PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-EIGHTH PARLIAMENT

FIRST SESSION

Thursday, 23 February 2017

(Extract from book 3)

Internet: www.parliament.vic.gov.au/downloadhansard

By authority of the Victorian Government Printer

The Governor

The Honourable LINDA DESSAU, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC, QC

The ministry

(from 10 November 2016)

Premier	The Hon. D. M. Andrews, MP
Deputy Premier, Minister for Education and Minister for Emergency Services	The Hon. J. A. Merlino, MP
Treasurer	The Hon. T. H. Pallas, MP
Minister for Public Transport and Minister for Major Projects	The Hon. J. Allan, MP
Minister for Small Business, Innovation and Trade	The Hon. P. Dalidakis, MLC
Minister for Energy, Environment and Climate Change, and Minister for Suburban Development	The Hon. L. D'Ambrosio, MP
Minister for Roads and Road Safety, and Minister for Ports	The Hon. L. A. Donnellan, MP
Minister for Tourism and Major Events, Minister for Sport and Minister for Veterans	The Hon. J. H. Eren, MP
Minister for Housing, Disability and Ageing, Minister for Mental Health, Minister for Equality and Minister for Creative Industries	The Hon. M. P. Foley, MP
Minister for Health and Minister for Ambulance Services	The Hon. J. Hennessy, MP
Minister for Local Government, Minister for Aboriginal Affairs and Minister for Industrial Relations	The Hon. N. M. Hutchins, MP
Special Minister of State	The Hon. G. Jennings, MLC
Minister for Consumer Affairs, Gaming and Liquor Regulation	The Hon. M. Kairouz, MP
Minister for Families and Children, and Minister for Youth Affairs	The Hon. J. Mikakos, MLC
Minister for Police and Minister for Water	The Hon. L. M. Neville, MP
Minister for Industry and Employment, and Minister for Resources	The Hon. W. M. Noonan, MP
Attorney-General and Minister for Racing	The Hon. M. P. Pakula, MP
Minister for Agriculture and Minister for Regional Development	The Hon. J. L. Pulford, MLC
Minister for Women and Minister for the Prevention of Family Violence	The Hon. F. Richardson, MP
Minister for Finance and Minister for Multicultural Affairs	The Hon. R. D. Scott, MP
Minister for Training and Skills, and Minister for Corrections	The Hon. G. A. Tierney, MLC
Minister for Planning	The Hon. R. W. Wynne, MP
Cabinet Secretary	Ms M. Thomas, MP

Legislative Council committees

Privileges Committee — Ms Hartland, Mr Herbert, Ms Mikakos, Mr O'Sullivan, Ms Pulford, Mr Purcell, Mr Rich-Phillips and Ms Wooldridge.

Procedure Committee — The President, Dr Carling-Jenkins, Mr Davis, Mr Jennings, Ms Pennicuik, Ms Pulford, Ms Tierney and Ms Wooldridge.

Legislative Council standing committees

Standing Committee on the Economy and Infrastructure — Mr Bourman, #Ms Dunn, Mr Eideh, Mr Elasmar, Mr Finn, Ms Hartland, Mr Leane, #Mr Melhem, Mr Ondarchie, Mr O'Sullivan and #Mr Rich-Phillips.

Standing Committee on the Environment and Planning — #Mr Barber, Ms Bath, #Mr Bourman, Mr Dalla-Riva, Mr Davis, Ms Dunn, Mr Eideh, #Ms Hartland, Mr Melhem, #Mr Purcell, #Mr Ramsay, Ms Shing, #Ms Symes and Mr Young.

Standing Committee on Legal and Social Issues — #Ms Crozier, #Mr Elasmar, Ms Fitzherbert, #Ms Hartland, Mr Mulino, Ms Patten, Mrs Peulich, #Mr Rich-Phillips, Mr Somyurek, Ms Springle and Ms Symes.

participating members

Legislative Council select committees

Port of Melbourne Select Committee — Mr Barber, Mr Mulino, Mr Ondarchie, Mr Purcell, Mr Rich-Phillips, Ms Shing and Ms Tierney.

Joint committees

Accountability and Oversight Committee — (*Council*): Ms Bath, Mr Purcell and Ms Symes. (*Assembly*): Mr Angus, Mr Gidley, Mr Staikos and Ms Thomson.

Dispute Resolution Committee — (*Council*): Mr Bourman, Mr Dalidakis, Ms Dunn, Mr Jennings and Ms Wooldridge. (*Assembly*): Ms Allan, Mr Clark, Mr Merlino, Mr M. O'Brien, Mr Pakula, Ms Richardson and Mr Walsh.

Economic, Education, Jobs and Skills Committee — (*Council*): Mr Bourman, Mr Elasmar and Mr Melhem. (*Assembly*): Mr Crisp, Mrs Fyffe, Mr Nardella and Ms Ryall.

Electoral Matters Committee — (*Council*): Ms Patten and Mr Somyurek. (*Assembly*): Ms Asher, Ms Blandthorn, Mr Dixon, Mr Northe and Ms Spence.

Environment, Natural Resources and Regional Development Committee — (*Council*): Mr Ramsay and Mr Young. (*Assembly*): Ms Halfpenny, Mr McCurdy, Mr Richardson, Mr Tilley and Ms Ward.

Family and Community Development Committee — (*Council*): Mr Finn. (*Assembly*): Ms Couzens, Mr Edbrooke, Ms Edwards and Ms McLeish.

House Committee — (*Council*): The President (*ex officio*), Mr Eideh, Ms Hartland, Ms Lovell, Mr Mulino and Mr Young. (*Assembly*): The Speaker (*ex officio*), Mr J. Bull, Mr Crisp, Mrs Fyffe, Mr Staikos, Ms Suleyman and Mr Thompson.

Independent Broad-based Anti-corruption Commission Committee — (*Council*): Mr Ramsay and Ms Symes. (*Assembly*): Mr Hibbins, Mr D. O'Brien, Mr Richardson, Ms Thomson and Mr Wells.

Law Reform, Road and Community Safety Committee — (*Council*): Mr Eideh and Ms Patten. (*Assembly*): Mr Dixon, Mr Howard, Ms Suleyman, Mr Thompson and Mr Tilley.

Public Accounts and Estimates Committee — (*Council*): Ms Pennicuik and Ms Shing. (*Assembly*): Mr Dimopoulos, Mr Morris, Mr D. O'Brien, Mr Pearson, Mr T. Smith and Ms Ward.

Scrutiny of Acts and Regulations Committee — (*Council*): Ms Bath and Mr Dalla-Riva. (*Assembly*): Ms Blandthorn, Mr J. Bull, Mr Dimopoulos, Ms Kilkenny and Mr Pesutto.

Heads of parliamentary departments

Assembly — Clerk of the Parliaments and Clerk of the Legislative Assembly: Mr R. W. Purdey

Council — Clerk of the Legislative Council: Mr A. Young

Parliamentary Services — Secretary: Mr P. Lochert

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-EIGHTH PARLIAMENT — FIRST SESSION

President:
The Hon. B. N. ATKINSON

Deputy President:
Mr K. EIDEH

Acting Presidents:
Ms Dunn, Mr Elasmar, Mr Finn, Mr Melhem, Mr Morris, Ms Patten, Mr Ramsay

Leader of the Government:
The Hon. G. JENNINGS

Deputy Leader of the Government:
The Hon. J. L. PULFORD

Leader of the Opposition:
The Hon. M. WOOLDRIDGE

Deputy Leader of the Opposition:
The Hon. G. K. RICH-PHILLIPS

Leader of The Nationals:
Mr L. B. O'SULLIVAN

Leader of the Greens:
Mr G. BARBER

Member	Region	Party	Member	Region	Party
Atkinson, Mr Bruce Norman	Eastern Metropolitan	LP	Mikakos, Ms Jenny	Northern Metropolitan	ALP
Barber, Mr Gregory John	Northern Metropolitan	Greens	Morris, Mr Joshua	Western Victoria	LP
Bath, Ms Melina [2]	Eastern Victoria	Nats	Mulino, Mr Daniel	Eastern Victoria	ALP
Bourman, Mr Jeffrey	Eastern Victoria	SFFP	O'Brien, Mr Daniel David [1]	Eastern Victoria	Nats
Carling-Jenkins, Dr Rachel	Western Metropolitan	DLP	O'Donohue, Mr Edward John	Eastern Victoria	LP
Crozier, Ms Georgina Mary	Southern Metropolitan	LP	Ondarchie, Mr Craig Philip	Northern Metropolitan	LP
Dalidakis, Mr Philip	Southern Metropolitan	ALP	O'Sullivan, Luke Bartholomew [4]	Northern Victoria	Nats
Dalla-Riva, Mr Richard Alex Gordon	Eastern Metropolitan	LP	Patten, Ms Fiona	Northern Metropolitan	ASP
Davis, Mr David McLean	Southern Metropolitan	LP	Pennicuik, Ms Susan Margaret	Southern Metropolitan	Greens
Drum, Mr Damian Kevin [3]	Northern Victoria	Nats	Peulich, Mrs Inga	South Eastern Metropolitan	LP
Dunn, Ms Samantha	Eastern Metropolitan	Greens	Pulford, Ms Jaala Lee	Western Victoria	ALP
Eideh, Mr Khalil M.	Western Metropolitan	ALP	Purcell, Mr James	Western Victoria	V1LJ
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Ramsay, Mr Simon	Western Victoria	LP
Finn, Mr Bernard Thomas C.	Western Metropolitan	LP	Rich-Phillips, Mr Gordon Kenneth	South Eastern Metropolitan	LP
Fitzherbert, Ms Margaret	Southern Metropolitan	LP	Shing, Ms Harriet	Eastern Victoria	ALP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Herbert, Mr Steven Ralph	Northern Victoria	ALP	Springle, Ms Nina	South Eastern Metropolitan	Greens
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Symes, Ms Jaclyn	Northern Victoria	ALP
Leane, Mr Shaun Leo	Eastern Metropolitan	ALP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Lovell, Ms Wendy Ann	Northern Victoria	LP	Wooldridge, Ms Mary Louise Newling	Eastern Metropolitan	LP
Melhem, Mr Cesar	Western Metropolitan	ALP	Young, Mr Daniel	Northern Victoria	SFFP

[2] Appointed 15 April 2015
[3] Resigned 27 May 2016
[1] Resigned 25 February 2015
[4] Appointed 12 October 2016

PARTY ABBREVIATIONS

ALP — Labor Party; ASP — Australian Sex Party;
DLP — Democratic Labour Party; Greens — Australian Greens;
LP — Liberal Party; Nats — The Nationals;
SFFP — Shooters, Fishers and Farmers Party; V1LJ — Vote 1 Local Jobs

CONTENTS

THURSDAY, 23 FEBRUARY 2017

Thursday, 23 February 2017

The PRESIDENT (Hon. B. N. Atkinson) took the chair at 9.34 a.m. and read the prayer.

OMBUDSMAN JURISDICTION

The PRESIDENT — Order! I wish to make a brief statement, and it is in respect of the determination of the Supreme Court in relation to the Ombudsman's jurisdiction. What I wish to put on record is that on Thursday, 9 February this year, Minister Jennings moved a motion in relation to the Ombudsman's inquiry into electorate office staff. During the minister's contribution he made some comments about the Parliament's submissions to the Supreme Court. Any submission to the court by my counsel are on my behalf as one of the defendants in the matter, as directed by this house. They are submissions on my behalf, acting for the Legislative Council, not the Parliament.

Minister Jennings stated that in parliamentary submissions to the court it was said 'that no fraud had taken place'. When this was said I made some comments from the chair to the minister because I was concerned that his comments did not accurately reflect the submissions made on my behalf. I wish to point out that I am reluctant to speak from the chair in the way I did and would not ordinarily do so, and I did not intend to be discourteous to Minister Jennings. But in this matter I am acting in court proceedings at the direction of the house, a significant responsibility on my behalf. I also wish to make it clear that I do not think the minister deliberately misled the house. In exchanges between my counsel and the judge in the first trial, a number of things were said about the nature of the matters in the Council's referral to the Ombudsman. Reviewing the various submissions and exchanges between counsel and the judge might lead someone to infer that there is already a conclusion about whether the alleged behaviour of members was improper, corrupt or fraudulent. That said, any such inference would be incorrect.

The exchanges between the judge and counsel involved the definitions of 'improper conduct' and 'corrupt conduct' in the Protected Disclosure Act 2012 and the proposition by my counsel that the house's referral to the Ombudsman did not seek to undermine the legislative scheme for protected disclosure complaints. In that context, my counsel submitted to the judge that the house's referral should not be read as an allegation of corrupt or improper conduct. In my view that is very definitely not a claim by me or by my counsel that 'no fraud has been committed'. It is not for me or my counsel to make any judgement about whether a fraud has been committed or whether ultimately any improper or corrupt conduct is involved. The essence of my counsel's submissions to the court was that the house's referral to the Ombudsman expressed matters in such a way that those matters did not undermine the protected disclosure and integrity regime in place, because the terms of the referral to the Ombudsman did not allege that the behaviour was improper or corrupt.

I wish to conclude by reassuring the house that this statement is not a breach of any sub judice convention because I have based the statement only on the comments of Minister Jennings in this place and the public record of a court hearing that has already concluded.

PETITIONS

Following petition presented to house:

Onshore unconventional gas

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria requests that the Legislative Council support the brave Andrews government decision to permanently ban the exploration and extraction of onshore unconventional gas (fracking) by unanimously voting for the corresponding legislation when it is introduced into the house.

By Mr LEANE (Eastern Metropolitan) (17 signatures).

Laid on table.

BUSINESS OF THE HOUSE

Adjournment

Mr JENNINGS (Special Minister of State) — I move:

That the Council, at its rising, adjourn until Tuesday, 7 March 2017, at 12.00 p.m.

Motion agreed to.

MINISTERS STATEMENTS

Foster and kinship carers

Ms MIKAKOS (Minister for Families and Children) — I rise to inform the house about what the Andrews Labor government is doing to assist permanent carers in Victoria. Our carers are the unsung heroes of our community. They open their hearts and their homes to raise and care for Victoria's most vulnerable children. They provide stability to children

who have often experienced enormous upheaval during their most formative years. It is essential that they get the help and support they need.

I am very pleased to advise the house that all Victorian permanent carers will soon have access to a dedicated helpline for over-the-phone support and advice. The Andrews Labor government is investing $600 000 over two years to the not-for-profit association Permanent and Adoptive Families to run this helpline. The helpline will be staffed by qualified professionals who can provide tailored advice and information, including details about local services and how to access funding to cover extraordinary expenses.

In addition to the helpline we are providing $4.58 million in flexible funding to existing permanent carers to help cover extraordinary expenses. These funds can be used to meet a child's educational, health and medical needs; to assist with contact between parents, siblings and family members; to help in preserving cultural identity; and for costs related to respite and child care. One carer in receipt of this funding wrote to thank the government for the provision of flexible funding, and I quote:

> Having taken this pressure off me has given me a sigh of relief. Really, what single aged pensioner has this kind of money? I have not had help before with these two vegemites; it is a long hard battle on your own.

I am very pleased this particular carer and many other carers like this individual carer have now received this flexible funding for the first time. OzChild will administer this flexible funding, and carers can apply through Permanent Care and Adoptive Families.

This is just part of what the Andrews Labor government is doing to support all our carers. In September last year I announced $19.2 million for a new handbook for foster carers, which has been distributed; an integrated training calendar for carers, which has commenced; along with other financial supports to both our foster and kinship carers. The Andrews Labor government is committed to supporting our carers in Victoria, just as these carers are committed to Victoria's vulnerable children.

Medicinal cannabis

Ms PULFORD (Minister for Agriculture) — There has been significant progress achieved in establishing a reliable, safe production pipeline for the supply of high-quality medicinal cannabis for Victorian patients. In April last year Victoria became the first jurisdiction in the country to legalise cannabis for medicinal purposes, and nearly a year on we are progressing well on the operational front.

The first batch of product developed by Agriculture Victoria has now been handed over to the Office of Medicinal Cannabis for testing and formulation work. We promised Victorians they would be able to access this life-changing treatment, and each day brings us one step closer to delivering on this Australian first. As a further example of that, the first cannabis research licence under the Narcotic Drugs Act 1967 has now been granted by the Office of Drug Control to a Victorian-based company, the Cann Group. The development of this industry in Victoria is a very exciting development and will result in further investment, innovation and ultimately job creation.

I am also pleased to inform the house that construction has been completed of a world-class, purpose-built cultivation and manufacturing facility for the supply of high-quality medicinal cannabis to patients in Victoria. Good manufacturing process certification will ensure that medicinal cannabis supplied will be manufactured to the highest quality and standards. And of course this is what we need. The first patient group eligible to access this product will be children with severe, intractable epilepsy who have tried other forms of treatment that have not provided the relief that they and their families need.

The Victorian budget included $28.5 million to establish the Office of Medicinal Cannabis and the Independent Medical Advisory Committee to map out the steps required to make this treatment available to patients. The Office of Medicinal Cannabis is responsible for the regulation of all clinical and manufacturing aspects of the medicinal cannabis framework. The Independent Medical Advisory Committee provides advice to the health minister on the types of medicinal cannabis products that should be approved for use by Victorian patients.

With the first delivery of the first batch of cannabis extract, the Office of Medicinal Cannabis will oversee its testing and processing stages through to it being manufactured pharmaceutically into a safe treatment for children with severe epilepsy. Victoria was the first state in Australia to legalise access to medicinal cannabis for patients in exceptional circumstances. The product being developed will be the first locally produced medicinal cannabis to be legally available in Australia.

Ararat correctional facility

Ms TIERNEY (Minister for Corrections) — As part of the Andrews government's response to the Harper review into the post-sentence management of serious offenders, on 13 February I announced that Labor will build a 20-bed secure facility to house Victoria's most serious adult offenders near Ararat. The facility will be located next to the Hopkins Correctional Centre and will accommodate sex offenders and violent offenders who are not yet suitable to be released into the community after they have completed their sentence.

This announcement was made after consultation with the Ararat Rural City Council, Victoria Police and other members of the local community. Along with this a new community advisory group, which will include members of the local council and community, Corrections Victoria and Victoria Police, will also be set up to spearhead further consultation with the local community. Up to 100 jobs will be created during construction, beginning in the second half of this year. A further 50 jobs will be created when the secure facility is opened at the end of 2018. These additional jobs have been welcomed by Ararat's mayor, Cr Paul Hooper, who said, and I quote from the Ballarat *Courier* of 15 February this year, that Corrections Victoria was Ararat's biggest employer:

> There are over 600 jobs here, full time, higher paid and secure for individuals who are provided with a career path …
>
> The prison has just recruited 25 people and there is another recruitment program in a couple of months … so it is not just Ararat that benefits but the surrounding area as well.

But it seems that not everyone is pleased. The Liberal Member for Ripon was out talking down our plans, putting her at odds with the council and some 600 employees that service Ararat's corrections facilities. Even Mr O'Donohue claimed I had sped in, dropped the news and run out. Perhaps he did not read the *Ararat Advertiser*. Journalists sat in on my meeting with the council, community representatives, local police and staff from our other two facilities. This announcement builds on significant action taken by the Andrews government in the last two years to toughen the law to provide stronger oversight and management of serious offenders.

The PRESIDENT — Order! I would just remind ministers that a ministers statement needs to provide to the house information on new government initiatives. It is not an opportunity to actually attack other parties.

Ballarat West employment zone

Ms PULFORD (Minister for Regional Development) — I rise to update the house on two new land purchases at the Ballarat West employment zone (BWEZ) and also to update the house on a further release of land at BWEZ to meet strong market demand.

The first of these two new land purchases is Broo. Broo is a rising Australian beer company that plans to establish a world-class brewery on its almost 15-hectare site, which will create more than 100 ongoing jobs. In addition to operating as a brewery the development will include visitor facilities, which will add to Ballarat's already significant tourist offering and experience and expand the local visitor economy.

The second land sale is to Athlegen. Athlegen has a long history in Ballarat as a manufacturer of medical and physiotherapy equipment. They specialise in treatment tables, and they have purchased a 0.54-hectare lot to build a production and warehouse facility, a research and development centre and a showroom that is an important part of their plans to grow their business. Athlegen's expansion will support, at least in the first instance, 10 new jobs. Both companies are very oriented to exports as part of their plans for growth.

The businesses that are signed up for stage 1 at BWEZ are Broadbent Grain, with 35 jobs; Agrimac, with 25 jobs; Kane Transport, with 17; and Broo and Athlegen — in all, over 187 jobs. We have had significant market interest in the industrial land at the Ballarat West employment zone, and to accommodate this interest, last Friday I announced that we will be releasing an additional 55 hectares of land, providing flexible, large lot sizes suitable for industrial and commercial businesses that have the ability to create local jobs. This project is unlocking industrial land to attract large-scale businesses to Ballarat, which will build on the region's existing strength and also help boost the local economy. We are proud of the strong jobs growth across regional Victoria over the last two years, and it is great to see BWEZ going from strength to strength. This is a project that has been planned for locally and worked on since 2009.

MEMBERS STATEMENTS

Bendigo Hospital

Ms WOOLDRIDGE (Eastern Metropolitan) — I am very pleased to be able to speak today on the new Bendigo Hospital and how proud we are as the Liberal and National parties of the new hospital that has been opened successfully. It was completed in 2016, as the coalition promised, and it has been opened and is well underway. Many people — the management, the staff, many people in the department — have worked exceptionally hard on this project over many years, and I want to congratulate them on what is a fabulous facility for the Loddon Mallee and particularly people in Bendigo.

I do want to acknowledge Diana Badcock for her work with the medical community engagement and also Rob Blum, who worked so hard on the new cancer centre. We do know of course that the cancer centre would not have existed if the Liberals and Nationals did not commit to it. We made a commitment of an additional $100 million that meant that the new Bendigo Hospital would not only be a new hospital but would have additional beds, a mother and baby unit — something I am very proud of — an integrated cancer centre and new educational facilities. So this new Bendigo Hospital is world class because of the additional $100 million commitment, and it has realised that full potential.

I was very pleased to be at the foundation dinner. Unfortunately no ALP members were present. What we did see consistently from Jacinta Allan and Maree Edwards in the other place is that they were naysayers who said it would not be delivered, it would not be good enough and the cancer centre was not needed. Well, the new Bendigo Hospital is world class, and it will make a real difference to the community of northern Victoria.

Palestinian statehood

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — The ALP has a proud history of support for Israel, including the fact that Doc Evatt was among the first people to vote for its creation. Today, though, I condemn the intellectual dishonesty of Bob Carr and Gareth Evans. Their calls for the ALP to adopt unilateral recognition of a Palestinian state ignore the outcomes of Gaza and refuse to accept that peace needs two partners. A two-state solution is indeed the only way to realise equally the legitimate separate national aspirations of the Jewish and Palestinian peoples — and it remains ALP policy — but that cannot be achieved unilaterally.

I do not support many domestic policies of Prime Minister Netanyahu as he panders to his own right-wing coalition partners, but that does not hinder peace talks, as anti-Zionists would have you believe. Years of failed peace negotiations, intifadas, terror attacks from the air and on the ground, hate crimes in the street and more are not cause to abandon the negotiated peace process.

A Palestinian state is right and just, but it can only come about through a negotiated settlement between the two parties. That means a final resolution to borders, recognition of both nations' legitimate right to exist and self-determine their identities, an agreement over the final status of Jerusalem and the holy sites, and an end to all violence and terrorism. We cannot sidestep this process; it has not worked yet, but that does not mean there is a better solution.

Unilateral recognition is not the way forward. It will do nothing to advance the peace process. It will only encourage intransigence and extremists on both sides, and it ignores the fact that the Palestinians have no unified government and no clear borders and have not had free and democratic elections in well over a decade. We cannot even provide aid money without it being siphoned off for terror tunnels and weapons purchases.

Peace will only come when the two parties trust each other enough that they believe a two-state solution will provide peace, security and a better life for their nations. Unilateral recognition will only promote the opposite of that.

