PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-NINTH PARLIAMENT

FIRST SESSION

THURSDAY, 4 AUGUST 2022

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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

OFFICE-HOLDERS OF THE LEGISLATIVE ASSEMBLY

FIFTY-NINTH PARLIAMENT—FIRST SESSION

Speaker

The Hon. JM EDWARDS

Deputy Speaker

Ms N SULEYMAN

Acting Speakers

Mr Blackwood, Mr J Bull, Ms Connolly, Ms Couzens, Ms Crugnale, Mr Edbrooke, Ms Halfpenny, Mr McCurdy, Mr McGuire, Mr Morris, Ms Richards, Mr Richardson, Mr Taylor and Ms Ward

Leader of the Parliamentary Labor Party and Premier

The Hon. DM ANDREWS

Deputy Leader of the Parliamentary Labor Party and Deputy Premier

The Hon. JM ALLAN

Leader of the Parliamentary Liberal Party and Leader of the Opposition

The Hon. MJ GUY

Deputy Leader of the Parliamentary Liberal Party

Mr DJ SOUTHWICK

Leader of The Nationals and Deputy Leader of the Opposition

The Hon. PL WALSH

Deputy Leader of The Nationals

Ms E KEALY

Leader of the House

Ms EA BLANDTHORN

Manager of Opposition Business

Ms LE STALEY

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 ASSEMBLY

FIFTY-NINTH PARLIAMENT—FIRST SESSION

Member	District	Party	Member	District	Party
Addison, Ms Juliana	Wendouree	ALP	Maas, Mr Gary	Narre Warren South	ALP
Allan, Ms Jacinta Marie	Bendigo East	ALP	McCurdy, Mr Timothy Logan	Ovens Valley	Nats
Andrews, Mr Daniel Michael	Mulgrave	ALP	McGhie, Mr Stephen John	Melton	ALP
Angus, Mr Neil Andrew Warwick	Forest Hill	LP	McGuire, Mr Frank	Broadmeadows	ALP
Battin, Mr Bradley William	Gembrook	LP	McLeish, Ms Lucinda Gaye	Eildon	LP
Blackwood, Mr Gary John	Narracan	LP	Merlino, Mr James Anthony	Monbulk	ALP
Blandthorn, Ms Elizabeth Anne	Pascoe Vale	ALP	Morris, Mr David Charles	Mornington	LP
Brayne, Mr Chris	Nepean	ALP	Neville, Ms Lisa Mary	Bellarine	ALP
Britnell, Ms Roma	South-West Coast	LP	Newbury, Mr James	Brighton	LP
Brooks, Mr Colin William	Bundoora	ALP	Northe, Mr Russell John	Morwell	Ind
Bull, Mr Joshua Michael	Sunbury	ALP	O'Brien, Mr Daniel David	Gippsland South	Nats
Bull, Mr Timothy Owen	Gippsland East	Nats	O'Brien, Mr Michael Anthony	Malvern	LP
Burgess, Mr Neale Ronald	Hastings	LP	Pakula, Mr Martin Philip	Keysborough	ALP
Carbines, Mr Anthony Richard	Ivanhoe	ALP	Pallas, Mr Timothy Hugh	Werribee	ALP
Carroll, Mr Benjamin Alan	Niddrie	ALP	Pearson, Mr Daniel James	Essendon	ALP
Cheeseman, Mr Darren Leicester	South Barwon	ALP	Read, Dr Tim	Brunswick	Greens
Connolly, Ms Sarah	Tarneit	ALP	Richards, Ms Pauline	Cranbourne	ALP
Couzens, Ms Christine Anne	Geelong	ALP	Richardson, Mr Timothy Noel	Mordialloc	ALP
Crugnale, Ms Jordan Alessandra	Bass	ALP	Riordan, Mr Richard Vincent	Polwarth	LP
Cupper, Ms Ali	Mildura	Ind	Rowswell, Mr Brad	Sandringham	LP
D'Ambrosio, Ms Liliana	Mill Park	ALP	Ryan, Stephanie Maureen	Euroa	Nats
Dimopoulos, Mr Stephen	Oakleigh	ALP	Sandell, Ms Ellen	Melbourne	Greens
Donnellan, Mr Luke Anthony	Narre Warren North	ALP	Scott, Mr Robin David	Preston	ALP
Edbrooke, Mr Paul Andrew	Frankston	ALP	Settle, Ms Michaela	Buninyong	ALP
Edwards, Ms Janice Maree	Bendigo West	ALP	Sheed, Ms Suzanna	Shepparton	Ind
Eren, Mr John Hamdi	Lara	ALP	Smith, Mr Ryan	Warrandyte	LP
Foley, Mr Martin Peter	Albert Park	ALP	Smith, Mr Timothy Colin	Kew	LP
Fowles, Mr Will	Burwood	ALP	Southwick, Mr David James	Caulfield	LP
Fregon, Mr Matt	Mount Waverley	ALP	Spence, Ms Rosalind Louise	Yuroke	ALP
Green, Ms Danielle Louise	Yan Yean	ALP	Staikos, Mr Nicholas	Bentleigh	ALP
Guy, Mr Matthew Jason	Bulleen	LP	Staley, Ms Louise Eileen	Ripon	LP
Halfpenny, Ms Bronwyn	Thomastown	ALP	Suleyman, Ms Natalie	St Albans	ALP
Hall, Ms Katie	Footscray	ALP	Tak, Mr Meng Heang	Clarinda	ALP
Halse, Mr Dustin	Ringwood	ALP	Taylor, Mr Jackson	Bayswater	ALP
Hamer, Mr Paul	Box Hill	ALP	Theophanous, Ms Katerina	Northcote	ALP
Hennessy, Ms Jill	Altona	ALP	Thomas, Ms Mary-Anne	Macedon	ALP
Hibbins, Mr Samuel Peter	Prahran	Greens	Tilley, Mr William John	Benambra	LP
Hodgett, Mr David John	Croydon	LP	Vallence, Ms Bridget	Evelyn	LP
Horne, Ms Melissa Margaret	Williamstown	ALP	Wakeling, Mr Nicholas	Ferntree Gully	LP
Hutchins, Ms Natalie Maree Sykes	Sydenham	ALP	Walsh, Mr Peter Lindsay	Murray Plains	Nats
Kairouz, Ms Marlene	Kororoit	ALP	Ward, Ms Vicki	Eltham	ALP
Kealy, Ms Emma Jayne	Lowan	Nats	Wells, Mr Kimberley Arthur	Rowville	LP
Kennedy, Mr John Ormond	Hawthorn	ALP	Williams, Ms Gabrielle	Dandenong	ALP
Kilkenny, Ms Sonya	Carrum	ALP	Wynne, Mr Richard William	Richmond	ALP

PARTY ABBREVIATIONS

ALP—Labor Party; Greens—The Greens;
Ind—Independent; LP—Liberal Party; Nats—The Nationals.

Legislative Assembly committees

Economy and Infrastructure Standing Committee
Ms Addison, Mr Blackwood, Ms Couzens, Mr Eren, Ms Ryan, Ms Theophanous and Mr Wakeling.

Environment and Planning Standing Committee
Ms Addison, Mr Fowles, Ms Green, Mr Hamer, Mr McCurdy, Ms McLeish and Mr Morris.

Legal and Social Issues Standing Committee
Mr Angus, Mr Battin, Ms Couzens, Ms Kealy, Ms Settle, Ms Theophanous and Mr Tak.

Privileges Committee
Ms Allan, Mr Carroll, Ms Hennessy, Mr McGuire, Mr Morris, Mr Pakula, Ms Ryan, Ms Staley and Mr Wells.

Standing Orders Committee
The Speaker, Ms Blandthorn, Mr Fregon, Ms McLeish, Ms Settle, Ms Sheed, Ms Staley, Ms Suleyman and Mr Walsh.

Joint committees

Dispute Resolution Committee
Assembly: Ms Allan, Ms Hennessy, Mr Merlino, Mr Pakula, Mr R Smith, Mr Walsh and Mr Wells.
Council: Mr Bourman, Ms Crozier, Mr Davis, Ms Symes and Ms Tierney.

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

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

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

Pandemic Declaration Accountability and Oversight Committee
Assembly: Mr J Bull, Mr Eren, Ms Kealy, Mr Sheed, Ms Ward and Mr Wells.
Council: Ms Crozier and Mr Erdogan.

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

Scrutiny of Acts and Regulations Committee
Assembly: Mr Burgess, Ms Connolly and Mr Morris.
Council: Ms Patten and Ms Watt.

CONTENTS

CONTENTS

Thursday, 4 August 2022

The SPEAKER (Ms JM Edwards) took the chair at 9.31 am and read the prayer.

Announcements

ACKNOWLEDGEMENT OF COUNTRY

The SPEAKER (09:32): We acknowledge the traditional Aboriginal owners of the land on which we are meeting. We pay our respects to them, their culture, their elders past, present and future, and elders from other communities who may be here today.

Bills

JUSTICE LEGISLATION AMENDMENT (SEXUAL OFFENCES AND OTHER MATTERS) BILL 2022

Introduction and first reading

Ms KILKENNY (Carrum—Minister for Corrections, Minister for Youth Justice, Minister for Victim Support, Minister for Fishing and Boating) (09:33): I move:

> That I introduce a bill for an act to amend the Confiscation Act 1997, the Crimes Act 1958, the Criminal Procedure Act 2009, the Evidence (Miscellaneous Provisions) Act 1958, the Jury Directions Act 2015 and the Summary Offences Act 1966 in relation to sexual offences, evidence and procedure, to amend the Court Security Act 1980 and the Open Courts Act 2013 to extend the operation of certain temporary provisions and to make consequential amendments to other acts and for other purposes.

Motion agreed to.

Mr M O'BRIEN (Malvern) (09:34): I request that the minister provide a brief explanation of the content of the bill.

Ms KILKENNY (Carrum—Minister for Corrections, Minister for Youth Justice, Minister for Victim Support, Minister for Fishing and Boating) (09:34): The bill will acquit several legislative recommendations from the Victorian Law Reform Commission's 2021 report *Improving the Justice System Response to Sexual Offences*, including the government's promise to implement an affirmative consent model and make clear that stealthing is a crime. The bill will also improve criminal procedure laws to ensure victims are adequately protected, facilitate the efficient operation of the courts and extend certain temporary COVID-19-related measures relating to the courts.

Read first time.

Ms KILKENNY: I move, by leave:

> That this bill be read a second time later this day.

Motion agreed to.

Business of the house

NOTICES OF MOTION AND ORDERS OF THE DAY

The SPEAKER (09:35): General business, notices of motion 12 to 17 and 34 and orders of the day 1 to 4, will be removed from the notice paper unless members wishing their matter to remain advise the Clerk in writing before 2.00 pm today.

Petitions

Following petition presented to house by Clerk:

FERNTREE GULLY TRAIN STATION CAR PARK

The Petition of certain citizens of the State of Victoria draws to the attention of the Legislative Assembly of Victoria community concerns regarding proposed additional railway commuter carparks in Ferntree Gully.

The Petitioners therefore request that any works on additional railway commuter carparks in Ferntree Gully cease forthwith to enable consultation with local residents, traders and community groups in the Ferntree Gully Village precinct to discuss:

- Any Analysis and/or demonstration of post COVID needs for additional commuter spaces in Ferntree Gully that has been undertaken
- Confirmation and disclosure of the site identified for additional commuter spaces in Ferntree Gully
- Potential benefits and/or impacts on the Ferntree Gully Village Precinct with regards to the design and location

By Mr WAKELING (Ferntree Gully) (46 signatures).

Tabled.

Ordered that petition be considered next day on motion of Mr WAKELING (Ferntree Gully).

Documents

DOCUMENTS

Incorporated list as follows:

DOCUMENTS TABLED UNDER ACTS OF PARLIAMENT—The Clerk tabled the following documents under Acts of Parliament:

Melbourne Cricket Ground Trust (MCG)—Report year ended 31 March 2022

Subordinate Legislation Act 1994—Documents under s 15 in relation to Statutory Rules 58, 60.

Business of the house

ADJOURNMENT

Ms BLANDTHORN (Pascoe Vale—Leader of the House, Minister for Planning) (09:36): I move:

That the house, at its rising, adjourns until Tuesday, 16 August 2022.

Motion agreed to.

Members statements

AUSTRALASIAN UNION OF JEWISH STUDENTS

Mr SOUTHWICK (Caulfield) (09:37): We talk a lot in this house about the future and our leaders of the future, and it is my pleasure to recognise our AUJS leaders—our Australasian Union of Jewish Students leaders—here in the gallery today who are part of a political exchange program. I want to acknowledge the member for Box Hill for working with me in organising this program; we have been doing this for a number of years. I particularly want to thank Eddie Lichtig, Natalie Gunn and Noah Loven, who have been instrumental in organising this program. It is about equipping these students with the tools they need to ensure they can have a strong voice on campus.

We have taken up the International Holocaust Remembrance Alliance definition at the federal level in combating antisemitism. We, the opposition, took this to the Parliament as a strong stance to combat antisemitism. The government joined us in doing that. We believe this should happen on campus too. Jewish students should have the right to define what antisemitism is. This will be one of the things we will be talking about today. Antisemitism should not and cannot be tolerated on campus.

AJAX FOOTBALL CLUB

Mr SOUTHWICK: I want to acknowledge AJAX's 50th birthday, which we had on the weekend, particularly Jamie Davis, Ronnie Lewis, Alida Lipton and Graham Lubanski—all legends, all people that have provided support in our community for so long. It was great to see the legends on the field at Princes Park kicking the ball around. May they have many years of success in the future.

AUSTRALASIAN UNION OF JEWISH STUDENTS

Ms HUTCHINS (Sydenham—Minister for Education, Minister for Women) (09:38): I also acknowledge the students in the gallery today and thank them for their great work in the community and on campuses.

SYDENHAM ELECTORATE LEVEL CROSSING REMOVAL

Ms HUTCHINS: I love nothing more than being out and about in my electorate. Recently I had the opportunity to attend a pop-up consultation stall in Watergardens shopping centre in my electorate set up by the Level Crossing Removal Project that provided residents with an opportunity to have their say on the design and construction of a brand new bridge that will see the Calder Park level crossing gone for good. It was great to speak to so many locals, who told me how much travel time they have already saved through the removal of the Melton Highway level crossing and how excited they are to see the second crossing gone in my seat of Sydenham.

TAYLORS HILL PRIMARY SCHOOL

Ms HUTCHINS: I also had the chance to pop into Taylors Hill Primary School last week, a school that is one of thousands across Victoria enjoying the healthy breakfast program, part of the government's school breakfast program. To date more than 24 million meals have been delivered as part of the program since its inception. As the member for Sydenham and Minister for Education, I could not have been prouder to attend with the kids.

DEANSIDE PRIMARY SCHOOL

Ms HUTCHINS: Last Friday was Schools Tree Day. I had the chance to visit another school, Deanside Primary School, where Sienna and Amaira told me about National Tree Day and the importance to students and the community of planting trees and planning for the future.

OVENS VALLEY ELECTORATE HOUSING

Mr McCURDY (Ovens Valley) (09:40): The housing shortage in the Ovens Valley electorate is at flashpoint. I continue to be called on by constituents that have been notified to leave their rental properties. There is simply nowhere for them to go. The short-sighted government for Melbourne has again only had eyes for Melbourne and the metropolitan suburbs they hold or those they need to form government. The big build in Melbourne has become regional Victoria's biggest headache. The Premier must be joking when he says he governs for all Victorians—that is, provided you live in Melbourne.

DEER CONTROL

Mr McCURDY: During my mobile office throughout July I travelled the length and breadth of the Ovens Valley many times. I was approached by many who explained that the sambar deer population is out of control. One particular constituent flagged me down between Bright and Harrietville to show me the damage that had been done during the middle of the day from hitting a sambar deer. I have seen more and more dead sambars on the side of the road, including one last week just out of Peechelba on the Wangaratta-Yarrawonga Road. The government for Melbourne needs to take this more seriously. Lives are at risk. If this happened in Richmond, it would be solved immediately.

OVENS VALLEY ELECTORATE INFRASTRUCTURE

Mr McCURDY: During my mobile office I had many people telling me about the poor state of roads and their poor state of repair—poor service, no shoulders and potholes that you can lose your

car in. The budget cuts to Victoria's regional roads are a false economy, and it will take us years to repair the damage done. The lack of investment will cost lives for many years to come. The government for Melbourne needs to get some control on its insatiable appetite for wasting money on poorly run and mismanaged projects and start maintaining the health services and the public roads that are falling down around us.

MICK DIMOS

Ms D'AMBROSIO (Mill Park—Minister for Energy, Minister for Environment and Climate Action, Minister for Solar Homes) (09:41): Only last month I stood in this house and paid tribute to Steve Dimos, a friend and long-serving ALP member in my area, who, sadly, passed away on 11 June. I am again standing here and this time to remember his brother, Mick, who passed away on 19 July this year. Mick was a stalwart of the ALP and worked on every campaign for every member of the Mill Park and Thomastown state electorates and the Scullin federal electorate. One of his proudest moments was when he was awarded the 40-year life membership medallion by then Premier Steve Bracks in May 2002. The week before the 2001 federal election Mick suffered a minor stroke, yet he still did his letterboxing, handed out on election day and ferried people to and from polling booths. He also voted three days before the election—'to make sure my vote was recorded in case of my untimely death!', he said. He was very active in his local Macedonian community and loved volunteering at his Epping church, helping to dig the foundations throughout the building process and then when he attended the many events at the Epping seniors group in the church hall.

He endured some heartbreaking tragedies in his life. He lost his young wife, Stella, in a car accident in the early 1970s and then his youngest son, Andrew, in an industrial accident. He took great pride in his son, Steven, and his family, and he loved his grandchildren and great-grandchildren and regretted not being able to spend more time with them when his health started to deteriorate. Mick loved telling stories of what happened in his day, the good and the bad. He was a wise, kind, thoughtful and patient man, always ready with a smile, a shake of the hand and a pat on the back. Mick and Steve were always together. Rest in peace, Vlado. You will be missed.

MALVERN ELECTORATE LEVEL CROSSING REMOVALS

Mr M O'BRIEN (Malvern) (09:43): The people of my Malvern electorate work hard, they pay their taxes and they love their children. So why does this Andrews Labor government insist on treating them like second-class citizens? Labor's taxpayer-funded ads boast they are removing 85 dangerous and congested level crossings, but the truth is Labor is keeping some of this state's worst level crossings for one reason alone: they are in Liberal electorates. The official Australian level crossing assessment model list rates the level crossing at Tooronga Road, Malvern, as the 39th worst in Melbourne, but Labor wants to keep it. ALCAM rates the High Street, Glen Iris, level crossing as the 53rd worst, but Labor wants to keep it. The former federal Liberal government even committed $260 million to remove the Glenferrie Road, Kooyong, level crossing, but the Andrews Labor government said 'No, thanks' and refuses to remove the 71st worst level crossing in Victoria.

I know how these level crossings disrupt the daily lives of the families in my community, and the fact that the Andrews government refuses to deal with them is disgraceful—because while crossings 39, 53 and 71 in Malvern are untouched, the 163rd worst one, in Dandenong South, was removed this year. This is a Labor government that plays politics with everything but is now playing politics with the safety and lives of people in my electorate. Premier, stop playing politics with level crossing removals and agree to remove the level crossings at Glenferrie Road, High Street and Tooronga Road.

LESLEY MCCARTHY

Mr PEARSON (Essendon—Assistant Treasurer, Minister for Regulatory Reform, Minister for Government Services, Minister for Housing) (09:44): I rise to acknowledge the fantastic contribution that Lesley McCarthy has made in my community in a number of roles over many, many years. Lesley McCarthy was previously the principal at Flemington Primary School, a fantastic local school, and

she has played a pivotal role in Flemington Kensington Rotary. She has worked tirelessly to build our community and make it a better place.

I was with Lesley on the weekend tree planting in the state district of Niddrie with the Minister for Public Transport. It was great to see Lesley there with the other Rotarians building a better community, doing the things that really count and making our community a better place. Lesley, you are a builder, you are a connector. We are so fortunate to have you working tirelessly in our community. In every way you make our community better. Thank you so much for everything that you do.

ST THERESE'S SCHOOL, ESSENDON

Mr PEARSON: I was delighted to be at St Therese's primary school with the grade 6 class to discuss the Essendon North roundabout. It was an hour and a half of questions from the students. It was a fantastic contribution—really thoughtful, insightful questions, students that are really engaged and a teaching cohort that are supporting them every step of the way. I have great hope and great confidence in the future when I see students like this, so intelligent, so articulate, so confident and so passionate about their community. It is what makes Essendon so special. It is a wonderful school community.

PARLIAMENTARY INTEGRITY

Ms STALEY (Ripon) (09:46): Yes, Minister, Victorians have a right to know. An Andrews Labor government minister has told the media that Victorians have a right to know when it comes to questions of integrity in politics. Minister Pearson is absolutely right: Victorians have a right to know what Daniel Andrews and his government have actually done. Victorians have a right to know why the Premier and his Labor MPs refused to cooperate with Victoria Police over the red shirts rorts investigation despite the Premier saying, 'Everyone should cooperate and everybody will'. Victorians have a right to know how many Victorians are waiting in pain on vital surgery waiting lists. Victorians have a right to know the Premier's secret dealings with United Firefighters Union boss, Peter Marshall, over alleged firefighter pay deals. Victorians have a right to know why the Premier dismantled the CFA to satisfy union demands. Victorians have a right to know what the Premier promised John Woodman for his sponsorship of the Premier's golf cup. Victorians have a right to know why the Premier will not admit that he has cut $2 billion from this year's health budget. Victorians have a right to know why the Premier is refusing to repay more than $1.3 million in funds misappropriated from taxpayers, as confirmed by Operation Watts. And Victorians have a right to know why the Premier continues to accept political donations from the CFMEU, collecting more than $3 million.

The SPEAKER: Order! I remind members to call members by their correct titles.

NEIL MCINNES

Mr DIMOPOULOS (Oakleigh—Minister for Tourism, Sport and Major Events, Minister for Creative Industries) (09:47): It is with deep sadness that I pay tribute today to Neil McInnes, a long-time Labor supporter and a great friend who passed away on Monday, 4 July. Neil was fondly recognised as an intelligent and soft-spoken person who respected everyone and made them feel heard. He always stood up for what he believed in—gender equality, asylum seeker rights and welfare, social justice. These were non-negotiable for Neil. He expressed those beliefs loud and proud, but his actions were even louder.

Neil was an active and hardworking member of the South Clayton ALP branch. He served as a returning officer the entire time. This is testament to his work ethic and popularity. He would make himself available to volunteer for the Labor Party time and time again, but he also extended his helping hand to many other community causes. He was known as the friendly and familiar face you would want to see at events, who people always felt they could talk to. Neil had a way of making people feel welcome and supported.

My sincerest condolences go to Neil's wonderful family—his wife, Irene; his three daughters and several grandchildren—and to all his loved ones. He was a loving husband, father, grandfather and friend and a truly kind and caring man. He will be missed deeply by all those who knew him, including me. Vale, Neil McInnes.

CAMPING REGULATION

Ms McLEISH (Eildon) (09:48): The government's decision to allow camping on licensed riverfrontages comes with many risks. Biosecurity is one of them. Foot-and-mouth disease is one of the biggest biosecurity threats we have faced in generations. It puts at risk Victoria's livestock industry, which is worth billions. They have been warned of these risks by many and on multiple occasions, and now is not the time to throw open the gates and allow people to camp in these areas. The failure of the Andrews Labor government to support the Liberal-Nationals bill shows their lack of regard for and understanding of the agriculture sector and producers. Our bill would have put power over leased waterfront land back into the hands of farmers and allowed them to maintain farm biosecurity. It is extremely disappointing that Labor do not understand or get this.

MCMAHONS CREEK PEDESTRIAN BRIDGE

Ms McLEISH: The saga of building the replacement bridge next to the Reefton Hotel at McMahons Creek continues. Community members have been waiting for action since 2017 when their bridge was demolished. This is way too long. The community and the local council want to know when the allocated funding will be provided to the Yarra Ranges council so they can plan and complete the build. Following years of community agitation and angst and an FOI application, the Andrews government finally committed $754 000 for the Yarra Ranges council to do the job. The project has made it to the VicRoads website, but the money has not been delivered. The council have been advised by VicRoads that the funding is not in the budget. This is just not good enough. For years children— *(Time expired)*

ST ALBANS ELECTORATE SCHOOLS

Ms SULEYMAN (St Albans) (09:50): I rise today to acknowledge the incredible work of my local teachers and students in the electorate of St Albans. I recently had the pleasure of visiting Monmia Primary School in Keilor Downs and also Sunshine North Primary School for Library and Information Week. It was great to see Monmia Primary School's brand new library, which was partly funded by the Andrews Labor government. I also want to thank the assistant principals, Vineta and Lucia, for all the work that they do at Monmia.

It was an absolute joy for me to visit Sunshine North Primary School. What a fantastic school it is. I have seen firsthand the great investments by our governments in rebuilding this school for Sunshine North. It was inspirational to see the fantastic programs on offer, including the school garden, which is part of the Stephanie Alexander Kitchen Garden program. I would like to thank acting principal Nelly Santos—what a fantastic assistant principal she has been—and also the acting assistant principal, Kylie Taylor, a former student of Sunshine North Primary School who lives locally and has returned to teach at Sunny North. I would also like to acknowledge the gold house leaders, Jason and Avneet, and the peer mentor students, Tina and Desirae. Your passion and hard work were amazing.

NEIGHBOURS

Mr ANGUS (Forest Hill) (09:51): Last week marked the end of an amazing international television institution, that of the TV series *Neighbours*. After 37 years and almost 9000 episodes the series has sadly come to an end. Filmed at Fremantle Media studios in Forest Hill, the show has launched the careers of many now-famous Australian actors and made a big impact on Australian and international television over the years. With the legendary Ramsay Street—real name Pin Oak Court—located in Vermont South in the Forest Hill district, this series has captured the attention of locals and tourists as well as viewers both at home and abroad. I congratulate and thank all the cast, crew and team at Fremantle for their work on *Neighbours* and wish them well for the future.

MONASH BUSINESS AWARDS

Mr ANGUS: Last Friday evening I attended the Monash Business Awards annual presentation night. After a two-year postponement due to COVID restrictions, it was a tremendous night to recognise and celebrate successful businesses in the City of Monash. Congratulations to all the nominees and award winners as well as to the MBA committee for organising this terrific event.

LIONS V DISTRICTS CANCER FOUNDATION MOBILE SERVICE

Mr ANGUS: I congratulate the Lions V Districts Cancer Foundation Inc on its mobile skin check and awareness unit that travels around Victoria and southern New South Wales conducting free skin checks for the public. This unit recently visited the Forest Hill district and set up in the Bunnings car park in Vermont South. I was pleased to inspect the unit, hear all about the services being offered and catch up with the Lions volunteers who were looking after the appointments on that weekend. Well done to all involved, including the chair, Lion Bruce Hudgson, and also Bunnings Vermont South for allowing the unit to park there for two days.

HEALTH SYSTEM

Mr ANGUS: All Victorians are now clearly seeing the healthcare crisis in Victoria continuing, with daily revelations about how the system is failing. *(Time expired)*

ROY DE MOOR

Ms NEVILLE (Bellarine) (09:53): It is with much sadness that I pay tribute to Roy de Moor, who passed away on 18 July after a lengthy and stoic battle with his failing health. Born in the then Ceylon in 1935, Roy as a 13-year-old arrived in Australia with his family in 1948, taking up residence in North Coburg. As a teenager Roy loved sport, especially his cricket, and he and his brothers promptly joined the Coburg Cricket Club, where over the next 25 seasons Roy proved himself a good bat and leg spin bowler. In the years following his schooling at Moreland High he was called up for national service and then commenced his lifelong career with Australia Post, working at the Melbourne GPO for 37 years until he retired.

He was a proud and active member of both the Australian postal union and the ALP. On his retirement Roy moved to Portarlington where, amongst other things, he was the founding member of the Portarlington branch of the ALP, fulfilling nearly every role over three decades there. I want to thank him for his very strong support throughout the time I have been the local member of Parliament. At the same time Roy joined the Portarlington Golf Club. He proved his sporting prowess there as well, winning the seniors championship and being appointed pennant captain. He was a highly respected lifelong member of the Freemasons. My condolences and thoughts are with all Roy's family and friends, especially his much-loved partner, Leila, his children and grandchildren, all of whom will miss him dearly. Vale, Roy de Moor.

PLANNING SCHEME AMENDMENTS

Dr READ (Brunswick) (09:55): Councils from across Victoria have collaborated to build a case to increase environmentally sustainable design, or ESD targets, for new developments. Twenty-four councils, representing approximately half of the Victorian population, including Ballarat, Frankston, Strathbogie, Warrnambool and my area, soon to be renamed Merri-bek, now seek an amendment to the Victorian planning scheme to increase those ESD targets. The proposed changes would make buildings more energy efficient, result in net zero carbon emissions, cut power bills and improve water management. Right now builders are allowed to produce houses that are cold in winter and hot in summer and that consume too much energy to keep at a comfortable temperature. A visitor from Finland recently complained that the house she was staying in in Melbourne was too cold—and she is from Finland! The easiest homes to make more energy efficient are those that have not yet been built. Higher ESD standards will help us get off gas, cut emissions and keep us warmer in winter. I commend

the councils for their work and join them in urging the new Minister for Planning, whom I congratulate, to support this amendment as soon as possible.

HIGHTON VILLAGE REDEVELOPMENT

Mr CHEESEMAN (South Barwon) (09:56): Over the last few months the Highton community has been strongly campaigning to save their beloved Highton Village from the Geelong council's planned redevelopment. Some of the council's plans include putting a four-storey multi-use building and parking garage on top of existing car parking spaces, ripping up the existing Highton Library and removing the iconic clock tower, among other radical changes. These alterations will result in Highton Village's small-town character very much changing. Residents only want small-scale repairs and upgrades undertaken to improve the village, such as fixing the footpaths and uneven pavers. Highton locals want the distinctive character of the village, which is at the heart of the Highton community, preserved for many years to come. I am proud to be a part of this campaign opposing the Geelong council's plans. I have held numerous street stalls to discuss these issues with residents, who overwhelmingly love the Highton Village as it is. I have assisted the community, and particularly community activists such as Graham Hobbs, in collecting thousands of signatures against this proposed redevelopment. I call on the Liberal-dominated Geelong council to cease and desist with their plans to redevelop this village.

BAYSIDE ENVIRONMENTAL ROUND TABLE

Mr ROWSWELL (Sandringham) (09:57): Together with the Shadow Minister for Environment and Climate Change last week we hosted the Bayside environmental round table with local environmental groups. We met at the Beaumaris Life Saving Club at Ricketts Point on Port Phillip. It was great to hear the perspectives and the priorities of the 16 local environmental groups in attendance. We had a spectacular view over the Ricketts Point Marine Sanctuary during the event, and it was a reminder to all of us of our obligation to better protect it for this generation and the next. I send a very big thankyou to our local environmental groups for attending.

SANDRINGHAM HOSPITAL

Mr ROWSWELL: It was a pleasure to have the CEO of Alfred Health Professor Andrew Way visit Sandringham Hospital, where we had a constructive conversation about my recent announcement that a future Liberal government will invest $25 million in our community hospital. Under our plan the Sandringham Hospital modernisation works will commence, a total refurbishment of the maternity ward will take place and the very first Sandringham Hospital community charter will be established. This plan also guarantees that the Sandringham Hospital emergency department will remain open 24/7, 365 days a year, and we will work with Alfred Health to re-establish a locally based general surgical unit.

SANDRINGHAM COLLEGE

Mr ROWSWELL: Last night the Lions Club of State Parliament celebrated their 20th anniversary, and I was thrilled to invite the Sandringham College jazz band to perform at that event. Sincere thanks to students Mackenzie, Sophia, Sebastian, Elizabeth and Max and their teachers Steve Sedergreen and Luke Devenish and to principal Amy Porter for facilitating their attendance. They were outstanding.

MICK DIMOS

Ms HALFPENNY (Thomastown) (09:59): On 27 July I, along with the Minister for Energy, Minister for Environment and Climate Action and Minister for Solar Homes, attended the funeral of Labor stalwart Mick Dimos. Mick was one of the great true believers of the Australian Labor Party. He had strong values and was always ready to fight for justice, equality and workers' rights. Mick passed away on 19 July 2022. Mick was a life member of the Labor Party as well as a long-time member of the Australian Workers Union and a vocal member of the Macedonian community. His

kitchen walls were adorned with all the Labor leaders he had met and helped—Bob Hawke, Steve Bracks, the Premier—as well as local members, both present and former. Mick faced a number of tragedies in his life, losing his wife Stella in 1972 and his beloved son Andy in a work incident in 1997 at the age of 36, leaving him to raise his remaining son, Steve, who he was very, very proud of.

In spite of these tragedies, Mick had room in his heart to fight for a better world for others. Mick always welcomed new ALP members and was generous in sharing his time and knowledge as well as many, many thousands of hours of volunteer work. When I was first elected to Parliament Mick was a great support and friend to me. He was kind and generous in sharing his wisdom and volunteering and supporting me. In later years it was difficult for him to get around, but he was still seen at Epping Plaza with his mates, arguing with them about politics and the great views and virtues of the Labor Party. He will be missed of course by all of us, and I give my condolences to his family.

ALYSSA POLITES

Mr EDBROOKE (Frankston) (10:00): The Commonwealth Games recently began, and I want to give a big shout-out to a local Frankston athlete who will be wearing the green and gold in Birmingham as we speak. For Alyssa Polites, who lives in my electorate of Frankston, Birmingham will be her first Commonwealth Games. Apparently sibling rivalry was her inspiration for taking up cycling when she was 12. She said her older brother had been gifted a new racing bike by her parents. Well, she has shown them. Last year she won the national junior time trial and road race. This year she won the under-23 road race while still 18 years of age and she won the Madison national championship title. Although she rides at Carnegie Caulfield Cycling Club, up the road from my electorate, we can forgive her for that, and we will all be cheering her on in Frankston.

JOHNNY FAMECHON

Mr EDBROOKE: It is with great sympathy that I learned only a minute ago that boxing great and legend Johnny Famechon has died aged 77. Johnny and his family are well known around the Frankston area. I believe he lived in Aspendale. Indeed I was part of the movement in 2015 to get a statue of Johnny Famechon in Ballam Park in Frankston. He has certainly left his mark, and he has been an inspiration for so many people in our community. His first major win was over Les Dunn to become the Victorian featherweight champion in 1964. Then he was the commonwealth featherweight champion. He became the lineal WBC featherweight champion, and he even defeated Cuban José Legrá on points at the Royal Albert Hall in London, where he defended his title. Vale.

BALLARAT HIGH SCHOOL

Ms ADDISON (Wendouree) (10:02): I would like to offer my heartfelt congratulations to you, Speaker, on your election to that position. It is well deserved, and I know you will do an outstanding job.

Well done to the talented cast and crew of Ballarat High School's production of *Frozen*. I was delighted to attend last Friday night. It was a magical performance that thrilled the audience as we were taken on a musical adventure with Elsa, Anna, Kristoff, Sven and Olaf. Congratulations to Alannah Hebbard, Lilly Pennell, Rose Cudby, Abigail Morton, Flynn Carli-Seebohm, Jaydn Stobie, Leah Ross, Naomi Ross, the ice ensemble and the ensemble. Musical productions like *Frozen* are a success because of not only the outstanding performances on stage but also the hardworking directors and stage crew. Well done to Ashley Kelman, Eleanor Jones, Caleb Spiller, Harvey Coombes, Lucy Laffey, Helena Anderson, Peyton Norman Kinna, Madeline Davis and everyone else involved.

LIONS CLUB OF STATE PARLIAMENT

Ms ADDISON: Last night it was wonderful to host Lions Club members at Parliament to celebrate 20 years of the Lions Club of State Parliament in Victoria and raise funds to support the Lions V Districts Cancer Foundation. A special thankyou to the fantastic Sandringham College band for performing at the event. It was fantastic to welcome Des and Sue Jones from Sebastopol and District Lions Club as well as to meet Lions from across the state. A special thankyou to past district governor

Helen Campbell for the significant role she plays in the organisation of the Lions Club of State Parliament. It is appreciated by all members.

LEVEL CROSSING REMOVALS

Mr J BULL (Sunbury) (10:04): I do want to take this opportunity very briefly to congratulate the newly appointed Speaker and Deputy Speaker of the house. There will be time for further remarks later on, I am sure, but just from me to both of you, Speaker and Deputy Speaker, I could not think of two better members of Parliament to preside over this house. So congratulations to you, Deputy Speaker, and to the Speaker, who has just left the house.

It is only the Andrews Labor government that gets on and removes dangerous and congested level crossings. Sixty-five level crossings across the state have been removed thus far, and I was absolutely delighted to join the Deputy Premier and Minister for Transport Infrastructure on Sunday in my community at Gap Road to provide an update on works. This is a transformative project—a project that is all about improving safety within the Sunbury town centre, reducing congestion and creating better connecting transport networks. It creates thousands of jobs along the way. It is an absolutely outstanding project, and I know that each and every member within my community is incredibly passionate to see this crossing go. There is an unprecedented level of interest in the project. People—me included—spend countless hours down at the level crossing. It is only an Andrews Labor government that gets on and gets rid of these crossings.

WILLIAM 'BILL' CHANDLER

Mr HAMER (Box Hill) (10:05): I rise to mourn the passing of Surrey Hills local William 'Bill' Chandler OAM. Bill's impact on both his profession and our local community was profound. An architect and town planner, Bill was chair of the Victorian state urban arts unit in the mid-1980s and a founding member of Urban Design Forum Australia. In the 1990s Bill was appointed chief planner on the Melbourne Docklands development, and he was the driving force behind the Australian Urban Design Awards. In 2014 Bill received an Order of Australia Medal for services to town planning and urban design, and in the 50 years that he lived in Surrey Hills his contributions were just as significant.

In the late 1970s and early 1980s Bill helped establish the Surrey Hills Neighbourhood Centre as a community hub and helped organise the early Surrey Hills festivals, an event which continues to this day. Bill was also a prolific writer and publisher. In January 2020 he achieved a rather unique feat of having different letters published in three metropolitan papers all on the same day. Locally he was the editor of the *Surrey Hills Neighbourhood News*, which was distributed to over 8000 letterboxes six times a year. In more recent times, when the local Leader paper stopped publishing he helped establish an online publication, *Eastsider News*, to discuss local community issues. As the current editor said to me this week, 'Whenever we are confronted with anything that needs a bit of judgement about how to handle it, we ask ourselves, "What would Bill say?"'. Bill had a great wit, a fierce intellect and boundless passion. He was a mentor and friend to many. I extend my sympathies to Ros and his children. Vale, Bill Chandler.

HEALTHCARE WORKERS

Ms SETTLE (Buninyong) (10:07): It was a pleasure to join with the Minister for Health and my colleague the member for Wendouree to meet the graduate paramedics at Wendouree station. *(Time expired)*

Bills

EARLY CHILDHOOD LEGISLATION AMENDMENT BILL 2022

Statement of compatibility

Ms HUTCHINS (Sydenham—Minister for Education, Minister for Women) (10:08): In accordance with the Charter of Human Rights and Responsibilities Act 2006 I table the statement of compatibility in relation to the Early Childhood Legislation Amendment Bill 2022:

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 Early Childhood Legislation Amendment Bill 2022 (the **Bill**).

In my opinion, the Bill, as introduced to the Legislative Assembly, 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

One of the main purposes of the Bill is to amend the *Education and Care Services National Law Act 2010*, the *Children's Services Act 1996*, and the *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021* to provide for the Regulatory Authority for Victoria under the National Law and the *Children's Services Act 1996* to be the integrated sector regulator for Child Safe Standards for the early childhood sector.

The Bill also amends the Education and Care Services National Law (**National Law**) set out in the Schedule to the *Education and Care Services National Law Act 2010*, in order to implement the recommendations of the 2019 National Quality Framework Review, and makes corresponding amendments to the *Children's Services Act 1996*.

In addition, the Bill amends the *Child Wellbeing and Safety Act 2005* to require providers of certain maternal and child health services to employ or engage nurses for those services only if the nurses have prescribed specialist maternal and child health nursing qualifications and any prescribed prerequisites.

Human rights issues

The Bill includes amendments which promote the rights of children (eg, clauses 4, 8, 35, and 100), which are protected under section 17(2) of the Charter.

A number of clauses may engage the right to privacy, protected under section 13(a) of the Charter. However, for the reasons set out below, the right to privacy is not limited.

Right to Privacy

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. It will be arbitrary only if it is capricious, unpredictable, unjust or unreasonable, in the sense of extending beyond what is reasonably necessary to achieve the statutory purpose.

A number of clauses in the Bill authorise requests for, and the disclosure of, information by or to the Regulatory Authority (see clauses 4, 9, 17, and 41). For example, clause 17 amends section 14(1) of the National Law to empower the Regulatory Authority to require a person who has applied for a provider approval to provide information, including for purposes of assessing the person's knowledge of the National Quality Framework (see also clause 41, which amends section 14(1) of the *Children's Services Act 1996*). In addition, clause 4 inserts new Part 2A (Compliance with Child Safe Standards) into the *Education and Care Services National Law Act 2010*. Within Part 2A, new section 16B empowers the Regulatory Authority (when exercising jurisdiction in Victoria) to collect, analyse and publish information and data regarding compliance with the Child Safe Standards by relevant entities (defined as an approved provider of an approved education and care service located in this jurisdiction), and to give that information to the Commission for Children and Young People (see also clause 9, which inserts new section 160(1)(da) into the *Children's Services Act 1996*).

To the extent the information which may be requested or disclosed pursuant to these clauses may include personal information, the right to privacy is engaged. However, the scope of any interference with a person's privacy is likely to be modest, as there is a reduced expectation of privacy in the context of the regulated environment of early childhood services. Moreover, I do not consider that these clauses limit the Charter right to privacy, because any interference with a person's privacy will be lawful (as the relevant authorising sections are precise and accessible) and not arbitrary.

More specifically, the scope of the permitted sharing of information is confined to what is reasonably necessary for the Regulatory Authority to effectively perform its functions. For instance, section 160(3) of the *Children's Services Act 1996* (inserted by clause 9) provides that the Regulatory Authority may exchange information with persons and bodies with functions or powers under a law of another State, a Territory, or the Commonwealth *relating to* the monitoring or enforcement of compliance with standards that correspond to the Child Safe Standards.

A number of other safeguards ensure that any interference with privacy will be appropriately constrained, including the application of the *Privacy and Data Protection Act 2014* and section 38 of the Charter to the Regulatory Authority and other public authorities in Victoria.

The Hon. Natalie Hutchins
Minister for Education

Second reading

Ms HUTCHINS (Sydenham—Minister for Education, Minister for Women) (10:09): I move:

That this bill be now read a second time.

I ask that my second-reading speech be incorporated into *Hansard*.

Incorporated speech as follows:

The Andrews Labor Government is committed to ensuring quality early childhood education and care, which plays a vital role in supporting the learning and development of Australian children in their early years and helps to lay the foundation for better health, education and employment outcomes later in life.

This Bill seeks to enhance the regulatory system for early childhood education in Victoria and nationally by:

- amending the Education and Care Services National Law (National Law) to implement the 2019 National Quality Framework Review (NQF Review) and make other minor technical amendments to the National Law;
- making corresponding amendments to the *Children's Services Act 1996* (CS Act) to maintain alignment with the National Law;
- amending the *Education and Care Services National Law Act 2010* (the National Law Act), the CS Act and the *Child Wellbeing and Safety Act 2005* (CWS Act) to provide for the Secretary to the Department of Education and Training, as the Victorian Regulatory Authority under the National Law and the CS Act, to be the integrated sector regulator of the Child Safe Standards (CSS) for the early childhood sector; and
- amending the National Law Act to remove the redundant requirement to table the annual report of the national authority in each house of the Victorian Parliament.

The Bill also amends the CWS Act to incorporate further regulation making powers to prescribe prerequisites for maternal and child health (MCH) nurses and to incorporate documents including the MCH Service Guidelines 2019.

Amendments arising from the National Quality Framework (NQF) Review and other minor policy decisions

The NQF sets national requirements and standards for the provision of education and care, and strikes the right balance between quality and affordability, by focusing on improving the quality of services, providing access to information about the quality of services and reducing the regulatory burden on services.

The NQF operates nationally and regulates education and care services that are provided to children on a regular basis, including preschools (kindergartens), long day care services, family day care (FDC) services and outside school hours care (OSHC) services. The NQF consists of the National Law and the Education and Care Services National Regulations (including the National Quality Standard).

The 2019 NQF Review aimed to ensure that the NQF continues to meet its objectives and consider the ongoing effectiveness and sustainability of the NQF in light of the continuing evolution of the education and care sector.

The NQF operates as an applied national law scheme. The national law is enacted by Victoria, as the host jurisdiction, in a schedule to the National Law Act and is applied in other jurisdictions as their own law or, in Western Australia, through corresponding legislation.

On 6 May 2022, the Education Ministers Meeting endorsed the final 2019 NQF Review package, which recommended changes to the NQF and included drafting instructions giving effect to amendments to the

National Law arising from the recommendations and other policy changes previously agreed to by Education Ministers.

The Bill makes changes to the National Law to give effect to these amendments by:

- strengthening the safety of children in early childhood services by addressing gaps between the National Principles for Child Safe Organisations and the NQF, and requiring that all FDC coordinators complete child protection training prior to commencing employment;
- improving safety and oversight in FDC services by enabling improved access for Regulatory Authorities to FDC residence-level information on a service's FDC register, enabling risk-based proactive approaches to regulation and assisting in the identification of FDC educators during emergency situations;
- improving oversight and compliance tools for Regulatory Authorities through minor changes to the process for transfer of services between approved providers;
- providing that cancellation or refusal of provider approval under the Commonwealth Family Assistance Law (FAL) for lack of fitness and propriety is to be a specific ground for cancellation or refusal of a provider approval under the National Law;
- confirming that the Regulatory Authority may administer questions to an applicant for provider approval to assess their fitness and propriety and to undertake an assessment of their knowledge of the NQF;
- updating the maximum penalties for offences throughout the National Law by increasing those penalties by 14.9 per cent to keep up with the cumulative increase in the consumer price index since the beginning of the NQF;
- reducing burden for education and care services by aligning the definition of 'person with management or control' of a service with the FAL definition of 'person with management or control' of a provider entity to better capture persons exercising significant influence over the operation of a service;
- making minor and technical amendments to clarify existing provisions, such as the calculation of FDC coordinator to educator ratios.

The Bill will also make relevant corresponding changes to the CS Act to align the residual Victorian regulatory scheme under which a small number of children's services are still regulated.

The Bill will also make a minor amendment to remove a redundant requirement to table the annual report of the National Quality Framework's National Authority (the Australian Children's Education and Care Quality Authority), in each house of the Victorian Parliament.

Amendments relating to regulating the Child Safe Standards

The Bill provides for the Regulatory Authority for Victoria under the National Law and CS Act to be the integrated sector regulator of the CSS for the early childhood sector.

The aim of the CSS is to drive cultural change in organisations so that protecting children from harm and abuse is embedded in the everyday thinking and practice of leaders, staff and volunteers. Organisations including early childhood services have been required to comply with a new set of CSS since 1 July 2022.

A new regime for enforcing compliance with the CSS will commence on 1 January 2023 under amendments made to the CWS Act by the *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021*. Under the new regulatory regime, each sector that is subject to the CSS will have its own 'sector regulator' (that will use the new powers in the CWS Act), or 'integrated sector regulator' (that will use its existing regulatory powers), to enforce compliance with the CSS.

The Regulatory Authority for Victoria (that is, the Secretary to the Department of Education and Training) will be the integrated sector regulator for the CSS in early childhood services that operate in Victoria, using the broad suite of regulatory powers available to it as the Regulatory Authority under the regulatory schemes in the NQF and CS Act and Children's Services Regulations 2020.

To achieve this, the amendments to the National Law Act will:

- provide the Regulatory Authority with the functions relevant to its role as an integrated sector regulator, including the functions to:
    i. monitor and enforce compliance with CSS by early childhood services in Victoria, and exchange information; and
    ii. collaborate with persons and bodies in relation to the safety of children and compliance with the CSS;

- provide that, when the Regulatory Authority is carrying out its functions as an integrated sector regulator, it must consider the most effective means of promoting compliance by an early childhood service with the CSS and may exchange information and collaborate with similar enforcement agencies in other jurisdictions;
- require compliance with the CSS as a condition on service approval, which will allow the Regulatory Authority to use its existing regulatory and enforcement tools when monitoring and enforcing compliance with CSS,
- make changes to the way the National Law relates to the enforcement of the new CSS condition on service approval for Victorian services, to ensure effective interaction of the two schemes; and
- exclude the application of irrelevant provisions.

Requiring compliance with the CSS as a condition on service approval will allow compliance and enforcement activity related to the CSS to be integrated into the Regulatory Authority's existing responsive, risk-based regulatory approach.

The Bill will also:

a. make relevant corresponding amendments to the CS Act; and

b. amend the CWS Act to provide that the Regulatory Authority is the integrated sector regulator for the early childhood entities specified in items 9 and 10 of Schedule 1 of the CWS Act.

Amendments to the CWS Act relating to Maternal and Child Health (MCH) nursing services

The Bill also makes amendments to the CWS Act to require providers of MCH nursing services to employ or engage nurses only if they have a prescribed prerequisite.

The Bill also amends the CWS Act to enable incorporation of the Maternal and Child Health Service Guidelines 2019 into the regulations. These guidelines provide the integrated framework and approach to service delivery in Victoria and outline the qualification and registration requirements for Maternal and Child Health nurses. The high-level of education in this workforce ensures they are well-qualified to provide a broad scope of practice across general, midwifery and maternal, child and family health nursing.

The amendment to the Child Safety and Wellbeing Act provides a legislative mandate for compliance with this requirement, ensuring nurses who are employed or engaged to provide a Maternal and Child Health service not only have the appropriate qualifications, but are also registered as a midwife.

Prescribing midwifery registration as a prerequisite for Maternal and Child Health nurses will safeguard and uphold the education and knowledge necessary to be registered as a midwife. It will ensure post-birth infant and maternal care such as breastfeeding and maternal health and wellbeing, as well as child health and development are upheld as key capabilities of Maternal and Child Health nurses.

This Bill goes some way to recognising the dynamic role nurses and midwives have within the health system, the changing structures in which they practice and the evolving nature of care they provide to us as the community.

I commend the Bill to the House.

Mr WAKELING (Ferntree Gully) (10:09): I move:

That the debate be adjourned.

Motion agreed to and debate adjourned.

Ordered that debate be adjourned for two weeks. Debate adjourned until Thursday, 18 August.

CASINO LEGISLATION AMENDMENT (ROYAL COMMISSION IMPLEMENTATION AND OTHER MATTERS) BILL 2022

Statement of compatibility

Ms HORNE (Williamstown—Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Local Government, Minister for Suburban Development) (10:11): In accordance with the Charter of Human Rights and Responsibilities Act 2006 I table a statement of compatibility in relation to the Casino Legislation Amendment (Royal Commission Implementation and Other Matters) Bill 2022.

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 Casino Legislation Amendment (Royal Commission Implementation and Other Matters) Bill 2022 (the Bill).

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

Overview

The Bill amends the *Casino Control Act 1991* (the Casino Control Act), the *Casino (Management Agreement) Act 1993*, the *Gambling Regulation Act 2003* and the *Tobacco Act 1987*.

It will deliver 12 recommendations of the Royal Commission into the Casino Operator and Licence (the Royal Commission), and complementary reforms, which together will ensure the casino is subject to strengthened harm minimisation and anti-money laundering measures and improved governance arrangements.

Human Rights Issues

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

- freedom of movement (section 12);
- privacy and reputation (section 13);
- freedom of thought, conscience, religion and belief (section 14);
- peaceful assembly and freedom of association (section 16);
- property rights (section 20); and
- rights in criminal proceedings (section 25).

Section 12—Freedom of movement

Section 12 of the Charter provides that every person lawfully within Victoria has the right to move freely within Victoria.

Clause 30 of the Bill makes changes to the exclusion framework at the casino, allowing a casino employee or the Victorian Gambling and Casino Control Commission (the VGCCC) to orally give a person a temporary exclusion order for a maximum of 24 hours. The clause introduces two offences for the casino operator where an excluded person enters or remains on the premises (new section 76B) or plays a casino game (new section 76C). Clause 31 also makes it an offence for a person who is the subject of a temporary exclusion to enter or remain in the casino.

The purpose of these amendments is to strengthen the existing exclusion framework at the casino by improving enforcement. Temporary exclusion orders are being introduced as a mechanism to address gambling harm at the casino, which the Royal Commission identified as carrying a significant cost to Victoria. The Royal Commission cited numerous examples of patrons gambling for long periods of time with little or no staff intervention or breaks. The introduction of a temporary exclusion order mechanism allows casino staff to intervene and require a patron to take a break in play for anywhere between 15 minutes to 24 hours. The break in play can assist patrons to reconsider their gambling away from the distraction of the gaming floor.

The right to freedom of movement may be subject to reasonable limitations in accordance with section 7 of the Charter. To the extent that clauses 30 and 31 of the Bill restrict freedom of movement, this limit is justified as the maximum 24-hour temporary exclusion period is not excessive and is designed to address the risk of gambling harm.

Section 13—Privacy and reputation

Section 13 of the Charter provides that every person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

Clause 41 of the Bill makes it mandatory, from 1 December 2025 or earlier date declared by the Minister, for a patron to use a player card to play games at the casino, and further specifies that the player card must only be issued where the casino operator has verified the person's identity in line with the regulations. Clause 47 provides the Governor in Council authority to make such regulations which will include such matters as the processes for verification of identity and the collection, storage and use of information provided by players. Improved identification was a recommendation of the Royal Commission and is intended to address money laundering through the casino.

If an interference with the right to privacy is lawful and not arbitrary, it does not come within the scope of section 13. In this case, the requirement for identification will be required by law (by the Casino Control Act) and not arbitrary as it will apply to all patrons at the casino. The information will only be collected in

accordance with the law and requirements to be prescribed in regulations. Therefore, these clauses do not limit the right to privacy in section 13.

Section 14—Freedom of thought, conscience, 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 have or adopt a religion or belief of their choice and to demonstrate that religion or belief in worship, observance, practice and teaching, both publicly and privately.

Clause 41 makes it mandatory to use a player card to play games at the casino, and further specifies that the player card must only be issued where the casino operator has verified the person's identity in line with the regulations. Clause 47 provides the Governor in Council authority to make such regulations.

The improved identification requirements may restrict a person's right to demonstrate their religious belief where that demonstration includes wearing religious dress that covers the face. However, these clauses of the Bill include high level requirements regarding the identification of patrons at the casino and the more detailed requirements and processes for identity verification will be prescribed in regulations, which will undergo a human rights impact assessment. It is therefore possible that these clauses alone do not engage the rights in section 14.

Improved identification was a recommendation of the Royal Commission and is intended to address money laundering through the casino. The Royal Commission attributed the increased risk and occurrence of financial crime at the casino to the anonymity with which people could access the casino and make large financial transactions.

The rights in section 14 may be subject to reasonable limitations in accordance with section 7 of the Charter. To the extent that the right to demonstrate a person's religion or belief may be restricted by the Bill, the restriction is justified as the identification requirements apply universally and are proportionate to the significant risk posed by money laundering and other financial crime at the casino.

Section 16—Peaceful assembly and freedom of association

Section 16 of the Charter protects the right of peaceful assembly and the right of freedom of association with others.

Clause 16 of the Bill expands the current definition of an associate of a casino operator. Under the Casino Control Act, associates of the casino operator must be approved by the VGCCC and are monitored for ongoing suitability by the VGCCC. While most associates of the casino operator are likely to be corporate entities, the definition does include officers and persons who have relevant interests in the casino operator.

The new definition in the Bill may result in some persons who would not currently fall within the definition of associate becoming subject to the restrictions in the Casino Control Act where the VGCCC can refuse to approve a person becoming an associate or can require that an associate terminate their relationship with the casino operator. To the extent that the associates are natural persons, this may place a limit on the freedom of association.

The scope of section 16 is wide and includes the right to voluntarily form and participate in any kind of organisation for a common purpose. On a broad reading of the right, it is arguable that the freedom includes commercial relationships set up primarily for economic gain.

The justification for the limitation on freedom of association is based on real concerns raised by the New South Wales Independent Liquor and Gaming Authority's Bergin Inquiry (which considered whether Crown Sydney was suitable to hold a casino licence in New South Wales) (the Bergin Inquiry) and the Royal Commission that certain persons who are in a position to control or influence a casino operator are not captured as associates under the current definitions. Both the Bergin Inquiry and the Royal Commission also identified ambiguities that make the definition of 'associate' difficult to apply.

To the extent that different treatment based on an association with the casino operator may engage the right to the freedom of association, any limitation is justified by the demonstrated risks posed by potential criminal activity of associates of the casino operator and the need for greater safeguards to ensure the integrity of casino operations as highlighted by the Royal Commission and other inquiries.

Section 20—Property rights

Section 20 of the Charter provides that a person must not be deprived of their property other than in accordance with the law. This internal limitation in section 20 means that as long as a limitation is prescribed by law, it is not necessary to demonstrate that it is 'reasonable' and 'demonstrably justified'. The term 'property' is not defined in the Charter but can include both real and personal property including land, shares, leases and other rights and interests.

Clause 22 of the Bill inserts new section 36U which requires a person to obtain VGCCC approval before acquiring a relevant interest of five per cent or more in the shares of a casino operator or any of its holding companies or increasing such an interest. Similarly, Clause 20 of the Bill inserts new section 28AB which requires an associate to obtain VGCCC approval before increasing their relevant interest in shares in the casino operator or a holding company above the five per cent shareholding threshold.

Clauses 20 and 22, respectively, insert new sections 28AE and 36Y into the Casino Control Act which enable the VGCCC to instruct a person or an associate to reduce their relevant interest in the casino operator or holding company, or to seek a court order to enforce compliance with the instruction, including an order requiring the person or associate to dispose of shares or other securities. To the extent that these clauses restrict natural persons from acquiring or holding shares or securities in a company, they may appear to limit that person's property rights.

The shareholding cap was a recommendation of the Royal Commission and is intended to prevent outside influence on the operations of the casino. Referring to findings of the Bergin Inquiry, the Royal Commission found that, as a dominant shareholder, Consolidated Press Holdings Pty Ltd exercised undue influence over the board of Crown Resorts.

Clause 26 clarifies and expands the role of a manager if the casino licence is suspended, cancelled or surrendered and strengthens the arrangements for statutory management of the casino. This includes provisions that the manager assumes full control and responsibility for all the property of the casino operator in relation to casino operations, and that they may manage that property or sell it to pay liabilities.

Clause 27, which inserts new section 22D into the Casino Control Act, prohibits a third party who holds a security interest in managed property to enforce that interest during the period of appointment of a manager or to take or enter into possession of any managed property during that period, except with the approval of the VGCCC. To the extent that these provisions restrict a third party who is a natural person from enforcing their interests or otherwise restrict the person's rights with respect to their property, these provisions may be regarded as a limitation on that person's property rights.

Clauses 26 and 27 implement recommendations of the Royal Commission, which found that the current scheme is unsatisfactory and most likely unworkable. The scheme is designed to ensure that the surrender, suspension or cancellation of a casino licence does not automatically bring an end to casino operations. These amendments ensure that the manager has appropriate power to carry on the operations of the casino where the licence has been surrendered, suspended or cancelled.

Clauses 26, 27, 20 and/or 22 are unlikely to limit the right in section 20 of the Charter as the deprivation, if any, will be in accordance with the law.

Section 25(1)—The right to be presumed innocent

Section 25(1) of the Charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. Any new offence that includes an exception, exemption, excuse or other defence may affect rights under section 25(1).

Clause 27 of the Bill inserts a new section 22C into the Casino Control Act, which creates an offence for the casino operator where the operator does not meet certain obligations during the appointment of a manager. New section 22C(2) imposes criminal accessorial liability on officers of the casino operator if the officer authorised or permitted the commission of the offence by the casino operator or was knowingly concerned in any way in the commission of the offence by the casino operator. Under new section 22C(3) the officer may rely upon the same defences that would be available to the casino operator.

The offence in new section 22C is justifiable because it represents a reasonable response to issues identified by the Royal Commission which included the casino operator being uncooperative and at times actively misleading the regulator.

Clause 30 inserts new section 76B into the Casino Control Act, which creates new offences for the casino operator or the person for the time being in charge of the casino where an excluded person enters or remains in the casino or the casino complex. New section 76B(3) provides an exception to the offence where the casino operator or person in charge of the casino has taken all reasonable steps to prevent that person from entering or remaining in the casino.

To the extent that the person in charge of the casino is a natural person, new section 76B(3) may engage the right to be presumed innocent by creating an exception for which the accused bears the evidential burden. However, this does not shift the legal burden of proof for the offence itself to the accused or require the accused to disprove an element of that offence.

Any limitations on the rights under section 25 of the Charter are justifiable to ensure compliance with the exclusion orders scheme in the Casino Control Act and to address the issues identified by the Royal Commission.

For the reasons set out above, I consider that the Bill is consistent with the Charter.

The Hon Melissa Horne
Minister for Consumer Affairs, Gaming and Liquor Regulation

Second reading

Ms HORNE (Williamstown—Minister for Ports and Freight, Minister for Consumer Affairs, Gaming and Liquor Regulation, Minister for Local Government, Minister for Suburban Development) (10:11): I move:

That this bill be now read a second time.

I ask that my second-reading speech be incorporated into *Hansard*.

Incorporated speech as follows:

Following the release of the report of the Royal Commission into the Casino Operator and Licence on 26 October 2021, the Government acted immediately to deliver nine priority recommendations through the *Casino and Gambling Legislation Amendment Act 2021*. This included establishing both the Special Manager and the Victorian Gambling and Casino Control Commission and providing the new regulator with strengthened and expanded powers to hold the casino operator to account.

The Government went beyond the Royal Commission recommendations in several key respects. The *Casino and Gambling Legislation Amendment Act 2021* provided that Crown Melbourne's licence will be automatically cancelled at the end of the period of Special Manager oversight unless the Victorian Gambling and Casino Control Commission is clearly satisfied that Crown is suitable to continue operating the Melbourne casino. The *Casino and Gambling Legislation Amendment Act 2021* also increased the maximum fine the regulator can impose on Crown Melbourne for disciplinary action from $1 million to $100 million and fully repealed legislative provisions that prevented the State from making regulatory changes to reform the casino's operations without incurring a liability to pay compensation to Crown Melbourne.

In its response to the report of the Royal Commission into the Casino Operator and Licence, the Government flagged that further legislation would be introduced into Parliament in 2022 to acquit actions arising from the remaining recommendations.

The *Casino and Liquor Legislation Amendment Act 2022* was passed by Parliament in June 2022 and delivered a further two Royal Commission recommendations to strengthen the powers and functions of inspectors. The Act also embedded a focus on harm minimisation, ensuring this shapes every single decision the regulator makes. The Casino and Liquor Legislation Amendment Act 2022 also expanded the grounds for disciplinary action against the casino operator and completed the transition to the new regulator, the Victorian Gambling and Casino Control Commission.

The Royal Commission recommendation to establish a single patron bank account was delivered by the Victorian Gambling and Casino Control Commission on 29 June 2022 through a direction issued to Crown Melbourne.

The Government supports the remaining 21 recommendations and is acting to deliver key reforms across five areas:

- preventing money laundering and other criminal activity at the casino
- minimising the impact of gambling harm
- enabling the ongoing operation of a casino in the event the operator's licence is cancelled, suspended or surrendered
- regulating the ownership and governance of the casino and its holding companies, and
- strengthening casino tax arrangements.

These reforms will make certain that the casino operator acts in a way that befits the privilege of holding the State's casino licence.

The Casino Legislation Amendment (Royal Commission Implementation and Other Matters) Bill 2022 (the Bill) introduces the most significant reforms to casino regulation in decades. It marks the next stage in the Government's comprehensive response to the Royal Commission into the Casino Operator and Licence and will deliver 12 Royal Commission recommendations.

This Bill is the third tranche of legislation to be brought to Parliament since the Victorian Government tabled its response to the Royal Commission in October 2021 and acquits the commitment made last year to deliver reforms that address the findings of the Royal Commission.

The Government supports the remaining recommendations made by the Royal Commission not covered by this Bill and will implement them through a combination of further legislation, directions and administrative mechanisms over the next 12 months.

I now turn to the provisions of the Bill before the House, which will implement world first harm minimisation and anti-money laundering reforms. The reforms will result in some of the strongest measures in any casino in Australia or overseas.

Preventing money laundering and minimising gambling harm at the casino

The Royal Commission revealed the prevalence with which money laundering and other financial crime was occurring at the casino.

The Bill will reduce the risks of financial crime by removing the anonymity with which people can access the casino.

It will make carded play compulsory and prohibit the casino operator from issuing a player card to someone without first verifying their identity in accordance with requirements to be set out in regulations.

Cash transactions will be limited to amounts of up to $1,000 in a 24-hour period.

As outlined in the Royal Commission's report, perhaps the most damning discovery from the Royal Commission is the manner in which Crown has dealt with the many vulnerable people who experience gambling harm. It is not only the gambler who suffers, but also their family, friends and the broader Victorian community.

The Bill will introduce mandatory pre-commitment to the casino to be fully implemented no later than 1 December 2025, requiring patrons to set limits on gaming machines before they play.

In addition to implementing Royal Commission recommendations, the Bill will overhaul the state's pre-commitment system, YourPlay.

As the first step towards mandatory pre-commitment, the Bill will require any person who plays a gaming machine under a loyalty scheme at the casino to use YourPlay to track their play.

It will enable the Victorian Gambling and Casino Control Commission to publish information about individual venue compliance with YourPlay obligations.

There will also be an offence for a casino operator who does not disclose information about their loyalty scheme when requested by the Victorian Gambling and Casino Control Commission or the Minister.

Further, the Bill will impose stricter obligations on the casino operator in relation to excluded persons, such as making it an offence for the operator if an excluded person enters or remains on the premises.

In response to findings of significant failures by the casino operator to detect and deter money laundering or other forms of financial crime, the Bill will prohibit all third-party payments into the casino's patron deposit account.

Enabling the ongoing operation of a casino where the operator's licence is cancelled, suspended or surrendered

The Bill will ensure the smooth transition to a new casino operator in the event that the licence is cancelled, suspended, or surrendered.

This includes provisions that:

- authorise a manager to act as the agent of the former casino operator,
- require the former casino operator to support a manager and facilitate the operation of the casino, and
- prevent third parties taking possession of property, such as gaming equipment while used by the manager.

