affect the ability of families to gather with members of the family with mental illness, and the ability of people to reside in their own homes if they are detained. However, in my view, the measures do not limit the right to privacy. As mentioned above, the right in s 13(a) of the Charter will only be limited where an interference with privacy is unlawful and arbitrary (*Thompson v Minogue* [2021] VSCA 358, [57]). The clauses of the Bill which authorise interference with a person's privacy, family or home by the use of compulsory treatment measures will be lawful, by virtue of the clauses themselves being clear, precise and appropriately circumscribed, and not arbitrary, because the protective purpose and safeguards upon the use of the compulsory treatment measures will ensure that their use is proportionate to the legitimate aims sought to be achieved.

Freedom of religion and belief

Section 14 of the Charter provides that every person has the right to freedom of thought, conscience, religion and belief, including the freedom to demonstrate one's religion or belief individually or as part of a community, whether in public or private, through worship, observance, practice and teaching. A person must not be restrained or coerced in a way that limits their freedom to have a belief. The freedom to hold a belief is absolute, however the other aspects of the right are not (*Christian Youth Camps Ltd v Cobaw Community Health Services* (2014) 50 VR 256, [537]).

The compulsory treatment measures could place limits on the freedom to demonstrate one's religion or belief as part of a community where people are detained or isolated. They could also limit the right where a person has beliefs that are opposed to the relevant treatment, if those beliefs have the necessary cogency, seriousness, cohesion and importance to engage the right (*Campbell v United Kingdom* (1982) 4 EHRR 293, [36]). The Bill contains measures that seek to ameliorate any impacts on religious practice, including by requiring that people who are subject to restrictive interventions and intensive monitored supervision be provided with the facilities and supplies needed to meet their needs and maintain their dignity. The Bill also requires that consideration of a person's religion be actively considered as part of the diversity principle in clause 25 and the cultural safety principle in clause 27.

Freedom of peaceful assembly and association

Section 16(1) of the Charter provides that every person has the right to peaceful assembly. This provision reflects the right of persons to gather together as a means of participating in public affairs and to pursue common interests or further common purposes.

Similarly, s 16(2) of the Charter relevantly provides that every person has the right to freedom of association with others. This right is concerned with allowing people to pursue common interests in formal groups, such as political parties, professional or sporting clubs, non-governmental organisations, trade unions, and corporations (Joseph and Castan, *The International Covenant on Civil and Political Rights* (3rd ed, Oxford University Press, 2013), [19.13]).

This right could be limited by compulsory treatment measures involving the detention or isolation of a person. However, clause 145 of the Bill provides that an inpatient assessment order cannot be made for a person unless the person cannot be assessed in the community. Similarly, clauses 181(2) and 194(2) of the Bill provide, respectively, that an authorised psychiatrist must not make an in-patient temporary treatment order and that the MHT must not make an in-patient treatment order unless a patient cannot be treated in the community.

Protection of families and children

Section 17(1) of the Charter recognises that families are the fundamental group unit of society, and entitles families to protection by society and the State. Section 17(1) is related to the s 13(a) right and an act or decision that unlawfully or arbitrarily interferes with a person's family is also likely to limit that family's entitlement to protection under s 17(1).

The Charter does not define the term 'family'; however, extrinsic materials and judicial consideration confirm that it is to be given a broad interpretation. It at least includes ties between near relatives, with other indicia of familial relationships including cohabitation, economic ties, and a regular and intense relationship. Cultural traditions may be relevant when considering whether a group of persons constitute a 'family' in a given case. In this respect, the cultural right in s 19(2)(c) of the Charter, which states that Aboriginal people must not be denied the right to maintain their kinship ties, is also relevant.

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. It recognises the special vulnerability of children, defined in the Charter as persons under 18 years of age. 'Best interests' is considered to be a complex concept which must be determined on a case-by-case basis. However, the following elements may be taken into account when assessing the child's best interests: the child's views; the child's identity; preservation of the family environment and maintaining relationships; care, protection and safety of the child; situation of vulnerability; the child's right to health; and the child's right to education (Committee on the Rights of the Child, *General Comment No 14 (2013)*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013), [52]–[79]).

These rights could be limited where the compulsory treatment measures prevent persons with mental illness from residing or spending time with other family, or where children are detained away from family or are prevented from attending school or undertaking other developmentally important activities. However, the rights of children are also promoted by provisions that promote their treatment for and recovery from mental illness. Two notable additional safeguards that are provided for children are that MHT approval is required for ECT to be administered even with consent, and that children cannot be subject to intensive monitored supervision.

Cultural rights

Section 19 of the Charter protects the right of all persons with a particular cultural, religious, racial or linguistic background to enjoy their culture, to declare and practise their religion and to use their language, in community with other persons of that background. In particular, s 19(2)(c) of the Charter provides that Aboriginal people must not be denied the right to maintain their kinship ties.

The compulsory treatment measures may interfere with the ability of people being detained to enjoy their culture or religion in community with others. They could also limit the right if the tenets of a person's religion is interfered with by the relevant treatment. The Bill contains measures that seek to ameliorate any impacts on culture and cultural practice, including by requiring that people who are subject to restrictive interventions and intensive monitored supervision be provided with the facilities and supplies needed to meet their needs and maintain their dignity. The Bill also requires that consideration of a person's culture be actively considered as part of the diversity principle in clause 25 and the cultural safety principle in clause 27.

Right to liberty

Section 21 of the Charter protects the right to liberty. The liberty rights in s 21 reflect aspects of the common law right to personal liberty, which has been described as 'the most elementary and important of all common law rights' (*Trobridge v Hardy* (1955) 94 CLR 147, 152). In particular, s 21(2) prohibits a person from being subjected to arbitrary detention, whilst s 21(3) prohibits a person from being deprived of their liberty except on grounds, and in accordance with procedures, established by law. Together, the effect of ss 21(2) and (3) is that the right to liberty may legitimately be constrained only in circumstances where the deprivation of liberty by detention is both *lawful*, in that it is specifically authorised by law, and *not arbitrary*, in that it is reasonable or proportionate in all the circumstances.

The right to liberty in s 21 of the Charter is concerned with the physical detention of the individual, and not mere restrictions on freedom of movement (*Antunovic v Dawson* (2010) 30 VR 355, [72]). The scope of the right extends beyond detention as part of the criminal justice system to protective or preventative forms of detention, including for mental illness. Whether a particular restriction amounts to a 'deprivation of liberty' for the purpose of the right in s 21 is a question of degree or intensity (*Kracke v Mental Health Review Board* (2009) 29 VAR 1, [664]).

The requirement that compulsory mental health assessment or treatment be provided on an inpatient basis, as a result of the risk posed by their mental illness, will limit the person's right to liberty. However, as explained below, the limitation will occur lawfully and the accompanying safeguards will ensure the limitation is not arbitrary.

Humane treatment when deprived of liberty

Section 22 of the Charter requires that all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. The right to humane treatment while deprived of liberty recognizes the vulnerability of all persons deprived of their liberty and acknowledges that people who are detained should not be subject to hardship or restraint other than the hardship or restraint that is made necessary by the deprivation of liberty itself (*Certain Children v Minister for Families* (2016) 51 VR 473, [172]–[173]).

The relationship between s 22 and s 10 was discussed in *Castles v Secretary to the Department of Justice* (2010) 28 VR 141, [99]:

> Section 22(1) is a right enjoyed by persons deprived of their liberty; s 10(b) applies more generally to protect all persons against the worst forms of conduct. Section 10(b) prohibits "bad conduct" towards any person; s 22(1) mandates "good conduct" towards people who are detained.

As discussed above, the use of the compulsory assessment and treatment measures may involve deprivations of liberty. Where the measures are used in this way, the service responsible for implementing that deprivation must ensure that the needs of those deprived of liberty are provided for so that any such deprivation is humane. In addition to their obligations to act compatibly with the right to humane treatment under the Charter, service providers exercising functions under the Bill must make all reasonable efforts to comply with the Mental Health and Wellbeing Principles and give proper consideration to them when making decisions, and apply the Decision-making Principles for treatment and interventions when making decisions under Chapters 3 and 4 of the Bill. The Mental Health and Wellbeing Principles include the "least restrictive principle" (clause 18) which requires mental health and wellbeing services to be provided with the least possible restriction on rights, dignity and autonomy. The balancing of harm principle (clause 82) with respect to treatment and interventions, requires that compulsory assessment and treatment or restrictive interventions not be used unless the serious harm or deterioration to be prevented is likely to be more significant than the harm to the person that may result from their use.

Further, the Bill specifically requires people who are subject to restrictive interventions and intensive monitored supervision to be provided with the facilities and supplies needed to meet their needs and maintain their dignity. In this way, the Bill provides additional direction to service providers with respect to acute circumstances where there is a risk that treatment may not be humane if particular care is not taken with respect to the premises, facilities and supplies made available to a person while they are detained, and ensures that the compulsory treatment measures in the Bill do not limit the right in s 22 of the Charter.