Supervised injecting centre

Ms PATTEN (Northern Metropolitan) — I rise today to acknowledge the many contributors to the public debate on having a medically supervised injecting centre in North Richmond. There have been many people, but I would just like to single out a few of them in particular: Judy Ryan, a resident in North Richmond, for her tireless work in her community and her strong advocacy in the media and down on the streets; Cherie Short, who bravely shared her very personal story of the loss of her son Aaron; Danny Hill and Steve McGhie from Ambulance Employees Australia, for their insight and advocacy on behalf of paramedics; Dr Marianne Jauncey from the Kings Cross centre; Robert Richter and Greg Denham for their tireless and powerful advocacy; the Australian Drug Foundation; and Mick Palmer, former federal

police commissioner, for his insights on how a supervised injecting centre would benefit police.

There have been many more contributors, including the 48 signatures on an open letter, and especially the Salvation Army. I would like to thank all of them for helping to save the lives of Victorians as we progress in this important change.

Melbourne City Football Club

Mr ONDARCHIE (Northern Metropolitan) — On Sunday, 12 February, the fantastic Melbourne City Women won the W-League final, 2-0. I congratulate those players: Lydia Williams, Teigen Allen, Lauren Barnes, Rachel Binning, Laura Alleway, Aivi Luik, Steph Catley, Larissa Crummer, Jess Fishlock, who is the playing coach, Erika Tymrak, Olivia Ellis, Rebekah Stott, Melina Ayres, Amy Jackson, Beverly Yanez Goebel, Marianna Tabain, Jacynta Galabadaarchchi, Tyla-Jay Vlajnic, Emily Shields, Hayley Richmond, Erin Hudson and Kelsey Quinn. I also congratulate the fantastic coaching and support staff: Patrick Kisnorbo, Paul Kilpatrick, Louisa Bisby, Donna Rice, Lucy Kennedy and Sam Frangos.

They are back-to-back premiers, Melbourne City Women, and as ambassador of Melbourne City Football Club I stand proudly in the Parliament of Victoria to congratulate Melbourne City's victorious women's team. What wonderful athletes they are!

Member entitlements

Mr BARBER (Northern Metropolitan) — I would like to address the question of members entitlements and the fact that in this Parliament and in previous parliaments we too have regularly found ourselves debating and answering questions about the use, misuse or even appropriateness of members entitlements. They arise from a whole number of different sources — from legislation, from regulation, from the Members Guide, from other precedents and from other decisions that are made — and it is about time that we had a complete and open review of those entitlements.

The entitlements themselves are not actually in many cases transparent to the public. The Members Guide is an internal document we all use, but it is not actually a public document as far as I am aware. Unfortunately every single day that we spend debating questions of MPs and their entitlements is a day that we do not spend talking about the pressing issues that the community expects us to be addressing. So the longer that goes on, the more irrelevant, in the minds of the public, we become.

To initiate change in this area it is not going to come from a public servant deciding to do it. The Presiding Officers themselves are simply servants of the house, and they administer a system on behalf of all MPs. It is the leaders of the political parties in this house who ought to be getting together to make the decision that this needs to be changed, and I invite those leaders, including the opposition leader, Mr Guy, and the Premier, Mr Andrews, to meet with me to do so.

Western Victoria Region roads

Ms TIERNEY (Minister for Training and Skills) — I rise to speak about the enthusiastic response of western Victorian residents and industries to the Andrews Labor government's funding for roads in the south-west — a response to calls for road upgrades and maintenance for well over a decade. In the past month the Andrews Labor government has announced an extraordinary $125 million commitment to important roads in a Victorian region vital for exports, jobs and tourism. The Warrnambool *Standard* described this commitment as a 'joy' for the western Victorian community.

The need for such spending stems from the progressive deterioration of local roads and highways, initially constructed from local materials that have failed under the stress of massive modern trucks and intense usage by tourists and locals alike. The $30 million commitment to upgrade the Great Ocean Road and to enhance the alternative inland route from Forrest to Apollo Bay will make travel safer, encourage tourists and importantly provide a key route for local residents. The timber, grain and dairy industries are served by improving the vital Princes Highway route from Colac to the South Australian border, the Hamilton Highway between Geelong and Cressy and the arterial roads in the Green Triangle around Portland.

For local residents perhaps the most significant of all is the commitment of $50 million to upgrade and improve narrow sealed roads such as the Macarthur-Myamyn Road and Foxhow Road. These are roads that either have been carrying increased heavy vehicle traffic or have been the cause of accidents and fatalities. When I made the announcement at Pomborneit a local resident said, 'This funding has been a long time coming, but it will make such a difference to the south-west, and it's nice to know we've not been forgotten'.

Casey community crime forum

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Last week, along with Mrs Peulich, I was pleased to welcome shadow Minister for Police

Edward O'Donohue and shadow Minister for Families and Children Georgie Crozier to Cranbourne for a community crime forum. The forum provided an opportunity for Casey residents to express their concerns about the crime crisis sweeping local suburbs.

Since the change of government in 2014, crime in Casey has blown out by more than 30 per cent; robberies have increased by 115 per cent; stalking, harassment and threatening behaviour by 57 per cent; burglary by 56 per cent; theft by 44 per cent and assault by 22 per cent — to more than 2100 occurrences. The number of first-responder police in Casey has been cut by 8 per cent. Worryingly, Cranbourne locals indicated they have stopped reporting crimes to the police because they do not believe they will get a response. Cranbourne residents live in fear of local gangs, being assaulted in the street, being carjacked and having their homes invaded. Residents identified a need for greater police resources in Casey, the need for a tough approach to low-level offending and the need for early systemic interventions to prevent young people becoming involved in drug and crime activity in the first place.

Strong criticism was also made of Labor's 2009–10 TAFE changes which saw genuine trades training and apprenticeship opportunities all but evaporate, eliminating an employment pathway for many local youth.

Casey residents have had enough. The Premier must start showing leadership and get this crime wave under control. Finally, I would like to thank local residents and councillors for their participation and congratulate local ward councillor Amanda Stapledon for convening the forum.

Tyrendarra Agricultural Show

Mr PURCELL (Western Victoria) — It gives me great pleasure to rise today to congratulate the Tyrendarra Pastoral and Agricultural Society on their 100th staging of the Tyrendarra Agricultural Show on 11 February. In particular I would like to congratulate Peter Malseed, the president of that society, and his hardworking team, who put many years of effort into staging this centennial event.

I am sure members know where Tyrendarra is, but in case they do not, it is halfway between Port Fairy and Portland. It is a farming community of a few hundred people. At this year's event there were somewhere between 4000 and 5000 people — it was a bumper crowd. The theme of the show this year was 'Historical', and it was a testament to the community's hard work that it was so successful.

I would like to highlight one part of the show — the effort put in by Dorothy Nichol in the fashion collection which showcased gowns worn by western district farmers during the last 100 years, particularly through the mid-20th century. Dorothy apparently had journeyed throughout the state hunting down what she regarded as glorious treasures, including hats, shoes and even the odd safari suit, the stories of which were possibly going to be documented.

It was a great event, as evidenced by the Punch and Judy show.

Flinders Street station

Mr LEANE (Eastern Metropolitan) — Last week I was fortunate enough to have a bit of a tour through Flinders Street station to see the cosmetic works happening on the outside of the building. This work is progressing quite well. By the end of the project, the facade of the station will be — for one thing — secure and secure for decades come. Also it will be painted in the building's original colours. I want to praise Heritage Victoria and Major Projects Victoria for going to the ends they are going to to make sure that the colour match is exact, particularly in relation to the cornices and the facade, as I said. Some of the moulding for the plasterwork is 100 per cent accurate with respect to what it was. It was fantastic to see so many workers on the job, particularly a lot of painters, decorators and solid plasterers, performing this work. We look forward to the scaffolding coming down next year and the work being revealed. I think it is an iconic building for our state, and for too long it has been left in disrepair. I am very excited that it is to be finished soon, and I am looking forward to having another look before then.

Multicultural affairs

Mrs PEULICH (South Eastern Metropolitan) — The ALP has a very lacklustre history when it comes to its relationship with our multicultural communities. In particular we are all aware of the ALP's long legacy of manipulating multicultural communities for cynical and often internal political motives. Unfortunately when they come to government, it translates into policies and programs, and we have seen the politicisation of the portfolio of multicultural affairs.

I do not necessarily believe that it is the handiwork of the Minister for Multicultural Affairs, but certainly I think the influence of the Premier can be seen in a range of ways. First, at the recent 'Speaking as one to

fight racial discrimination' event, where the Premier called upon members of Parliament to join 60 multicultural communities in opposing changes to the Racial Discrimination Act 1975 — something that Matthew Guy, as a former minister for multicultural affairs, championed — it was deplorable that members of the opposition were not invited to participate in the photo or the meeting.

The restructure of the Victorian Multicultural Commission such that it has no dedicated staff means that it cannot fulfil its statutory responsibilities. This is seen in the greater political activity of some of the commission's programs, including a meeting in Casey organised by the Labor MP Judith Graley of the Legislative Assembly. No other members of Parliament were invited to participate; that is unheard — —

Mr Davis — Where does she live?

Mrs PEULICH — Well, she does live in Mount Martha. It is unheard of. There has been a string of — —

Mr Davis — How many years has she lived there?

Mrs PEULICH — She has been promising for three terms to move in. The exclusion of faith communities in the consultation for the recent multicultural policy is deplorable, and there was the bad scheduling of the launch — on a Sunday at 9.30. It just shows the party politicisation of multicultural affairs. It is a very sad direction for Victoria.

Latrobe Valley economy

Ms SHING (Eastern Victoria) — I rise today to congratulate the many members of the community in and around the Latrobe Valley who have concentrated on making sure that we are investing in future educational opportunities and the significant momentum this area has to offer. Like many others, I saw the *Insight* program which aired on SBS earlier this week. It showed one snapshot of a community which in our part of the world — Gippsland — was neglected for too long, and it showed the knock-on effects of systematic disrepair and a lack of engagement over two decades.

What it perhaps failed to highlight was the pride, the resourcefulness and the close-knit nature of the many communities that make up the Latrobe Valley. We are strong. We are working hard. And despite the efforts of those who would seek to make this about nothing more than an exercise in cheap political tactics or strategy or self-promotion, there are many in the community who are doing the right thing. There are many in the community who are growing this part of the region with hope, with momentum and with commitment around making sure that the investments we are making now will stand long into the future to make this area the best it has been, to give it further support and respect and engagement, and to provide the opportunities that have been missing or have been insufficient in this area for many years.

Garden of the Grieving Mother

Mr MORRIS (Western Victoria) — I was fortunate on Wednesday, 15 February, to join many members of the community and dignitaries, including the Governor-General, in Ballarat for the unveiling of the statue of the *Grieving Mother* to honour families, in particular mothers, whose sons and daughters never returned from conflicts around the world. It was a particularly poignant ceremony at which there were present mothers who had lost their children, their sons and their daughters. I think it is a stark reminder that we still have many people serving in armed conflicts around the world and that there are still families who are grieving for the loss of their children. I would like to congratulate Mr Bruce Price, OAM, president of the Arch of Victory/Avenue of Honour Committee; Mr Gary Snowden, OAM, the chair of the Garden of the Grieving Mother subcommittee; and all the committees and others involved in bringing this garden to fruition.

Fall of Singapore anniversary

Mr MORRIS — Following the opening of the Garden of the Grieving Mother another service was held at the Australian Ex-Prisoners of War Memorial, which I note you, President, were also at. This was to commemorate the 75th anniversary of the fall of Singapore. At the time, over 15 000 Australians were captured in the fall, many of whom never made it home. It was a fitting tribute organised by the trustees of the Australian Ex-Prisoners of War Memorial, and I would like to congratulate them on it.

Regional and rural transport infrastructure

Mr RAMSAY (Western Victoria) — Carrying on from yesterday's members statement, I was advising the house of the absolute mess the Andrews government has made of the Murray Basin rail project, and I talked about the fact that the sleepers have not been properly placed under the new rail track under this new project and that what has happened is that when the temperature gets over 30 degrees the track cannot be used. This was particularly pertinent at the peak of the harvest, when we had grain coming off all over

western Victoria but unfortunately not being able to be put on the freight lines because the rail track was actually moving because of the heat — and that was because the sleepers were not placed appropriately. So the whole freight harvest was bogged down because of this mess.

Also, talking about messes, I note the recent delay on the Western Highway duplication project. Not only do court proceedings continue against land acquisitions for the Buangor bypass but the planning permit for section B of the Buangor to Ararat duplication has expired. A new permit now needs to be granted, and this could result in significant delays. This sounds at least very sloppy and adds to the history of poor management by the government on this project. We all remember VicRoads's 2015 admission of the wrongful destruction of 900 trees to make way for the duplication when just 221 were approved.

I could go on for hours about the current state of roads in regional Victoria. In fact the RACV is so totally disgusted it released a report in December which found that the network is grossly underfunded and a record amount of roads and highways are in a distressed condition to the point that some are unsafe for travel at the usual speed limit. It believes about 1500 kilometres of state highways are distressed to this point. In my region of — —

The PRESIDENT — Order! Thank you, Mr Ramsay.

Wannsee Conference anniversary

Ms FITZHERBERT (Southern Metropolitan) — On 29 January it was a very sober privilege to join you, President, and also Mrs Peulich at the Elwood synagogue, where we commemorated the 75th anniversary of the Wannsee Conference with a range of other state and federal MPs. The Wannsee Conference was a meeting of senior German government officials, including the SS, which was held in Berlin on 29 January 1942. The purpose was to plan the involvement of various government departments in what the Nazis called the final solution — the plan to murder all Jews in German-occupied Europe. It is extraordinary to think of such a horrendous crime being planned by a government with all the resources of government and bureaucracy, and it was even minuted. The minutes were later used at the Nuremberg trials. I thank the Elwood Shule, the Jewish Community Council of Victoria, the other organisers of the event and the speakers for this reminder to all of us of this evil so that it may never happen again.

Caulfield Primary School

Ms FITZHERBERT — I had the privilege of attending a far more pleasant occasion on Monday morning when I filled in for my colleague in the other house Mr Southwick at Caulfield Primary School to recognise the leaders of the school, their house captains and school captains, and to present them with their badges. It was a pleasure to join Mr Peter Gray, the principal, and other members of the school community on what was a very happy occasion.

Shane Lapworth

Mr EIDEH (Western Metropolitan) — Every day Victorians find themselves in situations that require the assistance of State Emergency Service (SES) volunteers. Last month my constituent Shane Lapworth, the SES Broadmeadows unit's deputy controller of operations, received an Emergency Services Medal from the Australian Governor-General in recognition of 15 years of volunteering with the SES. During his time with the SES Mr Lapworth has attended over 1000 call-outs and has experienced working with task forces to assist during times of major environmental events in Victoria, including the Black Saturday fires in 2009 and the rain and hailstorms of Christmas in 2011, as well as floods and traffic accidents.

The work of an SES volunteer is not just about attending an emergency scene. It involves being on call day and night, and at times extremely long hours with not much sleep. SES volunteers are out assisting Victorians in rain, hail or shine, oftentimes in extreme weather conditions. Their work is outstanding and often goes unacknowledged. We are indeed fortunate to have people who put the needs of others in their community first. I congratulate Mr Lapworth on his well-deserved award, and I proudly acknowledge the ongoing commitment of his fellow SES volunteers at the Broadmeadows unit as well as the volunteers across Victoria, who contribute so much to communities across our state. We are truly grateful for their tireless work.

CLIMATE CHANGE BILL 2016

Committee

Resumed from 21 February; further discussion of clause 52.

Clause agreed to; clauses 53 and 54 agreed to.

Clause 55

Mr DAVIS (Southern Metropolitan) — I move:

3. Clause 55, line 35, omit "appropriate." and insert "appropriate; and".

4. Clause 55, after line 35 insert—

"(h) the new and cumulative cost impacts of the implementation of this act, including the cost of any steps taken to achieve the long-term emissions reduction target and any interim emissions reduction target, on—

(i) the Victorian economy, including employment; and

(ii) Victorian households; and

(iii) Victorian businesses.".

These amendments replicate the amendments that were tested the other night on clause 52, which relate to the annual report, and they seek to replicate those reporting requirements with respect to the interim target period. I do not want to go on because we discussed this point in its essence the other night, but I do believe and I want to put on record that it is appropriate that this reporting requirement be there. These frameworks that are part of this bill, the Climate Change Bill 2016, will likely have some significant impacts on Victorian households, businesses and employment, and these should be transparently calculated and reported. Some might say there are advantages, and they can equally be put forward in a report of this nature. It is all very well to report on gas emissions and gas emissions avoided, but the actual costs and impacts on the economy also need to be seen, and it is a reasonable requirement to seek that the government do this with its interim targets, which are dealt with — and the reporting on them is dealt with — in clause 55.

Mr BARBER (Northern Metropolitan) — This amendment does the same thing to a different clause as the previous amendment. We opposed the previous amendment, and we will oppose this amendment with the same rationale as the Greens gave for the earlier amendment during the debate last Tuesday.

Mr JENNINGS (Special Minister of State) — The government rejected the proposal that Mr Davis made in relation to previous clauses, which in many instances would have been seen as tests for this clause, but Mr Davis is exercising his prerogative to move the same concept in relation to — —

Mr Davis interjected.

Mr JENNINGS — Well, I am just indicating to you, Mr Davis, that you could have chosen to see that previous vote as a test. You are not necessarily obliged to, and you have not. I am just drawing that to the attention of the committee. I am saying that the logic behind why the government, and in this instance Mr Barber, have indicated that there will not be support for your amendment is that we believe that it is overly prescriptive and intrusive of the work program that would be associated with the implementation of deriving the targets and the way in which the individual actions to achieve those targets would be determined.

I reminded you and the committee about this the other day, and perhaps I did it a bit quickly because I was assuming that we were going to conclude the committee stage the other night in a timely way. I may have taken some shortcuts that may have actually offended you or the committee generally when I described that there are obligations in the clause you are seeking to amend, and also in clause 12, that the government does rely on in relation to the determination of advice about the way in which options will be explored to achieve these targets and the actions that may be determined by the minister of the day.

Clause 12 does have a requirement that the minister would act on the basis of expert independent advice before setting targets and that those targets must cover opportunities to reduce emissions from across the economy in the most efficient and cost-effective manner. In clause 12(3)(d), that advice must take into account:

(d) economic circumstances, in particular the likely impact of the target on the economy and the competitiveness of particular sectors of the economy;

(e) social circumstances, in particular the likely impact of the target on the health and wellbeing of Victorians;

(f) environmental circumstances, in particular the benefits to the environment of emissions reduction …

Indeed in relation to clause 55, the clause that Mr Davis is seeking to amend, it does actually provide a mechanism that will enable a statement about the implications of achieving, or failing to achieve, the targets and a report on the implementation and effectiveness, including the cost effectiveness, of the pledges, and the minister can take in any other information they consider relevant. I believe the policy intent that Mr Davis is trying to achieve through his amendment can be achieved within the scope and responsibilities of the existing bill and that what he is seeking to do is overly prescriptive and would perhaps limit the effectiveness of the bill and the way in which

it would operate. It is for those reasons that the government will not be supporting his amendment.

Committee divided on amendments:

Ayes, 17

Bath, Ms	O'Donohue, Mr
Carling-Jenkins, Dr	Ondarchie, Mr (*Teller*)
Crozier, Ms	O'Sullivan, Mr
Dalla-Riva, Mr	Peulich, Mrs
Davis, Mr	Ramsay, Mr
Finn, Mr	Rich-Phillips, Mr (*Teller*)
Fitzherbert, Ms	Wooldridge, Ms
Lovell, Ms	Young, Mr
Morris, Mr	

Noes, 19

Barber, Mr	Patten, Ms
Dunn, Ms	Pennicuik, Ms
Eideh, Mr	Pulford, Ms
Hartland, Ms	Purcell, Mr
Herbert, Mr (*Teller*)	Shing, Ms
Jennings, Mr	Somyurek, Mr (*Teller*)
Leane, Mr	Springle, Ms
Melhem, Mr	Symes, Ms
Mikakos, Ms	Tierney, Ms
Mulino, Mr	

Pairs

Atkinson, Mr	Elasmar, Mr

Amendments negatived.

Clause agreed to; clauses 56 to 102 agreed to; schedule 1 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Mr JENNINGS (Special Minister of State) — I move:

That this bill be now read a third time.

In anticipation of where we might go in a minute, when the Parliament works effectively we can actually transact business. So congratulations for getting us to this stage.

House divided on motion:

Ayes, 20

Barber, Mr	Mulino, Mr
Dalidakis, Mr (*Teller*)	Patten, Ms
Dunn, Ms	Pennicuik, Ms
Eideh, Mr	Pulford, Ms
Hartland, Ms	Purcell, Mr
Herbert, Mr	Shing, Ms
Jennings, Mr	Somyurek, Mr
Leane, Mr	Springle, Ms (*Teller*)
Melhem, Mr	Symes, Ms
Mikakos, Ms	Tierney, Ms

Noes, 18

Bath, Ms	Morris, Mr
Bourman, Mr	O'Donohue, Mr
Carling-Jenkins, Dr	Ondarchie, Mr
Crozier, Ms	O'Sullivan, Mr
Dalla-Riva, Mr	Peulich, Mrs
Davis, Mr (*Teller*)	Ramsay, Mr
Finn, Mr	Rich-Phillips, Mr
Fitzherbert, Ms	Wooldridge, Ms
Lovell, Ms	Young, Mr (*Teller*)

Pairs

Elasmar, Mr	Atkinson, Mr

Motion agreed to.

Read third time.

CHILDREN LEGISLATION AMENDMENT (REPORTABLE CONDUCT) BILL 2016

Second reading

Debate resumed from 9 February; motion of Ms TIERNEY (Minister for Training and Skills).

Ms CROZIER (Southern Metropolitan) — I am pleased to rise this morning and speak to the Children Legislation Amendment (Reportable Conduct) Bill 2016. This bill amends the Children, Youth and Families Act 2005 to improve oversight of organisational responses to allegations of child abuse and child-related misconduct. It provides the Commission for Children and Young People with the appropriate functions and powers to administer, oversee and monitor the reportable conduct scheme and enables the sharing of relevant information as necessary with the Commission for Children and Young People, regulators, Victoria Police and the Secretary to the Department of Justice and Regulation.

It does do a number of other things with a number of other acts, but I want to speak to why we are debating this bill this morning and how it has come about. I will go back to the *Betrayal of Trust* report, the inquiry into which I had the pleasure to participate in in the last Parliament. The report that the committee of which I was a member put out looked at this issue very extensively. If you look at the *Betrayal of Trust* report, chapter 18 is dedicated to this whole area of improving, monitoring, oversight and capacity building regarding reports of child abuse.

During the inquiry, which was as members know an extremely extensive inquiry undertaken by the Parliament, we delved into many of these issues and

many of the issues that organisations, both religious and non-government, were looking at in terms of how to deal with child abuse and the allegations of misconduct. We have got the Royal Commission into Institutional Responses to Child Sexual Abuse, of course; that is still ongoing, and I am sure that it will have similar findings to what our inquiry reported on in this report. I am pleased to say that the royal commission has concurred with many of the findings from that extensive inquiry, echoing a lot of the sentiments and a lot of the findings and looking towards recommendations, I hope, that will make children safer.

I will speak to this in a little bit more detail. One of the things that we did conclude was that organisations required guidance and scrutiny, and many of the organisations that came before the committee told us that they were seeking support in establishing appropriate systems and processes for responding to any suspected child abuse that may be occurring. They also had great goodwill and dedication to ensure that those environments that they were working within were child safe. So there was lots of goodwill by organisations to provide a safe environment, but they really did want some guidance about that. The committee received evidence from many organisations that they were also looking for that guidance and an ability to implement the processes for handling such abuse. That was one of the findings, and as I said we heard from a number of leaders of various organisations, cultural groups and others that provided that evidence and information to the committee.