If the casino operator's licence is cancelled, suspended or surrendered, the reforms will ensure that a statutory manager has the full set of powers needed to run the casino and smoothly transition it to a new casino operator.

The Bill will also ensure that the area on which Crown Melbourne is licensed to operate the casino is the area that would be sub-leased to any new casino operator.

Regulating ownership and governance of a casino operator and its holding companies

The Bill introduces new requirements to prevent outside interference in the running of a casino by a dominant shareholder.

The Government is committed to restoring the integrity of the casino licence and ensuring the failures exposed by the Royal Commission never happen again, regardless of who owns the Melbourne casino.

As recommended by the Royal Commission, the Bill requires those seeking shares of five per cent or more in the casino operator to first gain regulatory approval and imposes rules to protect the independence of the board.

The Bill will also give the Victorian Gambling and Casino Control Commission the ability to recover the costs of investigating and approving shareholdings at or above the five per cent shareholding threshold.

The Bill will introduce a new definition of associate to capture the broader range of individuals and organisations that have the potential to influence a casino operator including holding companies and their officers, and those holding shares above the shareholding threshold.

Additional reforms to the casino operations

In line with community expectations around health and safety, including the right of all Victorians to a safe workplace, the Bill will remove Crown's exemption under the *Tobacco Act 1987* so that smoking is banned in all areas of the casino.

Finally, the Bill will address the significant costs of casino regulation by reintroducing an annual supervision charge, which was levied on the casino operator up until 1 July 1997.

As Commissioner Finkelstein made clear in his final report, holding Victoria's casino licence is a privilege, not a right.

The Victorian people are entitled to a casino operator that acts with integrity and transparency at all times, that works proactively to stamp out money laundering and illegal activity, and that prioritises the reduction of gambling harm.

This Bill is a vital step in ensuring Victoria has a casino operator that meets those expectations.

I commend the Bill to the house.

Mr D O'BRIEN (Gippsland South) (10:12): I move:

That the debate be adjourned.

Motion agreed to and debate adjourned.

Ordered that debate be adjourned for two weeks. Debate adjourned until Thursday, 18 August.

JUSTICE LEGISLATION AMENDMENT (SEXUAL OFFENCES AND OTHER MATTERS) BILL 2022

Statement of compatibility

Ms KILKENNY (Carrum—Minister for Corrections, Minister for Youth Justice, Minister for Victim Support, Minister for Fishing and Boating) (10:13): In accordance with the Charter of Human Rights and Responsibilities Act 2006 I table a statement of compatibility in relation to the Justice Legislation Amendment (Sexual Offences and Other Matters) Bill 2022.

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006,* (the Charter), I make this Statement of Compatibility with respect to the Justice Legislation Amendment (Sexual Offences and Other Matters) Bill 2022 (the Bill).

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

Overview

The Bill seeks to protect and promote the rights of victims of sexual offences by implementing the following reforms:

- Expanding the definition of consent in the *Crimes Act 1958* and the circumstances where consent is deemed not to be given
- Amending the *Crimes Act 1958* to include a requirement that a person must say or do anything to find out if the other person was consenting in order to have a reasonable belief in consent

- Relocating relevant image-based sexual offences from the *Summary Offences Act 1966* to the *Crimes Act 1958,* making them indictable offences triable summarily and improving their operation
- Amending the definition of 'sexual offence' in the *Criminal Procedure Act 2009* to extend protections such as alternative arrangements for giving evidence to complainants of image-based sexual offences
- Amending the *Jury Directions Act 2015* in relation to sexual offences, including with regard to consent and reasonable belief, and explanations of 'beyond reasonable doubt' in criminal trials
- Amending the *Criminal Procedure Act 2009* to limit the circumstances in which vulnerable witnesses can be cross-examined and to expand the use of ground rules hearings; and
- Expanding the confidential communications scheme in Division 2A of Part II of the *Evidence (Miscellaneous Provisions) Act 1958* in criminal proceedings to better protect complainants' health information.

The Bill will also extend certain temporary provisions in the *Court Security Act 1980* and the *Open Courts Act 2013* to assist the courts to operate effectively and efficiently.

Human Rights Issues

The following rights are relevant to the Bill:

- Equality (s 8)
- Right to life (s 9)
- Freedom of movement (section 12)
- Privacy and reputation (s 13)
- Freedom of expression (s 15)
- Rights of children (s 17(2))
- Property rights (s 20)
- Fair hearing (s 24)
- Rights in criminal proceedings (s 25)
- Retrospective criminal laws (s 27)

Affirmative consent (Part 2)

The Bill will implement the Government's commitment to legislate a stronger model of affirmative consent and to clearly prohibit the removal of, tampering with or refusal to wear a condom without consent (a practice sometimes known as 'stealthing').

The Bill amends the definition of consent in the *Crimes Act 1958* (Crimes Act), to clarify what consent is and the circumstances where consent cannot be assumed. It also clarifies what consent is not, by drawing attention to the non-exhaustive list of circumstances in which a person is deemed not to have consented. While some of these consent vitiating circumstances replicate existing law (in current section 36(2)), the Bill adds new circumstances (for example, to effectively codify the conduct often referred to as 'stealthing' as a circumstance vitiating consent) and amends some others.

The Bill also provides that a person's belief in consent is not reasonable if 'within a reasonable time before or at the time the act takes place' they do not do or say anything to find out whether the person is consenting to the act. There is an exception to this requirement for those with a cognitive impairment or mental illness that is a substantial cause of them not saying or doing anything to find out whether a person consents to the act. The onus of proving the matters relevant to the exception is on the accused, to the balance of probabilities.

General promotion of rights

The new consent provisions implement recommendations of the Victorian Law Reform Commission report 'Improving the Justice System Response to Sexual Offences' (the VLRC report) to deliver a stronger model of affirmative consent. Key to this is requiring a person to have said or done anything to ascertain consent. By requiring participants in sexual acts to take active steps to confirm the other party is consenting, and by focusing on the actions of the accused, rather than the victim-survivor, the reforms will promote victim-survivor's rights, and aim to reduce the prevalence of sexual offending through improved community understanding about consent in this context and the risk of traumatising victim-survivors through the criminal process. It is hoped that this will lead to fairer and more effective sexual offence prosecutions.

The provisions also promote the right to equality under section 8 of the Charter by using gender inclusive language, and by providing an exception to the requirement to say or do anything to ascertain consent for persons with a cognitive impairment or mental illness. I consider new subsections 36A(3) and (4) to be special measures under section 8(4) of the Charter, in that they are measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination, being persons with a cognitive impairment or mental illness who are overrepresented in the criminal justice system and may otherwise be disproportionately and unjustly impacted by these changes to consent laws.

As such, I consider these measures promote equality and do not constitute discrimination under section 8(3).

Limitation of rights

The Bill engaged the right to the presumption of innocence (section 25(1)) and the right against self-incrimination (section 25(2)(k)) under the Charter through the following provisions:

- the requirement of new section 36A that an accused must have said or done anything to find out if the other person consents in order for them to have a reasonable belief in consent (the absence of which is the key fault element of many sexual offences), and
- the requirement for an accused to establish evidence of a cognitive impairment or mental illness in order to avail themselves of the exception in new subsection 36A(3)

Rights to be presumed innocent and to not be compelled to testify against oneself

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

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

Both the presumption of innocence and the protection against self-incrimination encompass the right to silence, which includes the right of an accused to be free from adverse inferences drawn from their silence. It is considered a fundamental rule of the common law.

Affirmative consent provision (New section 36A(2))

Under new section 36A(2), if it is established that an accused did not say or do something to ascertain consent, they will be deemed to not have a reasonable belief in consent (the fault element of Victorian sexual offences where consent is relevant). This is effectively a 'deeming' provision. While the prosecution must prove beyond reasonable doubt the accused did not say or do anything, this may be easier in the absence of any evidence from the accused and the accused may deemed to have the requisite fault element as a result.

This may limit the right to be presumed innocent and the right against self-incrimination because the practical effect of the provisions may be that, even though not required by the legislation, an accused may need to lead evidence of certain matters as part of their defence—in this case, whether they said or did something to ascertain consent. This may in turn abrogate their right to silence and freedom from adverse inferences being drawn from their silence, as well as expose them to broader cross-examination, including in relation to other elements of the relevant offence.

While I accept that these provisions may limit what are considered fundamental criminal process rights of the common law, I am satisfied that these limits are reasonably justified, for the reasons that follow.

The nature of the right

As discussed above, the right to be presumed innocent until proven guilty according to law reflects a fundamental principle of common law that imposes on the prosecution the onus of proving the elements of an offence beyond reasonable doubt. Section 25(2)(k) of the Charter then outlines the specific right of an accused not to testify against or incriminate themselves, which the High Court has found reflects not only the privilege against self-incrimination, but is an aspect of the fundamental common law principle that the onus is on the prosecution to prove a criminal offence, and is an important feature of the accusatorial system of criminal justice. The rights are considered fundamental due to the gravity of consequences faced by an individual charged with a criminal offence, including potential loss of physical liberty, subjection to social stigma and ostracism from the community, as well as other social psychological and economic harms.

Further, the High Court has found in a related context (in *X7 v Australian Crime Commission* (2013) 248 CLR 92) that a change in the legal system which did not directly abrogate the right to silence in a criminal proceeding, but merely affected the decisions an accused would make about how to defend a charge, gave rise to a fundamental alteration of the accusatorial process of criminal justice. This illustrates that even indirect effects on how an accused conducts their defence may limit their right to the presumption of innocence and the right against self-incrimination.

Relevant matters to assessing the proportionality of any limits on these rights include the seriousness of the sentence likely to be imposed on conviction for such an offence, whether the nature of the offence makes it very difficult for the prosecution to prove an element of the offence, the gravity of the social problem or the extent of suffering caused by the offence, and whether the provision requires the accused to prove or lead evidence to support an exception, proviso or excuse (rather than an element of the offence) that is within the accused's own knowledge. To be justified, there must be a compelling reason advanced as to why it is fair and reasonable to deny an accused person the protections normally guaranteed to everyone by these rights.

The importance of the purpose of the limitation

I consider that a compelling justification exists in this case. These measures serve an important and pressing objective of addressing the prevalence of sexual violence in Victorian society, and its devastating and lifelong impact on the safety of women and children in particular. The VLRC report found that sexual violence is serious, and widespread, and is estimated to affect one in five women, and one in 20 men, although such figures are considered to understate how common sexual violence is in the community due to under-reporting. In relation to the most serious of sexual offences, only one in 23 rape cases that are reported result in a conviction. Sexual violence has the capacity to cause long-term negative impacts for victim-survivors, including serious emotional and psychological distress. It affects people's relationships, sense of wellbeing and lifestyle, trust in others, ability to engage in education and work, and their financial status.

The VLRC report also found that the justice gap in relation to sexual offences is real, and that charges were laid for only one-quarter of all incidents recorded by police. For many sexual offences involving adults, a lack of consent is a key part of the offence. The VLRC report found that there were challenges with how consent laws were interpreted and operate in practice, and that victim-survivors are still often required to demonstrate they did not consent through 'active resistance'. This is reflected both in the decisions to continue investigations and in court processes, especially cross-examination. The VLRC report considered that recent case law has set a low bar for communicating consent that is arguably not within the spirit of the sexual offences legislation.

Having clearly defined sexual offences supports an effective justice system response to sexual violence. The way sexual offences are defined also sets standards for behaviour, shapes the community's understandings of sexual violence and sets the boundaries for what sexual interactions are acceptable in society.

By providing for this deeming provision the reforms legislate a strong model of affirmative and communicative consent and send a strong message about what consent means and how it must be obtained by participants in a sexual act. The reforms in this Bill urgently address continued societal misconceptions and myths about sexual violence that have affected the effectiveness and fairness of prosecutions of sexual offences. Consistent with the recommendations of the VLRC report and reflective of a contemporary and holistic understanding of consent, the new model focuses more squarely on the actions of an accused ("What did the accused person do to make sure they had consent?"), rather than those of the victim-survivor ("What did the complainant do to say no?"), the latter of which is so often the focus currently. These reforms will collectively strengthen and clarify the provisions of the Crimes Act that relate to consent and reasonable belief in consent, and align Victoria's laws with contemporary understandings and expectations of sexual consent—namely, consent can never be assumed, consent must be actively sought and positively expressed.

Nature and extent of the limitation

I accept that the nature and extent of the limitation is serious, in that it limits the criminal process rights of an accused in relation to serious offences which attract consequences of high gravity, including, in the case of the sexual offence of rape, Level 2 imprisonment (of up to 25 years maximum).

However, the extent of the limitation is mitigated by the fact that the Bill does not place any burden on an accused in relation to disproving the essential elements of the offence. New section 36A(2) still requires the prosecution to establish the negative proposition that an accused did not say or do something to ascertain consent. The provision does not require the accused to testify, and any evidential burden on them is voluntary; it remains open to them not to give evidence, and to test the prosecution's case by other means.

I do accept that the effect of the affirmative consent provision may in practice result in an accused, who is intending to claim they mistakenly believed a victim-survivor was consenting, to be compelled to lead evidence that they did or said something to justify that belief, contrary to their right to silence, and leaving

them subject to cross-examination. However, I do not consider this to be too burdensome a requirement given the pressing objective it serves. Once such evidence is adduced by an accused (evidence which will often be peculiarly within their knowledge), the burden remains on the prosecution to prove the elements of the offence to the legal standard. Courts in other jurisdictions have generally taken the approach that an evidential onus on an accused does not limit the presumption of innocence. There is legislative precedent for an evidential onus on accused person in Victorian law. For example, section 16 of the Crimes Act, which provides for the offence of causing serious injury intentionally, imposes an evidential burden on an accused person with respect to 'lawful excuse'. I also note the Queensland Women's Safety and Justice Taskforce considered that a similar affirmative consent deeming provision was not too onerous and constituted a justifiable limit on the human rights of an accused.

The relationship between the limitation and its purpose

The consent reform provisions of the Bill and the associated potential limitation on the right to the presumption of innocence and the right against self-incrimination under sections 25(1) and (2)(k) of the Charter, is directly connected to the purpose of the provisions. This purpose is to legislate a strong affirmative consent model for sexual offences that focusses on the actions of an accused, rather than those of the victim-survivor.

Availability of less restrictive means

In my view there are no less restrictive means available to achieve affirmative consent and make the new fault element in respect of reasonable belief in consent clear and robust. The reforms have been the subject of significant consultation to ensure they reflect community attitudes about sexual relationships and the broad range of contexts in which sexual activity can occur. The VLRC received 71 written submissions and conducted 99 consultation sessions across a range of issues, including consent. The Department of Justice and Community Safety has conducted an additional 40 consultation sessions with over 120 different stakeholders specifically on the consent reforms, including with victim-survivor groups, advocates, and legal stakeholders and service providers.

The requirement for an accused to say or do anything to ascertain consent is the clearest and simplest method for objectively establishing whether there is in fact a reasonable belief in consent on the part of an accused. The requirement to merely say or do anything maintains flexibility as to the steps an accused may take in the relevant circumstances.

I consider alternative means that might place fewer restrictions on the rights of an accused would leave open the possibility that an accused can maintain a reasonable belief in consent, despite not have taken any steps to ascertain such consent. This runs counter to the central tenet of these reforms, which is that consent cannot be assumed. It will not reflect community expectations and be insufficient in shifting the focus of onto the behaviour of the accused.

The amendments do provide exceptions to prevent disadvantage to persons with cognitive impairment and mental illness, which I discuss further below. As such, I am satisfied that new section 36A(2) is compatible with the Charter, in that, although it may limit rights in the Charter, those limits are moderate and reasonably justified to achieve a critically important aim.

Cognitive impairment or mental illness exception (New section 36A(3) and (4))

New section 36A(3) and (4) require an accused to prove, on the balance of probabilities, that they have a cognitive impairment or mental illness that was a substantial cause of their failing to say or do anything to ascertain consent.

By creating an exception, these provisions place a legal burden on the accused, in that they require the accused to prove they have a cognitive impairment or mental illness and that it was a substantial cause of them not saying or doing anything to ascertain consent. As the provision only places the burden on the accused to establish an exception, and does not transfer to the accused the legal burden of proof to establish the elements of the relevant sexual offence, I do not consider that the right limits the presumption of innocence under section 25(1) of the Charter.

In the alternative, if this provision is considered to limit the right of an accused, I am satisfied that this limit is reasonably justified under section 7(2) of the Charter. This provision ultimately serves an important protective purpose of ensuring that persons with a cognitive impairment or mental illness are not disadvantaged by the requirement to say or do anything to ascertain consent, in circumstances where they are unable to meet this requirement due to the impact of their illness or impairment. This seeks to avoid the criminalisation of persons with a cognitive impairment or mental illness, groups that are already overrepresented in the criminal justice system. In doing so, this promotes the right to equality under section 8 of the Charter, as discussed above.

While imposing a legal burden, as opposed to an evidentiary burden, is more onerous to an accused, I consider it appropriate in this circumstance. The subject matter which the accused must prove is one peculiarly within their knowledge and within their capability to adduce supporting medical evidence. An evidential onus would

be too easily discharged and then require the prosecution to prove an absence of a cognitive impairment or mental illness beyond reasonable doubt, where the required evidence to do so would not be readily available or ascertainable by the prosecution. This would in turn risk obstructing the overall aims of the Bill to strengthen consent provisions. I note that this burden is also consistent with the burden on an accused to establish existing defences at law, such as the defence of mental impairment.

While an accused person will bear the legal burden of proving the matters outlined in section 36A(3), there is no legislative requirement for them to give evidence as to all the events and circumstances surrounding the alleged offence. Their evidence will only need to relate to their condition and its impact on their ability to say or do anything. While this burden can be discharged through adducing medical expert evidence, I accept there may be instances where an accused may need to testify to establish these matters or as part of the expert evidence, and this may engage the right not to be compelled to testify. However, for the reasons above, I consider that there is no less onerous manner in which this protective provision can be provided for without obstructing the overall aims of the Bill.

Accordingly I am satisfied that new section 36A(3) and (4) are compatible with the Charter.

Image Based Sexual Abuse Offences (Part 3)

The Bill will strengthen the justice system's response to the growing problem of image-based sexual abuse (IBSA) which includes the production or distribution of intimate images without consent, and can include revenge pornography and the production or distribution of digitally altered or manipulated intimate images (also known as 'deepfakes').

The Bill will relocate four IBSA offences from the *Summary Offences Act 1966* to the Crimes Act, and consolidate them into three new indictable offences triable summarily, each with a maximum penalty of three years imprisonment. This will better reflect the seriousness of this behaviour and remove the 12-month limitation period that applies to commencing proceedings for summary offences. Moving the offences to the Crimes Act, thereby making them indictable, will also give police more powers to investigate these offences, which again better reflects the seriousness and prevalence of this type of offending. Additionally, the Bill improves these provisions e.g. by broadening the definition of an 'intimate image' to be more gender diverse.

General promotion of rights

As well as promoting the rights of victim-survivors, and implementing the VLRC recommendations on IBSA offences, this Part of the Bill promotes a number of rights under the Charter, including:

- the right to equality (s 8), to be discussed in more detail below;
- the right to life (s 9), which encompasses a general obligation on the State to take positive steps to protect life, including by enacting legislation that upholds public welfare and safety. The Bill does this by strengthening the IBSA offences to deter and punish this particularly intrusive and anti-social behaviour, which can affect a victim-survivor's quality of life. It also does so by providing procedural protections to victims and witnesses when giving evidence in criminal proceedings for an IBSA offence;
- the right to privacy and reputation (s 13), which is wide in scope, and includes protecting a person's interest in the freedom of their personal and social sphere, including their personal development, identity, social relations and psychological integrity, personal security and mental stability, as well as informational privacy such as an individual's control over their own image. This right is promoted by the strengthening of IBSA laws to better deter and punish the taking and/or sharing of intimate images without consent, and to empower courts to order the disposal of intimate images; and
- protection of children (s 17(2)), to be discussed in more detail below.

Equality

Section 8(3) of the Charter relevantly provides that every person is entitled to equal protection of the law without discrimination and has the right to equal and effective protection against discrimination. The purpose of this component of the right to equality is to ensure that all laws and policies are applied equally, and do not have a discriminatory effect.

'Discrimination' under the Charter is defined by reference to the definition in the *Equal Opportunity Act 2010* (EO Act) on the basis of an attribute in section 6 of that Act. Direct discrimination occurs where a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute. Indirect discrimination occurs where a person imposes a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging persons with a protected attribute, but only where that requirement, condition or practice is not reasonable.

Clause 22 of the Bill inserts a new subdivision (8FAAB) into Division 1 of Part I of the Crimes Act which concerns the offences of producing, distributing or threatening to distribute intimate images. New

section 53O(d) broadens the definition of 'intimate image' to include an image of the breasts of a transgender or intersex person identifying as female. This promotes the right to recognition as a person before the law under section 8(1) of the Charter, by ensuring that transgender and intersex people are included in, and protected by, the legislation. The use of gender inclusive language also promotes the right of every person to enjoy their human rights without discrimination, and to protection from discrimination (sections 8(2)–(3)).

Clause 24 of the Bill amends the definition of 'sexual offence' under the *Criminal Procedure Act 2009* (CPA) to include the new IBSA offences in the Crimes Act. This promotes the right to equality as it allows complainants and witnesses in proceedings relating to an IBSA offence to access the same procedural protections, such as alternative arrangements for giving evidence, that other sexual offence complainants currently possess.

Rights of children

Section 17(2) of the Charter provides that every child has the right, without discrimination, to such protection as is in their best interests and is needed by them by reason of being a child. This right recognises the special vulnerability of children, and requires states to adopt social, cultural and economic measures to protect children and to foster their development and education. The scope of the right is informed by the United Nations *Convention on the Rights of the Child,* which requires that in all actions concerning children, the best interests of the child shall be the primary consideration.

As noted by the VLRC, children and young people use technology often, so are therefore at considerable risk of falling victim to IBSA offences. Further, IBSA offences are often linked to family violence, cyber-bullying and child sexual offences such as child pornography. The consequences for victim-survivors can be devastating and lifelong, resulting in complex trauma and broader impacts affecting a victim-survivors future employment and other pursuits, social interactions, family, and relationships. Accordingly, I consider that the Bill, in strengthening and emphasising the seriousness of IBSA offences, promotes the protection of children under section 17(2) of the Charter.

Limitation of Rights

The new IBSA offence regime further engages the right to equality (section 8) and the rights of children (section 17) as discussed below, as well as engaging the right to privacy (section 13), the right to freedom of expression (section 15) and property rights (section 20) under the Charter.

Equality

As discussed above, section 8(3) of the Charter protects the right to equality before the law and ensures equal protection of the law without discrimination. Discrimination may be direct or indirect and must be because of a protected attribute.

New section 53V will require the DPP to consent to the prosecution if the accused is under the age of 16 years at the time of the alleged commission of an IBSA offence. This may limit the right to equality on the basis of direct discrimination as persons aged over 16 may be treated unfavourably because of their age, by not benefiting from this additional safeguard prior to prosecution for an IBSA offence.

However, I consider that any limit on the right to equality effected by new section 53V is reasonable and justified in accordance with section 7(2) of the Charter, because the provision is designed to protect children from being criminalised for mistakes made during their development and is the least restrictive means of achieving this legitimate and important aim. The age threshold reflects the greater vulnerability of younger children, as well as the fact that children and young people over the age of 16 have a greater capacity to make choices in relation to issues such as sexual relationships and technology. This is consistent with the recognition in the *Convention on the Rights of the Child* of the 'evolving capacities of the child' and that the level of protection required will differ depending on the age of the child.

Accordingly, I am of the view that new section 53V imposes a reasonable and justified limit on the right to equality under section 8(3), and therefore is compatible with the Charter.

Privacy

Section 13(a) of the Charter provides that a person has the right not to have their privacy unlawfully or arbitrarily interfered with. An interference will be lawful if it is permitted by a law which is precise and appropriately circumscribed, and will be arbitrary only if it is capricious, unpredictable, unjust or unreasonable, in the sense of being disproportionate to the legitimate aim sought.

The new IBSA offence regime engages the right to privacy, in that it seeks to regulate and prevent certain private behaviours that could be considered part of someone's personal identity and social relations, which are both aspects that are protected by the right to privacy under the Charter. However, the right will not be limited if any interference is pursuant to properly prescribed legislation that it sufficiently accessible, predictable and is not unjust or unreasonable. The new IBSA regime is appropriately precise and is

proportionate to the aim of protecting members of society from having intimate images produced or distributed without their consent, which in turn would constitute a breach of their right to privacy.

Accordingly, I am of the view that the right to privacy is not limited by the new IBSA offences inserted by clause 22 of the Bill.

Freedom of Expression

The criminalisation of the taking, production and distribution of intimate images and the provision for the disposal of such images (new sections 53W–Z) engages the right to freedom of expression.

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

The purpose of clause 22 and the new IBSA offence regime is to protect the privacy rights of the public, and particularly women and children who may be particularly vulnerable to IBSA, by criminalising and punishing such conduct and deterring future harm being committed. I consider that this falls within the internal qualification of section 15(3) of the Charter, including the protection of the rights and reputations of others, public order and public morality, such that the right to freedom of expression is not limited by clause 22.

Protection of children

The amendments in the Bill are primarily intended to protect victim-survivors including children, however at the same time these offences will apply to children. Due to a child's evolving capacity and maturity as they age, there is a risk of over criminalising the mistakes and misunderstandings children may make in developing their sexual identities alongside their prolific use of technology.

To appropriately reflect a child's vulnerability and stage of development, and consistent with recommendation 54(a) of the VLRC report, new section 53V requires the consent of the DPP to commence a prosecution of a child under the age of 16 at the time of the alleged offending. I consider that this measure will ensure that the Bill does not unduly limit the rights of children under section 17(2) of the Charter, by ensuring that prosecutions against children under 16 years of age for the new IBSA offences only proceed with DPP approval.

While this safeguard is not afforded to children over 16 years, this is in line with the approach recommended by the VLRC report. It is also noted that there is no DPP consent requirement for children charged with a current IBSA offence. In addition, existing prosecutorial guidelines will still apply requiring any such prosecution to be in the public interest (taking into consideration the accused's age). Accordingly, I am satisfied this reform strikes the appropriate balance.

Property

New sections 53W–Z (inserted by clause 22) allow for the court, on application of the DPP or a police officer, to make an intimate image disposal order to effect the destruction of a seized thing (such as a laptop computer) or the removal of an intimate image contained in a seized thing (such as the removal of an intimate image saved on a mobile phone). The Bill also amends the *Confiscation Act 1977* in relation to the disposal of an intimate image if a person is convicted of an offence set out in Schedule 1 to that Act. These reforms engage the right to property under the section 20 of the Charter.

Section 20 of the Charter provides that a person must not be deprived of their property other than in accordance with law. This right requires that powers which authorise the deprivation of property are conferred by legislation or common law, confined and structured rather than unclear, accessible to the public, and formulated precisely. To the extent that these provisions may result in the deprivation of property, I am of the view that they do not limit the right to property as the deprivation would be accordance with accessible and precise statutory criteria and subject to the oversight of a judicial officer.

Jury directions reforms (Part 4)

Part 5 of the Bill amends the JDA to reform jury directions in trials, particularly sexual offence trials, to assist juries in better assessing the evidence and reaching a verdict. These reforms promote the right to a fair hearing under section 24 of the Charter. They do so by introducing amendments and enhancing existing directions that will make it easier for juries to apply the law, particularly with regard to consent and the determination of a reasonable belief in consent.

For example, the Bill adds new directions to address misconceptions in relation to personal appearance and irrelevant conduct (new section 47G), and non-consensual sexual acts occurring between all sorts of people, such as those who know each other or are in a relationship with each other (new section 47H). These new

directions reflect extensive research on common misconceptions about sexual offence victim-survivors, as discussed in the VLRC report.

Clause 51 amends section 51(1)(c) of the JDA to prohibit additional statements in respect of the credibility of complainants who provide commercial sexual service or, have a particular sexual orientation or gender identity. This promotes the right to equality under the Charter (section 8) by seeking to prevent unfavourable treatment on the basis of a protected attribute (such as gender identity), as well as the rights of victim-survivors in the criminal process more generally.

Clause 56 inserts new Divisions 4 and 5 into Part 5 of the JDA. Division 4 requires a judge, if appropriate, to give directions regarding the continuation of a relationship between the accused and the complainant after the alleged sexual offence. New Division 5 requires a trial judge to give a direction on the complainant's distress or emotion while giving evidence, unless there are good reasons for not giving the direction. This will guard against a jury making incorrect assumptions as to these issues, promoting victim-survivors' rights and achieving fairer outcomes in proceedings for sexual offences. Again, these new directions reflect extensive research on common misconceptions about sexual offence victim-survivors, as discussed by the VLRC.

Clause 57 of the Bill requires a trial judge to give the jury an explanation of the phrase 'proof beyond reasonable doubt' unless there are good reasons for not doing so, having regard to any submissions from parties. Currently, such a direction may only be given in response to a question from the jury. I am of the view that this promotes an accused's fair hearing rights and rights in criminal proceedings (particularly the presumption of innocence) under sections 24 and 25 of the Charter respectively.

Limitation of Rights

Retrospective criminal laws

Given new Division 1A (inserted by clause 48), which relates to directions regarding consent and reasonable belief in consent, is applicable to offences before, on or after 1 July 2015, clause 48 may engage the right against retrospective criminal laws under section 27 of the Charter. The transitional provisions inserted by clauses 92 (new section 638 of the *Crimes Act 1958*), and clause 95 (new clause 6 to Schedule 1 of the JDA) also apply some of the amendments to proceedings where the offences may have been committed prior to the commencement of the new provisions.

As above, section 27(1) of the Charter provides that a person must not be found guilty of a criminal offence because of conduct that was not an offence at the time the conduct was engaged in. Accordingly, while section 27 prohibits the imposition of criminal liability where previously there was none, it does not prohibit retroactivity in respect of procedural laws. This includes changes to the rules of evidence or other procedural elements such as, in this case, the content of jury directions, given they relate to how the trial is conducted, and do not themselves impose criminal liability. This is consistent with the operation of the equivalent provision of the *International Covenant on Civil and Political Rights,* whereby article 15(1) does not extend to changes in procedural law. This also reflects the statutory interpretation principle that the presumption against retrospectivity does not extend to laws that are merely procedural.

Accordingly, I am of the view that Part 5 of the Bill, and in particular clause 48, does not limit the right against retrospective criminal laws under section 27 of the Charter.

Ground rules hearings and cross-examination—(Part 5)

Part 5 of the Bill enacts various amendments to the CPA to improve the experience of complainants and other vulnerable witnesses in giving evidence in sexual offence proceedings.

Uncertainty about time when sexual offence occurred

Division 1 of Part 5 of the Bill seeks to address the difficulties that the prosecution faces when new sexual offences are introduced, and the laws do not explain how the prosecution should proceed when they cannot establish whether the alleged conduct occurred before or after the commencement of the new offences.

Clause 60 of the Bill inserts new section 7B into the CPA, which provides a substantive, interpretive provision to address these problems. New section 7B applies when conduct is alleged to have occurred at some time during a period; the conduct, if proven, would constitute a sexual offence at all times during that period; there is uncertainty as to when, during that period, the conduct allegedly occurred; and because of a change in the law during that period, the conduct, if proven, would constitute one sexual offence before the change and a different sexual offence after the change. It applies to any sexual offence as defined in section 4 of the CPA.

This provision implements recommendation 56 of the VLRC report. The VLRC found it unacceptable that a technical gap in the law has led to cases being discontinued, or charges not being filed, and people falling through the gaps of the laws designed to protect them.

As well as promoting the rights of complainants, the new provision also promotes the protection of children under section 17(2) of the Charter, which includes a positive duty on the state to provide measures to protect

children and recognises their particular vulnerability. This is because uncertainty about when alleged offending occurred is a particular feature of historical child sexual abuse.

Limitation of Rights

While this provision will promote the rights of victim-survivors, it has implications for the criminal process rights of an accused, including their right to a fair hearing (section 24) and to protection from retrospective criminal laws (section 27).

Right to a fair hearing

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

The Charter right under section 24(1) is in essence the right of an accused to know the prosecution case against them so that they can respond to that case. I am of the view that new section 7B does not limit the right to a fair trial under the Charter. The prosecution will still be required to inform the accused of their case, and to prove the elements of the offence to the criminal standard, including the particulars of the period in which the alleged conduct is said to have occurred. I consider that these particulars will enable an accused person to meet the case made against them. Further, the right to be informed of the particulars of a charge only extends to particulars that are available. Where the evidence does not enable the prosecution to provide more particularity, as is often the case with charges involving sexual offending over a period of time, the right is not considered to be engaged.

To the extent that this right may be limited by new section 7B, I consider that any limitation is reasonable and justified under s 7(2) of the Charter. This is because it is the least restrictive means of achieving the important and pressing aim, as identified by the VLRC, of addressing the obstacles to prosecuting a person for alleged sexual offending spanning a period of time where there has simply been a change in the laws. Importantly, it will ensure that prosecutions are not discontinued or not pursued for alleged criminal offending simply due to a technicality. Ultimately, this should result in fairer outcomes in the criminal justice system.

Retrospective criminal laws

Section 27(1) of the Charter provides a person must not be found guilty of a criminal offence because of conduct that was not an offence at the time the conduct was engaged in. Subsection 27(2) further provides that a penalty must not be imposed on any person for a criminal offence that is greater than the penalty applied to the offence when it was committed.

New section 7B expressly provides that the provision relates to any 'sexual offence', which is defined in section 4 of the CPA and includes historical conduct. Accordingly, section 27 of the Charter may be engaged.

However, the new section does not, in my view, retrospectively impose criminal liability for conduct that was not criminal at the time it was committed. New section 7B(1)(b) specifically states that for the provision to apply, the conduct, if proven, would have to constitute a sexual offence at all times during the period that the conduct is alleged to have occurred. The provision provides a mechanism by which a prosecution can proceed in these very specific circumstances.

New section 7B(2) provides that, where the circumstances in subsection (1) are met, a person may only be charged with whichever of those sexual offences has the lowest maximum penalty; or if both of the sexual offences have the same maximum penalty, the offence that the conduct, if proven, would have constituted before the change. This ensures that an accused will not be disadvantaged in relation to maximum penalties due to the operation of the provision.

Accordingly, I am satisfied that new section 7B does not limit the right against retrospective criminal laws under section 27(1) or (2) of the Charter. However, to the extent that this right may be limited, such limitation is justified and proportionate to achieving the purpose of the provisions; namely to effectively charge and prosecute alleged instances of sexual offending, which have been difficult to prosecute where these very specific circumstances arise.

Cross-examination

Clause 62 introduces the concept of 'specified witness' into section 124(5) of the CPA, which is defined as a child, a person with a cognitive impairment or a complainant in relation to a charge for a sexual or family violence offence. In considering whether to grant leave to cross-examine a 'specified witness' in a committal hearing, the court will be required to have regard to certain additional factors, such as minimising trauma to the witness, an additional protection which currently only applies to child witnesses.

Clause 63 inserts new section 124A, which requires the Magistrates' Court to give reasons for granting leave to cross-examine a witness at a committal hearing, including stating the reasons for granting leave and identifying each issue on which the witness may be cross-examined. This aims to improve the application of

the test for granting leave and to therefore minimise the unnecessary exposure of vulnerable witnesses to cross-examination in committal proceedings.

Clause 66 amends section 198A of the CPA, to reflect that the considerations in section 124(5) must be applied to a 'specified witness', not only child witnesses, when determining whether cross-examination is to be ordered pre-trial under section 198A.

These amendments promote the rights of sexual offence complainants, as well as protecting children and persons with cognitive impairment from unnecessarily being exposed to the trauma of cross-examination in pre-trial proceedings.

Ground rules hearings

Clause 69 of the Bill provides that ground rules hearings are to consider the communication, support or other needs of witnesses and to decide how the proceeding is to be conducted to fairly and effectively meet those needs, and that ground rules hearing *must* be held if the witness is a complainant in relation to a sexual offence charge.

These amendments expressly promote the rights of complainants in relation to sexual offence charges. They seek to ensure that questioning is fair and appropriate, and that these complainants are supported to give their best evidence.

Limitation of Rights

Fair hearing and rights in criminal proceedings

Expanding the application of protections for the cross-examination of witnesses, including potentially prohibiting their cross-examination in pre-trial proceedings, will necessarily limit the rights to fair hearing (section 24) and rights in criminal proceedings (section 25).

The nature of the right

As outlined above, the right to a fair hearing encompasses the right to have a charge determined by a competent, independent and impartial court or tribunal after a fair and public hearing. The requirement for a fair and public hearing includes the principle of equality of arms, and the right of an accused person to obtain the attendance of, and examine, witnesses under the same conditions as the prosecution. This right is expressly provided for in section 25(2)(g) of the Charter, which guarantees an accused's right to 'examine, or have examined, witnesses against him or her, unless otherwise provided for by law.'

Importance of the purpose of the limitation

The purpose of the limitation on cross-examination through the requirement to seek leave to cross-examine, and via the broader imposition of ground rules hearings that may limit the subject matter and style of cross-examination, is to protect complainants in sexual offence proceedings from unnecessarily stressful or intimidating questioning, and irrelevant questioning.

The nature and extent of the limitation

Any limitation on cross-examination of witnesses occasioned by Part 5 of the Bill would be 'provided for by law' and therefore would not interfere with the express right to examine witnesses at section 25(2)(g). In relation to the broader impact on fair hearing rights under section 24, the broadening of the application of protective factors in the test for leave to cross-examine under sections 124(4) and (5) (as amended) does not equate to a blanket prohibition on cross-examination. The accused may still make submissions as to why cross-examination should be allowed, and the court must have regard to factors such as whether the prosecution case is adequately disclosed, the evidence is of sufficient weight to support a conviction for the offence with which the accused is charged, that a fair trial will take place if a prosecution proceeds (including that the accused is able to adequately prepare and present a defence), and that the interests of justice are otherwise served.

The mandating of ground rules hearings for complainants in relation to sexual offence charges means that the style, parameters, and content of questioning for these complainants must be discussed by counsel for the prosecution, counsel for the defence and the judicial officer, prior to the complainant giving evidence. Following that discussion, the court will set 'ground rules'. Both prosecution and defence are limited to examining the witness on the same topics, although the accused is limited in the manner and extent to which they may cross-examine the witness. The judge may make various directions, including to exclude the rule in *Browne v Dunn* that contradictory evidence must normally be put to a witness in cross-examination, although this may not result in any disadvantage to an accused, as they may still include such evidence as part of their defence.

Relationship between the limitation and purpose

The limits occasioned by Part 5 of the Bill are rationally connected to the purpose of minimising the traumatisation of complainants and certain witnesses in sexual offences proceedings in relation to giving evidence.

Furthermore, any limits on cross-examination imposed through ground rules hearings may assist in eliciting relevant and clear responses from sexual offence complainants at trial, thereby helping to establish the facts of a case and promoting fair and efficient hearings.

Availability of less restrictive means

In my view, Part 5 of the Bill enacts the relevant reforms via the least restrictive means; there is no blanket ban on cross-examination and no set rules in respect of how a witness' evidence is taken following a ground rules hearing—these being agreed between the parties and the judge at the ground rules hearing. The accused has the opportunity to seek leave to cross examine and to make submissions with respect to the topics they would like to cross-examine a witness on in a ground rules hearing.

Accordingly, I am of the view there are no less restrictive means available to achieve the purpose of the reforms, which implement the recommendations of the VLRC report with respect to the treatment of sexual offences complainants in the criminal process.

I am therefore satisfied that Part 5 of the Bill in respect of ground rules hearings and cross-examination is compatible with sections 24 and 25 of the Charter.

Retrospective Criminal Laws

Clause 93 inserts section 462 into the CPA, with subsections (2) and (3) stipulating that the Bill's changes to committal proceedings only apply to proceedings to which no committal mention hearing or committal hearing has been held prior to the commencement of the new provisions. Accordingly, the new changes will apply to some committal proceedings for offences allegedly committed before the provisions commenced. Similarly, new section 462 also provides that the amendments to section 198A of the CPA (regarding cross-examination) applies to criminal proceedings that have not commenced at the time Part 5 commences.

Section 27(1) of the Charter prohibits a person from being found guilty of a criminal offence because of conduct that was not an offence at the time the conduct was engaged in. However, as discussed above, the right does not extend to procedural changes that govern how a trial is conducted. Given Part 5 does not impose criminal liability for conduct that was previously not unlawful, and relates to procedural aspects of how a trial is conducted, I am satisfied that the right against retrospective criminal proceedings is not limited by this Part.

Confidential communications and protected health information (Part 6)

Part 6 of the Bill amends Division 2A of Part II of the *Evidence (Miscellaneous Provisions) Act 1958* (EMPA) which prohibits the production and admissibility of confidential communications in a sexual offence proceeding without leave of the Court. The Bill makes two main reforms to the scheme for the purposes of criminal proceedings only:

- expanding the confidential communications scheme to include protected health information; and
- strengthening the procedural protections in applications for leave to compel, produce or adduce a confidential communication and/or protected health information, including giving complainants a right to appear, requiring them to be notified of an application and advised of specified matters, and allowing them to submit a confidential statement to the court.

The Bill stipulates that protected health information will only be part of the scheme in respect of criminal proceedings, and defines protected health information as health information about a person against whom a sexual offence has been or is alleged to have been committed, and the health information (including an opinion) was recorded, collected or formed by a person in a professional capacity.

The strengthened procedural protections include requiring the prosecuting party to ensure notice is given to a protected person in criminal proceedings of such an application and that the protected person is given specified information, including that they may:

- appear in the proceeding and make submissions;
- wish to consider obtaining legal advice; and
- provide a confidential statement (see new section 32CE).

The confidential statement will allow the complainant to describe the harm that is likely to be caused to them if the application is granted. Subsections 32CE(3)–(4) require that the court not disclose the confidential statement unless it considers that it is in the interests of justice to do so.

General promotion of rights

The effect of this expansion of the confidential communication scheme is to protect a broad category of documents and information from disclosure in criminal proceedings; namely protected health information. More generally, the purpose of the amendments is to better protect the right to privacy of sexual offence complainants in respect of sensitive health-related information. New section 32CE, in allowing protected persons to provide the court with a confidential statement in criminal proceedings, also aims to protect and promote the rights of victim-survivors and to ensure their views are taken into consideration by a court in deciding to grant leave for production or the admission of that information. These reforms implement recommendations made by the VLRC in respect of the rights of complainants of sexual offences in the criminal process.

Limitation of rights

However, the imposition of barriers to production and admissibility of potentially relevant documents and evidence in criminal proceedings, in respect of both the protected health information and the confidential statement by protected persons, engages the rights to fair hearing (section 24) and rights in criminal proceedings (section 25).

Right to fair hearing (s 24) and criminal proceedings rights (s 25)

As discussed above, the right to a fair and public hearing under section 24 of the Charter encompasses the right for each party to have a reasonable opportunity to present its case, and this includes being informed of the opposing party's case and to respond.

This in turn overlaps with the section 25 of the Charter, including:

- section 25(2)(b), which provides that an accused has the right to adequate time and facilities to prepare one's defence; and
- section 25(2)(g), which provides that an accused has the right to examine witnesses against them, unless provided for by law.

I am of the view that any limits on the disclosure of material upon which an accused might then use in cross-examination of prosecution witnesses would not limit these rights, as any interference with section 25 is in accordance with provisions that are precise and accessible.

As these provisions may have the effect of limiting the disclosure or admissibility of evidence that may be relevant to a criminal proceeding, and which may adversely impact the accused's defence in that proceeding, Part 6 of the Bill may impose a limit on the right to a fair hearing under sections 24 of the Charter.

The nature of the right

The Supreme Court has recognised that the right to a fair hearing under s 24 of the Charter incorporates the right of an accused person to know the case which the prosecution seeks to advance at trial and to seek information and documents from the prosecution as well as any exculpatory material.

Bound up in the fair hearing right is the duty of prosecutors to disclose relevant material to an accused in criminal proceedings that may assist in their defence, as well as through the subpoena process in seeking relevant information from non-parties.

However, the High Court has acknowledged that, in some circumstances, the requirements of procedural fairness may be qualified to protect important countervailing interests, including the protection of the privacy rights of sexual offence complainants.

Importance of the purpose of the limitation

As foreshadowed above, the purpose of the expansion of the confidential communications scheme, to include protected health information and to allow protected persons (that is sexual offence complainants) to provide confidential statements to the court to describe the harm that is likely to be caused if the application is granted, is to protect the privacy rights of these persons, and to ensure that complainants' views are taken into account before such documents are disclosed or evidence is adduced.

The VLRC (in both its 2021 report and 2016 report on *The Role of Victims of Crime in the Criminal Trial Process*) highlights how criminal proceedings can be traumatising for complainants, particularly in the context of the intrusion of privacy occasioned by the subpoenaing and subsequent admission into evidence of their private medical records, which are often then used to undermine their credibility. The VLRC considered that the confidential communication scheme is not functioning in practice as intended, with victim-survivors rarely able to resist a subpoena despite the statutory protections, and often remaining unaware that an application under current section 32C is even on foot.

The Part 6 reforms are consistent with the VLRC's recommendations that a broader range of health records be protected from production and admission into evidence and the need for complainants to have the opportunity to participate in the decision making about their confidential records.

The nature and extent of the limitation

The right to a fair hearing is context dependent, but ultimately would be infringed where the provisions would lead to a 'substantial disadvantage' for an accused in preparing their defence for a criminal proceeding.

Protected health information

In respect of the prohibition from production or admission of protected health information, this could include, for example, material such as hospital notes pertaining to a contemporaneous hospital admission which might contain inculpatory or exculpatory evidence (such as evidence of the complainant's physical injuries), and might have more probative value than just the records of a doctor or counsellor taken during a consult for treatment of a victim-survivor's mental health injuries resulting from an alleged offence.

While there is a risk that an accused might be prohibited from accessing information that could assist their case, the confidential communication and protected health information scheme (as amended) contains a significant safeguard in section 32C of EMPA, which allows an accused to seek the leave of the court for the production and/or admission of such evidence. The court must consider several factors in section 32D of EMPA (as amended) including whether the evidence has substantive probative value, and whether the public interest in preserving the confidentiality of the information is substantially outweighed by the public interest in admitting into evidence, evidence of substantial probative value. The court's discretion in this regard, and the public interest balancing exercise it must undertake in considering an application under section 32C, affords considerable protection to the fair hearing rights of an accused. Further, the court must, in making a decision to grant leave under section 32C, apply and give effect to relevant Charter rights, including the right to fair hearing.

There are also additional safeguards in section 32E of the EMPA, which specifies that Division 2A of Part II EMPA will not prevent the production or adducing of protected evidence in certain circumstances, including for example with consent of the complainant or if the protected evidence was made or prepared for the purpose of a legal proceeding arising from the commission or alleged commission of the sexual offence.

Confidential statement

Despite its limited scope, a confidential statement from a complainant describing the harm that is likely to be caused by the grant of leave might also contain information that is relevant to an accused's defence at trial. The inclusion of the 'interests of justice' exception will allow for disclosure of the confidential statement to the accused in limited circumstances and will require the court to consider the interests of the parties and larger questions of legal principle, such as the public interest and policy considerations. This will safeguard the accused's right to a fair trial.

The relationship between the limitation and its purpose

The reforms in Part 6 of the Bill and the associated interference with fair hearing rights under section 24 of the Charter are rationally connected to the legislative purpose of protecting the privacy of sexual offence complainants, and minimising the harmful effects of criminal proceedings upon them.

Availability of less restrictive means

This Part seeks to protect and promote the right to privacy of sexual offence complainants, and to improve their experiences of the criminal justice process and justice outcomes more generally. This is effected by the Bill protecting a broader range of health information from production and use in criminal proceedings, and by giving complainants the right to be heard in decisions regarding the use of their sensitive material, including by provision of a confidential statement

I am of the view there are no less restrictive means available to achieve these important aims, given an accused may still seek leave to compel, produce or adduce the protected evidence and the court may disclose a confidential statement if it is in the interests of justice. This is the best way to balance the rights of complainants with the rights of the accused in criminal proceedings.

Accordingly, I am satisfied that Part 6 of the Bill is compatible to the right to fair hearing under the Charter.

Retrospective criminal proceedings

Clause 94 of the Bill provides that that amendments to Division 2A of Part II of EMPA apply to a proceeding irrespective of when the proceeding commenced, except where an application for leave under section 32C is already ongoing and has not been determined. While this would appear to give the changes to the confidential communications regime retroactive effect, there is a carve out; no information constitutes protected health information where the proceeding commenced prior to the amendments to EMPA taking effect.

The effect of these transitional provisions is that the EMPA reforms could apply to a proceeding for an offence alleged to have been committed prior to the provisions commencing. I am, however, satisfied that section 27 of the Charter—the right against retrospective criminal laws—is not limited, because the provisions do not retrospectively criminalise behaviour that was not previously unlawful, relating instead to procedural changes regarding the laws of evidence, which fall outside of the scope of the right.

Extension of temporary measures (Part 7)

Amendment of Court Security Act 1980

The Bill amends the *Court Security Act 1980* (CSA) to extend the operation of temporary provisions that give courts and tribunals the ability to effectively manage their premises in response to the COVID-19 pandemic.

Right to life

The CSA amendments promote the right to life as the purpose is to ensure that courts and tribunals have the necessary powers to respond to the risks posed by the COVID-19 pandemic. These powers include restricting physical access to the court or giving reasonable directions for the health of persons at the premises. This will ensure that courts and tribunals can respond adequately and in-line with relevant public health advice. These measures protect the health of persons at the premises by minimising the potential of COVID-19 transmission, and thereby promote the right to life.

Right to freedom of movement and right to fair hearing

These amendments engage sections 12 and 24 of the Charter by clarifying that authorized officers may refuse a person access to, or to remove a person from, the court or tribunal premises. Refusing access may be seen as restricting access to a public hearing, thereby impinging on the right to a fair hearing and the principle of open justice. Further, refusing access may also prevent a person from attending their own hearing, thereby potentially restricting their right to a fair hearing.

However, the temporary provisions provide that authorised officers can only exercise these powers to protect the health of persons at court and tribunal premises during the COVID-19 pandemic, or to follow the relevant pandemic orders or public health directions in relation to COVID-19. In addition, the amendments aim to promote the right to life, by ensuring that persons who may present a health risk do not compromise the health of staff and other court users. Further, courts and tribunals currently have alternative measures in place to facilitate virtual hearings, which is likely to minimise the potential impacts of a person being refused physical access to court premises. Accordingly, any impact the right to freedom of movement and right to a fair hearing is reasonable and justified by the underlying intention to protect the right to life and to minimise disruption to the administration of justice by courts and tribunals.

Right to freedom of expression

These amendments engage section 15 of the Charter by clarifying that authorized officers can exercise their power to give reasonable directions for the health of persons on court or tribunal premises during the ongoing COVID-19 pandemic. As the forms of protected expression are broad, some directions (such as requiring a person to wear a face mask) may be seen to impinge on a person's right to freedom of expression. However, the Charter provides that the right can be subject to lawful restrictions, including for the protection of public health. Any impacts on the right to freedom of expression are justified as they are reasonably necessary for the protection of public health while the effects of the COVID-19 pandemic are ongoing.

Amendment of Open Courts Act 2013

The Bill amends the *Open Courts Act 2013* (OCA) to extend the temporary provision which clarifies that providing remote public access to proceedings (through contemporaneous audio or audio-visual broadcast or by subsequently providing an audio recording or transcript) does not contravene any rule of law relating to open justice, and to clarify that the provision applies if the remote method of access is in the interests of justice.

Right to life

The OCA amendments promote the right to life by enabling courts and tribunals to continue to limit the ongoing risk of COVID-19 transmission to judicial officers, staff and the community, during the administration of justice. The amendments provide for continuing clarity about the ability of courts and tribunals to provide public access to proceedings remotely, ensuring that the administration of justice continues while balancing the public health risks associated with physically open courtrooms.

Right to a fair hearing

The OCA amendments engage this right as the right to a public hearing may be limited where remote public access to proceedings is provided (such as when livestreaming proceedings).

The Bill contains safeguards to ensure that the right to a fair hearing is not unduly limited.

The amendment relating to providing audio or audio-visual broadcasts, audio or audio-visual recordings or transcripts, is temporary. This provides clarity on access arrangements used in place of physically open courtrooms, for a defined period, to limit the risk of COVID- 19 transmission when the pandemic is likely to have ongoing implications, and to enable courts and tribunals to efficiently manage the backlog of cases.

Further, the new 'interests of justice' requirement confirms the legislative intent that courts' and tribunals' discretion to provide remote access must be exercised compatibly with the Charter.

Any restriction of the right to a fair hearing is reasonably necessary and justified by the need to protect the right to life and to continue the administration of justice during the ongoing COVID-19 pandemic, and to enable courts and tribunals to efficiently manage the backlog of cases.

Right to freedom of expression

The right to freedom of expression includes the freedom to seek, receive and impart information about public and political issues (section 15 (2)). Part 15 engages this right as courtrooms may not be physically open where digital technology is used to provide public access to proceedings. This may impact the ability of the media and the public to seek and obtain information by physically attending court.

There are safeguards to ensure that this right is not unduly limited. The provision is temporary and, as noted above, the new 'interests of justice' requirement enhances Charter compatibility by confirming the legislative intent that courts' and tribunals' discretion to provide remote access must be exercised compatibly with the Charter.

This right may be subject to lawful restrictions reasonably necessary to protect public health (section 15(3)). The provision will protect judicial officers, court staff and the community from undue exposure to the ongoing risk of COVID-19 transmission during the pandemic, and enable courts and tribunals to efficiently manage the backlog of cases. To the extent that this right is limited, these amendments are lawful as they are reasonably necessary to protect public health.

Other rights

These amendments may also engage the right to freedom of movement (section 12), peaceful assembly and freedom of association (section 16) and rights in criminal proceedings (section 25).

To the extent the OCA amendments limit any of these rights, I consider the limitations to be necessary, justified and proportionate for the reasons outlined above.

Hon. Sonya Kilkenny MP
Minister for Corrections
Minister for Youth Justice
Minister for Victim Support
Minister for Fishing and Boating

Second reading

Ms KILKENNY (Carrum—Minister for Corrections, Minister for Youth Justice, Minister for Victim Support, Minister for Fishing and Boating) (10:14): I move:

That this bill be now read a second time.

I ask that my second-reading speech be incorporated into *Hansard*.

Incorporated speech as follows:

Sexual violence remains a prevalent social, criminal, and human rights issue in Victoria. It affects community safety, particularly the safety of women and children, and causes long-term, serious harm to victim-survivors. Conviction rates for sexual offences remain unacceptably low. Only 1 in 23 rape cases that are reported result in a conviction. The time for change is now. In the wake of reform in other jurisdictions, and strong and powerful advocacy for sexual offence reform from brave women such as Saxon Mullins, Grace Tame and Brittany Higgins, we must act decisively to protect the community from sexual violence and ensure the criminal justice system can respond effectively to these abhorrent crimes.

The reforms in this Bill will deliver critical improvements to the way in which justice is delivered for those who are the victim of sexual violence. It will strengthen our sexual offence laws, provide additional protections for victim-survivors, and ensure that those who perpetrate sexual abuse are held to account for their actions. In particular, it will deliver on the Government's commitment to introduce legislation to deliver affirmative consent laws and make it explicit that stealthing is a crime.

These reforms represent the first stage of the Victorian Government's legislative response to the Victorian Law Reform Commission's 2021 *Improving the Justice System Response to Sexual Offences* report, which contains 91 recommendations to improve the way the justice system responds to sexual offences.

This Bill marks the beginning, rather than the end, of a reform journey. The Government acknowledges there is more work to be done and commits to continuing this reform process in consultation with victim-survivors, victim-survivor advocates and key stakeholders.

Affirmative consent and non consensual non-use, removal or tampering of a condom

Part 2 of the Bill will reform the consent and reasonable belief in consent provisions in the *Crimes Act 1958* to introduce an affirmative model of consent. This will implement recommendations 50 and 51 of the VLRC report.

In some sexual offences, including rape and sexual assault, the prosecution must prove that the physical act occurred without consent and that the accused person did not have a reasonable belief that the complainant consented. The definition of consent and how this concept is understood and applied by juries is therefore of critical importance, as it is the presence or absence of consent and a reasonable belief in consent that turns a lawful sexual act into a serious criminal offence.

While there have been significant efforts to reform Victoria's consent provisions, most recently in 2014 and 2016, research shows that sexual offence laws are often misunderstood, and rape myths and stereotypes, including narratives of 'implied consent', still feature heavily in trials. In its report, the VLRC said that Victoria's consent provisions are strong, but there is room for improvement. The Bill will strengthen the consent provisions to ensure our laws around sexual offences and consent are clearly defined, reflect modern standards and community expectations, and can be appropriately and fairly prosecuted.

In response to the VLRC's report, the Victorian Government committed to adopting an affirmative consent model and amending the law to make it clear that the conduct colloquially known as 'stealthing'—that is, the non-use, removal of or tampering with a condom without consent—is a crime. Similar reforms have recently been introduced in New South Wales and the Australian Capital Territory and are being considered in other jurisdictions. Many features of the Bill align with these reforms, which will help us collectively move towards a more consistent national approach in this important area of law.

Under an affirmative consent model, consent must be actively and positively expressed, not assumed. The people involved in the sexual act are required to take steps to make sure that the other person, or people involved, are consenting. An affirmative consent model will put greater scrutiny in trials on the actions that the accused person took to obtain consent and move away from reliance on preconceived ideas and outdated notions highlighted by the VLRC report. In a trial, it shouldn't be a matter of just "what did the victim-survivor do to say no?", but more importantly "what did the accused person do to make sure the other party was consenting, both before and during the sexual act?"

The reforms have been the subject of significant consultation to ensure they reflect community attitudes about sexual relationships and the broad range of contexts in which sexual activity can occur. The VLRC received 71 written submissions and conducted 99 consultation sessions across a range of issues, including consent. The Department of Justice and Community Safety has conducted an additional 40 consultation sessions with over 120 different stakeholders specifically on the consent reforms, including with victim-survivor groups, advocates and legal stakeholders and service providers. I want to sincerely thank all stakeholders who have been involved in this process for sharing your lived experiences and considered views, and for being instrumental in shaping these important reforms.

Put simply, the Bill makes it clear when there is consent, when there is no consent and what is required of a person to make sure there is consent. The requirements of the Bill are not onerous and will not interfere with consensual activity. Strong laws around sexual offending and consent are vital to ensuring it is clear what we as a community expect of people engaging in sexual acts and relationships. The Bill promotes healthy sexual relationships that are based on the principles of mutual respect and bodily autonomy.

Definition of consent

The Bill makes a series of reforms relating to the meaning of consent. Collectively, these provisions provide a holistic understanding of sexual violence and the role consent plays in sexual relationships.

The Bill will update the definition of consent in section 36 of the Crimes Act to 'free and voluntary agreement' which promotes consistency with the definition of consent in most jurisdictions. The word 'voluntary' makes clear that agreement cannot be obtained through coercion, threats or other inappropriate means, and will reinforce that involuntary bodily reactions are not an indication of consent.

Two new provisions will be added to section 36 that will provide further qualification to the definition of consent and make it clear that consent can never be assumed.

First, the Bill provides that a person does not consent to an act just because they do not resist the act verbally or physically. We know freezing is a common response to sexual violence. Basing a lack of consent on the amount of resistance offered rather than a lack of positively communicated consent is outdated and has long since been replaced by communicative standards in Victorian legislation.

Second, the Bill makes it clear that a person does not consent just because of previous sexual behaviour. Consent is required for each separate sexual act and cannot be assumed just because a person has previously consented to the same act or a different act with the same person, or the same act or a different act with a different person. No one is obliged to say 'yes' just because they have said 'yes' before. The new provisions will help to overcome pervasive rape myths and stereotypes that the research has shown still impact assessments of consent.

The Bill also inserts a new objective to apply across sexual offence provisions and which the court must have regard to as part of the definition of consent. The new objective promotes the principle that consent to an act is not to be assumed and that consent involves ongoing and mutual communication and decision making between each person involved. That is, each person should seek the consent of each other person in a way and at a time that makes it clear whether they consent. This additional objective will reinforce two critical points in relation to consent. First, that assumptions have no place in consent or sexual offence trials—consent can only be based on a person's clear communication of their willingness to engage in the act. Second, that sexual acts and relationships require reciprocated agreement between the people involved in the act—consent isn't just one conversation before an act, but an ongoing one throughout the act.

Circumstances where there is no consent

In addition to defining what consent means, the Crimes Act already sets out circumstances where there is no consent. These are known as consent vitiating circumstances, and support decision-making in sexual offence cases by highlighting instances where a person does not consent, such as due to the inappropriate actions of the accused (e.g. where force or threats are used to make the person submit) or because they were incapable of consenting in the circumstances (e.g. because they were asleep or unconscious).

The Bill will introduce a new provision which re-enacts and builds upon the existing consent vitiating circumstances. Separating these circumstances from the definition of consent in section 36 will make it clear what consent is and what it is not. The list of circumstances has also been re-ordered to ensure the existing concept that a person does not consent if they do not say or do anything to indicate consent is more prominent. This principle is central to the communicative model of consent and reinforces that silence or 'freezing' is not consent.

The Bill will add five new circumstances where there is no consent. These will address cases where a person submits to or engages in the sexual act due to:

- force, harm or fear of force or harm of any kind
- coercion or intimidation
- abuse of a relationship of authority or trust
- false or misleading representations about payment for commercial sexual services
- agreement that a condom will be used, when in fact it is not used, removed or tampered with (known as 'stealthing').

Force, harm, fear of force or harm

The Bill makes clear that there is no consent if a person submits because of force, fear of force, harm of any type, and fear of harm of any type. This combines and strengthens the consent vitiating circumstances currently outlined in section 36(2)(a) and (b). This new provision makes clear what may be a type of harm, and when and how it may occur.

Harm is not just physical. It can include psychological and economic or financial harm and subtle emotional manipulation. These varied types of harm are particularly apparent in situations of family violence, where perpetrators may use coercive and controlling behaviours over an extended period of time. However, they are not exclusive to family violence, and may be a feature of sexual violence that occurs in other settings.

The provision sets out a non-exhaustive list of examples of the type of harm that may cause a person to submit to a sexual act to give a sense of the breadth of harm that could be captured. Other types of harm that are not included in the examples can still be relied on in prosecutions. The examples of harm provided for in the legislation include:

- Economic or financial harm, such as loss or withdrawal of housing, food or other financial support.
- Reputational harm, which may include fear of public humiliation. For example, a person who submits to an act because the other person has threatened to release disparaging information or a person's sexual or gender history.

- Harm to a person's family, cultural or community relationships may cover a broad range of situations. For example, submitting to a sexual act because it is culturally expected or there would be repercussions if a person did not submit such as being cut off or ostracised from their community or family.
- Harm to employment, which may extend to loss of a job, a reduction in income or job prospects.
- Family violence involving psychological abuse or harm to mental health may include, for example, verbal aggression, emotional manipulation or controlling behaviour. This could also include threats to withdraw care or medication, or sponsorship for a visa.
- Sexual harassment, which includes when a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, or engages in any other unwelcome conduct of a sexual nature towards the other person.

The provision makes clear that it does not matter when the force, harm, or conduct causing fear occurs, provided it is the reason for submission. For example, a person may submit because of a threat made at the time of the act or because the other person has previously harmed them and they are afraid that they will be subjected to harm again if they do not.

The Bill also makes it clear that submission to an act can result from a single incident or be part of an ongoing pattern involving this conduct or fear. An ongoing pattern of behaviour could be made up of individual instances of harm, for example, that on their own may seem subtle or minor and may not have resulted in submission to the sexual act. These provisions are also consistent with the recent reforms commenced in New South Wales.

Coercion and intimidation

The Bill provides that a person does not consent if they submit to the sexual act because of coercion or intimidation. As with the provisions dealing with the use of force and harm, similar provisions are included about the timing of the coercion or intimidation, and whether it is a single incident or is part of a pattern of behaviour.

Collectively, these provisions better reflect the complexity of consent, particularly in relationships characterised by family violence or situations where the accused person is known to the complainant. Force, harm, fear of force or harm, coercion and intimidation in these relationships is often ongoing and part of an established pattern or cycle of coercive and controlling behaviour. This can create a constant environment or state of fear.

We have heard that victim-survivors often adopt strategies to manage their safety or the safety of others in this environment by submitting to sexual acts regardless of when the behaviour or conduct that caused the fear occurred. The new provisions in section 36AA(1)(b) and (c) better reflect these family violence dynamics and how the ability to give free and voluntary agreement is negated in these situations.

Overborne by the abuse of a relationship of authority or trust

The Bill provides that a person does not consent if they submit because they are overborne by the abuse of a relationship of authority or trust. A similar provision is provided for in other jurisdictions, including the Australia Capital Territory and New South Wales, and has been used in successful prosecutions.

This provision will capture situations where a person abuses their position of power in a relationship in such a way as to cause the other person to submit to the sexual act or to feel they have no choice but to submit. For example, this may be because of the power or control the other person holds over them and because they fear they will suffer an adverse consequence if they do not submit. In these situations, a person cannot give free and voluntary agreement.

The phrase 'overborne by the abuse of a relationship' is consistent with the language used in the equivalent provision in New South Wales. 'Abuse' is not defined in the Bill but is an understood term in the common law. That is, the accused person must have taken advantage of the relationship or misused their position of power within the relationship .

Abuse of a relationship could result from explicit behaviour, such as threats about consequences if the person does not submit to the sexual act or reminders about the power imbalance. For example, an employee who submits to an act with their employer because the employer told them they would not receive a promotion if they did not. A person could also abuse their position within the relationship by implicit behaviour that may create fear of repercussions in the complainant. For example, where the complainant cannot leave in an institutional setting or may have limited options to make a complaint. In each situation, the result of the accused person's behaviour is that the complainant is overborne into submission and cannot give free and voluntary agreement.

A relationship of authority generally exists where a person has the right (legal or otherwise) to direct or control the other person's actions. Some types of relationships of authority that may be covered by this provision include employers or persons in management and employees, employees of a prison or detention facility and prisoners/detainees, or a sporting coach and athlete.

A relationship of trust goes beyond any ordinary relationship where trust may be present. The provision is intended to capture relationships involving an obligation of care and protection. For example, a healthcare professional and patient, a person who provides care or support to a person with a disability, or a lecturer or teacher and adult student. Relationships of trust could also extend to cultural or religious relationships such as a kinship relationships in Aboriginal or Torres Strait Islander culture. Some relationships may cover both authority or trust, such as an on-duty police officer and a member of the public, or employees of a mental health facility and involuntary patients of the facility.