Right to a fair hearing

Section 24(1) of the Charter relevantly provides that a party to a civil proceeding has the right to a fair hearing. The right may be engaged by those clauses of the Bill which provide for decisions relating to the use of compulsory treatment measures to be made by the MHT (*Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, where it was held that s 24 applied to proceedings before the Mental Health Review Board under the *Mental Health Act 1986*). The Bill requires that the MHT must have regard to the views and preferences of the person who is the subject of the proceedings about the treatment of their mental illness, including as expressed in any advance statement, and of other relevant persons or entities (clause 192) and that applications must be heard and determined by the MHT in a timely way (clause 191). Accordingly, I do not consider that the Bill limits this right.

Reasonableness of limits on rights

Although some of the above Charter rights are engaged or limited in serious ways by the compulsory treatment measures, it is my view that in each case the limits are reasonable and demonstrably justified under s 7(2) of the Charter. In particular, the fact that the right in s 10(c) not to be subjected to medical treatment without full, free and informed consent could be justifiably limited was recognised in the Explanatory Memorandum to the Charter, which stated that:

> [U]nder Victorian law there are some well recognised situations where full, free and informed consent to medical treatment is not required. These include where there is an emergency or where a person is incapable of giving consent and consent is provided by a substitute decision-maker. Some procedures are also permitted without consent in accordance with Divisions 4 and 6 of the Guardianship and Administration Act 1986. These procedures will not breach the Charter since they are reasonable limitations under law and can be demonstrably justified in a free and democratic society.

The Bill provides significant detail, guidance and clear safeguards about when and how these powers can be used, which satisfies the lawfulness requirements of s 7(2) and ensures that the limitations on the relevant human rights are proportionate to the purposes that the limitations seek to achieve. The individual factors that are relevant to assessing compatibility are considered in turn below.

Section 7(2)(a): the nature of each of the relevant rights that is potentially limited is discussed above when considering whether rights are limited.

Section 7(2)(b): the purposes of the compulsory assessment and treatment measures in the Bill are to reduce and manage specific risks to health and safety that arise out of mental illness, to both the person concerned and to others, and to enable people with mental illness to receive necessary treatment for that mental illness. These purposes have significant importance to persons with mental illness, their families and carers, and to the whole community. The purposes reflect important societal concerns and are pressing and substantial in a free and democratic society (*R v Oakes* [1986] 1 SCR 103, 139). In particular, the purpose of the differential treatment of people with mental as opposed to physical illness is to address the particular impacts of mental illness on a person, although they may still have capacity. There can be a material risk of suicide and self-harm where a person is in a state of extreme psychological distress, and in those cases the purpose of differential treatment is to protect the right to life in s 9 of the Charter.

Section 7(2)(c): this factor refers to the means chosen and the way in which a limitation constrains each of the limited rights. The nature and extent of the limitation on each of the rights is discussed above when considering whether rights are limited. I accept that many of the compulsory assessment and treatment measures impose serious and significant limits on Charter rights. However, in all cases the measures have been designed to constrain each of the rights as little as possible by ensuring that the use of the measures is authorised by qualified practitioners based on clear and confined criteria, of limited duration, closely monitored, notified to relevant persons and able to be reviewed. In addition, as noted above, the Bill contains a number of other safeguards designed to ensure that a person subject to compulsory assessment and treatment measures receives information and support necessary to enable them to exercise their autonomy and assert their rights throughout the process, including the requirement to provide appropriate supports to assist a person to make decisions, understand information and communicate their views, the provision of a statement of rights and the assistance of nominated support persons or mental health advocates.

Section 7(2)(d): consideration of the relationship between a limitation and its purpose requires that the measure taken, which limits rights, is rationally capable of achieving its purpose (*R v Oakes* [1986] 1 SCR 103). I consider that is the case with all of the limitations that may occur as a result of the compulsory assessment and treatment measures. For example, the purpose sought to be achieved by restrictive interventions, which is to protect the person concerned from serious deterioration in their mental or physical health and/or to protect the person or others around them from serious harm, is directly and rationally connected to the intervention. Further, as soon as a measure is no longer necessary, either the authority for that measure ceases, or the measure is required to be withdrawn, which ensures the rights limiting measure does not remain in place for any longer than required. More broadly, the purpose sought to be achieved by the compulsory treatment of persons with mental illness, which is to promote their recovery and wellbeing, is also directly and rationally connected to the limitations on rights that result from such treatment.

Section 7(2)(e): this factor requires consideration of other means of achieving the purpose of the limitation, and whether those other means are equally effective and reasonably available. As discussed above, persons responsible for making decisions with respect to compulsory assessment and treatment measures under the Bill must give proper consideration to the Decision-making Principles for treatment and interventions when making decisions under Chapters 3 and 4 of the Bill. The Mental Health and Wellbeing Principles include the "least restrictive principle" (clause 18) which requires mental health and wellbeing services to be provided with the least possible restriction on rights, dignity and autonomy. In particular, as noted above, an in-patient assessment order, in-patient temporary treatment order or an in-patient treatment order must not be made unless a person cannot be treated in the community and the intensive monitored supervision of a person is only to be used as a last resort and in the least restrictive way possible. Further, as discussed above, built into each of the decision making provisions with respect to compulsory treatment measures are requirements that alternatives have been considered or tried (and in relation to intensive monitored supervision, clause 578 requires that "all less restrictive options have been tried to mitigate the risk and have been found to be ineffective", not just that they be considered) and that the decision-maker is satisfied that there are no less restrictive means reasonably available. In respect of the use of restrictive interventions and intensive monitored supervision, the potential alternatives, and the reasons why they were considered to be unsuitable, must be documented, so decision makers cannot give mere lip service to this important requirement.

Having regard to all relevant factors, I consider the compulsory assessment and treatment provisions of the Bill are compatible with Charter rights.

Mental health crisis response and transport by authorised persons

Under Chapter 5 of the Bill, police officers and other authorised persons will continue to have powers to take a person into care and control, and transport them for the purpose of assessment or treatment, and to enter and search premises and seize items. These will be referred to as mental health crisis response and transport by authorised powers to ensure that these interactions are distinguished from the law enforcement powers that police also have.

Clause 232 allows for police officers, protective services officers, registered paramedics employed by an ambulance service or other prescribed people to take a person into their care and control in a mental health crisis for the purposes of having them examined, which can involve detaining and transporting them. In order to use the power, the person exercising the power needs to be satisfied that the person appears to have a mental illness and that, because of the person's apparent mental illness, they need to be taken into care and control to prevent serious and imminent harm to the person or to another person.

The Chapter also provides for powers of entry, search, seizure and bodily restraint in the circumstances above and with respect to people who are required to be taken to or from any place under the Bill. Clause 246 allows authorised persons to enter any premises (using reasonable force to do so if necessary) where they are satisfied on reasonable grounds that the person may be found there and to take that person into their care and control. Two forms that care and control may take are detention and transportation. Clause 247 allows for the search

of a person and clause 248 requires that the search must be conducted in a way that provides reasonable privacy for the person and must be the least invasive kind of search practicable in the circumstances and children must be searched in the presence of a parent or another adult. Clause 249 allows for the seizure of things found during the search of a person if the authorised person is reasonably satisfied that the thing presents a danger to the health and safety of the person or another person. Clause 250 allows for the use of bodily restraints on a person taken into care and control where all reasonable and less restrictive options have been tried or considered and have been found to be unsuitable, and the use of that restraint is necessary to prevent serious and imminent harm to the person or another person.

There are also powers to apprehend and transport people who are absent without leave from an in-patient facility in clauses 221, 608 and 609.

Clause 297 authorises the chief psychiatrist, or an authorised officer at the chief psychiatrist's direction, to enter the premises of a clinical mental health service provider at any time for the purpose of conducting an investigation or clinical review or performing any other function of the chief psychiatrist under the Bill (or a custodial setting in the case of an investigation or clinical review that relates to the provision of mental health and wellbeing services in that custodial setting). In such circumstances, the chief psychiatrist, or an authorised officer at his or her direction, is authorised to do a range of things reasonably necessary for the function being performed, including to require a staff member to produce documents or answer questions (clauses 297–298). Clause 496 makes similar provision in relation to the Mental Health and Wellbeing Commissioner. It authorises authorised investigators to enter the premises of service providers or a custodial setting (where an investigation relates to services in that custodial setting) to inspect and make enquiries and clause 497 provides for the Mental Health Commission to issue written notices requiring the production of documents and the attendance of witnesses. Clause 511 preserves the privilege against self-incrimination in connection with investigations by the Mental Health Commissioner. Clause 748 preserves the privilege in connection with and the provision of information or the doing of any thing that a person is required to do under the Bill.

The crisis response and transport powers, and the inspection and investigation powers of the chief psychiatrist and the Mental Health Commission are likely to either engage or limit the following Charter rights: equality (s 8); cruel, inhuman and degrading treatment (s 10(b)); freedom of movement (s 12); privacy (s 13(a)); protection of families and children (s 17); property (s 20); liberty (s 21); humane treatment when deprived of liberty (s 22).