One of the other things that we looked at to understand what was happening in other jurisdictions — we really wanted to ensure that we were not repeating or duplicating something unnecessarily but looking at what was working — was the model in New South Wales, and the model in New South Wales was monitoring and scrutinising systems and processes, which is undertaken by the Ombudsman. That model has been in place for something like 16 years, and this piece of legislation is largely modelled on what occurs in New South Wales. I am pleased that the legislation does reflect, largely, what we found in our inquiry and our findings and conclusions in this report. We did have a look at what the New South Wales Ombudsman did, and we wanted to understand the level of engagement that the New South Wales Ombudsman and that model undertook and how it would apply. In doing so there were four broad areas, as the report details on page 365 of the second volume, that were particularly important, and these included:

> the capacity to scrutinise and monitor an organisation's response;
>
> to investigate the manner of the organisation's response;
>
> to build capacity and assist organisations in appropriately responding to complaints;
>
> to identify and monitor trends in the manner of responding to complaints to assess the adequacy and effectiveness of an organisation's response.

One of the witnesses who gave evidence is the very highly regarded CEO of the Australian Childhood Foundation, Dr Joe Tucci, who also made a statement around capacity building, the level of scrutiny that organisations require and that they have come under, how it needs to be investigated and what needs to be done. It was very helpful to have such eminent people come before the committee to give such good evidence. We also heard from the deputy ombudsman from New South Wales, who really explained the values of the system in place and how it operates in New South Wales. As I said it has been operating for something like 16 years. What the committee wanted to do was not reinvent the wheel but ensure that we had a model where there was not unnecessary duplication, a robust model that would work. In saying that, there is some duplication in this bill, and I will come to that later in my contribution. It is about getting the model and the implementation right.

I want to just give as an example — and this is one of the things that we found — that not all of the reportable forms of conduct will necessarily be considered criminal child abuse and reportable to police. Any criminal abuse has to be reported immediately to police. That should be undertaken, and that is what any organisation should do.

One of the areas in the New South Wales Ombudsman Act 1974 defines reportable conduct. I just want to read this again from the report, because I think you have to distinguish between some organisations who might be trying to provide guidance, but we need to be careful of grooming elements that some individuals might undertake under a guise, so this reportable conduct definition and identification is very important. These were our findings in relation to how it was defined in the New South Wales model. The definition includes:

> (a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material …), or
>
> (b) any assault, ill-treatment or neglect of a child, or
>
> (c) any behaviour that causes psychological harm to a child …
>
> whether or not, in any case, with the consent of the child.

> Reportable conduct does not extend to:
>
> (a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or
>
> (b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
>
> (c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA …

of that particular act.

In this, as I said, we wanted to be extremely cautious about the grooming elements and also what should be reported and how organisations should be able to do that, so we also were conscious of that, and that is why the Ombudsman Act of New South Wales in this model also stated:

> Examples of conduct that would not constitute 'reportable conduct' include (without limitation) touching a child in order to attract a child's attention, to guide a child or to comfort a distressed child; a school teacher raising his or her voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.

I think there are important elements about that, because the reportable conduct definition is largely around what I have just described in this bill, and the bill goes on to speak of sexual misconduct. It includes behaviour, physical contact, speech or other communication of a sexual nature, including inappropriate touching, grooming behaviour and voyeurism. It covers overtly sexual behaviour and all types of communication of a sexual nature, including online or electronic communication and online grooming behaviours. I actually think it is important to note that it does encompass those new mediums. In 2017 we know there are elements of grooming through electronic means. This needs to be captured, and certainly reportable conduct does capture that electronic medium, which I think is very, very important to note.

There are other elements, and in the interests of time I am not going to go through all the clauses of the bill, but I just want to make a few other points around some of the findings that occurred throughout the parliamentary inquiry because I think this is also important as to why this bill is before the house. One of those findings was to look at 'Improving monitoring and scrutiny in Victoria', and it was very clearly identified to the committee that responses to allegations of child abuse in organisations were often inconsistent, inaccessible, sometimes overly complicated or very narrowly focused. So there was no overarching body to ensure that this scrutiny and monitoring could occur.

The parliamentary inquiry came out of the very thorough and significant Cummins inquiry that was commissioned by the former minister, Ms Wooldridge. So too came a recommendation of the Cummins inquiry that the government introduce the Commission for Children and Young People legislation. In March 2013 the Commission for Children and Young People was set up, so that was a significant reform that came out of the Cummins inquiry. In the act this is an agency independent of government that is able to table its own reports in the Parliament. I think that is a very important point, too: the independence of the commission must be maintained if it is to do its job. If it is to — —

Ms Mikakos — You'd just like to attack the commissioner.

Ms CROZIER — Well, Minister Mikakos, this is an important point, because we are going to have faith in the way this — —

An honourable member interjected.

Ms CROZIER — If this legislation is going to be implemented properly under your watch — as we know, we have had an absolute mismatch under youth justice, and we have just moved a no-confidence motion in you, which this house passed — I think there is a lot that you need to undertake. The point is that the commission needs to be independent in its processes, and I make the point — —

Ms Mikakos — Are you attacking the commissioner?

Ms CROZIER — No, I am making a point about — —

Ms Mikakos — You have attacked the commissioner on two occasions.

Ms CROZIER — Well, you walked in, Ms Mikakos, with only just — —

The ACTING PRESIDENT (**Mr Ramsay**) — Order! Through the Chair!

Ms CROZIER — Thank you, Acting President. I am just reaffirming the independence of the commission, and I would hope that that would be maintained. I made that point, and I make it again. And I just made the point that the commission was set up by the former minister, Ms Wooldridge, following the very

significant inquiry conducted by Philip Cummins and various others.

So just to go back to that point, it was important that there was an overarching body that could actually undertake the monitoring of such a reportable conduct scheme, and I note that various comments were made by the commissioner at the time, Bernie Geary, who also gave evidence to the committee. Mr Geary indicated that for such a body to work effectively it would be necessary for the relevant government departments and agencies to embrace the system and change their culture. That is what I am saying in relation to, yes, the opposition will support this bill but it is up to the government to be able to implement the changes that are required and look at how the commission will undertake this.

In terms of the various elements of the bill that go to the need to have the commission be able to do that, clause 10 amends various sections of the Commission for Children and Young People Act 2012 to enable the commission to delegate a power or function of the commission under that act. If I look at various aspects that are provided in the explanatory memorandum, the commission is the responsible statutory authority for overseeing, administering and monitoring the reportable conduct scheme. It does require that the commission will be able to liaise with the relevant regulators to avoid unnecessary duplication and to share information and provide advice and guidance about the protection of children. That is, I suppose, the point I wanted to make about duplication — ensuring that we have a model that does not have that duplication element and that the commission also, as the act outlines, has the powers to perform the necessary functions under the new sections of the bill.

The new section that is also relevant to the powers of the commission:

> … concerns the systems that the head of an entity must ensure are in place within the entity to ensure compliance with the scheme. Systems will include appropriate policies and procedures for preventing reportable conduct by an employee and for investigation and responding to such conduct.

Also:

> Subclause (1) provides that the head of an entity must ensure that systems are in place to prevent reportable conduct within the course of an employee's employment, investigate and respond to reportable allegations, and to enable any person to notify the head of an entity of a reportable allegation, or the commission of a reportable allegation involving the entity head.

So there is a significant obligation on organisations to ensure that this is undertaken, and I think that organisations do understand that they have a responsibility here. As I said, they were very willing when they came before the parliamentary inquiry to really do as much as they could to ensure the safety of children, but it will be up to the government to ensure they get the implementation right. The implementation of the scheme is going to be undertaken in three phases, and the first phase starts from 1 July of this year. From 1 July the scheme will apply to those entities in schedule 3, including those involved in child protection and family services, out-of-home care services, youth justice services, residential services for children with a disability, various education providers, government and non-government schools and government departments.

It is my understanding that phase 2 will commence on 1 January 2018, which will apply to those entities listed in schedule 4, and they include organisations such as hospitals, other disability services for children, providers of overnight camps, religious bodies and the residential facilities of boarding schools. The third phase, which will commence from 1 January 2019, will apply to early childhood services and statutory bodies that have a responsibility for children, such as public museums and galleries.

I note there were some concerns. I did receive some questions from various stakeholders about family services or hospitals that provide a range of services such as oral health guidance and things like that, and I think that the bill does pretty well explain that it is covered. Those organisations need to understand the reportable conduct scheme, and they need to have those processes in place. I think it is pretty self-explanatory that anyone dealing with children would understand that they have a responsibility to ensure that they are providing a child safe environment.

As I said, this bill came from the findings of the parliamentary inquiry and its report, *Betrayal of Trust*, and particularly it does emanate from recommendation 18.1. That recommendation states:

> That the Victorian government authorise an independent statutory body with relevant investigatory powers and legal and operational resources to:
>
> oversee and monitor the handling of allegations of child abuse by relevant government departments, religious and non-government organisations;
>
> undertake independent investigations into systems and processes in the context of allegations of reportable conduct and/or reportable convictions;
>
> scrutinise and audit the systems and processes in non-government organisations for handling allegations of child abuse;

> monitor and report on trends associated with allegations by collecting relevant data and report to the Parliament on an annual basis …

I think that is a very important element — that the commission looks at those trends to understand what is happening and if there are any gaps — and I think there will be a role of government to monitor this also.

The final point in recommendation 18.1 is:

> build the skill and knowledge of personnel in relevant government departments, religious and non-government organisations to ensure they have the capacity to competently handle allegations of suspected child abuse.

That was the recommendation that the inquiry that I served on found in relation to reportable conduct, and I think those elements will hopefully be captured over time. I think they are very important to reiterate.

I just want to make a couple of final points. It was agreed in principle at a Council of Australian Governments meeting in April of last year that reportable conduct schemes should be harmonised across jurisdictions. This bill broadly aligns with reportable conduct schemes already in place, as I have mentioned, in New South Wales and the ACT.

I think we need to be mindful that the royal commission is still ongoing, and it possibly is also looking at reportable conduct schemes in relation to the various findings that it may have found. Also, one would hope that it would look at the New South Wales model, look at this bill, see how the schemes are working in the jurisdictions that have them in place and hopefully not create a model with a whole new system if a system is in place and has been working, as has been the case in New South Wales.

I look forward to hearing what the royal commission might have to say when it finally concludes its very important work. As I said, I am very proud to have been part of a committee in this Parliament that undertook very important work, generated out of the Cummins inquiry, which was commissioned by the very effective then Minister Wooldridge. I am pleased that the current government is following on from the very important recommendations that our inquiry made. It is now 2017, so I am very pleased to see this come into the Parliament. Again I commend all those people involved in that inquiry, because it was such a significant piece of work, and out of that we are getting some very good reform — hopefully.

I think the community as one want to make organisations accountable and they want to protect children where they can. This report identified those gaps. It was also identified that there was enormous goodwill within the community amongst so many people and organisations towards ensuring that their organisations provided a child safe environment and that child safe standards applied. The opposition supports the bill in principle, but we will be very keen to see how the government implements these important reforms.

Ms SPRINGLE (South Eastern Metropolitan) — I would like to confirm that the Greens will be supporting this bill. The Greens strongly support the intention behind the Children Legislation Amendment (Reportable Conduct) Bill 2016. We have argued strongly for many years now that the recommendations of the *Betrayal of Trust* report and the Cummins report must be implemented in full and as soon as possible. We support independent oversight of investigations into misconduct within any organisation that works with children. We certainly support the strengthening of internal systems for identifying and reporting child abuse and misconduct in all organisations that work with children. We also support the establishment of the Commission for Children and Young People to undertake this important work, as it is their remit. I am aware that the government has worked with the commission in developing the framework for the scheme and consulted with the commission on the development of the bill. That cooperative work is an important first step in ensuring the successful implementation of the reportable conduct scheme and ultimately in improving protections for children and recourse to justice.

Child safe standards were an important step in the right direction. We would like to recognise the huge amount of work undertaken to date by the commission in this area. The reportable conduct scheme builds on this work by directly addressing the issue of accountability at last. The Greens have been advocating for increased accountability for organisations for a long time. It is critical that the government get this right. The Greens have concerns around the overall coherence of the mandatory reporting regime, the scope of this scheme in the context of that regime, information sharing and data and the effective resourcing of the scheme, and I will address these in turn.

As we have heard from the government, the bill will substantially implement recommendation 18.1 of the *Betrayal of Trust* report and a key component of recommendation 10.1 of the same report. It is worth spending a bit of time unpacking how the bill will implement these recommendations and how it addresses the challenges that informed these recommendations. Recommendation 18.1 proposed:

> That the Victorian government authorise an independent statutory body with relevant investigatory powers and legal and operational resources to:
>
> > oversee and monitor the handling of allegations of child abuse by relevant government departments, religious and non-government organisations;
> >
> > undertake independent investigations into systems and processes in the context of allegations of reportable conduct and/or reportable convictions;
> >
> > scrutinise and audit the systems and processes in non-government organisations for handling allegations of child abuse;
> >
> > monitor and report on trends associated with allegations by collecting relevant data and report to the Parliament on an annual basis;
> >
> > build the skill and knowledge of personnel in relevant government departments, religious and non-government organisations to ensure they have the capacity to competently handle allegations of suspected child abuse.

This bill quite clearly gives effect to substantial components of this recommendation. We are concerned that the monitoring and reporting requirements contained in the bill do not meet the standards set out in recommendation 18.1, and I will return to this issue later.

Recommendation 10.1 of the *Betrayal of Trust* report related to working with children checks. There were four components to this recommendation. This bill addresses one of those components, ensuring that all relevant non-government organisations are required to report any allegations of misconduct relating to children to the Victorian justice department's working with children unit. Of course this bill provides for allegations to be provided to the commission rather than the department, but provisions for information sharing within the bill are designed to ensure that these reports reach a number of relevant stakeholders, including and importantly, the working with children unit.

An important issue that has not been addressed is how the reportable conduct scheme sits within the wider regime of reporting in support of child protection. This scheme overlaps with a number of existing reporting obligations. The fact that some professions will now be subject to a number of reporting requirements is not a problem within itself; it is, however, important to ensure a level of consistency across those obligations and to reduce potential confusion amongst entities and individuals covered by these mechanisms. Once this bill comes into effect certain entities and heads of entities will be covered by the following: failure to disclose a sexual offence committed against a child under the age of 16 years, under the Crimes Act 1958; the mandatory reporting scheme under the Children, Youth and Families Act 2005; and the reportable conduct scheme under the Child Wellbeing and Safety Act 2005. Each of these schemes requires reporting of allegations to Victoria Police, the commission, the Department of Health and Human Services or a combination of these organisations. In addition the types of conduct or offence covered under each scheme varies.

There is clearly potential here for confusion. Part of this can be addressed through training, provision of guidance and resources tailored to the specific requirements of organisations covered by this scheme and by other reporting schemes. Given the complexity of this regime, we are expecting a lot of individuals and organisations to be covered by multiple reporting requirements. As I said, this is not a problem per se, and we should have the highest expectations where the safety and security of children are concerned, but the outcome of this regime must be better protection and support for children, and in achieving that we need to ensure that substantial attention is paid to particular groups of professions that are covered by multiple reporting requirements.

On that note, it would be good if the minister could answer some questions in her summing-up speech, and one of them is if she could tell us whether any analysis has been undertaken to understand which organisations or groups of professionals will be covered by multiple schemes and what the likely impact of additional reporting requirements is. Will bespoke training and resources be developed for these groups in order to ensure that these groups are well equipped to comply with the regime as a whole?

On the issue of other instruments, I wanted to raise some issues related to legislative consistency and the inclusion of family violence within the mandatory reporting regime. Previous research on what types of offences against children are included in reporting schemes across Australia has shown Victoria to lag behind other states. We have lagged behind in relation to the range of organisations subject to reporting schemes and also in relation to the types of behaviour and offences that must be reported. The bill in its current form brings us into line with other states in requiring a much wider range of organisations working with children to develop internal procedures for identifying and reporting reportable conduct.

We are pleased to see that the definition of reportable conduct is broad and that it includes psychological and emotional abuse. The Greens have argued strongly — and this argument is based on very sound evidence — that these forms of abuse have lasting and extremely

damaging impacts on children. Within that broad definition of reportable conduct any incidence of family violence committed or suspected to have been committed by an employee of an entity should be reported to the commission under this scheme. To be clear, heads of entities are required to report on conduct:

> … whether or not the conduct or misconduct is alleged to have occurred within the course of the person's employment …

The definition of reportable conduct itself covers a range of behaviours and abuses committed against or in the presence of a child — that is, any child. But it is not explicitly included, so rather than me making assumptions, perhaps the minister could confirm whether this scheme intends to capture family violence where committed by an employee or whether its implicit inclusion has happened by accident.

In speaking on the child safe standards prior to their introduction, I highlighted serious concerns about the inadequacy of data collected by the department. We are talking about basic data that is crucial to both understanding the scale of the problem in relation to child safety and to addressing barriers to this. We are therefore pleased to see that this issue has received at least some attention in the reportable conduct bill, but we are concerned that it does not go far enough.

The bill empowers the commission:

> … to report to the Minister and to Parliament on trends in the reporting and investigation of reportable allegations and the results of those investigations …

Recommendation 18.1 of the *Betrayal of Trust* report went a little further than this, recommending an independent statutory body:

> … monitor and report on trends associated with allegations by collecting relevant data and report to the Parliament on an annual basis …

The bill is not clear on exactly what kind of data should be collected and reported on, and no regular time frame for reporting is included. Perhaps the minister could explain why specific data requirements are not included beyond reporting on trends and why this has focused only on reporting and investigation. Would it not also be important to know rates of compliance and the incidence of full compliance with all reporting schemes, for example? Would it not be important to understand which organisations and professionals are subject to multiple reporting requirements and how this impacts on compliance? Would it not also be important to collect data on the types of conduct that are reported and in what circumstances? These are a few examples, but given the department's poor track record in collecting important data that can inform how we address complex challenges in child protection, I think it is vital that we are clear on how we are tracking this scheme and what data the department should be collecting from the outset.

We are also concerned that mechanisms for information sharing do not cause any unintended harm or consequences. Proposed section 16ZB provides for disclosure of information by the commission to a range of people. In family violence and child protection matters it is frequently one or both of the child's parents who pose risks to the child. The Greens are proposing an amendment to this section so that where the parent or carer is suspected of having committed reportable conduct, any disclosure of information about the investigation must be based on a risk assessment undertaken by the commission, with the aim of preventing further risk to the child.

As I highlighted earlier, situations of family violence where the perpetrator is both a parent or carer and an employee must be reported under this scheme, and this amendment aims to minimise potential for further damage to children that could be caused by the reporting process itself. These circumstances are treated as a serious risk requiring specific practices in New South Wales, where a 42-page guidance document has been developed on managing allegations of reportable conduct against authorised carers.

The reportable conduct scheme certainly looks good on paper, and in speaking to a range of groups and individuals working in child protection, there seems to be a significant amount of support for this scheme. But as always, the devil will be in the detail. There are several issues worth raising at this point that will be crucial to the scheme's effective functioning.

The proposed scheme represents a significant undertaking for the Commission for Children and Young People. The commission is currently in the process of rolling out child safe standards across the state, which represents another huge job. The two schemes are certainly closely related and in many ways complementary. Indeed in many respects the reportable conduct scheme is an extension of the commission's work on child safe standards. But in conceptualising these two areas of work as part of a whole it is vital that planning and resourcing take into account the scale and distinct challenges of these two jobs. It is one thing to look at the technical components of the scheme and to look at capacity in relation to compliance and enforcement. The Greens strongly advocate an approach that focuses on real outcomes in terms of

safer environments for kids and the development of norms around reporting misconduct, and I would like to think that this approach is shared by all of us here.

We therefore need to look at the magnitude of work involved in implementing child safe standards and the reportable conduct scheme and to ensure that the commission is adequately resourced and equipped to undertake this job from day one. On this issue, can the minister assure this chamber that plans are now in place to ensure that the commission has access to the funding it will need to implement the reportable conduct scheme from the day that it comes into force? And can the minister also provide an assurance that adequate funding has been budgeted for the ongoing effective running of the scheme?

As I mentioned earlier, the Greens support phased implementation as set out by the bill. Category 1 organisations will be covered by this scheme from the day the bill comes into effect, with second and third groups of organisations coming online at later dates. In dealing with the challenges I have already outlined, we think that a phased approach to implementation is both sensible and necessary. In theory this should enable smaller organisations to benefit from the development of systems and resources by both the commission and a whole range of larger organisations working with children, particularly those with strong existing procedures in place.

We know that a significant number of organisations are likely to struggle with compliance due to limited capacity. They are going to rely particularly heavily on the commission for information and resources in order to be compliant. Some organisations may even question the need for them to be covered by this legislation, which adds to the commission's work an element of education aimed at cultural and behavioural change. There is good evidence to show that where reporters are not sufficiently trained and educated, rates of unnecessary reporting increase, as do rates of failure to report allegations that should be reported. Research with teachers has shown that where they have received adequate training in recognising abuse and where their levels of confidence in recognising abuse are high, their reporting is much more effective. Research with nurses has shown that positive attitudes towards their reporting duties have influenced more effective reporting. Despite these findings, numerous studies — including some undertaken in Australia — have found that professionals who are required to report abuse and neglect often lack the training and support required to fulfil this role. Of course this is an issue that the reportable conduct scheme seeks to directly address. The commission clearly has its work cut out for it in that respect. It is vitally important that the government remain responsive to the commission in addressing these challenges as the scheme develops. I would also argue that it is vitally important that good data is collected and analysed to assist in understanding where the scheme is performing as intended and any potential problems.

I have covered the key areas of concern to the Greens, but there are a number of outstanding questions that I have not posed and which I will outline now in the hope that the minister can answer them in her final sum up.

The first is that 'employee' is defined broadly to include a person who is employed or engaged by the entity. Will this include contractors of the entity, and what about subcontractors of a contractor of the entity? For jurisdictional reasons the entities to which this scheme will apply include those which receive state funding. There are a number of service providers who receive funding from state, federal and local governments as well as from private sources, and we query how this scheme will operate in a practical sense for those entities. Finally, we would also like to query how new section 16R, which empowers the commission to interview a child, is proposed to operate when a child is the alleged perpetrator of the reportable conduct.

In summary, the Greens support this bill and commend the work undertaken to date to develop the scheme. We would, however, strongly urge members to consider the Greens' amendments when they are circulated. They are aimed at strengthening protection for particularly vulnerable children.

Greens amendments circulated by Ms SPRINGLE (South Eastern Metropolitan) pursuant to standing orders.

Mr DAVIS (Southern Metropolitan) — I am pleased to make a contribution to this Children Legislation Amendment (Reportable Conduct) Bill 2016. This is a bill that the opposition supports. It amends the Child Wellbeing and Safety Act 2005 to establish the reportable conduct scheme. Under the scheme allegations of reportable conduct or employee misconduct involving children committed by an employee within or connected to certain entities will be required to be reported to the Commission for Children and Young People. Under this bill the commission will administer the scheme, and that includes overseeing and conducting investigations.

Information will be shared under the scheme as necessary, and many of these mechanisms were being worked through closely immediately after the Betrayal of Trust inquiry report in the period when we were in government. I compliment those, including Ms Crozier who chaired that committee, on the work that they did on that very relevant and significant inquiry. That did change the way we look at a number of these issues, and it has fed into the national work that has occurred as well.

The bill makes a number of consequential amendments to other acts: the Commission for Children and Young People Act 2012, the Working with Children Act 2005, the Education and Training Reform Act 2006, the Children, Youth and Families Act 2005, the Disability Act 2006 and the Ombudsman Act 1973. Essentially it lays out arrangements for the reporting and for the sharing of this information, which will put police and other authorities in a much better position to make sure that checks are properly conducted.

Our concerns are not with the bill at all; the bill is a bill that we support. What is concerning is the Minister for Families and Children, who is administering these acts and will have carriage of this bill. It is pretty clear that this minister is not up to the job. We have seen a very significant set of failures, and the recent — —

Ms Mikakos — What about the no-confidence motion we had on you, Mr Davis?

Mr DAVIS — It never carried and it was nonsense, and that is right.

Ms Mikakos — Yes, because you had the numbers.

Mr DAVIS — That is wrong.

Ms Mikakos — It is rule 20-1 — when you've got the numbers, you use the numbers.