We recognise that power imbalances exist in many relationships and that these can involve sexual acts that are loving and consensual. The presence of a relationship of authority or trust, or a relationship where there is a power imbalance, is not enough to negate consent on its own. There must have been an abuse of the relationship by the person in the position of power that caused the complainant to be overborne for the circumstance to apply.

False or misleading representation about payment of commercial sexual services

The Bill makes it clear that a person does not consent if the act occurs in the provision of commercial sexual services and the person engages in the act because of a false or misleading representation that they will be paid.

Sex work is contingent on payment. Making a false or misleading representation about payment to a sex worker who then engages in the act therefore makes it non-consensual. This conduct is currently only captured by the lesser offence of procuring a sexual act by fraud. The Bill makes it clear that in some situations, this conduct could be rape or sexual assault.

What constitutes a false or misleading representation about payment will depend on the circumstances. The circumstances could include prior conversations between the accused person and the complainant about payment. For example, if an accused person says they will pay the complainant a particular price for a sexual service and does not make the payment. A false or misleading representation could include providing false bank details to the complainant, falsifying proof of payment or otherwise pretending to make payment but failing to do so. Consideration could be given to an accused person's actions after the sexual act to determine whether representations they made before the act were false or misleading. For example, if a person made an electronic payment before the sexual act but reversed or withdrew the payment after the act without reason this may be evidence that the original electronic payment and any associated representations about making payment were false or misleading.

False or misleading representation can be by words or conduct (including omissions) and be implicit or explicit. An implicit representation could include agreeing to the sexual service but not explicitly saying they will pay.

Payment is not defined but could include a non-monetary payment, benefit or reward on the basis of which the commercial sexual service is provided. Partial payment would not satisfy the requirement to make payment, unless it was agreed on by both parties.

Non-use or removal of or tampering with a condom

In response to the VLRC's recommendation, the Bill will make it clear that a person does not consent to an act if they engaged in the act on the basis that a condom is used and:

- either before or during the act any other person involved in the act intentionally removes the condom or tampers with it, or
- the person who was to use the condom intentionally does not use it.

The VLRC noted that this conduct is mostly perpetrated by men against women, as well as by men who have sex with men. There is limited research about how prevalent this behaviour is, but one study conducted at the Melbourne Sexual Health Clinic in 2018 found that nearly one in three women and one in five men who have sex with men reported having experienced non-consensual condom removal. The study also found that women who were subjected to this behaviour were more likely to be a sex worker.

It is clear this conduct can cause significant harm and trauma, including sexually transmitted diseases, unplanned pregnancy and psychological distress or fear. But more than this, the non-use, removal or tampering of a condom without consent is a violation of bodily and sexual autonomy. It is a violation of consent, as the act has changed without the person's free and voluntary agreement.

The VLRC noted that the law in Victoria does not make it clear that this conduct is a criminal act and it has been prosecuted inconsistently. This has likely contributed to poor reporting rates and an unsatisfactory

response from the criminal justice system. The same study at the Melbourne Sexual Health Clinic suggested that only 1% of patients in the study reported the event to the police.

Explicitly providing the non-use, removal or tampering of a condom without consent as a circumstance where there is no consent will empower victim-survivors to identify it as a criminal act and encourage reporting. It will enable the conduct to be prosecuted as rape or sexual assault. It is also broadly consistent with the approach in other jurisdictions such as the Australian Capital Territory and Tasmania who have also included the conduct as an explicit circumstance where there is no consent.

The provision will only apply where there has been explicit or implicit agreement to use a condom prior to the act taking place. The provision will only capture intentional non-use, removal or tampering of a condom, not accidental conduct or consensual acts.

Reasonable belief in consent—requirement to take steps to ascertain consent

The Bill will establish a new requirement for a person to take a step to ascertain consent for their belief to be reasonable. A step must involve saying or doing anything to find out if there is consent. This is a critical part of an affirmative consent model.

These reforms will make clear that, if you want to engage in a sexual act with someone, you have to say or do something to find out whether they also want to engage in the sexual act with you. This is an entirely reasonable expectation and will reflect the existing practices of most people in respectful sexual encounters. Under this new law, assumptions about whether a person consents or ambiguity about whether they want to be involved in the sexual act are not enough to satisfy the requirement to have a reasonable belief in consent.

Under the existing law, for offences such as rape and sexual assault, the prosecution must prove that the accused person did not have a reasonable belief that the complainant was consenting. Reasonable belief focuses on the accused's actual belief and whether the belief was reasonable in the circumstances. This involves considering some of the accused's particular characteristics and the circumstances of their situation. Guidance is provided in the *Jury Directions Act 2015* about what the circumstances may or may not include. For example, it may include the personal characteristics of the accused person. It then becomes a matter of what would be reasonable for a person with those relevant characteristics and in that situation to believe.

These reforms will elevate the taking of active steps to a requirement in every case. Importantly, this will put greater focus on the accused person's actions in sexual offence trials, rather than focusing on what the victim-survivor did to indicate they did not consent. The VLRC found that whether an accused person had taken any steps to find out whether the other person consented was rarely considered in trials. Analysis of transcripts from rape trials after 2015 showed that instead of questions about what the accused person said or did to obtain consent, complainants continued to be questioned on outdated notions such as whether they fought back or said 'no'.

The Bill provides that the accused person's belief that the complainant was consenting is not reasonable if, within a reasonable time before or at the time the act takes place, the accused person does not say or do anything to find out if the complainant is consenting. This is consistent with legislative reforms in New South Wales and the Australian Capital Territory.

What must be said or done to check if the other person consents will depend on the circumstances. The provision is flexible to cater to different styles of communication, including verbal and non-verbal. For example, saying or doing anything could include asking questions or using touch, gestures or body language. If they meet this requirement, the trier of fact may then consider what was said or done. This may be different depending on the type of relationship. For example, what is said or done to find out if there is consent in a long-term relationship, where there may be an established style of communication, may be more subtle and nuanced. Regardless of the situation or the type of relationship, there will now always be a requirement to take an active step, by saying or doing anything, to find out whether the other person consents. This means it should be more than a thought process or assumption.

A person must say or do anything a reasonable time before or at the time the act takes place. In most situations, there is an expectation that the person will say or do anything immediately before or at the time of the sexual act. It is unlikely that saying or doing anything to find out if the other person consents at a much earlier time, for example at a party that took place hours before the sexual act, would be considered reasonable. However, in limited circumstances it may be appropriate to say or do anything at an earlier time, so long as consent continues to be present at the time of the act.

The onus is on the prosecution to prove, beyond reasonable doubt, that the accused person did not say or do anything to find out whether the complainant consented. If it is established that nothing was said or done to ascertain consent, the accused's belief cannot be considered reasonable, and this element of the offence will be made out. If, however, the accused did say or do something to ascertain consent, they may still be found guilty if the prosecution establishes that their belief in consent is not reasonable in the circumstances.

The Bill provides a narrow exception to the requirement to say or do anything, to address cases where the accused person's failure to do this was substantially caused by a cognitive impairment or mental illness. This is consistent with the exception provided for in New South Wales. This will ensure that accused people whose capacity to say or do anything to find out if there is consent is impaired because of a serious, diagnosed cognitive impairment or mental illness will not be unfairly disadvantaged by the new affirmative consent requirement. The exception will not apply where the cognitive impairment or mental illness is the effect of self-induced intoxication (i.e. caused by alcohol or drugs), in line with section 36B of the Crimes Act.

To be clear, the exception is not a loophole or a "get out of jail free" card. It will not automatically apply to every accused person with a cognitive impairment or mental illness—only in those cases where this illness or impairment is a substantial cause of their failure to say or do anything to ascertain consent. The accused person will bear the legal onus of proving, on the balance of probabilities, that the exception applies. This is appropriate, as evidence about their impairment or illness is a matter that is peculiarly within the knowledge of the accused and would be too difficult for the prosecution to prove, particularly if the accused exercises their right to silence. Even if the exception is made out, the decision-maker will still have to consider whether, in all the circumstances, the accused person had a reasonable belief in consent. This means that an accused person may prove the exception, but still be found not to have had a reasonable belief in consent, and therefore be found guilty of the offence.

Together, these reforms will strengthen and provide clarity on the provisions in the Crimes Act that relate to consent and reasonable belief in consent. The reforms will bring Victoria's laws in line with contemporary understandings and expectations of consent and will create long-lasting change to the way Victorians participate in sexual activity.

Given their significance, the government will review the operation of the consent reforms. It is important to allow the new provisions to be applied in practice before a meaningful review of their effectiveness can be undertaken. This review will also be able to draw upon experiences and learnings in other jurisdictions that have recently undertaken affirmative consent reform, including New South Wales and the Australian Capital Territory, which have committed to their own reviews.

To realise the ambition of these reforms and effect change across the Victorian community, we will work with local organisations and specialist services to deliver community-based consent education, as announced in the recent 2022–23 State Budget, to ensure affirmative consent is understood, supported and adopted by Victorians. Ultimately, our goal is to stop sexual violence before it happens in the first place. When well understood, these reforms have enormous potential to change people's behaviour and attitudes, profoundly supporting our efforts to prevent sexual violence. This will complement existing education initiatives, like Respectful Relationships in schools, to embed a culture of consent and respect in young people and across the community.

Image-based sexual offence reforms

Image-based sexual abuse (IBSA) involves the non-consensual creation and/or sharing of intimate images or threats to do so. Victoria has historically been a leader in addressing this insidious and widespread form of abuse which, as of 2019, almost one quarter of Australians aged 16 to 49 had experienced. In 2007, Victoria was one of Australia's first jurisdictions to specifically criminalise IBSA through the creation of new offences in the *Summary Offences Act 1966.*

Almost 15 years after these offences were introduced, the VLRC recommended updating Victoria's IBSA laws to better reflect the seriousness of this offending and respond to advancements in the technologies used to commit it. The VLRC also recommended criminalising the taking of an intimate image without a person's consent in recognition that victim-survivors can suffer harm through knowing that an intimate image of them exists, even where distribution has not occurred or been threatened.

The Bill implements the VLRC's recommendations by consolidating Victoria's main IBSA offences and moving them to the Crimes Act. The three new offences cover producing, distributing and threatening to distribute an intimate image.

Moving the IBSA offences into the Crimes Act will mean that these crimes will now be classified as indictable, rather than summary offences. This will strengthen the criminal justice response by enhancing police search and arrest powers in relation to this type of offending. Additionally, the Bill will introduce a new, higher maximum penalty of three years' imprisonment to better recognise the seriousness and harmful effects of this type of offending. This reform brings Victoria's maximum penalties in line with other comparable jurisdictions.

The Bill expands the definition of 'intimate image' to include digitally created images in order to capture 'deepfake porn', where an image is generated, manipulated or altered to appear to depict the victim-survivor. The Bill also amends this definition to better cover persons of diverse genders. Under the change, in line with

legislation in New South Wales and other jurisdictions, an intimate image will include an image that depicts the breasts of a transgender or intersex person identifying as female. While this will achieve the intended purpose, the government acknowledges that there is more work to be done to improve the inclusivity of language relating to gender and gender identity in the Crimes Act and Victorian legislation more broadly. This will be a longer term project.

In line with Victoria's current laws, the new offences will include an exception if the person depicted in the image has provided their consent to it being produced or distributed. However, in line with Victoria's affirmative consent model, these provisions have been strengthened. For example, the Bill specifies that the fact a person consents to one act, such as the production of an intimate image, does not mean they have consented to another, such as distribution of that image.

Research shows that women, First Nations Australians and lesbian, gay and bisexual people are more likely to be victims of IBSA. The Bill will extend procedural protections to IBSA complainants to ensure they are better supported during criminal proceedings, including alternative arrangements for giving evidence and suppressing a complainant's identity unless they wish to be identified. These measures and aim to reduce the risk of traumatising victim-survivors through the criminal process and promote their right to privacy.

The Bill will also assist complainants by empowering the courts to make a 'disposal order' for the destruction or disposal of an intimate image. This will help address the long lasting and recurring harm image-based sexual abuse can have if intimate images are allowed to remain in the possession of an accused person.

While these reforms to strengthen Victoria's IBSA laws are appropriate, the VLRC noted that these changes may result in over-criminalising mistakes made by children, who frequently use technology and may have a less developed understanding of what constitutes IBSA offending. To address this risk, the Bill implements the VLRC's recommendation of requiring the Director of Public Prosecutions to consent to commencing a prosecution against a person who was under 16 years old at the time of the alleged offending. This procedural safeguard will help ensure that children are only prosecuted for this type of offending in appropriate cases.

Facilitating prosecutions for historical sexual offending

The Bill will facilitate the prosecution of historical sexual offending, addressing recommendation 56 of the VLRC report. New section 7B of the *Criminal Procedure Act* will address the difficulties that currently arise for the prosecution where offending is alleged to have taken place during a period but the applicable offence changes during that period.

Problems can arise when the prosecution is unable to pinpoint the exact time of the alleged conduct—which is all too common in these cases, particular for historical sexual offending against children—and it is not clear which offence should apply. A recent example of this problem is where an offence is alleged to have been committed during the period when new, modernised sexual offences laws were introduced in 2017 by the *Crimes Amendment (Sexual Offences) Act 2016*. In this example, it may be unclear whether the old or new criminal offences apply, due to the lack of certainty about the precise time when the offence was committed. In some instances, this uncertainty has resulted in cases being discontinued, or charges not being filed, despite the alleged conduct being a criminal offence at all times during the period.

New section 7B will address this gap in the law. It will ensure that the prosecution can rely on whichever offence carries the lesser maximum penalty, and can rely on this offence in relation to the entirety of the period.

Strengthening protections for confidential communications of sexual offence victim-survivors

To protect the privacy of victim-survivors and ensure that they are not discouraged from seeking counselling, the law already prohibits a 'confidential communication' from being compelled, produced or used in a proceeding, without leave of the court. 'Confidential communication' covers communication made confidentially by a victim-survivor to a registered medical practitioner or counsellor in the course of the client-practitioner relationship.

Despite this protection, the VLRC found that many victim-survivors are not made aware of applications for disclosure of their confidential communications and highlighted the importance of their participation in these applications.

In line with recommendation 87 of the VLRC report, the Bill will expand and strengthen protections in criminal proceedings, including expanding protections to include 'health information' (such as personal information about a sexual offence victim-survivor that is collected in providing a health service).

The Bill will make it clear that victim-survivors' concerns regarding the use of their sensitive records are heard and considered, including by:

- requiring the prosecuting party to ensure victim-survivors are notified about applications to access their information, and are advised that they have a right to appear and may wish to consider obtaining legal advice; and

- providing victim-survivors a clear right to appear in applications and permitting them to provide a confidential statement describing the harm they are likely to suffer if the application is granted. The court will only be able to disclose this statement in very limited circumstances, where doing so would be in the interests of justice, such as where necessary to ensure the accused's right to a fair trial is upheld.

Consistent with the VLRC recommendation, the Bill confines these reforms to criminal proceedings. Expanding these reforms to civil proceedings will be subject to further consideration by the Government and may be considered in future legislative reform.

These amendments fulfil the commitment made earlier this year, when similar house amendments were proposed by Mr Grimley MP. I thank Mr Grimley for agreeing to withdraw his amendments at that time, which has allowed the Government to consider these reforms in the context of this broader Bill, with the benefit of stakeholder feedback.

Improving criminal procedure protections

The Bill will make a range of improvements to criminal procedure, to better protect victim-survivors and witnesses from unnecessary additional distress and trauma.

The Bill better protects young complainants by clarifying the scope of a *Criminal Procedure Act 2009* (CPA) provision that prevents the cross-examination of witnesses in certain proceedings. It specifies that the provision applies if a complainant for a sexual offence charge was a child or person with a cognitive impairment when the relevant proceeding commenced. This removes uncertainty by confirming that a child complainant who turns 18 prior to a committal hearing is still protected from being cross-examined.

The Bill also strengthens other pre-trial cross-examination protections. The VLRC found that cross-examination is particularly stressful for victim-survivors of sexual or family violence and witnesses with a cognitive impairment. To address this, it reaffirmed recommendations made in its 2020 report on *Committals* (Committals Report) to strengthen measures in the CPA that protect witnesses from being unnecessarily traumatised through pre-trial cross-examination. The Bill implements recommendation 45 of the Committals Report by requiring the court to have regard to additional considerations when determining whether to allow the pre-trial cross-examination of a witness who:

- has a cognitive impairment, or
- is a complainant in a proceeding that relates to a charge for a sexual or family violence offence.

This requirement is already in place in relation to child witnesses. The additional considerations include the need to minimise trauma that might be experienced by the witness, and any relevant condition or characteristic of the witness.

The Bill also addresses recommendation 46 of the VLRC Committals Report by requiring magistrates to provide reasons for granting leave to cross-examine a witness and identify each issue on which the witness may be cross-examined. However, magistrates will not be required to provide the reasons in writing to prevent an undue burden being placed on the court.

The Bill will make ground rules hearings mandatory for all sexual offence complainants, implementing recommendation 84 of the VLRC report. At ground rules hearings, the court and counsel discuss the questioning of witnesses, to help ensure questioning is respectful and fair, and to encourage the best evidence from the witness. They are currently only available in sexual offence and other limited matters that involve a witness (other than the accused) who is a child or has a cognitive impairment. Expanding the availability of these hearings will fairly and effectively meet the needs of a broader cohort of complainants.

Jury directions

The Bill will strengthen and improve jury directions laws applying to sexual offence trials by implementing recommendations 78, 79 and 82 of the VLRC report.

Addressing misconceptions about sexual violence earlier and more often

Jury directions are an essential feature of the criminal justice process. They ensure the jury is provided with appropriate guidance in its decision making, such as in relation to the meaning of certain terms and the matters it should and should not take into account. They also help to address common misconceptions that may otherwise lead to flawed decision-making and unfair outcomes.

The Bill will introduce a clear process that requires trial judges to give misconception directions at the earliest opportunity and at any time in the trial, if the judge considers there are good reasons to do so. This will ensure that directions are given at the earliest appropriate opportunity, but also only when needed so that juries are not overwhelmed by information. The Bill will also encourage early discussions between the judge and counsel about the jury directions that may be required to be given in a trial, to further streamline this process.

To ensure there is greater clarity about the giving of directions, the Bill will provide that both the new misconception directions introduced by this Bill, as well as some existing misconception directions, will apply to any sexual offence, regardless of when it was alleged to have been committed. These changes will simplify jury directions law for judges and practitioners.

Addressing further misconceptions about sexual violence

The Bill will build on the strong foundation already provided in the *Jury Directions Act 2015* by introducing new directions to counter a broad range of misconceptions relating to sexual violence that may lead to jurors inappropriately assessing the facts in a trial. Some of the new directions are similar to directions recently introduced in New South Wales and New Zealand, and all have a strong evidence base.

The directions will address a range of misconceptions, including about a complainant's behaviour or appearance. For example, the Bill will make clear that an accused cannot rely on an assumption that a person who dresses provocatively or drinks alcohol with someone is consenting to sex. It will also, in appropriate cases, require the judge to direct that both truthful and untruthful accounts of a sexual offence may be given with or without obvious signs of emotion or distress, to address the misconception that a genuine victim-survivor would always appear distressed when giving evidence and that the absence of such emotion indicates they are not being truthful.

To further improve the fairness of sexual offence trials, the Bill will prohibit statements that diminish the credibility of complainants just because they are sex workers or have a particular sexual orientation or gender identity, or suggestions that these complainants require more careful scrutiny by the jury. This will build upon reforms undertaken by the government to de-stigmatise sex work and protect against damaging stereotypes.

Explaining 'proof beyond reasonable doubt'

The *Jury Directions Act* currently allows a trial judge to explain the phrase 'proof beyond reasonable doubt' to a jury, if the jury asks a question which raises the meaning of it. The Bill will require judges to explain the 'beyond reasonable doubt' phrase in all criminal trials unless there are good reasons not to. This reflects the fundamental importance of this concept in criminal trials, while still allowing judges an appropriate discretion. Judges will be required to explain this before any evidence is presented, unless there are good reasons to give it later. This will ensure juries are assisted in understanding this concept at the earliest possible opportunity, while retaining appropriate flexibility to adjust the timing of the explanation to best suit the needs of the trial.

Extending temporary measures to assist the efficient operation of the courts.

Finally, the Bill will assist the courts to operate efficiently and safely, by extending temporary provisions in the *Court Security Act 1980* and the *Open Courts Act 2013* by 12 months to allow courts and tribunals to effectively manage their premises and address court backlogs. The provisions:

- allow authorised officers to restrict access to court and tribunal premises and give reasonable directions for the health of all persons on the premises, and
- clarify that giving the public certain methods of remote access to court proceedings (for example, by providing a livestream) does not contravene any rule of law relating to open justice if it is in the interests of justice.

These reforms will support the courts and tribunals to continue managing their premises safely and using digital technologies to administer justice effectively and efficiently.

I commend the Bill to the house.

Ms STALEY (Ripon) (10:14): I move:

That the debate be adjourned.

Motion agreed to and debate adjourned.

Ordered that debate be adjourned for two weeks. Debate adjourned until Thursday, 18 August.

MAJOR CRIME AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2022

Statement of compatibility

Ms KILKENNY (Carrum—Minister for Corrections, Minister for Youth Justice, Minister for Victim Support, Minister for Fishing and Boating) (10:16): In accordance with the Charter of Human Rights and Responsibilities Act 2006, I table a statement of compatibility in relation to the Major Crime and Community Safety Legislation Amendment Bill 2022.

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 Major Crime and Community Safety Legislation Amendment Bill 2022 (**Bill**).

In my opinion, the Bill, as introduced to the Legislative Assembly, is compatible with the Charter. I base my opinion on the reasons outlined in this statement.

Overview

The Bill will amend:

- the *Confiscation Act 1997* (**Confiscation Act**) to:
  - enhance law enforcement's powers to address organised crime's growing use of cryptocurrencies;
  - clarify and strengthen investigation and enforcement powers including those regarding serious drug offenders, information gathering by law enforcement, restraining orders, and enforcement of confiscation outcomes to ensure more equitable outcomes where the confiscation system is used to satisfy compensation or restitution orders; and
  - update offences that trigger an offender's assets being automatically forfeited.
- the *Drugs, Poisons and Controlled Substances Act 1981* (**Drugs Act**) so that trafficking the serious drug 1,4-Butanediol (1,4-BD) triggers automatic forfeiture provisions in the Confiscation Act;
- the Crimes *Act 1958* (**Crimes Act**) to streamline, clarify and modernise Victoria Police search warrant powers and to fingerprinting framework;
- the Crimes *(Assumed Identities) Act 2004* (**Assumed Identities Act**) to streamline and modernise processes for Victoria Police to authorise and use assumed identities in the online environment; and
- the *Sex Work Decriminalisation Act 2022* consequentially to reflect changes to the automatic forfeiture provisions in the Confiscation Act.

Human Rights Issues

Amendment of the *Confiscation Act 1997* (Part 2)

Digital Currency Exchange Services (Part 2, Division 1)

The Bill broadens the definition of 'financial institution' under the Confiscation Act to include digital currency exchanges, as well as making consequential amendments to enable the expanded definition to operate. The reform means that:

- information-gathering powers in Part 13 of the Confiscation Act, including monitoring orders (Division 3) and information notices (Division 3A), will apply to digital currency exchanges; and
- freezing orders in Part 2A of the Confiscation Act will be available in relation to digital assets.

Right to privacy (section 13(a))

The information-gathering powers in Part 13 of the Confiscation Act enable law enforcement to require financial institutions to provide account and transaction information they hold in relation to specific persons. I consider that the amendments extending these information-gathering powers to digital currency exchanges engage the right to privacy. 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. For the reasons below, I consider any interference with privacy rights will not be unlawful or arbitrary and the information-gathering powers in the Bill are compatible with the right to privacy.

The extension of the powers to digital currency exchanges in the Confiscation Act will make their exercise lawful. Further, I do not consider that any resulting interference with privacy rights will be arbitrary. The circumstances in which information-gathering powers under the Confiscation Act may be exercised are limited, clearly defined and have sufficient safeguards to prevent arbitrary use. Information notices and monitoring orders are limited to circumstances in which there are reasonable grounds to believe that the person whose account is being affected has committed or benefited from a relevant offence (or is about to). Information notices can only be issued by an authorised officer of senior rank and with written reasons recorded. Further, monitoring orders are issued by courts, so are subject to judicial oversight.

Property rights (section 20)

The proposed expansion of information-gathering powers to digital currency exchanges is intended to assist with the forfeiture of cryptocurrencies and other digital assets. Together with the proposed extension of freezing orders to digital assets, these reforms will engage property rights. Section 20 of the Charter provides that a person must not be deprived of his or her property other than in accordance with law.

These powers will be provided for by the Confiscation Act and exercised in accordance with law, so are compatible with the Charter. Further, I consider that these powers are not arbitrary because they are appropriately confined to target the proceeds of serious, organised and profit-motivated crime. Freezing orders are established under Part 2A of the Confiscation Act and are subject to strong safeguards as they are strictly limited in duration and can only be issued by a court. Organised crime groups are increasingly trading and holding their wealth in digital assets like cryptocurrency. I consider these reforms are a modest and appropriate extension to ensure Victoria's confiscation scheme can meet contemporary challenges.

Search warrants and seizure warrants (Part 2, Division 2)

The Bill makes three main amendments to the search and seizure warrant provisions in the Confiscation Act. First, warrants for seizure of forfeited property in public places will be extended from one month to six months and additional persons will be able to apply for these warrants. Second, police will be able to require assistance from a person with knowledge of a computer, computer network, data storage device or item containing code to execute search warrants under the Confiscation Act. Failure to provide that assistance, which could involve providing a password, will constitute an offence and the Bill expressly abrogates the privilege against self-incrimination. Third, the Bill empowers police to secure digital assets by, for example, accessing the global blockchain and changing a digital asset's encryption key to prevent criminal targets from accessing the asset remotely.

Right to privacy (section 13(a))

I consider that the amendments to permit assistance from a person in executing a search warrant engage the right to privacy. However, I consider that any interference with the right to privacy is lawful and not arbitrary, and therefore that the amendments are compatible with section 13(a) of the Charter.

The powers are critical to ensure the confiscation regime adequately enables law enforcement to locate and ascertain digital assets, while providing associated safeguards. Their scope is similar to existing powers in sections 465AAA and 465AA of the Crimes Act, which also enable effective execution of warrants with reference to current use and changes in technology. Searches are limited to property that has been used in, or derived from, criminal offences, or property that has been forfeited to the State.

Property rights (section 20)

The amendments to search and seizure warrants under the Confiscation Act also engage property rights under section 20 of the Charter only to the extent that they relate to tainted, rather than forfeited, property. However, I consider that any interference with property rights will be appropriately confined and structured.

Empowering police to secure tainted digital assets is intended to restrict access to and dissipation of the asset, consistent with the purpose of the warrant to enable the seizure of tainted property.

To the extent that the securing of digital assets relates to forfeited property, the reforms do not engage property rights, as forfeited property is vested in the Minister on behalf of the State and individuals who retain possession of forfeited property have no rights in relation to it. Extending the duration of seizure warrants from one month to six months does not interfere with property rights, as the extended warrant period will apply to warrants for forfeited property only. Extending the validity of these warrants will assist police to seize forfeited property like vehicles if intercepted in public.

The right not to be compelled to testify against oneself (section 25(2)(k)) and right to a fair hearing (section 24(1))

The Bill provides that a person is not excused from complying with a direction or order to give assistance in the execution of a warrant under the Confiscation Act on the ground that complying with it may result in information being provided that might incriminate the person. This amendment engages the right not to be compelled to testify against oneself or to confess guilt under section 25(2)(k) of the Charter. The privilege against self-incrimination is also an important element of a fair trial and therefore similarly limits section 24(1) of the Charter, which 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. I consider that any limitation of these rights is demonstrably justified as a reasonable limit under section 7(2) of the Charter.

I note that the proposed reforms are modelled on existing general search warrant provisions in sections 465AAA and 465AA of the Crimes Act. Like those existing provisions, the amendments to the Confiscation Act reflect technological changes and will enable the effective execution of search warrants to access and seize digital assets that may be liable to forfeiture. Specifically, while police can use force or expert assistance to gain access to a locked room, cupboard or safe without impacting the privilege against self-incrimination, the same is not always possible for computers or digital storage devices. These devices often have sophisticated encryption or security settings that cannot be readily overcome with force or even professional skills in the same way as physical storage.

The nature and extent of the limitation on rights is confined, as a person may only be required to assist police to access a digital asset when authorised by a Magistrate issuing a warrant. The required assistance is also limited to assistance or actions that are reasonable and necessary to effectively execute the warrant.

Under section 92 of the Confiscation Act, police may seize items not listed in a warrant that would provide evidence about the commission of a Schedule 1 offence. It is therefore possible that by assisting police to access a data storage device, police may discover incriminating documents beyond tainted or forfeited property. Section 92 of the Confiscation Act is directed to the important purpose of ensuring that, where police identify evidence of serious offending, further investigation and prosecution is possible. Effective investigation and prosecution of serious crime is necessary to protect community safety, and may promote other rights, including the right to life and protection of families and children. If assistance provides access to a computer or storage device, which then leads to evidence of the commission of a Schedule 1 offence, it is consistent with the purpose of section 92 that that evidence should be admissible. I therefore do not consider that the inclusion of a direct use immunity is an appropriate less restrictive alternative.

Exclusion applications (Part 2, Division 3)

Property rights (section 20)

Where property is forfeited or restrained, the Confiscation Act allows third parties who are impacted to apply to have their interest in the property excluded from the operation of the scheme. The Bill restricts some of these exclusion mechanisms and therefore engages property rights. However, I consider that any interference with property rights is lawful and not arbitrary, and therefore compatible with the Charter.

First, the Bill closes a loophole in the Confiscation Act that allows third parties to exclude property from the serious drug offender scheme that they knew, or should have reasonably suspected, was used in or derived from criminal offending. This amendment aligns with the exclusion provisions for lesser offences in Schedule 2 to the Confiscation Act. Furthermore, exclusion order applications remain subject to court oversight and determination. I consider that this reform is appropriately confined given it will only apply where the affected third party is, or should have been, aware of the property's connection to criminal offending.

Second, the Bill also imposes a six-month time limit on exclusion applications related to money that has already been forfeited. Currently, exclusion applications made post-forfeiture must be made within 60 days of the property being forfeited unless the court allows an out of time application. For forfeited property that is not money, out of time applications are limited to the period before the property is sold off or disposed of by the State, which is usually within six months. However, as forfeited money is deposited in the Consolidated Fund, and not disposed of under the Confiscation Act, there is effectively no limit on the court being able to accept out of time applications.

Responding to exclusion applications made a significant time after money was forfeited causes the State substantial evidentiary difficulties. The Bill addresses this issue and provides for consistent treatment of exclusion applications across all types of forfeited property. The six-month time limit is consistent with the current practice for selling off forfeited property that is not money, and provides fair and sufficient time for third parties to seek to have their money excluded from the operation of the scheme.

Partial forfeiture of real property and proceeds of sale of forfeited residence (Part 2, Division 4)

When considering a forfeiture order application, the Confiscation Act allows a court to have regard to any undue hardship that may be caused to any person by the order. Where the property sought to be forfeited is solely owned by an offender but is a family home, the court can consider the impact forfeiture would have on family members. This has resulted in courts refusing to forfeit property to the State, despite it being proceeds of crime or associated with criminal activity. The Bill will clarify that a court may order partial forfeiture of property, providing flexibility to make fairer forfeiture orders.

Property rights (section 20)

The partial forfeiture amendment may increase the likelihood that an offender's property will be forfeited and therefore impact on their property rights or the property rights of their family members. The partial forfeiture amendment will be lawful, by its inclusion in the Confiscation Act, and the nuanced approach it takes to the interests of family members ensures it is not arbitrary. Importantly the amendment will allow, but not compel, a court to order partial forfeiture. This will remain a decision of the court, taking into account the circumstances of individual case. For these reasons, I consider the partial forfeiture amendment compatible with property rights.

The right to protection of families and children (section 17)

Section 17(1) of the Charter provides that families are the fundamental group unit of society and are entitled to be protected by society and the State. Section 17(2) additionally provides that every child has the right,

without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child. These rights are engaged by the amendments to partial forfeiture and proceeds of sale of a forfeited residence, but I am satisfied that any engagement is compatible with the Charter.

The Bill gives a court the ability to make orders that are fair and reasonable in all the circumstances of the case, with greater flexibility to consider an offender's family's interests in forfeited property. This ensures that the right to protection of families and children is protected to the greatest extent possible. The amendments in the Bill do not impact on third party property rights, as they do not alter the current mechanisms in the Confiscation Act for third parties to have their property excluded from the operation of the scheme because of undue hardship.

The Confiscation Act contains safeguards to protect an offender's dependents, which are enhanced by the Bill. Specifically, section 45A of the Confiscation Act allows a court to award some of the proceeds of sale of a serious drug offender's residence to their dependents. The Bill will clarify that the court may split a relief payment under section 45A between two or more dependents which will help prevent inequitable distributions in future cases. This amendment promotes the right to protection of families and children.

Enforcement of pecuniary penalty orders (Part 2, Divisions 6 and 7)

The Bill amends provisions relating to actions that may be taken when enforcing pecuniary penalty orders (**PPOs**) made under Part 8 of the Confiscation Act. Specifically, the Bill:

- inserts provisions for the sale of land to satisfy a pecuniary penalty order;
- creates an offence of disclosing the existence of document requests in relation to PPOs, consistent with the current position for information notices issued under the Confiscation Act; and
- enables the use of information-gathering powers under the Confiscation Act for historic PPOs issued under the *Crimes (Confiscation of Profits) Act 1986*.

Freedom of expression (section 15(2))

Prohibiting disclosure of the existence of a document request engages section 15(2) of the Charter, which protects freedom of expression. However, the right is subject to lawful restrictions reasonably necessary to protect public order. This amendment to the Confiscation Act is lawful and is directed to the legitimate public order purpose of supporting enforcement action under the Confiscation Act. Without this restriction on disclosure, PPO enforcement could be undermined by the subject of confiscation proceedings being tipped off and dissipating assets before they can be forfeited. The right to freedom of expression is therefore not limited.

Property rights (section 20)

Amendments relating to the enforcement of PPOs also engage property rights, but any engagement will be lawful and appropriately confined. The State can already pursue the sale of charged property to satisfy PPOs. The Bill simply establishes a statutory mechanism to avoid expensive litigation and associated delays. The Bill maintains judicial oversight and opportunities for affected persons to make exclusion applications as appropriate. Accordingly, I do not consider these amendments limit property rights under the Charter.

Expanded information-gathering powers for historic PPOs may lead to greater enforcement activity and also engage property rights. However, a PPO does not expire and a person subject to such an order remains liable regardless of the time that may have passed since the order was made. The information-gathering powers therefore do not interfere with property rights in any additional way.

Information-gathering powers (Part 2, Divisions 8 and 10)

The Bill strengthens information-gathering provisions under Parts 12 and 13 of the Confiscation Act, including by:

- establishing a new power to compel the production of documents as part of the existing examination process in Part 12 of the Confiscation Act;
- expanding the grounds for which property-tracking documents may be obtained to include documents to support the enforcement of a PPO under the Confiscation Act or a compensation or restitution order under the *Sentencing Act 1991*;
- expanding the types of information that may be obtained from financial institutions via an information notice (currently limited to account details) to include details about property secured by a loan;
- expanding the grounds on which information notices may be issued so they can be used to obtain information about 'tainted' or 'derived property';
- providing that information notices are valid for three months, during which time police can request updated information without issuing a new information notice;

- expanding the application of information notices issued to enforce PPOs under section 118E of the Confiscation Act to include accounts not secured by a mortgage; and
- establishing a new power to request and obtain credit reporting data for the purpose of any proceeding or enforcement action under the Act.

Right to privacy (section 13(a))

The proposed reforms to information-gathering powers engage the right to privacy. However, I consider that any interference with privacy rights is lawful and not arbitrary. The Confiscation Act specifies in detail the limited circumstances in which information-gathering powers may be exercised, including that there must be a nexus with criminal offending. Additionally, examination and production orders are only available when ordered by a court and are subject to judicial oversight. The reforms are a modest expansion of existing powers under the Confiscation Act that will address gaps and inefficiencies in the current provisions.

The right not to be compelled to testify against oneself (section 25(2)(k)) and right to a fair hearing (section 24(1))

The Bill will create the power to issue an examination notice, requiring production at an examination of specified information or documents. The Bill makes it an offence to fail to produce the specified information or document without a reasonable excuse and extends section 99(1) of the Confiscation Act to provide that a person may not refuse to comply with an examination notice on the grounds that it might tend to incriminate the person. These amendments engage the right not to be compelled to testify against oneself and, consequently, the right to a fair hearing. However, I consider any limitation on these rights by the examination notice amendments is demonstrably justified as a reasonable limit under section 7(2) of the Charter.

The limitation recognises that criminals may take steps to conceal their wealth from law enforcement agencies. The new production powers are designed to overcome such steps to fulfil the objectives of the Act, including to confiscate the proceeds of crime and to deter serious, profit-motivated criminal activity. The limitation is also appropriately confined and proportionate to the objective of the examination notice, as the Bill extends the existing direct and derivative use immunities in sections 99(2) and (2A) of the Confiscation Act to the person who provides information or documents under an examination notice. The information or documents produced under the notice—or any information, documents or other things obtained derivatively—are not admissible against the person in any criminal proceeding (except in proceedings for giving false testimony or failure to comply with the production notice). These important safeguards replicate those that apply where a person is asked questions during an examination process.

Restraining orders (Part 2, Division 9)

The Bill improves restraining order provisions under the Confiscation Act by:

- clarifying that restraining orders can be made to satisfy historic pecuniary penalty, compensation and restitution orders; and
- providing that any mortgage, charge or encumbrance (including a caveat) created on real property after a restraining order is void, unless approved by a court.

Property rights (section 20)

More property will likely be restrained as a result of clarifying that restraining orders can be made to satisfy pecuniary penalty, compensation and restitution orders made in the past, which will engage property rights under section 20 of the Charter. However, any interference with property rights will be lawful and appropriately constrained by judicial oversight and exclusion application pathways. For these reasons, I consider this reform compatible with property rights.

Limiting the ability of individuals to lodge caveats on restrained property will not otherwise engage property rights, given the availability of existing exclusion order pathways to protect property interests. Caveats lodged after a restraining order currently do not protect property rights and can be removed under section 42 of the Confiscation Act and the *Transfer of Land Act 1958*. The reforms will direct third parties towards the exclusion order pathways under the Confiscation Act, which will more appropriately protect their property interests and avoid the time and costs associated with having incorrectly placed caveats removed.

Miscellaneous amendments (Part 2, Division 10, Parts 5 and 6)

Property rights (section 20)

The Bill includes several other miscellaneous reforms that engage property rights and require Charter consideration.

First, the Bill clarifies the concept of effective control. Property that may be confiscated under the Confiscation Act includes property under the 'effective control' of an accused, not only property legally owned by them. Section 9 of the Confiscation Act defines how the concept of effective control applies in the

Act. It is critical to confiscating assets when accused persons have arranged for assets to be held in the names of family members, trusted associated or companies they control. The Bill will broaden the definition of 'effective control' in the Confiscation Act by providing that property may be subject to the effective control of more than one person and that property held on trust for the ultimate benefit of a person is taken to be under their effective control.

These additional elements are based on the approach taken in the *Proceeds of Crime Act 2002* (Cth) and increase the likelihood that property may be forfeited to the State. Importantly, whether or not property is deemed to be under the 'effective control' of a person will still be determined by the court taking into the account the circumstances of a particular case. I consider any resulting interference with property rights is lawful and appropriately confined, directed to circumstances where accused persons are actively seeking to conceal their assets from law enforcement. The opportunities under the Confiscation Act to have interests excluded from restraint or forfeiture, or to buy back or buy out forfeited property interests, provide sufficient safeguards for any third parties affected by the increased scope of the definition of 'effective control'.

Second, the Bill clarifies that property that is protected from automatic forfeiture for serious drug offences should be valued at the time a restraining order is made, regardless of any depreciation thereafter. Protected property is defined in section 24(2) of the Confiscation Act and includes necessary transport, clothing, household items and tools of trade used by the accused or their dependents above a prescribed value ($12,500 for vehicles that are used as a primary means of transport and $5,000 for other property items). Proceedings under the Act may take years to be finally determined, during which times assets like cars may depreciate significantly and fall below the prescribed threshold.

This reform provides certainty and frees the Director of Public Prosecutions from the additional work required to confiscate property that falls below the prescribed threshold before automatic forfeiture occurs. To the extent that the law could currently be interpreted as allowing valuation after the point of restraint, then the reform has the potential to enable the restraint of additional property of offenders. However, I consider the reform is necessary to provide certainty for all parties at the time property is restrained. Further, the impact of this reform on property rights is lawful and is also modest, proportionate and appropriately confined. I therefore consider that this amendment does not limit property rights.

Third, the Bill extends the period before a serious drug offence restraining order automatically lapses under section 27(3A) of the Confiscation Act after the relevant charge is withdrawn, from seven days to 14 business days. When charges are withdrawn, an accused may be charged with alternative lesser offences. The current seven-day period does not provide sufficient time for the Director of Public Prosecutions to prepare and file new charges before the restraining order lapses.

This reform increases the period that an accused person cannot deal with their property and is also intended to increase the likelihood that property may be forfeited to the State and not dissipated, thereby interfering with property rights. I consider this modest extension to be lawful, as well as striking an appropriate balance between protecting property rights and preserving assets while an appropriate restraining order is obtained. This amendment therefore does not limit property rights.

Fourth, the Bill extends the duration of freezing orders from three to five business days. The current duration is insufficient for the Director of Public Prosecutions to apply for a restraining order in almost half of all cases and can lead to the dissipation of assets before a restraining order can be obtained. I consider this is a modest extension that strikes an appropriate balance between property rights and the underlying purposes of the scheme. This amendment does not limit property rights.

Finally, the Bill triggers the Confiscation Act's:

- automatic and civil forfeiture provisions for possession of a traffickable quantity of firearms contrary to section 7C of the *Firearms Act 1996*;
- automatic forfeiture provisions for serious sex offences involving sexual servitude and commercial sexual services by children, regardless of the value of the service; and
- automatic forfeiture provisions for trafficking 600 grams or more of the serious drug 1,4-BD.

While these reforms will directly impact property rights by increasing forfeiture opportunities, I consider the amendments lawful and the impact on property rights to be proportionate to the seriousness of the offences. These amendments do not limit property rights.

Amendment of the *Crimes Act 1958* (Part 3)

Search warrant powers (Part 3, Division 1)

The amendments in Division 1 of Part 3 of the Bill will streamline the way police execute search warrants, by allowing police to copy data stored on a computer or data storage device, break open receptacles, seek assistance from those with specialised skills (such as locksmiths or forensic accountants) and secure computer

equipment for operation by experts. The amendments will also streamline the process after a warrant has been executed by allowing Victoria Police to lodge a report about the execution of the warrant, rather than returning seized items to court.

Rights to privacy (section 13(a)) and property (section 20)

I consider that the rights to privacy and property are engaged by the proposed search warrant reforms in Division 1 of Part 3 of the Bill to the extent they expand the powers available under search warrants, and who may exercise them. However, for the following reasons, I am satisfied that any interference with the right to privacy is lawful and not arbitrary, and therefore that the Bill is compatible with sections 13(a) of the Charter. I am further satisfied that any interference with property rights will be in accordance with law and appropriately confined and therefore compatible with section 20 of the Charter.

Victoria Police's powers to execute search warrants under section 465 of the Crimes Act are clearly defined and prescribed by Part III, Division 1, Subdivision 31 of the Crimes Act. Before searches can be undertaken, a Magistrate must grant a search warrant under section 465 of the Crimes Act. A Magistrate may only grant a warrant under section 465 where they are satisfied that there is an item in the search warrant premises that may constitute evidence of an indictable offence that has been committed or is likely to be committed within the next 72 hours.

Allowing Victoria Police to use assistants when executing a search warrant will engage the right to privacy by increasing the number of people who may be present at a private premises when a search warrant is executed. However, the increased impact on privacy is expected to be modest, as Victoria Police will only be able to use assistants who possess specialised skills or technical knowledge necessary to exercise a power authorised by the warrant and may not use an assistant to arrest a person.

The amendment to clarify that Victoria Police may break open a locked receptacle when executing a search warrant issued under section 465(1) of the Crimes Act will also engage the rights to privacy and property, by providing Victoria Police with additional access to personal property at a search warrant premises. The powers may also enable Victoria Police to damage personal property. However, the Bill limits the use of this power by requiring that it be reasonably necessary to gather evidentiary material or prevent a hazard. The powers serve the important purpose of allowing Victoria Police officers to execute search warrants safely and efficiently.

The amendment to empower Victoria Police to secure electronic equipment at a search warrant premises will engage the rights to privacy and property, as Victoria Police may spend longer at a private premises and may restrict access to personal property or private space while equipment is being secured. However, any impact on this right will be limited by the safeguards in the Bill, including that electronic equipment may only be secured for a maximum period of 48 hours to allow an expert to attend and operate the equipment. If Victoria Police wishes to secure equipment for a longer period, police must apply to a Magistrate to obtain an extension.

Victoria Police is also a public authority within the meaning of the Charter. Its officers are therefore obliged to properly consider human rights in their decision making and to act compatibly with human rights in exercising statutory search warrant powers, in accordance with section 38 of the Charter.

Further, Victoria Police will be required to lodge a report with the Magistrates' Court after a warrant is executed, thereby retaining Court oversight over the search warrant powers and providing a safeguard against the arbitrary interference with the rights to property and privacy. The report must include the name of the police officer in charge of the execution of the warrant, the date on which the warrant was executed, the powers executed under the warrant, the details of any person arrested, items seized, any items disposed of or destroyed during the execution of the warrant, the name and qualifications of any assistants used in the execution of the warrant and details of electronic equipment secured in the execution of the warrant and of any extension of time to secure electronic equipment granted by the Magistrates' Court.

The report will therefore engage the right to privacy of the police officer in charge and any assistants by naming them, but this will be lawful and not arbitrary and therefore also compatible with the right. Naming police officers and assistants is an important measure to ensure transparency in the execution of warrants.

The Bill requires Victoria Police officers to notify the occupier of a warrant premises where the report will be lodged and when it will be available for inspection. Further, any person with an interest in the execution of the warrant can inspect the report, ensuring transparency where search warrant powers have been exercised. The Magistrates' Court will also have a discretion to require a police officer to give evidence in relation to a seized item, and to order that a seized item be returned to its owner.

I do not consider that the amendment empowering Victoria Police to access, convert and copy data held in or accessible from a computer or data storage device will have any greater impact on the rights to property or privacy than existing provisions of the Crimes Act. Section 465AA of the Crimes Act already allows Victoria Police to direct 'a specified person' to access, convert and copy data from a computer or storage device. While the amendment will allow Victoria Police officers to now do this personally, rather than another specified

person, it will not grant any greater access to personal property or data during the execution of a search warrant under section 465(1).

Right to a fair hearing (section 24)

The display or publication of items may impact the right to a fair hearing at section 24 of the Charter, by influencing opinions about an alleged offence. However, I consider that any limitation of the right to a fair hearing at section 24 of the Charter is demonstrably justified as a reasonable limit within the meaning of section 7(2).

This power will deter offending and will provide public reassurance of community safety by demonstrating the outcomes of police investigations into serious and organised crime. It also aligns Victoria Police practice with other Australian jurisdictions, such as that of the Australian Federal Police. The courts will also retain their broad and inherent powers to ensure that criminal proceedings are conducted fairly and impartially. I am confident police will make these decisions responsibly and appropriately, and note police are accustomed to making such decisions in the context of releasing investigation details to the media.

Fingerprint powers (Part 3, Division 2)

Right to privacy (section 13(a))

I consider that the right to privacy under section 13(a) of the Charter, as described above, is engaged by the proposed amendments to Victoria Police's powers to retain and use fingerprints taken from suspects under sections 464K and 464L of the Crimes Act. Fingerprints are personal information and any expansion of Victoria Police's ability to use or hold a person's fingerprints will therefore have a direct impact on their right to privacy. However, I consider that any interference with the right to privacy is lawful and not arbitrary, and therefore that the Bill is compatible with section 13(a).

The Bill empowers Victoria Police to use fingerprints for the new purpose of identifying deceased and seriously injured people, including during coronial inquiries and investigations. While this amendment extends the purposes for which fingerprints can be used under the Crimes Act, it will serve the important purpose of reducing unnecessary investigations by the Coroner to identify a deceased person. The amendment may also reduce the time it takes for medical professionals treating a seriously injured person to receive relevant medical history or notify the family of a seriously injured or deceased person. The Bill also contains the important safeguard that fingerprints can only be used for identification purposes by a Coroner and will not otherwise be able to be used as evidence in a coronial investigation. Victoria Police will also only be permitted to share identity information, and not a copy of the fingerprints themselves, limiting the risks associated with storing and destroying fingerprints.

The Bill will also allow Victoria Police to retain multiple sets of person's fingerprints. However, this amendment does not allow police to retain any additional personal information. Under section 464K(1) of the Crimes Act, police may take a person's fingerprints on multiple occasions over a period of time or where they are suspected of having committed different offences. This can result in Victoria Police holding multiple sets of fingerprints for the same person, each with different retention and destruction timeframes under the Crimes Act. The Bill will streamline this process, allowing multiple sets of a person's fingerprints to be held until Victoria Police no longer have an authority to hold that person's fingerprints. While it could be considered less intrusive for Victoria Police to retain a single set of fingerprints in the circumstances, that approach could have unintended consequences for criminal proceedings, because it could alert a jury or judicial officer to the fact that an accused has had previous engagement with police.

Currently, under section 464O(3) of the Crimes Act, fingerprints taken from suspects must be destroyed 'immediately' after expiry of the six-month timeframe after the taking of the fingerprints if a person is not charged or the charge is not proceeded with.

The Bill will amend the timing of destruction so that fingerprints would be required to be destroyed 'within one month' rather than 'immediately' after the expiry of the specified timeframe. The reform will improve the operational workability of the destruction requirement, noting that it may not always be feasible for fingerprints to be destroyed 'immediately', while aligning with the existing timeframe for the destruction of fingerprints in circumstances where the person is found not guilty.

Importantly, this reform will continue to be subject to section 464O(7) of the Crimes Act, which provides that a person is guilty of a summary offence if they fail to destroy fingerprints required to be destroyed, or use, make, or cause or permit to be used or made any record, copy or photograph of fingerprints required to be destroyed.

Otherwise allowing Victoria Police to retain the fingerprints of deceased person will not interfere with the right to privacy, as the right to privacy does not extend to deceased persons.

Amendment to the *Crimes (Assumed Identities Act) 2004* (Part 4)

The Bill seeks to modernise and streamline the processes that regulate the use of assumed identities by Victorian Public Service employees of Victoria Police (**VPS employees**) under the Assumed Identities Act. The reforms include removing the requirement that it is impossible or impracticable for a sworn police officer to acquire an assumed identify before a VPS employee can be authorised to use that assumed identity and extending the duration of such authorisations from three to 12 months. The Bill also streamlines the process for making and supervising these authorisations.

The Chief Commissioner of Police will also be permitted to delegate powers to authorise and review assumed identities to up to 10 officers (previously four) and delegations will be permitted to be made to the rank of Inspector or above (previously Superintendent). The Chief Commissioner's powers under the Assumed Identities Act include granting, varying and cancelling authorities to acquire and use an assumed identity, reviewing, auditing and conducting appropriate record-keeping of Victoria Police's use of assumed identities, as well as applying to change the register of births deaths and marriages and authorise the production of evidence in relation to an assumed identity. Finally, the Bill allows Victoria Police employees using an assumed identify to be supervised by sworn police officers at or above the rank of Sergeant, rather than requiring supervision by a single specified officer.

Right to privacy (section 13(a))

The use of a false identity may result in a person providing information in relation to private aspects of their life that they would not otherwise reveal to police. I accept that the amendments outlined above, to the extent that they expand the number of persons who may use an authorised assumed identity engage the right to privacy in section 13(a) of the Charter.

However, I am satisfied that to the extent there is any interference with the right to privacy, it will be lawful and not arbitrary, and therefore that the proposed reforms are compatible with section 13(a) of the Charter. The use of assumed identities will continue to be regulated and prescribed by the Assumed Identities Act. The Assumed Identities Act provides a comprehensive framework to govern Victoria Police's acquisition and use of assumed identities. It is based on model legislation that is in place in all Australian jurisdictions.

Hon. Sonya Kilkenny MP
Minister for Corrections
Minister for Youth Justice
Minister for Victim Support
Minister for Fishing and Boating

Second reading

Ms KILKENNY (Carrum—Minister for Corrections, Minister for Youth Justice, Minister for Victim Support, Minister for Fishing and Boating) (10:16): I move:

That this bill be now read a second time.

I ask that my second-reading speech be incorporated into *Hansard*.

Incorporated speech as follows:

The Major Crime and Community Safety Legislation Amendment Bill 2022 makes important amendments that acquit commitments in the Community Safety Statement 2018 19, to strengthen Victoria's laws targeting proceeds of crime and improve Victoria Police's search warrant powers, crime scene powers, and ability to effectively gather and manage evidence.

The Bill also addresses the need to improve police investigations and reduce administrative burdens on Victoria Police, by streamlining and modernising the legislative powers related to executing search warrants, using and destroying fingerprints, and the use of assumed identities in criminal investigations. In streamlining these powers, the Bill maintains appropriate safeguards for their exercise, such as court oversight over the execution of warrants.

Confiscation Act Reforms

Effective asset confiscation laws are a powerful tactic against organised and profit-motivated crime. The Bill implements the Government's commitment from the Community Safety Statement 2018–19 to strengthen investigative and enforcement powers in the *Confiscation Act 1997*, providing law enforcement with greater opportunities to confiscate proceeds of crime and thereby disrupt, deter and dismantle serious and organised criminal activity.

Cryptocurrencies and digital assets

The Bill addresses the growing use of digital currencies and other digital assets by criminal groups, expanding law enforcement's powers to effectively identify and seize digital assets. The Bill extends the obligations of financial institutions under the Confiscation Act to digital currency exchanges to allow law enforcement to obtain account information from them in the same way that information may be obtained from banks. These amendments also provide clear powers for digital assets to be monitored and frozen to prevent them from being dissipated by a criminal target. The digital currency exchanges affected by these reforms are already required to be registered on the Digital Currency Exchange Register under Part 6A of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). The Bill also makes changes to the Confiscation Act to update provisions to ensure they are applicable to digital assets.

The Bill inserts new powers for law enforcement to require assistance from people with knowledge of computers, data storage devices, or other means of accessing digital assets to gain access to these assets when executing search warrants. These powers align with equivalent powers under the *Crimes Act 1958* and ensure digital measures to secure property can be overcome in the same way as physical barriers such as locks and safes. This reform is crucial to the effective use of search warrants now that assets are increasingly being held digitally.

The Bill also provides law enforcement with a clear power to secure digital asset wallets seized under warrant against remote interference, allowing digital assets to be secured in much the same way as physical assets.

Information-gathering powers

The Bill addresses operational limitations on the existing information-gathering powers provided to law enforcement in the Confiscation Act, by expanding the uses of powers and the types of information that can be accessed to support investigative and enforcement efforts. For example, the Bill allows law enforcement to issue information notices for a broader range of bank accounts and property types than are currently available and reduces the administrative burden of issuing multiple individual information notices to seek updated account information during ongoing litigation. The Bill also expands the circumstances in which the production of documents can be compelled, including during an examination into a person's assets and financial affairs by the Office of Public Prosecutions.

These amendments ensure that law enforcement is able to better investigate an accused person's financial situation and more effectively identify ill-gotten gains to support confiscation actions.

Enforcement and finalisation of confiscation outcomes

The Bill strengthens the State's ability to enforce and finalise confiscation outcomes. Specifically, the Bill provides a clear statutory pathway to enforce pecuniary penalty orders against real property, and a mechanism for a court to order a sale of land. These reforms are intended to reduce the complexity of the litigation that can currently occur in these cases while maintaining safeguards and judicial oversight of the process.

The Bill amends warrant provisions providing for the seizure of forfeited property in public places and the management of forfeited and restrained property. The Bill also creates a new offence prohibiting a person from disclosing the existence of document requests relating to the enforcement of pecuniary penalty orders, creating consistency with information notices issued under the Confiscation Act. This new offence will help prevent advance warning being given that could undermine a law enforcement agency's investigative or enforcement actions.

The Bill will assist in finalising forfeiture outcomes by putting a six-month time limit on third parties applying for forfeited money to be excluded from confiscation. This amendment avoids evidentiary difficulties when applications are received years after forfeiture and creates consistency with other types of property forfeited under the Confiscation Act.

Partial forfeiture

The Bill addresses gaps in law enforcement's ability to investigate and seize property that is tainted by criminal offending. The Bill resolves an inconsistency in the Confiscation Act that currently allows tainted or derived property to be excluded from forfeiture in relation to serious drug offences when it cannot be excluded for less serious offending. It also gives courts discretion to order the partial forfeiture of tainted property in circumstances where there is a sole owner of the property, mitigating disproportionate impacts and undue hardship when an entire property is forfeited, especially if it is a family home.

Serious drug offender scheme

The Bill clarifies aspects of the serious drug offender provisions to maximise the potential for asset forfeiture and reduce the risks of offenders being able to dissipate their assets. For example, the Bill clarifies that property may be forfeited if it meets the value threshold at the time of restraint, regardless of any depreciation that occurs later. The Bill also extends the period before which a restraining order lapses after a serious drug

offence charge is withdrawn, from seven days to 14 business days. This will allow adequate time for the Director of Public Prosecutions to file new charges and restraining orders where appropriate and prevent the property being moved in the interim.

The Bill also makes an important amendment to ensure fairer outcomes under the serious drug offender scheme. It clarifies that a court has power to split a payment from the proceeds of sale of a serious drug offender's forfeited residence between two or more of their dependents to avoid any inequitable outcomes in cases where a serious drug offender has multiple dependents.

Compensation for victims of crime

The Bill expands the range of forfeited property that may be used to pay victim compensation or restitution orders. Specifically, it removes the requirement that forfeited property must have previously been subject to a restraining order, which is not always the case, and the need for property to have been forfeited in relation to the particular offence that impacted a victim where an offender has been prosecuted separately for related crimes.

The Bill also raises the monetary threshold for restraining orders for compensation or restitution purposes from $10,000 to $20,000. This threshold has not been updated since the commencement of the Confiscation Act in 1998 and the increase is approximately in line with inflation. The raised threshold recognises the Act's focus on profit motivated crime, and the need to balance the impact on personal property rights caused by restraining orders and forfeiture with the rights and interests of victims.

Restraining orders

The Bill clarifies and streamlines the operation of restraining orders under the Confiscation Act. For example, it prohibits third parties from lodging restrictions like caveats on real property that is subject to a restraining order. This amendment makes it clearer for third parties that the application pathways contained in the Confiscation Act need to be used to protect property interests, while avoiding unnecessary time and cost of removing caveats and other restrictions on property through the courts. Additionally, the Bill clarifies that restraining orders may be made for the purpose of satisfying pecuniary penalty orders, or compensation or restitution orders that have been made in the past, improving opportunities to enforce those orders.

Automatic forfeiture offences

The Bill provides a number of additional offences that will trigger the automatic forfeiture of assets upon conviction. These include the possession of a traffickable quantity of firearms, and trafficking in amounts greater than 600g of the drug 1,4-Butanediol (1,4-BD), which is a surrogate for gamma hydroxyl butyrate or GHB. The Bill removes existing thresholds that prevent convictions in relation to certain serious sexual offences from triggering the automatic forfeiture of assets. Currently, convictions for offences relating to sexual servitude and commercial sexual services by children only trigger automatic forfeiture where the payment for those services amounts to $50,000 ($75,000 for multiple offences) or higher. These reforms reflect that the seriousness of those offences arises from the conduct, not the value of any payment made for the services. The Bill also consequentially amends the Sex Work Decriminalisation Act 2022 for these changes.

Additional clarifying reforms to the Confiscation Act

The Bill makes several further reforms to clarify concepts and provisions in the Confiscation Act. For example, the Bill expands the circumstances in which property can be considered under the 'effective control' of an accused person, consistent with approaches taken in some other jurisdictions including the Commonwealth. This amendment is important to ensure that accused persons cannot avoid confiscation actions by simply transferring assets to family members, trusted associates, or companies they control.

The Bill also clarifies that the criminal standard of proof applies in determining whether the evidence against a person who has absconded before being committed to trial is of sufficient weight to support their conviction before an asset confiscation order is made. Using the higher criminal standard avoids prejudice to accused persons as well as their family or other third parties who may have interests in the property of the accused.

Search warrant reforms

The Bill amends Victoria Police's search warrant powers under the *Crimes Act 1958*, acquitting the Government's commitments in the 2018–19 Community Safety Statement to streamline those powers.

Victoria Police's search warrant powers are set out in Part III, Division 1, Subdivision 31 of the Crimes Act. Before searches can be undertaken, a Magistrate must grant a search warrant under section 465 of the Crimes Act. The Bill does not amend the test for a Magistrate to issue a warrant under section 465 of the Crimes Act. However, once a warrant is issued, the Bill provides police with a suite of expanded powers, which reflect the reality of modern policing.

First, the Bill empowers Victoria Police officers to personally take copies of electronic data from computers and storage devices. So that evidence is not tampered with or destroyed, the Bill also allows Victoria Police

officers to secure electronic equipment for operation and analysis by experts. The Bill balances the impact that this power may have on individuals by limiting the time that electronic equipment can be secured to a maximum of 48 hours. If Victoria Police officers consider it necessary to secure equipment for longer, they must apply to a Magistrate for an extension.

The Bill also empowers police to seek assistance from people with specialised skills or technical knowledge to execute a search warrant, without those assistants being named in advance in the warrant—for example, seeking assistance from locksmiths or forensic accounts. The Bill ensures this power will only be exercised where the expert's skills are necessary to execute the search warrant. Victoria Police will also only be empowered to direct an assistant to take actions that are consistent with their specialised skills and knowledge, assistants will not be able to arrest a person, and Victoria Police will be required to report to the Court on the identity of any assistant used. This aspect of the reforms aligns with warrant powers across a range of Victorian legislation, such as the *Drugs Poisons and Controlled Substances Act 1981*, the *Taxation Administration Act 1997*, and the Confiscation Act.

The Bill also clarifies that a police officer executing a search warrant can break open a safe or storage receptacle as reasonably necessary to conduct a search under the warrant. The officer can also take the receptacle to another place for examination for up to seven business days if it is less expensive, easier, or safer than doing so at the search warrant premises.

The Bill allows police officers to retain things seized under a warrant issued under section 465 of the Crimes Act for an investigation or criminal proceeding, without first having to take the item back to court. Removing the requirement to return seized items to court will free up significant police and court time and resources.

Importantly, the Magistrates' Court will retain oversight over the execution of warrants despite the efficiencies gained in the process. Police will be required to lodge a report with the Court following the execution of a warrant. That report must include the name of the police officer in charge of the execution of the warrant, the date on which the warrant was executed, details of any items seized, any persons arrested, all searches undertaken, any things destroyed or disposed of, the name and qualifications of any assistants used in the execution of the warrant, and details of electronic equipment secured in the execution of the warrant and any extension of time to secure electronic equipment granted by the Magistrates' Court.

Police officers must notify the occupier of the warrant premises where and when the report will be lodged. People with an interest in the warrant can then inspect the report. The Magistrates' Court will also have a discretion to require a police officer to give evidence on the matters in the report. The Magistrate can also direct that a seized item be returned to its owner, consistent with existing legislation.

To help deter offending, the Bill also empowers the Chief Commissioner of Police to display seized items, such as quantities of drugs, openly in the media following the execution of a search warrant. This power will align Victoria Police with the practice of other Australian law enforcement agencies, will deter offending, and will provide public reassurance of community safety by demonstrating the outcomes of police investigations into serious and organised crime.

Fingerprint reforms

The Bill amends provisions in the Crimes Act to modernise and streamline Victoria Police's powers to retain, use and destroy fingerprints.

The reforms include removing the requirement to destroy a person's fingerprints if they die, streamlining Victoria Police's ability to conduct investigations or prosecutions where the fingerprints of a deceased person may be useful evidence.

The Bill also allows Victoria Police to use fingerprints to identify deceased and seriously injured people. Allowing fingerprints to be used for identification purposes may reduce unnecessary investigations by the Coroner and the time it takes for medical professionals treating a seriously injured person to receive relevant medical history. While this reform introduces a new purpose for using fingerprints under the Crimes Act, it also contains important safeguards. Specifically, fingerprints can only be used for identification purposes by a Coroner and will not otherwise be able to be used as evidence in a coronial investigation. Victoria Police will also only be permitted to share identity information, and not a copy of the fingerprints themselves, limiting the risks associated with storing and destroying fingerprints.

The Crimes Act allows police to take a person's fingerprints on multiple occasions over a period of time or where they are suspected of having committed different offences. This can result in Victoria Police holding multiple sets of fingerprints for the same person, each with different retention and destruction timeframes under the Crimes Act. The Bill will streamline this process, allowing multiple sets of a person's fingerprints to be held until Victoria Police no longer has an authority to hold any set of that person's fingerprints.

The Bill will also streamline the timeframe for destroying fingerprints under the Crimes Act. Presently, fingerprints taken from suspects must be destroyed 'immediately' after expiry of the six-month timeframe

after the taking of the fingerprints if a person is not charged or the charge is not proceeded with. The Bill will amend the timing of destruction so that fingerprints will be required to be destroyed 'within one month' rather than 'immediately' after the expiry of the specified timeframe. This will streamline Victoria Police's operations and align with the existing timeframe for the destruction of fingerprints in circumstances where the person is found not guilty.

Importantly, the reform will continue to be subject to the robust existing safeguards in the Crimes Act. The Crimes Act creates a summary offence, which will continue to apply, for a person who fails to destroy fingerprints or uses them after they should have been destroyed.

Assumed identities reforms

The Bill modernises and streamlines the *Crimes (Assumed Identities) Act 2004*, recognising the present-day reality that most assumed identities are online personas. In a 2020–21 report, Victoria Police identified that 1445 of the 1571 authorisations made under the Assumed Identities Act during that financial year related to online personas. These personas are often most appropriately operated by highly trained public service employees of Victoria Police.