Equality

The crisis response and transport provisions may potentially amount to direct discrimination on the basis of disability. The provisions treat people with mental illness *differently* from other people on the basis of their mental illness. Although the aims of the provisions are beneficial and aim to promote mental health and wellbeing, these specific provisions could be considered unfavourable, notwithstanding that aim.

Cruel, inhuman or degrading treatment

It is highly unlikely that the crisis response and transport powers could limit the right in s 10(b), unless they were exercised unreasonably, which would make the exercise of power unlawful in any event. These powers are "care and control" powers, and are granted for beneficial purposes. This will be relevant to the determining the reasonableness of any exercise of the power.

Freedom of movement

The crisis response and transport powers, and the inspection and investigation powers of the chief psychiatrist and the Mental Health Commissioner are likely to limit people's freedom to move about, including by detaining them, transporting them or requiring them to attend a particular location as a witness.

Rights to privacy, family and home

Whilst the crisis response and transport powers, and the inspection and investigation powers of the chief psychiatrist and the Mental Health Commissioner, engage the right to privacy in my view they do not limit it. The right in s 13(a) of the Charter will only be limited where an interference with privacy is unlawful and arbitrary. Any interference with privacy under these clauses will be lawful, by virtue of the clauses themselves which are clear and appropriately circumscribed, and not arbitrary, in the sense that they are also proportionate to the legitimate aims sought to be achieved by those clauses.

Protection of families and children

These rights could be limited by the use of crisis response and transport powers against children. Clause 248 requires that if the person being searched is of or under the age of 16 years, they must be searched in the presence of their parent, or if it is not reasonably practicable for a parent to be present, another adult.

Property

Section 20 of the Charter provides that a person must not be deprived of their property other than in accordance with law. There are three elements to this right:

(a) the interest interfered with must be 'property', which includes all real and personal property interests recognised under the general law;

(b) the interference must amount to a 'deprivation' of property, that is, any 'de facto expropriation' by means of a substantial restriction in fact on a person's use or enjoyment of their property (*PJB v Melbourne Health (Patrick's Case)* (2011) 39 VR 373, [89]); and

(c) the deprivation must not be 'in accordance with law', which involves a requirement that the law must be adequately accessible and formulated with sufficient precision to enable the person to regulate their conduct.

In my view, although it is possible that the seizure of some document or thing pursuant to clause 249 may constitute a substantial restriction on a person's use or enjoyment of their property, any such deprivation of property will satisfy the requirement that it be in accordance with law and the right will therefore not be limited.

Right to liberty

The crisis response and transport powers will limit the right to liberty by allowing for temporary detention of a person in order to prevent serious and imminent harm to the person or another person, although the limitation will occur lawfully and the purposes of that temporary detention would ensure the limit is not arbitrary. Clause 229 provides that in exercising a power under Ch 5, an authorised person must give proper consideration to the mental health and wellbeing principles. And clause 230 specifically requires that so far as is reasonably practicable in the circumstances, the exercise of these powers by an authorised person must be exercised in the least restrictive way possible. Clause 228 requires that, as far as reasonably practicable in the circumstances, these powers are to be exercised by an authorised health professional or, if that is not reasonably practicable in the circumstances, to be informed by another authorised person who is an authorised health professional or the advice of a registered medical practitioner, an authorised mental health practitioner, a registered nurse or a registered paramedic. Clause 234 requires that arrangements are made for the person to be examined as soon as practicable, this may be by arranging examination at or near the place, transferring a person's care and control, or transporting them to another place for examination, so that this non-therapeutic period of detention is of very limited duration. Although it is not of itself therapeutic, temporary detention in a mental health crisis including for the purposes of transportation is necessary in order for examination to occur in an appropriate location.

Humane treatment when deprived of liberty

As discussed above, the crisis response and transport powers may involve deprivations of liberty. Where the powers are used in this way, the relevant officers must ensure that the needs of those deprived of liberty are provided for so that any such deprivation is humane. The requirement that examination or transport occur as soon as practicable will ensure that any deprivation of liberty is brief. It is also unlikely that the power to take into care and control, search and seizure powers could limit the right in s 22, unless they were exercised unreasonably, which would make the exercise of power unlawful. These powers are "care and control" powers, and are granted for beneficial purposes.

Reasonableness of limits on rights

Although some of the above Charter rights are engaged or limited in serious ways by the crisis response and transport powers, and the inspection and investigation powers of the chief psychiatrist and the Mental Health Commissioner, it is my view that in each case the limits are reasonable and demonstrably justified under s 7(2) of the Charter. The bill provides significant detail, guidance and clear safeguards about how these powers can be used, which satisfies the requirements of s 7(2). The chief psychiatrist (clause 268) and the Mental Health Commissioner (clause 414) and those exercising powers to take people into care and control or transport them under the Bill will be required to give proper consideration to the mental health and wellbeing principles. The individual factors that are relevant to assessing compatibility are considered in turn below. These powers have been amended in order to implement the Royal Commission's recommendation that crisis intervention must be led by health professionals and not by the police. Under the current Act the police may apprehend a person and take them for examination. Police involvement in these circumstances can sometimes be frightening to a person with mental illness and can exacerbate the symptoms of their illness, through no fault of the police. This part allows for more sensitive responses, where that is possible, which will ensure interventions remain proportionate.

Section 7(2)(a): the nature of each of the relevant rights that is limited is discussed above.

Section 7(2)(b): the overarching purpose of the Bill is to enable people with mental illness to be treated for that mental illness, to achieve recovery and wellbeing and to reduce and manage specific risks to health and safety that arise out of mental illness, which has significant importance to the whole community. In furtherance of that purpose, the apprehension, search and seizure powers have an interim purpose of preventing serious and imminent harm to the person or another person and arranging for the person to be examined, either by arranging for an examination at or near the place the person was taken into care and control, or by transporting the person to a place where they may be examined. The chief psychiatrist's and the Mental Health Commissioner's inspection and investigation powers further the Bill's purposes by ensuring that services and others with powers under the Bill are complying with the Bill and are performing their roles diligently and humanely.

Section 7(2)(c): the nature and extent of the limitation on each of the rights is discussed above when considering whether rights are limited. I accept that many of the limits are serious limits on Charter rights, however in most cases the limits imposed by the crisis response and transport provisions will be temporary and of short duration. The provisions have been designed to constrain each of the rights as little as possible.

Section 7(2)(d): the relationship between the limitations on rights and the purpose sought to be achieved by the compulsory treatment measures is a direct one. All of the limits are rationally capable of achieving their purposes and are orthodox means of doing so.

Section 7(2)(e): clause 228 sets out principles regarding how these apprehension, search and seizure powers are to be exercised and authorised persons exercising these powers will be required to give proper consideration to the mental health and wellbeing principles. Further, as discussed above, built into the "care and control" provisions are mandatory requirements that set an appropriately high threshold before those powers can be used.

I therefore consider that the crisis response and transport powers, and the Mental Health Commissioner's inspection and investigation powers, are compatible with Charter rights.

Information collection, sharing and confidentiality provisions

The Bill contains a number of clauses allowing for the collection and sharing of information—some of it sensitive health information about a person. The Bill also contains various provisions ensuring the maintenance of confidentiality and preventing the sharing of information.

Clause 258 provides for the Health Secretary to enter into information sharing agreements with public sector bodies for specified purposes. Clause 259 allows the Health Secretary to collect a person's unique identifier (defined in clause 3 to have the same meaning as in the *Victorian Data Sharing Act 2017*) for the purposes of performing the Health Secretary's functions, and clause 505 requires that collection to be reasonable in the circumstances. Clause 525 allows the Mental Health Commissioner to collect health information, personal information, identifiers and unique identifiers, as relevant to other Victorian legislation that regulates privacy and the collection and sharing of information. Clause 671 allows the Victorian Collaborative Centre for Mental Health and Wellbeing to collect health information, personal information, identifiers and unique identifiers, to the extent necessary to conduct research. Clause 714 allows Youth Mental Health and Wellbeing Victoria to collect the same types of information to the extent necessary to perform its functions.

The complaints handling and investigations functions of the Mental Health and Wellbeing Commission engage Charter rights in a number of ways. Clause 448 allows the Commission to refer complaints to others without consent. Clause 462 allows the Commission to require a service to produce any document or other evidence relating to the subject of a complaint, including health information, and clause 521 does the same with respect to other types of information. Clauses 463 and 519 provide that a party to a complaint and the Mental Health Commissioner must not disclose conciliation matters. Clauses 517 and 518 prevent the disclosure of information obtained during an investigation, complaint data review or complaint resolution process. Clause 520 allows the Mental Health Commissioner to decide that particular identifying information is not to be disclosed. Clauses 511 and 748 preserve the privilege against self-incrimination.