Mr DAVIS — I am trying to make a serious point here that we do not have confidence in your ability to — —

The ACTING PRESIDENT (**Ms Patten**) — Order! Mr Davis, back to the bill.

Mr DAVIS — I am speaking directly on the bill and the administration of the bill. It directly relates to its implementation. Bills and legislation that are passed are allocated to a minister, and if the minister is not the minister who will be allocated responsibility for this bill, she can of course say so. My understanding is that the administrative orders would allocate this bill to the minister when it is carried, and she has a number of other acts that she administers as well under the administrative orders.

It is the whole failure of the administration of her portfolio that I think is of such great concern. We have seen the failures with respect to youth justice. We have seen the breakouts that have occurred. We have seen the inability of the minister to gain control of key aspects of her portfolio, so I think the chamber is very entitled to ask questions about how the minister will conduct herself with respect to this legislation and what the department will do. It is very clear that the department has struggled with respect to many of these youth-related issues and has not been able to administer complex portfolio areas, so this is a significant concern in the context of the bill and the context of the department which will administer it. I presume this will be allocated to human services.

Ms Springle interjected.

Mr DAVIS — No? Where will it be allocated to — justice?

Ms Springle — The child commission.

Mr DAVIS — The child commission, but under which portfolio area is that?

Ms Mikakos — Do you even know what you are talking about?

Mr DAVIS — I do. I know completely what I am talking about.

Ms Mikakos — Do you have any idea what this bill is about?

Mr DAVIS — I have a very good idea. I do, actually; I understand completely.

Ms Mikakos — I doubt it.

Mr DAVIS — Let me just explain. Let me just return, Ms Mikakos, to what I said a moment ago. When the *Betrayal of Trust* report came down we were actually in government. Many of the recommendations coming out of it to which this pertains — —

Ms Mikakos — That was a bipartisan report, Mr Davis.

Mr DAVIS — It was bipartisan, and I compliment the committee. I had done precisely that just a moment ago, if you had been paying attention. I complimented the chair, Ms Crozier, on the work she did on that inquiry. I can indicate that one of the cabinet subcommittees looking at this was a cabinet

subcommittee that I chaired. I am probably not meant to reveal those cabinet matters, but it was a subcommittee that I chaired, and we looked at many of the aspects of the implementation of the recommendations, including reportable conduct issues — including issues that go directly to this bill. So, Ms Mikakos, I have a deeper understanding of this than you may imagine.

What does concern me is the administrative overlay of this. You have got a department; you have got a minister. I understand the commission will work in its own way, but it is allocated as the responsible entity to the Department of Health and Human Services I understand. I stand to be corrected on that. The point I am making here is that it is extremely likely that the Premier will allocate this legislation to the minister who has got carriage of the bill in the chamber, and I would be staggered if she is able to administer this in a suitable or satisfactory way.

Ms Mikakos — Get real.

Mr DAVIS — No, I am absolutely real. You are not doing very well, Minister. I do not think anyone has confidence.

Ms Mikakos — Says you.

Mr DAVIS — Yes, that's right. And I think the whole — —

The ACTING PRESIDENT (**Ms Patten**) — Order! Through the Chair, Mr Davis.

Ms Mikakos — You know what? I don't need your confidence, Mr Davis. I couldn't care less about what you think, Mr Davis.

The ACTING PRESIDENT (**Ms Patten**) — Order! Minister!

Mr DAVIS — I note the minister has indicated that she could not care less. I think that is one of the problems. Her focus — —

Ms Mikakos — On a point of order, Acting President, we have now got Mr Davis verballing me. I said, 'I couldn't care less about what you think, Mr Davis'.

The ACTING PRESIDENT (**Ms Patten**) — Order! Minister, it is not a point of order.

Mr DAVIS — Thank you, Acting President. I make the point that in the context of the administration of her portfolio the house has expressed the view formally over a two-week, long and studied debate that it does not have confidence in this minister's ability to administer her portfolio, and that is a pertinent fact when this bill is being put through the Parliament — a bill the opposition supports. It will ultimately be carried, I believe, and then the Governor will give it approval. The Premier will have to make a decision as to which minister he allocates responsibility for this bill, and it is entirely within the purview of members to express a view about which minister is able or capable or competent to administer this legislation.

I do not believe this legislation ought to be allocated to Ms Mikakos as minister. She is not competent and she is not capable, and the chamber has expressed that view very directly. The administration of the scheme is up to the commission, but it will be overseen and allocated to a minister who will have responsibility, and I would be deeply concerned if the Premier were to allocate in the administrative orders this particular bill, as a new piece of legislation, to Minister Mikakos.

Ms Mikakos — Well, I hate to break the news to you: I will have responsibility for it, so get over it, Mr Davis.

Mr DAVIS — I will put on record the concerns that I have about that bill being allocated to you, Ms Mikakos. The chamber, as I say, has made its position very clear about its lack of confidence in your capacities, in your administration and in your ability to undertake what is required. With those comments, I indicate — —

Ms Mikakos — You said zero on the bill.

Mr DAVIS — No, I actually laid out the structure of the bill and I made a number of points about from whence it came. I made some points directly about the genesis of this work and indeed work that we had undertaken in government in this precise area.

Ms Mikakos — You said zero about the bill.

Mr DAVIS — No, I actually laid out the structure of the bill and the way it will operate and indeed indicated all the other acts it will amend, including many acts for which you currently have responsibility and ought not have responsibility.

Mr SOMYUREK (South Eastern Metropolitan) — I was under the impression that there was bipartisanship on this bill, and I am about to say some very nice words about members of the opposition — or certainly the ones who sat on the committee. I am a bit surprised that Mr Davis has gone off on a vitriolic attack on the minister, because I think this bill should be considered in the bipartisan spirit in which the process was

conducted. So I will not be having a go at the opposition; in fact I will be doing the antithesis of that — I will be praising their conduct throughout the inquiry.

I rise in support of the Children Legislation Amendment (Reportable Conduct) Bill 2016, which is a very important and necessary measure for the protection of children. The objective of this bill is to improve the protection of children from abuse by introducing a scheme to improve oversight of organisational responses to allegations of childhood abuse and child-related misconduct. The bill delivers upon our commitment to implement recommendations of the parliamentary inquiry into the handling of child abuse by religious and other non-government organisations. The Betrayal of Trust inquiry recommended the government introduce an independent oversight scheme to improve the handling of allegations of child abuse in relevant organisations, such as government departments and religious and non-government organisations providing education and community services. There will be staged inclusion of organisations over the next 18 months, beginning on 1 July 2017, with education, disability, mental health, drug, alcohol, housing, justice and child protection providers to be included, to name just a few.

New South Wales established a reportable conduct scheme 16 years ago, and it is considered a successful model by both the Betrayal of Trust inquiry and the Royal Commission into Institutional Responses to Child Sexual Abuse. The ACT, for its part, has introduced legislation for a scheme that will commence in the near future.

In essence the reportable conduct scheme, which this bill facilitates, will require centralised reporting to the Commission for Children and Young People by relevant organisations of allegations of child abuse and misconduct towards children made against their workers and volunteers. Recently introduced child safe standards complement the reportable conduct scheme by driving cultural change in organisations. That is not easy to do sometimes.

The bill requires heads of entities to, amongst other things: notify the commission of an allegation of reportable conduct within three days of becoming aware of it; provide more detailed information to the commission about the allegation of reportable conduct as soon as practicable, or within 30 days; arrange for an investigation of the allegation; provide the commission with the findings of an investigation as soon as practicable after the conclusion of the reportable conduct investigation; have systems in place for preventing reportable conduct in their entity, ensuring the head of the entity is made aware of an allegation; and enable any person to notify the commission of an allegation against the entity's head. Importantly the reportable conduct scheme will not — and I repeat, will not — impact upon investigations being conducted by Victoria Police or any other reporting obligations to the police. That is a very important point to note.

The Commission for Children and Young People will oversee the scheme and undertake a number of functions in relation to it. I am not going to go through all of the functions, but I might just touch on a couple of them. One function is to receive allegations and investigate outcomes and findings of reportable conduct from organisations within the scope of the scheme. Other functions include: to monitor the systems of organisations; to refer findings to certain professional registration bodies; to scrutinise organisations' systems; to assist in building the capacity of organisations to respond to allegations of abuse; and to report to Parliament on trends related to the scheme.

The importance of such a scheme was highlighted by the powerful and indeed distressing evidence submitted to the inquiry by victims and their families. We are fortunate that the bravery of these victims has directly influenced policy and practice which will minimise the risks for other vulnerable children.

The report revealed the betrayal experienced by victims by not only the perpetrators but also the organisations in which perpetrators were employed or volunteered. This was as a result of the inaction of these organisations in pursuing appropriate justice for the perpetrators, which let down the victims time and time again. Without oversight, organisations kept the atrocities — for want of a better word; perhaps 'abuse' — to themselves, and if any in-house action was initiated, it was simply to move the problem on to its next victim. I am sure we all agree that is not good enough.

According to the *Betrayal of Trust* report:

> They wanted to see consequences for perpetrators — to see them removed from their position in the organisation, reported to police and potentially punished through the criminal justice system.
>
> Victims also had hopes and expectations that organisations they had trusted would acknowledge that they failed in their duty of care to protect them from the harm of criminal abuse. They hoped organisations would listen to their experiences and validate them by providing an expression of remorse and a meaningful acknowledgement of wrongdoing.

The sense of injustice was exacerbated by inconsistent and subjective responses in which allegations were

received as trivial matters. Instead the priority became the protection of the institution or protection of the abuser.

From the incredibly heart-wrenching evidence presented to the inquiry the committee identified that the following reforms should be initiated in response: stronger requirements for organisations to take responsibility to protect children in their care, including taking reasonable steps to protect them from criminal abuse; and improved responses to allegations of criminal child abuse in non-government organisations, including oversight of those responses by an independent body and compulsory reporting to police.

The benefits of this scheme include — and I will not be too expansive here, because I realise I am running out of time: identifying individuals who pose a risk to children, independent oversight of responses to allegations of child abuse and building the capacity of organisations to respond appropriately. These protective and accountability measures will appropriately add to the suite of initiatives implemented to keep our most vulnerable safe and secure.

Due to the highly emotional content received so very personally throughout the inquiry — I was not there so I will rephrase that. The whole thing was pretty emotionally charged, I understand, and it was pretty distressing for some committee members. The committee should be thanked, and I congratulate the minister for accepting the recommendations. I acknowledge the great work of all of the members of the committee. I will end my contribution with the words of the committee's chair, Georgie Crozier:

> This is an opportunity to set a new benchmark for the protection of our children.

And it really is. I commend the bill to the house.

Mr MORRIS (Western Victoria) — I rise to make my contribution to the Children Legislation Amendment (Reportable Conduct) Bill 2016. In beginning I want to acknowledge some of the very significant work done in the previous Parliament with the Betrayal of Trust inquiry that was chaired by Ms Crozier. Some of the significant work that came out of that inquiry certainly informed much of the way forward that we are seeing presently.

In terms of a connection to these issues, my home town of Ballarat has unfortunately been described by many as the 'epicentre' of some of this child abuse. It is something that our community has been working through over a period of time. I note that a constituent of mine, Maureen Hatcher, has led the charge with the Loud Fence movement that sought to have some of the institutions where this abuse occurred recognised by tying colourful ribbons to their fences as a reminder that these things cannot remain in the shadows anymore. They were not spoken about for a long period of time, and they caused significant harm to individuals and, more broadly, the wider community as well. The work that Maureen has done is quite significant in bringing to light these significant challenges. The work that needs to be done in this particular area is going to be ongoing to make sure that what has happened in the past is not repeated in the future.

My children attend a Catholic primary school, and there have been significant changes in terms of the way children are taught about these issues. They are being directly addressed to make sure that that shameful history is not repeated in the future. I want to acknowledge the significant work that was done in the previous Parliament and the bravery of those who came before the inquiry and gave evidence, ensuring that in many ways justice could be done and bringing to light what had happened. I think that what did happen should never happen again.

The bill amends the Children, Youth and Families Act 2005 to improve oversight of organisational responses to allegations of child abuse and child-related misconduct. It is an important aspect of this bill, because what happened in the past was in effect facilitated by the lack of response to many of these allegations. In fact when those who were being abused did raise the actions that were occurring they were ignored and many times not believed. Sometimes they were sanctioned for bringing to light these issues, and that is something we need to ensure does not happen again. So it is pleasing to see that this bill makes provision for that.

The bill further provides the Commission for Children and Young People with the appropriate functions and powers to administer, oversee and monitor the reportable conduct scheme. If we did not have the capacity to have these incidents reported, acknowledged and appropriately dealt with, then we would be repeating the sins of the past, and we simply cannot allow that to happen, because we have a responsibility to ensure that those who are the most vulnerable in our community, many of whom are children, have the appropriate protections in place.

We have seen over history that these types of incidents have occurred all over the world in all sorts of different institutions, and I think we need to recognise that this is not a problem that is going to be easily solved but one

that we need to be taking exceptionally seriously. So I am pleased this bill addresses that.

Further, the amendments to the Children, Youth and Families Act 2005 contained in this bill will enable the sharing of relevant information as necessary with the Commission for Children and Young People, regulators, Victoria Police and the Secretary of the Department of Justice and Regulation to help promote the purpose of the bill and to ensure that our young people can be kept safe.

I think that a lot of work needs to be done, and there are some very significant recommendations that the *Betrayal of Trust* report details. It is going to be incredibly important, if we are going to address the issues that we see in our community and the issues that we have with protecting people, that the inquiry and its work are taken very seriously.

I also note what Mr Somyurek said in his contribution — that going through such an inquiry, led by Ms Crozier, was very challenging. It was not only challenging for those who were providing evidence but also very challenging for the members of Parliament sitting on that committee and also the staff who were involved in that inquiry. To sit through testimony from people who have had horrendous things done to them and to be able to draw together a very important piece of work must have been exceptionally challenging. So I just want to acknowledge the significant work that was done there, because without that work being done we certainly would not be where we are now in addressing the significant events that have occurred here in Victoria.

I note that significant steps have been taken. My secondary school, St Patrick's College, where some of these unfortunate events occurred, has taken a leadership role in addressing some significant issues. I would like to acknowledge Mr John Crowley, the headmaster of St Patrick's College, who I think has got on the front foot, one might say, in addressing the significant issues that have occurred at St Pat's and is attempting to make amends for the shameful history there. When you acknowledge and address an issue in the way that St Pat's has, you are going a long way towards rectifying it and ensuring that these things do not occur into the future.

It is always going to be a difficult journey. It is going to be difficult to address these types of issues, but we can do it on all fronts if the Parliament can address it and if those institutions that have seen this type of abuse occur can all pull in the one direction in saying, 'We have got a responsibility here to make sure our children are kept safe'. We need to address the issues. We need to understand why it is that these things were able to occur and why it is that these things were able to occur for so long without being appropriately addressed, despite broad knowledge among some that this was occurring.

We have a strong responsibility not only in this place but in other organisations as well to say that what happened was shameful and that it was facilitated by a lack of communication — by not talking about these things and, in some cases, by not bringing people to account for their actions. I think that we have certainly moved in the right direction, but we have a way to go to make sure that all of our children can be protected and, importantly, that if there are instances of concern they are brought to light and appropriately addressed in as quick a process as possible.

In summation, this is an important piece of legislation that stems from the important work done in the Betrayal of Trust inquiry. I am pleased to see that we in Victoria are moving in the right direction on this.

Mr EIDEH (Western Metropolitan) — I rise to speak to the Children Legislation Amendment (Reportable Conduct) Bill 2016. There is no doubt that the number one priority of all societies, governments and parents is the protection of our children, but unfortunately there are many instances of child abuse and neglect in Victoria and Australia. This bill is the culmination of a lengthy public policy process that came about because of the need to address the insidious scourge of child abuse and, in particular, the reporting of child abuse within certain entities and organisations. This bill fulfils an election commitment made by the Andrews Labor government to implement the recommendations of the parliamentary inquiry into the handling of child abuse by religious and other non-government organisations, the Betrayal of Trust inquiry.

In essence this bill creates a reportable conduct scheme which will compel organisations and entities under the scheme to report all allegations of child abuse and child-related misconduct made against their staff to the Commission for Children and Young People. The bill will apply to entities that exercise care, supervision or authority over children and to those with limited independent oversight, including schools, out-of-home care providers, early childhood services and religious bodies.

The reportable conduct scheme will be created by amending the Child Wellbeing and Safety Act 2005. The Commission for Children and Young People will be empowered to share relevant information with the

Department of Justice and Regulation, Victoria Police and regulators. It will be able to issue entities with a notice to produce documents and seek a declaration and penalty from the Magistrates Court when a notice is not complied with. The heads of all entities captured by the reportable conduct scheme will be required to notify the commission of an allegation of reportable conduct within three days of becoming aware of abuse or misconduct and to provide more detailed information relating to the allegation as soon as practicable or within 30 days. The above are just examples of what is a broad-based piece of legislation providing comprehensive oversight of organisational responses to allegations of child abuse and misconduct.

The reportable conduct scheme will encompass a broad range of entities and will commence its operation through various phases. In phase 1, from 1 July 2017, the scheme will apply to child protection and family services, out-of-home care services, youth justice services, residential services for children with a disability, certain education providers, government and non-government schools, and government departments. In phase 2, from 1 January 2018, the scheme will apply to hospitals, other disability services for children, providers of overnight camps, religious bodies and the residential facilities of boarding schools. In phase 3, from 1 January 2019, the scheme will apply to early childhood services and statutory bodies that have responsibility for children, such as public museums and galleries.

The reportable conduct scheme is broad based and captures a wide area of activity, but it will most certainly not replace the obligations of individuals and organisations to report crimes to the police. Rather, the entities under this scheme will have to report to both the police and the Commission for Children and Young People concurrently. Some have expressed concern that the scope of the bill does not cover a broad enough range of entities, but this fails to acknowledge that the bill mandates a five-year review of the scheme which must include an assessment of whether the scope of the scheme should be expanded. It should also not be forgotten that the government will be implementing every single one of the *Betrayal of Trust* report's recommendations.

We have all seen the terrible revelations and results of the Royal Commission into Institutional Responses to Child Sexual Abuse. These appalling instances of child abuse must be properly and rigorously tackled, and this bill goes a long way to doing just that. The insidious scourge of child abuse must be met with nothing short of our best efforts and our eternal vigilance. The Children Legislation Amendment (Reportable Conduct) Bill 2016 is a critical part of this process, and I commend the bill to the house.

The PRESIDENT — Order! In accordance with sessional orders, given that Mr Eideh has completed his contribution to the debate, we will proceed to questions without notice. I have all the ministers and the people I understand are to ask questions today here. We have a 30-second early start.

Ms Wooldridge — On a point of order, President, we are missing Ms Tierney, one of the ministers. I do not know whether she is intending to come to question time or whether our early start has caught her unawares.

The PRESIDENT — Order! I have confidence Ms Tierney will be here.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Barwon Prison

Ms CROZIER (Southern Metropolitan) — My question is to the Minister for Families and Children. Minister, during a Public Accounts and Estimates Committee hearing the secretary of your department advised that the department is, and I quote:

> … trialling a different approach down at Grevillea to behavioural management, which really works on a fairly simple gold, silver, bronze scheme that rewards youth for good behaviours and has consequences when expected behaviours are not met …

Minister, can you detail exactly what are the gold, silver and bronze rewards and the consequences that young offenders receive as part of this program?

Ms MIKAKOS (Minister for Families and Children) — I thank the member for her question, because the member has had very longstanding form in coming into this house and putting out all sorts of misinformation. Her latest piece of misinformation was to put out a tweet and a media release claiming that in fact the Parliament of Victoria has passed a no-confidence motion. The member is seeking to mislead the community yet again in relation to what occurred yesterday, because the motion was not debated or passed by the Legislative Assembly at all, therefore it is not — —

Mrs Peulich — On a point of order, President, I believe that the minister is reflecting on a decision of this chamber in relation to a motion that was passed by this chamber and calling it misleading. I believe that is

in breach of standing orders and that you should draw her attention to it.

The PRESIDENT — Order! I do not accept the point of order. I do not think the minister is reflecting in such a way. She is actually making the point that the tweet might have been better framed to have said that the motion was passed in this house but not by the Parliament. In fact that went to a statement that I actually made this morning in terms of the interchangeability of Parliament and one of the houses. The minister might well have chosen, perhaps, a different mechanism of addressing this matter rather than in the context of this question, because it does sort of test me on the debating rule, but nonetheless in terms of the actual point of order that has been raised I do not uphold that. Minister, perhaps to the question.

Ms MIKAKOS — I do actually have Ms Crozier's release in front of me and it does in fact refer to the Parliament passing this motion. I just raise that as a matter of concern, President, that Ms Crozier has sought to mislead the Victorian community in relation to this matter. But I can assure — —

Ms Lovell — On a point of order, President, I can understand the minister's sensitivity as being the only minister to have a no-confidence motion passed on her and her wishes to try and play that down, but the minister is flouting your ruling. You asked her to come back to the subject of the question. She continues to debate an opposition press release.

The PRESIDENT — Order! Minister, I would ask that you do return to the answer and do not continue discussing what Ms Crozier might have done or not done yesterday. But in saying that I also recognise, Ms Lovell, that both the minister and I are probably struggling with a barrage of interjections, and in the minister's case that does present a provocation. So let us be a little tidier and I am sure the minister will follow my direction.

Ms MIKAKOS — President, I want to assure this house that I will continue to work every day to improve the youth justice system and make up for the absolute neglect that occurred for four years under the previous government where they sat on an ombudsman's report, failed to invest in infrastructure and had three secure units built at Malmsbury on a low-security site with no perimeter fencing, which has inevitably led to escapes, and there has been absolutely no responsibility from the former minister for that particular project — a project that — —

Ms Crozier — On a point of order, President, the minister continues to flout your rulings. The question was very specific. She has taken 2 minutes; she obviously does not know. Why does she not just admit to the chamber she does not know or else refer back to the question and just answer it? Please, Minister.

The PRESIDENT — Order! Minister, I think it is helpful if, rather than covering the same ground that I have heard on each occasion these sorts of questions have been posed, we go to the specifics of the question and not a rehash of that same material. However, if the minister puts things as a matter of context I can accept that, but the context needs to be relatively short given that I think the whole house is aware of the minister's views on what might have been neglect in the past or may not have been. We are aware of your views. Minister, the answer to the question.

Ms MIKAKOS — President, I am giving some context here because we are addressing a range of issues in relation to behaviour management of young offenders. Addressing behaviour management of offenders goes to the issues around infrastructure and around additional staffing, but it also goes to additional consequences for young offenders as well. So yes, there has been a pilot that was trialled at the Grevillea unit of Barwon Prison. In fact there have been considerable discussions with the union and staff representatives around these matters. I have in fact met with staff representatives and the union to discuss this specific issue, because we want to make sure that young offenders who are in our facilities clearly understand that there are rules whilst they are there. There has been a longstanding practice, even when Ms Wooldridge was in fact the minister, of an incentivised scheme to ensure that young offenders would behave appropriately. Clearly the scheme that was developed when Ms Wooldridge was the minister has not been effective, and this is why a new behaviour management scheme with appropriate incentives is being trialled.

Ms Lovell — On a point of order, President, the question was quite specific — not 'Pacific', as the minister said — about the gold, silver and bronze reward system. We have 22 seconds to go; we still have not heard anything from the minister regarding the gold, silver and bronze system, and if the minister does not know the answer perhaps she could furnish the answer by way of a written response.

Ms Shing — On a point of order, President, it is a shame that Ms Lovell was thinking so much about what she wanted to say rather than listening to the minister, who in the process of Ms Lovell's getting to her feet was actually talking about the nature of consequences

and effects and the program which was the subject of the question itself. So rather than waste those remaining 22 seconds perhaps Ms Lovell could listen to what the minister was in the process of saying.

The PRESIDENT — Order! Can I just remind the house what a point of order is. A point of order is about a breach of our standing orders or our sessional orders. It is basically an opportunity to correct a departure from our process. A point of order is not an opportunity for someone to stand up and debate. It is not an opportunity for someone to stand up and sling off at another member, to try and provoke or even to get on the record some cute phrasing. It is about our standing orders and our sessional orders and any departure from them that needs to be brought to my attention to ensure that those rules of engagement in our house are followed properly.