The Bill will remove the requirement for the Chief Commissioner of Police to be satisfied that it would be impossible or impracticable for a sworn officer to acquire or use an assumed identity, before authorising a public service employee to do so. These reforms will bring Victoria more closely into line with the Commonwealth and New South Wales, which both include public servants in the definition of law enforcement officers who can operate an assumed identity.

The Bill increases the number of delegates that may exercise the Chief Commissioner of Police's assumed identities functions at any one time, from four individuals to 10, and allows the Chief Commissioner to delegate to an Inspector, rather than a Superintendent. The Bill also extends the duration of assumed identity authorisations for relevant Victoria Police employees from three months to 12 months, aligning it with the timeframe to review assumed identity authorisations for law enforcement officers under the Assumed Identities Act.

Importantly, Victoria Police employees who assume online personas will continue to be supervised by sworn officers at or above the rank of Sergeant. The Bill introduces some operational flexibility into this supervision requirement, removing the requirement to name a specific police officer who will supervise the Victoria Police public service employee when authorising the use of an assumed identity. This will again reduce the administrative burden involved in varying authorisations each time a named supervisor changes role or is no longer available.

Conclusion

The Bill modernises and streamlines essential powers to investigate and combat crime, and target proceeds of crime in Victoria. It acquits significant commitments of the Community Safety Statement 2018–19, giving police and law enforcement partners the tools they need to respond to contemporary criminal offending and keep our community safe.

I commend the Bill to the house.

Ms STALEY (Ripon) (10:16): I move:

That the debate be adjourned.

Motion agreed to and debate adjourned.

Ordered that debate be adjourned for two weeks. Debate adjourned until Thursday, 18 August.

MONITORING OF PLACES OF DETENTION BY THE UNITED NATIONS SUBCOMMITTEE ON PREVENTION OF TORTURE (OPCAT) BILL 2022

Statement of compatibility

Ms KILKENNY (Carrum—Minister for Corrections, Minister for Youth Justice, Minister for Victim Support, Minister for Fishing and Boating) (10:18): In accordance with the Charter of Human Rights and Responsibilities Act 2006, I table a statement of compatibility in relation to the Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Bill 2022.

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 Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Bill 2022.

In my opinion, the Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Bill 2022, as introduced to the Legislative Assembly, is compatible with human rights as set out in the Charter. The Bill is protective of rights set out in the Charter and engages, but does not limit, rights in the Charter of Human Rights and Responsibilities.

I base my opinion on the reasons outlined in this statement.

Overview

The Bill will facilitate inspections of places of detention by the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Subcommittee) for the purpose of the Subcommittee's mandate under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

To enable the Subcommittee to perform its inspections independently and in full, the Bill requires that a responsible Minister and a detaining authority must permit the Subcommittee:

- access to, and unrestricted access within, a place of detention; and
- access to all relevant information, including personal and health information.

Human Rights Issues

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

The Bill engages several rights under the Charter.

By establishing a legal framework to facilitate OPCAT inspections by the Subcommittee, the Bill promotes the following human rights:

- recognition and equality before the law (section 8)—by ensuring that every person, including a detained person, has the right to enjoy their human rights without discrimination; and
- Protection from torture and cruel, inhuman or degrading treatment (section 10) and humane treatment when deprived of liberty (section 22)—by ensuring the Subcommittee may inspect and provide assurance regarding the treatment and conditions of detained persons.

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

The Bill engages the Charter right to privacy and reputation (section 13).

Right to privacy

Section 13 of the Charter provides that a person has the right not to have, among other things, their privacy unlawfully or arbitrarily interfered with and the right not to have their reputation unlawfully attacked. The right to privacy protects a person from government interference or excessive or unsolicited intervention by other individuals.

The Bill engages the right of a person to privacy by mandating the Subcommittee's unrestricted entry and access within a place of detention, and access to all relevant information for the purpose of evaluating the needs and measures that should be adopted to strengthen, if necessary, the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment. This includes personal and health information.

I consider that the right to privacy is limited by the requirement on a responsible Minister and detaining authority to ensure the Subcommittee has unrestricted access to places of detention and relevant information as specified in the Bill. However, for the following reasons I am satisfied the Bill is compatible with Charter and that any interference with the right to privacy is proportionate, is not arbitrary, and is reasonable and just to achieve the Bill's purpose.

The Optional Protocol is a human rights treaty which seeks to protect people in detention against torture and mistreatment by the State through prevention focussed inspections. The Bill will ensure the Subcommittee may undertake such inspections during any visit to Victoria's places of detention.

Appropriate safeguards have been included in the Bill to mitigate the impact on individuals' right to privacy. The Subcommittee will only be permitted to inspect relevant identifying information during an onsite inspection in a place of detention. Further, without an individual's consent, the Subcommittee will not be permitted to retain or copy any identifiable information outside a place of detention.

Limiting the right to privacy in circumstances where access to places and information may reveal instances of torture and other cruel, inhuman or degrading treatment or punishment is necessary to acquit the assurance role the Subcommittee will perform by virtue of its inspections. Failure to require the Subcommittee's mandatory access to places of detention and relevant information could prevent the Subcommittee from having the necessary level of access to undertake inspections in accordance with their mandate under the Optional Protocol. As a result, potential instances of torture and other cruel, inhuman or degrading treatment or punishment may not be identified.

Sonia Kilkenny MP
Minister for Corrections
Minister for Youth Justice
Minister for Victim Support
Minister for Fishing and Boating

Second reading

Ms KILKENNY (Carrum—Minister for Corrections, Minister for Youth Justice, Minister for Victim Support, Minister for Fishing and Boating) (10:18): I move:

That this bill be now read a second time.

I ask that my second-reading speech be incorporated into *Hansard*.

Incorporated speech as follows:

The Victorian Government supports the principles of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and is pleased to introduce the Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Bill 2022.

OPCAT seeks to protect persons in detention from torture and other cruel, inhuman or degrading treatment of punished whilst deprived of their liberty. It intends to achieve these aims through a regime of regular, independent, prevention-focussed inspections. Australia's obligations under OPCAT are two-fold:

- enabling periodic visits by the United Nations Subcommittee on the Prevention of Torture (Subcommittee) across Australia; and
- establishing, designating or maintaining a domestic National Preventative Mechanism (NPM) to coordinate visits to places of detention and the monitor the treatment of persons in detention.

This Bill is intended to facilitate the Subcommittee's inspections within Victoria, as a part of the Subcommittee's periodic visits to Australia. It intends to complement existing oversight regimes to ensure that people in detention are protected against torture and other cruel, inhuman or degrading treatment or punishment.

Victoria is pleased to establish a framework that will ensure inspections may be carried out by the Subcommittee when it conducts its inaugural visit of Australia. Whilst a planned visit in March 2020 was suspended due to the COVID-19 pandemic, on 30 June 2022, the Subcommittee confirmed its upcoming visit to Australia in the second half of this year. Victoria looks forward to confirmation of the Subcommittee's visit in due course.

The Bill will provide a framework to ensure Subcommittee visits may proceed in Victoria in accordance with OPCAT. In particular it:

- defines places of detention in scope for inspections by the Subcommittee across the Corrections, Youth Justice, Secure Welfare Services, Mental Health and Disability sectors, noting that in accordance with Article 4 of OPCAT a place of detention requires a person be detained by virtue of a public authority or at its instigation or with its consent or acquiescence.
- specifies the State's obligations to facilitate, for the purpose of the Subcommittee's visit and inspections, Subcommittee access to a place of detention and relevant information, and the ability to interview detainees and others in a place of detention.
- creates a system to support the Subcommittee's access to places, information and people. This includes a consistent approach to entry requirements, information sharing provisions and the power to nominate accompanying officials and issue Ministerial Guidelines to assist and facilitate inspections operationally in places of detention.
- provides necessary safeguards to protect the privacy of detained persons and ensure detained or other persons who provide information to the Subcommittee are protected from reprisal; and

- provides necessary safeguards to enable detaining authorities to preserve security, good order, welfare and safety in places of detention during visits by the Subcommittee.

As an international human rights treaty, the Commonwealth's 2017 ratification of OPCAT imposed additional and separate obligations on states and territories by virtue of domestic inspections under the National Preventative Mechanism. Victoria looks forward to continuing discussions with the Commonwealth regarding the National Preventative Mechanism to facilitate the full implementation of OPCAT across Australia in a way that is nationally consistent, effective and economically sustainable. Given its significance, Victoria wants to play its part in ensuring that Australia's full implementation of OPCAT is done right.

I commend the Bill to the house.

Ms STALEY (Ripon) (10:18): I move:

That the debate be adjourned.

Motion agreed to and debate adjourned.

Ordered that debate be adjourned for two weeks. Debate adjourned until Thursday, 18 August.

RACING AMENDMENT (UNAUTHORISED ACCESS) BILL 2022

Statement of compatibility

Mr CARBINES (Ivanhoe—Minister for Police, Minister for Crime Prevention, Minister for Racing) (10:20): In accordance with the Charter of Human Rights and Responsibilities Act 2006 I table a statement of compatibility in relation to the Racing Amendment (Unauthorised Access) Bill 2022.

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 Racing Amendment (Unauthorised Access) Bill 2022 (the **Bill**).

In my opinion, the Bill, as introduced to the Legislative Assembly, 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 Bill amends the *Racing Act 1958* (**the Act**) to:

- prohibit unauthorised access to certain areas of race courses during race meetings and official trial meetings;
- to prohibit certain conduct during race meetings and official trial meetings; and
- to provide enforcement of these provisions.

The purpose of these amendments is to promote the safety and welfare of all patrons and participants, including animals, at race meetings and official trial meetings and to avoid the potential consequences of incursions and disruptive conduct. The consequences of disruptive behaviour or incursions onto a race-track (or a restricted racing area) can be significant, including serious injury or death to humans and animals. Notably, the *Major Events Act 2009* currently contains crowd management provisions; however, these only apply to eight major feature thoroughbred race meetings. The Bill seeks to include in the Act equivalent arrangements to specified crowd management provisions contained in the *Major Events Act 2009* so that equivalent conduct is prohibited at all race-meetings and official trial meetings (as defined in the Act and the Bill).

Human Rights Issues

This statement of compatibility commences with an outline of the human rights that are relevant to this Bill. It then discusses how relevant provisions of the Bill engage those rights.

Protection from cruel, inhuman or degrading treatment (s 10)

Sections 10(a)–(b) of the Charter provide that a person must not be subjected to torture or treated or punished in a cruel, inhuman or degrading way. The right is concerned with the physical and mental integrity of individuals, and their inherent dignity as human beings.

Cruel or inhuman treatment or punishment includes acts which do not constitute torture, but which nevertheless possess a minimum level of severity. Degrading treatment or punishment involves acts of a less severe nature again but which inflict a level of humiliation or debasement of the victim. Whether conduct meets the necessary threshold will depend upon all the circumstances, including the duration and manner of the treatment, its physical or mental effects on the affected person, and that person's age, sex and state of health.

Right to freedom of movement (s 12)

Section 12 of the Charter provides that every person lawfully within Victoria has the right to move freely within Victoria, to enter and leave Victoria, and to choose where to live in Victoria. The right extends, generally, to movement without impediment throughout the State, including a right of access to public places and premises, subject to (amongst other things) the private and property rights of others. It is one of the most qualified of rights.

Privacy (s 13)

Section 13 of the Charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. It is wide in scope, and includes protecting a person's interests in the freedom of their personal, spatial and social sphere, including their right to identity, social relations, dignity and employment. Section 13(a) contains internal qualifications—namely, an interference with privacy will only limit the right if it is unlawful, in that an applicable law is infringed; or it is arbitrary, in that it is capricious, or has resulted from conduct which is unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought.

Freedom of expression (s 15)

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

Right to peaceful assembly and freedom of association (s 16)

Section 16(1) of the Charter provides that every person has the right of peaceful assembly. The right of peaceful assembly encompasses the right to privately and publicly gather or associate with others to attain a particular end and the right to organise and to participate in public demonstrations and marches. The right only extends to protect peaceful gatherings, and violent assemblies, such as riots and affrays, are not protected.

Right to be presumed innocent (s 25(1))

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

Offence to enter or remain in a restricted racing area during a race-meeting or an official trial meeting

Under new Division 4A, section 32A makes it an offence for a person, without reasonable excuse, to enter or remain in a restricted racing area during a race-meeting or an official trial meeting unless the person is authorised or acting in accordance with an engagement in the management or conduct of the meeting.

Freedom of movement

While prohibiting persons from entering certain areas may interfere with their freedom of movement, it is doubtful as to whether the right would extend to protect unfettered access to a racing area on a premises, where an occupier is otherwise able to exercise their property right to exclude entry.

In the event that the provision is considered to limit freedom of movement, in my view, any interference is justified. Significantly, the limits serve the important purpose of promoting safety and order at race events and are aimed at protecting public order and, in turn, the rights and freedoms of others. The extent of the interference will be limited as the restrictions on movement are confined as they only affect specified 'restricted racing areas'. The provision includes a 'reasonable excuse' defence for non-compliance, which safeguards against any further interference with the right. I am therefore satisfied that the provision is compatible with this right.

Peaceful assembly

New section 32A may also engage and limit the right to peaceful assembly, which entitles persons to gather intentionally and temporarily for a specific purpose. However, the right to peaceful assembly may be justifiably limited on private property, or on Crown land where access is restricted, as long as the circumstances including the purpose behind restricting access, are proportional under 7(2) of the Charter.

I consider the limits on peaceful assembly to be reasonably necessary and proportionate to achieve the legislative purpose. The limits imposed on the right to peacefully gather is for a significant and important purpose, that is, safety and good order during race-meetings and official trial meetings. Also, the extent of the limit on peaceful assembly only apply to 'restricted racing areas' of limited scope, being: the track which is being used for racing; space which is being used for the saddling and keeping or animals; pathways which

connect 2 of more restricted racing areas and a prescribed land area. Finally, the extent of any limitation is confined, in that there remain other means available for a person or group to exercise this right, such as peacefully gathering in neighbouring or adjoining areas that do not pose a danger to patrons and racing participants. Accordingly, I am satisfied that any interference with this right is compatible with the Charter.

Offences for disrupting, climbing, or causing objects to enter, fly into or land in a restricted racing area during an official trial or race-meeting

The Bill seeks to create a number of offences around unsafe or unreasonable behaviours, subject to a 'reasonable excuse' exception. New section 32B creates an offence where a person, who is in a restricted racing area during a race-meeting or an official trial meeting, disrupts the meeting; further sections makes it an offence to throw or kick projectiles or otherwise cause them to land in a restricted racing area (32C) or climb on fences, barriers or barricades within the restricted racing area during a race meeting or an official trial meeting, unless the person is authorised or is acting in accordance with an engagement in the management or conduct of the meeting (section 32D).

Freedom of expression

As disorderly conduct can have an expressive component, new sections 32B, 32C and 32D may engage section 15 of the Charter. It is well recognised that the right to freedom of expression protects the expression of ideas that offend, shock or disturb and covers behaviour that is irritating, contentious, heretical, unwelcome or provocative—provided that any relevant expression does not tend to provoke violence or itself constitute violence or damage to property.

However, as noted above, section 15(3) provides that the right to freedom of expression can be subject to lawful restrictions that are reasonably necessary to respect the rights and reputation of other persons or for the protection of national security, public order, public health or public morality. The offences concern prohibiting unsafe or anti-social conduct during meetings (s 32B, 32C and 32D) and serve the legitimate purpose of protecting public order and safety at such events. As any limits are proportionately tailored to the important objective, which is only concerned with behaviour that is unsafe or poses risks, I consider these provisions to be compatible with the right to freedom of expression.

Powers to direct a person to leave and not enter a restricted racing area

New section 32E provides an authorised officer with powers to direct a person to leave and not re-enter a restricted racing area or race-course for the duration of a race-meeting or an official trial meeting if an authorised officer believes on reasonable grounds that the person is committing or has committed one of the offences outlined above (see 32A 32B, 32C or 32D). 32F(1) makes in an offence to not comply with direction issued under s 32E.

These powers of direction are relevant to the rights to freedom of movement and peaceful assembly.

Freedom of movement and peaceful assembly

Following the discussion above, it is doubtful as to whether this power of direction, which is limited to being exercised in relation to ordering a person to leave and not re-enter a restricted racing area or race-course, would limit freedom of movement in light of ordinary powers of an occupier to exclude a person from such premises. Additionally, as the power is able to be exercised in relation to disruptive or anti-social conduct, it may also be beyond the scope of protection afforded by the right to peaceful assembly.

However, to the extent that the exercise of this power constitutes a limit on either right, I consider that such rights will not be limited under 7(2) of the Charter. The directions power provides authorised officers with an immediate tool to prevent or mitigate an identified risk to safety and public order at race meetings and official trials. The scope of the power is precisely prescribed to meet the objective, in that there is a clear and rational connection between the limitation on rights and the purpose of the provision. An authorised officer can only make a direction where they believe on reasonable grounds that a specified offence has been committed, they have informed the person of that belief and the person has refused to comply. The effect of the direction is limited to the duration of the race-meeting or official trial meeting during which it was exercised. I am thus satisfied that any limits on rights are reasonably justified and the power is compatible with the Charter.

Powers to use force to prevent or remove a person from a restricted racing area

The Bill inserts new section 32F(4), which provides a police officer with powers to use 'no more force than is reasonably necessary' in order to prevent a person from entering or re-entering a restricted racing area or race-course contrary to a direction given under s 32E, or remove a person from such areas who has refused to comply with such a direction.

Protection from cruel, inhuman or degrading treatment (s 10)

The use of force on a person may engage a person's right to protection from cruel, inhuman or degrading treatment, however I do not consider the right to be limited. For a use of force power to be compatible with

the Charter, it must be precisely circumscribed and aimed at achieving the legitimate objective, only authorise necessary force and the minimum needed to be considered effective, generally be a measure of last resort and be subject to adequate training and governance.

The power is directed to ensuring the legitimate objective of safety and good order at race meetings and trials. It is only exercisable by police officers (and not authorised officers) who will have the requisite training regarding the proportionate use of force. The power is only enlivened in relation to a person who has already been issued a direction to leave or not enter under s 32E, and can only be used for the purpose of preventing a person from entering and removing a person from a restricted racing area or race-course. The provision contains the internal qualification permitting 'no more force than is reasonably necessary', which ensures that any force used by a police office is proportionate and necessary in the circumstances to achieve the public order and public safety objectives. Accordingly, I am satisfied that this power is compatible with the Charter.

Powers to make 'ban orders'

The Bill inserts new section 32G, which seeks to enable a court to make a ban order when a person is found guilty of one of the specified offences (32A, 32B, 32C, 32D or 32F). A ban order will mean that a person is barred from attending specified race-meetings or official trial meetings, or categories of those meetings. The penalties under this section range from banning that person from attending one race or official trial meeting, through to imposing a ban order on participation at meetings of up to five years.

Freedom of movement and privacy

New section 32G creates ban orders which prohibit a person from attending race and official trial meetings and penalises them for non-compliance, limiting that person's right to freedom of movement. Additionally, a ban order made under section 32G may interfere with the right to privacy in circumstances where they impact on a person's employment or social identity to the extent that it involves attendance at such events. However, I consider that any interference with these rights will be compatible with the Charter, in that any limit on the freedom of movement will be reasonable and justifiable under s 7(2) of the Charter, and any interference with privacy will not be arbitrary.

The ban orders are for a preventative purpose of preventing repeat offending and are only enlivened following a finding of guilt of specified offences outlined above involving disruptive, unsafe or anti-social conduct. Given the dangerous nature of the proposed prohibited conduct, the orders provide a significant additional deterrent and ensure public safety where the offending conduct is particularly serious. The ban order is a discretionary order of the court, and subject to the objective standards and criteria within a court's jurisdiction, as well as an independent and fair hearing. The order is also limited in maximum duration (up to five years) and scope (applies only to specified race-meetings or official trial meetings where the offence was committed, or to specified categories of race-meetings or official trial meetings). This allows the orders to be appropriately tailored to the nature of the offence. I consider there is no less restrictive means reasonably available to achieve the purpose of the limitations. I also note that these orders are consistent with existing provisions that apply to other events under the Major Events Act 2009. Accordingly, I consider these orders to be compatible with the Charter.

New offence provisions

The Bill inserts new sections 32A, 32B, 32C, 32D and 32J, which are offence provisions. The new sections inserted all include exceptions based on authorisations or on having a reasonable excuse. New section 32A creates an offence to enter into a restricted racing area without a reasonable excuse. Section 32B makes it an offence to disrupt an official trial meeting or race-meeting without a reasonable excuse. Section 32C makes it an offence to throw or kick things or cause an object to fly into or land in a restricted racing area without authority. Section 32D prohibits climbing certain infrastructure without authority. 32P prohibits obstructing an authorised officer without a reasonable excuse.

Presumption of innocence

As these offences are summary offences, section 72 of the *Criminal Procedure Act 2009* will apply to require an accused who wishes to rely on the 'lawful authority or excuse' defence to present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the excuse. By providing for a 'reasonable excuse' offence exception, the offence provisions may be viewed as placing an evidential burden on the accused, in that it requires the accused to raise evidence as to a reasonable excuse. However, in doing so, this offence does not transfer the legal burden of proof. Once the accused has pointed to evidence of a reasonable excuse, which will ordinarily be peculiarly within their knowledge, the burden shifts back to the prosecution who must prove the essential elements of the offence. Case law has held that an evidential onus imposed on establishing an excuse or exception does not limit the Charter's right to a presumption of innocence, as such an evidentiary onus falls short of imposing any burden of persuasion on an accused. Accordingly, I do not consider that an evidential onus such as this limits the right to be presumed innocent.

Powers to request a person's name and address

New section 32K provides an authorised officer with powers to request a person's name and address if the authorised officer believes on reasonable grounds that the person has committed an offence against 32A, 32B, 32C or 32F. Section 32L makes it an offence to refuse to give a name and address to an authorised officer under 32K. Section 32M provides that, if an authorised officer believes that a person required to give information under 32K is giving false information they may require that person to produce evidence of their name and address, which the person must comply with.

Privacy

The right to privacy is relevant to these provisions as they effectively compel a person to disclose their name and address, which is personal information. However, in my view, this section does not limit the right to privacy because any interference is permitted by law (this Bill) which is precise and appropriately circumscribed. The section is not arbitrary because it is for the clear and legitimate purpose of enabling authorised officers to enforce offences under the Bill where necessary. It is not possible for an authorised officer to prosecute offences and enforce directions to leave without the power to confirm the identity of the suspect.

The provision is subject to reasonable limitations in that the powers can only be exercised where an authorised officer has formed a belief on reasonable grounds that a person has committed an offence or when directing a person to leave. Authorised officers who are not police officers are required to produce their identity card, inform the persons and state that they believe that a relevant offence has been committed. The power to compel a person to produce evidence of their name and address is only enlivened when an officer believes on reasonably grounds that the name and address given a person may be false. Further, 32N requires that an authorised officer must not disclose any information obtained in the course of the authorised officer's duty or incur a penalty of 50 penalty units. These provide effective safeguards against inappropriate disclosure by an authorised officer obtained in the course of their duties.

Authority to disclose information

The Bill inserts new section 32N, which provides that authorised officers may disclose the information obtained in the course of the officer's duties or the exercise of a power under provisions 32K or 32L in certain circumstances (being details or evidence of a person's name and address).

Privacy

New section 32N will engage the right to privacy as it allows for an authorised officer to disclose personal information. In order for information to be disclosed under this provision, an authorised officer must hold a reasonable belief that disclosure is necessary for the purposes of the Act. The section enumerates limited circumstances in which the information can be shared; and imposes 50 penalty units if the information is not shared for these strict purposes.

In my view, this section will not be arbitrary or unlawful interference with privacy, as any disclosure of personal information authorised by this section will only occur to the extent necessary to carry out the functions of the authorised officers under the Act, or for other specified purposes such as in the course of legal proceedings or pursuant to a court or tribunal order. Consequently, I consider that new section 32N is compatible with section 13 of the Charter.

The Hon. Anthony Carbines MP
Minister for Racing

Second reading

Mr CARBINES (Ivanhoe—Minister for Police, Minister for Crime Prevention, Minister for Racing) (10:20): I move:

That this bill be now read a second time.

I ask that my second-reading speech be incorporated into *Hansard*.

Incorporated speech as follows:

The Victorian racing industry contributes $4.7 billion annually to the Victorian economy and helps sustain 34,900 full-time-equivalent jobs across our State. The Government is committed to ensuring the Victorian racing industry remains a pre-eminent racing jurisdiction in Australia.

There is at least one Victorian racing industry meeting conducted on every day of the year, except for Christmas Day. There were almost 2,300 Victorian race meetings conducted in 2020–21. This included 538 thoroughbred racing meetings, 440 harness racing meetings and 1,321 greyhound racing meetings.

In recent years there have been instances of unauthorised entry to a racetrack area during the running of horse races at Victorian racecourses. While the frequency of track incursions by spectators is relatively low, the potential consequences are significant, and could result in serious injury or death to patrons, human and animal participants, and officials.

This Bill amends the *Racing Act 1958* (Racing Act) to provide for offences and penalties to ensure the safety and welfare of all patrons and participants, including animals, at all Victorian race meetings and official trial meetings.

To this end, the Bill identifies certain parts of a racecourse as restricted areas for the purposes of new offences and penalties relating to unauthorised access to those areas during a race or official trial meeting. The areas that have been identified reflect the current operational arrangements that are already in place at racecourses across Victoria. Access to these areas usually requires a person to produce an authorisation to enter, and include racing and training tracks, and other areas used by racing animals and their handlers, such as mounting yards, parade rings, stabling and kennelling facilities, and pathways between these areas.

Importantly, the introduction of restricted areas on racecourses will not affect the enjoyment of race goers. As race goers are already prohibited from entering restricted areas, those provisions will not affect their enjoyment or change the areas of the racecourse that they can access. The Bill will not alter who is authorised to enter restricted areas and what they are authorised to do.

The new crowd management offences and penalties apply to behaviours in or near restricted areas. They do not apply to the general conduct of persons in other parts of the racecourse.

New offences to manage crowd behaviour

The Bill will insert provisions into the Racing Act to create offences with regard to specific behaviours in and around the restricted areas, without a reasonable excuse.

The offences are consistent with similar offences in the *Major Events Act 2009* (Major Events Act) which apply at major sporting events covered by that Act. This includes eight of Victoria's feature race meetings during the Spring Racing Carnival: Caulfield Racecourse on Caulfield Cup Day, Caulfield Guineas Day and Thousand Guineas Day, Flemington Racecourse on a day that a race meeting of the Melbourne Cup Carnival takes place, and Moonee Valley Racecourse on Cox Plate Day.

The Bill will not affect the operation of the Major Events Act. It is important that those race meetings continue to be subject to all relevant provisions of the Major Events Act, which extend beyond the management of crowd behaviour.

The offences relate to the disruption of a race meeting or official trial meeting; throwing or kicking projectiles, or otherwise causing projectiles to enter into a restricted racing area; and climbing on fences or barricades that are adjacent to a restricted racing area. The latter activity could lead to animals reacting unpredictably creating a risk of injury to persons near the area. It could also result in patrons inadvertently entering a racetrack area, endangering themselves and participants, and disrupting races.

These new statutory offences and related penalties will provide a clear and strong deterrent to persons who are not authorised to access certain areas of the racecourse from engaging in dangerous and disruptive conduct.

Racing industry participants

It is not intended that the new offences under the Bill apply to those persons who are licensed or registered to participate in the conduct of the meeting, or who are engaged in the management or conduct of the meeting, while they are carrying out their roles at the meetings.

For example, there may be times when a person engaged at a race meeting throws to a jockey on the race track a towel or water bottle. This type of action, which takes place in the general conduct of a race meeting, would not constitute an offence under this Bill.

This Bill does not alter who is authorised to enter restricted areas and what they are authorised to do. It also has no impact on activities that are not connected with the restricted areas.

The Victorian racing industry is fully supportive of the Bill. The new offence and penalty provisions will enable racing clubs and the racing code bodies to provide clear warnings to patrons about the consequences of dangerous and anti-social behaviour at the races.

Authorised officers

The new offences will be enforced by Victoria Police or authorised officers appointed by the Secretary of the relevant department.

Victoria Police will have primary responsibility for the enforcement of the provisions at those race meetings where a sworn officer is in attendance.

However, most Victorian race meetings are conducted without any police presence. In those instances, the offences will be enforced by other authorised officers. The Bill inserts new provisions into the Racing Act that enable the Secretary of the relevant department to appoint racing stewards and persons who have appropriate skills, qualifications, knowledge, or experience as authorised officers. It is intended that at least one authorised officer will be present at every Victorian race meeting or official trial meeting.

The Bill provides that the Secretary can delegate this power of appointment to other Executives within the Secretary's department.

Dealing with offenders

Authorised officers will also have powers to manage people who are reasonably believed to have committed offences. Authorised officers will have the power to direct a person, reasonably believed to have committed an offence under the new provisions, to leave the restricted racing area or racecourse for the duration of the race meeting or official trial meeting. The objective of the provision is to ensure that the person does not cause further disruption at the meeting.

To assist with enforcement of the new offences to manage crowd behaviour, the Bill provides authorised officers with the power to require a person reasonably believed to have committed an offence against the new provisions to provide their name and address.

The Bill provides that safeguards are in place for the disclosure of information obtained by authorised officers in the course of exercising their powers under these new provisions.

Infringement notices are an effective and efficient way to enforce crowd management laws. The Bill empowers authorised officers to serve an infringement notice on a person reasonably believed to have, without reasonable excuse, entered a restricted racing area without authorisation, thrown or kicked a projectile, or otherwise caused a projectile to enter into a restricted racing area, or climbed any fence, barrier or barricade of a restricted racing area.

There may be some instances where a more severe penalty is warranted where an individual repeatedly offends against the provisions, or where the consequences of the offending are serious or significant. To address this, the Bill provides the courts with the option of imposing a ban order against an individual.

The ban order may specify the race meeting or official trial meeting, or category of race meetings or official trial meetings and racecourse or racecourses to which the order will apply.

Where a person's conduct is serious enough for a court to ban the person from all thoroughbred race meetings and official trial meetings, the ban could also apply to race meetings which are covered in the ME Act to ensure that there are no gaps in the regulatory framework.

Conclusion

Fortunately, the conduct this Bill seeks to discourage doesn't occur frequently. Nevertheless, the potential consequences are so serious that any occurrence is extremely concerning. That is why these additional deterrents, which are already in place at other major sporting events, are needed to help ensure the safety and welfare of all participants, animals, and patrons at Victorian race meetings and official trial meetings.

I commend the Bill to the house.

Ms STALEY (Ripon) (10:20): I move:

That the debate be adjourned.

Motion agreed to and debate adjourned.

Ordered that debate be adjourned for two weeks. Debate adjourned until Thursday, 18 August.

DISABILITY AMENDMENT BILL 2022

Statement of compatibility

Mr BROOKS (Bundoora—Minister for Child Protection and Family Services, Minister for Disability, Ageing and Carers) (10:22): In accordance with the Charter of Human Rights and Responsibilities Act 2006 I table a statement of compatibility in relation to the Disability Amendment Bill 2022.

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 Disability Amendment Bill 2022 (the **Bill**).

In my opinion, the Bill, as introduced to the Legislative Assembly, 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 purpose of the Bill is to amend the *Disability Act 2006* in relation to the Secretary's functions, the sharing of information about persons with a disability and persons subject to restrictive practices and supervised treatment orders (**STOs**), residential services, use of restrictive practices, the compulsory treatment of persons with a disability, and other related matters.

The Bill also amends the *Residential Tenancies Act 1997*, in relation to Specialist Disability Accommodation (**SDA**) enrolled dwellings, and the *Disability Service Safeguards Act 2018* (**DSS Act**) in relation to registration requirements.

Relevant human rights

The Bill engages the following human rights under the Charter: equality (s 8); protection against torture or cruel, inhuman or degrading treatment (s 10); freedom of movement (s 12); privacy and the home (s 13(a)); freedom of expression (s 15); property (s 20); liberty and security of the person (s 21); and humane treatment when deprived of liberty (s 22).

The content of each right is summarised below. My analysis of the relevant clauses of the Bill follows.

Equality

Section 8(2) of the Charter provides that every person has the right to enjoy their human rights without discrimination. This aspect of the right prohibits discrimination against a person with respect to their enjoyment of other substantive human rights.

Section 8(3) of the Charter provides that every person is entitled to equal protection of the law without discrimination and has the right to equal and effective protection against discrimination. This component of the right ensures that laws and policies are applied equally and do not have a discriminatory effect.

'Discrimination' under the Charter has the same meaning as in the *Equal Opportunity Act 2010*. Direct discrimination occurs when a person treats, or proposes to treat, a person with an attribute listed in section 6 of the *Equal Opportunity Act 2010* unfavourably because of that attribute. Indirect discrimination occurs where a person imposes a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging persons with a protected attribute, but only where that requirement, condition or practice is not reasonable.

Protection from torture and cruel, inhuman or degrading treatment

Sections 10(a)–(b) of the Charter provide that a person must not be subjected to torture or treated or punished in a cruel, inhuman or degrading way. The right is concerned with the physical and mental integrity of individuals, and their inherent dignity as human beings.

Cruel or inhuman treatment or punishment includes acts which do not constitute torture, but which nevertheless possess a minimum level of severity. Degrading treatment or punishment captures acts of an even less severe nature, but which inflict a level of humiliation or debasement upon a person. Whether conduct meets the necessary threshold will depend upon all the circumstances, including the duration and manner of the treatment, its physical or mental effects upon the affected person, and that person's age, sex and state of health.

Section 10(c) of the Charter provides that a person has the right not to be subjected to medical experimentation or treatment without their full, free and informed consent. This right protects an individual's personal autonomy and bodily integrity, and the freedom to choose whether or not to receive medical treatment.

Freedom of movement

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

Privacy and the home

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. The scope of the privacy interest includes protection for one's bodily integrity. An interference will be lawful if it is permitted by a law which is precise and appropriately circumscribed. It will be arbitrary only if it is capricious, unpredictable, unjust or unreasonable, in the sense of extending beyond what is reasonably necessary to achieve the statutory purpose.

Freedom of expression

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

Property

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.

Liberty and security of the person

Section 21 of the Charter provides that every person has the right to liberty and security, including the right not to be subject to arbitrary arrest or detention. This right is concerned with the physical detention of an individual, not mere restrictions on freedom of movement. What constitutes detention or deprivation of liberty will depend on all the facts of the case, including the type, duration, effects and manner of implementation of the measures concerned. A person's liberty may legitimately be constrained only in circumstances where the relevant arrest or detention is lawful and not arbitrary.

Humane treatment when deprived of liberty

Section 22(1) of the Charter provides that all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. The right recognises the particular vulnerability of persons in detention, and applies to persons detained both in the criminal justice system and non-punitive or protective forms of detention such as the compulsory detention of persons with a mental illness. The right reflects the principle that detained persons should not be subjected to hardship or constraint other than that which results from the deprivation of their liberty.

Analysis of relevant clauses

Use of restrictive practices

The Bill amends a number of provisions in the *Disability Act 2006* relating to the authorisation of, or prohibition upon, the use of 'restrictive practices', which is defined as 'any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with a disability, an NDIS participant or a DSOA client' (s 3, as amended by clause 4).

Most relevantly, clause 47 of the Bill replaces Parts 6B and 7 of the *Disability Act 2006* with a new, consolidated Part 7, which sets out parameters for the use of restrictive practices in relation to, and protects the rights of, persons (other than those covered under Division 6 of Part 8) with a disability who receive disability services, are NDIS participants (including those subject to treatment plans in certain circumstances), or are Disability Support for Older Australians clients. Clauses 68–76 amend provisions in Division 6 of Part 8 of the *Disability Act 2006*. The purpose of Division 6 of Part 8 is to protect the rights of persons who may be subject to restrictive practices in the context of the implementation of treatment plans by disability service providers and registered NDIS providers (s 201A, as amended by clause 68).

The principal purpose of these amendments is to ensure that both disability service providers *and* registered NDIS providers must comply with similar rules and protections in relation to the use of restrictive practices.

Insofar as the amendments authorise the use of practices which may interfere with bodily integrity, constitute medical treatment without consent, and deprive persons of their freedom of movement or their liberty, they may engage the Charter rights to protection from torture and cruel, inhuman, or degrading treatment (s 10), freedom of movement (s 12), privacy (s 13(a)), liberty (s 21), and humane treatment when deprived of liberty (s 22). In addition, because restrictive practices may only be used in relation to persons with a disability (which is a protected attribute under the *Equal Opportunity Act 2010*), and may therefore be considered to treat those persons unfavourably because of that attribute, the Charter right to equality (s 8) may be engaged. However, for the reasons detailed below, it is my opinion that any limitation upon these rights is reasonable and justified in accordance with section 7(2) of the Charter.

Privacy and liberty

The restrictive practice amendments do not, in my view, limit the rights to privacy and liberty, because any interference with these rights will be lawful and non-arbitrary.

Any interference with a person's Charter right to privacy (particularly, bodily integrity) and to liberty will be lawful as the relevant clauses are precise, accessible and appropriately circumscribed.

Furthermore, an authorised use of a restrictive practice is reasonably necessary to achieve important purposes, including to prevent a person from harming themselves or others, and is therefore not arbitrary. The Bill and the *Disability Act 2006* contain many layers of oversight that ensure any interference with a person's privacy or liberty is appropriately confined. For example, the Senior Practitioner (a clinician appointed pursuant to s 23 of the *Disability Act 2006*) and Authorised Program Officers are empowered to perform review and monitoring functions with respect to the use of restrictive practices (eg, new ss 134–135, 137 and 146, inserted by clause 47, new s 201H inserted by clause 75, and existing s 27). New section 144 (inserted by clause 47) provides a right to apply to VCAT for review of certain regulated restrictive practice decisions. And it is an offence for a disability service provider or registered NDIS provider to use a regulated restrictive practice other than as authorised under the *Disability Act 2006* (new s 149, inserted by clause 47, and s 201G, replaced by clause 74).

Protection against cruel, inhuman or degrading treatment and right to humane treatment

I do not consider that the restrictive practice amendments limit the Charter protection against torture or cruel, inhuman or degrading treatment, nor the right to humane treatment when deprived of liberty. Rather, many of the amendments seek to *promote* the humane treatment and dignity of persons who may be subject to restrictive practices. For instance, under new section 136(1)(b) (inserted by clause 47), an Authorised Program Officer may only authorise the use and form of a proposed regulated restrictive practice which is the least restrictive option in the circumstances and which is not applied for longer than the period of time that is necessary to prevent the person from causing physical harm. These parameters are consistent with the guiding principles set out in section 5 of the *Disability Act 2006* and with the *United Nations Convention on the Rights of Persons with Disabilities*.

Freedom of movement and equality

The restrictive practice amendments authorise limitations on freedom of movement and, to the extent the amendments constitute discrimination on the basis of disability, the right to equality. However, in my view, any such limitation is reasonable and justified.

As discussed above, restrictive practices serve an important purpose, and the Bill includes a number of safeguards to ensure that the practices are tailored to individual circumstances, including that they are used in a way that least restricts a person's rights. While I acknowledge that the use of restrictive practices represents a significant interference with a person's freedom of movement, the harm-prevention objective of these practices promotes the Charter right to life (s 9) of the person who is subject to the practice, and of other persons who may be at risk of harm.

Restrictive practice protections do not apply to security conditions applying to all residents of a residential treatment facility

Clause 68(5) of the Bill replaces section 201A(4) and inserts section 201A(5) into the *Disability Act 2006*. New section 201A(5) relevantly provides that a disability service provider is not required to comply with sections 201B to 201E (as amended by the Bill) in applying a security condition if the Secretary has approved the security condition under new section 159A (inserted by clause 51). Under new section 159A, a security condition that is a restrictive practice and which will apply to all of the residents of the residential treatment facility *must* be approved by the Secretary. Approval may be granted if the purpose of the security condition is for the supervision of residents or the security of the residential treatment facility. The Secretary must consult the Senior Practitioner before making a decision under new section 159A. The exemption in new section 201A(5) will only be engaged to the extent that a particular security condition falls within the definition of a 'restrictive practice' (discussed above) to which the provisions in Division 6 of Part 8 would otherwise apply.

Clause 68(5) may engage the Charter rights to protection from cruel, inhuman, or degrading treatment (s 10), privacy (s 13(a)), and humane treatment when deprived of liberty (s 22), because it could result in the application of restrictive practices on all residents of a residential treatment facility, without the protections afforded in sections 201B to 201E (eg, an assessment of whether the use and form of a regulated restrictive practice is the option which is the least restrictive of the person as is possible in the circumstances—s 201D(b)).

However, for the reasons set out below, I consider that the rights to privacy and liberty, and the protection against cruel, inhuman or degrading treatment, are not limited. To the extent that freedom of movement and the right to humane treatment may be limited, any such limit is reasonable and justified in accordance with section 7(2) of the Charter.

Privacy and liberty

Clause 68(5) does not, in my view, limit the rights to privacy or liberty, because any interference with these rights will be lawful and non-arbitrary.

Any interference with a person's Charter right to privacy (particularly, bodily integrity) and to liberty will be lawful, as the amendment to section 201A(5) of the *Disability Act 2006* is precise, accessible and appropriately circumscribed.

Furthermore, the non-application of certain provisions in Division 6 of Part 8 with respect to security conditions is not arbitrary because it is reasonably necessary to achieve the important purpose of safeguarding the security of a residential treatment facility and its residents (who are required to reside in the facility in accordance with one of the orders listed in s 152(2) of the *Disability Act 2006,* as amended). In particular, it is not feasible to conduct an individualised assessment of certain security conditions (eg, a perimeter fence) which apply to a facility as a whole. However, the role of the Secretary (in consultation with the Senior Practitioner) in new section 159A (inserted by clause 51) ensures that the exemption from sections 201B to 201E is appropriately confined to security conditions which serve the purpose outlined above. Last, the exemption does not apply to sections 201F (as amended by clause 72), which relates to reporting requirements for the use of regulated restrictive practices, or new section 201H (inserted by clause 75), which provides that the Senior Practitioner may issue guidelines and give directions in relation to restrictive practices.

Section 152 of the *Disability Act 2006* (as amended) further constrains any impact upon a person's rights to privacy and liberty. In making a decision to admit a person to a residential treatment facility, the Secretary must be satisfied that the criteria in section 152(1) are met, including that all less restrictive options have been tried or considered and are not suitable. This assessment would include consideration of any security conditions (that are also restrictive practices) applicable to the relevant residential treatment facility. Moreover, under new section 152(5) (inserted by clause 111), the Secretary must not allow a person to continue to reside at a residential treatment facility if the Secretary is not satisfied the conditions in subsection (1) continue to be met. This ensures that any new security conditions (that are also restrictive practices) which are made in respect of a residential treatment facility *after* a person is admitted will be relevant to the person's continued ability to reside there.

Protection against cruel, inhuman or degrading treatment

I do not consider that clause 68(5) limits the Charter protection against cruel, inhuman or degrading treatment as the exemption in amended section 201A(5) will only be engaged in circumstances where security conditions are imposed for the purposes of security of a residential treatment facility or the supervision of its residents (not to impose harm or humiliation upon residents) and are approved by the Secretary following consultation with the Senior Practitioner. Therefore, these conditions would not constitute cruel, inhuman or degrading treatment.

Freedom of movement and right to humane treatment

Insofar as clause 68(5) may result in the imposition of security conditions which are also restrictive practices upon all residents in a residential treatment facility, without regard to the individual circumstances of those residents (eg, whether a less restrictive option is available), it may be considered to limit residents' freedom of movement and right to humane treatment when deprived of liberty. In my opinion, however, any such limit is reasonable and justified in accordance with section 7(2) of the Charter.

New section 201A(5) of the *Disability Act 2006* serves important purposes, including promoting the security of residential treatment facilities. This supports the right to life of residents, protected under section 9 of the Charter. I do not consider there are any less restrictive means reasonably available to achieve these purposes, as a security condition genuinely imposed for the security of an entire facility (eg, a perimeter fence) cannot be subject to individualised assessment and modification. In addition, as discussed above, the scope of the exemption from sections 201B to 201E is reasonably tailored to the objectives, and the oversight role of the Secretary (in consultation with the Senior Practitioner) serves an important rights-protective function.

Use and disclosure of information

In 2019, most of Victoria's quality and safeguarding functions for services within the scope of the *Disability Act 2006* were transitioned to the National Disability Insurance Scheme Quality and Safeguards Commission. The Bill makes a number of further amendments to the information sharing regime in the *Disability Act 2006* to ensure consistency in, and the appropriateness of, information sharing relating to disability services and use of restrictive practices, and to bring the regime into line with other legislation. The amendments are designed, amongst other things, to facilitate the provision of collaborative supports to complex clients and to support the ability of regulatory agencies to exercise their powers to reduce risks to persons with a disability.

Most relevantly, clause 103 repeals subsections 39(2)–(9) of the *Disability Act 2006*, which regulate the disclosure, use and transfer of information relating to the provision of disability services to a person under the Act. In place of the repealed provisions, clause 105 of the Bill inserts Part 8A into the *Disability Act 2006*, which sets out a new regime for the use and disclosure of 'protected information' (defined in new s 202AA).

Part 8A will apply to any information collected before the date on which the Bill comes into operation (new s 261, inserted by clause 107).

In addition, clause 26 of the Bill, which amends sections 49(1) and 49(2), and replaces section 49(3) of the *Disability Act 2006*, empowers the Secretary, in making a decision on a request for access to disability services, to require the person who made the request or the person in respect of whom the request was made to provide more information, or to require the person in respect of whom the request was made to undergo a formal assessment. Similarly, new section 50 (inserted by clause 27 of the Bill) empowers the Secretary, in making a decision whether or not a person has a disability, to request any relevant information (including personal information and health information) from any person or body.

Some of these amendments may engage the Charter rights to privacy (s 13(a)) and freedom of expression (s 15). However, for the reasons set out below, I do not consider there to be any limitation on these rights.

Privacy

A number of sections inserted into the *Disability Act 2006* by clause 105 authorise the disclosure of protected information to certain persons (eg, new s 202AB(2)) in specified circumstances (eg, new s 202AB(3)). New section 49(3)(a), inserted by clause 26, provides that the Secretary may require a person who requests disability services, or the person in respect of whom the request was made, to provide more information. New section 50(4), inserted by clause 27, provides that a person or body that receives a request for information from the Secretary under subsection (2) is authorised to give the information to the Secretary. To the extent that information captured by clauses 26, 27 and 105 may include personal information (eg, of persons receiving services under the *Disability Act 2006*), these clauses authorise interferences with the Charter right to privacy. However, the right to privacy is not limited because any such interference will be lawful (the authorising provisions are precise and accessible) and non-arbitrary.

In particular, disclosures permitted under new Part 8A are reasonably necessary to achieve important purposes, including developing or maintaining and improving information systems under section 39 of the *Disability Act 2006* (new s 202AB(3)(a)(i)), or lessening or preventing a serious threat to a person's life, health, safety or wellbeing (new s 202AB(3)(e)(i)). Similarly, disclosure of relevant information to the Secretary under new sections 49(3) or 50(4) (inserted by clauses 26 and 27, respectively) is necessary to enable the Secretary to make a decision regarding whether a person should have access to disability services (in the case of s 49) or whether a person has a disability for purposes of accessing disability services (in the case of s 50), and to minimise the number of assessments a person must undergo in order for these decisions to be made.

I am satisfied there are ample safeguards to ensure that any use or disclosure of a person's personal information pursuant to clauses 26, 27 or 105 will be confined to what is reasonably necessary to achieve these important purposes. For example, disclosure to many of the persons listed in new section 202AB(2) (inserted by clause 105) is expressly qualified by the phrase 'to the extent it is necessary' (or similar). Furthermore, new section 50(3) (inserted by clause 27) requires the Secretary to obtain consent from one of three relevant persons before requesting personal information or health information about a person under subsection (2).

In addition, to the extent disclosure is permitted to certain persons with protective and oversight functions under the *Disability Act 2006*, including the Senior Practitioner (new s 202AB(4)(a)) and the Public Advocate (new s 202AB(4)(c)), the amendments *support* the human rights of persons receiving disability services under the Act.

Freedom of expression

Clause 105 inserts a number of new sections (eg, new s 202AB) which have the effect of prohibiting 'relevant persons' (as defined in new s 202AA) from disclosing protected information except where the disclosure is made in the performance of a function or exercise of a power, or is required or permitted, under the *Disability Act 2006* or another Act.

While this prohibition interferes with freedom of expression under section 15 of the Charter, it does not limit that right because it constitutes a lawful restriction reasonably necessary to respect the rights (eg, the right to privacy) of persons to whom the information relates (s 15(3)(a) of the Charter).

Community visitors

Clause 36 inserts new section 129(1C) into the *Disability Act 2006*, which provides that a community visitor may visit any premises approved by the Minister under new section 129AA (inserted by clause 35) with or without any previous notice at the times and periods that the community visitor thinks fit. Under new section 129(5A) (inserted by clause 36), the Minister may also direct a community visitor to visit a Minister approved premises at the times the Minister directs. Clause 39 inserts new section 131B which provides that any Minister approved premises resident or a person acting on their behalf may request that the disability service provider or the registered NDIS provider arrange for the resident to be seen by a community visitor.

New section 30B (inserted by clause 24) lists the functions of a community visitor when visiting Minister approved premises, including to inquire into: the appropriateness and standard of the premises for the accommodation of Minister approved premises residents; any case of suspected abuse or neglect of a Minister approved premises resident; and the use of restrictive practices and compulsory treatment. New section 130(4) (inserted by clause 37) sets out the powers of a community visitor when visiting a Minister approved premises, including to: inspect any part of the premises where the person with a disability, NDIS participant or Disability Support for Older Australians client is living; see those persons in order to make enquiries as to the provision of services to those persons; and inspect any document relating to any such person that is not a medical record and any documents required to be kept under the *Residential Tenancies Act 1997* and other specified legislation. Finally, the community visitor may also inspect any medical record relating to persons with a disability, NDIS participants, or Disability Support for Older Australians clients with their consent or the consent of their guardian.

In addition, new section 3B (inserted by clause 5) provides that a registered NDIS provider that is providing supervised treatment to persons in accommodation approved by the Senior Practitioner under new section 187 (inserted by clause 56) is taken to be a disability service provider, the accommodation is taken to be a residential service, and the person receiving supervised treatment is taken to be a resident, for purposes of Division 7 of Part 6 of the *Disability Act 2006*. As a result, community visitors are newly empowered to visit these types of accommodation, and to perform the functions and exercise the powers set out in section 130 of the *Disability Act 2006* (as amended).

Clauses 5, 24, 36, 37 and 39 may engage the right of persons who reside in Minister approved premises or a deemed residential service not to have their privacy or home unlawfully or arbitrarily interfered with, under section 13(a) of the Charter. However, I do not consider that the right is limited, because any such interference will be lawful (the new community visitor provisions are accessible and precise) and non-arbitrary.

More specifically, the ability of community visitors to attend a Minister approved premises or a deemed residential service without notice and at times the visitor thinks fit, and to conduct the functions set out in new section 30B and existing section 130 of the *Disability Act 2006*, is consistent with the functions and powers of community visitors in relation to other types of supported accommodation for persons living with a disability, and is reasonably necessary to achieve the important protective and oversight functions served by community visitors. A requirement to provide advance notice of a visit may deprive a community visitor of the ability to observe the true conditions of the relevant accommodation or premises. In this way, clauses 5, 24, 36, 37 and 39 *support* the Charter rights of residents who may be subject to restrictive practices or compulsory treatment (eg, the right to humane treatment when deprived of liberty).

In addition, a number of safeguards are in place to ensure that any interference with a person's privacy is appropriately confined. For instance, new section 130(4) (inserted by clause 37) and existing section 130(1)(e) provide that a community visitor may only inspect medical records with the consent of the person to whom they relate (or that person's guardian). Clause 38 inserts new section 132(2A) which requires a disability service provider or registered NDIS provider, who is present when a community visitor visits a Minister approved premises, to keep a record of the visit, or face a penalty of 5 penalty units. Clause 25 amends section 34(1) of the *Disability Act 2006* to require community visitors who visit Minister approved premises in a particular region to submit a twice yearly report to the Community Visitors Board on visits conducted in that region. These amendments ensure that most community visits are recorded and reported on, providing a further level of oversight for the privacy of residents.

Reporting and notification requirements

The Bill makes a number of amendments to the *Disability Act 2006* (eg, clauses 30, 47 and 60) and to the *Residential Tenancies Act 1997* (eg, clauses 230–232) in relation to mandatory reporting and notification requirements. To the extent that these requirements might involve the sharing of personal information of persons with disabilities, they engage the right to privacy. However, the right is not limited because any interference with privacy will be lawful (the provisions are precise and accessible) and non-arbitrary.

Specifically, each of the above-noted amendments authorise reporting or notification where reasonably necessary to achieve an important purpose. For example, clause 60 inserts new sections 194A and 194B into the *Disability Act 2006*, which include requirements to notify the Senior Practitioner of non-compliance with a condition of an STO by a disability service provider, registered NDIS provider, or the person who is subject to the STO. These requirements are reasonably necessary to achieve the important purpose of facilitating the exercise of the Senior Practitioner's statutory oversight functions (eg, under ss 24 and 195 of the *Disability Act 2006*).

In addition, other provisions of the amended Acts ensure that the scope of any personal information disclosed will be confined to the relevant purpose. For instance, clause 30 inserts new section 58(1)(k) into the *Disability Act 2006*, which requires a disability service provider providing residential services to report any

suspected breach of a direction or an order requiring a person with a disability to live at the residential service to the responsible authority (defined in new section 58(5)). Existing section 58(4) further constrains this duty, however, by requiring a disability service provider to have regard to the need to ensure there is a reasonable balance between the rights of residents and the safety of all the residents in the residential service. Moreover, disability service providers who are public authorities within the meaning of the Charter are also subject to the obligation in section 38 to act compatibly with human rights.

Similarly, in relation to amendments to the *Residential Tenancies Act 1997* inserted by clauses 230–231 of the Bill, which require SDA providers to notify the Director of Consumer Affairs Victoria of certain events (eg, details of a notice of temporary relocation or notice to vacate), section 498M of the *Residential Tenancies Act 1997* (as amended by clause 172) imposes duties on SDA providers to take reasonable measures to ensure SDA residents are treated with due regard to their entitlement to privacy and not to unreasonably interfere with an SDA resident's right to privacy.

Amendments relating to the Disability Services Board

The Bill amends the *Disability Act 2006* to remove references to the Disability Services Board, an entity that is no longer required due to the transition to the NDIS of disability service providers and the resulting significant reduction in the number of people accessing State-funded disability services and the reduction in the functions of the Disability Services Commissioner that the Board was established to support. Specifically, clause 17 repeals section 16(1)(i),(j) and (m)(i) of the *Disability Act 2006*, removing the Disability Services Commissioner's functions in respect of the Board, including the Commissioner's ability to seek advice from the Board and to initiate inquiries into matters referred to it by the Board. Clause 18 repeals Division 4 of Part 3 of the *Disability Act 2006*, which established the Board.

The abolition of the Board could engage the right to equality under section 8(3) of the Charter, for persons living with disability. This is because the State has a positive duty to protect persons from discrimination on the basis of disability, and the removal of a body that was designed to support the oversight of the Victorian disability services sector, including relevant complaints processes, and to represent the interests of, and advocate for, adults and children with a disability, might result in an erosion of protections against disability-based discrimination.

However, I consider that the removal of the Board would not in fact limit the right to equality under section 8(3) of the Charter, as the amendments do not propose to treat persons with a disability unfavourably, and are not likely to have the effect of unreasonably disadvantaging those persons, so as to constitute direct or indirect discrimination. Specifically, there will be no reduction in safeguards for persons living with disability who continue to receive State-funded disability services, as the Disability Services Commissioner remains able to oversee the provision of disability services in Victoria, to resolve complaints, and to protect the rights of people with disability, including with respect to discrimination.

Power of disability service provider to enter a resident's room without notice

Clause 32 of the Bill inserts section 60(2)(ca) into Division 1 of Part 5 of the *Disability Act 2006*, which provides an additional reason for a disability service provider to enter the room of a resident of a residential service without notice: namely, when the disability service provider suspects on reasonable grounds that there has been a breach of a condition of an order that the resident is subject to that requires them to reside at the residential service.

While most residential services and accommodation that were previously covered by the *Disability Act 2006* have now transitioned to the NDIS, specialist forensic disability accommodation, residential treatment facilities and some short-term accommodation where support or transitional accommodation is provided are still within the scope of the *Disability Act 2006*. Properties approved for the provision of supervised treatment under new section 187 (inserted by clause 56) will also fall under the application of the new section 60(2)(ca). Residents of specialist forensic disability accommodation will generally be subject to civil or criminal orders, such as STOs or bail conditions, requiring them to reside at that residential service.

Allowing disability service providers to enter a resident's room without notice engages the right to privacy under section 13(a) of the Charter, and in the case of residents who are under criminal orders (such as a residential treatment order or custodial supervision order) or STOs that compel them to remain in the residential service, the right to humane treatment when deprived of liberty under section 22 of the Charter. For the reasons set out below, I am of the view that neither right is limited by clause 32 of the Bill.

Privacy

Section 13(a) of the Charter stipulates that a person has the right not to have their privacy and home (amongst other things) unlawfully or arbitrarily interfered with. Entry into a resident's room without notice would engage both of these aspects of the privacy right, because 'privacy' includes a person's physical and

psychological integrity, and a resident's room within a residential service is clearly encompassed by the concept of 'home'.

However, the right to privacy will only be limited if the interference is 'unlawful' or 'arbitrary'. Entry to a resident's room without notice would occur pursuant to new section 60(2)(ca) of the *Disability Act 2006*, which is a precise and accessible provision that includes an appropriately stringent 'reasonable grounds' threshold. I consider this to be a reasonable and proportionate measure to achieve the important purpose of ensuring that conditions of the relevant orders are being complied with, which in turn fulfils the purpose of maintaining the safety and welfare of staff and residents in residential services. I am therefore satisfied that entry into a resident's room without notice pursuant to the new provision would not be unlawful or arbitrary.

Accordingly, I am of the view that the right to privacy is not limited by clause 32 of the Bill.

Humane treatment when deprived of liberty

An order compelling a person to reside in a residential service (such as an STO), particularly one that compels them to receive compulsory treatment, would likely be considered to constitute a deprivation of liberty that triggers a requirement for humane treatment and respect for inherent human dignity under section 22 of the Charter. However, I am of the view that entry into a person's room without notice on suspicion (based on reasonable grounds) that the person has breached a condition of the order reflects an interference with rights that could reasonably be expected to result from the deprivation of liberty in this context. Further, the measure is proportionate to the important purpose of enforcing the conditions of the relevant order to which the person is subject, and therefore ensuring the safety of staff and residents in residential services.

I do not therefore consider the right to humane treatment while deprived of liberty to be limited by clause 32 of the Bill.

Termination of residency

Clause 33 of the Bill inserts new section 61A into the *Disability Act 2006* which sets out the circumstances in which a person's residency in a residential service may be terminated, namely, where: the person's residency period has expired and has not been extended; the person is no longer subject to a direction or civil or criminal order requiring them to reside at the residential service and suitable alternative premises are available for them to move to; the person has moved to another premises; the person has been directed or ordered to move to an alternative residence for at least three months and there is no agreement between the person and the Secretary for the residency of the person to continue in the residential service; the disability service provider gives the person written notice that the residency of the person will end on a specified date; or the person and the disability service provider agree, in writing, that the residency will end.

The termination of a person's residency in a residential service engages the Charter rights to equality (s 8), to not have one's home unlawfully or arbitrarily interfered with (s 13(a)), and to property (s 20).

Equality

Clause 33 engages the right to equality under s 8(3) of the Charter, insofar as new section 61A of the *Disability Act 2006* may adversely affect persons living with a disability whose residency in a residential service is terminated.

However, I am of the view that the termination of residency provision does not constitute direct discrimination as it does not permit unfavourable treatment *because of* a disability; rather, it may result in unfavourable treatment (ie, termination of residency) because of one of the above-specified reasons, such as the expiration of the residency agreement or abandonment by the resident of the residential service. I am also of the view that the provision does not constitute indirect discrimination because it does not impose an unreasonable requirement, condition or practice that would disadvantage a person with a disability. Termination of residency can only occur for one of the legitimate reasons set out in new section 61A and is a proportionate measure to ensure residents do not refuse to move after the expiration of the period of residency specified in their residential statement or once they are no longer subject to an applicable direction or order. Clause 33 also ensures that residential service resources are being properly utilised and that persons who require them are able to be given access in a timely manner. In addition, the requirement in new section 61A(2) for a disability service provider to comply with any guidelines issued by the Secretary with regard to termination of residency, and to notify the Secretary at least 30 days before terminating the residency of a person under subsection (1)(d) or (e), serve an important protective function for the rights of residential service residents..

Accordingly, I am of the view that the right to equality would not in fact be limited as clause 33 does not directly or indirectly discriminate against persons on the basis of disability.

Privacy and the home

As discussed above, a person's room or accommodation in a residential service would fall within the concept of 'home' under section 13(a) of the Charter. While termination of a person's residency in a residential service

would constitute an interference with this right, I am satisfied that it is not unlawful or arbitrary and would therefore fall within the internal qualification contained in section 13(a). The interference with the home would occur pursuant to new section 61A of the *Disability Act 2006* for one of the reasons outlined therein; this is a provision which is precise and accessible, and is a reasonable and proportionate measure to achieve the aim of ensuring that residential service resources are properly used, allocated and accessible to persons who need them.

Accordingly, I am satisfied that the right to the home is not limited by clause 33 of the Bill.

Property

Section 59 of the *Disability Act 2006* sets out various duties of residents analogous to those that would arise in a residential tenancy, such as an obligation to pay specified charges and to contribute to the cost of reparation of any damage. Therefore, to the extent these obligations might be considered to give rise to a property interest, such that termination of residency would deprive a resident of that interest, the Charter right to property (s 20) may be engaged.

I am satisfied, however, that a termination of residency pursuant to new section 61A of the *Disability Act 2006* (which is precise and accessible) would not constitute an unlawful deprivation of property. The right to property under section 20 of the Charter is therefore not limited by clause 33.

Non-application of Residential Tenancies Act 1997 for accommodation approved by Senior Practitioner

Clause 56 of the Bill replaces sections 185 to 191 of the *Disability Act 2006*. New section 187(5) provides that the *Residential Tenancies Act 1997* does not apply in respect of accommodation that has been approved by the Senior Practitioner as being suitable for persons to reside in for the purposes of receiving supervised treatment by a disability service provider or a registered NDIS provider. Clause 237 makes a corresponding change to section 3(1) of the *Residential Tenancies Act 1997*.

Given persons with a disability who receive supervised treatment at accommodation approved for this purpose will not be able to avail themselves of the protections provided by the *Residential Tenancies Act 1997*, the Charter rights to equality (s 8(3)) and to the home (s 13(a)) are engaged, but for the reasons set out below, are not limited.

Equality

I am satisfied that clauses 56 and 237 do not limit the right to equality as they do not directly or indirectly discriminate against persons with a disability. The amended provisions do not treat persons with a disability unfavourably because of their disability, but rather excludes certain accommodation at which they might be receiving supervised treatment from the application of the *Residential Tenancies Act 1997*. Therefore, clauses 56 and 237 do not result in direct discrimination. Further, the exclusion of the application of the *Residential Tenancies Act 1997* is not an unreasonable imposition that would disadvantage persons with a disability; it is a reasonable and proportionate measure to ensure that accommodation approved for supervised treatment is subject to legislation (namely, Division 1 of Part 5 of the *Disability Act 2006*) that is better tailored to the distinct needs of such accommodation. The definition of 'residential service' in section 3(1) of the *Disability Act 2006* (as amended by clause 4(3)) includes accommodation provided by disability service providers, and new section 3B (inserted by clause 5) will include accommodation provided by registered NDIS providers, that is approved by the Senior Practitioner for the provision of supervised treatment under new section 187(1), such that Division 1 of Part 5 will apply to provide alternative protections for residents of approved accommodation.

Home

Clauses 56 and 237 may engage the right to the home in section 13(a) of the Charter because the disapplication of the *Residential Tenancies Act 1997* to the relevant supervised treatment accommodation removes various protections under that Act (eg, the duty of a rental provider, in s 67, to ensure a tenant has quiet enjoyment of the premises).

However, any interference with a person's home is effected by a provision which is accessible and precise, and is proportionate to the purpose of providing a tailored framework (namely, Division 1 of Part 5 of the *Disability Act 2006*) for accommodation approved for supervised treatment that protects the rights of residents. As such, I am satisfied that any interference with the right to the home would not be arbitrary or unlawful. The right is therefore not limited.

Supervised treatment orders

Clause 56 of the Bill replaces sections 185 to 191 of the *Disability Act 2006*, with new sections 191A to 191C. New section 191 sets out the process pursuant to which an Authorised Program Officer for a primary service provider may apply to VCAT for an STO in respect of a person who: has an intellectual disability; is living

in a type of accommodation listed in section 191(1)(b); has an approved treatment plan; and meets the criteria in new section 193(1A) (inserted by clause 58).

An STO authorises detention and treatment of a person without their consent. Insofar as that treatment interferes with the person's bodily integrity and limits their physical liberty, clauses 56 and 58 may engage the Charter rights to protection from medical treatment without consent (s 10(c)), freedom of movement (s 12), privacy (s 13(a)), liberty (s 21), and humane treatment when deprived of liberty (s 22). In addition, since clauses 56 and 58 may be considered to discriminate against persons on the basis of disability, they may engage the Charter right to equality (s 8).

However, for the reasons detailed below, it is my opinion that there is no limit on the Charter rights to privacy and liberty, and that any limitation upon other Charter rights is reasonable and justified in accordance with section 7(2).

Privacy and liberty

Any interference with a person's privacy or liberty resulting from an STO is not, in my opinion, a limit upon these Charter rights, because it will be lawful (the amendments to the *Disability Act 2006* made by clauses 56 and 58 are precise and accessible) and non-arbitrary.

In particular, VCAT may only make an STO if satisfied that all of the conditions in new section 193(1A) of the *Disability Act 2006* (inserted by clause 58) are met. Each of the conditions is premised on the existence of a significant risk of serious harm to another person. Therefore, STOs may only be made where reasonably necessary to achieve the purpose of reducing the risk of, or preventing, serious harm to another person. This supports the right to life, protected under section 9 of the Charter.