Part 17.1 regulates and provides for the disclosure of health information, both with and without consent, for specific purposes including to and between services, to the MHT, the chief psychiatrist and the Health Secretary. Division 1 sets out new information sharing principles set out in clauses 722–726. These include, in clause 722, that the use or collection of information about a person receiving mental health and wellbeing services should, amongst other things, enhance their ability to access, understand and self-manage their information, support their autonomy and empowerment and ensure they are provided with safe, high-quality treatment, care and support. By clause 721, an entity that makes a decision, performs a function or exercises a power related to the disclosure, use or collection of health information or personal information under the Bill must give proper consideration to the information sharing principles.

Clause 730 permits a mental health and wellbeing service provider or people associated with the provider (including staff and contractors) to disclose a person's health information without their consent for various purposes, including where disclosure is reasonably necessary for the service provider to perform functions under the Bill. Clause 729 allows for people to consent to the disclosure of their health information to family, a carer or supporter, during the course of receiving a service. Clause 732 allows a service provider not to disclose a person's health information to family, a friend or supporter in certain circumstances, including that the disclosure poses a threat to the life or health of any person or could unreasonably impact on the privacy of any person.

Division 4 of Pt 17.1 provides for information sharing between mental health and wellbeing service providers and specified service providers (such as a provider of alcohol and drug treatment services funded by the State or a provider of public or community housing services funded by the State), and Ambulance Victoria and other prescribed emergency service providers. Clause 727 sets out the purpose of the electronic health information system, including to maintain the records of people who receive services from service providers. Clause 728 provides in what circumstances information from the electronic health information system can be used and by whom. Division 5 of Pt 17.1 creates offences relating to the misuse or unauthorised disclosure of information on the electronic health information system.

Clauses 387 and 746 make it an offence to give false or misleading information under the Bill and clause 515 makes it an offence to make a false or misleading statement.

The information collection, sharing, confidentiality and misleading information provisions are likely to either engage or limit the following Charter rights: privacy (s 13(a)); and freedom of expression (s 15(2)).

Rights to privacy, family and home

Whilst the information collection and sharing provisions engage the right to privacy, in my view, they do not limit it. Any interference with privacy under these clauses will be lawful, by virtue of the clauses themselves which are precise and appropriately circumscribed. They are also not arbitrary, in the sense that they are proportionate to the important aims sought to be achieved by those clauses which include, broadly, ensuring that relevant people and entities have the information needed for the provision of mental health services and the protection of persons with mental illness and those around from serious harm, and ensuring that complaints are considered by the appropriate body so that mental health services are maintained at a high standard.

Freedom of expression

The right to freedom of expression in s 15(2) of the Charter extends to the freedom to seek, receive and impart information and ideas of all kinds, including orally, in writing, in print, by way of art or in another medium. The right contains an internal limitation in s 15(3)(b), which permits lawful restrictions that are reasonably necessary for the protection of public order, public health or public morality. The internal limitation may limit the scope of the right, in the same manner as the internal limitations in s 13(a), or it may indicate the kinds of limits that will be considered reasonable under s 7(2).

The right may be limited by the confidentiality or offence provisions that require confidentiality or prevent the sharing of particular information. However, in so far as these provisions fall within the internal limitation in s 15(3)(b), which provides that freedom of expression is subject to lawful restrictions reasonably necessary for, among other things, the protection of public health, the right might not be limited.

Reasonableness of limits on rights

If the rights in s 13(a) or s 15(2) are limited, it is my view that in each case the limits are reasonable and demonstrably justified under s 7(2) of the Charter. The Bill provides significant detail, guidance and clear safeguards about how these powers can be used, which satisfies the requirements in s 7(2).

The individual factors that are relevant to assessing compatibility are considered in turn below.

Section 7(2)(a): the nature of each of the rights is discussed above.

Section 7(2)(b): the overarching purpose of the Bill is to enable people with mental illness to be treated for that mental illness, to achieve recovery and wellbeing and to reduce and manage specific risks to health and safety that arise out of mental illness, which has significant importance to the whole community. The information gathering and confidentiality provisions further the Bill's purposes by ensuring that appropriate services can be provided, and risks to the safety of the person concerned and others around them can be managed, and that information is only shared to the extent reasonably necessary for that purpose.

Section 7(2)(c): the nature and extent of the limitation on each of the rights is discussed above when considering whether rights are limited. The extent of the limitation on these rights is also minimised by the requirement in clause 721 that any entity that makes a decision, performs a function or exercises a power related to the disclosure, use or collection of health information or personal information under the Bill must give proper consideration to the information sharing principles.

Section 7(2)(d): the relationship between the limitations on rights and the purpose sought to be achieved by the information sharing and confidentiality provisions is a direct one. All of the limits are rationally capable of achieving their purposes and are orthodox means of doing so.

Section 7(2)(e): the provisions have been designed to balance the right to privacy and the right to freedom of expression against each other, as they compete with each other in some circumstances. The provisions have been designed to ensure that rights are only limited to the extent reasonably necessary and that the balance struck between competing rights is appropriate to the specific power or function.

I therefore consider that the information sharing and confidentiality provisions, to the extent that they limit any rights, are compatible with those rights because they fall within the internal limitations on the rights and, in any event, satisfy the requirements of s 7(2).

Offence provisions

The Bill contains a number of offence provisions in clauses 386–388, 463, 498, 513–515, 517, 735–738, 746 and 747. Clauses 386, 483, 489 and 498 contain "reasonable excuse" provisions and clauses 738 and 747 contain "lawful authority" provisions. Clause 717 requires a person to give true answers to questions asked by an auditor, and it is an offence not to do so, which may require a person to incriminate themselves with respect to other offences in the Bill. However, the clause also provides that the answers will not be admissible in evidence against the person in any criminal proceeding other than a proceeding under that clause.

Clauses 511 and 748 preserve the privilege against self-incrimination in connection with investigations by the Mental Health Commissioner and the provision of information or the doing of any other thing that a person is required to do under the Bill.

In my view, the offence provisions engage but do not limit the fair hearing and criminal process rights in ss 24 and 25 of the Charter.

Fair hearing and criminal process rights

Section 24 of the Charter provides that a person charged with a criminal offence (or a party to a civil proceeding) has the right to a fair hearing. Section 25 of the Charter protects a number of rights that apply to a person who has been charged with a criminal offence. Section 25(1) protects the right of a person charged with a criminal offence to be presumed innocent until proven guilty according to law. The right to silence is an inherent part of the presumption, which is also protected by s 25(2)(k). These rights reflect the common law presumption of innocence and require the prosecution to prove the guilt of an accused beyond reasonable doubt and without using compelled testimony against a person.

Provisions that merely place an evidential burden on the defendant (that is, the burden of showing that there is sufficient evidence to raise an issue) with respect to any available exception or defence are consistent with the right to a fair hearing in s 24(1) of the Charter and the presumption of innocence in s 25(1) of the Charter (because the prosecution still bears the legal burden of disproving that matter beyond reasonable doubt).

Section 72 of the *Criminal Procedure Act 2009* applies to summary hearings and provides that where an Act creates an excuse, an accused who wishes to rely on the excuse bears an evidentiary burden (and not a legal burden) in relation to that excuse. A person accused with an offence under any of the above clauses of the Bill would therefore not bear a legal burden to prove that an excuse applied. Reasonable excuse provisions are generally interpreted as imposing only an evidential burden and not a legal burden on an accused with respect to the excuse, and for that reason they are not considered to limit the right to the presumption of innocence in s 25(1) of the Charter.

Similarly, s 130 of the *Magistrates' Court Act 1989* applies to summary offences that provide exceptions, exemptions, provisos, excuses or qualifications, and only requires the defendant to point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the exception, exemption, proviso, excuse or qualification. The burden remains on the prosecution to disprove those facts beyond reasonable doubt.

I therefore do not consider that the rights in ss 24 or 25 of the Charter are limited by any of the offence provisions.

Provisions that require people to perform work

Some clauses in the Bill require people or entities to perform work. Clause 295 allows the chief psychiatrist to give a direction to a service provider to improve the services provided and to address any aspect of their services. Clause 272 requires service provider staff to provide reasonable assistance to the chief psychiatrist or their authorised officer and clause 524 requires the same for the Mental Health and Wellbeing Commission. These clauses may engage, but do not limit the prohibition on forced work (s 11).

Freedom from forced work

Section 11(2) of the Charter recognises that people must not be made to perform forced or compulsory labour. Section 11(3) of the Charter clarifies that 'forced or compulsory labour' does not include work or service that forms part of normal civil obligations. The United Nations Human Rights Commission has expressed the view that to qualify as part of 'normal civil obligations', the work or service must be provided for by law, must be imposed for a legitimate purpose and must not have any punitive purpose or effect (see *Faure v Australia*, Communication no. 1036/2001, UN Doc, CCPRC, 85, D/1036/2001 (2005), [4.11] and [7.5]). I consider that the requirements imposed under the Bill would likely constitute normal civil obligations, and that therefore this right is not limited.

Shaun Leane MLC
Minister for Commonwealth Games Legacy
Minister for Veterans

Second reading

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (20:32): I move:

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

Motion agreed to.

Ms STITT: I move:

That the bill be now read a second time.