In respect of Ms Lovell's point that the minister has not addressed the question, I think the minister was actually talking about the incentive program and may well have got to the gold, silver, bronze program that Ms Crozier requested further information for the house on. She was certainly answering the question in a way that was apposite. If the minister does not complete that question and in the context of a supplementary question also fails to address it, the minister, the house and the member who posed the question all know that there is an opportunity for me to consider a request for a written response on it. But the minister initially has the opportunity to answer that question. As I said, by the direction she had taken, accepting the comments I had made earlier, she gave me the courtesy of in fact moving to the substance of the question and was providing an answer.

Ms MIKAKOS — As I was explaining before the constant interruptions, I have in fact been briefed by the manager of the Grevillea unit about this trial. I have been advised that this has been working very effectively in making very clear to young offenders the rules as they apply in these facilities. The previous model that Ms Wooldridge rolled out as minister was not effective. We need to make it very clear to these young offenders that bad behaviour does have consequences.

Supplementary question

Ms CROZIER (Southern Metropolitan) — Minister, thank you. You have had that briefing so, Minister, since Grevillea has been operating, how many gold rewards have been handed out, and in comparison how many young offenders have faced consequences as detailed by the secretary?

Ms MIKAKOS (Minister for Families and Children) — I thank Ms Crozier for her insightful supplementary question to this level of granular detail about the classifications for particular offenders. I would be very happy to provide the member with a written response in relation to this if that type of data is even collected by the department.

What I can say to her is that I have had discussions with staff representatives and the union about this trial. They have been very positive about it. They are very positive about a new behaviour management model that will make very clear to young offenders the consequences of bad behaviour. There are in fact incentive schemes that I saw in existence when I visited one of New Zealand's youth justice facilities. They existed when Ms Wooldridge was the minister, and they exist in our prison system as well.

Ms Crozier interjected.

Ms MIKAKOS — No, they were not working. That is why we are going to make them better.

Youth justice centres

Ms CROZIER (Southern Metropolitan) — My question is again for the Minister for Families and Children. Minister, on Tuesday you said, and I quote:

> We have invited the council to suggest an alternative location that meets all of our strict selection criteria …

You mentioned parts of the act and that the site needs to be close to services. The Minister for Planning has mentioned planning zones and the Premier has even mentioned the quality of the soil, yet the strict selection criteria, line by line, have never been provided to Wyndham or the Victorian community, so I ask: can you now detail, line by line, the strict selection criteria used in the business case for your new youth justice prison?

Ms MIKAKOS (Minister for Families and Children) — I thank Ms Crozier for her question. I have indicated to this house on multiple occasions now the various selection criteria, as does the media release in fact that we put out on 6 February when we made the announcement about the preferred site. Despite Ms Crozier's claim, my department officials have met with Wyndham council and have in fact provided detailed information to Wyndham council about the selection criteria. We have gone through a rigorous process in identifying a preferred location that does meet a range of strict selection criteria, but we have also said to council that if they can suggest an alternative location that meets those strict selection criteria, then of

course we will consider that. We are of course working very closely with Wyndham council. We will continue to engage with the local community there about this particular issue.

It has been very interesting seeing the flip-flopping positions from the opposition about this issue. In fact Mr Guy has shown he has got no confidence in his shadow minister, who has committed the Liberal Party to a supermax, because all he has been able to say recently is that Malmsbury should be expanded or that Parkville should be retrofitted. So the Liberal Party is all over the place in relation to these issues. On the one hand Mr Guy says Werribee South is no problem; on the other hand he says Malmsbury should be expanded and Parkville should be retrofitted. In fact the member for Ripon in the Legislative Assembly has said that there are 88 Victorian electorates and surely one of the other 87 could house these people.

It is about time the Liberal Party is honest with the people of Werribee South and actually tells them where Ms Crozier would build her secret supermax, because Mr Guy will not tell them. His position changes on a daily basis.

The PRESIDENT — Order! Minister, I have given you a fair amount of licence in terms of this answer, because it is debating. It is reflecting on what the opposition might do, but the reality is that the question was quite specific in terms of the criteria. Therefore I would bring you back to that rather than reflecting, particularly at such length, on the opposition.

Ms MIKAKOS — President, I made it clear at the outset that we have provided information to the council, we have provided information to the community at large and also to the Werribee South community and we will continue to engage with the community around these issues around the decision.

Honourable members interjecting.

Ms MIKAKOS — I have put it on the record, Ms Wooldridge — have a look at *Hansard* — around the selection criteria. I have made the point previously that the business case is of course a cabinet-in-confidence document. We will continue to engage with the community of Wyndham and provide as much information as we can about this particular project. We have been very up-front in saying what our preferred site is; the Liberal Party is suggesting different locations for this facility every second day.

Supplementary question

Ms CROZIER (Southern Metropolitan) — Minister, my supplementary goes to the issue regarding what the Premier has said. Do the criteria actually include soil quality testing?

Ms MIKAKOS (Minister for Families and Children) — I have outlined to this house and to the community on numerous occasions the various selection criteria. I am not going to get into the business here of Ms Crozier coming in here and making suggestions every day about possible things that may have been part of the selection criteria. I have said that the business case is cabinet in confidence. We have provided detailed information to the council around the selection criteria. We have provided information to the community, and we will continue to provide information to the Wyndham community.

Parole reform

Mr O'DONOHUE (Eastern Victoria) — My question is to the Minister for Corrections. Minister, I refer you to recommendation 1 of the Callinan review, which recommends the implementation of a comprehensive electronic database and case management system for the Adult Parole Board of Victoria (APB). It has been revealed that the cost of implementing the recommendation would most likely now exceed the original $84 million funding envelope. Minister, how much extra will be required to get the job done, and where will this money come from?

Ms TIERNEY (Minister for Corrections) — I thank the member for his question. The recommendation has been worked through and has been worked through for some time. As I understand it you met with the adult parole board fairly recently, so you would be across the fact that there has been an integration with Victoria Police information technology systems. There is also an existing operating model and there are process changes that have already improved the flow of information with other agencies, including Victoria Police, and the case workflow system will be connected to corrections applications to enable automated flow of information. This will improve efficiencies through replacing existing manual processes.

The fact remains that it was your government that underestimated what the real cost was going to be. We have been working through exactly how pieces of technology are connected in a number of ways so that we can ensure there is long-term durability in the system — something that again was a legacy of your government in not looking at this at all. As part of this

exercise we are making assessments in terms of the additional costs that will be required to put in a system that is going to deal with the issues that we have not just today but into the future.

Supplementary question

Mr O'DONOHUE (Eastern Victoria) — Consistent with her colleague, I note the minister tried to blame the previous government.

Honourable members interjecting.

Mr O'DONOHUE — Tempted as I am to take up the interjection from corrections minister number three, I will desist from doing that.

As I was saying in my preamble, the minister seeks to put the blame on the previous government, but I note that corrections minister number one, Wade Noonan, promised in April 2015 that the implementation of the new system would be completed by the end of 2015, on time and on budget. According to the most recent advice the minister has given to me that has now blown out to the end of 2018. Minister, what has gone wrong since Wade Noonan's clear and unequivocal promise in April 2015 that would cause this critical community safety project to blow out in both time and in cost?

Ms TIERNEY (Minister for Corrections) — Mr O'Donohue, it has become clear that the final system will support further improvements and efficiencies in the operation of the APB. The issues impacting the ability of the APB to access relevant information have already been addressed. In terms of the issue of flow of information, or difficulties with the flow of information, that has been an issue for a long, long time, and it was certainly there when you were the minister — and you did nothing. In terms of the cost, the final cost will probably exceed the initial forecast, but as I said to you before Christmas and indeed in the last parliamentary sitting, those moneys will be met within the department's existing budget.

Public sector code of conduct

Mr O'DONOHUE (Eastern Victoria) — My question is to the Special Minister of State, the Leader of the Government. Minister, section 2.2 of the *Code of Conduct for Victorian Public Sector Employees* requires that public sector employees conduct themselves in an apolitical manner and that they avoid in the course of their work any participation in activities which support a political party or Independent candidates, including attendance at fundraising or similar events. Minister, Kylie White, the acting CEO of the Latrobe Valley Authority, has been advertised as being a keynote speaker at the forthcoming joint Traralgon and Morwell Labor Party branch event. As the minister responsible for upholding the code of conduct, will you direct that Ms White not attend this party-political event?

Mr JENNINGS (Special Minister of State) — I thank Mr O'Donohue for his question. There are a number of concepts that we have to get clear in response to how we might deal with this issue and how we might understand this issue now and into the future.

In the first instance can I say that Mr O'Donohue is quite correct. In the course of a public servant's working life, in accordance with the code that he has referred to, there would be an expectation that people would act in accordance with that code. Our expectation would be that on their time on the public purse people would operate in a fashion that is clearly apolitical in acquitting their responsibilities. If in fact they err on the side of political activism within the course of their responsibilities, then that would be in error and subject to scrutiny and the appropriate sanctions or guidance that would be provided to them in accordance with their employment obligation. That does not prevent public servants from participating in community-based activities that may be forums that are created for a variety of opportunities. For instance, in relation to recent discussions that have taken place about forestry industry matters or what might be happening in relation to industry adjustment transitions there are a number of forums that have been sponsored by local government — —

Ms Wooldridge — No, sponsored by an ALP branch.

Mr JENNINGS — In this instance sponsored by an ALP branch — a community forum that may be sponsored that provides — —

Ms Shing interjected.

Mr JENNINGS — Ms Shing is encouraging me to have a look at the flyer for such an event, which in fact does include representatives of local government and other members of the community. If Mr O'Donohue is actually suggesting that political parties should not sponsor community forums and then invite people who are relevant to those issues, which may include public servants — if that is the point that he is making — then let us assess that on its merits and take action accordingly. Is the invitation falling foul of the code and the professional obligation? I would suggest not. If in fact Mr O'Donohue wants to take the logic of the code to actually talk about the way in which

community-based forums should be understood, who should sponsor them, how they should be created and who should come to them in the future, I am happy to take reflection on that, but to bring these two issues together in the way that the question has been constructed is not evidence in itself of any wrongdoing but in fact a caution that they should be able to make sure that there is an appropriate demarcation of the role and responsibility of a public servant to acquit their obligations and to provide information in a community-based forum in an apolitical fashion, and if they err on the side of being involved in political activity, then that is actually something that would warrant attention and warrant action.

Supplementary question

Mr O'DONOHUE (Eastern Victoria) — I note the minister's answer in relation to upholding the code of conduct, and I ask by way of supplementary: Minister, given this breach of the apolitical requirement of the code of conduct and noting that at least three of the first senior appointments to the Latrobe Valley Authority are strongly and publicly associated with the Labor Party, including the current president of the ALP's South Gippsland branch, the former ALP candidate for Narracan and your former senior political adviser, how will you restore public confidence that the Latrobe Valley Authority is apolitical?

Mr JENNINGS (Special Minister of State) — I know that Mr O'Donohue is trying to bring a number of elements together. First of all let us just deal with the responsibilities of public servants to acquit their obligation to provide community information and to acquit their responsibilities as public servants in an apolitical way. In fact we would absolutely and determinedly agree that that is a fashion by which public servants should be made accountable; they should act in accordance with that and they should not err on the side of engaging in political activity in the course of their professional engagement. The example that Mr O'Donohue has raised raises a concern that it may have the potential to be inappropriate, but in fact there is no demonstration that that would be the form of engagement or the way in which that undertaking would be made. As Mr O'Donohue would also know, there have been many authorities established by many governments of many persuasions that would include former members of Parliament.

Mr Eideh

Ms WOOLDRIDGE (Eastern Metropolitan) — My question is to the Minister for Small Business, Innovation and Trade. Minister, fresh from the Premier's captain's call appointing a special adviser on trade and innovation, the member for Footscray, to have responsibilities in some of your portfolio area, we now learn a member for Western Metropolitan Region, Mr Eideh, has been appointed as special adviser assisting the Premier of Victoria on trade and business development in the Middle East. Minister, can you advise the house what specific roles and responsibilities in trade and business development the member for Western Metropolitan Region Mr Eideh has been given by the Premier which further diminishes your ministerial responsibilities?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I thank you, President, for the opportunity to respond to the Honourable Mary Wooldridge's question. Can I say that this is not a new appointment and it is indeed a very welcome one. The Deputy President has extensive background networks and connections into the Middle East region, which is one of the most important trading blocs for our dairy and agricultural industry. In relation to the appointment by the Premier, let me point out that the Deputy President's role is specifically to assist the Premier, so if the honourable member wishes to ask specifically about what tasks he undertakes, that question would be best directed to either the Premier in the other place or the Leader of the Government in this place, who represents the Premier in the other place. Insofar as my responsibilities go, I work with Mr Eideh, the Deputy President, whenever we have Middle Eastern delegations here. In fact prior to going to Gulfood last year, where I took a trade delegation of Victorian companies — a very successful trade delegation — I spent some time with Mr Eideh, the Deputy President, to ask him what advice he could provide to me given it was my first such visit to the United Arab Emirates in a professional capacity. Let me just say that anything that assists the Victorian government — —

Honourable members interjecting.

The PRESIDENT — Order! This is a significant question because it is a question that involves the Deputy President of the house and the position that has been referred to in the question. The fact is that this is an important question in that context, and I do not expect, when the minister is providing a response to this question, that there should be quips in regard to that, because it does reflect on an office in this house.

Mr DALIDAKIS — What I was saying was that on this side of the chamber anybody who is capable of assisting us to expand and increase our exports to enable us to gain greater opportunity in overseas markets — well, I would be silly not to take advantage

of that. Let me also state to you, President, that the role the Deputy President was undertaking he was undertaking prior to his role as Deputy President. In fact I remain deeply indebted to him that he was prepared to continue with that task and that role despite undertaking the significantly greater demands as Deputy President of this house. So I thank him for his efforts. I thank him for the expertise and the mentorship he shares with me — —

Ms Wooldridge — On a point of order, President, I ask you to ask the minister to return to the question. The question was very clear. It was about the specific roles and responsibilities. It was not about whether he had the role or not but about his responsibilities in that role. At the moment all we have had is that he asked for some advice prior to taking a trip. Could you ask the minister to return to answering on the roles and responsibilities of Mr Eideh in terms of this position as special adviser on trade?

The PRESIDENT — Order! The answer might not have satisfied the opposition, but indeed the minister has addressed that point already by way of saying that Mr Eideh in this envoy role reports to the Premier — it is a Premier appointment rather than under Mr Dalidakis's position — and that the question on the specifics of what the role involves might well be better directed to either the Premier or the Special Minister of State in this place. As I said, that might not be an answer that satisfies the opposition at all. However, the question has been answered within Mr Dalidakis's contribution.

Mr DALIDAKIS — I think the member might be excited because she has finally been allowed to ask a question and is a bit carried away. Again the appointment by the Premier predates my appointment to cabinet in these portfolios as well. In fact the member in question, the Deputy President, has accompanied me to a range of meetings where we have also received overseas delegations. He continues to remain a great source of support in that role. Again I would like the opposition to reflect on the fact that anything that assists our businesses to increase the opportunities afforded to them in terms of overseas trade is something that they should welcome, not deride.

Supplementary question

Ms WOOLDRIDGE (Eastern Metropolitan) — My supplementary question to the minister is: the member for Footscray has an office suite in your departmental building, provided by your department, and has access to minstaff emails and privileges, including travel paid by the taxpayer, something that is the responsibility of your department, associated with the special adviser for trade. So I ask in that context whether the member for Western Metropolitan Region Mr Eideh has the same or similar privileges in your department?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I seek your guidance, President, because on previous questions similar to this in relation to the Honourable Marsha Thomson in the Legislative Assembly my response has been similar — that because this was an office afforded by the Premier, the request in relation to resources provided is something that is best directed to the Premier's office. Now I can certainly, and happily will, take on notice anything that my department has provided or otherwise — not that I am aware of anything, but I will happily take that on — but I suggest that the actual crux of the supplementary, though, does go to the heart of the Premier and the Department of Premier and Cabinet. I suggest that — —

Ms Wooldridge — On a point of order, President, perhaps I can help the minister in terms of, once again, relevance and this being relevant to his department. In the recent public accounts and estimates hearings his department did in fact confirm that the Footscray office and associated costs were directly the responsibility of his department. So it is very clearly in his departmental authority. He has offered to take it on notice, but it is something that is within his responsibility.

Mr Morris — A very good point of order.

The PRESIDENT — Order! I note that Mr Morris thinks that that was a very good point of order. I do not in so much as it was not about an error in process; it was basically trying to put more information on the table. Whilst I understand the context in which that was offered, it really is not a point of order as such.

Mr DALIDAKIS — As I wind up, President, I just state for the record that in fact my department said costs were shared, not borne solely by my department.

Timber industry

Ms DUNN (Eastern Metropolitan) — My question is for the Special Minister of State. As the Premier's representative, you would be aware that last year the Premier's Forest Industry Taskforce unanimously agreed that 36 high-priority interim protection areas should not be logged. This recommendation was passed to the government. Is the minister aware if any of the coupes in these high-priority interim protection areas have been subsequently logged by VicForests?

Mr JENNINGS (Special Minister of State) — I am very surprised! No, maybe I am not surprised, because I was not in the chamber. I was not here for a long period of time, but now finally processes have actually caught up with the fact that I might know something about this matter. I have been assisting my colleagues, including the Minister for Agriculture, in relation to dealing with some forestry matters and have played an intermediary role between the government and the forest industry task force for the last number of months.

As Ms Dunn did indicate, there has been consideration of the conservation status and the priorities of a range of forested areas that the task force had been seeking protection for. Indeed there was a protracted series of conversations between the task force and VicForests about the timber release plan and the way in which it could be undertaken for this summer in a way where there were increasing pressures on VicForests to acquit its contracted volumes of timber, to get the timber allocation in accordance with the timber release plan and, in a very tight schedule of coupe allocation, to achieve a balanced outcome that meets everyone's expectations on the task force.

Within the 36 that Ms Dunn referred to, the activity that VicForests undertook when they released the timber allocation was to exercise their best endeavours to prevent any of those 36 locations from being harvested during the course of this summer whilst acquitting their obligations. Most of their obligations that we have been discussing of recent time have been the proliferation of the sites where Leadbeater's possums have been identified and the readjustment of coupes that have been made as a consequence of the ongoing identification of the Leadbeater's possum, which I would have thought most people from the conservation movement would have been happy about, but that is not necessarily the case, because in fact there is a lot of denial about the significance of the proliferation of the Leadbeater's possum in the forest.

Notwithstanding that, of the 36, VicForests I believe has allowed harvesting in one of those 36, and I understand that they are making their best endeavours not to harvest any of the others, in accordance with their ability to satisfy the timber release plan and in accordance with what their intention is, which is not to go into those areas.

Supplementary question

Ms DUNN (Eastern Metropolitan) — Thank you, Special Minister of State, for your answer. In relation to that one that you indicate has been harvested, could you confirm whether that contains Blue Vein coupe as one of the logging coupes in that area, and can you also explain why logging was undertaken here, given the unanimous decision of the task force to not log any of those high-conservation areas?

Mr JENNINGS (Special Minister of State) — Ms Dunn I think probably should know better in the framing of her question, because I am sure she is aware of the 36 coupes in question — and Blue Vein was not one of them. Indeed on Blue Vein, as I understand it, harvesting has not proceeded in that coupe.

Timber industry

Ms DUNN (Eastern Metropolitan) — My question is for the Special Minister of State. Considering the Premier's Forest Industry Taskforce has not been able to produce a final report of substance, is the Premier keeping it as an ongoing concern as a delaying tactic to put off any decisions on the future of native forest logging in Victoria?

Mr JENNINGS (Special Minister of State) — No.

Supplementary question

Ms DUNN (Eastern Metropolitan) — Thank you, Special Minister of State. My supplementary question is: did the Special Minister of State take the deliberative negotiations on the supply of logs to Australian Sustainable Hardwoods out of the Premier's Forest Industry Taskforce and hand it to a hastily convened advisory group because in the state of Victoria the forestry division of the Construction, Forestry, Mining and Energy Union calls the shots?

Mr JENNINGS (Special Minister of State) — No.

Questions interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — Order! I acknowledge that we have in the visitors gallery today Digby Crozier, a former member of the house and minister.

QUESTIONS WITHOUT NOTICE

Questions resumed.

Desalination plant

Mr BARBER (Northern Metropolitan) — My question is for Mr Jennings, representing the Minister for Water. Minister, after years and years and years of paying water security payments to the desalination plant, they finally switched it on to generate some water

for real and it immediately blew a fuse. In the Public Accounts and Estimates Committee last week we asked for an explanation as to what exactly was the nature of the technical problem, and we were unable to get — or those representatives were unwilling to give us — the answer, beyond reference to a governmental statement, which did not actually explain things. We are getting a drip-feed of information via the *Herald Sun* about the problems down at the plant. Is the government through you, Mr Jennings, now willing to give us a proper explanation of what exactly is the problem at the desalination plant, and will it be rectified?

Mr JENNINGS (Special Minister of State) — I do not necessarily want to give Mr Barber any comfort to the extent that he is asserting that the answers that he has been given so far are improper. They may not have been as complete as he would like, and in fact I think I will have to take advice about the information that he seeks. Without being able to prejudge how complete that information is and whether it be to his satisfaction, I will have a conversation with my colleague who is responsible for this matter, and I imagine that if I do not volunteer it, it will be requested of me by the Chair to actually provide that answer within two days.

Supplementary question

Mr BARBER (Northern Metropolitan) — Thank you, Minister. If we cannot get the information via the Public Accounts and Estimates Committee but we can get it via the *Herald Sun*, could the minister also confirm through the same process of inquiry whether there is any other technical issue that is a problem at the desalination plant? Beyond the question of the electricity supply, which we have now read about in the *Herald Sun*, is there any other technical issue occurring at that plant that might also impact on its ability to provide water in accordance with the water order?

Mr JENNINGS (Special Minister of State) — On the meandering way that Mr Barber asked that question, I am not quite sure whether he was implying that the correct source of information is the *Herald Sun* or the correct source of information is my ministerial colleague. I will go to my colleague.

Rushworth State Forest

Mr YOUNG (Northern Victoria) — My question today is for the Minister for Energy, Environment and Climate Change, represented by the Leader of the Government in this house. Minister, recently actions by a government department in the Rushworth State Forest near Whroo resulted in more than 7 kilometres of track being made inaccessible to users. Hundreds of trees were bulldozed and dragged onto the old Telecom track, large areas of undergrowth have been dug up to create piles of dirt and logs have been dragged through the bush to be placed in the way of users on the track. It is now not possible for bushwalkers, pushbike riders or horseriders to access this section of the track. Allegedly this has been the result of an unfounded safety concern. Minister, is the policy of the government to solve any user issues on our public lands by having the managers simply lock everyone out?

Mr JENNINGS (Special Minister of State) — I thank Mr Young for his question and his concern about this matter. There are a couple of ways that I want to address it. The track that he has referred to where this damage has actually occurred and these trees have been felled, as I understand it, runs adjacent to a formed road that has been described to me in part to be about 50 metres to the west of the track. In terms of the imputation that in fact access to the forest has been denied through this action and will mean that people will not be able to gain access to the forest, we actually have to debunk that issue in the first instance because in fact access is still available through the ongoing reliance on the formed road.

On the issue about falling trees and about the circumstances that are associated with that, the decision and the actions being taken, my colleague the minister for the environment has sought a review of that activity, that practice, to try and ensure that this does not occur again and that in fact remedies and processes are put in place to prevent this occurring again. She is expecting advice in the near future about the way in which those guarantees can be provided to her and ultimately to the Victorian community.