Indeed, I consider that clauses 56 and 58 *strengthen* protections for the human rights of persons with respect to whom an STO application may be made. For instance, new section 191A(1)(b) requires an application for an STO to include any risk assessment reviewed by the Senior Practitioner; this was not previously required. Furthermore, new section 191C(2) provides that a person in respect of whom an STO application is made is a party to the VCAT proceeding (enhancing their right to a fair hearing, protected in s 24(1) of the Charter), and new section 191C(3) provides that the Senior Practitioner must (on application) be joined to the proceeding.

Equality, protection from medical treatment without consent, freedom of movement, and humane treatment when deprived of liberty

To the extent clauses 56 and 58 limit the Charter rights to equality, protection from medical treatment without consent, freedom of movement, or humane treatment when deprived of liberty, any such limit is, for the following reasons, reasonable and justified under section 7(2) of the Charter.

The availability of an STO serves pressing and substantial objectives, including to reduce the risk of, or prevent serious harm to other persons (as discussed above) and to provide services in accordance with a treatment plan which will be of benefit to the person subject to the STO (new s 193(1A)(c) of the *Disability Act 2006*).

I acknowledge that an STO may constitute a profound interference with the dignity and bodily integrity of the person to whom it relates. However, as reflected in the criteria in new section 193(1A) of the *Disability Act 2006*, an STO is only available where there is a significant risk of serious harm to another person that cannot be substantially reduced through less restrictive means. I am satisfied that the protections in new sections 191, 191A to 191C, and 193(1A), including the protective role of the Senior Practitioner, ensure the least-restrictive interference with the Charter rights of persons who may be subject to an STO.

Apprehension of person subject to supervised treatment order or detained in residential treatment facility who is absent without leave

Clause 66 of the Bill replaces section 201(1) and amends section 201(2) of the *Disability Act 2006*. The amendments empower a police officer, the person in charge of the disability service provider providing disability services, the person in charge of the registered NDIS provider providing daily independent living supports at the accommodation, or an authorised person who is employed or engaged by, or is providing disability services or services under the NDIS at the accommodation for or on behalf of, the disability service provider or registered NDIS provider, to apprehend a person who is subject to an STO who is absent without approval from the accommodation that the person is required to reside in. The apprehension may only be made for the purpose of returning the person to their accommodation. Similarly, clause 121 of the Bill replaces section 160(b) of the *Disability Act 2006* to expand the list of persons who are empowered to apprehend a resident detained in a residential treatment facility who is absent without leave for the purpose of returning the resident to the facility.

These clauses authorise an interference with a person's Charter rights to freedom of movement (s 12), privacy (s 13(a)), and liberty (s 21).

However, in my opinion, the rights to privacy and liberty are not limited because any interference authorised by sections 201 or 160 (as amended) will be lawful (as those provisions are clear and accessible) and non-arbitrary. In particular, the power to apprehend a person who is absent without leave is reasonably necessary to achieve the purposes of enforcing the order pursuant to which the person is required to reside in the accommodation or residential treatment facility, and returning the person to the relevant accommodation or facility. Furthermore, the lists of persons in sections 201 and 160 who are authorised to apprehend a person who is absent without leave are strictly confined.

To the extent the clauses authorise limits on a person's freedom of movement, any such limitation is in my view reasonable and justified, with regard to the important purpose of ensuring the relevant orders are upheld. I do not consider there is any less restrictive means of achieving this objective. The *Disability Act 2006* provides a mechanism for some persons detained in accommodation under the Act to obtain an authorised leave of absence (eg, ss 156–157, as amended by clauses 117–118).

Admission to residential treatment facility

Clause 111 of the Bill amends section 152 of the *Disability Act 2006*, which sets out the process for a person with an intellectual disability to be admitted to a residential treatment facility. Clauses 112 and 113 of the Bill insert new sections 152A and 152B (respectively) into the *Disability Act 2006*. New section 152A requires the Secretary or forensic disability service provider to give a person admitted to a residential treatment facility relevant written information to the person, including about the services to be provided to that person, the conditions that will apply to their admission under any order or direction under the Act, a copy of their treatment plan, any security conditions that will apply at the residential treatment facility, and their legal rights and entitlements, including for review of their treatment plan. New section 152B empowers the Secretary to extend a person's admission to a residential treatment facility for further periods (not exceeding 12 months) if certain conditions are met.

Clauses 111 and 113 authorise an interference with a person's Charter rights to freedom of movement (s 12), privacy (s 13(a)), and liberty (s 21). In addition, to the extent that these clauses authorise interference with the rights of persons who have a disability, they engage the Charter right to equality (s 8). For the reasons set out below, however, the rights to privacy and liberty are not limited, and any limitation on freedom of movement or equality is reasonable and justified.

Privacy and liberty

In my opinion, the rights to privacy and liberty are not limited because any interference authorised by sections 152 or 152B (as amended), provisions that are precise and accessible, will be lawful and non-arbitrary.

A person may only be admitted to a residential treatment facility where the criteria in section 152(1) (as amended) are satisfied, including that: the person presents a serious risk of violence to another person; all less restrictive options have been tried or considered and are not suitable; the treatment is suitable for the person having regard to the person's willingness to engage in and benefit from the treatment; the person is able to engage in the therapeutic environment at the residential treatment facility; and admission of the person to the treatment facility is appropriate having regard to the level of vulnerability of the person, any risks the person presents to other residents of the treatment facility and the compatibility of the person with the other residents of the residential treatment facility. These criteria ensure that a person's rights to privacy and liberty will only be interfered with to the extent reasonably necessary to achieve important purposes, including protecting others from harm and ensuring there is therapeutic benefit for the person in that environment.

In addition, I consider that clause 111 strengthens the rights protections for a person who may be admitted to a residential treatment facility. For example, new subsection 152(1A) requires the person to undergo a clinical assessment before a decision to admit is made, while new subsection 152(1B) requires the Secretary to consult with, and to consider the advice (if any) of, the Senior Practitioner in relation to the suitability of the treatment to be provided to the person at the residential treatment facility. And new subsection 152(5) provides that, subject to new subsections 152(6)–(7), if the Secretary is not satisfied the conditions in section 152(1) continue to be met or that the person is no longer subject to an order listed in section 152(2), the Secretary must not allow a person to continue to reside at a residential treatment facility.

Freedom of movement and equality

To the extent clauses 111 and 113 of the Bill limit the Charter rights to freedom of movement and equality, I consider such limitations to be reasonable and justified in accordance with section 7(2) of the Charter.

The power of the Secretary to admit a person to a residential treatment facility, or to extend their admission, serves important purposes, including to protect other persons from a serious risk of violence, which supports the Charter right to life (s 9). In addition, the amendments seek to protect the dignity and autonomy of persons who may be admitted to a residential treatment facility, including by seeking to ensure that those persons are willing to both engage in their treatment (amended s 152(1)(d)) and to engage with the therapeutic

environment at the residential treatment facility (new s 152(1)(e)), and by requiring those persons to be provided with information about their treatment and their rights (new s 152A).

I acknowledge that the decision to admit a person to a residential treatment facility reflects a potentially significant interference with their freedom of movement and right to equality. As discussed above, however, a decision to admit a person can only be made where there are no less-restrictive alternatives reasonably available to achieve the harm-prevention objective. New section 152(5) ensures that, subject to subsections 152(6)–(7), the duration of any limitation on rights is restricted to the period required to achieve this purpose. Moreover, pursuant to section 151(4) (as amended by clause 110) and new section 152B (inserted by clause 113), a person can only be admitted to a residential treatment facility for a period not exceeding 5 years, with further extensions of 12 months where specified criteria are satisfied, including that there is therapeutic benefit for the person.

Information provided to Disability Worker Registration Board of Victoria

Clauses 132, 137 and 139 of the Bill amend the DSS Act to require the provision of certain information, including an applicant's criminal history or NDIS clearance (if the applicant has one), to the Disability Worker Registration Board of Victoria. In addition, clause 138 inserts new section 252(h) into the DSS Act to clarify the record-keeping obligations of the Board in relation to information about a disability worker's NDIS clearance. To the extent this information may include personal information, these clauses may interfere with a person's right to privacy under section 13(a) of the Charter. However, any interference with the privacy interests of applicants is minimal, as persons seeking to participate in a regulated industry hold a diminished expectation of privacy in information obtained by the regulator for that purpose.

There is, in any case, no limit on the Charter right to privacy as any interference with privacy is lawful (the amended provisions of the DSS Act are clear and accessible) and non-arbitrary. The amended provisions of the DSS Act are reasonably necessary to facilitate the Board's ability to determine registration applications, including to assess whether applicants are fit and proper persons to be registered as disability workers. The Board exercises a protective function, given the vulnerability of persons with whom such workers will engage. The amendments serve the important purpose of enhancing efficiency and reducing duplication, by enabling the Board to consider an NDIS clearance (where available) in lieu of a criminal history check.

Amendments to other Acts relating to SDA dwellings and accommodation approved by the Senior Practitioner

A number of clauses of the Bill amend other Acts to expand the application of certain provisions to include accommodation approved by the Senior Practitioner under new section 187 (inserted by clause 56) and SDA dwellings. 'SDA dwelling' is defined in new section 498BA of the *Residential Tenancies Act 1997* (inserted by clause 143) to mean an SDA enrolled dwelling or other permanent dwelling that provides long-term accommodation where daily independent living support is provided to one or more residents with a disability funded by a specified entity or program (excluding the types of dwelling set out in subsection (2)). These amendments ensure that appropriate legal regimes apply to all properties where persons with disabilities are receiving State-funded or Commonwealth-funded disability support.

By way of example, clauses 234 and 249 amend section 17 of the *Guardianship and Administration Act 2019* to permit the Public Advocate to exercise their powers of inspection in relation to an accommodation approved by the Senior Practitioner, a short-term accommodation dwelling, or an SDA dwelling. Similarly, clauses 236 and 252 amend the definition of 'health facility' in the *Medical Treatment Planning and Decisions Act 2016* to include accommodation approved by the Senior Practitioner, a short-term accommodation dwelling, and an SDA dwelling, such that relevant protection in that Act (such as the advance care directive requirements in section 98) apply to persons in those dwellings. Clauses 245 and 256 amend the definition of 'detained person' in the *Victorian Inspectorate Act 2011* to include persons detained in accommodation approved by the Senior Practitioner and SDA dwellings, such that relevant protections in the Act (eg, the ability of detained persons to complain to the Victorian Inspectorate under s 92A) apply to those persons.

Some of these clauses may result in the application of provisions of the amended Acts, which may engage Charter rights such as the right to privacy (s 13(a)) and freedom of expression (s 15), to SDA dwellings and/or accommodation approved by the Senior Practitioner. However, in my view, none of the amending clauses create new or greater human rights issues, but simply expand the field of application of existing provisions. In addition, many of the relevant provisions have previously been the subject of statements of compatibility, and were found to be compatible with the Charter (see, eg, statements of compatibility for the Disability (National Disability Insurance Scheme Transition) Amendment Bill 2019 and for the Guardianship and Administration Bill 2018). I am therefore satisfied that these clauses are compatible with the Charter.

Hon Colin Brooks MP
Minister for Disability, Ageing and Carers

Second reading

Mr BROOKS (Bundoora—Minister for Child Protection and Family Services, Minister for Disability, Ageing and Carers) (10:22): I move:

That this bill be now read a second time.

I ask that my second-reading speech be incorporated into *Hansard*.

Incorporated speech as follows:

There are more than 1.1 million people with disability living in Victoria. This Disability Amendment Bill makes important and critical amendments to enhance services, safeguards, rights and protections for people with disability; address National Disability Insurance Scheme (NDIS) implementation issues and address unintended regulatory burdens and operational difficulties. This Government is committed to promoting and protecting the rights of persons living with disability in Victoria, and these reforms deliver on the government's promise to introduce legislation in 2022 to better support persons with disability in our community. These amendments will improve the delivery of state funded disability services by ensuring that there are better legislative protections and supports.

The *Disability Act 2006* is being reviewed in stages. The first stage occurred in 2019, in advance of the commencement of the NDIS. Technical amendments were made to reflect the changes in roles and responsibilities of the Commonwealth and Victorian Governments in relation to the funding, delivery and regulation of services, as well as the interface between the residual state disability and mainstream service systems.

This Bill forms part of stage two of the Disability Act Review and will amend the Disability Act to: promote rights for persons residing in residential services and those subject to compulsory treatment and restrictive practices; align and reduce duplication of requirements for the use and authorisation of restrictive practices by registered NDIS and disability service providers; improve processes and practices relating to supervised treatment orders; provide a clear legislative authority to disclose protected identifiable information and clarify the functions and responsibilities of the Secretary to the Department of Families, Fairness and Housing.

This Bill will also amend the *Residential Tenancies Act 1997* to address gaps in residential rights and protections for people living in specialist disability accommodation and the *Disability Service Safeguards Act 2018* so that an NDIS worker clearance is accepted in lieu of a criminal history check. The amendments in this Bill align and respond to a key area of focus by of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability to ensure appropriate safeguards are in place for people with disability.

As part of this government's commitment to better support Victorians living with disability, a new nation first legislative framework is being developed to establish a contemporary and proactive disability inclusion scheme to support the vision of a barrier free Victoria for all people with a disability. The Disability Inclusion Bill will be released for public comment in 2022 and forms part of the stage two reforms. A critical component of this work will be the establishment of an Australian-first Commissioner for Disability Inclusion to bring about improvements in practice in the public sector and promote inclusion across Victoria.

The inclusion reforms provide the legislative architecture to strengthen and complement the ambitious reform agenda endorsed in *Inclusive Victoria: State disability plan 2022–2026.* The state disability plan outlines the government's approach to driving change towards a fairer community that supports every Victorian to fully participate in all areas of life.

The Disability Amendment Bill, now before the house, addresses a number of policy and legal issues that will improve services, rights, protections and safeguards for people with disability.

Functions of the Secretary

Amendments are being made to the Disability Act to clarify the role, responsibilities and powers of the Secretary to the Department of Families, Fairness and Housing. The Bill provides that the Secretary is only responsible for services that the Secretary funds. When the *Social Services Regulation Act 2021* commences, the majority of providers registered as a disability service provider will not be providing services funded by the Secretary. These amendments will reduce any overlap of legislative responsibility and ensure there is clarity regarding the Secretary's responsibilities. The Bill amends the Disability Act to confirm that decisions about disability and access to services are made by the Secretary only in relation to disability services funded by the Secretary. It also clarifies that the Secretary can acquire, hold or dispose of land for the purposes of being a specialist disability accommodation provider. Amendments are also being made to enable the Secretary to dispose or deal with land with or without consideration in certain circumstances.

Information sharing

The Disability Act contains information sharing arrangements that are outdated and there is a lack of express power authorising the disclosure of identifiable information so that people can carry out their functions under the Act. Protected information that identifies the person to whom it relates can only be disclosed by people specified in the Bill and for a specified purpose such as to obtain legal advice or to prevent or lessen a serious threat to a person's life, health, safety or wellbeing. A person can be found guilty of an offence if there is an unauthorised disclosure. The amendments will ensure that important and critical information can be shared.

Residential services

The Disability Act contains rights for residents of residential services whose accommodation is exempt from the Residential Tenancies Act. The Bill amends the Disability Act to clarify the services being provided; the rights, duties and requirements residents may be subject to within the service and the roles and responsibilities of service providers delivering residential and treatment services.

Restrictive practices

In 2019, amendments were made to restrictive practices to facilitate transition to the NDIS. Further amendments are required to remove uncertainty about the application of existing Parts and Divisions in the Act; better align requirements and responsibilities for NDIS and state funded disability providers and ensure there is consistency and accountability in the use of restrictive practices. The Bill will explicitly provide that the existing offence that relates to use of unauthorised restrictive practices for disability service providers also applies to registered NDIS providers and that registered NDIS providers must meet the requirements for authorisation of restrictive practices in the Disability Act for people accessing services funded through the Commonwealth Disability Support for Older Australian's program. It will also expand the role of the Senior Practitioner to include promoting the reduction and elimination of the use of restrictive practices by registered NDIS providers and disability service providers to the greatest extent possible and additional powers to provide directions to providers about appointment of Authorised Program Officers.

Compulsory treatment

Residential treatment facilities

The Bill makes a number of important changes that will have an impact on compulsory treatment provided to persons with an intellectual disability that are residing in residential treatment facilities. The Bill will clarify that the statutory admission criteria will apply where there has been a re-admission or a new criminal justice or civil order imposed; strengthen the clinical admission criteria; and include an overall residential timeframe for admission to a residential treatment facility and enable extension where it is therapeutically beneficial for a person. The Bill will also ensure treatment plans are appropriately explained and provided in an accessible format and will include specific legislative obligations regarding the provision of information on admission. Changes are also being made to enable prescribed forensic disability service providers, in addition to the Secretary, to operate residential treatment facilities to support service integration and innovation opportunities in the future.

Supervised treatment orders

Amendments are being made to supervised treatment orders to ensure responsibilities and obligations under the Disability Act are streamlined, there are strengthened approval processes and there is clearer information for persons subject to supervised treatment orders. The Bill specifies that a registered NDIS provider is now guilty of an offence if they detain a person other than in accordance with Part 8 of the Act. It also clarifies requirements in relation to treatment plans which include ensuring the treatment plan is clearly explained and provided in an accessible format; all service providers delivering services are disability service providers and registered NDIS providers and they are identified in the treatment plan, and a treatment plan being used by registered NDIS providers meets the NDIS requirements for a behaviour support plan. The Senior Practitioner will also have the power to approve properties as being suitable to provide supervised treatment for persons with an intellectual disability.

The Bill also clarifies what information must be included in a certificate provided by the Senior Practitioner during an application for a supervised treatment order; who is a party to a proceeding; that an application does not need to be made to confirm expiry of an order, and that the Victorian Civil and Administrative Tribunal can consider prior risk related material.

Dissolution of the Disability Services Board and community visitors

The Bill makes some other miscellaneous amendments which will result in the dissolution of the Disability Services Board and expansion of the properties that community visitors can visit. As the majority of disability services have transitioned to the NDIS, the scope and role of the Disability Services Commissioner and Board has been significantly reduced and the Board is no longer required. As such, the proposal in the Disability

Amendment Bill to remove the Disability Services Board will not lead to a reduction in safeguards for people. The Bill also allows the Minister to declare new types of accommodation at which persons receive disability services, NDIS services or services under the Commonwealth's 'Disability Support for Older Australians Program' to be subject to the community visitors program. This will enhance safeguards and protections for people with disability. Properties approved by the Senior Practitioner as suitable to provide suitable treatment will also be subject to the community visitors program.

Amendments to the Residential Tenancies Act

The Bill also removes barriers for residents of group homes provided by disability service providers from receiving rights under the Residential Tenancies Act. This Bill amends the Residential Tenancies Act to ensure residents in group homes meet the definitions in that Act and residential rights and protections are afforded. The Bill will provide for transition of existing group homes to specialist disability accommodation residency arrangements under Part 12 of the Residential Tenancies Act and repeal group home provisions from the Disability Act. This was the original objective of previous amendments made to the Residential Tenancies Act which had not been realised in full due to unanticipated impediments for persons to access specialist disability accommodation provided under the NDIS.

Amendments are also being made to the definitions in the Residential Tenancies Act to ensure residents in specialist disability accommodation and NDIS and state funded long term disability accommodation are afforded residential rights and protections under the Residential Tenancies Act. The amendments will also provide protections for persons with a disability living in these types of accommodation under a residential rental agreement prior to commencement of this Bill, who may not have previously qualified for a specialist disability accommodation residential agreement. Their rental provider must, within 6 months of commencement, give them the choice of entering into a specialist disability accommodation residential agreement instead, along with a copy of the specialist disability accommodation agreement information statement.

Amendments to the Disability Service Safeguards Act

The Bill makes minor amendments to the *Disability Service Safeguards Act 2018*. The amendments will allow the Disability Worker Registration Board of Victoria to accept a NDIS clearance in lieu of a criminal history check when disability workers voluntarily seek to register. The screening checks for NDIS registered disability workers are currently duplicative and the amendments will reduce red tape for disability workers seeking registration. The Bill also strengthens information sharing provisions between the Board and the NDIS worker screening unit to enable the Board to obtain information about changes or cancellations of the NDIS clearance. The amendments do not affect the principles or intent of the Disability Service Safeguards Act. The amendments are expected to encourage more disability workers to register and thereby accelerate efforts to professionalise the disability workforce, improve the quality of services delivered and increase choice and control for people with a disability.

Conclusion

The Government is committed to ensuring disability legislation is contemporary and fit-for-purpose. This Bill will bring about critical reforms that will improve the delivery of disability services and enhance safeguards for Victorians with disability. Wide stakeholder consultation has occurred in relation to these legislative amendments. I would like to thank everyone who has contributed to the development of this Bill, in particular those individuals and organisations who provided submissions to our Disability Act Review consultation paper last year, members of the Disability Act Review Advisory Group and the Victorian Disability Advisory Council, Chaired by Dr George Taleporos and members Shol Blustein, Jax Jacki Brown, Astrid Edwards, Karen Fankhauser, Gabrielle Hall, Martin Heng, Colin Hiscoe, Amanda Lawrie-Jones, Brent Phillips and Caitlin Syer. These contributions have played an important role in ensuring the Bill has been informed and enriched by the experiences of people living with disability in our community. The Government is looking forward to continuing reforms that promote disability equality and inclusion and enhance the quality and effectiveness of our services.

I commend the Bill to the house.

Ms STALEY (Ripon) (10:22): I move:

That the debate be adjourned.

Motion agreed to and debate adjourned.

Ordered that debate be adjourned for two weeks. Debate adjourned until Thursday, 18 August.

STATE SPORT CENTRES LEGISLATION AMENDMENT BILL 2022

Statement of compatibility

Mr DIMOPOULOS (Oakleigh—Minister for Tourism, Sport and Major Events, Minister for Creative Industries) (10:24): In accordance with the Charter of Human Rights and Responsibilities Act 2006, I table a statement of compatibility in relation to the State Sport Centres Legislation Amendment Bill 2022.

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006*, (the **Charter**), I make this Statement of Compatibility with respect to the State Sport Centres Legislation Amendment Bill 2022 (the **Bill**).

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

Overview of Bill

The Bill amends the *State Sport Centres Act 1994* (the **SSC Act**) to provide for the State Sport Centres Trust (**Trust**) to manage and operate the Knox Regional Sports Park, the Knox Regional Sports Park land, the Lakeside Stadium, and the Lakeside Oval Reserve land, and make other minor changes to improve the efficiency and effectiveness of the Trust's operations. Both the Knox Regional Sports Park land and the Lakeside Oval Reserve land are Crown lands reserved under the *Crown Land (Reserves) Act 1978* (the **CLR Act**), which are currently managed under that Act and reserved for the purposes of public park(s). The Trust is currently appointed as committee of management of the Lakeside Oval Reserve land under the CLR Act. The Bill revokes that appointment and provides for the Lakeside Oval Reserve land to be managed by the Trust under the SSC Act, exercising its statutory functions and powers conferred on it by the Bill under that Act, rather than as a committee of management under the CLR Act.

The Trust has recently been granted a lease under the CLR Act to manage the Knox Regional Sports Park land. The Bill provides for that lease to be preserved and survive commencement of the Bill until (the lease) is terminated or would have otherwise expired. Upon termination of the Lease, the Bill provides for the Knox Regional Sports Park land to be managed by the Trust under the SSC Act, rather than under the lease granted under the CLR Act.

The Bill also amends the *Melbourne and Olympic Parks Act 1985* (the **MOP Act**) to excise a parcel of the national tennis centre land following road widening at Hoddle Street, and makes consequential amendments to the *Australian Grands Prix Act 1994* (the **AGP Act**), the *Albert Park Land Act 1972* and the *Major Events Act 2009* (the **ME Act**).

Human Rights Issues

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

- section 12 Freedom of movement; and
- section 20 Property rights.

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

Freedom of movement

Section 12 of the Charter provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live. The Bill engages the right to freedom of movement by—

- establishing requirements for entering Crown land and varying reservations over the Crown land;
- amending existing consultation requirements in relation to roads and road closures; and
- varying use of reserved land for use as a road.

However, for the reasons set out below, I am satisfied that the Bill does not limit the right to freedom of movement.

Crown land

The Bill provides for the Trust to be responsible for the State Sport Centres land, including the Knox Regional Sports Park land and the Lakeside Oval Reserve land, which are Crown lands reserved under the *Crown Land (Reserves) Act 1978* (**CLR Act**) for the purpose of public parks.

Clause 7 amends section 22 of the SSC Act and provides that the Trust may charge fees for entry to the State Sport Centres or any part of the State Sport Centres land or for the use of any facilities or services at the Centres or on the land. Clause 8 inserts new section 23A into the SSC Act which provides that if the Trust is appointed as a committee of management under the CLR Act over any other land then the Trust may exercise its powers and functions under the SSC Act in relation to that land as if it were State Sport Centres land, including charging fees for entry to that land.

The amendments provide clarity and express provision for the Trust to charge fees as a trustee under the SSC Act, rather than as a committee of management (or any other power exercised) under the CLR Act.

The amendments in clauses 7 and 8 engage the right to freedom of movement by providing a framework to manage the movement of individuals on Crown land by allowing the Trust to charge fees for access to the Crown lands that it manages. Permission for committees of management or trustees to charge fees for entry exists in other Crown land legislation, such as the CLR Act. Charging fees for entry and use is necessary for the Trust to uphold its statutory duties of managing the land, including financial management, use, operation and promotion of the State Sports Centres and the State Sport Centres land. Managing access and use of the land and facilities promotes permitted uses of the land, for example, the purposes of sporting activities; by managing the use and access by way of charging fees for volume control, sporting activities undertaken using the fit-for-purpose facilities are promoted, and the risk of overcrowding and misuse of facilities is minimised.

For these reasons I am of the view that clauses 7 and 8 do not further limit the right to freedom of movement, and to the extent that may be limited, the limitations are lawful and not arbitrary and are balanced with promoting the right.

Clause 11 of the Bill varies the reservations made under the CLR Act in relation to the Knox Regional Sports Park land and the Lakeside Oval Reserve land, and provides that the land may be used for—

- the purposes of sporting, education, recreational, social or entertainment activities, or purposes connected with those purposes; or
- the erection of buildings or structures or the carrying out of works for those purposes.

The amendments in clause 11 engage the right to freedom of movement by varying the purposes that the Crown land may be used, which also engages how individuals may move through, remain in, enter or otherwise access the land. However, to the extent that the freedom is engaged by varying the reservations, the variations are for the public benefit and in the public interest. For this reason I am of the view that clause 11 does not limit the right to freedom of movement.

Temporary closure and modification of roads

Part 4 of the Bill makes consequential amendments to other Acts, relevantly, the AGP Act and the ME Act.

Clause 23 amends section 33 of the AGP Act to provide that the Corporation or the Trust may temporarily close any road or part of a road in the part of Albert Park that is Lakeside Oval Reserve land, with the consent of the Minister administering the SSC Act and the Minister administering the CLR Act, for the purpose of carrying out the Corporation's or the Trust's functions or exercising its powers. These are the same terms as currently provided for by section 33 of the AGP Act in relation to Melbourne Sports and Aquatic Centre land.

Division 3 of Part 4 of the Bill amends sections 109(3) and 110(4) of the ME Act, which concern the temporary closure of roads, and temporary modification of roads respectively.

Divisions 1 and 3 of Part 4 of the Bill engage the freedom of movement by providing requirements that the Minister administering the SSC Act, the CLR Act, and the ME Act must adhere to before temporarily closing or modifying roads which are part of reserved Crown land, and which would otherwise be accessible to the public (for the purposes for which they are reserved). It is my view that though the freedom is engaged, it is not limited by the Bill as the amendments provide clarity on pre-existing legislative requirements for the land and roads on the land, and any new requirements are limited to consultation with the particular ministers prior to the road closure or modification. Therefore the amendments provide no further limitation of the right.

National tennis centre land

Part 3 of the Bill amends the MOP Act excises a parcel of land from the National Tennis Centre Land, which is Crown land temporarily reserved as a site for public purposes, being, in particular, the purposes of the National Tennis Centre pursuant to the provisions of section 30E(2) of the MOP Act. The reservation over the excised land was revoked in 2020 and is to become a road.

The amendments to the MOP Act engage the freedom of movement as the way in which the public may access or move through the National Tennis Centre Land is different to how the public may access or move through a road. However, the land has been excised pursuant to an agreement to provide a portion of National Tennis Centre land to the Department of Transport for the purposes of the Hoddle Street Streamlining Project. Though the way individuals may access and move through the land will be different when the land is a road,

it is not arbitrary, and promotes the use of and movement through the land as a road by increasing the volume of individuals who have access to that road. The reservation has been revoked prior to commencement of the Bill, and the amendments to the MOP Act are administrative in nature and do not further limit the right. For this reason I am of the view that Part 3 of the Bill does not limit the right to freedom of movement, and further, promotes that freedom.

Right to property

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

- permitting the Trust to grant leases and licences over Crown land; and
- providing for certain existing property rights to prevail to the extent of any inconsistency with the Bill.

Clause 11 inserts new section 26FD into the SSC Act, which permits the Trust to grant leases over the Knox Regional Sports Park land and the Lakeside Oval Reserve land, or any parts of those lands. Clause 11 also inserts new section 26FE which permits the Trust to grant licences over the Knox Regional Sports Park land and the Lakeside Oval Reserve land, or any parts of those lands. Any leases or licences granted are subject to any covenants, exceptions, reservations and conditions that are determined by the Trust and approved by the Minister, and will have effect despite anything to the contrary in the *Land Act 1958* or the CLR Act.

It is possible that clause 11 could have the effect of limiting lessees' and licensees' property rights by restricting the use of their property subject to any covenants, exceptions, reservations or conditions. However, to the extent that these clauses may cause a deprivation of property, I consider that any deprivation is permitted because it is expressly and clearly authorised under the SSC Act (as amended by the Bill).

Clause 17 inserts new section 41 into the SSC Act which provides for particular leases and licences granted under the CLR Act prior to commencement of the Bill to continue and have effect for the duration of the terms of those leases or licences. Clause 17 promotes the right to property by providing for these existing property rights to prevail to the extent of any inconsistency with the Bill.

Steve Dimopoulos MP
Minister for Tourism, Sport and Major Events

Second reading

Mr DIMOPOULOS (Oakleigh—Minister for Tourism, Sport and Major Events, Minister for Creative Industries) (10:24): I move:

That this bill be now read a second time.

I ask that my second-reading speech be incorporated into *Hansard*.

Incorporated speech as follows:

It is with pleasure that I introduce this Bill amending the *State Sport Centres Act 1994* to extend and improve the management arrangements under which the State Sport Centres Trust operates. The Bill also amends the *Melbourne and Olympic Parks Act 1985* to excise a parcel of National Tennis Centre land following road widening on Hoddle Street.

The State Sport Centres Trust has management responsibilities over the Melbourne Sports and Aquatic Centre, the State Netball and Hockey Centre and is the committee of management for Lakeside Stadium.

In 2019, these facilities attracted more than 2.5 million total visits, contributed $164.6 million in economic benefits to Victoria and provided over 1000 jobs. The State Sport Centres Trust provided further support to Victorian sport by hosting over 100 significant events in 2019, 20 professional and semi-professional or representative teams, and 32 sports tenants including 20 state sporting associations, the Victorian Institute of Sport, four national sporting organisations and eight other sporting tenants.

The Andrews Government made an election commitment in 2018 to redevelop the State Basketball Centre at Knox Regional Sports Park. When complete, the $132 million project will be one of Australia's leading basketball centres and include training and administration facilities for the South East Melbourne Phoenix and upgraded facilities for Women's National Basketball League team, the Deakin Melbourne Boomers, who

are based there. It will also include 12 new community courts for local basketball competitions and regional facilities for gymnastics at local and elite levels.

It is fair to say we have delivered on our election commitment. Victoria is the epicentre of basketball in Australia and our state centre will become Australia's premier facility. It is a great result for players of all ages and standards and means the future of the game in Victoria is strong. The $105 million contribution from the Andrews Government made to this redevelopment has supported more than 500 jobs in construction and when completed in 2023, will host up to two million visitors a year and support more than 100 ongoing jobs.

To protect the investment made by the State, this Bill expands the responsibilities of the State Sport Centres Trust to include the management of the Knox Regional Sports Park. The State Sport Centres Trust plays a vital role ensuring our top facilities operate successfully and serve the needs of the Victorian community.

This Bill makes the State Sport Centres Trust directly responsible for Lakeside Stadium and Lakeside Oval Reserve under the State Sport Centres Act rather than as a committee of management under the *Crown Land (Reserves) Act 1978* as is currently the case. This will resolve difficulties with leasing and licensing the Lakeside Stadium due to ambiguity in exercising powers under the two Acts.

The Bill also clarifies that the State Sport Centre Trust can manage any land and facilities for which it is a committee of management under the Crown Land (Reserves) Act in the same way it manages facilities under the State Sport Centres Act, including leasing and licensing arrangements.

Importantly, the Bill inserts a new provision into the State Sport Centres Act to specify that the trust must maintain the Lakeside Oval Reserve land and facilities to a standard that complements Albert Park. I wish to reassure members of the house that there will be no loss of public open space because of these changes.

Other minor changes to the management arrangements under the State Sport Centre Act include:

- improving the efficiency and effectiveness of the Trust's operations including allowing the preparation of a single business plan and the holding of a single bank account for all entities
- changing the membership structure of the State Netball and Hockey Centre Advisory Committee to require that both a State Sport Centre Trust member and the State Sport Centre Trust Chief Executive Officer (CEO) be appointed. Currently either a member or the CEO is to be appointed to the Advisory Committee. This change reflects the importance of the supervisory role played by the State Sport Centre Trust board and the day-to-day operational knowledge of the CEO. The State Sport Centre Trust member will be elevated to Chairperson of the committee.

Finally, the Bill amends the Melbourne Olympic Park Act to reflect the new boundary of the national tennis centre land following the reservation of a strip of centre land as a road in the 'Streamlining Hoddle Street' project.

I commend the Bill to the house.

Ms McLEISH (Eildon) (10:25): I move:

That the debate be adjourned.

Motion agreed to and debate adjourned.

Ordered that debate be adjourned for two weeks. Debate adjourned until Thursday, 18 August.

VICTORIAN ENERGY EFFICIENCY TARGET AMENDMENT BILL 2022

Second reading

Debate resumed on motion of Ms D'AMBROSIO:

That this bill be now read a second time.

Mr SOUTHWICK (Caulfield) (10:25): Deputy Speaker, congratulations to you on your new role.

It is a pleasure to rise and speak on the Victorian Energy Efficiency Target Amendment Bill 2022, and can I say at the outset that the opposition will not be opposing this bill. We believe in energy efficiency. We believe this is very important in terms of reducing emissions, in achieving energy efficiency targets and in tackling climate change. Also, if I could say at the outset, I am very proud of the Liberal-Nationals policy which we announced around providing real solutions to all Victorians when it comes to climate change, setting achievable, real targets of net zero by 2050 and a 50 per cent legislated target by 2030. I want to say on the legislated target for 2030 that this is something that provides certainty

for industry and provides certainty for consumers. It is something that we have working with the New South Wales Liberals on—they have led the way over a number of years in tackling climate change.

It is very interesting that those opposite, the government, seek to play politics with this, because I would have thought, when we have jumped on board and even lifted the bar to talk about legislating a target for 2030, the government would have said, 'Well, that's a great idea. Let's not play politics when it comes to climate change, but let's actually work together when it comes to climate change'. Surprise, surprise, the Minister for Environment and Climate Action could not help herself. Off she was, having a crack at me on Twitter because she has got nothing better to do. Well, can I say through you, Deputy Speaker, to the government that now is the time to take politics out of climate change and to work together in a race to the top to ensure we have a planet that will be sustainable, that we will be able to fight and combat climate change and that we will be able to work together, whether that be industry, consumers, the public or families—everybody—but, importantly, that will be led by government from all sides.

There are times for arguing. Certainly we may have a very different view on the way we get there to the government, and I am going to talk today about our views on how we reach climate change targets. We have a different view on how to get there because we believe a big part of this needs to be industry led, because it is industry that largely create these emissions and industry now acknowledge that they need to tackle these emissions through innovation, through certainty, through technology and through responsibility. It cannot be government doing everything. That is the difference between the Labor side and the Liberal side. We believe very much that everyone should take shared responsibility and it is not just government lifting the game here but it is everybody working together to achieve climate change targets and to ensure we have a better planet, better environment and better community.

Can I say on this—and I will not go much further, because again the minister for the environment just cannot help herself—I would have thought, with the fact that we have got an energy crisis and we have got a situation where gas and electricity prices are a point where people are choosing whether they eat or whether they heat their homes, the minister would be pretty busy at the moment, but all the energy and environment minister is doing at the moment is having a crack on Twitter. You know what, I suggest the minister does her job, because we need to ensure the cost of living is central—first and foremost, that people can afford to heat their homes, and as part of that that we have affordable energy bills, a climate change target we can all reach, renewables that we can bring into the market and that we can get on with it.

I remind the minister that when she tweets out and tells me about all the things that I have said in the past, how about I get a tweet talking about the renewables revolution? Back in 2016 I was the shadow minister, and it is a privilege to be the Shadow Minister for Energy and Renewables again. How about I get a Twitter shout-out again from the minister saying, 'Do you know what? Back in 2016 you called it a renewables revolution. And guess what's happening now? It is one'. We are seeing renewables coming into the market, and that is what we are doing. That is what we have said in our absolute focus on real solutions for all Victorians in terms of the climate when it comes to things like our homes package, when it comes to big batteries and when it comes to the $4400 for batteries and solar to get 1 million Victorian households on batteries and solar—not having to choose either batteries or solar but being able to have both in 1 million Victorian households. We are one of the largest jurisdictions in the world to uptake solar. Australians have really adopted solar in a big way. We now need to shift the game to get batteries as well, because that storage will take more pressure off the grid and ensure that we are able to have enough power to keep the lights on. On that, there are a number of other things that we have proposed, including a hydrogen policy of $1 billion looking at, again, zero-emission energy coming into the market in the future. It is about green hydrogen—using that for research and using it for infrastructure to be able to get hydrogen into the market and to be a market leader, which is where Australia can be when it comes to hydrogen.

Another important part of our policy is to talk very much about the focus on connecting the grid. This government has been very, very big on cutting ribbons on large-scale projects. We believe that we

should have large-scale projects—wind, batteries; terrific. Off you go and do it. But you cannot create the fastest, swiftest, best car if you do not have the highway to drive it on, and that is what has happened here in Victoria. We have the Ferrari but we do not have the roads. What we need to do is ensure that we have got the actual energy programs connected up to the grid. If you look at what happened when we saw the closure of Hazelwood power station, 1800 megawatts of power were taken out of the market. And guess what? At the moment, because of the lack of grid connection, we have got 1800 megawatts that cannot be connected back into the grid from large-scale wind and solar. It would be a very, very easy transformation. If the government had their eye on the ball and the minister spent less time on Twitter and more time actually doing stuff, then what we would have is the 1800 megawatts connected to the grid.

Instead of wasting it—it is no use having a wind farm churning around and pumping out energy and putting it nowhere—that wind that we are creating, that solar that we are capturing, needs to be plugged in. At the moment we do not have the power cables to plug it in and to use it. It is all a media stunt. We have got to get beyond media stunts, which this government has been very, very good at, and do real, practical stuff. Let us plug it in, let us make it work and let us ensure we drive down power prices and we achieve the climate change targets. You can do it with real solutions. You can do it with a plan. You can do it if you actually believe in it and focus on it. That is what we are doing, and that is why we believe our policy is so important for fixing the Victorian grid, making sure you can plug stuff in and making sure it works.

The last part of our policy, which is really important, is about onshore conventional gas—not fracking. We were the first ones, absolutely, to the party and on the unity ticket for banning fracking. Absolutely we do not need that. Regarding onshore and offshore gas and conventional gas, what did this government do? For five years they did an inquiry. They got the chief scientist and said, 'Let's go and have a look at it and see what happens'. Now they have finally come to the party. It has taken seven years—seven years to be able to say, 'Do you know what? Let's go and have a look at bringing some gas into the market as a transition to renewables'. Well, in that time we have had a shortage of gas, and in that time instead of using local gas and being able to use that gas for Victorians, like Western Australia does—Western Australia has the situation where 15 per cent of the gas that they find in Western Australia stays in Western Australia, and we should do the same; gas that is found in Victoria should stay in Victoria; let us look after Victorians first—the government have just kicked the can down the road.

We have a shortage, and when you talk about emissions and when you talk about climate change, what are we doing? We are importing our gas. We are sending gas halfway around the world and bringing it in. Not only what a waste and what a cost but also what an impact on the environment this is. We are actually shipping gas halfway around the world and bringing it back again. That is a problem that needs to be fixed. There is a real solution: conventional gas that is found in Victoria should stay in Victoria. Get it done, stop kicking the can down the road and ensure we have a transition fuel. Coal-fired power stations are going to close. What are we going to do in the meantime? We need to have that transition fuel so we can take up renewables as real solutions to keep the lights on.

If you could not find a better example of a government that might be okay in terms of intent but hopeless in execution, have a look at what we are talking about today in terms of these Victorian energy efficiency targets. The idea of this is to make efficient appliances—whether they be fridges, washing machines, heaters or coolers—and to get the market to actually make them so you have got this 6-star rating, so they are something that is not creating a whole lot of emissions. Make them efficient, get them into the marketplace, reduce power bills and reduce carbon. Terrific. Brilliant. This project started in 2008. We continued it through when we were in government. We have got no problems with having schemes like this; we have a problem with the way they are run. That is what we have a problem with—the way they are run. Again, if the minister got off Twitter and actually did something, we would not have the problems that we have now.

Only a few weeks ago we rolled out those fridges. I mean, I was out in Elsternwick in one of my restaurants, I was having a meal in the Mediterranean Greek Tavern with my family, and we were told, 'You're not going to believe this, but a truck came past Glen Huntly Road with a whole lot of fridges on the back of it'. I was like, 'Come on, you're joking'. He said, 'No, no, no. They weren't fridges that fell off the back of a truck, but they could have been'. I said, 'What are you talking about?'. He said, 'They had these fridges loaded up and a guy came out and said, "How many do you want?"'. I went, 'No, that can't be true'. I could not believe it. It could not be true. He said, 'No, all you've got to do is sign a bit of paper and away you go'. Now, this was a responsible retailer, but he was telling me about other stories that he had heard from others. He said, 'Do you know what? This scheme is so dodgy that you can actually take the fridge off the back of the truck, plug it in, take it out of the power point and sell it on eBay and then get another one'. I was like, 'No way would the government be so stupid and irresponsible with money to be able to do something like that'.

I cannot believe that this government has failed in doing that, and the reason why I cannot believe it is that it is not the first time. The government had light installations being changed to get LED lighting, and I remember that from when I was a shadow minister back then in 2015–16. We had scams with lighting back then. We had installers that would come to little old ladies' homes and say, 'Excuse me, would you like free light bulbs?'. They would ring them or doorknock them and say, 'Would you like free light bulbs?'. Many of these people said no. What did these dodgy installers do? They put in an invoice and got a payment from the government. That was under this government; under this minister, that is too busy on Twitter rather than actually doing something; and under this minister, that has just been hopeless at managing anything. Seriously, they could not manage a chook raffle. These people were ripping off taxpayers and harassing little old ladies, pensioners, to take up these systems.

Again, that was discussed and legislation was tightened, and I would have thought because it was highlighted that we had the problem back then that surely we would not be coming to the Parliament today and trying to tighten up the laws again because of those dodgy installers. No, surely that would not happen again. Well, it is groundhog day. We are back again trying to stop the rorting from happening because this government have taken their eye off the ball and they are too busy on Twitter having a go at the opposition. Well, do you know what? I reckon with the amount of debt that Victorians are in at the moment from the budget blowouts and with the cost-of-living pressures that each Victorian faces, the government should be doing their job. I reckon that we could get energy efficiency and we could tackle climate change and we could do it economically and responsibly. That is what I reckon we could do. That is what I reckon each Victorian taxpayer should expect from their government. This is great what we are talking about today—bringing in rules and tightening up the rules to make sure you have a fit and proper person who is going out and doorknocking your home—with this legislation. Then there is this article in the *Herald Sun* about Labor's bungled fridge carbon credit scheme worth $52 million. It talks about:

> Victoria … created almost $52 million of carbon credits this year … under a now-suspended appliance scheme that was rorted.

A member interjected.

Mr SOUTHWICK: Rorted.

> New figures reveal the scale of the Victorian Energy Upgrades program …

as it comes under heavy scrutiny, for obvious reasons. This article also talks about how other parts of the Victorian energy upgrades program are not immune. One company was suspended last week over allegations of fraud involving LED light installations. Nearly $3 million of carbon credits were also confiscated. Groundhog day—not just the fridges, the lights. No wonder this economy and this state are in such debt. No wonder we have a situation where the cost of living is through the roof. Every time you get hundreds of billions of dollars that have been misappropriated or wasted, what happens is the government does not pay that—we pay it. When these energy systems come together, when these schemes come into play, it is not free money—the money needs to be put back on your energy

bill. Now, that is all fine when they work. That is all fine when everybody gets a fair go and access to them, but it is not fine when they are rorted under this government, as we have just seen.

This is a really serious problem. I understand that the system has now been suspended. I am not sure what is happening with those people that have purchased fridges or the suppliers that are meant to be installing these fridges. I am not sure what is going to go on with all of this, how long this is going to take and what mess has been created. This bill has been scrambled in to probably tackle half of these issues that we have got at the moment—to deal with a fit and proper person and to ensure that this stuff does not continue. But you know what? We have got to fix it. We have got to get the fit and proper person test to ensure that these people are accredited and they are proper licensed providers, not dodgy operators.

This scheme did not come into place yesterday. This scheme has been in place since 2009. Since 2009 we have had the opportunity to set up what the fit and proper person test is, since 2009 we have had the opportunity to establish a code of conduct framework for this scheme, since 2009 we have had the opportunity to ensure we strengthen reporting requirements and since 2009 we have had the opportunity to ensure we strengthen governance provisions—all items within this bill, all things that ensure transparency, accountability, responsibility and the stopping of rorts, something this government knows a lot about. We have seen the red shirts rorts. We have seen the IBAC reports into the way the government misuses and misappropriates taxpayers money when it comes to a whole range of different things. We have seen that. We have seen that the government has got good form in rorting. But here is a scheme that is meant to be around helping people with energy efficiency and they are up to their old game again: more rorting, more waste, more mismanagement, and up goes the cost of living.

I say coming into the election that the government will be judged on a whole lot of things. We have got a health crisis—we know that. We need to ensure we get hospital beds and waiting lists and ambulances working. We have got a situation with our schools—we have got to fix them. We have got a situation certainly in terms of corruption, which this government is up to its eyeballs in. We have got a situation with the cost of living. I think cost of living will be a pretty big thing coming into the election, because I know a lot of people that are struggling at the moment; they really are. It is a huge situation, the cost of living. You are seeing interest rates going up, impacting just buying basic grocery items. You are seeing petrol prices. You are seeing 42 new taxes. The government said, 'We aren't going to bring in one new tax' before the last election. Well, they were right. They did not bring one new tax in, they brought 42 of them in—42 taxes.

This government has got great form in taxing people. They have got great form in rorting people. This is a rorting, corrupt government. Here you have got a situation of energy upgrades that should have been pure as day, that should have been perfect in terms of energy efficiency, perfect in terms of climate change and perfect in terms of real solutions to ensure we got reduced carbon credits. And what did the government do? They rorted the carbon credit system. They rorted it—free fridges off the back of a truck.

Are you serious? I cannot believe that people would drive down and literally have fridges fall off the back of a truck, like this government has done. They fall off the back of a truck—'How many do you want?'. This is unbelievable. I still think that if you went to most Victorians out there and said, 'Guess what? The government have got this system in place that allows you to kind of go out there and get as many fridges as you like—take one and then resell it on eBay, pocket the cash and go and get another one as well', they would say, 'Are you fair dinkum?'. And who pays? We all pay. The government have the absolute audacity to say, 'Look how wonderful our program is'. They absolutely stuffed the first energy upgrade with lighting—absolutely buggered it with shysters going around doorknocking people. Absolute shysters would come down to doorknock you and push you—or ring you and force you—to adapt your lights or even take an invoice without putting them on. Now they have done it again with fridges, and they are doing it again with lighting. Well, do you know what? Get it right. Get it right.

The energy upgrades system has a great ability to do a number of things. We should be doing a whole range of stuff in terms of energy efficiency. Our program is for real solutions—for climate change, for energy efficiency, for keeping the lights on. That is what we are going to do. We are going to deliver. This minister needs to get off Twitter and start doing her job. That is what she needs to do: get off Twitter and start doing her job—simple. People cannot afford to keep the lights on at the moment. They cannot afford to pay their bills at the moment. We cannot have fridges falling off the back of a truck, where we all have to pay for rorters. We cannot have it. That might be okay in the Labor Party, to be rorters, but it is not okay to have the same game played out for many of those businesses and say, 'Let's set up a scheme and allow people to rort Victorians and rort taxpayers'. That is not good enough. It is not good enough. I am sorry, but you cannot create a scheme that is set up so people can just rort it and have taxpayers money rorted. We should not be hearing about a scheme that was set up in 2009 and is already in question because the government could not get it right. We are back here again debating legislation to tighten the laws because we have got the cold truth of Labor's bungled, rorted fridge program. Here we go.

Mr Fowles: On a point of order, Deputy Speaker—I have actually got heaps of points of order. The first is the member on his feet is using props. The second point of order is we are well into the bounds of tedious repetition. The third point of order is that the member is not anywhere near the substance of this bill. I would ask you to ask him to refrain from tedious repetition, stop him using props and bring him back to the bill that is before the chamber.

The DEPUTY SPEAKER: Thank you, member for Burwood. Member for Caulfield, can I just remind you in relation to using props that that is not permitted.

Mr SOUTHWICK: Sure. I am happy to table the props for the house. If you would you like me to incorporate this in my speech, I am happy to do that. Can I seek leave to table this in the Parliament?

The DEPUTY SPEAKER: No, unfortunately it is not appropriate. You can keep that.

Mr SOUTHWICK: Okay. That is fine, no problem. Sure.

The DEPUTY SPEAKER: Can I ask you to—it has been a wideranging debate—just get back to the matter that is before the house.

Mr SOUTHWICK: Well, on the point of order, Deputy Speaker—

The DEPUTY SPEAKER: Member for Caulfield, I have ruled, so you can continue with the matter before the house.

Mr SOUTHWICK: Okay. That is fine, no problem. I am happy to talk about the fridges that are part of the energy upgrades agreement specific to this bill for the next 6 minutes. That is very much on the bill, because energy efficiency and the fridges which have been rorted under a scheme this government has mismanaged are right on the bill and right on the money. The reason why we have this legislation, member for Burwood, in this house is that the Labor Party has set up a scheme that has rorted taxpayers. The Labor Party are good at rorting. We have seen that with the red shirts rort and we have seen that under two IBAC investigations, and this is another example of the government rorting taxpayers.

Mr Fowles: On a point of order, Deputy Speaker—and this is an entirely predictable point of order—no sooner had you asked the member on his feet to come back to the bill than he was straightaway drifting off on an unhinged frolic on a whole range of other matters. I would ask you to bring him back to the subject matter of the bill.

Mr SOUTHWICK: On the point of order, Deputy Speaker, the actual fridge program that I am talking about that has been rorted—taxpayer money that has been rorted—is right on what this bill is all about. That is what I am referring to. This is the government that is actually managing the scheme,

and I am referring to the rorting that has taken place under this government's leadership—or lack of leadership.

The DEPUTY SPEAKER: Member for Caulfield, I repeat that you should remain on the bill that is before the house.

Mr SOUTHWICK: As I said, we have Victorians that are doing it really tough at the moment, they really are, and the last thing that they expect is that the government would rort a system like they have done with this fridge program—the fridge program which is part of the energy upgrades agreement, like we had with the lighting program under the energy upgrades agreement. Both of these schemes were set up to reduce energy or to create energy efficiency and reduce emissions. That is something that we on this side of the house think is a good idea. We want to see carbon reduction. We agree with carbon reduction, but we do not agree with rorting, member for Burwood. We do not agree with rorting, and that is what has happened, plain and simple. The *Herald Sun*, which I have quoted in here—and I am not making the words up—has stated, and let me say it again:

> Victoria has created almost $52 m in carbon credits this year … under a now-suspended …

and the opposition has not suspended the program, the government has suspended the program. The government has suspended the program because these appliance schemes were rorted, stolen—define 'rort'. That is right in line with the bill. I would be happy for the member for Burwood to make as many interjections as he possibly can to take a point of order, because I am sure that many of his constituents in Burwood, along with every other government member's constituents, would be horrified to think that taxpayers money had been used and abused like it has in this scheme. This was poorly managed. It is a disgrace that this government would poorly manage a program like this just at a time when people are doing it so tough. They have effectively said to people, 'Off you go. Get as many fridges as you can into as many businesses as you can. Put in an invoice, and the government will pay. Even if you resell the fridge on eBay, the government will pay'. What a disgrace.

There are so many good things that this program could be. There are so many things that this government should be doing. We could be getting smart homes. We could be getting more energy pumps—heat pumps which are not even star rated—in the home. The government talks about getting people off gas and onto electricity in the home, and the heat pumps to get people onto electricity are not star rated. The government are all spin when it comes to climate change and energy efficiency. They have got no idea about practical implementation. It is a government, again, and a minister that is so busy on Twitter that they have no time to get things done, no time to lay a plan, no time to lay a grid. There are 1800 megawatts that are being pumped into the sky because they are not pumped back into the energy grid—1800 megawatts of large-scale solar, wind, going nowhere because this government has not laid down the power lines.

We have got to get this stuff done. We have got to get energy efficiency. We have got to be able to get climate change sorted. We have got to lead the way. We have got to ensure that we do this properly with a plan, and that is what the Liberal-Nationals have. We have set a plan, we have set a target, we have outlined it. It has got solar, it has got batteries, it has got hydrogen, it has got connectivity, it has got certainty, it has got gas as transformation, it has a plan, and it will have a 20, 30, 50 per cent target legislated. I would hope today during this debate that every member of the government stands up as part of energy efficiency and climate change and says, 'We support the Liberals' position of legislating a 50 per cent reduction'. Here is your chance. Let us get on a unity ticket. Let us get a race to the top, not try and be political. Let us see how many attacks you have on me and attacks you have on the opposition, because at the end of the day it is not about me, it is not about the opposition, it is about all Victorians. Let us give Victorians hope. Let us give Victorians certainty. Let us take the politics out of climate change. That is what we are doing. That is what we released a few weeks ago.

Now we are giving you a challenge: come on board for all Victorians. Let us not make this a debate. We have got a legislated target. Let us see whether the government comes on board to do that. And do you know what? We will not fight you, we will not attack you; we will just congratulate you. We will

stand together. I am happy to stand with the energy minister and sign an agreement together. I am happy to do that along with the member for Brighton, who has championed this and has done fantastic work on our climate policy. Let us all sit down together, sign an agreement and give certainty to all Victorians about climate change. Let us lead the way when it comes to climate change, energy efficiency, certainty, keeping the lights on and the cost of living—not rorting and corruption and what we have seen from the Andrews Labor government.

Ms THEOPHANOUS (Northcote) (10:55): My gosh, that was a lot of grandstanding from a party that has barely even recognised climate science over the last decade. And let us not forget that the last time they were in government they tried to abolish the Victorian energy upgrades program. We do not forget. Every time they get power it is cuts, it is delays, it is abolishing the infrastructure and the investment that we put in to create actual climate action. What a sham that entire speech was.

It is with great pleasure that I rise to lead the debate for the government in support of the Victorian Energy Efficiency Target Amendment Bill 2022, a bill which makes important changes to strengthen Labor's highly successful and ambitious Victorian energy upgrades program. The VEU is our flagship energy efficiency program and is already having an enormous impact in cutting power bills and reducing emissions for homes and businesses. No other jurisdiction is doing this at the scale that we are—it is a massive program. But before I go into the detail I just want to set some context, because the VEU is just one aspect of Victoria's nation-leading work to deliver climate action.

As we speak, Victoria is in the process of making one of the most rapid transitions to renewable energy in the world. We are a global leader in this. Our entire economy is set to shift as we embark on a hugely ambitious program of decarbonisation, electrification and emissions reductions. It is not a small thing, transforming our economy and our society. It is not a small thing, bringing communities along on a collective mission to undo some of the worst impacts of industrialisation. It is not a small thing to do it while generating prosperity for our state rather than entrenching disadvantage, and it is certainly not something that a slick marketing campaign or senseless speeches like that of the previous speaker can achieve. This kind of transformation takes perseverance and policy refinement. It takes diligence and negotiation and compassion. It takes considering and balancing our economy, employment, energy security and environment. That is the dedication that this Labor government and our Minister for Energy and Minister for Environment and Climate Action have put into this work.

The Minister for Energy is one of the most determined people I know, and I am honoured to call her a friend. I have no hesitation in saying that Victoria's ambitious climate policy is in no small part because of the bloody hard work done by her and her team, day after day, with the backing of a labour movement that has pushed the envelope and the limits of what is achievable again and again. There are always those who say that we are not doing enough, and maybe there is a place for them on the sidelines enjoying a self-satisfied running commentary. But talk is cheap, and we are in the business of real action here, not words. Labor is right now delivering the projects, investment and reform Victoria needs to achieve our state's ambitious target of halving emissions by 2030 and reaching net zero by 2050. And it is better than that, because we smashed our 2020 target out of the park, and we are not slowing down.

As the member for Northcote I have been proud to push for strong climate policies and reducing our reliance on fossil fuels. I am not afraid to say here in this house that I support us smashing our targets once more, and I will do everything in my power to ensure that we do. My community knows and understands the urgency of climate change. We know there is work to do, and fast. Across kitchen tables, in classrooms and on the street I hear the inner north loud and clear, and I echo their voices: we want to see a Victoria that moves away from the consume-and-discard model and instead elevates localised, re-usable and sustainable ways of living. We want to see a Victoria that treads lightly on our environment, recognising the lands and waters that sustain us, nurturing and honouring them. We want to give hope to our children that the world we are leaving them will be better than the one we inherited, and we can only do that if we act with clarity, with resolve and with dexterity.

At the national level we have been in the abyss, enduring a decade of decline marked by climate wars that have set our country back a devastating amount. I will not linger on the obstinance and vanity from some quarters which led to those dismal years, because thankfully, they are past us. The Albanese Labor government will now pick up those pieces and work to deliver unity, not division, progress, not protest. For Victoria that means a partner in Canberra committed to progressing climate action at speed and at scale. Critically, in line with our Labor values, we are putting people at the heart of this transition, a just transition. We are supporting workers into new industries and creating new clean jobs. We are supporting Victorians with rebates and lower power bills. Transition should not be reserved for the privileged few, and we remain committed to these values. We are bringing Victorians with us. It is the only way we will get this done.

Over two-thirds of our emissions are coming from the energy sector, so changing the ways we create and use energy is key. Victoria is already delivering the largest annual increase in renewable energy generation of any state ever. There are big batteries. There are neighbourhood batteries. There are solar and wind farms at scale. There is solar on hundreds of thousands of roofs. By 2025 every school, hospital, government building and our public transport network will be 100 per cent renewable. Then there is our offshore wind revolution. It is hard to wrap your head around how big this one is, but by 2040 offshore wind will exceed 9 gigawatts, basically setting us up to power our entire state with renewables. Friends of the Earth has said that this policy is a game changer for climate and jobs, and they are spot-on, but decarbonising our energy generation is only one part of the puzzle. We also need to change the way that we use power. The VEU program is pivotal to this work, and this bill strengthens it. Once a relatively straightforward upgrades program, it is now moving to support a wider range of more complex technologies, and we need to ensure that compliance and enforcement keeps up with this change.

The bill makes sure the Essential Services Commission has the powers and tools it needs to effectively manage the program and protect consumers. This includes pursuing enforcement where necessary and enforcing the new code of conduct for the program. The code sets out the minimum standards that consumers should expect from people and businesses delivering discounted products and services through the program. It includes protections for Victorians when it comes to marketing and sales, contracts, communication, installation, after-sale follow-up and consumer dispute resolution. These protections are in step with industry codes and Australian Consumer Law. New offences, enforcement tools and greater flexibility will be introduced, balanced by greater accountability for the commission. Penalties will now apply not just to businesses providing services but to subcontractors as well. The bill will also ensure that the accredited providers are appropriately qualified, and they will need to annually renew their accreditation and undertake independent assurance audits. The commission will also be able to reject applications to renew an accreditation and to revoke, suspend or impose conditions on accreditations. Together these changes will ensure the VEU has the framework in place to deliver on the program's goals, improve the program's transparency, protect consumers and maintain public trust in this important initiative.

The VEU has now helped more than 2 million households and businesses cut bills and reduce emissions to the tune of 73 million tonnes since 2009. This is the equivalent of taking 22 million cars off the road for a year. In Darebin more than 52 000 homes and 3000 businesses have participated in the program since it began. That is more than 161 energy efficiency upgrades. This includes 13 000 homes with fewer cold draughts this winter thanks to installing weather sealing, more than 13 000 homes with low-flow showerheads saving money on hot water, and more than 10 000 homes have installed in-home displays to help them better track energy use. Local businesses are also benefiting. In Thornbury 3 Ravens Brewery had 130 lights upgraded, Melbourne Bushfood in Fairfield had a split system installed and 38 LEDs fitted, and Encore Music Distributors in Alphington changed 133 lights. Together these three businesses alone are now saving 35 000 kilowatt-hours of electricity and $8650 a year.

But we are not done yet. We are also strengthening the program, adding new activities and phasing out incentives for all residential gas products. That is something I have been really proud to work on with my local environmental group Darebin Climate Action Now. We pushed for this in the Parliament and with the minister, and it has now been achieved, so we are very, very happy about that. I want to thank the minister for her support on that. I also want to thank DCAN, and we are also excited about the gas substitution road map and our shared vision for the future of energy efficiency in this state.

Talk is cheap; real change is hard. It takes ambition. It takes work. Real change is what Labor is interested in delivering. It is what I am interested in delivering, whether that be ambitious statewide targets or tangible local projects. Together I and my community have pushed to secure improvements like recent changes to the VEU, protecting our local waterways, funding for local sustainability projects and big gains in residential energy efficiency. This bill builds on that work. I commend it, and I commend Labor's real action to secure a clean energy future for this state.

Mr McCURDY (Ovens Valley) (11:05): Deputy Speaker, before I start my contribution and before you leave the chair can I congratulate you on being appointed Deputy Speaker, and I congratulate the Speaker in this house. It is a privilege to be in that position. It was not lost on me yesterday that the condolence motion was a very difficult day for both you and the Speaker; congratulations on the way you both handled it. It was a difficult day. So congratulations; well done.

Now, onto the bill—you can leave now, Deputy Speaker; I have given you enough of a wrap-up. This bill is clearly an amendment that is a direct result of the rorting of the Victorian energy upgrades scheme, with the dodgy providers profiting millions of dollars from the taxpayer. And we know that this government needs to lead by example by cleaning up its own act, certainly when it comes to rorting. Then it can start to deal with the poorly vetted providers that facilitate these upgrades. I continue to have residents within the Ovens Valley contacting my office about different energy upgrades, concerned about whether they are rorts or scams or what they are, and I think this bill goes some way to starting to clean this up, but there is certainly more that we can do.

These scammers or rorters do give a bad name to the genuine local businesses that we have—and every community has got them, whether you are in metro Melbourne or whether you are in regional Victoria like we are. They do give a bad name to the genuine businesses that are doing the energy upgrades with energy-saving lights or fridges or whatever it might be. Some of these programs are excellent programs provided there is due diligence done to make sure that the scheme is not just a rip-off. There needs to be a proper education process, an awareness campaign that helps people to understand that these schemes are genuine and which ones are and which ones are not so they can have faith in the various schemes. But, as I say, when the government is up to its armpits in its own rorts I can see why they would be reluctant to be the pot calling the kettle black.

That being said, I am pleased to see the bill introducing a test to determine a fit and proper person. From my understanding and discussions with providers, that is the key. We need to ensure that those who are rolling out these schemes have a track record, have gone through a process to ensure that they are fit and proper people to conduct them, not people who have just come in with the wind and will blow out just as quickly. When you have got a business that you rely on, a local business that you call for repairs or for a tradie or someone like that, you rely on the fact that they may want a job again somewhere in the future and they are going to do their best to do the right thing. But with some of these schemes, obviously there is no need for them to do the right thing, because it is one hit. It is a sugar hit; they will get their energy certificates and they will move on. So I think it is a very good start to make sure that we get this fit and proper person test.

Clause 9 of the bill inserts a new section into the Victorian Energy Efficiency Target Act 2007 which will help to clean up the people and the body corporates who can apply to be an accredited person, like I was saying a moment ago. New section 10B will cover the fit and proper person test, hopefully ruling out any groups that have abused the system previously. There have been plenty of systems over the many years—you know, pink batts—and schemes we can talk about that started with good

intention and ended up in a disaster. I just think it is probably well overdue that this fit and proper person test comes into place to make sure that those who are rolling out these systems can be trusted. We hear of so many examples right across Victoria about these people. Section 10C is designed to cover who is competent and capable. The intention is to ensure that people providing the services have the necessary skills and qualifications. These reforms are a step in the right direction aimed at stopping the system being abused, as I said, and at ensuring that regional Victorians are able to benefit from honest work.

I have had one gentleman contact my office—I have had various people contact my office, but one gentleman last week talked about the lighting upgrade. He was approached about wanting to get his lights upgraded. He was not sure, and then they asked him to send through some photos for them, so he did. He sent through the photos, and then he never heard from them again. One can only assume, and I do not know for a fact, that that particular business could then go and claim the rebates, claim the certificates and never have done the work in the first place.

To me it sounds like it was not a difficult threshold, it was not a high threshold. This is where people started to lose faith in the system. Of course bad news travels faster than good news. As people started to talk about this system all of a sudden our phones went mad with the amount of people ringing up saying, 'I've just had someone call me about a fridge or call me about a light system upgrade; is it a scam or is it a genuine provider?'. For the benefit of both local MPs and those who are charged with trying to oversee some of these situations, it gives us the opportunity to know who is a scam and who is genuine, and we can provide support for these people. As all the MPs know in here, you have got to be very careful about giving advice to people when they ring about someone who might be a scammer. We need to be careful to cover our back and ensure that we are not giving them the wrong information. As I said, it is providers like that that give a bad name to the legitimate accredited person. They have got every intention of doing the right thing by the customer, but it does make the customer very sceptical. I also note that because many of these providers are only set up to roll out the energy upgrades, as I said before, they do not seem to have the same concern about follow-up work that might be coming into the future, because it is the one-off sugar hit where they will get their certificates and they will move on.