Incorporated speech as follows:

In March 2021, the Royal Commission into Victoria's Mental Health System released its final report, setting out an ambitious 10-year plan to transform the face of mental health and wellbeing services in Victoria.

As I said at the handing down of that report during a historic special sitting of Parliament, we know that our mental health system is broken, and must be rebuilt from the ground up. The Royal Commission's reports gave us the blueprint for delivering the biggest mental health reform in a generation, ensuring that all Victorians can access the mental health care they deserve.

This Bill is a fundamental part of the reform journey on which we have embarked. It will give effect to the Royal Commission's recommendation for a brand-new Mental Health and Wellbeing Act, which is essential to promote good mental health and wellbeing for all Victorians and reset the legislative foundations of our mental health and wellbeing system.

I would like to begin by acknowledging our partners and collaborators, without whom we could not have progressed this legislation, nor indeed any of the Royal Commission's vision.

First, to those who have lived and living experience of mental illness or psychological distress, whether as consumers of mental health and wellbeing services or as family, carers and supporters. Thank you for the valuable insights, awareness, and opportunities you have generously shared with us as we embrace systemic and cultural change.

This Bill will enable the views, preferences and values of people living with mental illness or psychological distress, families, carers and supporters to be at the forefront of everything we do, centred in this reform, true to the vision of the Royal Commission.

I would also like to acknowledge our mental health workforce. In particular, the clinical, community and support staff in our public mental health system who have faced the additional challenges imposed by the pandemic head-on. You are true heroes, and I thank you on behalf of the Victorian community.

Working alongside our dedicated mental health and wellbeing workforce, we will create the service system envisaged by the Royal Commission, providing a world-leading mental health and wellbeing services for all Victorians.

Context for the Bill

The proposed Bill has been informed by the findings of the Royal Commission; an Expert Advisory Group appointed to support the Bill's development; and extensive feedback through engagement in 2021 and this year. 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.

Since the beginning of the Bill's development, the level of public engagement on this work demonstrated high community expectations for this Bill and how eagerly it is anticipated.

The Royal Commission said that a new Mental Health and Wellbeing Act's purpose should be 'to promote good mental health and wellbeing in Victoria' and the new legislative objectives should reflect the aspirations of the future mental health and wellbeing system. These new objectives include frameworks for supported decision making, recovery-oriented practice, and human rights protections.

I would like to emphasise the word 'aspiration'. This is an unapologetically aspirational Bill.

But it would be naive to expect that the reforms of the Royal Commission can be implemented overnight. It took us many years of underinvestment to get the broken system described by the Royal Commission, and it will take at least a decade of unwavering commitment to this reform to build the system that Victorians deserve.

Legislation alone cannot mend a broken mental health system and this Bill will not—and cannot—be all things to all people. But my sincere hope is that it represents a significant leap forward in the legal foundations of this work, building new system leadership, establishing a wellbeing and rights-based approach to mental health, and centring voices of lived experience.

The Royal Commission saw as imperative that new legislation be passed this year, and they were absolutely right. This Bill will establish key new elements of the system architecture, such as the Mental Health and Wellbeing Commission and Regional Boards, to guide the system across the reform journey ahead.

During our engagement, some stakeholders expressed cynicism that the new legislation will achieve the Royal Commission's vision without significant investment in implementation and long-term service development. They too are absolutely right.

Three foundations for reform success

I consider that there are three core foundations necessary to achieve success in this reform. They are workforce, legislation, and large-scale, sustainable investment. Without a strong commitment to all three, we cannot hope to achieve the vision set out by the Royal Commission.

We are well on our way to developing and sustaining the future mental health and wellbeing workforce. Between the last three State Budgets, this Government has invested over $600 million into workforce pipelines and retention. We will deliver over 2 500 more mental health professionals across the forward estimates, precisely what our December Mental Health and Wellbeing Workforce Strategy told us was necessary.

Today we deliver on the second critical component, a new legislative framework that delivers on the vision for rights-based mental health and wellbeing laws which reflect the diverse needs of our communities and creates the structures that will hold Government to account on providing the high-quality, compassionate public mental health system of the future.

And importantly, we have already implemented the recommendation of the Royal Commission to create a Mental Health and Wellbeing Levy, which ensures an ongoing, sustainable funding source to keep mental health services accessible, responsive and strong. Without that levy, there would be a $3.7 billion hole in mental health funding, which would mean beds without nurses, community centres without social workers, no new facilities and vulnerable Victorians still falling through cracks in an underfunded system.

We have heard from some that we are moving too slowly. That the directions outlined by the Royal Commission must be acted on as soon as possible.

On the other hand, we have also heard from some in the sector that we are moving too fast to change a public mental health system that is already operating under huge pressure.

I believe that we need to strike a balance. And I firmly believe the Royal Commission was right in asking us to deliver this bill this year.

This is an enabling Bill—it sets up the new system architecture, alongside the necessary powers and functions for entities and others in the new system.

Support for implementation

One lesson that we have learned from feedback about the implementation of the 2014 Act is that more investment is needed to support transition to new legislation, especially in the context of an already over-stretched system.

Recognising this need for investment, $29 million was allocated in this year's State budget to support implementation of this Bill, once passed. There will be 23 expert practitioners and change leaders embedded within Area Mental Health Services. We will develop and deliver comprehensive training on the new

legislation across the mental health sector and support for consumers, carers, families, and supporters to understand the Act and their rights under it. We are providing dedicated funding to peak bodies including VMIAC and Tandem to create materials for consumers and carers, and resources to help navigate the new legal system from next year onwards.

The new legislation will commence no later than 1 September 2023, giving us at least 12 months after passage of this Bill to enable the service system to prepare, as well as for our reform investment to mature, alleviating some of the current pressure on providers and clinicians.

Overview of the Bill

I turn now to a brief overview of the Bill. This Bill, consistent with the recommendations of the Royal Commission, repeals and replaces the Mental Health Act 2014.

Its operation sits alongside the Victorian Charter of Rights and Responsibilities as outlined in the Statement of Compatibility I have tabled. The obligations of the Charter will apply to entities and service providers under the Bill.

The introduction of modernised rights-based mental health principles will guide service providers and decision makers to support the dignity and autonomy of people living with mental illness or psychological distress. For the first time, mental health legislation will include a "Diversity of Care" principle, a "Least Restrictive Care" principle and a principle to specifically call out the health, wellbeing and autonomy of children and young people.

This important shift in focus will ensure that our legislative foundations reach beyond merely authorising and regulating the use of compulsory treatment and restrictive interventions. We are setting out a vision 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 on world-class care in facilities that actually help people recover.

Importantly, the Bill also includes a Statement of Recognition to acknowledge the Victorian Government's commitment to Aboriginal self-determination in achieving positive health outcomes and delivering health services that cater to the unique needs of Aboriginal Victorians.

The inclusion of the Statement will progress a key reform priority of the Aboriginal Health and Wellbeing Partnership Forum to enshrine commitments to Aboriginal self-determination in Victorian government health statutes for the first time.

The Bill includes measures to the increase in uptake of safeguards that promote supported decision-making and the agency and autonomy of people living with mental illness. It also establishes in legislation an 'opt-out' mental health advocacy service, to better support people subject to compulsory treatment orders navigate both the clinical mental health system and the legal system that surrounds it.

Establishment of new entities

Significantly, 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 Regional Mental Health and Wellbeing Boards will provide a valuable opportunity to capture the voices of local communities and be guided by their needs in commissioning implementation of exciting new developments such as the 50–60 Local Adult Services, Infant Child and Family Hubs and expansion of Area Mental Health Services.

The Royal Commission also recommended the establishment of a new independent oversight body—the Mental Health and Wellbeing Commission—to provide state-wide monitoring of the mental health and wellbeing system.

The Bill establishes the Commission as an independent statutory body reporting directly to Parliament and comprising a Chair Commissioner and three Commissioners to be appointed by Governor-in-Council. The Commission will include people with lived experience of mental illness or psychological distress, and with lived experience as a family member, carer or supporter.

We have heard from stakeholders and the community about how important it is that the Commission is not a 'toothless tiger'.

The Commission will incorporate the existing complaints function of the Mental Health Complaints Commissioner and have a suite of broader powers, including an 'Own Motion' investigation power. For the first time, carers and families will be able to make complaints directly to the Commission in circumstances where they own treatment has been sub-par.

The Commission will be empowered to hold government to account for the performance, quality and safety of the mental health and wellbeing system; the implementation of recommendations made by the Royal Commission; and ensuring the mental health and wellbeing system supports and promotes the health and wellbeing of consumers, families, carers and supporters and the mental health and wellbeing workforce.

The Commission will also report on non-compliance with the Act and report to the Secretary any matters arising in relation to a mental health and wellbeing service that pose a serious risk of harm to a person or community.

Further, in line with the rights-based framing of the Act, the Commission will promote, support and protect the rights of consumers, families, carers and supporters.

And it will report directly to Parliament as it sees fit.

Youth Mental Health and Wellbeing Victoria

Excitingly, the Bill also establishes a new statutory entity, Youth Mental Health and Wellbeing Victoria (YMHWV).