In relation to the track itself, I have been told that there have been measures put in place to assist in the rehabilitation of those environmental values that have been jeopardised because of this action, that there have been signs put in place to address the access questions and that in fact on the reassurance that the community deserves on our firefighting efforts the minister has been advised that our firefighting capability has not been diminished because of this action. But at the heart of Mr Young's question is obviously a concern that is a legitimate concern to be raised in terms of the way in which environmental values have been protected and access has actually been able to be provided for, and I know my colleague has sought remedies and guarantees that this action will not occur again.

Supplementary question

Mr YOUNG (Northern Victoria) — Thank you, Minister, for your answer and clarification on the government's point of view about access to the area, but the track in question, whilst it is running parallel to another formed road, has been used by a certain group of users — that is, bushwalkers, horseriders and pushbike riders — and the formed road you are mentioning is one that is used by car traffic and potentially other motorised vehicles. Arguably it is inappropriate to have pushbike riders, horseriders and walkers pushed onto a track that is being used by cars. By way of my supplementary question, I ask: what consultation was there to address this issue prior to the action being taken and what were the alternative options to destroying the bush and denying users access?

Mr JENNINGS (Special Minister of State) — The information that I have actually provided the house was furnished to me during the course of question time, so in terms of my knowledge of other matters beyond what I have reported to you, it is extremely limited. I would suggest that, from my knowledge and your description of the issue, perhaps not a lot of consultation occurred, but I will seek advice on that matter. I think the important issue that I have actually described to you is that I am advised by my colleague that this has been poor practice and that this practice should not be replicated.

Written responses

The PRESIDENT — Order! In respect of today's questions, Ms Crozier's questions 1 and 2, both the substantive and supplementary questions, to Minister Mikakos, they are one day; Mr O'Donohue's questions, substantive and supplementary, to Ms Tierney, that is one day; Ms Wooldridge's substantive and supplementary questions to Mr Dalidakis, that is one day; Mr Barber's substantive and supplementary questions to Mr Jennings, that is two days; and Mr Young's supplementary question to Mr Jennings, that is two days.

Mr O'Donohue — On a point of order, President, in relation to the substantive question from me to Minister Jennings, the question was: will he direct that Ms White not attend the upcoming Labor Party event? While the minister addressed the public sector guidelines, he did not actually address that specific question.

The PRESIDENT — Order! I think the minister satisfactorily answered that question, and if he did not go to a direction, then you have your answer.

Mr Dalidakis — On a point of order, President, in relation to Ms Wooldridge's question to me, I did agree in the supplementary answer to take that part of the question in relation to my department on notice. In relation to the substantive question, what I said at the time was that in relation to specific tasks asked by the Premier, that was a question best directed to him, and then I outlined in my substantive answer the types of roles and activities that I have undertaken with the Deputy President, so I believe I have acquitted my response in relation to the substantive question.

The PRESIDENT — Order! I did give some consideration to that; in fact I had made mention of that in regard to a point of order. I have allowed for a written answer on this one to give you an opportunity to check that there are no other aspects in terms of responsibilities that have been provided through your department. I agree that, for all intents and purposes, it would seem that you did actually address that matter. You gave us the assurance on the supplementary, and I took the view that I would let you have some consideration. It may well be that the answer that comes back really just reinforces what you did tell the house.

QUESTIONS ON NOTICE

Answers

The PRESIDENT — Order! Mr Rich-Phillips has written to me in respect of a question to the Minister for Training and Skills for the Minister for Police in another place. It is question 7673. I have looked at the question and answer and will reinstate that question.

Ms Pennicuik has written to me in respect of questions 7699, 7700, 7701 and 7702. They are questions to the Minister for Corrections, sending them through to the Minister for Police. Having looked at the answers, I will also reinstate those.

Ms Wooldridge — On a point of order, President, I have a number of questions on notice that have passed the deadline in terms of response time. I have alerted the Minister for Families and Children, who represents the Minister for Health in this place in relation to questions in relation to that portfolio. However, on questions 571, 572, 868 and 872, which were actually reinstated by you on 10 December 2015, I have raised these issues a number of times in this house and I would ask that the minister genuinely take them back

and seek a response from the minister. I also have yet to receive a response to questions on notice 7703, 7704, 7705, 7707 and 7708. Further, there is no answer or explanation in relation to questions 9415 through to 9422, lodged in December, 78 days ago. I ask if we can have some advice from the minister representing the Minister for Health in relation to the non-answering of these questions and hopefully an encouragement to provide the responses within the times provided in the standing orders.

Ms Mikakos — On the point of order, President, I understand that all of these questions on notice are in the portfolio responsibility of the Minister for Health. I will endeavour to follow this matter up with the responsible minister. Obviously that is a matter that is outside my personal control, but I will endeavour to follow this issue up.

Sitting suspended 12.59 p.m. until 2.04 p.m.

CONSTITUENCY QUESTIONS

Eastern Victoria Region

Ms BATH (Eastern Victoria) — My constituency question is for the Minister for Agriculture. After the inquiry into the puppy farm legislation last year the minister said she would consult with stakeholders on developing amendments to the Domestic Animals Amendment (Puppy Farms and Pet Shops) Bill 2016. Banksia Park Puppies, in my electorate, are third-generation breeders and the largest breeders in Victoria, employing 25 people from the region. They are held up by the industry as a model for animal welfare standards.

In his evidence before the inquiry, Dr Paul Martin, president of the Australian Veterinary Association (AVA), said:

> I would further add the point that the industry per se has seen some really, really good operators, and Banksia Park has been mentioned numerous times. I have visited Banksia Park …
>
> …
>
> I think Banksia Park does a great job in lots and lots of different areas.

Can the minister advise if she will be consulting with Banksia Park Puppies as part of her consultation process, and if not, why not, noting that she has already met with the AVA, the RSPCA, the Municipal Association of Victoria and the bird association, among others.

Western Metropolitan Region

Ms HARTLAND (Western Metropolitan) — My question is for the Minister for Roads and Road Safety. As of 1 April, tolls for trucks on CityLink will increase substantially. The Victorian Transport Association has said that trucks will move away from CityLink and rat run through suburban streets to avoid the high tolls. Given that the government's proposed western distributor is set to charge trucks similar tolls, there is serious concern that trucks will not use the new toll road and will continue to rat run on residential streets in the inner west to keep costs down. Can the minister explain why the government has not committed to a 24-hour truck curfew on residential streets in the inner west as part of its plans for the western distributor toll road?

Southern Metropolitan Region

Mr DAVIS (Southern Metropolitan) — My constituency question today relates to the impact of CityLink tolls on many people in my constituency, and it is directed to the Minister for Roads and Road Safety. The government appears set to sign a deal with Transurban that will extend tolls for up to two decades, which is a massive hit on people in my constituency. I note that the first toll on the way into Melbourne on CityLink is at Toorak Road, and people are funnelled up Toorak Road by the existence of that toll. The extension of that in 10 or 20 or 30 years time would have an extraordinary impact on Toorak Road and all of the Stonnington area. What I seek from the minister is that he makes available publicly all of the information on this matter and that he tells us exactly how many millions of dollars motorists will pay in the coming 40 years.

Northern Victoria Region

Ms LOVELL (Northern Victoria) — My question is for the Minister for Public Transport and it is regarding problems, including the lack of functional air conditioning, on the Shepparton line V/Line trains during recent heatwaves. On Wednesday, 8 February, the temperature in Shepparton reached 37 degrees, and the 12.52 p.m., 4.31 p.m. and 7.08 p.m. Melbourne to Shepparton services all failed passengers. The 12.52 p.m. service had electrical problems and needed to stop for urgent maintenance. The lights were restored but the air conditioning was not. The 4.31 p.m. service had one carriage out of action for badly timed scheduled maintenance, resulting in overcrowding in the remaining carriages, with passengers, including one pregnant woman, having to sit on the floor. On the 7.08 p.m. service an air conditioner broke down, so

V/Line staff had to disrupt passengers, evacuate one of the carriages due to the heat and relocate the commuters into the remaining carriages. My question is: when will the government commit to new rolling stock so that passengers on the Shepparton line can enjoy the same comfort that passengers from many other regional centres and their city counterparts get to enjoy?

Western Victoria Region

Mr MORRIS (Western Victoria) — My constituency question is directed to the Minister for Regional Development. The announcement by the City of Ballarat that it will be bailing out the state government's shambolic redevelopment of Eureka Stadium has hit the Ballarat community like a bombshell. Ballarat ratepayers are now on the hook for what is likely to be a multimillion-dollar compulsory acquisition of land at Eureka Stadium because of the Victorian government's haphazard approach to this project. My question is: why did the government not ensure that access to the ground and facilities for AFL games was guaranteed prior to proceeding with this multimillion-dollar project?

Western Metropolitan Region

Mr FINN (Western Metropolitan) — My constituency question is to the Minister for Planning. As I am sure the minister is aware, there is huge community concern surrounding the proposed expansion of the stinking tip that we have at Ravenhall. Its proximity to residential housing causes illness and gross discomfort to thousands on a very regular basis. The communities surrounding this tip would like to know the future of this proposal as it directly impacts their future. Is there any reason the minister will not release the independent planning panel report into the tip expansion?

Southern Metropolitan Region

Ms FITZHERBERT (Southern Metropolitan) — My constituency question is to the Minister for Training and Skills, and it relates to the question asked yesterday by Ms Pennicuik concerning a constituent of hers and mine. I have also been contacted by a constituent with a similar question about the Sage Institute of Education.

My recollection of what the minister said yesterday is that the Sage Institute is closed. I am advised that while they have gone into liquidation they are trying to trade out of their position, and today there is a potential buyer meeting with the federal Department of Education and Training to see how this issue might be resolved. So they have not closed; they are still operating and offering courses. Students at the institute therefore cannot access the Australian Students Tuition Assurance Scheme. Under this scheme, when registered training organisations collapse, that organisation steps in and obtains student records and is then responsible for contacting the affected students.

Could the minister please clarify what action she is taking to assist students who have been affected by the problems that are currently affecting the Sage Institute.

Eastern Metropolitan Region

Ms WOOLDRIDGE (Eastern Metropolitan) — My question is to the Minister for Roads and Road Safety in the other place, and I ask why the government and the minister are so reluctant to provide information to Eltham residents about the upgrade of Bolton Street. The government announced via the VicRoads website in January that it was pursuing its preferred option 1 but also that it intends to reduce the speed limit along this busy road to a permanent 50 kilometres per hour. Now it has told the *Diamond Valley Leader* that it will also ban trucks from the upgraded road. However, the government has barely consulted and certainly not informed anyone of these plans other than via very subtle means. The minister shied away from giving me a direct response to previous questions on this matter, many of which were reinstated by the President earlier this week. It appears that communication around this project is at best designed to inform a very small number of people. The government has said that the community will be kept updated through the VicRoads website, social media and email bulletins, yet it appears that the majority of road users are unaware of the changes that the government plans for this road and they need to be informed.

Northern Victoria Region

Mr HERBERT (Northern Victoria) — My constituency question is to the Minister for Roads and Road Safety, and it also involves the Bolton Street upgrade. My question is: how will local residents be protected from the plans of the previous government to put a dual freeway or highway right along Bolton Street, which would have destroyed the amenities of that area? How will they be protected and what are the safety components of the road upgrade?

Northern Victoria Region

Mr O'SULLIVAN (Northern Victoria) — My constituency question is for the Minister for Public Transport. Some constituents who have small taxi

operations within some regional communities have come to me, and the $2 levy that is going to be applied to them is of major concern. These operators have a whole lot more questions than they are getting answers to in relation to that. What they are particularly concerned about are people on fixed incomes and the elderly who travel short distances for medical appointments and who will have to pay $2 on the way to their appointment and then another $2 on the way back from their appointment, adding $4 on top of the fares they have to pay.

There are other issues surrounding the GST that is going to be applied to the $2 levy. There are not too many answers in relation to that. Of particular concern are some of the cross-border issues that some proprietors have — proprietors who have cabs licensed in two different towns along the Murray River border. There are no answers as to how that will work its way through.

Ms Wooldridge — On a point of order, Deputy President, constituency questions are required by sessional orders to be in relation to the constituency that one represents. As much as Mr Herbert might wish that he represented the constituency of Eltham, he actually walked away from that constituency and now represents the constituency of Northern Victoria, of which Bolton Street forms no part. I ask that you rule out the constituency question from Mr Herbert.

Mr Herbert — On the point of order, Deputy President, I have had a long history with Bolton Street, but there are many residents from the Northern Victoria region who travel along that route on their way to the city, and it is in their interests that I asked for that clarification in my question.

The DEPUTY PRESIDENT — Order! We will check the *Hansard* and refer back to the issue later on.

CHILDREN LEGISLATION AMENDMENT (REPORTABLE CONDUCT) BILL 2016

Second reading

Debate resumed.

Ms FITZHERBERT (Southern Metropolitan) — I am pleased to be able to rise to speak on the Children Legislation Amendment (Reportable Conduct) Bill 2016. This bill is of course another legacy of the *Betrayal of Trust* report, which was developed by the Parliament in the previous term. Primarily the bill changes the Child Wellbeing and Safety Act 2005 and also amends a range of other acts in largely consequential ways — for example, the Commission for Children and Young People Act 2012, the Education and Training Reform Act 2006 and a range of other acts, which have already been mentioned in this debate. It takes effect from 1 July 2017, with a staged introduction.

It establishes an obligation for organisations to report allegations of reportable conduct as defined. This is laid out in the preliminary section of the bill. It goes to an allegation of reportable conduct or misconduct that may involve reportable conduct committed by an employee within or connected to certain entities, to be reported by that entity to the Commission for Children and Young People for investigation or oversight of the investigation of the allegation, and so on.

It also refers to the information that needs to be shared and how that is supposed to be done. It refers to the Commission for Children and Young People administering the reportable conduct scheme, and this is an important development. As a parent I have to say I find it very upsetting and sad that we need to legislate for people and organisations to do the right thing, which is to stand up and point out behaviour that is often — frequently, usually — criminal and at the very least is questionable in relation to some of the most vulnerable members of our community, in this instance children.

This legislation is the direct result of the evidence given by victims and their families. Many of these people had spoken up before, sometimes at the time of the offending or shortly afterwards, and many of them we know now were not believed. Their concerns and their complaints were cast aside and hidden, and because of that their suffering continued. People continued to be abused, and even when that stopped we know that the effects on individuals and on their own families — their families of birth and those that they may have created otherwise — that suffering, continued.

I do hope that those who presented at the committee — and I think that was an extremely brave thing to do and would have been an enormously taxing on most people — and their experience of being heard, being believed and being treated with respect gives them some solace after many years of neglecting in a practical way the crimes and abuse that many of them reported at the time. This legislation is an important part of that healing. Most of all though I hope it protects children and young people from the kinds of abuse and crimes that were outlined in often very graphic and upsetting detail during the hearing that led to the *Betrayal of Trust* report.

This is an important piece of legislation that shows the Parliament working at its best. The cross-party committee — and it was a very, very good use of the committee system — was responding to an issue that was not just of interest to the community but for many people was about issues that were life defining and had had a huge effect on their life. In fact in some instances, sadly, it dominated their lives in ways that are truly heartbreaking.

We have done this before, but I think it is important to do it again, and that is to commend the work of the committee — all its members, some of whom are no longer members of this house, including Mrs Coote, my predecessor. But I also want to acknowledge the contribution of my colleague and fellow member for Southern Metropolitan Region, Ms Crozier.

This was the Parliament at its best, but I have to say that in terms of the ministry that is responsible for taking this very important change forward, the family services and community portfolio, it is anything but well run. We saw yesterday something very unusual — the passage of a motion of no confidence in the minister — and that is at the heart of — —

Mr Rich-Phillips interjected.

Ms FITZHERBERT — Ms Mikakos is, as Mr Rich-Phillips says, in an exclusive club.

I do hope that we will see the provisions of this bill enacted and administered appropriately and in a way that far exceeds the way we have seen some of the rest of this ministry administered in recent times. As I said, the way it has been administered by this minister led to the motion of no confidence yesterday. But there is another measure of her performance, and that is in the response of the public who have seen repeated reports of the failings of this minister in her portfolio.

Mr Herbert — I have a point of order, Deputy President, on relevance. You could talk about bad taste on a bill like this. You could talk about inappropriateness on a bill like this. You could talk about decency on a bill like this. My point of order is that it is not relevant. The youth justice issues that they have been banging on about are not relevant to this bill, and the member should be brought back to the bill. It is really quite disgraceful to seek to score political points on a bill of this significance.

Mr Finn — On the point of order, Deputy President, there is clearly no point of order. The member opposite makes a point of debate, there is no doubt about that, but there is nothing in the standing orders on the point to which he refers.

The DEPUTY PRESIDENT — Order! There is no point of order, but I ask the member to relate her contribution to the bill we are debating.

Ms FITZHERBERT — Thank you, Deputy President. I return to the bill. As I have outlined, it is an extremely important piece of legislation. It is in response to very graphic evidence that has been given by the community about issues of huge importance in their lives and those of their families. It is about protecting children. It is about making sure that children and young people are safe in the institutions that they are sent to — their schools and so on, and churches and other community organisations. We should be able to expect that some of the youngest and most vulnerable members of our community will be looked after appropriately, that when there are problems or, regrettably, attempts at abuse or other behaviour that is utterly inappropriate, that it will not be swept under the carpet but will be taken seriously, that people will be believed and that these issues will be responded to quickly in a way that deals with the problem. The problem is not the children and perhaps the uncomfortable truths that they are raising; the problem is the perpetrators. That is at the heart of what this bill is about. The opposition is of course supporting this bill, and I commend it to the house.

Ms MIKAKOS (Minister for Families and Children) — I am very proud today that we are debating this bill in this house on what will be a very significant reform in the interests of protecting children in this state. A number of members have already referred to the circumstances in which issues have come to the public's attention in recent years through the Betrayal of Trust inquiry and more recently through the Royal Commission into Institutional Responses to Child Sexual Abuse, which was initiated by the Gillard federal Labor government. We have all heard, as members of Parliament but also as members of the community, harrowing stories of abuse of children in our nation. It is important that we join in a bipartisan sense across all political parties, across the political divide, to support such a groundbreaking reform for our state.

I am really pleased that we have already had some very significant, I would say groundbreaking, reforms implemented in terms of the new child safe standards that have commenced in Victoria. We have had new oversight and enforcement mechanisms passed by the Parliament more recently, and now this is a further set of very significant reforms to protect Victoria's children.

It has been a process that has involved extensive consultation. Over 220 organisations and peak bodies were invited to consult on the design of the scheme, including on the types of organisations to which the scheme should apply. There was considerable stakeholder feedback about these issues and very strong support for such a scheme. The scheme that has been developed will apply to organisations that exercise the closest care, supervision and authority over children or who have limited or no independent oversight.

The New South Wales reportable conduct scheme has been in operation for 16 years and applies to approximately 7000 organisations. The Victorian scheme builds on the New South Wales scheme and, more recently, the ACT scheme, by applying to approximately 10 000 organisations that work with children. There will be a staged process of implementation in terms of the types of organisations to which this legislation will apply, and the scheme will be introduced in three phases from 1 July 2017.

In phase 1, from 1 July 2017, the scheme will apply to government and non-government schools, organisations registered or accredited to provide senior secondary education and training, registered overseas student exchange organisations, registered schools and senior secondary providers that provide approved education and training courses to students from overseas, disability service providers that provide residential services to children with a disability, mental health service providers that provide inpatient beds for children and young people, drug or alcohol treatment services that provide inpatient beds for children and young people, and housing or homelessness services that provide overnight beds for children and young people, such as youth refuges. In addition it will apply to child protection services, out-of-home care services and government departments providing services to children.

In phase 2, from 1 January 2018, the scheme will apply to religious organisations; residential facilities of boarding schools; overnight camps for children; public, denominational and private hospitals; and other disability service providers that provide services for children, including those registered with the national disability insurance scheme.

In phase 3, from 1 January 2019, the scheme will apply to approved education and care services, such as kindergartens and after-school-hours care services; children's services, such as occasional care providers; and statutory bodies that have responsibility for children, such as public museums and galleries.

That is a very extensive list of organisations to which this legislation will apply, and of course that means that there needs to be considerable work done with community organisations to support them in this change. We will be working very closely with the Commission for Children and Young People, which as an independent statutory body will have the responsibility for this scheme to ensure that the wider community organisations that will be captured by this new legislation have the support in terms of capacity to make sure that this scheme works effectively.

It is important to stress that the reportable conduct scheme will not interfere with reporting obligations to Victoria Police or with Victoria Police investigations. In all circumstances allegations of criminal conduct must be reported to Victoria Police as the first priority, and under the scheme an organisation may be required to report the matter to Victoria Police at the same time as to the commissioner for children and young people. Any action by that organisation would generally be suspended whilst Victoria Police investigate that matter. If Victoria Police has advised that they are not investigating the matter, a reportable conduct investigation by the organisation could proceed in consultation with Victoria Police, as required. Once Victoria Police has finished, an investigation by the organisation may be required, for example, to determine if the worker can continue to work at the organisation.

There were a number of questions posed during the course of the debate, and I will attempt to respond to some of them. I have got limited time now, but no doubt there will be further opportunity during the committee stage and I look forward to providing more information then.

There was a question that Ms Springle posed around the interface between mandatory reporting, the criminal law and the scheme. I can advise the house that the bill builds on, rather than replaces or duplicates, existing mechanisms that promote child safety, including existing criminal child protection laws, the working with children check scheme, misconduct and disciplinary investigations by existing regulators and the child safe standards. There will be guidance provided so that organisations and professionals are aware of the requirements to report information and to which relevant body. There will also be information-sharing provisions within the bill to allow for information sharing as appropriate.

To the extent possible the bill will leverage existing regulatory arrangements to minimise duplication and ensure the scheme does not replace existing processes

for reporting and responding to allegations and incidents of child abuse — for example, the bill enables existing regulators to undertake an investigation into allegations involving employees in accordance with the regulator's existing functions and powers.

In relation to the intersection with the criminal law, this bill requires reportable conduct allegations that involve suspected criminal conduct to be reported to Victoria Police as a priority, and I have already explained how that would work. In relation to the intersection with other regulators, I can advise that the bill provides that the commission should liaise with other regulators to avoid duplication and to collaborate in providing for the safety of children. It also enshrines as a guiding principle other regulators' specific knowledge of their sectors as well as the important role that these regulators play in reportable conduct investigations, and it enables information sharing between other regulators and the commission for the purpose of the reportable conduct scheme.

In terms of the intersection with mandatory reporting obligations, I can advise that the reportable conduct scheme complements the mandatory reporting under the Children, Youth and Families Act 2005. Mandatory reporting requires reporting to child protection in either the Department of Health and Human Services or Victoria Police if a person reasonably believes that a child is in need of protection from the child's parent. The reportable conduct scheme requires reporting to the Commission for Children and Young People concerning allegations of child abuse or child-related misconduct by workers and volunteers of an organisation.

These initiatives work together to better ensure that children are safe no matter where they are, including in the home and in organisations that have care or responsibility for them, and there will be further guidance materials made available so that reporting obligations are made very clear. Again, the bill complements the work that the government has already done in terms of legislating for the child safe standards as well as existing provisions that relate to working with children checks. The bill enables the commission, for example, to notify substantiated findings of reportable conduct to the Department of Justice and Regulation for the purposes of the working with children check, enabling assessment or reassessment of a person's eligibility to hold the working with children check. This will complement and align with the way the working with children check currently considers professional misconduct findings by regulatory bodies such as the out-of-home care suitability panel and the Victorian Institute of Teaching.

In terms of the question that was posed around data collection, I can advise that the Commission for Children and Young People is required to include in its annual report a review of the operation of the reportable conduct scheme. In addition the commission must provide a further report to the minister and the Secretary of the Department of Health and Human Services upon request. The term 'trends' is not defined in the bill as this provides flexibility and enables the commission to report on emerging and identified themes arising from its operation of the scheme. The provision is similar to the requirements for the New South Wales Ombudsman to report on trends as well.

In relation to issues that were raised around the definition of an 'employee' or a 'contractor' — I believe the question was around a contractor — I can advise that the bill has a broad definition of employee to capture all employees, volunteers, contractors, office-holders and officers of entities along with other persons engaged by entities, irrespective of their role or whether they have direct care of or supervision or control over children. This broad definition ensures that the reportable conduct scheme applies to people who are 18 years or older who may pose a risk to children regardless of the legal status of the person who is alleged to have committed the conduct or whether or not the person provides services to children.