The rest of part 2 of this bill outlines other general amendments to tidy up and implement new requirements for those seeking accreditation, including the disclosure of any adverse information on a provider's application; again a good step forward to make sure that those people applying for accreditation have got a reputation that is suitable for this. This new test and additional amendments will hopefully see those who are exploiting the system purged and prevent similar circumstances from happening again. There will always be dodgy operators around somewhere, but this is a significant step forward to try and assist that.

Part 3 inserts section 7A, which will see the Essential Services Commission (ESC) publish and maintain a record of the holding, transfer and surrender of all certificates. Again, transparency is what we have been looking for for some time, and this is a step towards greater transparency and accountability for this system. Clauses 23 and 24 are specifically about restricting the transfer of certificates from any person to a person who holds a Victorian energy efficiency target (VEET) scheme registry account. This limits the ability of holders to transfer certificates to private individuals or other companies who are not in the scheme and further exploit and rort the price of the carbon credits, so hopefully that will solve that problem. The rest of this part of the bill is dedicated towards greater transparency and other amendments, including penalties for those found in breach of the changes rather than a slap on the wrist with a wet lettuce. I know for a fact that some of these providers are wanting to exit the industry because they are sick and tired of the dodgy providers that make life difficult for them. It seems like the ones doing the right thing are the ones continuing to get audited, and the ones that are dodgy just seem to slip through the cracks.

Part 4 extends the VEET scheme and its targets by one year from January 2030 to January 2031, and clause 35 inserts into the VEET act new sections 14G and 14H, which give the ESC the power to

implement a code of conduct for providers and also outline the penalties for non-compliance. This is crucial to ensuring that these providers are held to account for their actions or omissions and ensuring that they are held to the same standard that companies and businesses anywhere else in our communities are held to. As I said, some, because they have got a shopfront in a local town or a local suburb, need to be accountable. The ones who you call up on the phone, do a deal and move on, that makes it much easier for them to avoid the scrutiny that a normal business on your corner faces.

These governance provisions should have been implemented a long time ago. We know that, and it took all these fridges getting delivered at the end of the financial year to expose the shortcomings of this scheme. Although we are genuinely trying to make sure that we can reduce our carbon footprint, which is what everybody wants to do, it is just sad that it took so long for this to happen. Let us hope that these recommendations and these changes are implemented very quickly. We look to see that these schemes then get managed in a better system to make sure that the dodgy operators are, as I said, purged from the industry, because there are many operators out there who are genuine, good operators who can make sure that these certificates go through and we can reduce our carbon footprint. That being said, these changes are long overdue, and it is well time to see them brought before this place.

Ms ADDISON (Wendouree) (11:15): I am very pleased to rise in support of the Victorian Energy Efficiency Target Amendment Bill 2022, which will further reinforce and improve the highly successful Victorian energy upgrades (VEU) program. I am delighted to be following on from the member for Northcote, who made an outstanding contribution. I know that climate action is very important to the member for Northcote. She is such a strong voice on this, shows such great leadership and very much amplifies the voice of the residents of Northcote in her electorate. She is doing such an excellent job. Referring to the opposition lead speaker, the member for Caulfield, it was very, very difficult to be lectured by him on behalf of the Liberal-Nationals about action against climate change because we only really have to look at the federal election results to see what the community in Victoria think about the Liberal-Nationals approach to climate change. We are a party of action on this. We are true believers when it comes to the need for climate action. We will continue to work hard. We are fair dinkum about this, and that is something that I am very proud of.

I do want to acknowledge the incredible work over a very long time of our Minister for Energy and Minister for Environment and Climate Action. I notice one of her outstanding advisers, Dean Rizzetti, is in the chamber at the moment. The work that they are doing to make Victoria safer and cleaner and better is just extraordinary. I would also like to thank the Department of Environment, Land, Water and Planning for the work it does and for bringing this bill to the house, because this is making substantial change and I am very, very pleased to be a part of it.

It is so important when you are introducing energy efficiency targets and amending bills that you really do bring your stakeholders along with you. We want this to be something that is embraced by the sector, and that is why extensive stakeholder consultation has occurred with the Victorian energy upgrade providers, with businesses within the energy efficiency industry, with the consumer peak bodies and with our energy retailers. More than 80 organisations and individuals were engaged during the public consultation, and that is just really great work. That is what we want. This is legislation that has gone out to the community, gone out to the sector, gone out to the industries and gone out to businesses, and I note and welcome that there was broad stakeholder support for the options presented. Also, the consultation will not stop; it will continue as the bill is implemented. The department and the Essential Services Commission are already supporting our businesses and consumers with the implementation of the new VEU code of conduct. It is this Victorian energy upgrades program which is such an integral component of this government's commitment to energy efficiency. The work is vital. We have a collective responsibility to address our impact on the environment and a moral obligation to leave a better Victoria for generations to come.

As I said, the opposition are late to the party on this and have no credibility, and talk is cheap. You compare that to what we are doing, and I could not be prouder to be a member of a government which is leading the nation on setting targets to reduce emissions by 50 per cent by 2030, with plans to reach

net zero by 2050. We are taking action to achieve these targets, and we have runs on the board already. We have surpassed our initial aim of 25 per cent renewable energy by 2020, with 32 per cent renewable energy last year—an incredible reflection of what we are doing. The levers that we control we are pulling, and we are getting the results—32 per cent renewable energy last year.

We are also the only state in the country with offshore wind targets, complemented by investments of almost $40 million to support the establishment of three offshore wind farms. The member for Northcote said it, and it is worth repeating some of the incredible things that we are doing when we are investing in storing renewable energy—I am thrilled that the minister has just walked into the chamber—whether it be our big batteries, whether it be our neighbourhood batteries, whether it be batteries within homes, as well as supporting Victorian households, businesses and public buildings to install solar. We are helping low-income households to remove outdated heaters and replace them with highly efficient split systems. We have already published the gas substitution road map detailing our approach to substituting fossil gas. But there is more. We are implementing these energy efficiency policies and programs. We are creating jobs and driving down bills.

I am immensely proud to represent the Ballarat community in this place because the Ballarat community is taking action on the energy we use. I would like to acknowledge BREAZE, which is Ballarat Renewable Energy and Zero Emissions, an incredible local group of energetic, forward-thinking people who are organising more resilient and sustainable ways of living on our patch of the planet. This is not something new to Ballarat. BREAZE was formed back in 2006 when they held a rally, Walk Against Warming, at Lake Wendouree. Some people might remember back in 2006 that our beautiful Lake Wendouree, which is the heart of my electorate, dried up because of drought. It dried up because of climate change. So the people of Ballarat do not need to be convinced that climate change is real; they have lived it. They have seen the impact of drought and they want to take action, and BREAZE is one of the great organisations in Ballarat. As a government we are partnering with them to deliver solar panels at a number of Ballarat not-for-profit organisations, community sport venues and social housing.

When we invest in these projects and we partner with organisations, not-for-profit organisations like BREAZE, it means that local jobs are created and local businesses are supported. It is such a great thing to do because our local organisations can then instead of paying energy bills invest in more services for the community. The Ballarat table tennis centre is now not paying the same energy bills. They can buy more table tennis tables. They can do more. They can put back more into membership, which is a great outcome. So it is a really, really good outcome what we are doing, and we are saving the planet—just extraordinary.

The people of Ballarat get it. They have enthusiastically implemented energy-saving practices, with 3500 solar home installations completed as well as 65 businesses taking advantage of the Solar for Business program launched last year. I am very proud that we have the sixth-highest uptake of any Victorian LGA, and I hope to see us climb that leaderboard even more. Fifty-six zero-emission vehicle subsidies have been paid to Ballarat residents as well, while 280 local households have had an application approved under this government's home heating and cooling upgrade program. Last, but certainly not least, we have seen a huge uptake recently of the bill-busting $250 power saving bonus, with many applicants going on to check and improve their power plans through the Victorian Energy Compare website.

This bill before us today will assist Victorian households and businesses seeking to reduce their energy usage by strengthening the flagship Victorian energy upgrades program. The VEU makes available to homes and businesses a huge variety of discounted energy-efficient upgrades and products. It has supported lighting upgrades, low-flow shower roses and weather sealing—weather sealing in Ballarat is so important; we have so many heritage homes, homes built of weatherboard and stuff like that, so weather sealing is a really important issue for my community—energy monitoring displays, high-efficiency devices and much more. The benefits are manifold through savings on power bills—$120 annually on average for participating households and a whopping $3700 annually for the average

participating business—as well as through driving down energy demand and therefore costs for all. It supports 2200 jobs statewide and has reduced emissions by a massive 73 million tonnes since 2009.

I note with particular interest that in the City of Ballarat LGA 38 000 households and 2800 businesses have participated in this program to date. Especially pertinent for Ballarat at this time of year is that 8000 local homes have combated cold draughts by installing weather sealing with the support of the VEU. This is an excellent amendment; I recommend it to the house. This is about us showing our colours. We support action on climate change.

Dr READ (Brunswick) (11:25): Today I speak on the Victorian Energy Efficiency Target Amendment Bill 2022. This bill will change the legislation around the Victorian energy upgrades program, granting more regulatory powers to the Essential Services Commission in order to better protect consumers and, importantly, to prevent non-compliance by providers. We know that improving energy efficiency across Victoria is vital to reducing our emissions, vital to getting off coal and gas and vital to addressing climate change. The Greens are strong advocates for improved energy efficiency. Anything that saves money and makes our homes less like glorified tents is a positive, and that is without even getting to the climate benefits.

While the Greens will be supporting the bill, I want to raise some of the opportunities for Victoria to do more and go further and faster in our efforts to improve energy efficiency. First, we are concerned that currently Victoria's energy upgrades program is actively supporting and providing incentives for homes and businesses to install new gas appliances. This is deeply troubling and needs to be addressed urgently. I can see that Labor recognises this problem and has committed to changes as part of the gas substitution road map. But instead of making the change as soon as possible, in this term of government, Labor appears to be delaying this change for possibly years. In the meantime—

A member interjected.

Dr READ: I just heard 'in March', which is splendid. How many more homes will we be subsidising to lock themselves in to relying on expensive and polluting fossil gas appliances? How can this government justify subsidising the purchase of fossil fuel-powered heaters in 2022? The Labor government have known about this issue and reassured the Greens and stakeholders that they will fix it. I have just heard from the minister that that will be in March. It could be possibly done tomorrow.

Fossil gas makes up 17 per cent of Victoria's climate pollution, and that is why the Greens are pushing to get 1 million homes off gas in the next six years. Not only would this tackle climate change, it would reduce household energy costs and help protect the health of Victorians. Using gas in our homes accounts for up to 12 per cent of childhood asthma, a significant price to pay for a fossil fuel that is both expensive and damaging to the environment. It is simply not worth it.

Another concern the Greens have about the energy upgrades scheme is that it still does not include insulation. Retrofitting homes so that they are properly insulated is one of the best and cheapest ways to make them warm and to improve energy efficiency, yet it continues to be excluded, presumably due to concerns about safety. I understand the hesitancy after what happened with the federal pink batts scheme, but that was over a decade ago. We should learn from policy that goes wrong, but there is no need to throw the baby out with the bathwater and abandon good and necessary policy out of atavistic fear. I have heard from a number of stakeholders about this bill and the energy upgrades scheme, and they all agree that we urgently need to get insulation included. The Greens have been pushing Labor on this for some years, and it was part of our election platform in 2018. The need is now more urgent than it was then. Energy costs are skyrocketing, and the climate crisis getting on, so for goodness sake, can we please just get insulation recognised in the energy upgrades program?

We have also heard from providers, consumers and industry experts that there is mixed comprehension and understanding of how the energy upgrades program works. For many consumers in particular who lack the working knowledge of the legislation and industry under which this program is run, the program is complex. I know that this government is keen to promote this program, so in the interests

of acting on climate change I urge it to simplify the program wherever possible so that we can see increased uptake. We have also heard from stakeholders that for some vital but expensive energy efficiency upgrades the certificates allocated are not enough of an incentive for consumers. I urge the government to look at topping these up with further financial incentives to consumers to ensure Victoria goes further and faster in making our homes more energy efficient.

Lastly, having consulted again with stakeholders, we have heard from several sources that increased resourcing within the Department of Environment, Land, Water and Planning could improve the performance of this program. If the government worked to increase capacity within the relevant teams, this would maximise uptake of the program. It would also give these teams the capacity to quickly address any issues that may arise, like we saw recently with unwanted fridges being delivered.

Anything we can do to reduce demand for gas, particularly household demand, will save us from spending money on importing more gas in the coming years. Things like building a gas import terminal at Corio Bay should be unnecessary, because there is so much scope for demand reduction that we should be able to save consumers a lot on household gas bills with programs like this and with further direct incentives rather than spending money importing gas. The problem with importing gas is that increasingly it will be fracked gas from places like the Beetaloo Basin, and we know that gas obtained from fracking is about as polluting as coal because of the increased fugitive emissions and because methane is a far more potent greenhouse gas than CO_2. So programs like this are worth fixing where they are broken, strengthening where they are not being taken up sufficiently, simplifying so that consumers can understand them and complementing with energy efficiency so that they really do bring down emissions, reduce demand for gas and reduce the need to import more of it.

I will finish by urging the government to build on what is already good with this scheme, fix the gaps and remove the perverse incentives that are locking in gas. Doing so would be a win for climate and for householders who are confronting rising gas bills.

Mr J BULL (Sunbury) (11:32): I am delighted this morning to have the opportunity to contribute to debate on the Victorian Energy Efficiency Target Amendment Bill 2022. We on this side of the house are a progressive government, a reforming government and a government that tackles the big challenges that our community and our society face head-on. We know and we understand that when it comes to energy, our environment and climate change, to simply do nothing in this space has never been an option. It is why at every chance and every opportunity the Andrews Labor government has invested in renewable energy, in new technologies and in the very best of science for the betterment of the planet. Of course, as members have spoken about this morning and as members know, that investment needs to be continuous, it needs to be consistent and it needs to be sustained as new technologies are developed and we chart the course of science to continue to work with the very best of technologies as we go forward.

I do not plan in my contribution to spend too much time on those opposite, but what we have heard this morning from the shadow minister is a call—a call that has not been common in my time in this place and I am sure for others as well—to take the politics out of this debate. Now, what was extraordinary about that contribution was that not only do we on this side of the house wholeheartedly agree with that but what unfortunately we have seen for the best part of a decade from the former Liberal-National coalition government has been an entirely political debate. What this country has needed, not just for that decade but for decades before, is an environmental policy, an energy policy, that meets the needs of consumers to drive down the price of energy but of course is able to tackle the very significant and very concerning impacts of climate change.

Now, what we saw during the most recent federal election was a change in that. I know that the member for Northcote spoke extremely well in this space, but what we have been able to do on this side of the house since the very first time we came to office and had the opportunity to sit on the Treasury benches is develop a consistent approach to our energy policy and our environment and deliver the biggest investments in this space anywhere in the nation. That is something I know as a local member I am

extremely proud of, and it is something I know that many members on this side of the house are incredibly proud of as well—clear, consistent, constructive policy that works hard in this space.

We know that our state is proud to be leading the country in delivering climate action and transitioning to renewable energy. We know that we have set nation-leading targets to reduce emissions by 50 per cent by 2030 and have delivered the largest annual increase in renewable generation of any state ever. We have heard from other members of the house we are of course the home of the Big Battery, the largest big battery in the Southern Hemisphere, and a number of other batteries which are spread across our state. We know and we have heard about the investment in offshore wind targets. We are leading the country, bringing online 2 gigawatts of offshore wind by 2032, 4 gigawatts by 2035 and 9 gigawatts by 2040. We know that that support for new technologies creates thousands of jobs while cutting power bills and slashing emissions. These are tangible, practical and important steps that are taken.

This piece of legislation before the house complements the whole range of those investments that this government has been very proud to not just bring through the house but bring through local communities right across the state. Of course we know that we need to continually invest in this space, but we know the excitement, the enthusiasm and the interest from local communities when we move around our local communities as local members. There is significant interest from Victorians, from the Victorian community, about solar energy and about what we can do with new technologies. This is something that I know that many members have spoken about in the house before, and it is something we will continue to make sure that in this space we are bringing forward the best of policies.

We know that the Victorian energy upgrade program is our flagship energy efficiency program. It has delivered incredible outcomes, helping more than 2 million households and businesses to cut their bills, saving the average household $120 and the average business $3700 per year. It supports more than 2200 jobs across the state, both in metropolitan and in regional Victoria. It has also had a huge impact on carbon emissions, reducing those emissions by over 73 million tonnes since 2009. That is the equivalent of taking 22 million cars off the road for a year. The program is continuing to grow. There are ambitious targets to reduce emissions through the program. As a result, we are strengthening consumer protections for the program, which is the fundamental purpose of this bill before the house, by ensuring that the Essential Services Commission can enforce the new code of conduct regulating all businesses working in the program, including subcontractors, and giving them the power to take strong action when it comes to compliance. We know of course that this program has been incredibly important and delivered substantial benefits to Victorians. The program offers discounted products to help make homes and businesses more energy efficient—whether that is with, for example, in-home display units, lighting, showerheads, heating and cooling or hot-water systems—and I know that other members have spoken at length about those areas. In fact every household is estimated to save $150 and every business to save $870 a year over the next 10 years, thanks to the VEU.

We know with technologies like this that it is about the investments, the initiatives and the protections that can be put in place, not just through this piece of legislation but through that whole raft of investments. Whether it be within state budgets or investments that come directly to local communities, we know that these investments are incredibly important for people's bills. I did hear other members mention this before, but the program commenced of course in 2009 and has supported more than 2 million residential lighting upgrades and installed more than 530 low-flow showers; more than 398 000 homes have been weather sealed to reduce draught; 365 000 homes have an in-home display unit to better monitor their energy use; 120 000 businesses have installed energy-efficient lighting and a range of high-efficiency appliances, including 23 000 high-efficiency televisions and 900 high-efficiency pool pumps; and more than 230 businesses have been approved to undertake some of those smaller upgrades that are needed as the program rolls out.

We know—and I will conclude my remarks by tying them back to where we started—this is a government that will continue to invest and make sure that we lean into tackling those significant challenges, those big challenges that we know are presented through climate change, but also the challenge of the cost of living within local communities, whether that be in your community, Acting

Speaker Connolly, or in mine or in any community right across the state. Whether it is for the city or the suburbs or for the wonderful people in rural and regional Victoria, making sure we are providing those supports is critically important. We know of course that there are a range of initiatives that this government has brought before the house, both within budgets and outside of budgetary cycles—whether that be the power saving bonus or whether that be the investment in those renewable technologies for the home, for business or for large-scale manufacturing and industry.

We on this side of the house will continue to invest in clean, renewable energy that drives down energy prices for consumers—an energy that is good for the planet. The Andrews Labor government is committed to this. We are not just committed in the sense of words, we are committed in the sense of investment, and for each and every Victorian that is what matters. We are making sure that we are supporting them to deal with the challenges that household power bills present but of course also working with science and working with industry to drive down the cost of energy and invest in those renewable technologies. I am proud to commend the bill to the house.

Mr BRAYNE (Nepean) (11:42): I also rise today to speak on the Victorian Energy Efficiency Target Amendment Bill 2022. Obviously this is a hugely important bill for everyone in the Parliament and of course for many of the people on the Mornington Peninsula, who frequently rank the environment and our future energy needs and demands as some of their most important issues. In fact I remember speaking to a local who listed buses as their most important issue on the Mornington Peninsula. I spoke to her about the huge improvements we have made to buses on the Mornington Peninsula, and after having this conversation, despite her seeming quite satisfied, she still responded, 'But when are they going to be completely electric?'. This issue is also a hugely important one for me. I strongly believe that a key part of our energy solution must be the efficiency of our devices and our modes of transport coupled with the introduction of newer technologies such as solar panels—newer, although they have been around since the 1970s, of course. It is important to note the efficiency of these technologies has also ramped up over time. The efficiency of solar panels is vastly better now than in the 1970s, as you can imagine.

This Victorian government is committed to taking strong climate action and transitioning to renewable energy. It is this government that has set nation-leading targets to reduce emissions by 50 per cent by 2030 and has delivered the largest annual increase in renewable energy generation of any state. Whether it is supporting new energy technologies, being home to the largest big battery in the Southern Hemisphere, or having the most ambitious offshore wind targets in the country, Victoria is leading the way on climate action. Storage and capacity—these are critical. Renewable energy is the cheapest form of energy. It is the only form of energy that big businesses, shareholders and investors are actually putting their money in. Do not take a politician's word for it, take their word for it.

I also note the member for Caulfield's comments and his suggestion that we should accept a unity ticket on this issue of renewable energy and the environment. Well, I would genuinely love to have a unity ticket on this issue, but I just do not believe it. I just do not believe the Liberals now care about this issue. Look at the last election in 2018. The Liberal's election promise was a pledge to scrap the emissions reduction target and the renewable energy target. What changed? They lost an election. Is that the only change that has taken place? I do not believe a genuine change of heart has happened within the Liberal Party when it comes to this issue. When I do believe that, I will be happy to declare there is a unity ticket.

In addition, the Victorian energy upgrades program is this government's flagship energy efficiency program, which is helping Victorians to reduce the amount of energy they use every day. The program offers discounted products to help make homes and businesses more energy efficient. Whether it is home display units, lighting, showerheads, heating and cooling or hot water systems, the VEU is helping Victorians to lower their carbon footprint, and Victorians and Mornington Peninsula folks have shown that they are keen to do so. More than 2 million households and businesses have participated in the program, not only becoming more energy efficient but saving money on their power bills. For example, the average household has saved $120 and the average business $3700 each year.

What is more, every single Victorian household and business benefits from this program regardless of whether they take part in the program, because the VEU reduces the amount of energy infrastructure we need to build in the first place. In fact every household is estimated to save $150 with these measures over the next 10 years thanks to this flagship program.

The VEU is also having a significant impact on our carbon emissions, reducing emissions by 73 million tons since 2009. That is the equivalent of taking 22 million cars off the road for a year. And thanks to this Victorian government's ambitious targets that were set for the program, between 2022 and 2025 the VEU will deliver an additional 28 million tons of emissions reductions and drive a further $1.3 billion of investment in energy efficiency.

These are real, tangible savings that are helping real people, all thanks to a program that is having a real impact in reducing our state's emissions. You only need to look at the numbers to see how successful this program has been. Since 2009 the VEU has supported more than 2 million residential lighting upgrades and more than 530 000 low-flow shower roses. More than 398 000 homes have been weather sealed to reduce draughts. What is more, 365 000 homes in Victoria now have an in-home display unit to better monitor their energy use; almost 120 000 businesses have installed energy-efficient lighting; a range of high-efficiency appliances have been installed, including 23 000 high-efficiency televisions and nearly 900 high-efficiency pool pumps; and more than 230 businesses have been approved to undertake bespoke upgrades. Across our state the VEU is delivering real upgrades for households, and Victorians have done their part in helping us all become energy efficient.

I know that across the Mornington Peninsula more than 62 000 households and 3000 businesses have participated since the program began. That is more than 157 000 energy efficiency upgrades on the Mornington Peninsula alone. This means that more than 8000 homes on the peninsula have fewer cold draughts this winter due to installing weather sealing with support from the program. More than 12 000 homes installed low-flow showerheads through the program, saving them money on hot water; more than 8000 homes have installed in-home displays to help them better track and manage their energy use; and more than 400 homes on the Mornington Peninsula installed energy-efficient heating.

The Mornington Peninsula is home to many environmentally conscious people who are passionate about reducing their carbon footprint and protecting their environment. That is why they came together to oppose the AGL gas pipeline in Crib Point. Their efforts resulted in the project being rejected by this government. That is why they came together, again, to oppose the proposed quarry at Arthurs Seat that would have had a devastating effect on our natural environment. Time after time people across the Mornington Peninsula have demonstrated their commitment to the environment. I am proud of the number of locals who have participated in this program.

The VEU has delivered incredible outcomes, and the program has continued to grow, with the program now shifting from supporting straightforward upgrades to supporting a wide range of technologies, such as reverse-cycle air conditioners, energy monitoring tools and heat pumps. As such, as is the case with any successful program, it is vital the compliance and enforcement framework keeps pace with these exciting changes. That is why this government is strengthening protections for this program with this bill, helping to ensure that the Essential Services Commission (ESC) has the powers they need to manage the VEU and protect its consumers.

Some of the specifics of the legislation: this bill will give the ESC the power to effectively administer the scheme, monitor compliance of companies working in the program and pursue enforcement where necessary to protect Victorian consumers and ensure the program meets its goals. The bill will also ensure that the accredited providers are appropriately qualified through requirements to demonstrate they are a fit and proper person and a competent and capable person. Providers will also need to annually renew their accreditation and undertake independent assurance audits. The ESC will also be able to reject applications to renew an accreditation, as well as revoke, suspend or impose conditions on accreditations. Protecting consumers who are doing their bit to reduce their carbon footprint is so important. That is why this bill will strengthen consumer protections by introducing penalties for all

businesses providing services under the program. This includes subcontracted telemarketers or installers rather than just accredited providers.

The combination of these changes will strengthen the ESC's powers to enforce a new code of conduct that has been created for businesses working in the program. This code of conduct sets out the minimum standards that consumers should expect from people and businesses delivering products and services through the program and is designed to promote good conduct and specific consumer protections. The code includes protections for Victorians when it comes to marketing and sales, contracts, communication, installation, after-sales follow-up and customer dispute resolution. The code also applies to everyone involved in delivering upgrades under the VEU program, including accredited persons and their contractors, independent or subcontracted; installers; and any other service provider involved in delivering upgrades. The code covers all points of a consumer's Victorian energy upgrades journey, including marketing lead generation, sales contracting, installation and after-sales processes and dispute resolution. The ESC is already using the code of conduct and educating VEU companies on the new expectations; however, current legislation limits their capacity to enforce the code. As such this legislation will allow the government to fully implement the code of conduct.

Ensuring that Victorians are protected while participating in this program is so important and will give households and businesses peace of mind that they will be protected when doing their bit to reduce emissions. Overall the bill will empower the ESC to take strong action to ensure compliance by introducing new offences, enforcement tools and greater flexibility. The ESC's enhanced powers will also be balanced by greater accountability, ensuring that consumers and stakeholders can be confident this important program is operated by a strong regulator. This government has led the way in taking climate action and reducing our emissions. Whether it is our nation-leading targets to reduce emissions or the Victorian energy offer program that has helped millions of Victorians to reduce their carbon footprint and save money on their power bills, we are committed to transition to renewable energy. Again, it is the cheapest form of energy. This bill is another step towards climate action and supporting Victorians to reduce their carbon footprints. All governments have a responsibility not only to tackle climate change themselves but to help households and businesses do their part. That is what this bill does, all while ensuring that Victorians are protected for doing the right thing. I am proud to support this legislation.

Ms CRUGNALE (Bass) (11:52): I rise to speak on the Victorian Energy Efficiency Target Amendment Bill 2022. This important bill comes at a time really when our community is demanding and is always deserving of transparency in how programs like the Victorian energy upgrades are rolled out and how they are regulated and how that regulation is applied. Before I begin on my contribution, I just want to mention that the member for Brunswick claimed it would take years and years and years to remove domestic gas from the VEU through our gas substitution road map. To correct the member here on the record and present the facts, the truth of it is the actual real date is March next year—and the member for Brunswick would know that. This is a key part of our ambitious gas substitution road map, and we are the only state to have done this vital work, and we are proud of the jobs it will create, the lower bills it will deliver and the way it will slash our emissions.

A member: Hear, hear!

Ms CRUGNALE: That's right—hear, hear.

In my electorate office in Wonthaggi we have helped close to 1000 constituents apply for the $250 power saving bonus, including around 300—and rising quickly—just in this third round. This fantastic initiative has been a great help to my local community, and the discounts and rebates on energy saving and renewable energy products through the VEU program and Solar Homes program have also been a great help to my constituents. In fact one of my constituents who did the power saving bonus application and switched—I was quite taken aback really—will be saving $1500 a year.

Going into a little bit of detail, the VEU program currently provides a range of low- and no-cost energy saving options, such as low-flow showerheads, which we have already heard about, and draught sealing and lighting, and also provides subsidies for replacing major appliances such as hot-water systems and heating. The VEU is regulated by the Essential Services Commission (ESC), which is an independent regulator that promotes the long-term interests of Victorian consumers with respect to the price, quality and reliability of essential services, including the electricity and gas, water, local government and transport sectors. Their role in relation to the VEU program is to oversee compliance and performance reporting by energy retailers and accredited providers, thus bringing integrity and trust to the program in the eyes of the community.

My electorate of Bass covers three council areas—the Bass Coast shire, Cardinia council and the City of Casey—and the VEU program has proven to be incredibly popular in my electorate and has saved households and businesses a significant amount in the up-front costs of installation and ongoing annual savings on energy bills, given that the reduced demand lowers energy prices for Victorian energy consumers. In Bass Coast LGA alone more than 18 000 households and 1000 businesses have participated since the program began back in 2009. That is more than 48 000 energy efficiency upgrades. That is 1500 homes in the Bass Coast that will have fewer cold draughts this winter due to installing weather sealing with support from the program. That is 5500 homes that have installed low-flow showerheads through the program, saving them money on hot water.

In Cardinia more than 29 000 households and 1800 businesses have participated, and that is more than 79 000 energy-efficient upgrades. That is 4000 homes that are warmer, 6000 homes installing low-flow showerheads and more than 8000 homes installing in-home displays to help them better track and manage their energy use. Casey does have a big population, but it has got the highest uptake of this program in the state, with more than 94 000 households and 4000 businesses having participated since the program began. That is more than 320 000 energy upgrades, with more than 29 000 homes having again fewer cold draughts, more than 29 000 installing water-saving devices and more than 400 installing energy-efficient heating. They are also top of the pops with the Solar Homes program.

I also want to mention that we did announce a target to halve Victoria's emissions by 2030 as part of our climate change strategy. Through the strategy we have a set of pledges to cut emissions across the Victorian economy, with plans covering areas such as energy, transport, agriculture, land use and waste. In the previous budget we announced $1.6 billion for clean energy, the largest investment in clean energy of any state ever. We have got an amazing minister who is dedicated to spearheading a climate change revolution literally across the grid, from the power saving bonus to Solar Homes to community energy hubs, neighbourhood batteries and big batteries and right through to offshore wind. Obviously there is the Energy Innovation Fund—we kickstarted three major offshore wind projects from Star of the South, Macquarie Group and Flotation Energy, all right off the South Gippsland and Bass Coast coastline. That funding to the tune of $40 million across the three has the potential to create 5600 jobs, bring in more than $18 billion in new investment and power around 3.6 million homes. We do not just kind of talk about stuff, we get on. We are very active in this space and are literally leading the nation. What is important with all these projects and programs is the opportunity to skill up a workforce, especially for our young people, and to reskill the existing workforce; the supply chain benefits; the creation of a new industry sector; and the potential gigawatts of reliable, renewable energy to power our homes and industries and be that clean energy capital of Australia. It is the clean energy revolution, literally, as I said, house by house, from community centre to football clubrooms and from big-scale solar farms right out to offshore wind.

I am really proud of my local community, who have embraced everything 'clean energy' with open arms. It is now our job as a government to ensure the trust and integrity of the program is unshakeable. This bill makes amendments to the Victorian Energy Efficiency Target Act 2007 to improve consumer protections and the operation of the Victorian energy upgrades program. Across 2019–20 more than 440 000 households and 23 000 businesses benefited from this program. It is noted that over this period the Essential Services Commission received 631 complaints from consumers on a range of

matters. Although this is only a small percentage of the overall program participants, marketing-related complaints have been growing more broadly across industries, and consumers were often unable to resolve their concerns through avenues available at the time. In response to this the VEU code of conduct was introduced just recently, on 1 July 2022. This code of conduct sets out minimum standards consumers should expect across their journey with the VEU program, and this includes commonsense and general principles around good conduct and specific protections relating to marketing and sales, contracting and information provision, installation and after-sales processes and dispute resolution. This includes any activity relating to the promotion, sale or supply of the particular VEU program activity made in person, by telephone or online. The code requirements are consistent with similar industry codes, the bill and Australian consumer laws.

The bill before the house will strengthen the enforcement of this code of conduct and includes new offences for breaching the requirements outlined in the code of conduct, and these include the following: the manner and form in which prescribed activities may be promoted; engaging with electricity and gas consumers; the provision of information about prescribed activities, regulated actions and other matters; and dispute resolution processes in relation to a prescribed activity or regulated action. These reforms will ensure the benefits of the VEU program are delivered between 2022 and 2025, and this includes $1.3 billion in energy bill savings, 28 million tonnes of avoided greenhouse gas emissions and incentives for the majority of households in Victoria to install energy-saving products and services.

Giving the ESC the ability to instil strong consumer protections is vital. Ensuring there is a culture of compliance is paramount in making sure all Victorian households and businesses can participate in the program. The VEU is Victoria's largest energy efficiency initiative, it is integral for our broader agenda for our clean and affordable energy system and we need to ensure that we can continue to deliver this for the community by ensuring its integrity and its benefit.

Ms KILKENNY (Carrum—Minister for Corrections, Minister for Youth Justice, Minister for Victim Support, Minister for Fishing and Boating) (12:02): I move:

That the debate be now adjourned.

Motion agreed to.

Ordered that debate be adjourned until later this day.

BUILDING, PLANNING AND HERITAGE LEGISLATION AMENDMENT (ADMINISTRATION AND OTHER MATTERS) BILL 2022

Second reading

Debate resumed on motion of Mr WYNNE:

That this bill be now read a second time.

Government amendments circulated by Ms BLANDTHORN under standing orders.

Mr R SMITH (Warrandyte) (12:04): I rise to speak on the Building, Planning and Heritage Legislation Amendment (Administration and Other Matters) Bill 2022, and at the outset can I once again thank the minister's staff for organising a very good briefing—thank you to Tina, and could I give also a special shout-out to Nicole, who is heading off to better things, or brighter things, however she would like to put it. As always, staff have been very helpful and courteous through this process, and again I want to show my appreciation for that.

This bill before the house comes at an interesting time. It gives me an opportunity to reflect on the last few weeks during the winter break when the Minister for Planning was appointed and the circumstances that have come about as a result of that. I do not seek to be gratuitously partisan in these comments but rather to reflect what has been relayed to me by community groups, by developers and by the sector more broadly and to reflect on some of the issues that have been raised in various parts

of the media. The issue arises against the backdrop of the Independent Broad-based Anti-corruption Commission releasing the report of the Operation Watts investigation, which broadly found that the Labor Party for many decades has been mired in corruption and issues of impropriety. The commissioner reported on 3AW shortly after the release of the report that the Premier was up to his neck in those things. Against that backdrop it is concerning that a minister who has been appointed to the planning portfolio is and has been shown to be so tightly conflicted with regard to her relationship with a director of Hawker Britton, her brother John-Paul Blandthorn.

Ms Hutchins: On a point of order, Deputy Speaker, I think the member is straying from the bill. Perhaps he might want to stick to the amendments.

Mr R SMITH: On the point of order, the bill goes to pretty well every single aspect of the planning minister's portfolio. Indeed the issues that I am raising now go directly to the reason why the opposition have taken the position they have on this bill.

The DEPUTY SPEAKER: Member for Warrandyte, at this point I caution you to remain relevant to the bill before the house. You may continue, but please remain relevant to the bill, as I have stated.

Mr R SMITH: Shortly after the media raised these issues of concern, Mr John-Paul Blandthorn issued a letter from Hawker Britton basically explaining that going forward—

Ms Hutchins: It's still not related to the bill.

Mr R SMITH: The bill is about planning. This is about the planning minister. This is why the opposition are taking the position they are on this bill. Is that okay, Deputy Speaker?

The DEPUTY SPEAKER: Member for Warrandyte, continue.

Mr R SMITH: Thank you. The letter from Mr John-Paul Blandthorn basically proposed to the government that any time Mr John-Paul Blandthorn—the letter was written by him, bizarrely speaking in the third person—met with his sister he would make sure that nothing was spoken about in relation to clients of Hawker Britton and if they were going to talk about portfolio responsibilities, then a planning bureaucrat would be there. That is a ridiculous proposition, because quite frankly it is impossible to police. So there are significant concerns—

Ms Hutchins: On a point of order, Deputy Speaker, I believe that the member opposite is continuing to stray from the details of the bill. He has not yet mentioned one section of the bill or any of the amendments that are being proposed in the bill.

The DEPUTY SPEAKER: Member for Warrandyte, I have cautioned you. I know it is a wideranging debate and contribution, but I will just repeat: please continue to speak in relation to the bill before the house.

Mr R SMITH: Once again, the reasons why the opposition is choosing to not support this bill and in fact to oppose this bill directly go to the matters I am canvassing here in the house. It is impossible for me to accurately define why the opposition is taking this position if I cannot canvass issues that have led to the decision that the opposition has made in this regard. The issue is that the minister is hopelessly conflicted, and the government agrees with that view, because the government has put in provisions to address that conflict. We are in agreement, the government and I, that the minister is hopelessly conflicted on a number of issues. What we do not have agreement on is whether the processes the government have put in place by which they hope to alleviate the conflict are adequate. They go directly to the minister's ability to fulfil the provisions that are outlined in the bill.

Therefore the opposition is choosing to oppose this bill for those reasons, and I will go further. That the government's processes put in place a replacement planning minister who is not allowed to speak to any of the minister's direct ministerial staff or to the departmental staff in making decisions goes directly to many of the provisions of the bill and their implementation because of the conflicts that are

involved. The conflicts go to the client list of Hawker Britton, which has over 20 clients that are related to development, construction, financing—

Ms Hutchins: Is this your speech or a point of order?

Mr R SMITH: I'm not sure I have to answer to you.

The DEPUTY SPEAKER: Just continue through the Chair.

Mr R SMITH: Thank you. Very strange. There are so many projects that are directly related to the clients of Hawker Britton for it to be just impossible for the minister to discharge her duties. I mean, you cannot be a planning minister and not be able to talk about issues like the West Gate Tunnel Project. You cannot be the planning minister and implement the provisions of the bill when clients such as AustralianSuper have a project that they are putting forward at the Kingswood golf course, where the community is significantly concerned about the ramifications of that particular development. You cannot have a minister who can implement the provisions of the bill when there is this blatant conflict. And if those opposite cannot see the conflict or the paucity of the provisions that are put in place to deal with it, then they just do not get it. If you think that there is a conflict between the minister and the lobbyist but you put in a replacement minister and say that they do not have a conflict between planning decisions and the environment portfolio, well, again you just do not get it.

It is said that success is 10 per cent formulation and 90 per cent implementation, and because many in the development, construction and building industries have raised with me their concerns, of course the opposition cannot support this bill, because the implementation of it is by a minister who is hopelessly conflicted and whose appointment has been tainted already by several news items. I mean, the issues have been canvassed widely in the media. It is a concern for so many in this sector that of course there are going to be so many problems with the minister implementing the provisions of this bill. So that is one of the reasons why the opposition is opposing this bill.

Now we can turn to the particulars of the bill. This bill has been introduced about 5 minutes before the election. It seems to be a grab bag of everything that the former minister wanted to get out of the way before the term finished, and the problem with this particular bill is that too many of the provisions are underpinned by regulations that have not been written yet and probably will not be written before the election. So it is again impossible to support this bill in any way when so many of the provisions just do not have the supporting regulations in place. We are not aware on this side of the house of how these particular provisions will be implemented or the detail that will be implemented around them, and that is a huge concern.

I am certainly not saying that there are many issues in the planning portfolio that should not be addressed. The most recent Auditor-General's report raised a number of issues in relation to the way the government has discharged duties around the planning portfolio, and I will quote from that report entitled *Managing Victoria's Planning System for Land Use and Development*. The Auditor-General concluded that the department, and by extension the government, have not been:

> … fully effective in their management and implementation of the planning system.
>
> … they have not prioritised or implemented review and reform recommendations in a timely way, if at all. The assessments—

that the department provides—

> … to inform decisions are not as comprehensive as required by the Act …

And:

> As a result, planning schemes remain overly complex. They are difficult to use and apply consistently to meet the intent of state planning objectives, and there is limited assurance that planning decisions deliver the net community benefit and sustainable outcomes that they should.
>
> Our examination—

the Auditor-General's examination—

> showed that planning schemes have mixed success in achieving the intent of state policy …

The Auditor-General went on. After eight years of administering the planning portfolio, the Auditor-General found that issues in planning included:

- vague and competing state planning policy objectives and strategies, with limited guidance for their implementation, which reduce the clarity of the planning system's direction in meeting state planning objectives
- a lack of specific guidance to address key planning challenges …
- an overly complex system of planning controls in local planning schemes—

and that the department's measurement frameworks were—

> unable measure whether the objectives of the Act or state planning policies are being achieved …

And there were also:

- lengthy delays in the processing of planning proposals, leading to set time frames not being met and unnecessary costs for applicants.

There is a whole report around all the issues relating to the planning portfolio, and of course there is this damning assessment across a range of issues the government seems to think only just now need addressing after eight years in government. So on multiple matters, as I said, there are a number of provisions that are yet to be supported by regulation, and because of those shaky, ill-defined provisions, the opposition will not be supporting this bill for those reasons as well.

If I can go to some issues directly relating to the bill, the issue of offences is raised in the bill—the amendments to sections 16 and 16B. These provisions create offences for carrying out building work without a building permit or carrying out work not in accordance with the act, the regulations or the building permit. The issue that has been raised with me by the sector is basically that these measures are too extreme, too hard on the industry, and that the indictable offence that is being proposed is too harsh. This government have a history of demanding things from others that they will not do themselves. I refer to a report in the *Age* of 27 July, which says:

> A leaked WorkSafe report handed to the Victorian Building Authority … last week found that the authority was placing its 40 building and plumbing inspectors at risk by demanding they finish at least three inspections a day and, in the case of plumbing inspectors, five a day.

The demand from government of others is high, and yet of the government themselves, according to this leaked WorkSafe Victoria report, the inspectors have reported that they:

> … feel pressured to not complete a thorough inspection … or avoid finding risk items in order to meet performance …

targets under tight time frames. Three employees reported they had been advised by team leaders to:

> … alter the inspection outcome—

that is, provide a risk rating of low risk—

> to reduce administrative obligations or had been discouraged from identifying non-compliance in order to complete work at a faster pace.

This practice puts lives at risk, so when the government are announcing indictable offences for not adhering to the legislation, they should look in their own backyard and understand that pressuring people to finish work or downgrade risk assessments is extraordinarily dangerous. So the government needs to look in its own backyard before it starts telling other people how to act. But it is indeed a common trait of this government to demand standards of others that they will not and do not uphold themselves.

One of the other issues that has come to the fore as a result of this legislation are the changes to the Architects Registration Board of Victoria. Many architects have written to me, as well as the Australian Institute of Architects. The minister said in his second-reading speech:

> The Bill will amend the Architects Act to ensure appointment requirements for the ARBV … reflect best practice governance standards for a skills-based board.

And further he said that the changes will:

> … secure a board that has the knowledge, experience and expertise required by a professional regulator.

Despite those words, the provisions of the bill actually allow the exact opposite to occur. We have had statements from the Australian Institute of Architects and a range of other professional architects, who have expressed confusion and disbelief at a legislative approach which will have detrimental impacts on their profession. The legislation also puts the consumer at risk by removing the experienced oversight of professional standards and competency. The current Victorian Ombudsman's investigation into the politicisation of the public service has highlighted the Victorian Labor government's obsession with installing politically aligned figures at senior levels, and it is difficult to reach any other conclusion than that this is another way of doing exactly that. Those concerns again form part of the reason why the opposition is opposing this particular bill.

In relation to the introduction of the preoccupancy permit inspection for some buildings, the bill will require a municipal building surveyor to inspect or cause the inspection of a building or documentation and determine whether there are any items of non-compliance. Several councils have raised issues with me in that regard—about the impost on them with regard to limited resources and the added cost that that will bring. Banyule City Council, in a letter to the minister cc'd to me, said:

> … this particular model was not identified in the consultation carried out to date …

which means the government may have consulted with local government but they did not raise this issue in that consultation. Rather the government sprang it on them, and the council has huge concerns. Boroondara council cc'd me on a letter to the minister, which says:

> This reform … will have significant resource, cost and risk impacts on Council. It is considered unreasonable and unworkable to expect an MBS to identify non-compliance once a build is almost complete when previous documentation approval and mandatory inspections have been undertaken by a private building surveyor …

I also have correspondence from Colac Otway shire. Indeed many councils have contacted me, and I know have also contacted the minister, to raise concerns, particularly those councils in rural areas where having a surveyor who is able to do this work is not always possible. That is a very difficult issue and it is something the government will need to address, because putting those issues on councils is extremely problematic.

With regard to the state building surveyor's powers, the industry has raised concerns about the state building surveyor issuing binding determinations and has many questions about the usefulness of allowing such a delegation in relation to the state building surveyor being able to delegate its powers. They have concerns around the building monitor. They have concerns around, as I said, the extra inspections on buildings for local government. A whole range of issues have been raised, as I said, by architects, by local government and by the sector. I mean, everyone seems to have a problem with various aspects of this bill. When you put all these different issues together, when you have not consulted properly and when you do not have the regulations to back it up, it means that it is a very poorly drafted bill with little thought put into it. It certainly raises some significant issues for, as I said, a whole bunch of different people.

If I can just move on to a few issues that were raised with me again by the sector, issues around the register of building employees. There are some concerns around that, about what will be in that register. Will it be available to the public? What is the register actually for? There are, as I said, some significant concerns from the building sector. Speaking about the building sector, and again canvassing that the bill addresses a wide range of issues, we are currently going through a building crisis. I am not

sure the government knows this, but we have builders who are folding. These sorts of changes are coming at a time when they are experiencing difficulties in terms of getting builds done because of labour shortages and because of material costs. We have seen already the collapse of some builders, and the industry expects to see more. Instead of putting change and extra regulation on the sector, I do not know of any instance where either the Premier or the current planning minister have sat down with the building sector and had a conversation about where the building sector is going and the problems that are going to occur as a result. It is not just about people who may well be left without a job should these builders collapse; it is about the literally thousands of families who will find themselves on a half-completed building site. No other builder is going to take up the half-finished work of a builder that has collapsed—no-one is going to do it. I have canvassed all sorts of high-volume builders and independent builders. The chances that they are going to take that on are very, very slim.

Knowing that this issue is on the horizon and that there are going to be those thousands of families who have half-finished building sites—the industry is very clear those issues are going to come up—I do not know why the government is not addressing it. I do not know why the government is not sitting down with the sector and doing some early work to map a way out of this crisis. When these people start appearing on the news with half-completed foundations or frames that are not going any further, it will be on the government to explain why they did not get ahead of it. The government needs to get ahead of it. We need to understand how we can move through this crisis. The fact that the government is just sitting on its hands, not even alert to the fact that this crisis is about to overwhelm us, as I said, is quite an indictment of the government itself.

I also briefly want to talk about some aspects of the bill which we do support, and I have made some public statements in that regard. The introduction of green wedge management plans and the changes to the distinctive areas and landscape processes we do support. We think they are sensible. As I have said in this house before, green wedges are a Liberal legacy from the 1970s. We have been avid supporters and protectors of that legacy for the decades that have followed, and we will continue to be so. Had the government brought in those changes unencumbered by these other provisions, then they would have had enthusiastic support from the opposition. But unfortunately the mess that surrounds these particular provisions is again too great for us to support the bill in its entirety.

Just to sum up a little, I guess, the portfolio is replete with problems—it has been for eight years. You only have to get out and talk to the sector to understand that, whether you are talking to a developer, a builder, the end consumer or anyone who has tried to get a planning approval done in any sort of reasonable amount of time. We have had issues around cladding, and this bill seeks to again buck-pass some of the responsibilities there. There is the issue of orphaned permits, which no-one seems to want to take responsibility for. It has taken me nearly a year to assist just one person with an orphaned permit.

Heritage issues—I am having regular conversations with constituents out in Hawthorn, Kew and Malvern about heritage issues. As an aside, I guess, I am speaking to a group of heritage activists in Hawthorn. Their local member will not speak to them. The member for Hawthorn will not speak to these people. It is extraordinary. It is just extraordinary the member for Hawthorn will not speak to these people and has not done for the best part of a year. I said to them as I was sitting at a cafe, 'Why does the member for Warrandyte have to come across town to speak with you because your local member just refuses to?'. It is extraordinary.

A member interjected.

Mr R SMITH: I am happy to talk to them. It is unfortunate that the members opposite just will not. There has been a lack of consultation across a range of areas across Melbourne and indeed further afield. We only have to look at the new Union station and the Surrey Hills and Mont Albert level crossing removals. The government told them quite clearly—the member for Box Hill included—that there would be two stations. There is now going to be one. It is going to be just about 4.5 metres from residents' front doors. They have been asking for designs for so long. They have been asking for a decent design so they can understand what is actually going to happen. The government has really

been so disrespectful to them in offering them pictures—mere pictures. They are not even trying to hide that they are not real in terms of what is actually going to happen there: at the bottom of the pictures it says 'Dimensions are approximate and subject to change'. They have got a measure here of 5 metres which is completely different to this other measure of 5 metres. It is just so disrespectful to these people.

Again I say the member for Box Hill refuses to meet with these people and absolutely refuses to discuss these concerns. It is great that they do have an advocate, the Liberal candidate for Box Hill, Nicole Werner, who has been out with these people, advocating for these people and making sure their issues have been raised. But the state government refuses to answer the question: when will Beresford Street residents have access to their driveways, garages and on-street parking in front of their homes? You would not think it would be a state secret, but the government will not tell them when they can get into their own driveways. You would not believe it. Beresford Street has been closed since April 2022, and an end date for the closure has never been communicated—another example of secrecy. I mean, you do not want to tell people about the station opposite their homes, 4.5 metres from their front door. I have been there. I have been there because the member for Box Hill will not go there. I have been there and the candidate for Box Hill, Nicole Werner, has been there, and we have seen it. But the fact that the government will not even say to residents when they can get into their garages is just bizarre. I have never heard anything like it.

As I said before, over in Dingley Village the residents have been sitting on this issue regarding Kingswood golf course for so long now. They are stressed, they are concerned. Again, their local member will not speak to them about it, will not give them any direction and will not get the minister to come out and make a decision straightaway. And of course the minister now cannot make the decision because the proponent for that development is a client of Hawker Britton. So it is going to be passed to the Minister for Environment and Climate Action, who knows nothing about the issue, has never spoken to the residents and does not understand anything about it. The member for Keysborough actually has opposed this particular project in public statements and in writing, so if you want to get someone to assist the planning minister with her conflict, then maybe we should get someone who actually knows about it and actually represents that community. That might be a smarter thing to do, but of course that is not going to happen.

If I go across to Burwood, the Markham estate, for those who do not know, is a social housing project that has been started in that area. It has been a long-running issue for those residents there, who have no problem at all with social housing going there, but the manner in which the development is being done is just extraordinary. They just alerted me, members of the Ashburton community, about this particular site. The community is devastated that a manna gum has been killed by the irresponsible actions of the construction workers. So to add insult to injury, not only is the government's development working across the planning provisions and ignoring height restrictions and all those sorts of things that come to it—there is no screening, nothing of the sort—but now they have gone and killed a hundred-year-old tree. Of course they will probably go and plant a couple of saplings and say, 'Everything is done. That's fine'.

If you go across to the Cairnlea development over in the west, again residents have been particularly concerned that they have had no movement from the government in actually telling them what is going on and addressing their concerns. Cr Maria Kerr and I will be going out there shortly to continue the conversation that we have had with those residents. I have had many conversations with those residents. In every place across metropolitan Melbourne there are issues about a lack of consultation with the community. They keep telling us time and time again. It is not the opposition making this up; there are so many concerned communities that just cannot speak to their local member or are not getting any action from the government in relation to the concerns that they raise. All of those issues are really serious issues, because you cannot have a government that is spending most of its time trying to make things look as though they are legitimate without them actually being legitimate.

The government has no time to consult because it is too busy trying to explain why the Commissioner of the Independent Broad-based Anti-corruption Commission is saying that the party is mired in decades of corruption and impropriety. That is the important thing for this government. It is not about talking to community. It is not about understanding their concerns. It is not about addressing those concerns. It is not about Victorians anymore. It is about trying to explain away all of these issues—explaining away why the Premier has been to IBAC three times and trying to explain away why ministers are leaving left and right. It is just extraordinary. When the government starts thinking about itself in that way, it stops thinking about Victorians, and that is exactly what has happened with this government.

This bill is full of holes. There are regulations that underpin provisions that have not even been finished—or probably even started. There are provisions that have intent but not the defining words that are needed to give assurances to people about the meaning of those provisions. And we have got a minister who has become infamous in a very short space of time for all the wrong reasons. For all of these reasons we cannot support this bill; we flat out oppose it. Because of the conflict of interests that arises because the minister's position has been tainted we do not think that she can implement the provisions of the bill without that impropriety and that conflict being addressed properly. With that, we oppose this bill.

Ms HALFPENNY (Thomastown) (12:33): Thank you, Deputy Speaker, and congratulations on becoming Deputy Speaker.

I rise to make a contribution to the debate on the Building, Planning and Heritage Legislation Amendment (Administration and Other Matters) Bill 2022. This bill has a number of elements to it and makes changes to various and numerous acts. The overall purpose of the proposed legislation we are talking about today is to deliver priority reforms stemming from the stage 1 recommendations made by the expert panel leading the building system review together with government election commitments to strengthen legislative protection of Melbourne's green wedges, to streamline the process for endorsing a statement of planning policy and also to make some changes to the Heritage Act 2017.

I do not know what legislation the member for Warrandyte was speaking on, but I do not think he said the words 'consumer protection' in any of the 30 minutes he was talking. This bill is actually about providing protection to consumers because we do know—and there have been very recent experiences—that we get many complaints about building defects that have not been rectified on people's homes that are being built. We also have situations where developers do not fulfil their obligations, and of course, which this legislation is further addressing, the tragic situation that we have had of the combustible cladding that has been put on many buildings around Melbourne and beyond, such as on the Lacrosse and Neo200 apartments, which has actually resulted in fires. Luckily no-one was killed in those fires. Of course we can go further afield to the Grenfell Tower in London. That was a tragic situation where many people sadly lost their lives.

I will talk about two aspects of the legislation we are talking about today, which are around the building industry stuff and then the Heritage Act. I will be concentrating on those two aspects. I will just go through a little bit of the history. I guess another thing to note about the contribution made by the member for Warrandyte is there was not really any talk about the fact that these changes are the result of recommendations that came from an expert panel working on and looking into the industry. It is not legislation that just sort of came into someone's head, or the Minister for Planning's head, just popped in to become law. It comes after very considered and deliberated-on views and recommendations of a panel made up of experts to provide recommendations to the government. This is what we are doing: (1) fulfilling our election commitments and (2) strengthening the legislation so that those that purchase buildings or purchase land and home packages can have further confidence that their views and voices will be heard when it comes to what is often the biggest investment a family or a person will make in their lifetime—that is, the investment in owning their own home.

Just going back into a bit of the history, in 2017, after the Lacrosse and Neo200 apartment fires and, as I mentioned earlier, the Grenfell Tower tragedy, the Victorian government established the Victorian Cladding Taskforce to investigate the use of non-compliant or non-conforming external wall cladding. That task force found there was widespread non-compliance and use of combustible cladding and made a series of recommendations to improve the building regulatory system. Our Andrews Labor government has led the world in its response to this combustible cladding problem, banning many of the high-risk claddings on multistorey buildings. We have also established the Cladding Safety Victoria group and removed dangerous cladding from a number of at-risk buildings in the community.

Similarly concerning incidents resulting from poor building compliance that have arisen, in 2018 the Building Ministers Forum—which was a nationwide forum, not just in Victoria—commissioned an independent expert panel comprising Peter Shergold and Bronwyn Weir to undertake an assessment of building regulatory compliance and enforcement systems across Australia. These assessments resulted in the publication of the *Building Confidence* report, and again a number of recommendations were made from that.

The reforms that are contained in this bill respond to those findings, and this is what we are very proud to be talking about today in terms of the government's commitment to Victorians to make sure that people have a good experience when purchasing that very important home or home and land package that is going to set up them and their families for the future. One of the key recommendations that we have put into this legislation is the establishment of a building monitor. The building monitor will finally be a monitor that will overview or oversee the building industry and also take into account the views not just of the building industry—those that are making the profit out of this, which the member for Warrandyte seems to be only concerned about—but also of consumers and listen to their experiences and the problems that they are having in order for that to be taken into account when we are looking further into the system and making it more accountable.

I will give some examples. The Thomastown electorate now includes parts of the growing outer suburbs, especially the areas of North Epping and Wollert, and it was not that long ago that, due to requests from residents, we actually put together a forum to talk to them about some of the problems that they were having. There were massive problems with developers not fulfilling their obligations—not maintaining the more common areas of space, reserves and parklands and just leaving them to go to waste, with rubbish strewn all over the place—and the developers refusing to do anything about it. We also had concerns about building defects and problems with sunset clauses and also a number of other issues with those. The consumer was in a powerless situation. Apart from maybe taking legal actions for hundreds of thousands of dollars and years in court, there was really no comeback for them. So the building monitor is another step in trying to make sure that there is better accountability. Of course not all builders and developers are like this. Some are very good, and of course this legislation will not hurt them in any way because they are doing the right thing. Therefore they will continue to do as they do.

It is really good that the Victorian government has also provided so much investment into the TAFE system in order to increase the skills, hopefully, of particularly our young people so that they can work in these areas and have the skills that are needed to provide the home building and meet some of the demand that we have.

Now, the heritage amendments are the other thing I quickly will talk about. I have not got much time, but there is so much to say about this legislation. One aspect I want to talk about, because it relates to the Thomastown electorate again, is the Peter Lalor Home Building Co-operative Society, which was established just after the Second World War and which provided housing for working-class families built with voluntary labour on the estate. It does not have state-level recognition; however, these heritage amendments would also allow for non-state-recognised heritage or important historical places in an area to be recognised—not at the level of state recognition but of course recognised within the planning system of an area. I know a lot of residents will be really looking forward to the Peter Lalor estate being elevated by being recognised and also being acknowledged when planning around that

Lalor area is conducted. Again, this bill will implement reforms to improve the regulatory landscape in the building system, and— *(Time expired)*

Mr McCURDY (Ovens Valley) (12:43): I am delighted to rise and make a contribution on the Building, Planning and Heritage Legislation Amendment (Administration and Other Matters) Bill 2022. We have heard from other speakers that the purpose of the bill is to recognise and strengthen the role of the state building surveyor and create a building monitor. It will also change building approvals and quality assurance processes in various ways but specifically by requiring a building surveyor to inspect the building before an occupancy permit can be issued and also by providing a process for the requirements relating to the preparation, maintenance and updating of building manuals. Furthermore, it will require the relevant building surveyors to provide owners with an information statement setting out the role and functions of the relevant building surveyors.

Other main provisions include clarifying the power of the Victorian Building Authority, the VBA, to issue restricted plumbing work licences and strengthen information sharing between the VBA and other building system entities, including the building monitor. We all know the building industry needs to remove any barriers or obstacles that may exist between bureaucracies to ensure a smoother, a more efficient and most importantly a faster process. I do have concerns that that will not happen under this bill. It will also expand the categories of builders who will need to be registered when their work is prescribed by regulation, amend the distribution of the cladding rectification levy, support the implementation of the national automatic mutual recognition scheme and improve the governance arrangements for the Architects Registration Board of Victoria.

The bill also makes changes to the Planning and Environment Act 1987 relating to Melbourne's green wedges and distinctive areas and landscapes by introducing a requirement that local government authorities prepare green wedge management plans, enabling the Minister for Planning to issue directions in relation to their content preparation. The bill also updates provisions to streamline the process that will help to gain the endorsement of responsible authorities for declared distinctive areas and landscapes, which should ensure the protection of these valuable assets. But the minute I talk about local government authorities, I know there are concerns—I will get onto those in a moment—about cost shifting and workload shifting towards local governments. The bill will also provide online access to hearings and notices and allow applications to exclude places and objects from the Victorian Heritage Register if they are not of state-level cultural heritage significance, which is a step in the right direction. It will also make sure agencies delivering major infrastructure projects can confirm the heritage significance of a place or object in approval pathways during the planning stages.

The building industry in Victoria is in a very tough space at the moment. I suppose all business is. It has been a difficult time, as we all know. But certainly in the Ovens Valley—and every other electorate, I am sure, has the same concerns with not being able to get timber, trusses or fittings and fixtures—it really is a difficult space, and we have got to be careful that when something does not come to fruition, when you cannot fit something in a house, that domino effect does not go all the way down the line and just slow the whole process up. That is predominantly out of the hands of any regulator or anybody else, and that is why we have got to make sure any legislation that we introduce reduces red tape and does not allow bureaucracies to slow the process down or rely on somebody else to make a decision before something else can happen, because without any of that in place it is already a difficult space.

I spoke to a builder last week in Myrtleford when I was in my mobile office up there, and he said if it were not for the goodwill of the tradies at the moment, the building industry would be in whole lot more pain than it currently is. He gave me the example where obviously when someone decides to build a house, they put the deposit down and the builder gets going. The next payment is at lock-up stage and then there is another payment further on or a final payment, and what we are finding is that a builder cannot get benchtops, cannot get internal doors or cannot get something that makes it to lock-up stage. Through the goodwill of the tradies they can actually still get it to that lock-up stage, that second payment can then go ahead and then all of a sudden that domino effect does not happen. Some

of the tradies have got to come back two or three times, where they would prefer to just come and do their job once. But out of their goodwill they are making sure that it happens, that lock-up stage gets done, that second payment is triggered and away they go, because otherwise you would find builders going to the wall because they are just not getting paid that second payment. It is all within the boundaries of the contract, and I get that. But as I said, it is the goodwill of the tradies that is actually helping us, and because it is in on a knife edge this collaborative approach is what is needed in the industry at the moment. So any streamlining that we can do is essential, but certainly any more layers of bureaucracy simply are unhelpful.

One of the concerns I have got is that I am not sure there is justification to have the site supervisors registered as building practitioners. I have also got concerns around the expansion of the practitioner licensing scheme to include new categories. This was recommended for those involved in complex buildings. But in the absence of actual regulations it is unclear to me how this will impact on the domestic building industry, and as I said, it is an industry that is already operating on a knife edge. The state building surveyor's ability to delegate their power to make binding determinations is always a concern. Victorians have lost trust in this government's ability to use power, and any room for corruption or room for decisions that we are not sure about is a concern, because of that lack of trust. The amendments to sections 16 and 16B capture binding determinations made by the state building surveyor. It means non-compliance with a determination would be an indictable offence. To me that is a very heavy-handed response. To me this should be a separate summary offence, not an indictable offence.

I understand that significant resource strains will be placed on councils to identify non-compliance on builds, which may contribute to further time blowouts. Again councils have made their voices heard by saying they are concerned about whether it is just a cost to them or maybe resources will be required by them in this whole process, because they are strapped as well in terms of the people they have got, and it is just not that easy to go and find somebody to do those jobs in council. Again, anything that is going to push this whole time frame back is of concern to me. We have to be really careful. We probably do not know what it is going to really look like, because until we can see how this all rolls out and the regulations and the guidelines are completed we will not know what the full effects of this legislation will be. The proposed changes to section 47 of the Architects Act 1991 will result in unregistered and inexperienced architects being appointed to the Architects Registration Board of Victoria. It seems inconsistent with other Victorian professional boards. As far as I can see, it will place some consumer protections at risk.

In conclusion, there are many unanswered questions about this bill and, as always, questions that will not be answered, as I said, until the full regulations and guidelines are completed, and that comes obviously after this point. You would not sign a blank cheque for this government to fill in the gaps because nobody would ever be held to account and nobody would resign or even recall what happened, so it is really important that these regulations and guidelines provide for smooth sailing to make sure that we can speed the process up rather than do anything that slows it down again.

Again I say local government is opposed to the cost shifting. The architects are opposed to the changes to their registration board and the building industry is opposed to a range of the provisions. I still think we have got a bit of work to go with this, and the devil will be in the detail of the guidelines and the regulation. I just hope this does not turn out to be another government stuff-up that will send many tradies to the wall or slow up the building process because, despite the Premier's claims that he governs for all Victorians, the facts are that unless you are in a union you really do not count in Victoria. We have seen that time and time again. As I say, this legislation—we will see the detail in time, and only then will we know what effect this will have on the industry.

The building industry is hurting, as I say, because they cannot get access to timber, fittings, internal doors, all sorts of things that they are struggling with. I hear it time and time again, and the domino effect—people cannot even get into the new houses, the rental market is at the crossroads as well. This whole industry needs support, not barriers and blockades. That is why I want to make sure of the guidelines and the regulations when they come out. We will go through them with a fine-tooth comb,

but I do have concerns that if it is not here in the legislation, that could go anywhere. With that, I will leave my remarks there.

Mr KENNEDY (Hawthorn) (12:53): This has been an interesting debate so far, and I would just like to offer a few thoughts prior to lunch. The member for Warrandyte offered the observation that the Premier is up to his neck in trouble. That was helpful. He referred to 'looking at the confusion' and 'disbelief' and all these other words that were used. However, I would just like to, in a little bit of time, take up his—well, there were very few specifics, but there were a few specifics, which means that we have something to respond to.

The good member talked about the lack of consultation and gave me a free plug as the member for Hawthorn. He said that in fact there are all these people wanting to see me on heritage and that I was refusing to see them. Well, here is news. On Monday, 1 August—that is, four days ago—I sat down in my office—

Ms Ward: You've been misrepresented.

Mr KENNEDY: Misrepresented—with the people from Wattle Street, Roseberry Street and a number of others. We got together with about eight or nine people—that was a very good occasion—I think at 1400 hours on Monday for the whole hour, in which we were able to share a whole range of opinions and views about the problems that can exist with heritage listing. I just think the glib dismissal of that by the good member for Warrandyte does not help us on that path, can I say with due respect, of trying to see the subtleties of this. Of course as you know, the problem is that there are some people who want to preserve it and then there are others who perhaps want to sell their properties, and the last thing they want to see is themselves saddled with one particular classification or another. I just wanted to get that going, because I believe that the consultation has been very good.

But it is that time of year, so they are running around with the shadow member for Hawthorn, John Pesutto, and various other people who are standing for election. Of course they are all agreeing to everything, including contradictory things. Anyway, poor, pitiful me has to put up with this, but I just needed to be very clear about Monday, 1 August. Remember that day, please—Monday, 1 August—when a whole hour was spent with all those groups, two from each group as a matter of fact. It was a very fruitful conversation.