We know that since the Royal Commission's report, the ongoing impacts of the pandemic have created real and enduring challenges for our children and young people—in some ways they have felt the impacts the hardest. There is an urgent need to expand on the work of the Royal Commission and provide system-wide leadership in youth mental health − and to give agency to the voices of young Victorians to share their mental health and wellbeing experience, and help us develop the services that will help them live their best lives.

This new entity will champion the voice of young people, including young people with lived experience on its governance board. The entity will also be advised by a Youth Council, made up of young Victorians with diverse backgrounds and experience.

Youth Mental Health and Wellbeing Victoria will support strong strategic partnerships with specific youth mental health service providers not already regulated as public health services or public hospitals in Victoria, and oversee those services to ensure safe and high-quality care for young people.

It is proposed that Orygen will be the inaugural partner, providing services within the West and North-West Metropolitan regions. This model will complement our existing youth mental health services state-wide, and not overlap with the important work already underway in other services across Victoria.

Restrictive interventions—seclusion and restraint

The Royal Commission also recommended that the statutory provisions relating to compulsory assessment and treatment be 'simplified and clarified' such that they are no longer the defining feature of Victoria's mental health laws. However, no firm recommendations were made as to specific legislative changes to achieve this objective.

The final report recognised that, for some people, the experience of compulsory treatment has been a damaging and traumatic one. One of the consequences of the current broken system has undoubtedly been an overreliance on the use of compulsory treatment to provide people with help and support when they are at their lowest ebb.

The Royal Commission has therefore called for a reduction in the use of compulsory treatment and measure to mitigate against its impact, though it did not recommend an end to compulsory treatment altogether. This is because there may be times when medical professionals and psychiatrists are obligated to take action to prevent harm—including at times making difficult treatment decisions against people's will and preferences.

The Royal Commission's final report set a target for the elimination of restrictive interventions (including seclusion and restraint) within the next 10 years. In doing so, they recognised that much of the work to reduce the rates and impacts of restrictive interventions will involve the implementation of the broader system reform, as well as significant practice and culture change, and sustainable sector investment to improve outcomes for all consumers.

Importantly, the Bill acknowledges that restrictive interventions offer no inherent therapeutic benefit and highlights the aim of elimination within 10 years. It's an ambitious goal, but this is an ambitious Bill, and we must do better for our must vulnerable Victorians.

Whilst this Bill achieves these important steps forward in safeguarding the use of restrictive interventions, there is a lot more work to do before we have the mental health and wellbeing system that protects the rights and dignity of all consumers, their families and carers.

Independent review panel

Through engaging with the sector and community, one theme we heard very strongly was a need to delve deeply into laws around compulsory treatment and restrictive interventions. Key stakeholders including

VMIAC, Tandem, the Royal College of Psychiatrists and the AMA all called for more time to work through these complex issues, outside the tight timeframes 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.

The review will also consider the related issue of how the legislation might more closely align with personal treatment decision-making laws—such as the Guardianship and Administration Act 2019 and Medical Treatment Planning and Decisions Act 2016. The Review significantly brings forward consideration of these decision-making laws from the 5–7 year timeframe set by the Royal Commission, delivering a better outcome for consumers and advocates.

The terms of reference for the review will be developed collaboratively with consumers, families, carers, supporters, workers in the sector and service providers using co-design principles.

I am pleased to advise that Hon Justice Shane Marshall A.M. will lead the Review. Justice Marshall was a Federal Court judge for 20 years and is currently an Acting Judge of the Tasmanian Supreme Court. He has been a strong educator and advocate on mental health issues, particularly those faced within the legal profession, informed by lived experience.

Justice Marshall will be joined on the Panel by eminent psychiatrist, Professor Richard Newton; lived experience consumer representatives, Ms Flick Grey and Ms Erandathie Jayakody; and lived experience carer representative, Ms Lisa Sweeney.

The Independent Review Panel will commence its review in October this year once its Terms of Reference are finalised. The Panel will report back to government in twelve months and its recommendations will form the basis of amending legislation.

I would like to extend my gratitude to the members of the Panel for taking on this important work.

Health-led emergency response

The Royal Commission recommended that emergency service responses to people experiencing a mental health crisis in the community are led, wherever possible, by health professionals rather than police.

Following extensive consultation with emergency services, the lived experience community and our police and ambulance partners, the provisions of the 2014 Act have been redesigned to better protect the rights of people experiencing mental health crises in the community.

To enable this new response, some health professionals will now be authorised to take people to be examined for an Assessment Order.

All authorised persons are obliged to give proper consideration to, and make all reasonable efforts to comply with, the mental health principles of this Bill in addition to two additional principles specifically: powers must be used in the least restrictive way possible; and wherever practicable, led by a health professional.

These principles are critical for the cultural change envisioned by the Royal Commission, including ensuring compulsory treatment and restrictive interventions are only used as a last resort and people in this particularly vulnerable situation are given support to make their own decisions, including about assessment and treatment.

This means people must be provided with alternatives, for example assistance from peer workers. Peer workers will never be asked to use force or coerce a person, but they are crucial in helping people voluntarily access treatment, support and care. Ensuring that people can easily access the support and care they need, without the need for utilise these powers, is the best outcome and the ultimate goal of these reforms.

Mental health professionals

This diversity of workforce is really critical—not only in developing a health-led response to mental health crises but also across the whole spectrum of care. We are expanding the footprint of the mental health and wellbeing system, which means bringing in multidisciplinary teams to cater to a breadth of treatment and support needs. In recognition of this, we have included a new definition—Mental Health and Wellbeing Professional—to better recognise the diverse workers who make up our new system. This definition explicitly calls out professionals such as registered psychologist, registered paramedic and counsellor of a prescribed class as persons who perform duties in connection with mental health and wellbeing services.

Because at the end of the day, the beating heart of this new system is undoubtedly our compassionate, dedicated workforce. Without mental health nurses, psychiatrists, social workers and peer support workers we could not help a single Victorian improve their mental health and wellbeing. We are all indebted to these people who dedicate their careers and lives to others, and who are, every day, helping us build a new mental health and wellbeing system from the ground up.

Conclusion

Before I conclude, I wish to acknowledge the hard work of the many people who have contributed to the development of this Bill.

I am grateful to those people and organisations who took the time to respond through the engagement process last year and more recently in a more targeted stakeholder consultation.

I would also like to acknowledge the contribution of the Expert Advisory Group who carefully considered the policy positions and advised on all aspects of this Bill from first principles onwards.

And I would especially like to thank the hardworking teams within the Department of Health and the Office of Chief Parliamentary Counsel for the preparation and drafting of this Bill to meet the rigorous timeframe set by the Royal Commission.

I am proud to bring to this House a Bill that establishes, in law, the vision of the Royal Commission and puts people living with mental illness or psychological distress, families, carers and supporters at the centre of our entire reform program, delivering better mental health and wellbeing for all Victorians.

I commend this Bill to the House.

Mr RICH-PHILLIPS (South Eastern Metropolitan) (20:32): I move:

That debate on this bill be adjourned for one week.

Motion agreed to and debate adjourned for one week.

Adjournment

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (20:33): I move:

That the house do now adjourn.

NUCLEAR ENERGY

Mrs McARTHUR (Western Victoria) (20:33): (2033) My adjournment matter is for the Minister for Energy and concerns electricity generation in Victoria. Specifically I want to raise this state's continued moratorium on nuclear power and the minister's own comments on the technology. She has recently described it as a 'stupid idea' and said without qualification that it is 'dangerous'. I am worried that this clear prejudice will have damaging long-term consequences for our state.

In my view and in the view of many governments around the world nuclear is neither stupid nor dangerous. Indeed as the technology develops it is becoming ever more attractive, as recent commitments to small modular reactors in the US, the UK, Canada and elsewhere have shown. An already safe technology is becoming safer still. New construction methods and smaller reactors are making the capital investment and site requirements more palatable too.

It is easy to dismiss a novel idea, but the minister's willingness to do so is concerning. Developing energy generation capacity is a long-term issue. We cannot just suddenly decide we need it and flick a switch. Will we soon have the same problem with generation that we have now with transmission? Labor's short-sighted botching of our grid has left energy generators unable to connect and now a desperate rush job to criss-cross our state with new transmission lines to catch up with demand. Demand is only going in one direction. With the push for more electric vehicles and for cooking and heating to be done via electricity; with coal-fired generation going off-line without replacement in the next few years; with ever more ambitious emissions reductions policies from all sides of politics; with Victoria's gas crisis; and with rising power bills hurting households, putting businesses under and damaging our economy, I worry the minister is closing her eyes and putting her fingers in her ears.

We need a change of direction, and we need it now. I welcome the leader of the federal opposition's announcement of a policy review on nuclear. As he said, the average wholesale electricity price in the second quarter this year is three times higher than a year ago. The Australian Energy Market Operator called it unprecedented. It is a sign something is not right, and we cannot afford to let ideology dictate our response. Energy affordability is so basic and fundamental; providing it must be the government's

primary focus. The viability of nuclear power should be subject to stringent safety, public health and environmental regulation as well as economic reality, but it is nonsense to ban outright any investigation into the viability of this established low-carbon generation method. Minister, the action I seek is for you to scrap your prejudice and order a comprehensive review of future electricity generation policy, which starts with a genuinely blank slate.