The definition of 'employee' will not extend to subcontractors of a contractor of an entity, and this is because a subcontractor is engaged by the contractor and not the entity. Additionally it is not possible for the head of an entity to respond to allegations involving personnel with whom it has no employment or contractual relationship. Any allegations of criminal conduct by subcontractors will be covered by existing criminal laws as is appropriate, and this approach aligns with the reportable conduct schemes in New South Wales and the ACT.

There was also a question that was posed — a related question around children — as to whether a child who is an alleged perpetrator would come within the scope of the reportable conduct scheme. I can advise that the bill's definition of 'employee' relates to a person of or over 18 years of age, so the bill does not cover child-to-child abuse; it is dealing only with adults.

There was a question that came up in the course of the debate around funding from different levels of government and how that brings organisations within the scope of the legislation. I can advise that the bill defines particular entities by reference to their funding arrangements with the state government. However, the bill also covers many entities which generally do not

receive any funding — for example, religious organisations. So the bill ensures that entities within the scope that receive funding — whether that is state, federal, local or private funding — or no funding in fact, such as religious organisations, are appropriately captured and required to report and respond to allegations of reportable conduct in accordance with the requirements of the scheme.

To the extent possible, the scheme will leverage existing employee misconduct and incident reporting and response arrangements to ensure it does not duplicate or replace existing arrangements. For example, many hospitals receive a mixture of both commonwealth and state funding, and the scheme will apply to certain hospitals six months after the bill commences. For an allegation arising in a hospital covered by the scheme the bill provides that the head of the hospital must report the allegations to the Commission for Children and Young People and undertake an investigation or permit an investigation to be undertaken. As soon as practicable after the investigation has concluded, the head of the hospital must provide the commission with the findings and outcomes of the investigation, including any disciplinary or other action taken against the employee. The commission will be able to share this information with the relevant government departments and agencies, enabling assessment or reassessment of the employee's suitability to hold a working with children check or relevant professional registration as appropriate.

I hope that responds to many of the questions that were posed during the course of the debate. I know that there will be some further discussion around an amendment, and I perhaps will address those issues at that time, but can I just say again this is a very significant reform in the interests of children's safety in this state. I certainly support the bill and wish it a speedy passage.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Ms CROZIER (Southern Metropolitan) — My question relates to clause 1 in relation to the sharing of information, as necessary, with the Commission for Children and Young People, regulators, Victoria Police, the head of an entity, the Secretary to the Department of Justice and Regulation et cetera. Could you explain how that sharing of information would actually be undertaken? Is it through a reporting mechanism? If there were multiple entities that require that information, how would that be achieved?

Ms MIKAKOS (Minister for Families and Children) — I thank the member for the question. The advice I have is the relevant provision that sets out the information sharing is in section 16ZC that is being inserted into the principal act, the Child Wellbeing and Safety Act 2005. That will establish the legislative basis under which information can be shared. It is not intended to become an overly formal process. It will obviously be up to relevant organisations to work with the commission on how they wish that information sharing to occur and in what form they wish that to take shape, but it is expected that there will be memoranda of understanding (MOUs) that will be developed between the Commission for Children and Young People and these relevant organisations about the form in which that information will be shared.

Ms CROZIER (Southern Metropolitan) — Thank you, Minister, for that answer. In relation to that new section 16ZC that will be inserted into the act, as you have just referred to, with the undertaking that it is with an MOU, the explanatory memorandum says it empowers the commission, the head of an entity and a regulator to disclose specified information to each other, and to Victoria Police, if necessary to an investigator or the Secretary to the Department of Justice and Regulation, a relevant minister, and any other prescribed person or body in relation to a prescribed matter or class of matters, obviously including the working with children check.

So if that MOU is undertaken, if that issue is brought to the attention of the commission, it is then the commission's responsibility to provide the MOU to the relevant entities, but, if it is with the police, can you talk me through how it would practically work with those MOUs? I think that is what I am trying to understand, because if there is an investigation with the police, obviously they would be the lead agency — and there is also the commission. So with the police as the lead agency, do they take priority over the commission? I am just trying to understand how it would work in practice.

Ms MIKAKOS (Minister for Families and Children) — I did, in summing up, refer to the fact that police investigations will have primacy under this scheme. The bill does require reportable conduct allegations that involve suspected criminal conduct to be reported to Victoria Police as a priority, and when Victoria Police are undertaking an investigation the bill

requires that any reportable conduct investigation must be placed on hold until Victoria Police advise that the police investigation has been completed or until Victoria Police agree that a reportable conduct investigation can take place in consultation with Victoria Police. The bill enables relevant information to be shared between the commission and Victoria Police for the purposes of the scheme, including to support necessary consultation.

So the responsibility to report criminal or suspected criminal conduct to police and the primacy of Victoria Police investigations are clearly enshrined in the bill. I refer members to section 16B(1)(b) and (c**)**, and new section 16U in that respect. In terms of the issue around MOUs, it is anticipated that the commission would develop MOUs with each of these other respective agencies around the form which the information sharing would take, which was the original question that was posed.

Ms CROZIER (Southern Metropolitan) — Thank you, Minister, for that clarification. If I could go back to clause 1 in relation to working with children checks, if there was an investigation being undertaken for misconduct that is not perhaps a police matter, and there is an issue around the working with children check, I presume that investigation would be suspended while an investigation is being undertaken or overseen by the commission. Could you just talk through that element as well? I am just referring to the last part of the explanatory memorandum on clause 1, where it says:

> The scheme will require information to be shared, as necessary, with the Commission for Children and Young People, regulators, Victoria Police, the head of an entity, the Secretary to the Department of Justice and Regulation (for the purpose of assessing or reassessing whether an employee may hold a working with children check) and any other prescribed person or body.

So if that investigation is being undertaken and if there is doubt about whether somebody should have a working with children check, how would that play out with those other entities? Could you explain practically how that would apply?

Ms MIKAKOS (Minister for Families and Children) — In relation to the working with children checks, the bill enables the commission to notify substantiated findings of reportable conduct to the Department of Justice and Regulation for the purposes of the working with children check, enabling assessment or reassessment of a person's eligibility to hold a working with children check. This will complement and align with the way that the working with children check currently considers professional misconduct findings by regulatory bodies such as the out-of-home care suitability panel and the Victorian Institute of Teaching.

On the approach taken in relation to the scheme and whether it captures reportable convictions, the advice that I have is that under the New South Wales and ACT schemes reportable convictions are matters where a person has been convicted of a relevant criminal offence. The approach taken here is different. This is because Victoria's working with children check has operated for over 10 years and has existing processes to enable a relevant charge, conviction or finding of guilt — a reportable conviction, in other words — concerning a relevant offence to trigger assessment or reassessment of a person's eligibility to hold that check. Requiring organisations in Victoria to report to the commission relevant criminal convictions akin to the reportable convictions under the New South Wales and ACT schemes would duplicate existing notification processes under Victoria's working with children check scheme. Given that the working with children check is the mechanism for determining a person's eligibility to work with children, this would create an additional reporting burden for organisations with no practical benefit.

Ms SPRINGLE (South Eastern Metropolitan) — I just want to bring the minister back to the issue of how family violence is captured in the bill in the definition of abuse. It is not explicitly outlined, but our reading of it was that it is caught up in the definition. I am just hoping that the minister might elaborate on that.

Ms MIKAKOS (Minister for Families and Children) — Thank you for that question. The scheme captures allegations of reportable conduct that occurs both within and outside the course of employment. This could include allegations of family violence of which the head of an entity is made aware. This will ensure that allegations of harm to children are reported and responded to irrespective of whether the harm occurs at home or in organisations that have care or responsibility for children.

Family violence is a crime, and the bill requires allegations of criminal conduct to be reported to police as the first priority, as I have explained. That is enshrined in the bill. Where Victoria Police is undertaking an investigation, the bill requires that any reportable conduct investigation be placed on hold until Victoria Police advises that the police investigation has been completed or until Victoria Police agrees that a reportable conduct investigation can take place in consultation with Victoria Police. The bill enables

relevant information to be shared between the commission and Victoria Police for the purposes of the scheme, including to support necessary consultation.

In Victoria the alleged reportable conduct of an employee need not be in the course of the employee's employment; this could include situations of family violence. This approach aligns with the ACT scheme but extends the requirements beyond those of New South Wales. This will better ensure that allegations of harm to children are reported and responded to regardless of where the harm occurs. The New South Wales scheme only captures conduct outside the course of employment for employees in designated agencies, which includes government and non-government schools, childcare centres, out-of-school-hours care and substitute residential care services for children as well as government departments and agencies. The view that has been taken here is that we need to take this issue very seriously and we need to apply it to a broader range of organisations. That is the reason why we have gone further than New South Wales. I think this is a very important addition to the scheme.

Ms SPRINGLE (South Eastern Metropolitan) — Just to clarify, would that only include situations where family violence had been reported to Victoria Police (VicPol)? Have I understood that correctly?

Ms MIKAKOS (Minister for Families and Children) — The trigger is the allegations of family violence becoming known to the head of an entity — in other words, the employer. Given that this is a scheme that is based around the information that employers and other organisations have on issues around child abuse and child sexual abuse and their response to those issues, the trigger is the information that the entity has, and in many cases the entity will be the employer of the alleged perpetrator of family violence.

Ms SPRINGLE (South Eastern Metropolitan) — But it would not necessarily rely on a report to VicPol to trigger that — is that right?

Ms MIKAKOS (Minister for Families and Children) — Obviously, as I explained before, where there is suspected criminal conduct, that is reported to Victoria Police as a priority, but the trigger — if I have understood your question — is about the information being made available to the entity, which in most cases would probably be the employer of the alleged perpetrator.

Ms SPRINGLE (South Eastern Metropolitan) — I have one more question on this clause, and that is just around the resourcing of the commission in terms of the fact that it will need more capacity to implement and set up the scheme compared to what it currently has. I wonder if the minister could elaborate on that.

Ms MIKAKOS (Minister for Families and Children) — Thank you for that question. We are working extremely closely with the commissioner for children and young people around the implementation of this significant reform for this state, and those discussions have involved conversations around funding. Some funding has already been provided to the commission for the reportable conduct scheme, and we are going to work very closely with the commission to support them in the rollout of this scheme as well as with the organisations to which the scheme applies, because we obviously need to ensure that the 10 000 or so organisations that I referred to earlier are adequately prepared for the implementation of this new scheme in terms of their capacity. Obviously the commission will play a very important role in an educative sense and in terms of building that capacity in the community, and obviously the department will work very closely with the commission to ensure it has the resources that it needs to perform its functions under this particular legislation, as well as that broader educative role — not just for the reportable conduct scheme but also the child safe standards that are already in place.

Clause agreed to; clauses 2 to 5 agreed to.

Clause 6

Ms SPRINGLE (South Eastern Metropolitan) — I move:

1. Clause 6, page 25, line 17, omit "The" and insert "Subject to subsection (3), the".

2. Clause 6, page 26, after line 6 insert—

   "(3) If the person to whom the information is to be disclosed is the subject of the reportable allegation, information disclosure under subsection (2) must be based on a risk assessment undertaken by the Commission aimed at preventing further risk to the child.".

3. Clause 6, page 26, line 7, omit "(3)" and insert "(4)".

I want to apologise at the outset for the mix-up around the amendment earlier. Unfortunately there were some misunderstandings and miscommunications about what was circulated yesterday. I do understand that the amendment that was circulated in the chamber today was the correct amendment. The fundamental difference in the two versions of the amendment was around risk assessment.

As I talked about in my second-reading speech, the proposed amendment is aimed at safeguarding against the unintended consequence of information disclosure when the perpetrator of the alleged abuse is the parent or both parents or the carer of the child. It involves the commission having to undertake a risk assessment so that any disclosure of information does not put the child at further risk. It is my understanding from the commission that this will happen in practice anyway. What this amendment seeks to do is to codify that and make sure that it is part of the practice of reporting in every situation. Obviously if a parent has been accused or if there is alleged misconduct by a parent, it is a very serious allegation, and given that the child is more than likely in direct contact with that person it is very important that we are very sure that the actions of the commission and other bodies are not actually making the situation worse through an investigation or during the time of an investigation. So that is in essence what this amendment seeks to do.

Ms MIKAKOS (Minister for Families and Children) — I can advise the house that the government will not be supporting Ms Springle's amendment. The effect of the proposed amendment to new section 16ZB is that before the commissioner provides the information to the subject of a reportable allegation who is also the child's parent or carer about the progress of an investigation and the findings, reasons, recommendations and actions taken at the conclusion of an investigation, the commissioner must conduct a risk assessment to prevent further risk to the child. Disclosure to the subject of the reportable allegation must be in line with the risk assessment.

I understand the sentiment in terms of what Ms Springle believes she is seeking to achieve, but we do not support this amendment for the following reasons. It is unnecessary to expressly include this requirement. I am advised that the commission's current power to provide certain information to the parent or carer who is an alleged perpetrator is discretionary, and in exercising its discretion to disclose this information the commission must have regard to all relevant considerations, which would include an assessment of risk. This is a legal administrative requirement. I am further advised that the principles in new section 16B(1) provide that the protection of children is the paramount consideration. The bill therefore already requires the commission to consider risk to the child before making each and every decision under the bill, including a decision to disclose information under the new section 16ZB.

The commission is required to comply with the child's right to be protected in the child's interests in accordance with section 17 of the Charter of Human Rights and Responsibilities Act 2006 when making each and every decision under the bill, including a decision to disclose information under new section 16ZB. So if a position is stated in new section 16ZB regarding undertaking risk assessments but none is included elsewhere, this would create confusion about the requirement of the commission to undertake risk assessments when exercising its other discretions.

The proposed amendment will not achieve its intended rationale — that is, to prevent the person who is the subject of a reportable allegation from receiving information where there is a risk to the child. The commission is required to provide information as to findings, reasons, recommendations and actions taken at the conclusion of an investigation to an entity. The entity in most cases will be obliged to provide the outcome of the investigation to its employee. It is appropriate for persons subject to the reportable allegation to be provided with the outcome of an investigation as the person has a right to a fair hearing and to appeal the results. This is consistent with other protection regimes, such as criminal investigations and child protection investigations.

I can also advise the house that my office has had discussions with the principal commissioner at the Commission for Children and Young People about Ms Springle's amendment, and I understand that the member herself has had some discussions as well. It is unfortunate that there were different versions of the amendments that were circulated. Certainly the amendments circulated in the house today were the first time I saw this version of these amendments.

But, nevertheless, even at this very late hour, we did have a consultation with the principal commissioner about Ms Springle's proposed amendment. She does share the concern that I have outlined, based on the advice that I have received about the potential confusion that this amendment might create. As I have explained to the committee, Ms Springle through her amendment is seeking to impose a requirement to undertake a risk assessment in this particular clause and in no other clause. Potentially the way that the bill could be interpreted later is that the risk assessment obligation only applies to this very narrow range of circumstances under this particular clause and is silent in the rest of the bill.

As I have explained to the committee, this particular amendment is unnecessary because the commission already, under an administrative law requirement, is required to have regard to all relevant considerations,

which would include an assessment of risk. So the commission would already undertake an assessment of risk. It has discretionary powers about disclosures of information under the bill, and for this reason the government is opposed to this proposed amendment. I do understand what is driving it, but it will actually potentially have wider ramifications in creating new obligations on the commission in one narrow area and will therefore, by being silent in the rest of the bill around obligations to risk assessment, potentially create opportunity for mischief-making by those who will potentially try and challenge this legally at some point in time around the fact that the bill is silent about the risk assessment in other areas.

For that reason I would hope that Ms Springle would give some consideration to not proceeding with her amendment. I understand the sentiment that has motivated her here. We all want to ensure that children are kept safe. That is the whole premise of this bill, and of course the commission will have a statutory responsibility, if this bill is passed, to make sure that this scheme works effectively. I have to be mindful of the concern that she shares around this particular obligation that is sought to be inserted into this provision. So we will not be supporting the amendment, and I in fact hope that the committee would reflect on the risk of creating, in an unintended way, a loophole here that might create some difficulties for the commission in enforcing its powers in the future.

Ms SPRINGLE (South Eastern Metropolitan) — As a point of clarification on what the minister has just presented, I am a little bit unclear about why this proposed amendment would leave the rest of the legislation silent on risk assessment, when you have just said that there are administrative processes around that. If they are already there, surely this would just be strengthening in this one area? It would not actually render the rest of it mute.

Ms MIKAKOS (Minister for Families and Children) — These matters get looked at by lawyers, and I certainly looked at it from that perspective as well. These are issues around legal interpretation, Ms Springle. Yes, the commission would have regard to all relevant considerations under this bill, which would include an assessment of risk, and as I explained that is an administrative law requirement. But as soon as you codify in the legislation a new set of obligations on the commission just in this particular clause and not in the wider bill, some clever lawyers might well argue in the future that the Parliament's intention was to create the obligation for a risk assessment only in that clause and that the Parliament had made a decision to be silent about the need for a risk assessment in the rest of the bill. So it is a potential risk — no pun intended — that would be created in terms of how this might be interpreted in the future.

I understand the sentiment that underlies what Ms Springle is seeking to achieve. The advice that I have had is very clearly that those processes would be undertaken by the commission anyway. I know the very strong personal commitment that Ms Buchanan has to the issues of family violence, and I am sure that the commission would want to not have its role potentially fettered by a perhaps well-meaning but misguided amendment that might actually end up making the commission's role more challenging in the future.

Ms CROZIER (Southern Metropolitan) — Just on this point, because I have been listening, obviously, to Ms Springle's reasoning for the amendment. As has been highlighted, it has just been circulated, and there has been a little bit of confusion about this. I concur with her sentiment in relation to the risk assessment. Minister, you have just explained, I think, some of the unintended consequences that could potentially arise. I just want to understand this from you: you said that there could be some reasonable grounds for legal challenge. Could you just highlight how or why you think there could be a legal challenge? Could you just provide an example from another part of the bill or how that might arise — how a legal challenge might actually occur?

Ms MIKAKOS (Minister for Families and Children) — I think Ms Crozier may perhaps have misunderstood what I was talking about. I was expressing a concern that if Ms Springle's amendment is passed, that might have an unintended consequence of creating an avenue that someone may wish to pursue. Of course that is a hypothetical matter — let us hope that no-one seeks to challenge this legislation — but I am expressing concern that if this amendment were to be passed, there would be a legislative requirement for the commission to undertake a risk assessment that is not spelt out anywhere else in the bill. The clear advice I have had is that the commission would be undertaking such risk assessments through an administrative law requirement in any event. Therefore this amendment is not necessary in that sense. By putting in new obligations in one very narrow clause and being silent about the same issue of risk assessment in the rest of the bill, someone may wish to mount a legal argument that the obligations for the commission to undertake a risk assessment only apply under new section 16ZB and not in the other provisions of the bill. I hope that makes it clearer.

Ms CROZIER (Southern Metropolitan) — It does. I think there is. I think you have actually explained that of course the commission wants to mitigate risk wherever possible, and so if it to just to one part of the bill then you potentially open it up, as you have described. I think I am very clear and comfortable on that. I understand Ms Springle's sentiment, and we discussed it beforehand. I would not want to be overburdening the commission either in terms of some of those assessments if it is already being done. So I am pretty comfortable with what you have explained, that the commission already has the powers in terms of that risk assessment that is conducted. If there were unintended consequences by narrowing it to this point, then I do not know that I would support it either.

Ms MIKAKOS (Minister for Families and Children) — If I could just be clear, this would not create additional obligations on the commission. In fact it may well fetter its powers. If it is seen that the commission has the ability to do a risk assessment under this one particular clause and not in other areas, it may well fetter its ability to exercise its functions. I am grateful for the understanding on this. I certainly would hope Ms Springle might decide not to proceed with her amendment, but that is a matter for her.

Ms CROZIER (Southern Metropolitan) — I think there was some confusion, because Ms Springle had a conversation with the commissioner and was under that impression, and then you have had a conversation with the commissioner.

Ms Mikakos — It has also changed in the course of the last 24 hours.

Ms CROZIER — Exactly, and I think that has been slightly confusing, but I think the bottom line is that if the risk assessment is undertaken and we are not going to have loopholes or potential loopholes, that is the responsibility of what we are trying to achieve here — to ascertain that that is actually the case.

Minister, in my contribution I was talking about monitoring the entity's compliance and also trends in the reporting. Can you just provide to the house how that reporting will be undertaken, and will that be done on a regular basis? Is it reported in an annual report? How will that be actually monitored?

Ms MIKAKOS (Minister for Families and Children) — I did in fact address this point in the summing up, but anyway, the Commission for Children and Young People is required to include in its annual report a review of the operation of the reportable conduct scheme under new section 16ZL. In addition, the commission must provide a further report to the minister and the Secretary of the Department of Health and Human Services upon request.

I talked about how the term 'trends' was not defined in the bill to provide the commission with flexibility to enable the commission to report on emerging and identified themes arising from the operation of the scheme, and that is a provision that is similar to the requirements that the New South Wales Ombudsman has in reporting trends under their equivalent scheme.

Amendments negatived; clause agreed to; clauses 7 to 18 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Ms MIKAKOS (Minister for Families and Children) — I move:

That the bill be now read a third time.

In doing so, I thank members for their contributions in debating and passing today a very significant reform to protect children in Victoria.

Motion agreed to.

Read third time.

OMBUDSMAN REFERRAL

Debate resumed from 9 February; motion of Mr JENNINGS (Special Minister of State):

That, further to the resolution of the Council of 25 November 2015, this house —

(1) pursuant to section 16 of the Ombudsman Act 1973, refers the following matter to the Ombudsman for investigation and report:

In relation to members of the Legislative Council of the Parliament of Victoria representing the Liberal Party of Australia — Victoria Division, the National Party of Australia — Victoria and the Australian Greens — Victoria —

(a) the nature of staff pooling arrangements entered into by those parties, or those members individually; and

(b) whether any arrangements entered into by those members contravene the terms of the Members Guide relating to political or party duties, or have seen the diversion of the electorate office budget resources, in particular the communication

allocation, in breach of the electorate expenditure guidelines; and

(2) requires the Ombudsman to investigate and report on this matter concurrently with the matter previously referred on 25 November 2015.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to rise this afternoon to make some remarks on the motion moved by the Leader of the Government on 9 February, which was a motion that seeks to make a further referral to the Ombudsman pursuant to section 16 of the Ombudsman Act 1973 to inquire into and report on matters relating to members of the Legislative Council from the Liberal Party, the National Party and the Australian Greens regarding staff pooling arrangements and the standing of those arrangements in relation to the Members Guide. The proposal from the Leader of the Government requires the Ombudsman to conduct that investigation concurrently with the matter that was referred to her on 25 November 2015. What the minister sought to do was create a fresh reference, an additional reference, to the Ombudsman in relation to matters surrounding members of Parliament in addition to that of 25 November 2015.

One of the advantages of that debate having been adjourned on 9 February is that members who are now participating in the debate this afternoon have had the opportunity to read the contribution made by the Leader of the Government on that occasion, and there are a number of matters that were referred to by the Leader of the Government in the course of that debate which I would like to take up. Indeed on the day that matter was debated in the Council the Legislative Assembly debated a related motion where it sought to assert the privilege of the Assembly to restrict the capacity of the Ombudsman to investigate the matters that were referred to her in November of 2015, arguing the doctrine of exclusive cognisance as the basis on which the Ombudsman's inquiry should be restricted.

The first matter I would like to touch on is the substance of Mr Jennings's contribution on the motion. I said at the outset that the motion from Mr Jennings is a straightforward one. It seeks to require the Ombudsman, under section 16 of the act, to inquire into certain matters surrounding Liberal, National and Greens members of this chamber. What was fascinating though about Mr Jennings's contribution on the motion is he that then went on to argue why this house should not have made a referral under section 16 in relation to the matters that were referred in November 2015, being the allegations of staffing rorts by Labor members of Parliament. We had the extraordinary situation of Mr Jennings proposing a section 16 reference in relation to members of Parliament and matters surrounding members of Parliament and then arguing that an earlier reference under section 16 in relation to members of Parliament was invalid. In fact the majority of Mr Jennings's contribution was not arguing in favour of his motion; it was arguing against the motion of November 2015, reprosecuting with a different set of arguments the debate of November 2015.