I think it is important that we really focus on how this bill will strengthen protection for domestic building consumers. The opposition did not mention consumer protection at all. Too many times we hear devastating stories about people who have been left with building defects—and they are the ones we get to hear about at Hawthorn as a matter of fact, and I am sure other members do as well—things that were not completed or were not made safe or whatever. Nothing is perfect, but I think any attempt to try and improve the legislation surely is something that we want to support and not pick holes in for the sake of it.

I just want in the next couple of minutes to just say a couple more things about the Building, Planning and Heritage Legislation Amendment (Administration and Other Matters) Bill 2022. It is something that is dear to my heart. My late father was an architect, and we were always talking about these sorts of issues. I just say that in the last decade we have seen the tragedy of the Grenfell Tower in the UK as well as the Lacrosse and Neo200 fires in Melbourne. In response we created the Victorian Cladding Taskforce to investigate how widespread non-compliant or non-conforming external walls were. As we all know, this task force found widespread non-compliant use of combustible cladding and made recommendations in response to this. Similarly in 2018 we saw poor building compliance resulting in safety incidents, so the Building Ministers Forum had independent experts assess compliance and enforcement systems across Australia. We also have a further building system review currently underway. This bill is a response to these reviews and will ultimately improve our building system.

I think it is important to acknowledge the work that has been done in regard to cladding safety. There have been a few issues of course, but nobody doubts that work has to go on and that hopefully one can

get the right sort of balance in terms of who pays and whose fault this is and that is and so on. We are building to ease traffic, we are building public housing, we are building quality housing but we are not building necessarily for the developers. We have got the priorities right, and we all think that I am sure. Deep down both houses think we have to get priorities right when it comes to who we are serving in this place.

I may have an opportunity to come back after 1 o'clock or at some other time for 3 minutes and 21 seconds, but otherwise I think I will leave it for the moment.

Sitting suspended 1.00 pm until 2.01 pm.

Business interrupted under standing orders.

Questions without notice and ministers statements

HEALTH SYSTEM

Mr GUY (Bulleen—Leader of the Opposition) (14:01): My question is to the Minister for Health. Melissa is 42 and a single mum with two kids. Her health issue was raised in this Parliament directly on 5 April. She has come to Parliament today seeking answers. Melissa has severe arthritis in her jaw and to keep the pain under control she is on a range of prescription-only analgesics. She was placed on the waitlist as a category 2 patient in 2021 but soon after was informed the actual wait time would be four to five years. She is still in pain, is struggling to eat and continues to lose weight. She cannot work. She is deteriorating. I ask the minister: how is it fair that Melissa has now waited four to five years for surgery that should have been completed within 90 days?

Ms THOMAS (Macedon—Minister for Health, Minister for Ambulance Services) (14:02): I thank the Leader of the Opposition for his question. Can I first take this opportunity to express my sympathy for Melissa and the situation that she finds herself in. What I would like to suggest is that my office would be very happy to follow up this case and we would be happy to inquire of the health service provider exactly what the circumstances are, so if you would like to provide that information, I am more than happy to do that.

But I do want to make this point. I have made it before, and I will make it again. Right now our health system here in Victoria is facing unprecedented challenges. I need to make this point. This is not just being experienced here in Victoria but right around the nation and indeed right around the world. The global pandemic has had an extraordinary impact on our healthcare services. Our government has recognised this. That is why we have a $12 billion pandemic repair plan in place, and I am focused on delivering that. Not only am I focused on delivering the pandemic repair plan, I am out there every day meeting with our healthcare workers, supporting them and understanding the pressures that they are under as they seek every single day to deliver the very best care to all Victorians. Again, I have said it before and I suspect it is something I may say many times: I am not a clinician, but my department can follow up with Melissa and get her a clinical review, if she is indeed with one of our public health services, to see whether she is still categorised appropriately, given the circumstances in which she finds herself. So that is what I undertake to do.

Mr GUY (Bulleen—Leader of the Opposition) (14:05): I thank the minister for her answer. In response to Melissa's case when it was originally raised in April the then health minister spruiked a COVID catch-up plan, which the hospital has since confirmed to Melissa would have no impact on her wait time. She cannot work, has lost her house and is struggling to support her two young children. Her current emergency accommodation is running out. As I said, she has been in the Parliament today. I ask the minister: how many of the almost 100 000 Victorians on the elective surgery waitlist will still have to wait in agony until 2026 at the earliest to receive the surgery they should have received within 90 days?

Ms THOMAS (Macedon—Minister for Health, Minister for Ambulance Services) (14:05): I thank the Leader of the Opposition for his supplementary question. Indeed he is right: our government has a

$1.5 billion COVID catch-up plan in place, and it is all about boosting surgical activity across Victoria. And indeed it was announced by my predecessor in April this year. The plan comprises several elements, including money to maximise public activity and throughput through new rapid-access hubs, $20.3 million for the Surgical Equipment Innovation Fund and $548.1 million to maximise all available private hospital capacity—and indeed we have purchased Frankston Private Hospital in order to be able to deliver more surgeries more often. Every decision about planned surgery is made by clinicians and is based on acuity.

MINISTERS STATEMENTS: BETTER AT HOME PROGRAM

Mr ANDREWS (Mulgrave—Premier) (14:06): I am very pleased to rise to update the house on our $12 billion pandemic repair plan across our health system, a massive investment in COVID catch-up dealing with the pressures and very significant challenges that this one-in-100-year event presents to our nurses, our ambos, our doctors, our cooks, cleaners and ward clerks—the whole team—who are doing an amazing job under quite extraordinary circumstances, unprecedented circumstances. One of the ways in which we are supporting them is to listen to them, to respect them, to value them and to give them the reform and innovation that they push and drive through that respectful partnership that we as a government have with those staff. Part of that is $698 million for the Better at Home program. This is all about making sure that patients can safely return home sooner than they otherwise would. No-one wants to be in hospital a moment longer than they need to be—at home with family and friends in a familiar environment, being supported—

Members interjecting.

Mr ANDREWS: You would be better at home too actually, I reckon. You would be a lot better at home too. Mock all you like, interject all you like; we are getting on with it. 56 000 patients have been able to be discharged to the comfort of their own home with support—multidisciplinary support, and I know all about this program at a very personal level. On behalf of everyone on this side of the house, who supports and respects our health workers instead of going to war with them and mocking them and depriving them of the resources they need—

Members interjecting.

Mr ANDREWS: They are all very loud now—not so loud when the cuts were being made. I thank every single person; I thank every single clinician, every support worker, despite the noise. You make the noise, and we will make the change. It is a great program supporting tens of thousands of Victorians.

Mr Cheeseman interjected.

The SPEAKER: The member for South Barwon is warned.

HEALTH SYSTEM

Mr GUY (Bulleen—Leader of the Opposition) (14:09): My question is to the Minister for Health. Can the minister confirm that there are now more than 100 000 Victorians on the state's elective surgery waiting list?

Ms THOMAS (Macedon—Minister for Health, Minister for Ambulance Services) (14:09): I thank the Leader of the Opposition for his question. Unlike those on the other side of the house, our government is committed to transparency when it comes to the release of data—

Members interjecting.

The SPEAKER: Order! Members will come to order. I cannot hear the Minister for Health.

Ms THOMAS: As I said, unlike those opposite, our government is absolutely committed to increasing transparency of the data in our health system. And to that end, we release quarterly reports on hospital performance and indeed on ambulance services. This is something that those on the other side of course sought to hide. They sought to keep the truth from the people of Victoria. We will be

releasing data when it is ready and when it has been validated, and it will be available for public scrutiny at that time.

Mr GUY (Bulleen—Leader of the Opposition) (14:10): I thank the minister for her answer. Thousands of Victorians on the elective surgery waitlist are waiting in pain, waiting for life-changing operations and waiting for the government to take their health concerns seriously. Given these figures are now overdue, are being hidden from Victorians, I ask the minister: when will they be released and when will Victorians know the true state—

Members interjecting.

The SPEAKER: Order! I cannot hear the Leader of the Opposition's supplementary question.

Mr GUY: Given these figures are overdue, when will they be released and when will Victorians know the true state of vital elective surgery delays in this state?

Mr Battin interjected.

The SPEAKER: Member for Gembrook!

Ms THOMAS (Macedon—Minister for Health, Minister for Ambulance Services) (14:11): Once again I thank the member for Bulleen for his supplementary question. I make this point: our government is committed to the release of this important health system performance data, and it will be released in the normal fashion. To say that it is overdue is in fact incorrect. The quarterly data has been collated and has been compiled. It is still being fact-checked and validated, and when it is ready it will be released.

Members interjecting.

The SPEAKER: Order! I will not ask members again to come to order. Members will be removed from the chamber if they are too loud.

MINISTERS STATEMENTS: HEALTHCARE WORKERS

Ms THOMAS (Macedon—Minister for Health, Minister for Ambulance Services) (14:12): I rise today to update the house on how the Andrews Labor government is supporting the health system and its workforce by delivering 1200 registered undergraduate students of nursing and midwifery, or RUSONs and RUSOMs, as they are known, to hospitals across the state. This employment model was first developed in 2010 under the Brumby Labor government in close collaboration with the Australian Nursing and Midwifery Federation and indeed a former health minister, but this fantastic initiative was scrapped in December 2010 as part of the major cuts to the health system by those on the other side, the same government who in 2011 cooked up a secret plan not to grow our nursing workforce but to cut it.

When Labor was re-elected in 2014 we ended the war against our healthcare workers that had been waged by those on the other side of the house, and in 2016 the first RUSONs began working on wards at Monash Health, Alfred Health and indeed at Eastern Health. Since then the program has seen over 3000 skilled undergraduate students work in hospitals across Victoria, and it was a real pleasure to be at Sunshine Hospital to meet some of these RUSONs and RUSOMs with the Premier. I am delighted that they will be taking up positions from Sunshine to Tallangatta—a place I know well—providing extra support to more experienced nurses and midwives. This is a unique Victorian innovation, one that is proving overwhelmingly popular with the students themselves, with nurses, with their universities and indeed, most importantly, with patients. This is just another example of how our government will always back our healthcare workforce. We will always innovate. We will listen to the workers and we will implement their good ideas.

HEALTH SYSTEM

Ms VALLENCE (Evelyn) (14:14): My question is to the Minister for Health. Mrs Mitchell, a 62-year-old woman from Eltham who has kidney cancer, is a category 1 elective surgery patient, has lesions on her lungs and requires Endone every two hours. Surgery is not an option; it is a must. Her vital surgery has not occurred despite presenting over five weeks ago with this life-threatening condition. A number of previous health ministers over the last few years have said elective surgery delays have not caused category 1 surgeries to go past their critical 30-day period—and they clearly have. The question is: does the new minister stand by answers of previous health ministers that Victoria's elective surgery wait times are not causing delays with category 1 patients?

Ms THOMAS (Macedon—Minister for Health, Minister for Ambulance Services) (14:15): I thank the member for her question, and once again I want to express my concern for Mrs Mitchell. I know that she will receive the very best care from our Victorian healthcare workers and from our Victorian public healthcare system. To the best of my knowledge, all category 1 surgeries are being performed within their 30 days. I am very happy, if the member would provide me with details—and by that I mean name, address, hospital and treating clinician—to follow it up.

Members interjecting.

The SPEAKER: The member for South Barwon can leave the chamber for the period of 1 hour.

Member for South Barwon withdrew from chamber.

Ms VALLENCE (Evelyn) (14:16): Again to the Minister for Health: using the Andrews government's own figures, in the last quarter there were four patients who waited more than 30 days for category 1 surgery. In the quarter before that there were seven. This is despite previous health ministers guaranteeing that there were none. Can the new minister guarantee that there are no Victorians from the April–May–June quarter elective surgery waitlist data, which you refuse to release publicly, who have waited or are waiting longer than 30 days for urgent category 1 surgery?

Ms THOMAS (Macedon—Minister for Health, Minister for Ambulance Services) (14:17): I thank the member for Evelyn for her question. There are a number of points that I would like to make in relation to her answer. The clinical guidelines are clear that category 1 surgery should occur within 30 days. There are indeed reasons where this might not happen—if, for instance, a person is sick during that time and it puts them at greater risk by actually undertaking the surgery than by not having it. These are decisions that are made by clinicians every single day in our healthcare system.

The second point that I would like to make is that once again I extend the offer to the member for Evelyn to share the full details of this patient; I will follow up. The third point I will make is that this government releases its health performance data. We release it every quarter. We always have and we always will, unlike those on the other side who sought to hide very important healthcare data from the Victorian people— *(Time expired)*

MINISTERS STATEMENTS: MENTAL HEALTH REFORM

Ms WILLIAMS (Dandenong—Minister for Mental Health, Minister for Treaty and First Peoples) (14:18): I rise today to update the house on the Andrews Labor government's work to implement every recommendation of the Royal Commission into Victoria's Mental Health System. Nearly 18 months after the delivery of the landmark final report we have made enormous inroads into the reform of our state's mental health and wellbeing services. Work is underway on more than 90 per cent of the recommendations—90 per cent. New services have opened, and more Victorians than ever are getting the help that they need closer to home.

The Victorian Collaborative Centre for Mental Health and Wellbeing board have started their important work. We have appointed providers for our infant, child and family hubs. Applications are now open

for our inaugural mental health commissioners. We have kicked off our regional mental health workforce incentives program, and we have opened submissions for our new statewide trauma service.

Of course, though, none of this can happen if you do not fund it properly—a fact that time and time again the royal commission called out. That is why in the last two budgets alone we have invested over $5 billion in this important reform—$5 billion. It is why we have also delivered on an ongoing and sustainable funding mechanism for mental health services across our state—for the right-now but also for the future—because on this side of the house we understand that the only cost would be in the devastating consequences of doing nothing at all.

Our commitment to building a new mental health and wellbeing system is steadfast and it is unwavering, just as it should be. Sadly, the only commitment of those opposite is to not only ignore the royal commission but to cut some $3.7 billion of funding from the system. If they can, they will. That is what they said: if they can, they will. Make no mistake, these reforms will change lives, they will save lives. The work is not easy. It is a long way from finished, but only the Andrews Labor government will finish it.

SYDNEY ROAD UPGRADE

Dr READ (Brunswick) (14:20): My question is for the Minister for Roads and Road Safety. In 2019, following a lengthy co-design process involving many stakeholders, VicRoads surveyed residents of the inner north about their views on four possible designs for the Sydney Road shopping strip. The option with a separated bike lane was preferred by a clear majority of the 7000 respondents. VicRoads's design included accessible platform tram stops and wider footpaths. When will the government provide this much-delayed and much-needed upgrade to Sydney Road in Brunswick?

Mr CARROLL (Niddrie—Minister for Public Transport, Minister for Roads and Road Safety, Minister for Industry Support and Recovery, Minister for Business Precincts) (14:21): Can I thank the member for Brunswick for his question. It is an important question, and bike lanes are important because they are a little bit like emails—they make wonderful trails. I do thank you for that question. But on a very, very serious note—

Members interjecting.

The SPEAKER: Order! I need to hear the minister for roads's response.

Mr CARROLL: Bike lanes are very important. They are a part of everything we are doing, and the Andrews Labor government, through its Big Build, is doing an incredible amount of work—some 250 kilometres. If you think about the portfolio that the member for Brunswick highlighted, roads and road safety, there are another 100 kilometres right through our suburbs. They are vitally important.

Now, the one that the member has identified is on Sydney Road, and the member would appreciate how important Sydney Road is for small business and for the trams that he identified. The other thing to consider with Sydney Road is the Rolls-Royce Upfield bike path that is literally only some 50 metres away, that I have been on and I know he has been on. While I am talking about it, I just want to just give credit to the member for Pascoe Vale for her advocacy for the upgrade of the Upfield bike path. That does run parallel with Sydney Road. We know we have got more to do, and we will continue to do that.

I think the member also asked about accessibility and tram stops. The last state budget had just over $157 million for accessibility, and again everything we do through the Big Build is about increasing accessibility. We know our people with disabilities right throughout Victoria love to get on public transport. That is why through the Big Build, through our level crossing removal program, through our rolling stock initiative, everything we do is about improving accessibility and livability for people with disabilities to make sure public transport is the first option for them, it is something they consider and it is something they use whether they need to get to TAFE, to school or to work. We have got a lot more to do, and I am happy to continue this conversation with the local member.

Dr READ (Brunswick) (14:24): I thank the minister for his interest in these issues and his answer, but I would encourage the minister to come and have a look with me and see first of all that it is 5.5 kilometres between the two accessible tram stops on Sydney Road, between Brunswick and the terminus much further north, and also that south of the upgraded Upfield bike path, which finishes halfway through Brunswick, you have got to go for a couple of kilometres either down Sydney Road or through a very constricted bike path along the Upfield path. Will the minister come and have a look with me and see how reduced the options are in Brunswick?

Mr CARROLL (Niddrie—Minister for Public Transport, Minister for Roads and Road Safety, Minister for Industry Support and Recovery, Minister for Business Precincts) (14:25): Thanks to the member for Brunswick for his question and his request. I am certainly happy to come out with him and look at some of the issues he has raised and to ensure that when we are continuing to make those important investments, such as the $3.5 million released only a few weeks ago with the member for Pascoe Vale—

Mr Andrews: Weren't you there the other day? You were just there. You don't need to go back.

Mr CARROLL: I was there with you recently, Premier, looking at that level crossing at Bell Street that has gone, which is pretty impressive too. So there is a lot going on in Melbourne's north. We have got big investments to come, but we are very proud of what we have been able to do with the Upfield bike path. I just want to quote to the member—it has actually been given to me here—the *Saturday Paper*, 'New look for Upfield railway line'. It says here:

> The bike path, now wider and smoother and with better sightlines and night-lighting, plus bike repair facilities and secure parking at the train stations, has turned into a cyclists' paradise.

So I think we would all love that, but I am certainly happy to come and have a latte and do what we need to do.

MINISTERS STATEMENTS: CLIMATE CHANGE

Ms D'AMBROSIO (Mill Park—Minister for Energy, Minister for Environment and Climate Action, Minister for Solar Homes) (14:26): Speaker, I take this opportunity to congratulate you formally on your ascendancy.

I rise to update the house on the nation-leading climate action agenda being delivered by the Andrews Labor government. Since we were elected we have slashed emissions by almost 30 per cent and delivered almost $2 billion of investment, and our 2030 target to cut emissions by 50 per cent is leading the nation, standing side by side with international leaders and delivering the most rapid decarbonisation of any state in the country. Our massive climate change action has created thousands of jobs, driven billions of dollars of investment and delivered the greatest increase in renewable generation in a single year of any state ever.

Mr Newbury interjected.

The SPEAKER: Order! Member for Brighton, you can leave the chamber for the period of 1 hour.

Member for Brighton withdrew from chamber.

Ms D'AMBROSIO: But unfortunately some do not share our ambitions or indeed pretend that they would do better. They never have, and they never will. In fact there are those who voted against every climate change action, every climate change and renewable energy bill introduced into this place, a critical fact that they continue to deny. Today we have debated vital reforms to the Victorian energy upgrades program, the largest and most effective energy efficiency program in the whole country. The program has reduced Victoria's emissions by more than 73 million tonnes, the equivalent of taking 22 million cars off the road, while saving households hundreds of dollars and businesses thousands of dollars. Those who are on the climate change road to Damascus claim that they have been converted, but at the first opportunity to show their worth while debating this legislation they

barely showed up—empty at the back, in the middle and at the front. Then of course others flagrantly misrepresent how quickly our gas substitution road map will be delivered. They say that because they know we are on the right track, and you will only get that from our government.

HEALTH SYSTEM

Mr SOUTHWICK (Caulfield) (14:28): My question is to the Minister for Health. Bronwyn Natecki is a 76-year-old woman who lives in Caulfield and has been waiting for more than two years to have hip replacement surgery. Ms Natecki is in constant pain and relies on addictive painkillers and an 85-year-old family member to care for her. She has been given no time line about her surgery after two years of waiting. She faces a long wait, with surgery waiting lists growing and growing under a government with no plan.

Members interjecting.

Mr SOUTHWICK: This is quite serious. Ms Natecki is watching this broadcast today. What can the minister say to her about the state of a health system that leaves a 76-year-old lady waiting more than two years to have a hip replacement, with no resolution in sight?

Mr Edbrooke interjected.

The SPEAKER: The member for Frankston is warned.

Ms THOMAS (Macedon—Minister for Health, Minister for Ambulance Services) (14:29): I thank the member for Caulfield for his question. I acknowledge that hip pain can be extremely painful—I think there are many of us that know that from experience—but I want to say this. The question was what the government is doing. Well, let me tell you what we are doing. We have a $1.5 billion catch-up plan in place. The pandemic has caused quite devastating impacts in our healthcare system, and that has been primarily as a consequence of our healthcare workers being impacted by the global pandemic, being impacted by coronavirus. What we know still is that on any given day between 1500 and 2000 healthcare workers have to stay at home because they have been impacted by COVID. This is of course in addition to other planned and unplanned leave that is being managed through our healthcare system.

The question, as I said, was do we have a plan. And the answer very clearly is, yes, we do. Our $1.5 billion planned surgery catch-up plan is backed in with our $12 billion pandemic repair plan. I have already detailed some of the elements of that plan so I do not propose to do it again. But I will make this point. The member for Caulfield said this is a very serious issue, and indeed absolutely this is a very serious issue. This is about people, health care; it is not about politics. Those on the other side want to politicise this at every step of the way. They have done it throughout the pandemic. They have refused to acknowledge the challenges that our healthcare workers and our health system have been under, and absolutely every question that they ask in this place is an insult to the healthcare workers who are striving every day to deliver the healthcare work. They are working extra shifts, they are coming in off holiday—they are doing everything that is possible to meet the needs of those patients that are waiting for planned surgery.

Mr SOUTHWICK (Caulfield) (14:32): Our healthcare workers are doing a fantastic job under huge stress, but none of this is helping people like Bronwyn. People like Bronwyn are likely to end up in aged care prematurely because their elderly family members are being forced to provide extended care while they wait too long for vital elective surgery. What is the government doing to support the growing number of Victorians who end up prematurely in aged care simply because they cannot get the surgery that they desperately need at the time they need it?

Ms THOMAS (Macedon—Minister for Health, Minister for Ambulance Services) (14:33): I thank the member for his supplementary question. I make the note that it was just unqualified ideas that he had. I do not know where the data comes from to support this suggestion that people are prematurely moving into aged care, but can I say this. One of the big challenges that is facing our health system

right now is bed block caused by older Victorians who are in our healthcare system who should be or want to be able to move into aged care. But here is the thing. Because of the actions of the previous, former federal government—I should say the inactions of the previous, former Liberal government—many in our community have lost confidence in the private aged care system, and this of course creates its own challenges. Our government looks forward to working with the federal Labor government to restore aged care to provide the quality services that older Victorians need and deserve.

MINISTERS STATEMENTS: POLITICAL DONATIONS

Mr PEARSON (Essendon—Assistant Treasurer, Minister for Regulatory Reform, Minister for Government Services, Minister for Housing) (14:34): It is my pleasure to rise again to talk about Victoria's strict, transparent and nation-leading donation laws. We made these reforms in 2018 because we believe that voters have a right to know who makes and receives political donations and they should also know that political donations cannot unfairly or improperly influence the political process. Now, let me tell you what has changed through these reforms. Foreign donations were banned; anonymous donations over $1080—banned. We introduced a cap of $4320 for each four-year election period from the same source. People with deep pockets should not wield a greater influence.

We introduced new disclosure obligations so each donation equal to or above $1080 must be disclosed by both the donor and the recipient within 21 days of it being made or received, and we introduced new penalties for failure to comply with the disclosure and reporting scheme. Planning or acting out a scheme to get around prohibited donation laws has a consequence of up to 10 years prison time. This shows how seriously we take the integrity of our political donations scheme, and we know the Victorian community do too.

It is no surprise that the Leader of the Opposition is refusing to come clean on his secret plan to rort our donation laws when he and his party strongly opposed our reforms in 2018. At the time the opposition said that there was no need to ensure that parties could seek financial support from other sources. What other sources are they referring to? These laws were created to prevent MPs being bought and sold and to ensure politicians cannot be compromised by donors. The question remains: who owns the Leader of the Opposition? And are you glad you backed this bloke? Are you glad you rolled him and replaced him with this bloke?

Members interjecting.

The SPEAKER: Order! What a pleasant way to end question time!

Ms Vallence: On a point of order, Speaker, I would like you to please follow up a few adjournments that are outstanding: adjournment 6388 to the Minister for Housing in relation to housing affordability and accessibility in the Yarra Ranges and adjournment 6414 to the Minister for Tourism, Sport and Major Events in relation to including Commonwealth Games activities in the Yarra Ranges. If you could follow those two overdue items up, that would be greatly appreciated for my community.

Mr McCurdy: On a point of order, Speaker, could I get a response to questions on notice 6687 and 6669, adjournments 6448 and 6394 and constituency question 6398, please.

Mr D O'Brien: Also on a point of order, Speaker, I have unanswered questions 6561, 6338 and 6278 that I believe are all overdue.

The SPEAKER: I will make sure those matters are addressed.

Constituency questions

RIPON ELECTORATE

Ms STALEY (Ripon) (14:38): (6456) My question is to the Minister for Health. I ask: will she reconsider the decision by her predecessor to not fund stage 1 of the redevelopment of St Arnaud hospital? The St Arnaud hospital is in desperate need of a redevelopment. That is why the Liberals

and Nationals have committed $30 million to doing that if we come to government. Ideally the government would also support this worthy project, yet the last time they were invited to put their proposal forward—the government said, 'Put this forward'—they did not fund it. We have a new health minister. She has got her training wheels on, and perhaps she could review the flawed decision of her predecessor and actually fund this really needed health upgrade. The people of St Arnaud deserve a quality health service building. They do not have it at the moment. We will give it to them.

ELTHAM ELECTORATE

Ms WARD (Eltham) (14:39): (6457) My constituency question is for the Deputy Premier and Minister for Transport Infrastructure. Deputy Premier, we recently marked National Tree Day, and it was so incredible to see so many people from my community volunteer their time to use their green thumbs and help plant more natives in our local wetlands at Challenger Street in Diamond Creek. A big thankyou to the Rotary Club of Eltham; Diamond Creek Men's Shed; the awesome kids from the Eltham Scout group, Eltham Sea Scouts, Plenty Girl Guides and Craigieburn Scouts; and some former members of the Diamond Creek Scouts, who worked hard throughout the morning revegetating this lovely area. I would also like to thank Nillumbik council for organising and running this event, recognising that our community is passionate and invested in the health of our environment and waterways. Deputy Premier, can you please update my community on the Andrews Labor government's commitment to tree planting as part of Victoria's Big Build in my electorate of Eltham?

GIPPSLAND SOUTH ELECTORATE

Mr D O'BRIEN (Gippsland South) (14:40): (6458) My question is to the Minister for Agriculture, and I ask: what has happened to the Andrews Labor government's $110 million commitment to new plantations in the Latrobe Valley, which was announced in the 2017 state budget? This plantation proposal was meant to be part of the transition to a new plantation future, and certainly in light of the disgraceful decision to shut down the native timber industry this would be very useful plantation. This was meant to support supply at Opal at Maryvale, where there are 1000 jobs in the Latrobe Valley reliant on this timber coming through. We were told at the Public Accounts and Estimates Committee hearings in 2020 that the commercial tender had been advertised—there was strong interest according to the department at the time—and it would be announced in mid-2021. Last year we heard there were six new investors interested, but we are now in August 2022 and still nothing has happened, so I ask the minister: why is it five years later and we have still not got any actual trees in the ground from this announcement?

NEPEAN ELECTORATE

Mr BRAYNE (Nepean) (14:41): (6459) My constituency question is for the Minister for Education regarding the $8.8 million upgrade of Dromana Primary School. Since I made this announcement last year the Dromana Primary School community has been working together with the Victorian School Building Authority to decide how best to use this funding to help cater for continued growth on the Mornington Peninsula, specifically the Dromana and Safety Beach area. I have met many times with the principal, Andrew Haley, who is the school's number one champion. His enthusiasm, passion and dedication to the school is something I am truly awed by. Together the school staff, parents, students and school council have helped determine the future of Dromana Primary School and its continued presence as a hub for the Dromana community. These brand-new facilities will provide local students with the very best classrooms and learning environments in the state, so my question to the minister is: how are works progressing on this vitally important school rebuild for the Dromana community?

BRIGHTON ELECTORATE

Mr NEWBURY (Brighton) (14:42): (6460) My constituency question is for the Minister for Energy and Minister for Environment and Climate Action, and I ask: will Labor match the Liberal Party's energy and environment plans for our state's future? My constituents want to see this plan for the future adopted, because they know it will benefit them. Yet on energy Labor has been caught flat-

footed. We have seen the market operator suspend the market and warn of future supply shortages. By contrast the Liberals have a plan for affordable, reliable and clean energy, which includes a legislated local gas guarantee for supply, a $1 billion Victorian hydrogen strategy and a fix-Victoria's-grid task force to modernise our system.

And on the environment the government looks tired. The Liberal Party will turbo-charge solar and batteries through a power-to-the-people plan that sees the product installed to 1 million Victorian households by 2035, legislate an emissions reduction target of 50 per cent by 2030 and increase tree canopy coverage across metropolitan Melbourne from around 15 per cent to 35 per cent by 2050. My constituents want to see this plan matched.

WENDOUREE ELECTORATE

Ms ADDISON (Wendouree) (14:43): (6461) My question is for the Minister for Housing, and I wish to congratulate him on the new portfolio. Will the minister please update me on the progress of the Big Housing Build and the projects currently underway in my electorate of Wendouree and explain how this investment will benefit my local community. Our government's Big Housing Build is delivering 12 000 new homes for Victorians in need and creating tens of thousands of new jobs. I applaud that the Big Housing Build will invest 25 per cent of the total $5.3 billion program across regional Victoria. Significantly Ballarat is guaranteed to share in economic and social benefits of the Big Housing Build, with a minimum local investment of $80 million for social housing and affordable housing in Ballarat. I look forward to working with the minister to help deliver these transformative housing projects for my electorate of Wendouree.

MILDURA ELECTORATE

Ms CUPPER (Mildura) (14:44): (6462) My constituency question is for the Minister for Emergency Services, and the information I seek is in relation to the government's plans for the Sunraysia CFA Victorian emergency management training centre. The centre was established by the Napthine government and opened in 2015. It is one of a network of centres across the state but, unlike the others, has never been completed to its original plans. Despite receiving piecemeal funding since its opening, the centre has been unable to operate to its full potential—for example, the centre does not have any female-friendly facilities, despite many local brigades having a significant and increasing number of female members; learning is still taking place in demountables that are connected by dirt footpaths; and there are not enough props to reflect the complexity and risks associated with modern firefighting. Local firefighters must travel to other parts of the state for training because the Mildura centre is not finished, thereby defeating the original purpose. The Mildura centre needs to be completed to the original plan, and I look forward to the minister's response.

BASS ELECTORATE

Ms CRUGNALE (Bass) (14:45): (6463) My constituency question is for the Minister for Early Childhood and Pre-Prep. Will the minister please advise how the new $9 billion Best Start, Best Life program will practically benefit my electorate of Bass? Early childhood education and childcare fees are hurting family budgets. Families are spending 20 per cent of their income just to cover these ever-increasing costs, and our system is not working for families, especially women. In fact it is holding them back, taking 26 600 women out of the workforce and costing our economy $1.5 billion per year in lost earnings alone. We also know that access to kindergarten significantly reduces the rates of developmental vulnerability among children. Making kinder free, a hallmark of this program, for three- and four-year-olds will save local parents up to $2500. I thank the minister for her ongoing commitment to early childhood education and of course welcome her any time to visit my electorate.

FERNTREE GULLY ELECTORATE

Mr WAKELING (Ferntree Gully) (14:46): (6464) My question is for the Minister for Transport Infrastructure. I recently announced my plan for a feasibility study to extend the route 75 tram to Knox. This study will investigate the different transport options, like a trackless tram, while also examining

the economic benefits. It has been overwhelmingly supported by many residents across the City of Knox, and they see this as long overdue. This extension would help families better commute to workplaces, education facilities, health services, shopping precincts and public transport hubs. It is going to provide economic benefits to Knox, and it is going to reduce traffic on our major roads. In 1999 the state Labor Party committed to build a tram extension to Knox shopping centre; 23 years later this election promise has never been delivered. The question for the minister on behalf of the residents in Knox is: will the government commit to adopting my plan to examine extending the route 75 tram to Knox, giving commuters better options?

MELTON ELECTORATE

Mr McGHIE (Melton) (14:47): (6465) My constituency question is to the Minister for Education. The Melton electorate has seen a huge investment in our schools and in the most recent budget Melton received news of a new fast-tracked primary school in Brookfield, funding for the purchasing of land for a new primary school in Weir Views, land for a new secondary school in Cobblebank, $10.68 million upgrades for Darley Primary School and a massive $31.77 million for Staughton College, which will effectively be a new school by the end of the upgrades. We have already seen a new school in Eynesbury; next week I will open the huge upgrades to Exford Primary School; next year we will open a new primary school in Thornhill Park; and earlier this year we opened Strathtulloh Primary School for students. Even with this massive investment, the growth in Melton still continues and these new schools like Strathtulloh Primary are already seeing huge enrolments and pressure on future capacity. Will the minister visit my electorate to discuss the impact of growth in student numbers on our schools?

Bills

BUILDING, PLANNING AND HERITAGE LEGISLATION AMENDMENT (ADMINISTRATION AND OTHER MATTERS) BILL 2022

Second reading

Debate resumed.

Ms D'AMBROSIO (Mill Park—Minister for Energy, Minister for Environment and Climate Action, Minister for Solar Homes) (14:48): I move:

That the debate be now adjourned.

Motion agreed to and debate adjourned.

Ordered that debate be adjourned until later this day.

CRIMES LEGISLATION AMENDMENT BILL 2022

Second reading

Debate resumed on motion of Ms HUTCHINS:

That this bill be now read a second time.

Mr M O'BRIEN (Malvern) (14:49): I rise to address the Crimes Legislation Amendment Bill 2022. At the outset I indicate that the opposition will not be opposing this bill. This is a relatively short bill. It undertakes three primary purposes. The first is to abolish the common-law offence of outraging public decency. The second is to effectively replace that with the creation of a new statutory offence of engaging in grossly offensive public conduct. The third and separate aspect of the bill is to delay by a further 12 months the abolition of the offence of public drunkenness.

I might deal with the third aspect of the bill first. When the government introduced legislation some time ago now to abolish the offence of public drunkenness, members on this side did not support that bill, and one of the reasons we did not support the bill was that we knew that it would be absolutely socially devastating to abolish an offence of public drunkenness if you did not have the health services

necessary to step into place. The concern of the government was that public drunkenness was being used to lock up people who were a danger to themselves and to others. Yes, absolutely that is exactly what the offence was being used for—to stop people being dangerous to themselves and others through their own intoxication. But if you abolish that offence and you do not replace it with the support services necessary to help those people who are in that situation, you are leaving them to their own devices, to hurt themselves or hurt others. We warned the government about this at the time. We said, 'You do not have the services in place'. We have got a hospital system that cannot cope as it is. We have got an ambulance system that cannot cope as it is. We have got a mental health royal commission that recommended that ambulance officers effectively be used instead of police officers to deal with a lot of mentally ill people. That still has not been properly implemented. Yet this government wanted to load up the health system in this state with a whole lot of new responsibilities, and it did not have that in place; it was not ready to go.

What this bill is is an admission that the government got it wrong. By delaying for a further year the abolition of the offence of public drunkenness the government is admitting it did not have the health services in place. Do we object to the further deferral of this abolition of the offence? No, we do not. It is clearly necessary. But why doesn't this government ever listen to people in the first place? In their arrogance, members opposite just believe that they can say something and it suddenly happens. It does not. You need to do your homework. You need to make sure the funding is there, the policies are there, the staff are there, the recruitment is done and the facilities are in place. If you want to set up a sobriety centre—or drunk tank, to use the usual term—you have got to build them, you have got to staff them and you have got to train the staff. You cannot just wave a bit of legislation around and say it is done, because it is not done, and that is why this bill kicks down the road for a further year the abolition of the offence of public drunkenness. The opposition do not object to this part of the bill. We do say, 'Why don't you listen, Premier? Why don't you listen, Labor government?'. We told you this. We warned you about this, and now in the death throes of the 59th Parliament you come in here with a bill to admit that you got it wrong. You should have listened in the first place.

Turning to the other aspects of the bill, I was Leader of the Opposition at the time of the Eastern Freeway tragedy. You see a lot of things in politics and in public life, and there are some things that make you stop. I remember that night when I heard the news. It is one of those things that just makes you stop. The idea that we could lose four of our finest, four members of Victoria Police, in the one incident was tragic in the true sense of that word. I think all Victorians felt a sense of loss that night and in the days that followed.

Then on top of that loss of four officers who were doing their duty, who were serving Victorians, who were keeping us safe, the news filtered out about the actions of one individual who was a witness to the tragedy and his conduct not to call for help but to pull out his mobile phone and film the tragic scene when there were police officers still fighting for their lives. It made me sick to my stomach, and I think it made many Victorians sick to their stomachs too. The thought that somebody could be so heartless, so insensitive and so cruel is just not something that really ever crossed my mind, and I suspect it has never really crossed the minds of legislators or courts in the past, because when the police looked for an offence with which to charge this individual—and I am not going to name him because he does not deserve it—all they could find that seemed to fit the bill was a common-law offence of outraging public decency. That matter proceeded to court. The individual concerned pleaded guilty and was sentenced to jail for three months on that count. There were other counts relating to driving offences and others which meant that that individual went to jail for a longer period of time, but the specific action that gave rise to the outraging public decency common-law charge only resulted in three months jail. The reaction of many in the community was that that was insufficient. Certainly the reaction of many of the families of the police officers who lost their lives on the Eastern Freeway that night was that that was completely inadequate as well. I acknowledge that the government has responded to those concerns in this bill today and I acknowledge the fact that the common-law offence of outraging public decency is to be abolished by this bill. In its place will be a

new offence of engaging in grossly offensive public conduct. That is an offence which would have a maximum penalty of five years imprisonment.

Now, I have consulted, as you would expect me to do as Shadow Attorney-General, with a number of organisations in relation to this bill, and some concerns have been raised. I understand those concerns, and I will put some of those on the record because the second-reading debate is the appropriate place for those concerns to be put in place. But nonetheless, as I made clear, the coalition does not oppose this bill, because it does think that the actions in relation to the response to that individual on the Eastern Freeway did identify a gap in the law. We acknowledge that the government is seeking to fill that gap through this bill here today. How would this new offence work? Well, new section 195K creates an offence of grossly offensive public conduct. The elements of this offence are that:

> the offender engages in conduct that grossly offends community standards of acceptable conduct …

So that is the first limb. The obvious question is: what sort of conduct grossly offends community standards of acceptable conduct? And of course that is not defined in the bill. That is what gives rise to some of the concerns that have been expressed publicly and to me by stakeholders, to which I will refer later on. Some people say, 'Well, you shouldn't have crimes which are uncertain, and if we don't know what community standards of acceptable conduct are and we don't know what grossly offends them, is it fair to have a crime of that nature?', to which I respond: I understand the concern, and it is obviously better if you can perfectly define matters, but that is not always possible. We currently have a number of offences under statute which do require the application of an assessment of where the community standards lie.

Using indecent language, for example, is a statutory offence. What is indecent? Well, different people would have different views. I suspect if you are at a wharfie's picnic what is indecent language may be slightly different to if you are at a meeting of the CWA. Somebody swearing loudly at the footy may be regarded in a different context to somebody swearing loudly in a church service. At the moment the law does provide for courts to bring to bear an assessment of what is acceptable and not acceptable behaviour in the minds of reasonable people in the community, so to that extent this is not novel legislation. It is not asking courts to look at something and to determine a view of where the community's mind is where it has never done it before, because there are currently a number of offences where courts are required to assess what is offensive or not offensive, what is indecent or not indecent, and often context is key to those types of assessments.

Firstly, the offender must engage in conduct that grossly offends community standards of acceptable conduct. Hopefully this will not be an offence which is ever prosecuted, because hopefully this sort of conduct will never occur again. But the government says it uses the term 'grossly offends' because it wants to make clear that this is only to capture the sort of conduct that is at the extreme end of the spectrum. I think that is an important point for perhaps future courts who might be reading second-reading debates to try and understand what Parliament was intending when we passed this legislation, and I am sure it will be passed. This is not intended to deal with hurt feelings. This is not intended to deal with, to use the term du jour, snowflakes. This is designed to deal with the most offensive conduct on the most extreme spectrum. We do not want to see this new offence being used or abused in the future. This is not designed to curtail freedom of speech or freedom of thought. It is not designed to curtail protest. It is a very specific offence. I think the context in which this has come about—the context of the Eastern Freeway tragedy, the context of the actions of a particular individual on that tragic night—needs to be seen and understood by future courts when they are understanding and seeking to apply this new offence. This is an offence which hopefully, as I say, will never have to be employed, but if it is, it should be limited to the most extreme and the most offensive type of conduct.

A second limb is that the conduct is engaged in at a public place or is seen or heard by a person in a public place, and 'public place' is defined within the bill. We have seen that formulation used previously, I think most recently in relation to the passage of the legislation which banned the display of the Nazi swastika in public places. It is appropriate that Parliament does not seek to govern every

single aspect of what happens in every single place in Victoria. There is a place for privacy. Our charter of human rights and freedoms acknowledges that privacy is a right, and I think it is appropriate that the government is therefore limiting the creation of this new offence to actions that occur in a public place or that can be seen or heard from a public place.

The third limb is that the offender knows, which is a subjective test, or is reckless as to whether, which is a more objective test, the place at which the conduct is engaged in is a public place or it was likely to be seen or heard by a person in a public place. Effectively the person needs to either know that they are doing this in a public place or be reckless as to whether that is happening. The offender also needs to know, or a reasonable person would know—again, that is the subjective and the objective aspects coming together—that the conduct would likely grossly offend community standards of acceptable conduct. Something which is grossly offensive to me may not be grossly offensive to you. Obviously we have all got different views as to where the boundaries lie for what is acceptable conduct, what is unacceptable, what is offensive and what is grossly offensive. I do understand the courts will no doubt at some point in the future need to try and draw that line. What we are trying to do through this legislation I think as a Parliament is to put in place a system where we understand that the person who is accused of committing this conduct needs to either know that it is grossly offensive or a reasonable person would have that view.

Interestingly, new section 195K(3) provides that a reference to conduct being 'seen or heard' in the earlier subsection does not include seeing or hearing it by electronic communication. The government states that this is intended to remove online activity and electronic communication from the operation of this new offence. If that is the intent, I think that intent is a worthy one. We have seen, or at least I have seen—occasionally you see on social media—what occurs in other jurisdictions, notably in the United Kingdom. Certain police forces in the United Kingdom take a very proactive approach to online activity—arguably overzealously, arguably infringing free speech, arguably taking subjective hurt and criminalising it. This must not be the path that we go down here in Victoria. Free speech still matters. Yes, we have laws against defamation; yes, we have laws against racial and religious vilification. That is entirely appropriate. But just generically hurt feelings should not be a crime, and I think it is important that the government has put that exemption in place in this bill.

One of the questions I did ask in the bill briefing—and I am grateful to the Attorney's office and the Department of Justice and Community Safety for assisting with that bill briefing—was: what if somebody was showing a video on their phone on a bus or a train or a tram that contained grossly offensive conduct? I do not particularly want to speculate; maybe the member for Polwarth can help me speculate as to the sort of videos I might be talking about. It might be Carlton getting done by the umpires again, as happened the other night.

Mr Riordan: Geelong losing to Carlton.

Mr M O'BRIEN: Well, that would be outstanding conduct. But let us say hardcore pornography. If somebody tried to publicly broadcast that on their phone in a public space like a tram or a train or a bus, with schoolkids on the bus—as the member for Polwarth said—that could potentially be very grossly offensive. I asked the question: will the exemption in relation to electronic communications stop that sort of conduct from being caught by this new offence? I did receive a response in writing, and I must admit that I am not really the wiser as a result of that. Maybe the Minister for Corrections, who is at the table, or other speakers from the government on this matter could perhaps clarify that issue, because I do think that is the sort of thing that sadly we have seen. We have seen instances of people using electronic devices and broadcasting things which are pretty offensive—I do not know if they would meet the 'grossly offensive' standard here, but very offensive conduct—in confined spaces like on trams and trains and buses, and I think it is a reasonable question to ask whether this bill could pick that behaviour up or whether it would be excluded because of the operation of section 195K(3). Section 195K(4) provides that:

> A person's conduct does not grossly offend community standards of acceptable conduct just because …

a person uses profane, obscene or indecent language or is intoxicated. I understand the government has put this in as it will be a safeguard to make the offence less likely to be raised against people who have got mental health issues and less likely to be raised against people who have got substance abuse issues. I understand that. There are still concerns from the sector, though, that notwithstanding that intention, section 195K(4) will not necessarily have that effect. It says 'just because' a person uses profane, obscene or indecent language or is intoxicated it does not grossly offend community standards of acceptable conduct. But of course what often happens with people who have got mental health issues or substance abuse issues is that it is not just one action. It is not just swearing loudly or vulgarly or obscenely in a public place; it is often combined with a whole lot of actions. So the sector has expressed concern that this does not necessarily act as the safeguard that the government thinks it is. I pass those concerns on, and I would be interested if the government has a response.

In terms of defences, the bill provides that:

> It is a defence to a charge … if the accused engaged in the conduct reasonably and in good faith …

So there are two qualifiers at the start: you have to have engaged in the conduct, to establish a defence, reasonably and in good faith. I am not quite sure why you need them both. I am not quite sure of the legal distinction between 'reasonably' doing something and doing it 'in good faith'. I would have thought if you do something in good faith you are being reasonable and vice versa, but I am sure brighter minds than mine have put both of those in there for a reason. But it has to be in context. It has to be done reasonably and in good faith:

> in the performance, exhibition or distribution of an artistic work; or
>
> 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.

I think the last time we looked at this type of suite of defences was in relation to the legislation that was effectively banning the public display of the Nazi swastika. There were some similar defences put in place there. As I said, free speech still does matter, even in this day and age. In fact I would say especially in this day and age free speech matters and is a value that should be maintained and protected. Clearly these defences are designed to try and ensure that things that could otherwise be regarded as grossly offensive to standards of public conduct can still occur.

The example that was given was the uproar that was caused many years ago, probably around 1997—in fact possibly even around October 1997—when a certain artist, Andres Serrano, was going to have an exhibition at the National Gallery of Victoria featuring one of his photographs, which was a depiction of a crucifix immersed in urine. Particularly considering this was 1997, this did cause a lot of offence, and it was something which went to court. His Honour Justice Harper of the Supreme Court of Victoria had to consider the matter. Did it constitute blasphemous libel? Did it offend the Summary Offences Act 1966? It was a very interesting judgement. His Honour actually alluded to the fact that he felt uncomfortable being put in the position of having to make a decision in matters such as this because it was almost prejudging what a reaction might be. In the end, His Honour decided that because not all the potential criminal matters had been played out to their possible extent, he would decline to issue an injunction, and the exhibition went ahead.

I vaguely remember it. I think I was maybe a baby lawyer at the time, so it was interesting from a legal point of view how the court case would operate and what conclusion might be reached. His Honour essentially took the view that we are a pluralistic society and it is not the role of the state to uphold any particular religion, certainly in a country such as Australia where we do not have a state religion. In fact our constitution prohibits there being a state religion, notwithstanding the fact that no doubt this particular piece of art, as some may call it, was grossly offensive to parts of the community.

But we should err on the side of free speech in my view. We should err on the side of tolerance in my view, and I think to that extent the defences that are provided for in this bill are therefore appropriate. As I said, political, academic, educational, artistic, religious, cultural or scientific purposes are all examples of the sort of activity which you can engage in, and as long as you act reasonably and in good faith, things which might otherwise be grossly offensive to community standards will not constitute an offence. A technical legal issue I should raise is that once a defendant points to evidence that suggests a reasonable possibility that an offence exists, the onus is then on the prosecution to disprove the defence when it is proving its case beyond reasonable doubt.

There is one further safeguard in this bill. New section 195L provides that a prosecution for this offence must not be commenced without the consent of the Director of Public Prosecutions. We do not want a situation where any old officer of the law can say, 'Right. Grossly offensive public conduct—we're going to charge you and you can go to jail for five years'. This is a type of offence which should be used so sparingly, because it can criminalise people's thoughts, words, actions or deeds. When you are dealing with a concept that can be as amorphous as 'What are community standards?', the notion of criminalising behaviour which is contrary to that must be done very, very sparingly. So to the extent that the Director of Public Prosecutions provides a safeguard from this offence being abused, I think that is something that we do support.

In the couple of minutes remaining, there are some expressions of concern that I have received. The Law Institute of Victoria said:

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

And they said that:

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

The Federation of Community Legal Centres noted:

> … the proposed legislation designed to respond to a specific incident, may have far-reaching consequences for communities that are marginalised and already overrepresented in the criminal justice system.

And they noted that:

> … the proposed offence affords police a wide discretion in terms of assessing public propriety and decency and could result in discriminatory application …

Liberty Victoria stated:

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

And they said:

> In short, there is no demonstrated need for this new offence.

I do understand the concerns of these organisations, but in responding to what happened on that tragic night on the Eastern Freeway when we lost four police officers, the outrageous conduct which followed and the fact that the law that could be utilised at the time was clearly not fit for purpose, the opposition does think that this statutory offence is an appropriate response. We do note that, should this be applied in a way which is not in accordance with our intentions by future courts, we would have no hesitation in bringing this legislation back before the Parliament and amending it. This should not be seen as a blank cheque for any police or any future courts to try and criminalise conduct which should be dealt with in other ways, because it does carry a maximum five-year jail sentence. But we do think that this legislation does meet a gap that was identified in that single tragic incident. We hope this legislation will never need to be used, because we hope that those horrific events of that night on the Eastern Freeway and the appalling and outrageous conduct which followed will never, ever be repeated.

Mr EREN (Lara) (15:19): I too would like to make a contribution on this very important bill before the house today, the Crimes Legislation Amendment Bill 2022. At the outset, I have been in this place for nearly 20 years now, and we have seen a lot of legislation come through the house. Unfortunately we need legislation like this because of certain individuals out there that are vile individuals. I will get onto, a bit later on in discussing the bill, how that incident impacted the lives of the four members of the Victorian police force and indeed all of their families, and how we as a government deal with vile individuals like that person I am about to talk about in a few minutes. It is with sadness that we rise in this place for legislation like this but it is necessary. I acknowledge the member for Malvern's contribution on behalf of the opposition in supporting this bill before the house.

Obviously this is a commonsense bill. As I indicated before, there is a lot of legislation that we have put through, and from time to time some legislation does come back for minor tweaking. This has been a part of a process where we have consulted widely in relation to this legislation, and we think we have got it right at this point in time. The bill will create a new offence to be added to the Crimes Act 1958 which applies to conduct that grossly offends community standards of acceptable conduct and applies to conduct which occurs in a public place or is seen or heard by a person in a public place. This will not apply to online offensive conduct, and I will get to that in a few minutes. I know the member for Malvern had a couple of issues with that. I have sought some advice, but I will get to that a bit later on. It contains defences for good-faith and reasonable conduct that is in the public interest, including genuine political activity, art or science; has a maximum penalty of five years imprisonment; and includes a requirement that the DPP consent to any prosecutions. The common-law offence of outraging public decency will be abolished. The bill will also defer commencement of the Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021 by 12 months to November 2023. This will defer the repeal of public drunkenness offences by 12 months.

The government is strengthening and clarifying our laws around extremely offensive public behaviour to better meet the expectations of our community. As I have indicated before, the Eastern Freeway tragedy in 2020 took the lives of four Victorian police officers. They are Leading Senior Constable Lynette Taylor, Senior Constable Kevin King, Constable Glen Humphris and Constable Joshua Prestney. The events surrounding the tragedy highlighted a gap in the law. Obviously that is why we are here today talking about it and introducing this law before the house. This bill will create a new contemporary statutory offence for grossly offensive public conduct with a clear maximum penalty. This will replace the archaic and unclear common-law offence of outraging public decency. The bill will also defer decriminalisation of public drunkenness to November 2023 to allow time to trial and implement a health-based response. I think the member for Malvern picked up on that as well. We need this reform, as was highlighted in the aftermath of the Eastern Freeway tragedy. This horrific incident—again, as I have indicated—took the lives of four Victorian police members. When leaving their home and going out to protect and serve the community they did not expect to be tragically killed in these circumstances and not come back to their families, and I think it is a loss for all of us collectively when something like this happens. Obviously it is very sad and we express our profound and deepest sympathies to the families of those killed in the line of duty that day and acknowledge any family or friends listening to this debate today.

Many Victorians were shocked by the actions of—unlike the member for Malvern I will name this person, because he should be named. He should be shamed every time his name is raised and when he presents somewhere where his name is announced people should say, 'That's that vile individual that committed that offence'. Richard Pusey is a vile individual, and I think we should shame people like this and make sure other people do not copy these sorts of incidents in the future. That is why it is important that we should name and shame some of these people—so they are not forgotten, they are remembered for the vile individuals they are. He recorded footage of the crash scene and made offensive commentary. This obviously caused extreme distress to the families of the victims and their friends and colleagues, and indeed all Victorians and all Australians were disgusted by the actions of that individual.

In a modern society we expect that public spaces are maintained as public places of decency and dignity that all members of our society can safely enjoy. Richard Pusey was charged with the common-law offence of outraging public decency. This offence is archaic and unclear in its scope and does not have a clear maximum penalty. This old offence will be abolished by this bill.

While we hope the new offence will rarely or never be used, it is important that clearer guidance is set out in law about how the conduct should be dealt with if it occurs again. The proposed laws were developed alongside heartfelt campaigning by Stuart Schulze, whose wife, Leading Senior Constable Lynette Taylor, died in that crash. The government thanks Mr Schulze for his constructive and valuable feedback. There are several key features of the offence. The relevant conduct must occur in a public place or be seen or heard by a person in a public place. This includes parks, roads, sportsgrounds, public transport and both government and non-government educational settings. It reflects our society's expectation that public spaces are maintained as places of decency and dignity that everyone can safely enjoy, free from intimidation and distress.

A relevant fault element is also included. The offender must know or be reckless as to whether the place at which the conduct is engaged in is a public place or the conduct is likely to be seen or heard by a person in a public place. This recognises that there may be circumstances in which a person may not know or foresee the possibility of their conduct being public in nature. The offender must engage in conduct that grossly offends community standards of acceptable conduct. This relates to the physical act that takes place. Offensiveness has a legal meaning, being 'behaviour calculated to wound feelings and arouse anger, resentment, disgust or outrage in the mind of a reasonable person'. The bill uses the language 'grossly offensive' to emphasise the extreme nature and high degree of offensiveness required to meet the threshold.

In relation to one of the issues, in the limited time that I have, that was raised by the member for Malvern, the bill also does not apply to conduct seen or heard when using electronic communication. This is because the online behaviour is adequately covered by the commonwealth offence of using a carriage service to cause offence. The exclusion does not necessarily mean that any reference to an electronic device is completely outside the scope of the offence. Whether the conduct is captured will depend on the particular circumstances, including the exact conduct alleged to be grossly offensive as well as contextual factors. If you consider someone sitting in a tram or train or on public transport discreetly looking at his or her phone and something comes up unintentionally which could be offensive to someone else, if that is not shown to everyone else—if that person does not attract the attention of everybody else to come and look at the offensive detail on their phone—then it cannot be an offence, because there will be certain complications around that. Having said all of that, this is a bill that will hopefully prevent these types of events happening in the future. I am proud to be part of a government that does react and brings in legislation that brings decency to our community. I commend the bill to the house.

Mr BATTIN (Gembrook) (15:29): I rise to speak on the Crimes Legislation Amendment Bill 2022 and to speak about some of the issues that were raised by the member for Malvern, but I will focus a little bit more on a different section of the bill. First of all, I think it is really important when we speak on this that we do acknowledge that it has been brought in because of acts of absolutely disgraceful behaviour that I am not going to canvass here. We have seen it canvassed far too often, and we see it through the media all too much. I know every time it ends up back in the media the impact that that has on Victoria Police but I would also say on the emergency services, who would have attended on that night. Obviously all the emergency services who responded on that night would have instilled in their memories the occurrences of that evening.

The bill put in place here is to adjust, as we know we have to adjust, laws as we move forward in a more modern world, because some laws under common law just eventually get outdated. We have got examples of that through many of our pieces of legislation, and I know on occasion it is quite interesting to see some of the things that change in legislation and you did not even realise they were still in the law at the time. They were from an era that was a lot different. If you go back to the old

Victoria Police act of 1958 and some of the things that were still there in 2012 and 2013 when it changed, people would be appalled at the things that were expected of some of our Victoria Police and particularly our Victorian policewomen. Some of the conditions that were put on them just to remain in employment were still in acts in 2012, so it is important we do go back and adjust acts.

This legislation is ensuring that we also have an opportunity to send a message about what is deemed as appropriate or what is deemed as inappropriate. Obviously this is to the extreme; however, I was speaking to my friend the member for Polwarth and we were talking about the differences in the era with new social media and people effectively living their life through different elements of social media. There is an article in the *Standard* where a Dixie woman was charged with culpable driving, and when that charge came through the courts, some of the evidence that came out was highlighting the fact that the driver got out of the vehicle and, more importantly than worrying about calling 000 for a 23-year-old stuck in that car, decided it was her best option to get a quick selfie in front of the car, and that was put on Snapchat before 000 was called. That car caught on fire, and that person died. You can see that the vehicle was already on fire. I know the member for Frankston is here. We know how quickly a car can burn. I am sure he has been to many of them, and it is not often you get there and most of the shell is still remaining. They are usually well and truly alight. To think someone has in this world decided that was a good idea. Now, we are not saying that needs to be in this legislation or legislated, but it is a great opportunity to send a message out there about what is and is not appropriate. We just think of it in here sometimes as common sense. What is common sense? There are circumstances where people just do not live by that same common sense anymore, and I think it is really important we have that opportunity to discuss that and to get that message out there.

The second part I want to focus on today is in relation to the amendment to the Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021. When this piece of legislation was brought in there were concerns raised from the opposition around decriminalising public drunkenness without a public health response. That was the first issue that was raised. We had spoken to the Police Association Victoria, who also had concerns around decriminalising public drunkenness not just because of the health response but also because by doing it just in specific, certain areas as a test trial you would have the issue where on one side of the Yarra you could get charged with public drunkenness and on the other side of the Yarra you could not be charged with public drunkenness. We raised these issues at the time as some of our concerns, and I raised it myself and spoke on that bill, particularly around the impact of Victoria Police having to understand that act, being in different areas. When you go from Richmond to Prahran, which are very, very close stations, and you cross those borders a lot, which laws do you apply when you cross the border: the new laws of the new place or the old laws of the old place? If you imagine it being like we have got it on the Murray, where we have special police that go across the border, because there are laws that are different between Victoria and New South Wales, and we created it to be different between Richmond and Prahran. The Police Association Victoria as well as members within those stations were concerned about how that could be enacted, who would be protected, how to ensure that no-one would get in trouble for false arrest, what the public health response for it would be and how they could do that public health response.

The other section in relation to that bill when it was discussed in here—and I know it was quite open, and I am not sure if it was the member for Brunswick at the time who spoke on this—was the Indigenous community. I am going back from memory, and I have not got a note here, but I am pretty sure it was. It is an issue that I know has been raised in relation to the Indigenous community, who are over-represented in our justice system, over-represented within our crime statistics and over-represented drastically when it comes to public drunkenness. There are a world of reasons why that happens: because they generally drink in more public places and homelessness is a bigger issue with our Indigenous community, we see more people and there are a whole range of things. So it is not just the bill, it is actually taking all of those things into consideration as well. In my view we need to go back pre this and find out what we can do before we get to where someone is going to be placed in that position—either arrested or not, depending on where you are—of public drunkenness and how we as a community can react to make that better, to give a better health response prior and to be more

preventative than we are reactive. The concern from the police was about what they can and cannot do but also having the power to do something to even put them into the health response.

Now, I hope the member for Brunswick can look at these ones down here. Dandenong have had a very successful program for a long period of time, where if someone was Indigenous and they were arrested and brought into Dandenong police station for public drunkenness, the police officers themselves would prefer not to have them in the cells. There is an alternative that is a better outcome for the police and a better outcome for the person who has been arrested for public drunkenness, and that is that you would call then—and please excuse me if the name has changed—the Aboriginal co-op in Dandenong at the time. They would send around their yellow car, two people would turn up, they would take the person with them and there were no charges. We arrested them and brought them in, they left and then basically we did not want to hear about it from there, because the response was appropriate. If the person was non-violent, there were no other ongoing concerns and we could identify that they could go back with the Aboriginal co-op and get assistance and help, then we supported that as Victoria Police. It did not need a change in legislation; it needed better training in Victoria Police, which I would assume is even better today than when I was there, but it gave a genuine opportunity for police to do that. I am going to assume—and I have not been all around the state—that that is available in other parts of Victoria and possibly something that could be expanded on.

Victoria Police want to make sure that when we look at changing legislation that public health response is there, but also they want to keep that power for arrest for public drunkenness. They find that that is something that is very, very important. But the reason that I raised it today is that this is to repeal one section just to change the date, and this is highlighting that the government brought in this legislation for a media release rather than an outcome. The reason I can say that now is that they have asked for a 12-month extension on a program they have done nothing about since this legislation came in. There has been nothing done by the government to ensure there is that surrounding public health response. They just basically said, 'We're going to remove one part of the power, and we're not going to give you any extra support'. Now they are realising that has not worked without the extra support, so they have got to go back for another 12 months.

What should be happening is today we should be having the debate about whether it should be permanently staying or not. It should have been the government coming out, being able to stand in this room and have this as a separate piece of legislation, rather than tying it in and going, 'We delivered on these programs to ensure that for people who are arrested for drunkenness—or, under the new terms, taken in for a public health response for drunkenness—those circumstances were put in place to protect those people in a better position'. However, because the government failed, now we have got it here today where we are having a debate and it is tied in with another piece of legislation to make it more difficult to have a genuine vote on this piece of legislation alone. It is my view that this is a concern for the Police Association Victoria and a concern for Victoria Police, and I will continue to listen to them and make sure that going forward we can have our discussions on this. I know we are not opposed, because the other element of it is far too important. The victims on the Eastern Freeway I do not want to politicise, therefore I am only going to be voting to not oppose to ensure that this legislation is there to protect that in the future.

Ms RICHARDS (Cranbourne) (15:39): I am pleased to have the opportunity to contribute to the debate on this bill and grateful to have the opportunity to follow on from the member for Lara. I do want to pay credit as well to the member for Malvern for what I consider to be a really reasoned and thoughtful contribution on legislation that has been brought to us that does acknowledge a really awful and horrendous tragedy. Whilst, in line with the member for Gembrook, not wanting to politicise it, I will acknowledge the pain that that horrendous incident caused and the ripple effect that that has had not just on the police family but I think on the emergency services family.

But just to begin, I am pleased to rise to speak on the Crimes Legislation Amendment Bill 2022. This is an unfortunate and regrettable necessity. This bill introduces a new statutory offence which will apply to a person who engages in conduct in a public place that is grossly offensive to community standards

of acceptable conduct. I think that it has already been recognised by several speakers, the importance of the very strong language in the legislation that something needs to be 'grossly offensive'. I think the member for Lara did help—and I will as well—clarify. I will speak to some of the safeguards that are in place as they relate to this legislation, why that language is quite specific and why we do have to make sure that there are safeguards in place. I do feel confident that with this legislation we have taken the action that is necessary, and I am looking forward to being able to provide that clarity.

This bill acknowledges Victorians' expectations of decency, dignity and freedom from intimidation and distress in our shared public places. This is a fundamental principle, and it is something we have needed to legislate. It is careful in its discernment between low-level offensive behaviour and the protection of fundamental values and freedom from social harm. It is important to note that this bill will not include conduct that is in the public interest and committed for legitimate purposes, such as conduct that has a political, artistic or cultural purpose. The member for Malvern did actually highlight something that I remember in my own long-ago history, some artwork that had at the time been considered to be offensive to many, and it was important to actually take note of some of that historical law, case law, and the reasons for decisions at the time. It is of note that a key difference between the statutory offence in this bill and the common-law offence it replaces is the provision of a clear maximum penalty. This is designed to guide sentencing judges and will provide certainty to the offence.

I will just speak a little bit about some of the safeguards, because I think that that has come up in this debate and it is important to place on the record that there are some really important safeguards that are included in this bill. I would like to highlight new section 195L, which provides that before proceeding with a prosecution the DPP is required to consent to it. This means that the general circumstances of a matter are scrutinised before charges are filed against an accused person, with the overall aim of ensuring that only prosecutions that are appropriate and in the public interest are commenced.

In addition to that, new section 195K builds a safeguard into the offence that makes clear that just being intoxicated or just using indecent, obscene or profane language is not enough on its own to be classified as grossly offensive, and this reflects the high threshold for the offence, which applies only to very serious conduct. This bill introduces a broad defence that applies to ensure that specific types of conduct committed reasonably, in good faith and for a legitimate purpose are not captured by the offence—for example, conduct for any genuine political, academic, educational, artistic, religious or scientific purpose. I did want to place that on the record and also reinforce what the member for Lara said as reassurance and to enhance, perhaps, the debate that has already been had.

If the DPP consents to charges being laid, Victoria Police will provide a brief of evidence to the Office of Public Prosecutions. A case tried as an indictable offence will start in the Magistrates Court to determine if in fact there is enough evidence before being committed to the County Court. If consent is not given, Victoria Police cannot file the charges and the matter cannot be prosecuted. I really wanted to make sure that that was very clear, to provide that context and to provide that understanding as it has been raised in what I think is a really legitimate debate on this legislation.

I also wanted to just acknowledge and respond to the member for Gembrook's concerns about the deferral of the public drunkenness element of this offence and recognise that this is another element of this legislation. The government introduced the reforms to repeal public drunkenness offences last year in line with the recommendations of the expert reference group appointed to advise the government on these reforms, which recommended a 24-month implementation period for trial sites to be established. But the impact of COVID-19 has delayed the establishment of trial sites as health services deal with the unprecedented impact of the pandemic, and that has, as we know, placed significant demand on many sectors.

I am going to move, though, to recognising and acknowledging the extraordinary pain that so many in our community but particularly our emergency services family experienced after the horror and the tragedy of the events on the Eastern Freeway. I do want to express the government's and, I think, the Parliament's—it has been expressed by both sides of course—gratitude to the families who have used

what has been a horrendous tragedy to seek for that to never be experienced again. I am going to make sure that I acknowledge the pain but also thank the families for the work that they have done through their pain to make sure that the tragedy and the loss have a consequence that means others are less likely to experience what was experienced.