VICTIMS OF CRIME

Mr GRIMLEY (Western Victoria) (20:36): (2034) My adjournment debate is for the Attorney-General, and the action that I seek is for the Attorney to explain why the state government is denying a right-to-review scheme for victims of crime. A right-to-review scheme currently operates broadly in the UK and Scotland with great success and allows a victim to seek a review of a decision not to charge a suspect. In Victoria, although we do not have such a scheme, the victims of crime commissioner has voiced her support for such a model. We would like to see victims of crime able to appeal certain decisions within prosecuting agencies such as plea bargaining and sentence indications. This would expand upon a scheme which already exists in the Office of Public Prosecutions but is restricted to discontinuing proceedings and only for indictable offences prosecuted by that agency. Given this, we would like to see the police implementing a formal review scheme as a matter of urgency—at the very least, in the interim.

As we know, most offences are heard and prosecuted by police, and victims' rights can sometimes be neglected. Victims often feel failed by our justice system when they have no right to seek a review of decisions made by prosecutors. The Victorian Law Reform Commission recommended in both 2016 and in 2021 that victims should have the right to review certain decisions via the DPP, but to date we have not seen this expanded rights review scheme accepted or acted upon. We had an amendment to legislate the right to review in the house six months ago that went to this issue, but for whatever reason it was voted against by the government, along with the Greens, Animal Justice and the Reason Party. The Attorney said at the time the VLRC report:

> … made a similar recommendation to provide victims of a sexual offence with the right to request an independent review of decisions by police or prosecutors …

And:

> I absolutely commit to have further conversations with—

Derryn Hinch's Justice Party about this policy. Unfortunately we have heard nothing since. Six months later and we are still pushing it, with no government commitment. Attorney, I seek for you to explain why the government is not acting on implementing a right-to-review scheme.

ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN

Dr BACH (Eastern Metropolitan) (20:38): (2035) When it comes to Indigenous Victorians some people are very good at gesture politics and very good at virtue signalling, but mark my words: at some point in the not-too-distant future a Victorian Premier will be forced to stand up and publicly apologise for the appalling impact of the current practices of the Andrews Labor government upon Indigenous Victorians. I had the great privilege today of sitting down for some length of time with Aunty Muriel Bamblett. She is the CEO of the Victorian Aboriginal Child Care Agency, and it was great to be with her today given that it is National Aboriginal and Torres Strait Islander Children's Day. Now, in particular we spoke about young Indigenous people in Victoria's child protection system in our out-of-home care system. As I have discussed in this place on many occasions, Indigenous children are appallingly over-represented in our child protection system in our out-of-home care system. Fully one in 10 Indigenous children here in Victoria is in the care system right now. That is easily the worst proportion of any Australian jurisdiction. One in nine Indigenous babies in Victoria is taken by the state into care—one in nine. Again, that is worse than any other Australian jurisdiction, and for many years we have known what can be done in order to make inroads into these chronic issues.

I have been calling, like Aunty Muriel has been calling over a long period of time, for a radical reorientation of our care system, away from a crisis-driven approach that focuses on more and more child protection workers and instead to an approach that focuses on early care and prevention. Now, I know this is difficult for government because this is the opposite of what the CPSU tells the government it should be doing. Over the last nine months we have had four child protection ministers, which in and of itself is quite appalling. What I have committed to doing if I have the great privilege of being our child protection minister after the next election is to shift significant powers from the government to Aboriginal community controlled organisations, to get the government out of kinship care and instead place that responsibility upon our community sector and our fantastic ACCOs, and also to make sure that all kids coming into the care system have a therapeutic assessment, something that is denied them today by the Andrews Labor government—a broader radical reorientation, away from a crisis-driven approach and instead to early intervention and also to early care. The action that I seek is a progress report from the minister on the government's Closing the Gap target when it comes to the over-representation of Indigenous kids in care.

HOMELESSNESS SERVICES

Dr RATNAM (Northern Metropolitan) (20:41): (2036) My adjournment matter tonight is for the Minister for Housing, and my ask is that he urgently reverses the funding cuts that have been handed down to homelessness services this week and increases ongoing funding for Victoria's homelessness services. This week is Homelessness Week, and this year's theme is 'To end homelessness we need a plan', but this year the government's plan appears to be cutting funding for our state's hardworking homelessness services.

I was extremely concerned today to hear that our homelessness services have just been given yet another cut to their funding, and it sounds like this has occurred without warning to the services. I have heard from frontline services that they were only informed yesterday of the funding cut, which has immediate impacts on their services and will mean dozens, if not more, families and children will have no place to call home within days. The cut has slashed funding to emergency accommodation by up to a third, if not more. It means dozens of families, women and children as well as individuals, are being threatened with immediate homelessness, and many more will be turned away at the door when seeking emergency accommodation. Housing is essential for women fleeing family violence, yet here is a decision that will leave women and children in the cold. Our housing and homelessness services do incredible work, housing the thousands of people who present to them for housing assistance every year, but they have increasingly been doing more with less as Victoria's housing crisis worsens and the government continues to cut funding to frontline services.

Early this year I and many services were disappointed to hear that the government had effectively axed the successful From Homelessness to a Home program by allocating it no further funding in the state's budget. While the government later backtracked on this decision and announced it had found the money to extend it, I have heard that some services are preparing to exit their clients under the program over the next few months due to funding fears. The news of the funding cuts today is yet another blow to people experiencing or at risk of homelessness.

Victoria's severe shortages of affordable housing means services are already struggling to find suitable accommodation for their clients, often having to resort to motels and rooming houses. The funding cut will further limit their ability to secure emergency accommodation options and force even more Victorians into homelessness. Our frontline homelessness services should have ongoing sustainable funding and a strong supply of affordable housing options so that everybody who presents to them can be offered a long-term home. This week's funding cut is the exact opposite of an ending homelessness plan and will only worsen Victoria's housing and homelessness crisis. I ask the minister to urgently reverse this week's funding cut for Victoria's homelessness services and guarantee ongoing funding for frontline housing services.

ECHUCA SOCIAL HOUSING

Ms LOVELL (Northern Victoria) (20:44): (2037) My adjournment matter is directed to the Minister for Housing, and it concerns the personal circumstances of one of my constituents. The action that I seek is for the minister to commit funding to acquire and/or construct an appropriate social housing house in Echuca as well as personally intervene to ensure that my constituent obtains this appropriate housing for her family.

Members in this place will know of my continued advocacy for more social housing infrastructure in regional Victoria, particularly in my electorate of Northern Victoria Region. The Andrews Labor government have failed when it comes to meeting the needs of those requiring social housing across the state, with waiting lists for social and priority housing more than doubling in many regional towns and cities over the last eight years.

I was recently contacted by a constituent and social housing tenant. Because of circumstances that were beyond her control, she can no longer be housed in her present home. The constituent is the mother of eight children who reside with her, and she also has five other children in her care following the death of a friend. She moved from Echuca to Mooroopna and planned to enrol her secondary school aged children at Mooroopna Secondary College, unaware of the planned closure of the four secondary schools in Mooroopna and Shepparton to create the single-campus Greater Shepparton Secondary College. Of the 13 children, two are past school age, two are preschool age, three became students at the Greater Shepparton Secondary College and six attended a local primary school.

Like many students at the single-campus super-school, two of the constituents' daughters have been subjected to constant harassment and bullying from other students to the point where they now have been removed from the school by their mother. My constituent cannot afford to enrol them at private school and, because of the policies of the Andrews Labor government, has no other secondary education options for her children. While my constituent is grateful for her current large house, she is now forced to move to another town that has a six-bedroom house available. My constituent is now homeschooling eight of her nine school-aged children while she waits for an appropriate house to become available in Echuca or in another location close by.

Considering my constituent has been forced to move her extremely large family to another town to access suitable educational options for her children, I call on the minister to intervene in this case and ensure this family gets the appropriate social housing they need. My office will ensure the details of this constituent are provided to the minister's office.

EUROA HEALTH

Ms MAXWELL (Northern Victoria) (20:47): (2038) My adjournment is for the Minister for Health, and the action I seek is for the minister to support the survival of Euroa Health and bring the hospital under the public health umbrella. Euroa Health Incorporated was established in 1927 as a community bush nursing hospital. As a small rural healthcare provider, Euroa Health has grown from six beds to a 22-bed fully accredited acute facility, a 75-bed aged care facility, an urgent care centre and a community service centre. While the service does not operate as a public entity, its community status excludes it from government funding provided to other comparable public regional hospitals. The 22-bed fully accredited acute service provides vital support to Goulburn Valley Health and the Strathbogie shire's 11 455 residents. It provides valuable stepped care to patients who do not need to be treated at a large regional hospital but still require hospital care. It supports the safe recovery of patients as they transition, close to home and their community, before they are discharged.

A social analysis of the town and wider region demonstrates why Euroa Health operates as a public service and does not attract many patients with private health insurance. The population is aging, and the rates of chronic illness are higher and the levels of social disadvantage greater than the state average. The sustainability of what have been known as bush nursing hospitals has been precarious for years, and this has been further exacerbated by the pandemic. The future of Euroa Health is under

threat, and losing this local health service would gut the community and place strain on larger hospitals and our ambulance service.

Bringing the hospital under the umbrella of the public system would be a big change for the community and one that might be difficult for them, but it is a much better option than closure. It would enable the hospital to access more equitable funding and, I believe, help their wonderful staff to provide better service to their community as a result. There are other smaller hospitals in my electorate that are public hospitals—Alexandra, Rushworth and Kilmore are just three of the many—so I hope that gives some comfort to the Euroa community that regional hospitals are important and can survive.

Euroa Health provides around 3800 bed days each year to support the community and our health system. This is certainly not the time to be losing a hospital. On the day that I visited Euroa Health recently there were 16 patients admitted who, if this hospital did not survive, would need to be placed at GV Health. I hope the government will deliver a lifeline to Euroa Health and create a stronger plan to transition to public management or provide a suitable alternative that ensures the sustainability of this incredible health service.

WONTHAGGI LIFE SAVING CLUB

Ms BURNETT-WAKE (Eastern Victoria) (20:49): (2039) My adjournment matter is directed to the Minister for Energy and Minister for Environment and Climate Action. The action that I seek is for the minister to intervene in Bass Coast council's management of Department of Environment, Land, Water and Planning Crown land at Wonthaggi Life Saving Club and to help the club develop a workable plan for its future. Wonthaggi surf lifesaving club has been around since 1938, which means it will soon be celebrating 85 years of saving lives. On 10 May 2019 the surf lifesaving clubhouse was destroyed by severe floods. DELWP own the land and Bass Coast council is the appointed land manager.

The club has been using an onsite portable so that they can temporarily operate while they go through the rebuilding process. In the last summer season the volunteers still managed to save eight lives, despite the challenges of not being able to operate out of their usual headquarters. This portable was given the go-ahead by a steering group made up of members of the surf lifesaving club, DELWP, Life Saving Victoria and the Emergency Services Infrastructure Authority as a temporary facility, because the rebuild is expected to take two or three years. The club was, however, advised by Bass Coat council last year that their temporary portable was now considered to be a permanent building being used temporarily.

This advice contradicts what was originally agreed to by the steering group. Now, as a result, the club has had to bring in and fund building consultants, surveyors, fire engineers and specialists to redesign their temporary building to ensure it meets the new code of permanent building being used temporarily. The $50 000 the volunteers have spent on compliance could have funded critical new lifesaving equipment or gone towards construction of the permanent building. There has been a breakdown in certain relationships of the steering committee and the club desperately needs some direction from the outside authority. There are particular issues around the tenure of the lease being offered by the council.

The volunteers want to focus on saving lives and establishing a permanent structure to meet their needs now and into the future. I call on the minister to intervene in Bass Coast council's management of the DELWP Crown land at Wonthaggi surf lifesaving club and help the club to develop a workable plan for its future.

NEIGHBOURHOOD HOUSES

Dr CUMMING (Western Metropolitan) (20:52): (2040) My adjournment matter is for the Minister for Disability, Ageing and Carers in the other place, and the action that I seek is for the minister to make the non-recurring funding for neighbourhood houses permanent. The 401 Victorian neighbourhood houses across the state receive poor funding from the Department of Families, Fairness and Housing known as the neighbourhood house coordination program funding. In 2018 the state government made an investment across four years in recognition of the inadequacies of funding for many underfunded neighbourhood houses, including a number in Western Metropolitan Region. At the time of this announcement it was not made clear that, unlike existing neighbourhood house funding, this new funding would be non-recurring and would lapse in four years time.

In the recent budget the sector was relieved to see that this funding had been extended for two more years up until June 2024. I have been contacted by a number of neighbourhood houses in my region, including Angliss Neighbourhood House in Footscray, Joan Kirner House, Spotswood Community House, Altona North community house, the Grange community house in Hoppers Crossing, Louis Joel Arts and Community Centre in Altona and the community and neighbourhood house in Deer Park, and I am surprised I have not heard from Yarraville or West Footscray neighbourhood houses, but I am guessing it is on its way.

The work of neighbourhood houses has a significant impact on so many areas that determine quality of life for Victorians, including combating loneliness and social isolation, mental and physical health and wellbeing, poverty and disadvantage. They support people from a diverse range of backgrounds, including people with a disability, people from migrant and refugee communities and people experiencing family violence, and they help people gain core skills for employment. Importantly they strengthen communities with pride and belonging. They employ over 5000 Victorians, the vast majority of whom are women, and around 200 000 Victorians access a neighbourhood house in an average week. In 2020 for every one dollar of the neighbourhood house core funding they received they generated $22.05 in community value. Without this funding on a permanent basis, there is a risk of the closure of 27 neighbourhood houses, including four Aboriginal-run neighbourhood houses and 12 in rural Victoria. It would also see the reduction of 77 000 hours annually of paid employment and the loss of 1 554 000 hours of neighbourhood house activities annually, impacting 189 communities. Neighbourhood houses certainly need their fair share of funding, and they need it now.

EATING DISORDER STRATEGY

Ms PATTEN (Northern Metropolitan) (20:55): (2041) My adjournment matter relates to eating disorders and the lack of an eating disorder strategy. We know that an eating disorder is a serious mental illness and we know that it is characterised by a whole range of issues, whether that is behaviours and attitudes to food and eating or whether it is a preoccupation with exercise and body weight and shape. We have certainly all seen in the media the significant rise in eating disorders over COVID. In some ways, when I met with Eating Disorders Victoria just last week—I hate to say it—I was somewhat comforted to hear that this rise in eating disorders was not just in Victoria but across Australia and in fact across the world. So it was not necessarily linked to lockdowns; it appears to be linked to the anxiety of COVID and the anxiety that was a global experience. What we saw, and we were grateful, was that the government did commit funds to uplifting eating disorder services in the May budget. It was unclear why they chose where they will provide that funding. Certainly what we did not see was an eating disorder strategy. That is pretty much what my adjournment matter is about—asking for an eating disorder strategy or an update on that—because what I learned from Eating Disorders Victoria last week is that eating disorders are actually the most deadly of all mental illnesses. Schizophrenia, depression—more people die from eating disorders than any of those other mental illnesses. So the action I am seeking is for the minister to provide an update to the sector specifying where the strategy is up to, what funding will be allocated and to which services funding will be allocated. As I say, young people's lives quite literally depend on this.

TIMBER SALVAGING

Mr QUILTY (Northern Victoria) (20:58): (2042) My adjournment matter is for the Minister for Environment and Climate Action. I have talked about Wombat State Forest before. Following storms in 2021 more than 500 000 tonnes of timber were knocked down and began to dry and rot in Wombat forest. The timber creates an enormous fire risk and it needs to be cleared. Thankfully the naturally felled timber is useful. We can harvest it and use it as a resource, but this must be done quickly because the condition of the wood will deteriorate the longer it sits on the forest floor. After extensive and costly delays, the salvage of timber in Wombat forest has finally commenced. At this point, the value of the salvaged timber is already reaching the point where it is scarcely worth the cost of clearing it. We are getting to it just in time. If we wait any longer, we will be forced to clear the forest at expense and will lose out on the compensation of putting the timber towards productive uses.

So of course the conservation regulator is doing its best to stall the operation. They have demanded hundreds of pages of documentation from the small, family-run business that is doing the clearing work. The regulator lodged this request, withdrew it three days later and then relodged it a month later. This company has about three harvesting staff and about five truck drivers, and the regulator is demanding copies of all licences and routes, personal information, time sheets, permits, their authority to undertake timber harvesting operations and all the business contracts and records linked with the salvage operation in Wombat forest. By the time they are done complying with this request, they will have used all the timber they can salvage for paper to print the records on.

What is worse is that the regulator says this is standard practice. They claim they do this for every single business and every single operation. The cost to Victorians is enormous, although the fact that the regulator apparently did not know how to issue a valid notice the first time around calls this into question. The business operator says they are unable to comply with the request because half the documents demanded are held by different bodies. He is subcontracting from VicForests, and VicForests is working for the Dja Dja Wurrung, who hold the licence. I call on the minister to tear up this excessive red tape that is delaying this time-sensitive matter. Just let the salvage operation go ahead, and then do the same for other affected timber operations going forward.

RESPONSES

Ms STITT (Western Metropolitan—Minister for Workplace Safety, Minister for Early Childhood and Pre-Prep) (21:00): There were 10 adjournment matters this evening, and I will seek a written response from the relevant ministers in accordance with the standing orders.

The PRESIDENT: On that basis, the house stands adjourned.

House adjourned 9.00 pm until Tuesday, 16 August.