I do want to start by acknowledging Senior Constable Lynette Taylor and the way that she was represented as a precious and beloved friend, a niece, a cousin, a wife and the glue to a family. I would like to acknowledge Senior Constable Kevin King and the messages that were read out at the memorial services from his wife, Sharon, who remembered her husband as a soulmate, and how important the public service that Kevin King provided to the community was. Of course I acknowledge Constable Joshua Prestney and his family for the way that he served the community and the tragedy that has come from that loss. And finally, I thank the family of Constable Glen Humphris, because there is great pain and agony that has come from that, and I acknowledge his partner, who said that his heart was broken by the loss. Recognising we have several members of this chamber who have come from emergency services, I know that each time there is another tragedy they are more aware than any of us of the pain that ricochets through families. I know when I was a young person a very dear friend of mine lost her brother, who was a member of the police force in active service. To go into their house and see the way that this family was touched—the memorials were really important.

This legislation before us is in response to a tragedy. It would be great if we never needed to do this type of work. It would be wonderful if this was not necessary, but it is. We are here together, and I am not just pleased to commend this bill but pleased as well to be joined in unison with the others in this chamber in wishing it a speedy passage.

Mr D O'BRIEN (Gippsland South) (15:49): I am also pleased to rise to speak on the Crimes Legislation Amendment Bill 2022, noting that this is not a bill about the actions of Richard Pusey but in relation to him. I would also like to acknowledge the families—and all the police force, but the families in particular—of constables Lynette Taylor, Glen Humphris and Josh Prestney and Senior Constable Kevin King, who lost their lives in absolutely awful and tragic circumstances on the Eastern Freeway. Subsequently we saw the actions of Pusey, which were despicable—unspeakable. What he did in the aftermath of that terrible accident has brought us to this point.

Again, this legislation is not about that but is certainly in response to that event. Just re-reading before the commentary that Pusey gave as he filmed the aftermath of that terrible event, it was absolutely sickening, and no fair-minded Victorian could not be sickened by what he did and what was said and indeed his entire behaviour throughout that. This is not legislation, though, to punish Richard Pusey, but it is indeed to ensure that similar future events or actions or activities are properly punished in the eyes of the community and indeed of community standards. So the opposition is certainly not opposing this legislation on that basis; however, there is nuance in everything that we say and do, and there are concerns. There have been concerns raised about this legislation and particularly with respect to the objectivity of what might be considered grossly offensive public conduct and what that actually means. There are a number of elements to the bill and certainly parts of it which provide some safeguards, if you like, in particular ensuring that only the DPP can finally approve action on a charge of grossly offensive public conduct, and that is as it should be.

There are concerns that have been raised I think probably by other speakers, but there are certainly some concerns that have been raised with the opposition by some of the groups involved, particularly the Law Institute of Victoria, which has raised concerns about the clarity of the legislation and that it should not be subject to the vagaries of public opinion or outcry. The Federation of Community Legal Centres has also raised some concerns that the proposed legislation designed to respond to a specific incident may have far-reaching consequences for communities that are marginalised and already over-represented in the criminal justice system and particularly that the proposed offence affords police a wide discretion in terms of assessing public propriety and decency and could result in discriminatory application. That is their view. Liberty Victoria similarly has raised concerns about the lack of definition of the term 'grossly offensive conduct'.

Look, I understand those concerns. I think there is some validity to them, and I am sure the member for Malvern—I was not able to hear his contribution, but I know in his comments to the Liberals and Nationals he has raised those concerns and the fact that the Parliament should be prepared, if necessary, if these changes are in any way overused or over-abused, to step back in and provide that clarity, which I am sure we would be prepared to do. At the end of the day the community needs to have some satisfaction that if that sort of offensive conduct that we saw with the Eastern Freeway tragedy is to occur again, the people involved will be justly punished. I do not think the community saw that in the case of the Eastern Freeway tragedy and its aftermath. So we certainly are not opposing this legislation on that basis, having noted, though, the concerns that have been raised about the lack of definition and how it will be applied. We all hope, I am sure, that this particular offence is not something that needs to be prosecuted from time to time, because we hope that we will not have people like Pusey involved. Unfortunately they are out there, but I hope that this is used sparingly and that it is not needed too often.

The second part of the bill I want to go to is the delay in introducing the decriminalisation of public drunkenness, and I must say I pulled out my contribution on the original legislation from *Hansard* from February last year. It is not often you get to say 'I told you so', but this is exactly the reason that the coalition opposed the bill at the time to decriminalise public drunkenness, because we were concerned—and I made some specific comments on behalf of my community and on behalf of rural and regional Victoria—that the systems were simply not in place to accommodate the decriminalisation of public drunkenness. I highlighted at the time that whilst there was some agreement on the recommendations of the Expert Reference Group on Decriminalising Public Drunkenness, which released its report known as *Seeing the Clear Light of Day*, we understood—in fact I actually said—that we in this place need to better acknowledge and respect that while there can be a problem and there can be a range of potential solutions, if we do not agree what the government's solution is, it does not mean we do not accept that there is a problem. What I said at the time, particularly as it relates to rural and regional Victoria, was that the health services simply do not exist to deal with this. I know that one of the recommendations from the expert panel was that primary first responders should be personnel from health or community services organisations, such as outreach services. I gave the example at the time that at 11.30 on a Friday night in Toora or Foster or Yarram there is not going to be someone available from one of those services to deal with a person who is drunk and causing problems in public. At the moment the police play that role. They probably do not like it necessarily, but they also know that they have a role in protecting public safety.

Likewise, the report recommended a range of new transport options be required to deal with people who are drunk in public. Again, I have enough trouble in my community with sober people being able to get public transport through much of my electorate. It is simply not there, and for many of the people who are going to be the subject of these laws, who do have issues with drunkenness, they do not have access to transport or peers around them who can assist. I made the point at the time of this legislation being debated in February last year that the notion that there will be transport options available in small country towns, even in bigger country towns, is just not feasible.

We warned the government then that it had the solution around the wrong way. By all means bring in the health response, bring in a response that says, 'We will stop treating public drunkenness as a crime, as a criminal issue; we will treat it as a health issue'. That is great, but we do not have the health response set up. I am actually still sceptical that the government will have that in the next 12 months, particularly given the impacts and the pressure on the health system at the moment. We have seen, indeed with the COVID pandemic, commitments and promises about preparing the health system for the pandemic, which have verifiably failed. I think the notion that in 12 months time we are going to be able to have a health response in place—I am somewhat sceptical still. Whether it was the paramedic that I spoke to about this legislation before it was debated, whether it was the Police Association Victoria, whether it was the AMA, they have all had valid concerns. It certainly is good that the government has acknowledged that it is not ready. I still think, though, that it does not have the resources in place to deal with public drunkenness. It is a good decision to delay this for another 12 months, but it has got the wrong end of the stick, and I think it should still be reviewing it further.

Mr TAK (Clarinda) (15:59): I am delighted to rise today to make a contribution on the Crimes Legislation Amendment Bill 2022. Like other members that have already done so, I would like to take this opportunity to thank the members of Victoria Police across the state and in my electorate, at the Springvale and Clayton police stations as well as those at Moorabbin, Cheltenham and Oakleigh. For the last three years we have been keeping all Victorian police busy, especially in the last two years during the global pandemic. Our police officers and emergency services workers have been in overdrive, working tirelessly to keep every single Victorian safe. Like our frontline healthcare workers, police and PSOs have been right there on the front line for the state's response to COVID-19. A huge thankyou to all the police, PSOs and emergency workers once again. They are protecting us and supporting our community each and every day, so I am glad to be part of a government that recognises the true value of and supports investment in this important institution.

We have here before us today another piece of legislation that goes to the heart of those values, an important amendment bill with two major objectives. Firstly, it creates an indictable statutory offence targeted at grossly offensive public behaviour that is suitable for contemporary society and has an appropriate maximum penalty, and it abolishes the outdated common-law offence of outraging public decency. As we have heard from other members, the context for creating this offence is the Eastern Freeway tragedy of April 2020. I join other honourable members in sending my condolences and my heartfelt best wishes to the families and friends of police officers Lynette Taylor, Glen Humphris, Kevin King and Joshua Prestney—a terrible tragedy, as we all remember from that time. I cannot begin to imagine the impact on those families. I can only hope that in some very small way this bill might help those families and communities.

The new offence proposed to be inserted into the Crimes Act 1958 will (a) apply to conduct that is grossly offensive to community standards of conduct that occurs in a public place or is seen or heard by a person in a public place, (b) will not apply to online offensive conduct and (c) contains a defence for good faith and reasonable conduct that is in the public interest, including genuine political activities, arts and science. It has a maximum penalty of five years imprisonment and includes a requirement that the Director of Public Prosecutions must agree that the offence can be charged before a prosecution can be commenced. The last qualifier, the DPP consent requirement, is an important safeguard to mitigate the risk of the offence criminalising conduct that is in the public interest and safeguards against possible misuse of the offence. There has been broad consultation in the development of the offence. A range of stakeholders have been consulted about the new offence, including the families of the victims of the Eastern Freeway tragedy, Victoria Police, the Office of Public Prosecutions, Victoria Legal Aid, the courts and other legal representative bodies.

Additionally, there are some important changes to the Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021, namely, to defer the repeal of the public drunkenness offence by 12 months to November 2023 to ensure a safe, health-based service model can be implemented statewide to replace the justice-led response following decriminalisation. When the government introduced the reform to repeal public drunkenness offences last year, it acknowledged that time was needed to properly design, implement and trial the replacement health-based response. This was in line with the recommendations of the expert reference group appointed to advise government on this reform, which recommended a 24-month implementation period and for trial sites to be established to test and evaluate the health model.

The impact of COVID-19 has delayed the establishment of the trial sites as health services deal with the unprecedented impact of the pandemic. That work is ongoing, but the importance of the decriminalisation of public drunkenness absolutely remains, and it remains an important priority for this government. The government is working with health services and Aboriginal service providers, including providers in the City of Greater Dandenong, which is in my electorate and part of the south-east, to establish a trial of the health-based service response. The trial implementation committees, including representatives from Victoria Police, health service providers and Aboriginal-specific

services, have been established to ensure service providers are working together. The trial sites, one in the City of Greater Dandenong, are expected to commence operations progressively from September.

The government is absolutely committed to this important transformation. It is well overdue, and we are committed to ensuring that there are no further delays to this long overdue reform. We all know that the challenges of COVID-19 are still being felt across the health and community services sector, but the government is doing everything that it can to support the establishment of the replacement health model to ensure the necessary services and supports are in place by November 2023.

These are both important changes to our criminal legislative framework. Again, thank you to all our police, locally and across the state, and again I am very proud of the government's support for police, funding 3637 new frontline police officers and deploying new police when and where they are needed most, using a new and sophisticated staffing allocation model. In fact 75 additional new police are based out in the southern metro region, division 2, Moorabbin division, which makes a great difference to our local community. Another 172 and 225 are working out of the Nunawading and Dandenong divisions, again making a huge difference to our local community.

There is a lot of work taking place in the crime prevention space as well. Over the past 18 months we have had the former Minister for Crime Prevention out in the Clarinda district on several occasions for some of the exciting announcements. Over the last four years there has been a lot of important work taking place under the building safer communities program in collaboration with the City of Greater Dandenong, and that work will continue until 2024.

More recently there have been some exciting new initiatives under the youth engagement grants as well as the African partnerships program. I was privileged to join the former minister in a visit to Afri-Aus Care's Ubuntu mothers program. They do amazing work supporting the mothers and families of at-risk youth in a two-generational approach to early prevention with a focus on supporting mothers' mental wellbeing and building their connectedness, wellbeing and capacity to support their young people. It is an amazing project, and you can really feel the sense of focus on families and community and building connections. On the same day we also got to sit down with the Somaliland Union of Victoria, a great local group who are helping young people across our area to find a sense of purpose, a sense of connection and a sense of belonging to their community. Again, some fantastic work is taking place to build the skills and resilience of our young people from our community. I thank Hussein and the team for all their hard work, time and effort. We will continue that work both within our community and here in the Parliament for a safer and fairer community, and I commend the bill to the house.

Dr READ (Brunswick) (16:09): The Crimes Legislation Amendment Bill 2022 arises from the offensive behaviour of a man who filmed police as they lay dying after a terrible crash. The suffering of the families and those who knew the victims must be immense, and I can only begin to imagine how they must have felt about the outrageous behaviour that ultimately led to this bill. Out of the grief from the loss of four officers who were killed as they worked and out of the disgust at the disrespectful behaviour, this bill was born.

The bill creates a new offence and, not related to those tragic events, it also delays the repeal of an old one. The new offence is one of grossly offensive conduct, and the old offence is public drunkenness. One thing that we learn from this is that it is much easier to create a new offence than it is to get rid of an old one. Consider that in 17th century England well-heeled lawmakers considered the sight of the hundreds of alcoholics from the gin alleys lying in the streets as representing grossly offensive public conduct to the moral sensibilities of the time. Their response was to develop public drunkenness laws designed, as they put it, for 'oppressing the odious and loathsome sin of drunkenness'. These laws were carried across and have been with us ever since in Victoria.

It is now 30 years since the Royal Commission into Aboriginal Deaths in Custody called on governments to eliminate the offence of public drunkenness, which has contributed to the overimprisonment of so many First Nations people, but has strangely had little impact on the impact

of white revellers at events like the Melbourne Cup. I understand that there are good reasons for the most recent delays to the repeal of this law, as the government works to develop the necessary sobering-up services. Nevertheless, the history of the public drunkenness offence and the racist manner in which it has been applied contain an important lesson for us to consider when we create this new offence. Will this new statutory offence work the way we think that it should? Probably not. Not if you read the Law Institute of Victoria's Tania Wolff, who writes that in attempting to solve one problem, this bill creates a dozen more.

As with most discretionary laws, this one will likely be disproportionately applied to the most vulnerable, such as those with psychological problems. It is not hard to imagine someone being grossly offensive if they are mentally unwell and under stress. Homeless Victorians will be affected more because they live their lives in public without the privacy that most of us enjoy. There is no clear benchmark for defining 'grossly offensive behaviour'. We do not know what we are legislating against, given this law is likely to be used against someone in 30 years. What was offensive 30 years ago may not be offensive now. Criminal lawyer Isabelle Skaburskis argues that the inherent uncertainty in creating such a vaguely defined offence makes it impossible to know what kind of conduct could land you in jail.

Offences of this nature will be unusual, so while the law was born out of one unpleasant act, who knows what will offend a police officer sufficiently in the future to justify the use of this offence? And as Skaburskis points out in her blog, which I urge you to read, all criminal offending is offensive. Many offences that will put you in jail offend community standards of acceptable conduct. The new offence serves no purpose because much of the existing criminal law is written to cover the sort of offensive conduct that harms people or otherwise justifies the attention of the courts.

It is hard to imagine this offence being used fairly. Based on our experience with the public drunkenness offence, among many others, it seems reasonable to fear that it will be applied unevenly and that those more likely to upset or offend the police are also more likely to find this added to their charge sheet, on top of resisting arrest and other popular items on the menu. This bill strays into new territory, though, by penalising departure from what the dominant community finds acceptable. While the bill is not explicit, it seems that the opinions of news editors and talkback radio hosts may determine when this offence should be applied. Skaburskis writes:

> Enforcing notions of proper or improper behaviour with threat of criminal sanction is itself offensive. It offends against liberalism. It offends our social unity. It offends against a conception of humanity that recognises that we are all flawed and there are times when each of us is ugly, and no one person stands above another in that regard.

We do not need another new offence with a jail term. What happened was an awful tragedy, and the behaviour of one man offended us all. But creating a trap for others to fall into in very different future circumstances will not undo what has been done. The bill will not deter behaviour it cannot define. I hope that the government reconsiders this bill before it reaches the other place.

Ms WILLIAMS (Dandenong—Minister for Mental Health, Minister for Treaty and First Peoples) (16:14): I move:

> That the debate be now adjourned.

Motion agreed to and debate adjourned.

Ordered that debate be adjourned until later this day.

MENTAL HEALTH AND WELLBEING BILL 2022

Second reading

Debate resumed on motion of Mr MERLINO:

That this bill be now read a second time.

Mr TAYLOR (Bayswater) (16:15): I got it right this time. Fantastic. I am not the minister and I am not the Clerk; I am the member for Bayswater, and I am here to kick off debate again on the Mental Health and Wellbeing Bill 2022. It is a great privilege to speak on this bill and speak in support of it. I would just like to start by acknowledging the fantastic work of the previous Minister for Mental Health and the current minister and the entire team. I know there has been a lot of work and a lot of dedication, and of course it has been extremely well supported and obviously crafted with a great deal of work from the department. It is always important to acknowledge those people who have done a great deal of work to get to this point.

Given that this is a significant part of the reforms and one of the recommendations that we are acquitting as part of the Royal Commission into Victoria's Mental Health System, I would like to take the opportunity to acknowledge the lived experience and the voices of so many people that have led us to this point. Whilst this is directly acquitting one recommendation, I will go on and talk about some of the other things that we are doing that obviously lead into, as part of this fantastic work, this very important generational reform in Victoria. I would like to put on record and begin my contribution by thanking all of those people for all of those very, very important and on many occasions extremely difficult things they recounted—their lived experience—through the royal commission that have led us to this point.

Of course we are here to establish through this bill the statutory framework necessary to reform Victoria's mental health system and achieve the vision of the Royal Commission into Victoria's Mental Health System. We know the context. In March 2021 the commission released its final report. The government is committed to implementing the recommendations in full. The royal commission recommended, through recommendation 42, that we repeal and replace the act with a new mental health and wellbeing act by mid-2022—and here we are. This bill will deliver on this recommendation and acquit or lay the foundations to progress a further 28 recommendations.

The bill will repeal and replace the Mental Health Act 2014 and will do a range of things. It will bring into scope regulation of a broader group of mental health and wellbeing services, establish new government oversight entities, introduce new rights-based principles, establish in legislation an opt-out model of access to non-legal mental health advocacy services, regulate the use of chemical restraint in mental health services for the first time in Victoria, introduce new measures to support a reduction in the use and impact of compulsory assessment and treatment and restrictive interventions, increase the uptake of safeguards that promote supported decision-making and the agency and autonomy of people living with mental illness, and of course enable new mental health-led responses to people experiencing mental health crisis in the community.

It is incredibly important that I talk about some of the background and the context for this bill. I think of the fact that things like this take bold reform. They take bold steps, and they also take a government who are willing to admit that they do not get everything right and a government that take decisive action. I think way back when to 2014 when I was sitting on my couch in Wantirna. I remember the Royal Commission into Family Violence and in 2014 this government committing to implement one if it was elected. It did that. It committed to all of those recommendations, and we are kicking on with that really, really important work. Particularly given my background and my experiences in my life and professionally as well, it is critically important work. Again, that takes bold, decisive action and a commitment to see it through, listen to the experts and listen to the voices. That led us to that reform.

Again, in 2018—before I was even the candidate for Bayswater—from recollection there was the announcement in the men's shed talking about the underinvestment and talking about creating a

mental health system that Victorians deserve and not laying the blame in any single person's or single government's hands but saying that we all must do better, that we must set upon a range of reforms, and, through the royal commission, let them do their work and that we would implement every single one of the recommendations and of course fund them as well. That is extremely bold. I was very proud, even before my time in, and now being part of, this government, that there was a government in this nation—and I am very proud to be part of this government—that was willing to say, 'We've got to do better, guys. We have got to do better'. To now be here being part of that solution as part of the team is a very proud moment, but of course my role is small. I feel quite insignificant compared to the roles of so many before me and those who have done the lifting of mountains to get to this point.

Look, speaking to locals—and I am sure this experience is the same for any member of Parliament, Labor, Liberal, Greens, independent et cetera et cetera—this means a lot. This is something we have spoken about often. This is going to change lives and it is going to save lives. This mental health bill really does help to lay the foundations. It acquits one of those recommendations but really is a commitment to the community and an ongoing commitment to Victorians that we are getting on with this work, that we are reforming the mental health system and that we absolutely want to make sure that Victorians get the mental health system that they well and truly deserve.

Of course the report was quite a read and quite extraordinary, and also the government's response, but it is important to fund that stuff. Our commitment was to do exactly that, and since 2019, $6 billion—this is nation leading. This beats and exceeds what the federal government has committed across the entire country, and this is just here in Victoria. That is our government's commitment, absolutely mammoth. I will go through and take the house through some of the funding commitments, but I do want to talk about the interim report. In the interim report on page 543 under 'A new approach to mental health investment', there is a recommendation that:

> … the Victorian Government designs and implements a new approach to mental health investment comprising:
>
> - a new revenue mechanism … for the provision of operational funding for mental health services …

There was a recommendation, which of course we took up in the government as our commitment, 'Funding for a better mental health system':

> A substantial increase in investment will be required to deliver the scale of reform needed to achieve a contemporary mental health system in Victoria.

It goes on:

> There is crucial work to be done by the Victorian Government to design and implement a new revenue mechanism. Starting this work now will ensure adequate funding is available to implement the Commission's final recommendations and support enduring reform of the mental health system.

Then it goes on, on page 544, under 'Need for increased investment':

> The Commission considers that there is a clear and significant need for increased investment in Victoria's mental health system.

Then we go to page 560, under 'Recommended process', from experts, listening to lived experience:

> The Commission recommends that the Victorian Government adopts a new approach to secure a dedicated and stable level of investment for the mental health system.

It then goes on to tell, through its report, why it recommends that. Of course the government absolutely in full has taken up that recommendation. We will acquit it, and obviously we are getting on with that important work.

I have a couple of minutes left. Just very briefly, as a part of context, when I put material out to my community I talk about the government's plan, I talk about positivity, I talk about supporting Victorians and I talk about supporting our mental health system and understanding we have not done everything perfectly. But to think there are some who have used that material as an opportunity and have used their voice in this place to say, 'You are wrong. Lived experience, you are wrong. Royal commission, you are wrong. This is a tax. That's simply what it is'. For two years let us just say a few

opposite spent time campaigning against this, and we still do not know what their position is. I cannot believe it. With the great opportunity and privilege that I have, my personal view on this is I want to do good. I want to listen to experts. I want to get out there and work with my community, provide better health care, provide better emergency services and provide better schools. One of the most primary functions of government is of course to support our healthcare workers, support our healthcare system and understand that we all have a role to play in providing for better mental health care and providing a better mental health care system. We are all part of that solution.

I think the government acknowledged that we have not done everything right, that we have not been perfect, but it is not about one side or the other. It is about coming together. I really hope that we can have a bipartisan position on funding for something that is not something that government has handed down a report on, this is a report from experts on a royal commission, people who have done the work, who have done the legwork. I mean, just look at some of the stuff. Despite the work of the royal commission, there have been numerous statements—you know, 'If we can, we will'. In some of those throwaway lines we have heard real opposition to making sure of our mental health care system, regardless of who is in government—Labor, Liberal, whatever the case may be.

I hope that for as long as possible it is a Labor government, because only a Labor government will fund health care properly. Only a Labor government will make sure the mental health care system is grown, is properly invested in and is supported so that people can have the facilities, the support and the treatment that they need and that they deserve. For too long we have not done enough. We have not been good enough, and this work, this commitment to Victoria, is about righting those wrongs and doing exactly that. I hope we can all get behind this. I am sure we will all be supporting this bill today and supporting the funding model which backs that work in.

Mr KENNEDY (Hawthorn) (16:25): I am glad today to be speaking on the Mental Health and Wellbeing Bill 2022. It is a pivotal part of the most extensive reform of the mental health system in Victorian history. It is also a crucial component in our commitment to delivering every single recommendation from the Royal Commission into Victoria's Mental Health System. But before I go on I would like to echo a sentiment expressed by many of my colleagues, principally that if you have lived and/or a living experience of mental illness, whether you have dealt with it yourself or you are family or a carer or a supporter, you recognise the importance of addressing this particular illness.

Our mental health strategy contains three fundamental pillars of reform: significant workforce expansion; sustainable ongoing investment; and—what this bill is delivering—legislative transformation. The past three state budgets since the royal commission's November 2019 interim report have injected over $6 billion into mental health reform in Victoria. Indeed work is underway now on 90 per cent of the royal commission recommendations, 18 months since the release of the final report.

I would also like to remind everyone here that this should not be a partisan issue—and I think we generally accept that up to a point. Every one of our lives has been touched by this issue, and so has every one of our constituents. This should not be a political issue to deal with, yet the opposition has not made an ironclad commitment to implement every recommendation from the royal commission. This is not the time for Thatcherism, this is the time to expand services so that every Victorian can have access to the mental health services they need. However, the opposition will not accept the recommendation by the interim report of the royal commission to create a dedicated mental health levy. I think that this is disappointing, because what this means is if one does not accept a levy based on, say, a percentage or some other formula, then we have got, in a sense, a bit of a barney, a fight, over how much and arguments about, 'Well, is it well spent?' or 'Should there be more?' and so on. And it is a pity, because that just distracts us from getting on with the main game. This is not really a talking point, it is just a political strategy—and what we are talking about is lives. I would hope that we will be able to revisit the mental health levy at some time in the future. The issue really should transcend politics—something which is recognised by stakeholders and mental health advocates. So I would ask the opposition to match our commitment to implementing every single recommendation of the royal commission into mental health.

I would like to talk now about the state of mental health in the electorate of Hawthorn. In 2015 VicHealth released resilience scores on different regions in Victoria. These are numbers between zero and 8 which aim to measure people's resilience in a crisis. In Boroondara the average score was 6.4, which is around the Victorian average. However, what is a major point of concern for me is that the lowest resilience score in Boroondara came from the 18 to 24 age group; the group that is most affected is in the area of youth between 18 and 24. This shows the vulnerability of our younger constituents to mental illness. This is reflected in a 2018 VicHealth study that showed that 75 per cent of adult mental health conditions emerge by the age of 24. The importance of the action we take today to counteract this issue therefore cannot be overstated. We must do everything in our power here in this chamber to assist those suffering or at risk of suffering from mental health issues.

During my time as the member for Hawthorn many constituents have contacted me exhausted from societal pressures. I would like to use the example of two constituents who recently contacted me about this bill. They are in their 70s and explained how they have struggled daily with the deaths of their children in the last few years. As a parent I could not imagine losing one of my children, and this couple's story was truly heart wrenching. Their children suffered from a combination of alcohol dependence, anxiety and depression. These afflictions are commonplace throughout our society; however, our system still failed to meet their needs. We are committed in this chamber to doing everything in our power to stop situations like this from ever happening again or from worsening. These parents still rely on support groups and our existing infrastructure, and I am confident that this bill will help them deal with these issues.

I was glad when my new federal neighbour Dr Michelle Ananda-Rajah recently helped open a new Headspace centre in the nearby Malvern electorate, and I am thankful that we finally have a federal government who will treat this issue with as much seriousness as we have in this chamber. The previous federal government managed to spend even less in this area, despite having considerably more funds. Those in the opposition have consistently flip-flopped on providing the resources needed to implement the royal commission's recommendations.

This bill will lay out a blueprint for building a compassionate and effective mental health and wellbeing system from the ground up. I would like all those suffering from mental health issues to know that they are not alone and that they have a state government that is working night and day to create a new, better mental health system. We will continue to fund the required programs in this area, and we will continue to pass legislation like this when it is needed. I spent my career in education, and I am glad today to have witnessed over the course of 40 years a complete change in the way people treat mental health issues. The removal of stigma around mental ill health has broken down cultural barriers for Australians in accessing these services.

The funding provided by this government and this bill are part of an overarching strategy to build a new, better system. This reform is not just for Australians today but for building a system for generations to come. But for this system to last for generations we need emphatic bipartisan support for it. All of our lives have been touched by this issue, and I am absolutely sure that those opposite me have helped constituents affected by this issue, so I would like to make one final plea to the opposition to support every single recommendation from the royal commission and not to cherrypick. We have read the reports and we saw the picture they painted, and we need to fix this system. The Andrews government will do the work to make sure that the royal commission's recommendations are met and that Victorians are no longer let down by the mental health system.

In conclusion, mental health is an absolute priority for this government. That is why we have invested over $6 billion in this area in the three budgets since the November 2019 report, and it is why we are proposing this bill. We are transforming the mental health system, and I urge us all not to just rest on our laurels but to keep evaluating that and to make sure that money is being spent in the right way—and if it is not right there, then remove it and apply it elsewhere in the mental health system. Having said that, I commend this bill to the house.

Mr McGHIE (Melton) (16:35): Congratulations to you, Deputy Speaker, on your elevation to the Deputy Speaker role.

I rise today to contribute on the Mental Health and Wellbeing Bill 2022. It is always good to follow the member for Hawthorn's contributions, and I thank him for that. Of course the handing down of the Royal Commission into Victoria's Mental Health System's final report was a pivotal moment in Victoria's history, and the reform that has been desperately needed by sufferers and the people that surround them cannot come soon enough.

The former Minister for Mental Health noted in his second-reading speech that there are three core foundations necessary to achieve success in this reform, and they are the workforce, the legislation and large-scale sustainable investment. Today's bill helps to deliver the legislation component to the investment this government has already made financially and into this critical workforce. This bill is a comprehensive bill. It differs from the Mental Health Act 2014 and sets out a fresh foundation for the new mental health and wellbeing system, looking beyond the issues of compulsory treatment and restrictive interventions which dominate the existing legislation. This is an unapologetically aspirational bill and in keeping with our bold and aspirational commitment to the Victorian community to deliver on every single one of the royal commission's recommendations.

The Royal Commission into Victoria's Mental Health System was unequivocal that our system was broken and failing Victorians. The final report laid out a blueprint for building a compassionate and effective mental health and wellbeing system from the ground up. While the commission undertook its important work, we did not stand idly by, with a record investment of $869 million in November 2020 to address critical demand and improve the mental health system while we awaited the final report. In total we have invested more than $252 million in additional mental health support since April 2020 to help meet demand and to ensure Victorians get the care that they need during and well beyond the COVID-19 pandemic. This was in keeping with expert advice on how to best manage traumatic events such as this pandemic that we have all gone through over the last 2½ to three years.

Also in record-breaking investment, the 2021–22 state budget provided an enormous $3.8 billion to kickstart the next decade of mental health reform. It focused on funding for services to provide greater clinical care and community support services to Victorians in need. We then backed that in through the 2022–23 budget with another $1.3 billion of further investment, building on the foundations created the year before and continuing to build the momentum necessary to fully deliver on the royal commission's outcomes. This investment will be the turning of the tide for mental health in Victoria, and this government is immeasurably proud to be the one to deliver it. Of course to achieve great outcomes, that cannot happen overnight. In order to secure the future of Victoria's mental health system we need the opposition to actually come to the table and explain how they intend to continue this vital work if not through sustainable funding mechanisms, including the mental health levy.

Some of the highlights of the record $3.8 billion through the 2021–22 state budget investment included: $954 million to reform area services to better support the mental health and wellbeing of adults and older adults; $264 million for 20 new local services for adults and older adults, supporting people in their communities; a further $266 million for supporting the mental health and wellbeing of young people; $196 million to support the mental health and wellbeing of infants, children and families; $370 million for new models of care for bed-based services that are safe and compassionate; $173 million for government- and community-wide suicide prevention and response; and $218 million for mental health reform in education, setting up children and young people to thrive. In Aboriginal mental health and social and emotional wellbeing we provided $116 million, and we provided $141 million in asset funding to expand mental health treatment options for Victoria's youth.

The 2022–23 Victorian state budget is investing $1.3 billion for brand new initiatives, which will build on last year's record investment of $3.8 billion. We could rattle on about more and where the money is going to improve the mental health services, but one important area that needs to be highlighted is the $372 million for workforce initiatives, which includes training an additional 1500 mental health

workers, including 400 mental health nurses, 100 psychiatrists and 300 psychologists. There is an additional $490 million for acute hospital-based care, which includes 82 new mental health beds in key growth areas such as the Northern Hospital and the Sunshine Hospital—obviously that is in the electorate of the Deputy Speaker. These are great initiatives in spending in regard to trying to assist the Victorian community with their mental health issues. Since the royal commission's report over 2500 mental health jobs have been created in Victoria, delivering on exactly what our mental health workforce strategy identified as necessary for this reform, for without caring mental health workers there can be no mental health system at all. Professor Pat McGorry, executive director at Orygen, welcomed the investments as an outcome of the royal commission and reflected that this approach will mean that Victorians and in particular young Victorians will be able to bounce back from the adversities experienced over the last two years and go on to lead healthy and contributing lives. Of course this is just the start of a 10-year journey, he says, and we are committed to long-term mental health reform that will benefit all Victorians for generations to come.

Our job now is to overhaul our mental health system and win back the trust of those Victorians who need our help and support. This should not have to be a partisan solution, but until those opposite similarly commit to implementing a single recommendation of the royal commission we are the only ones Victorians can rely on and really count on in this state to improve the mental health situation. Despite the dedicated work of the Royal Commission into Victoria's Mental Health System and despite the thousands of expert witnesses, formal statements and informal contributions from across Victoria, the opposition will still not commit, as we have done, to implementing all of those recommendations that the commission has tabled on this lifesaving outcome. One bit of the expert advice they particularly refuse to acknowledge is in relation to the creation of a dedicated mental health levy. As recommended by the interim report of the royal commission, this initiative recognises the considerable struggle mental health services have faced in receiving sustainable, ongoing funding sources in our crowded health sector.

Investing in mental health is critical, as we all know, and I am personally pleased to see this government investing in mental health and the workforce that surrounds it. As an ex-paramedic I can assure you that so much time of our hardworking first responders is used providing care and support for those struggling with mental trauma, and it has been in the past disheartening to see the same individuals time after time getting to a point where their only option is to call out a paramedic. We should never let mental health get so bad that for many that is the only option available to them. It is also smart to reduce the pressure on our first responders by dealing with the mental health issues at the core. It is the same as we hear about reducing pressure on our public health system by investing in the GPs. We need to have a smarter approach to the way we treat people physically and mentally, to provide better outcomes for patients and to reduce pressure elsewhere in the system, such as on our first responders. In my experience as a paramedic and as the ex-secretary of the ambulance union I have seen many paramedics suffer with mental health injuries over the years. In fact in my 38 years working in the ambulance industry unfortunately I know of 23 paramedics that took their own lives, and some of those paramedics were my work colleagues. I knew every one of those 23 paramedics. I am pleased to say that things have improved, but we have got a long way to go.

This bill is a vital piece of reform as we seek to continue to work, as highlighted in the mental health royal commission. I want to thank the previous minister and also the ministers that have done a huge volume of work on these reforms. I support these reforms, I support this legislation and I commend the bill to the house.

The DEPUTY SPEAKER: The member for Ringwood.

Mr HALSE (Ringwood) (16:45): Thank you, Deputy Speaker, and I echo the words of the member for Melton in congratulating you on your elevation to that role.

It is always a pleasure to follow the member for Melton when we are talking about health policy issues, given his extensive experience, and those final comments that he made about those in his sector, those

paramedics, who have during the course of their duties suffered severe mental ill health. It is always a pleasure to rise and talk about health policy when you are a member of the Labor Party because that is at the core of who we are. We want people to have access to world-class health and mental health services. Irrespective of where they live or their socio-economic status, everyone deserves the right to universal health care, and this series of reforms that Labor has introduced since the election in 2018, the re-election of the Andrews Labor government, has been significant.

One of the most challenging areas of public policy is mental health and how we address this lacuna of services—and the approach as well—that has lagged in standards over the previous generation, and so the Royal Commission into Victoria's Mental Health System was implemented. That in and of itself was telling of this government's intent around this issue. That the Andrews Labor government would commit to implementing every single one of the findings and recommendations of the royal commission is something quite significant. It is a bold move to say that you are going to hold a royal commission and then that you are going to implement every single one of the recommendations, not knowing how much they will cost and not knowing what the reforms will be. It is a great privilege and honour to speak to this bill, a significant bill for Victoria, as members have noted, one that points to a structural milestone in the 10-year mental health journey, the reform journey that is being undertaken by this government and being led by this government.

As others have noted, the bill has a wider focus than the Mental Health Act 2014 and thus provides this transformational reform that the system needs for those who intersect with it. The bill brings forth recommendations, as I have mentioned, from the royal commission. I want to go through some of the relevant outcomes, and I want to talk about mental health workers, some of the issues they are confronting at the moment and what this legislation seeks to do. The bill, as we have heard, will establish new governance and oversight entities for the mental health and wellbeing system; introduce a new rights-based framework and principle, which is tremendously important; establish in legislation an opt-out model of access to non-legal mental health advocacy services; and regulate the use of chemical restraints in mental health services for the first time. This is an issue that has arisen in my community, in the Eastern Health network, and has had some publicity recently, and I will touch back on that at a later point. It will increase the uptake of safeguards that promote supported decision-making and the agency and autonomy of people living with mental illness and will enable new health-led responses to people experiencing mental health crises in the community.

Of course we know what the context is for this bill: the royal commission and its final report released last year. The Victorian government has of course committed to implementing all of the recommendations, and as a part of those it will repeal and replace the existing act with this new bill, the Mental Health and Wellbeing Bill 2022. It also lays the foundation to acquit the progress of 28 other recommendations of the royal commission. Of particular importance the bill has a focus on those with lived experience of mental ill health. Those experiencing mental illness and psychological distress, their families, carers and supporters will be placed at the centre of the mental health and wellbeing system, as they should be. Treatment for mental health should be through better services in the community, community-based services to foster peer-led support; that will be the core aspect of Victoria's mental health system—as I mentioned, a rights-based approach with objectives and principles and the inclusion of designated lived experience roles at the highest levels of new and existing governance and oversight entities.

I would like to just quickly make some remarks about our mental health workforce. I had the opportunity to bump into the secretary of the Health and Community Services Union before to talk about some of the issues that his members are confronting every single day. We will be out in Maroondah Hospital soon to tour the mental health ward and to talk with workers at that facility. I am conscious that we often think of mental health workers in a particular frame. We think of mental health nurses, or we think of psychologists or psychiatrists, but the spectrum of individuals who work within the mental health workforce is enormous—the dozens and dozens of professionals and individuals who make up the mental health system and make it tick every single day. These people are lifesavers,

just like that consultant physician in the emergency room or the emergency department nurse or the surgeon—so too are mental health nurses, occupational therapists and social workers; so too is that person who works as the admin officer of the mental health ward in a hospital; and so too are those community outreach workers who go into situations which are very difficult and often very confronting. Those individuals are truly lifesavers, and we need more of them. We need to acknowledge the work that they do. We need to support them in a better way, and that is in part what this bill does.

This is part of a journey. This is one aspect of an enormous piece of public policy reform that lesser governments would simply choose not to pursue—it would be too difficult for them to pursue—but not the Andrews Labor government, because we know how serious this issue is in our community. It is highlighted by and has come to the fore during the pandemic, but we know that one in four or one in five Victorians will suffer mental health ill health at some point during their lifetime and nearly 50 per cent of Victorians will be diagnosed with a mental health condition during the course of their life.

We all know someone who has been impacted or touched by or has intersected with the mental health system. We know a sister, a friend, a sibling, a colleague, a co-worker—a colleague in this place—who has been touched by mental ill health, and we know, as the member for Hawthorn touched upon, the stigma that is often attached to those who are battling and going through a journey of mental ill health. We want to move beyond that and normalise the treatment of mental ill health, just like we would approach someone who presents at an emergency department or to their doctor with an ailment like a broken arm or a virus. We want to implement a system that is supportive of individuals so that they can seek that treatment that they need when they need it in a peer-led environment that is community based, that is well resourced and that is best practice. That is what this bill seeks to do: set the framework and the foundation for that work to occur.

Ms GREEN (Yan Yean) (16:55): Thank you, Deputy Speaker, and congratulations on your appointment. I know that representing the western suburbs is quite similar to representing a lot of the areas that I represent in the north, and you know full well the importance of this system and reforms to this system and have welcomed the investments that we are making in places like the Northern Hospital and the Sunshine Hospital.

I was fortunate walking through Strangers Corridor today to see a dear friend of mine, Paul Healey, who is the secretary of the Health and Community Services Union, and like me, he grew up in Warrnambool. We actually did year 12 together at Warrnambool TAFE, and he began his career as a psychiatric nurse. We were both mentored and influenced going into the labour movement by a fantastic life member of the Health and Community Services Union, Kevin Goodger. Kevin is in his 90s now and is no longer working as a psychiatric nurse, but it is people like Kevin that influenced people like Paul and me to understand why this system needed such reform and indeed our commitment to Labor politics.

There is another giant of mental health I also want to acknowledge, as other members have, and that is Patrick McGorry. I did happen to hear Patrick McGorry—it was either yesterday or this morning; time flies in a parliamentary sitting week—talking about a potential breakthrough in the use of medical marijuana as a potential treatment and maybe even a cure for the symptoms of many common mental health issues. What really struck me was that Professor McGorry said that in terms of treatment there had been little innovation and breakthrough for many decades, and as someone that had been involved, indeed, with the work that the member for Altona did in the introduction of medical marijuana in this state, I think now we are reforming this system it could be something that really works. I note that the new Minister for Mental Health is at the table and is taking note, so I am really hoping that it is something that she will have her department really get into and have a look at. I know that she enjoys working with Professor McGorry.

I wanted to acknowledge and congratulate her on her appointment but also acknowledge the great work of the member for Monbulk in his work as the Minister for Mental Health and Minister for

Education and for his diligence in implementing the Royal Commission into Victoria's Mental Health System and introducing this bill to the house and delivering the full second-reading speech to the house, which is different to what is normally done. I wanted to thank him particularly for the commitment that he made over a period of time and for the care and attention he took to the needs of my community who were particularly impacted by the trauma of Black Saturday and still are to this day—that is, members across the community, our first responders, police, firefighters and ambulance staff, and there are many of those workers that live and work in my community—but also to the young people and for his commitment especially to our mental health professionals in schools. There were trial sites, particularly in the Yan Yean electorate at Mernda Central College, at Mernda Primary and at Whittlesea Primary, and I really want to thank him for his attention to that.

There are the mental health beds that are being built at the Northern Hospital, which I mentioned earlier, and there is an early childhood parenting program being set up in the City of Whittlesea. This is a great bill, and I commend it to the house.

The DEPUTY SPEAKER: The time set down for consideration of items on the government business program has arrived, and I am required to interrupt business.

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

The DEPUTY SPEAKER: The bill will now be sent to the Legislative Council and their agreement requested.

VICTORIAN ENERGY EFFICIENCY TARGET AMENDMENT BILL 2022

Second reading

Debate resumed on motion of Ms D'AMBROSIO:

That this bill be now read a second time.

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

The DEPUTY SPEAKER: The bill will now be sent to the Legislative Council and their agreement requested.

BUILDING, PLANNING AND HERITAGE LEGISLATION AMENDMENT (ADMINISTRATION AND OTHER MATTERS) BILL 2022

Second reading

Debate resumed on motion of Mr WYNNE:

That this bill be now read a second time.

The DEPUTY SPEAKER: The question is:

That the bill be now read a second time, the government amendment be agreed to and the bill now read a third time.

House divided on question:

Ayes, 50

Addison, Ms	Fregon, Mr	Pearson, Mr
Allan, Ms	Green, Ms	Read, Dr
Blandthorn, Ms	Halfpenny, Ms	Richards, Ms
Brayne, Mr	Hall, Ms	Richardson, Mr
Brooks, Mr	Halse, Mr	Settle, Ms
Bull, Mr J	Hamer, Mr	Sheed, Ms
Carbines, Mr	Hennessy, Ms	Spence, Ms
Carroll, Mr	Hibbins, Mr	Staikos, Mr
Cheeseman, Mr	Horne, Ms	Suleyman, Ms
Connolly, Ms	Hutchins, Ms	Tak, Mr
Crugnale, Ms	Kennedy, Mr	Taylor, Mr
Cupper, Ms	Kilkenny, Ms	Theophanous, Ms
D'Ambrosio, Ms	McGhie, Mr	Thomas, Ms
Dimopoulos, Mr	McGuire, Mr	Ward, Ms
Eren, Mr	Merlino, Mr	Williams, Ms
Foley, Mr	Pakula, Mr	Wynne, Mr
Fowles, Mr	Pallas, Mr	

Noes, 19

Angus, Mr	O'Brien, Mr D	Staley, Ms
Battin, Mr	O'Brien, Mr M	Tilley, Mr
Britnell, Ms	Riordan, Mr	Vallence, Ms
Hodgett, Mr	Rowswell, Mr	Wakeling, Mr
McCurdy, Mr	Smith, Mr R	Walsh, Mr
McLeish, Ms	Southwick, Mr	Wells, Mr
Newbury, Mr		

Question agreed to.

Read second time.

Circulated amendments

Circulated government amendment as follows agreed to:

Clause 205, page 188, line 18, omit "31" and insert "133 of the amending Act".

Third reading

Motion agreed to.

Read third time.

The SPEAKER: The bill will now be sent to the Legislative Council and their agreement requested.

CRIMES LEGISLATION AMENDMENT BILL 2022

Second reading

Debate resumed on motion of Ms HUTCHINS:

That this bill be now read a second time.

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

The SPEAKER: The bill will now be sent to the Legislative Council and their agreement requested.

Business interrupted under sessional orders.

Adjournment

The SPEAKER: The question is:

> That the house now adjourns.

HEALTHCARE WORKER WINTER RETENTION AND SURGE PAYMENT

Mr WALSH (Murray Plains) (17:08): (6466) My adjournment matter tonight is to the Minister for Health, and it concerns the healthcare worker winter retention and surge payment scheme that the government has brought in. I ask the minister to look at some of the anomalies in that payment process whereby people who are very deserving of payments under that scheme are missing out. There will be a number, but particularly general practitioners—most of them do not qualify for that particular payment. I have had a letter from a constituent who is a rural generalist and a general practitioner who works at the Echuca hospital. She has explained to me that there are two staff doctors at that hospital but there are 10 general practitioners who work there on contract. They do not qualify for the payment even though they are doing exactly the same work, and that is setting up a real anomaly in that system. She goes on to say:

> Due to the combination of a COVID outbreak on our rehabilitation ward, unfillable junior and senior doctor leave, locum staff not fulfilling contracts, and our hospital having to keep severely unwell patients because either there have been no beds available at other hospitals or no ambulances available to transfer them there …

This particular doctor has worked for 19 days straight. Along with the rest of her colleagues she goes on to describe how she is absolutely exhausted.

On the Victorian Department of Health website the aim of the healthcare worker winter retention and surge payment is:

> To recognise public healthcare workers …

and to:

> … join other programs designed to fill gaps and improve the working environment for all staff …

It says:

> All staff employed in public health services …

are eligible, but if you actually look at what happens, the Victorian government has not accounted for the fact that many of the GPs working in public hospitals are actually contractors, not employees, so they are not eligible for the payment. As I said, at Echuca there are two part-time employed general practitioners but there are 10 contracted GPs who do not actually qualify for that particular payment. She believes that it creates an inequity between the contracted doctors and the two part-time staff ones. But, more importantly, she is quite concerned that with that disparity there are something like 30 doctors in training that are being taught at that particular hospital and that they will know that perhaps they should not go on and become general practitioners and rural generalists because they know they are not going to be rewarded suitably when they work in a hospital under this particular scheme. She believes it is sending the wrong signal at this point in time when they are doing their training and they are choosing what path they go down in the future. So I ask the minister to have a look at that particular anomaly that is in that program and ask her to make sure that these doctors get that payment.

YARRA RIVER, ALPHINGTON

Ms THEOPHANOUS (Northcote) (17:11): (6467) My adjournment is to the Minister for Energy and Minister for Environment and Climate Action, and I ask the minister to provide me with a briefing on our efforts to protect the Yarra riverfront at the site of the old Alphington paper mill. For years the future of this riverfrontage has been uncertain, as the developers who own the land have wanted to vest it into public hands but discussions were completely bogged down on who should take responsibility for it. In the intervening time, we saw significant degradation of the riverbank, with contamination and unstable soil continuing to erode this sensitive waterway. So last year, with the backing of our steadfast local campaigners, I went straight to the minister and pushed for the Department of Environment, Land, Water and Planning to intervene to bring some certainty to this situation. I was thrilled to let my community know that the state government has now put forward a proposal to the City of Yarra which can see this area become Crown land and the council then appointed as committee of management. If it is achieved, this will be a fantastic outcome for our community that will ensure public ownership and access, amenity and connectivity, and most importantly protect the sensitive riverbank well into the future.

The problem is that even though the state has offered a resolution, Yarra council are now sitting on their hands in some pseudo stand-off with the developers, where neither is particularly interested in resolving this with any urgency. Yarra has the power to put this to bed and secure the long-term future of this riverbank, but they are still refusing to act after months, based on some fallacy about wanting the land rehabilitated first. Let us be clear: there will be no land handover to the Crown or council management if the developer does not do their part first in remediating this land to be safe, stable and ecologically sound. So this is all just more senseless stalling from Yarra council, and all the while the riverbank is suffering.

You know, the Greens talk a big game when it comes to the environment, but here we are with a Greens-controlled council who cannot even act to protect the environment in their own backyard. We are so sick of the posturing and the holier-than-thou sloganeering. These absolute fraudsters go around my community telling people they are the only ones that care about climate action. The truth is the only thing they care about is themselves, and when they are given power they cannot even wield it to do something as important as protect the Yarra River when they have the chance. Shame on them. The ones who really care about climate action and our riverfront are the locals in Alphington who I have been working with for over three years to get action on this issue. Yarra council need to formalise the agreement so we can get on with making sure this stretch of the Yarra stays beautiful, natural and public. And if you cannot even live up to your own stated values, then do us all a favour and get out of the way, you absolute scammers.

FOOT-AND-MOUTH DISEASE

Mr RIORDAN (Polwarth) (17:14): (6468) My adjournment matter this evening is for the Minister for Agriculture in the other place. The action I seek from the minister is to actively engage with the private veterinary industry to help give confidence to our rural and regional communities about the potential outbreak of FMD, foot-and-mouth disease, here in our wonderful Victoria.

Agriculture to Victoria is worth billions of dollars. Throughout the COVID pandemic time rural and regional Victoria still managed to fire along on most of its cylinders. It is going through an enormous boom at the moment in land and in commodity prices. Regional Victoria is in a good place at the moment. It does not need to have an FMD outbreak, which would absolutely rip the guts, the absolute guts, out of agriculture. We would see the transport industry, the livestock industry, meat processing, food processing and exports grind to a halt, costing Victorians billions.

It is very distressing to know that given opportunities this state government has not acted in the best interests of rural and regional Victoria. For example, this week in Parliament the government was given an opportunity to halt unauthorised riverside camping on farms in Victoria. Even the Greens and even the independents—everybody in this chamber—sided with the Liberal Party to put a

temporary stop to that until such time as we know that the risk of FMD has passed. This government did not do it.

More distressingly, the government have admitted in briefings to the Parliament this week that they are 300 to 500 workers short in the ag department in dealing with a rapid FMD outbreak. What is the solution to such a shortage? Well, the government has undertaken to bring in people from across the public service. Quite frankly, regional Victorians will not have confidence in people from the transport industry or from the health department or from other sections of the department and the government bureaucracy that have no experience or expertise in rural or regional Victoria and particularly in FMD outbreaks. There is a solution, and it is the private veterinary industry. The Veterinary Practitioners Registration Board of Victoria works with the private vets that are already out in the workforce and already out in rural and regional Victoria. They are the ones that will recognise this disease. These are the people that will be at the coalface. This government needs to have an action plan that works with this industry—this vital industry—to help Victorians keep on top of FMD and be aware of the outbreaks.

It is incumbent upon the agriculture minister to stop dillydallying, stop wasting time and start putting confidence into our communities. People in regional Victoria need to know that this government is going to have their back and it is going to take easy, simple steps that will help keep all Victorian agriculture safe.

VICTORIA POLICE ACADEMY

Mr FREGON (Mount Waverley) (17:17): (6469) Speaker, it is good to see you in the chair this afternoon. Congratulations on your election—fantastic first week.

My adjournment matter this evening is for the Minister for Police, and the action I seek is for the newly appointed minister to come to the Mount Waverley district and join me in visiting the Victoria Police Academy in Glen Waverley as the main induction training establishment for Victoria Police. I see the member for Gembrook is in the room, and I presume he was trained there for his former role in the police. Were you trained in Glen Waverley?

Mr Battin: Yes. I got a speeding fine too out the front on my way to work on my first day. That was pretty annoying.

Mr FREGON: I will let that go. The state-of-the-art academy has helped train thousands of additional police officers and PSOs, and now we are continuing the recruitment to ensure we have the necessary resources to keep Victorians safe. Over 3500 police in the last four or five years have been recruited. We know that our community is strongest and safest when we work together and are supported by a well-resourced, modern police force engaged with our local communities. I look forward to the minister's response.

ROSEMAUR GALLERY

Mr BATTIN (Gembrook) (17:18): (6470) I rise with my adjournment matter for the Minister for Planning, and the action I seek is for the Minister for Planning to travel down to Harkaway, a beautiful part of the world, and meet with the residents out there in relation to the new gallery which has been approved, the Rosemaur Gallery. There was a committee put forward in relation to this gallery application. It went through the former minister, and the former minister signed off on this in the minutes before he resigned, or retired, from the role of planning. The new minister should be coming down now and speaking to my residents down there.

This weekend we met with many residents. We have also had many speak up, including Shaun Williams, Melanie Harley, Bruce Wood, Helen and Geordie Fyfe, Brittany Van Steensel, John Fletcher, Roland Crantock, Alicia Hansford and Jeanette Hird. We have had many kids that have come along as well to some of these events to talk about the impact of what would happen with this gallery that is going to be put in on King Road in Harkaway.

The proposal put forward is not just a gallery, it is also a convention centre or function centre that will hold 150 in one section and 100 people in another. So it could hold up to 250 people at a time. For those who know Harkaway, know the area and know King Road, it is a dirt road on which you cannot get two cars to go past each other. It is a very, very narrow road. We have got memories of the road because back on Ash Wednesday my father crashed his car whilst trying to get out of the Ash Wednesday fires at the bottom end of that hill, because the road was not wide enough when the flames were around that area. Obviously, luckily, he was fine, but that is the style of road. It is one of those really big country roads that the residents have loved for a long period of time. The people living on there are all on broadacreage and they are quite proud of the area they live in. Their concern is in relation to fire danger and cars getting in and out if there is a fire through there, which we have had in the past. Their concern is around the traffic movement going past the primary school through the little town of Harkaway—which has one shop, so we are not talking a big town. We have got a shop. If you go down the other end to get out in the other direction, you have to go down a fire track, which is currently mud, but they have been told they will have to turn that into a tar track. Whilst that would be common sense and safe, that will go out to Beaumont Road, and no-one will rule out that that will then become a thoroughfare. So residents on Beaumont Road in Berwick are also concerned with traffic movement coming through after functions at 11 and 12 o'clock at night if you have got 300 cars going from the gallery.

The one thing from the community that they will say is they do support the idea of a gallery. It is the location which is the biggest issue. It is in the middle of a green wedge zone, which means the function centre would not be allowed if it was just a function centre, but because it has got the art gallery it gets around the conditions and finds that loophole. But I say to the minister: come out and hear from the families, the kids, the school and the local community, because of the 521 submissions put forward, 83 per cent opposed, and yet it was still supported by the government. The minister needs to come out and listen to my community.

TARNEIT ELECTORATE BUS SERVICES

Ms CONNOLLY (Tarneit) (17:22): (6471) My adjournment is for the Minister for Public Transport, and the action I seek is that the minister update me on the rollout of the new FlexiRide service for Tarneit North residents. As the minister very well knows, we absolutely love our buses out in Melbourne's west. In last year's budget just over $12 million in funding was allocated towards planning and implementing two new bus routes to service these estates. After planning and analysis was conducted, it became clear that these residents would benefit a lot more from something that we are calling a FlexiRide service, which we announced in December last year.

In many ways FlexiRide can do many of the things that a regular, run-of-the-mill bus service cannot do. It is more reliable and convenient, with smaller buses that can traverse our local streets with greater ease and more regular services to pick up residents and take them to some of our major destinations. I am talking about places like Tarneit train station, nearby schools even, and our fabulous major shopping centres within the catchment zone. All residents will need to do is book and track their service via the FlexiRide app or by telephoning the bus operator directly. The average wait time—and this is really important for people to know—for a FlexiRide bus service is only 15 minutes. That is why I know it is going to service people in Tarneit a whole lot better than just a normal bus service. That wait time compares very favourably with taxis and other timetabled bus services.

I know that once our FlexiRide is up and running this service will greatly benefit families living in new and developing estates in Tarneit and Truganina, which is why I know they would very much appreciate an update from the minister on the progress in setting up this very important service.

HEALTH CARE SUSTAINABILITY

Dr READ (Brunswick) (17:24): (6472) My adjournment matter is for the Minister for Health, and the action I seek is for the minister to establish a sustainable health care unit within the Department of Health. Health care is a large and growing sector of the Victorian economy, and nationally it is

estimated to account for around 7 per cent of our greenhouse gas emissions. Many hospital staff are dismayed at the volume of waste they throw out daily, and this has increased with COVID. They worry too about emissions and the many impacts of global warming on health. I recall seeing a nurse a few years ago throwing out unopened packs containing resuscitation bag and mask kits, worth about $40 each, simply because they had passed their use-by date. She complained that they would probably be fine for another 10 years. She is one of many health workers who want their work to protect and improve health and wellbeing but are increasingly worried that the health sector is part of the problem. Motivated staff are often also frustrated by a number of barriers, including a lack of enthusiasm at some levels of management and uncertainty around questions like what equipment can safely be re-used without risk of infection, and will the energy used in sterilising equipment undo any sustainability gains?

Clinicians and researchers in the Victorian public health system are working together to find answers, but a sustainability unit would coordinate their efforts and turn their work into guidelines for the whole system, maximising the environmental and financial gains. The new health care sustainability unit would harness the considerable purchasing power of the state's public health system to choose medicines and other products with lower carbon footprints. It would guide all of those things and both drive and monitor our health system's progress towards decarbonising. The AMA, the Royal Australasian College of Physicians, the Climate and Health Alliance and Doctors for the Environment Australia, who, by the way, came to visit me last week, have all called for such a unit at both national and state levels, and it makes sense to have a state unit to work with what we hope will be a new federal unit and to liaise with industry and the private health sector.

I applaud the government's decision to ensure that in future new hospitals will be all electric and that all public hospitals will be powered by renewable energy from 2025, but let us not stop there. The British National Health Service has a sustainable health care unit which is more than paying for itself with the savings it has generated, and I encourage the minister to establish one in Victoria without delay.

MORDIALLOC ELECTORATE POLICE

Mr RICHARDSON (Mordialloc) (17:26): (6473) It is a pleasure to rise this evening and present an adjournment matter to the Minister for Police. The action I seek is for the minister to join me in the electorate of Mordialloc to meet with the dedicated police service people across our local community. The Andrews Labor government backs our Victoria Police members. That is shown in the resources that we have provided and an increase of more than 3100 new police members since we came to government. To add to that, recently in the Victorian 2022–23 state budget we added an extra 500 serving police members.

They have done an extraordinary job across Victoria during really challenging times over the last couple of years of the pandemic, and in our community we have seen their hard work translate into a reduction in crime in the City of Greater Dandenong and Kingston communities. Their proactive work, particularly during some of those warmer months, with the Operation Summersafe program keeping all of the communities that interact with Port Phillip Bay safe from St Kilda through to Frankston, shows that active, preventative and community-supported and -minded approach to community policing.

I had the great opportunity of joining members of the Greater Dandenong police community recently at a forum in Keysborough South where we came together with residents to hear their thoughts, views, suggestions and concerns. It was a really informative and important meeting at the Tatterson Park reserve to hear all of the different challenges that Victoria Police are facing—changes in technology that we need to support them in as well—and how modern policing is undertaken. It was an open and transparent discussion, and we are indebted for their work and connection with our community.

I would really like the Minister for Police, as we head towards national Police Week in September, to come with me to the Mordialloc electorate and meet with members of the Victoria Police family to hear their thoughts and views on how we can improve the service to our local community, the challenges that we are facing and how we can support them into the future.

COVID-19 VACCINATION

Mr ANGUS (Forest Hill) (17:28): (6474) Speaker, I congratulate you on your election to high office earlier this week.

I raise a matter of importance for the attention of the Minister for Health. The action I seek is for the minister to provide a daily breakdown of the vaccination status of all Victorians hospitalised with COVID-19. I raise this matter as I have been contacted recently by several constituents seeking this information, including vaccinated constituents. Upon trying to locate this information it was apparent that it is no longer available in Victoria. Providing this information to all Victorians would provide more transparency and better inform Victorians around the issues surrounding the ongoing health crisis here in Victoria.

I note that the lack of disclosure of this information in Victoria stands in stark contrast to some other jurisdictions, such as New South Wales. The last time the basic vaccination status of patients hospitalised with COVID-19 in Victoria was publicly disclosed was on 26 January this year, when there were 1089 people in Victorian hospitals, with 77.2 per cent noted as being fully vaccinated. No data is available regarding the 743 COVID-19 patients in Victorian hospitals yesterday. This contrasts with New South Wales where this information is regularly available, with the latest data available being for the weekend of 23 July 2022. The New South Wales data at that time showed that of the 918 people in New South Wales hospitals, 692 people, or 75.4 per cent, were vaccinated, with 225 people, or 24.6 per cent, having an unknown vaccinated status. This leaves one person, or 0.1 per cent of hospitalised people, recorded as unvaccinated. Of the people hospitalised in New South Wales at that time, 24.1 per cent had received four or more doses of COVID-19 vaccine, 31.8 per cent had received three COVID-19 vaccine doses and 18 per cent had received two COVID vaccine doses—a total of 73.9 per cent vaccinated patients.

Having similar information available for Victorians would assist people with their health management. It may well also assist the government as it tries to deal with the current crisis in the health system here in Victoria. It is now very clear that, whatever one's initial view of the COVID-19 vaccination program, it is clearly not working as intended. Consequently it is incumbent on the Victorian government to look at what is actually going on, inform Victorians accordingly and look at options to address this situation. Minister, I urge you to release this important information on a daily basis, both to inform all Victorians as to what is happening in our hospitals and to inform the government so it can ensure this situation is being properly managed and changes to the previous approach can be made as required.

ROSEBUD PRIMARY SCHOOL

Mr BRAYNE (Nepean) (17:31): (6475) My adjournment matter is for the Minister for Education. The action I seek is for the minister to come down to the Mornington Peninsula to visit the brand new Rosebud Primary School, where construction has just been completed. The Andrews Labor government has a proud record of upgrading and modernising schools across our state. Rosebud Primary School is no exception. This rebuild has been a huge win for the southern Mornington Peninsula, with the school receiving $13.7 million to add a range of new facilities to accommodate an extra 200 local students. The most exciting of these upgrades is the brand new gymnasium that is already being put to good use by the students in the sports academy. These new facilities are such a good asset for the southern peninsula. It goes to show just how important it is for students to go to school and have access to world-class buildings and learning spaces. Once again, I invite the minister to come down to Rosebud Primary School to tour the incredible new facilities that local students are already utilising.

RESPONSES

Ms BLANDTHORN (Pascoe Vale—Leader of the House, Minister for Planning) (17:32): Thank you to the member for Gembrook for his adjournment matter regarding the Rosemaur Gallery at Harkaway. I am advised that in June 2022 the former Minister for Planning approved this gallery, that this followed extensive community consultation as well as careful consideration by an independent advisory committee and that a report was provided as such. The decision has been made. I am advised that it was made carefully, and the decision will not be revisited in that context.

I am advised that the gallery will display an internationally significant collection of artworks valued at more than half a billion dollars and will establish onsite accommodation for visiting artists and gallery staff. I am also advised that approximately 100 jobs are expected to be created during construction of the project, with another 150 ongoing jobs once it is operational, and I am sure that will also be of great interest to the member for Gembrook and his community. I am also told that in relation to some of the concerns that the member for Gembrook raised in relation to traffic in and out of the area and other such types of concerns that strict requirements have been imposed on the development to mitigate against any potential impacts on the surrounding community as well as the green wedge area. I thank the member for his adjournment matter and hope that that can clarify some of the issues for his community.

The member for Murray Plains raised a matter for the Minister for Health.

The SPEAKER: Member for Footscray, you need to acknowledge the Chair when you are crossing backwards and forwards in the front of the chamber.

Ms Hall: Sorry.

Ms BLANDTHORN: Thank you, Speaker. The member for Murray Plains raised a matter for the Minister for Health regarding the healthcare worker retention payments in winter and specifically an issue that he has been advised of in his community, particularly in Echuca, regarding those who are eligible for the payments, between contracted workers and permanent workers. I will ask the Minister for Health to consider that matter.

The member for Northcote raised a matter for the Minister for Energy and Minister for Environment and Climate Action regarding the riverfrontage at the old Alphington paper mill site. It is a site that I am particularly familiar with because my now husband lived just near that site so I used to drive past it all the time and look at those old buildings there. The member has asked for a briefing regarding that and says in particular that Yarra council appear to be sitting on their hands and not working constructively with the developer to ensure that this land can be retained in public ownership for the betterment of the community.

The member for Polwarth raised a matter for the Minister for Agriculture regarding meeting with the private vet industry regarding foot-and-mouth disease, and I will pass that on to the minister, who I know is busily consulting with many people about this important issue at this time.

The member for Mount Waverley asked the Minister for Police to visit the police academy in Glen Waverley. Similarly, the member for Mordialloc asked for the police minister to join him in Mordialloc to meet with our dedicated police force. I am sure the Minister for Police will be more than happy—particularly regarding the 3000 or more new police that have been appointed and employed—to take that on.

The member for Tarneit raised a matter for the Minister for Public Transport regarding buses in Melbourne's west and FlexiRide and asked for an update on those services. I am sure the Minister for Public Transport will be more than willing to provide that.

The member for Brunswick raised the issue of whether or not there should be a sustainable health care unit set up within the Department of Health, and I will refer that to the Minister for Health. The member

for Forest Hill also raised a matter for the Minister for Health, regarding the daily breakdown of statistics of people hospitalised with COVID who have been vaccinated versus those who have not been vaccinated, and I will ask that the minister consider that.

The member for Nepean asked that the Minister for Education visit the new Rosebud Primary School—a $13.7 million investment, I believe, including a new gym—and I am sure that the Minister for Education will be more than willing to visit these world-class facilities.

The SPEAKER: Thank you, Minister. The house now stands adjourned.

House adjourned 5.37 pm until Tuesday, 16 August.