I would like to go to the substance of the motion that Mr Jennings moved on 9 February because in his contribution he spoke at length about hypocrisy, accusing the non-government parties in this place of hypocrisy in having made that reference to the Ombudsman in November 2015 in relation to the Labor staffing rorts. Mr Jennings's proposition was that the non-government parties in this house would oppose the motion that he moved last sitting week, and if that was the case those other parties would be hypocrites. That was also a strong theme of Mr Jennings's motion.

I would, firstly, like to address the specifics of what Mr Jennings is seeking. In paragraph (1) of Mr Jennings's motion, which is asking the Ombudsman to investigate Liberal, National and Greens members of Parliament, he seeks an investigation into:

(a) the nature of staff pooling arrangements entered into by those parties, or those members individually; and

(b) whether any arrangements entered into by those members contravene the terms of the Members Guide relating to political or party duties, or have seen the diversion of the electorate office budget resources, in particular the communication allocation, in breach of the electorate expenditure guidelines …

The motion goes on in paragraph (2) to say:

requires the Ombudsman to investigate and report …

Firstly, the subject matter that the Leader of the Government sought to have the Ombudsman investigate, concurrent with the other reference, is actually on a different subject matter. Mr Jennings seeks to talk about the issue of pooling arrangements, and it is true that from time to time in this place there have been staff pooling arrangements. I recall when I was first elected to this place, which preceded the structural changes that took place in 2006, the members of the Legislative Council were assigned one staff member in their electorate office and a further allocation, which to the best of my recollection was a 0.5 staff member, was allocated to a staffing pool. That staffing pool was made available by the Parliament. It was obviously in proportion to the number of members that each party had in the Legislative Council, and that staffing pool was allocated to the leaders' offices of the

respective parties. There was a staffing pool arrangement put in place, certainly to the best of my recollection, at that period in the Parliament's history.

Later, while the coalition was in government, arrangements were put in place for what were known as whips clerks. That was not an arrangement put in place through the Department of Parliamentary Services or through the Parliament; that was an arrangement put in place through the Department of Premier and Cabinet, which allocated an additional staff member for each minor party represented in the Parliament. It provided those parties with additional staffing resources, above and beyond the ordinary two full-time equivalent elected office allocation that had by that stage become the standard for members of the Legislative Council. What is important to note about those arrangements is that they are formalised arrangements, and at the time they operated they were formalised arrangements that had been put in place in accordance with the procedures and processes of the Parliament. As I say, in the latter case the arrangement was put in place by the government of the day through the Department of Premier and Cabinet.

In respect of those arrangements there has been no allegation and there is no allegation of wrongdoing on the part of the parties that had those arrangements in place. This is entirely different to the matters which were referred to the Ombudsman by the Legislative Council in November 2015 for investigation. In 2015 there were a series of allegations made by people who had been engaged as staff by members of the Labor Party — people who provided documentary evidence, people who provided statutory declarations, that they had been engaged under the pretence of working for members of Parliament but who had in fact been engaged in party campaigning activities. The whistleblowers who came forward on that matter even indicated that there were instances where they had been on the payroll of members of Parliament who signed time sheets attesting that they had worked in their electorate offices but they had never met the member of Parliament concerned. What we had in the case of the matters that were referred in November 2015 were people coming forward providing documentary evidence, providing statutory declarations, as to matters that had occurred, which on the face of it were not consistent with the requirements of members of Parliament around the employment of electorate office staff. There was a very sound basis on which that referral was made to the Ombudsman in November 2015.

What we had from Mr Jennings last week was merely a fishing expedition, a request for an investigation into a matter where there have been no allegations of improper conduct, where the nature of — —

Mr Jennings — What if there were?

Mr RICH-PHILLIPS — Mr Jennings says, 'What if there were?'. The point is that there were no allegations in respect of those formalised pooled staffing arrangements. The proposition that the Leader of the Government is putting forward is to run an analogy. Given what we have seen in the recent IBAC inquiry into certain staffing arrangements or certain activities by staff at the Department of Education and Training, if you were to follow on to the logical conclusion of Mr Jennings's proposition, because IBAC had grounds to investigate certain staff at the department of education, it should be investigating all staff at the department of education, even those about which there is no allegation or no suggestion of improper conduct. Mr Jennings's proposition is basically saying that because there are allegations against the Labor Party in respect of a particular matter, by Mr Jennings's logic every other member of Parliament should be investigated actually on a different matter, which does not — —

Mr Jennings — I didn't say that.

Mr RICH-PHILLIPS — Mr Jennings, it is not on the same matter. It is not at all on the same matter.

Mr Jennings's motion is in respect of pooled staffing arrangements, which was, as Mr Jennings well knows, a formalised arrangement from time to time in this place. As I said there were different arrangements through parliamentary services a number of Parliaments ago and through the Department of Premier and Cabinet more recently, if you take the whips clerk arrangements as an example of that. They are formalised arrangements. They are not the arrangements that the Ombudsman has been asked to investigate with respect to allegations against certain Labor members of Parliament around their staffing arrangements.

Mr Jennings — Why are they different?

Mr RICH-PHILLIPS — Mr Jennings asks, 'Why are they different?'. Mr Jennings is suggesting that a formalised arrangement, put in place with the organisations — the Parliament of Victoria and the Department of Premier and Cabinet — to allocate staffing resources to parties is in some way analogous to the suggestion via a whistleblower of misconduct by members of Parliament signing timesheets for people

that never worked for them. The fact that Mr Jennings thinks that it is somehow the same matter I find absolutely perplexing — that there is somehow the suggestion that it is the same thing.

Allegations were made by individuals about the particular conduct of Labor members of Parliament around staffing. Documentation was provided, statutory declarations were provided, and that is the reason why in response to those allegations the Legislative Council asked the Ombudsman to investigate those matters.

The matters Mr Jennings now seeks to join to this investigation are not matters which have been the subject of allegations; they are matters of a formal staffing arrangement. What Mr Jennings is proposing is simply a fishing expedition. Because you are investigating allegations against some members of Parliament, you somehow should investigate unrelated matters about other members of Parliament. It is just an absolute farce. What Mr Jennings is proposing is an absolute farce, and it is not something that this side of the house is willing to support — sending the Ombudsman on a fishing expedition about other members of Parliament simply because she is investigating substantial allegations that have been made against Labor members of Parliament.

As I said at the outset, Mr Jennings in his contribution, having moved this motion under section 16 of the Ombudsman Act 1973, basically then went on to talk about why the Parliament should not be making section 16 referrals to the Ombudsman. There are a few things that Mr Jennings said in his speech on 9 February which I would like to address. The first, just to take it in the order that Mr Jennings's speech flowed, related to his claim, which the President dealt with earlier today, that Parliament's counsel at the Supreme Court hearings, Peter Hanks, QC, had said that no fraud had taken place. That was the assertion Mr Jennings made in his contribution on 9 February, and it was the subject of an exchange, a contention — —

Mr Jennings interjected.

Mr RICH-PHILLIPS — It was the subject of a contention with the President at the time. Mr Jennings says that the President did not ask him to withdraw on that occasion, and indeed he did not ask him to withdraw today. But as members of the house heard earlier today in response to Mr Jennings's claim that Peter Hanks, as counsel for the Legislative Council, had said that no fraud had taken place, the President stated:

> … any such inference is incorrect.

He went on to say:

> The exchanges between the judge and counsel involve the definitions of 'improper conduct' and 'corrupt conduct' in the Protected Disclosure Act and the proposition by my counsel —

being counsel for the Legislative Council —

> that the house's referral to the Ombudsman did not seek to undermine the legislative scheme for protected disclosure complaints. In that context, my counsel submitted to the judge that the house's referral should not be read as an allegation of corrupt or improper conduct.

Mr Jennings — Correct.

Mr RICH-PHILLIPS — Mr Jennings says, 'Correct'. That is not the contention he put to the house two weeks ago when he said that the counsel, Peter Hanks, had said that no fraud had taken place. That is not what Peter Hanks put to the Supreme Court, and Mr Jennings's interpretation of Peter Hanks's oral submission to the court is at best mischievous — as the President's statement indicated earlier today.

One of the other points Mr Jennings made as his rationale for this proposed referral under section 16 was that if you have nothing to hide, why resist it? He went on to say that everyone is subject to the same degree of scrutiny, tested by the same adherence to the guidelines.

That goes to my earlier point. There is no allegation against the other parties in this house in relation to pooled staffing arrangements. What we had with the 15 November referral to the Ombudsman were substantial allegations by people who were willing to come forward, provide documentary evidence and provide statutory declarations suggesting that members of Parliament had signed casual staff forms for staff who had never worked in their offices. For Mr Jennings to somehow say that this inquiry should be expanded to pooled staffing arrangements by other parties in this place is nothing more than a fishing expedition, and it is not something that the coalition will entertain.

As I said, as the debate unfolded on 9 February, Mr Jennings touched very little on the substance of his motion, being the additional referral to the Ombudsman, and argued essentially why the Council should never have made the referral in November 2015 in the first place. What is fascinating about the argument put by Mr Jennings last week is that question of why the Council should never, in his view, have made that referral in 2010. It essentially came back to the issue of exclusive cognisance, and as I said, on the same day the Legislative Assembly also passed a resolution advising the Ombudsman that it was asserting its claim of exclusive cognisance in relation to

her inquiry to the extent that it went to members of the Legislative Assembly.

What is fascinating about the government's reliance on this argument of exclusive cognisance — and Mr Jennings has indicated that it would be a feature of the government's appeal to the High Court in relation to the Ombudsman's jurisdiction — is that that never featured in the debate in November 2015, when the Leader of the Government came in here and argued why the Council should not be proceeding with the motion to make a referral to the Ombudsman. On not one occasion was exclusive cognisance raised as the reason why the reference should not go forward. There was never, never — —

Mr Jennings — You are being mischievous.

Mr RICH-PHILLIPS — Mr Jennings, as I said before, one of the benefits of considering this motion a week after you first put your proposition has been an opportunity to read your remarks from last week and to read your remarks from 2015. At no point did you or the government in November 2015 — —

Mr Jennings — I didn't use the phrase 'exclusive cognisance'.

Mr RICH-PHILLIPS — No, the phrase 'exclusive cognisance' was not used, but nor was the proposition that this reference from the Council somehow infringed the privilege of the Assembly. That was not put forward by the Leader of the Government in 2015 either. It has only been since the government has attempted on now two occasions to have the Ombudsman's jurisdiction to investigate this matter struck down that it has now resorted to the argument of exclusive cognisance. That was never the basis in November 2015 as to why the government sought to block that investigation in the first instance.

In fact in 2015 the Leader of the Government's opposition to the Council referral was essentially based on his view, or the government's view, that there was ambiguity between IBAC, between Victoria Police and between Parliament's internal auditor with the Ombudsman as to jurisdiction over that inquiry. The essence of Mr Jennings's submission in November 2015 was that there was ambiguity between those integrity bodies, between the internal audit committee of the Parliament, and therefore they did not support the referral to the Ombudsman. It is only since — —

Mr Jennings interjected.

Mr RICH-PHILLIPS — Acting President, the Leader of the Government interjects, 'That is one phrase'. That was the essence of his contribution. When you read the extent of his contribution in November 2015, the essence of the argument he made for the government opposing that referral was ambiguity between the integrity bodies and the Parliament's internal audit committee. That was given as the reason why the government would not support that referral.

We have seen on two occasions, in the Supreme Court and in the Court of Appeal, the government seek to shut down the Ombudsman's inquiry by arguing jurisdiction — that the Ombudsman did not have the jurisdiction to undertake this referral. We are now seeing the argument of exclusive cognisance used to draw a distinction between an investigation involving members of the Legislative Council and an investigation relating to members of the Legislative Assembly.

Mr Jennings — What do you think? Is that a valid argument?

Mr RICH-PHILLIPS — I will come to that shortly, Mr Jennings.

As I said at the outset, the debate last sitting week was not about Mr Jennings's proposal that the inquiry be expanded; it was about Mr Jennings's view that the inquiry should never have commenced by virtue of reference to the Ombudsman. It is interesting that as part of that contribution, and I think it was in response to a series of interjections from Mr Finn, Mr Jennings indicated that it was the government's view that the Ombudsman Act is unworkable. To put it beyond doubt, Mr Jennings said:

> … in the government's view the cumulative effect of what we are talking about is that the Ombudsman Act 1973 is unworkable.

We had the proposition put by Mr Jennings that the Ombudsman Act is unworkable, and the basis of the government's — —

Mr Jennings interjected.

The ACTING PRESIDENT (**Ms Dunn**) — Order! Mr Jennings, you will have a chance to respond at the appropriate time.

Mr RICH-PHILLIPS — The point in raising that is that the government is expressing the view that the Ombudsman Act, if the Ombudsman proceeds with her referral from November 2015 in the scope that the Supreme Court and the Court of Appeal have indicated are in order, is unworkable, given those two levels of the Supreme Court have indicated the Ombudsman has the jurisdiction to undertake her inquiry. But what is

significant from that is that it is not the government's contention on that basis that the Ombudsman's referral is wrong, that the Ombudsman acting in accordance with section 16 is wrong, it is merely the government's proposition that if the Ombudsman acts in accordance with the legislation, it is a demonstration that the legislation is unworkable.

Mr Barber — The legislation is wrong.

Mr RICH-PHILLIPS — The legislation is wrong, Mr Barber. But it is seemingly no longer the government's contention that the Ombudsman acting in the way she is apparently going to is itself wrong, merely that the legislation which allows her to do that is unworkable.

Mr Jennings interjected.

Mr RICH-PHILLIPS — And the Court of Appeal. Curiously in that contribution Mr Jennings also talked about the effect of the referral of November 2015 as taking away from the Ombudsman her statutory responsibilities. By statutory responsibilities, Mr Jennings indicated he was talking about the other activities the Ombudsman undertakes under her statutes separate to section 16. But this side of the house would put that an inquiry under section 16, such as the referral made in November 2015, is one of the Ombudsman's statutory responsibilities. It does not detract from the Ombudsman's statutory responsibilities.

Mr Jennings — How long are you going to hold that view?

Mr RICH-PHILLIPS — The Leader of the Government asks, 'How long are you going to hold that view?'. It is clear from the original statute for the Ombudsman, 1973, that it was always envisaged that inquiries under section 16 were one of that office-holder's statutory responsibilities, alongside the other more common activities that that office undertakes. It is true that section 16 has been used sparingly in the 40-odd years that it has been on the statute book, but to suggest that the use of that provision somehow takes away from the statutory responsibilities of the Ombudsman ignores the fact that it is actually one of the statutory responsibilities of the Ombudsman.

I would like to turn to the reference that the government is now making to exclusive cognisance as the argument for the Ombudsman not to look at matters in relation to the Assembly in respect of the Council's reference. It is interesting to reflect that the government, in putting forward that argument, has relied on Hatsell's *Precedents of Proceedings in the House of Commons* of 1818 as the reference to exclusive cognisance and the perfect equality between the houses. The Attorney-General in the other place spoke at length about that principle and referred extensively to Hatsell's 1818 volume on that matter. What the Attorney-General did not refer to in his contribution was a slightly more contemporary reference, being the 2010 case in the United Kingdom Supreme Court in the matter of *R. v. Chaytor & Ors*. The Chaytor case related to the issue which members in this place may remember, which was the expense rorts involving members of the House of Commons. There were stories which went around the world about members of the House of Commons claiming expense allowances in respect of second properties. I recall there was one member of the House of Commons who claimed expenses from the Parliament in respect of a moat, or the cleaning of a moat at a second residence — —

Mr Barber — A duck pond.

Mr RICH-PHILLIPS — Mr Barber refers to a duck pond.

Mr Barber — A bird bath.

Mr RICH-PHILLIPS — There was a bird bath.

There was an extensive exposé on members of the House of Commons who had claimed a variety of dubious expenses — rorted a variety of expenses — on the basis that they were parliamentary expenses and could be reimbursed from the House of Commons. The significance of that case, the significance of the investigation of those rorts, is that when the matter reached the Supreme Court of the United Kingdom the President of that court, Lord Phillips, on the issue of exclusive cognisance drew the distinction between the privileges of the House of Commons and members of the House of Commons, and the administrative activities that may be associated with the House of Commons. The point was made that there are many things that take place within the precinct of the House of Commons or the Parliament of Westminster which are not of their nature parliamentary and are not of their character something protected by privilege.

There are whole lot of administrative activities that take place within the Palace of Westminster. There are a whole lot of infrastructure activities which take place within the Palace of Westminster. The court made the very clear distinction that just because something related to a member of Parliament that did not mean that privilege automatically attached to it. The administrative arrangements of, in that instance, making illegitimate claims for expenses simply because

they related to a member of Parliament did not mean that privilege attached to it. It was not of its essence a parliamentary proceeding.

Mr Jennings interjected.

Mr RICH-PHILLIPS — Mr Jennings talks about something that is relevant. We had the government in the other place relying on a reference from 1818 while ignoring a UK Supreme Court decision of 2010 which indicated the constraints on the concept of exclusive cognisance and the fact that there are a whole lot of administrative matters which surround a member of Parliament — surround the Palace of Westminster — which are not of their essence matters of parliamentary business and therefore not matters to which privilege is attached.

That Chaytor case of 2010 established that the exclusive cognisance of the House of Commons did not prevent the investigation and the prosecution of members of the House of Commons in relation to the expense rorts. It confirmed that there are matters of parliamentary privilege relating to parliamentary proceedings and there are matters which relate to members of Parliament which are not parliamentary proceedings and therefore do not attract parliamentary privilege and accordingly exclusive cognisance.

I would argue that the government's reliance on that 1818 Hatsell reference ignores the more contemporary recognition of the UK Supreme Court that there are limitations to that doctrine and that administrative matters can be the subject of investigation. Those matters are in many respects beyond the scope of this motion, because this motion does not argue exclusive cognisance. This motion simply seeks to send the Ombudsman on a fishing expedition about matters which are unrelated to her inquiry launched by the reference in November 2015 and for which there is no credible basis for investigation. It is simply an attempt by the government to smear the conduct of that inquiry referred in November 2015, to create confusion and misinformation on that subject and to cloud the fact that the Ombudsman has been asked to investigate a matter in relation to which clear allegations have been made, documentary evidence has been presented and an investigation should take place.

On that basis, on the basis that this is nothing more than a fishing expedition seeking to distract from the substantive motion of November 2015, the coalition parties will not be supporting Mr Jennings's reference.

Mr BARBER (Northern Metropolitan) — I just want to address one aspect of this motion that appears to be fairly fatal to the motion. The request by the mover is that the Ombudsman investigate the nature of staff pooling arrangements entered into by those parties — and that includes the Greens — or those members individually. There is no staff pooling arrangement involving the Greens. There never has been a staff pooling arrangement. In fact until about a year or so ago I was not even aware that there was such a thing as a staff pooling arrangement, and for most of my 11 years here I was blissfully ignorant.

As I understand it — because I have never participated in it or had access to it, but as it has been explained to me — these other parties can take parts of their allowances, their office budgets, take some of the value of that money and put it into a pool, then that pool is used to hire staff and those staff work subject to the direction of another MP — I think it is generally the Leader of the Opposition. The Greens have never had access to that. In fact we were surprised when we first heard about it, which I think was just a couple of years ago.

Therefore, to move on to the second part of the motion, which is to consider whether that staff pooling arrangement may have contravened anything, well, that is redundant. There is no staff pooling arrangement and therefore you cannot investigate as to whether it contravenes a range of other things. So if, depending on the will of the house, this was to pass, the Ombudsman would ring me up and she would say, 'I am investigating the nature of your staff pooling arrangement', and I would say, 'Well, that's easy because I don't have one. No access to it has ever been granted to the Greens'. So it would not really be a fishing expedition, as Mr Rich-Phillips suggests; it would be like having no rod, no bait and no water to fish in. Therefore since the two sections are joined by the word 'and', these are not alternative investigations. This is an investigation into the thing described at (a) and the nature of it described at (b). I do not think this investigation actually gets off the ground.

There is a mention of a communication allocation here. We all have those, I think, as MPs. A certain part of our budget is provided for communications. Every single aspect of that communication budget is in fact signed off by the Department of Parliamentary Services. Every individual item of our communications budget is signed off on. If I was to produce a postcard to send out to my local constituents about an issue of concern, that needs to be approved by parliamentary services or in fact, if they find it is non-compliant, they will not actually reimburse me. So — —

Mrs Peulich — Not sure that that is being applied — lots of Greens examples.

Mr BARBER — As I say, if Mrs Peulich has an example of a non-compliant postcard from the Greens, she need only send a copy of that over to parliamentary services. If the view of parliamentary services retrospectively is that it is non-compliant, then it is me who will have to pay that money. I am quite happy for that to occur. I think it happens from time to time that members make reports to parliamentary services about each other's communications, but I have never had to go back and repay something, I do not believe.

It would be the same in relation to the olden days, when it was fridge magnets and newsletters, but these days it is more likely to be via Facebook.

An honourable member interjected.

Mr BARBER — Well, no, Mr Ramsay is not having anything to do with this newfangled internet machine. He thinks it is the work of the devil, but I can assure you that with a large electorate, as upper house MPs have, Facebook is not a bad way to get your message out. But again the same rule applies: parliamentary services have to go through each individual Facebook post. They have to go through the Facebook posts, and they have to decide if the text and the photo associated with it are compliant. They will refund the sponsored amount. You might spend $10, $50 or more to boost a post, and if they do decide retrospectively that it is non-compliant, then the member does not get refunded and they end up having to pay it out of their own pocket.

I do not know that that is the case with the Premier's Facebook page. Not to anticipate debate, but we do have a bill before this house to further regulate government communications. This motion, I think, refers to MPs and their own office communications. But when we get to that bill about government communications we can ask whether the Premier's Facebook page is funded out of his pocket, by the Labor Party or by his department, the Department of Premier and Cabinet. Maybe it is his electorate office; I do not know. He seems to run a lot of sponsorships, so I do not think it would be paid for out of his electorate office budget. At that point we can actually find out whether the individual materials produced through government communications are compliant with the code and in fact compliant with the proposed bill, which, as I understand it, tends to bring into statute the code. As I say, that is a debate for another issue.

I think it would be impossible in fact for the Ombudsman to actually investigate these matters because, in my close reading of what it is that is proposed, she would be investigating a staff pooling arrangement for the Australian Greens that does not actually exist. In any case, as I think Mr Rich-Phillips might have suggested — although he took a lot more time than I did to do it — this is really just a group of Labor members who are under investigation and they do not like it and because they are under investigation they want everyone else to be under investigation, as if that will somehow make it better. It will not make it better for them. It will not make it better for the confidence of the Victorian people.

I really wish that Ombudsman's report would come as soon as possible. It has been delayed, of course, by many of these court proceedings. But once the report is here we can read it. I have made no judgement, and I think I am right in saying I have never made a public statement that judges anybody's guilt or innocence in relation to this. I have suggested that, based on the material that has been presented, there is certainly a prima facie case for an investigation, but I do not think I have prejudged the matter.

Once we read the Ombudsman's report and some of the fine detail about who was paid, who they were paid by, what their duties consisted of, who they actually reported to, where they worked and what their duties were — once we read that — we will be in a better position as members to judge ourselves whether we think that is a compliant use of those resources as per the Members Guide. If it turns out it is not, then the upper house can determine in relation to its own members whether there has been any breach of the code of conduct or of privilege. We cannot sit in judgement on a privilege breach in relation to the other house, but we can do that in relation to our own members if it turns out any of our own members are actually caught up in these arrangements.

So far we have heard quite a bit from the young staffers who were involved in this, but I have not seen named the MPs who may have been signing their time sheets. I am happy to just wait and get that information from the Ombudsman and examine it before getting too far ahead of ourselves about the steps that might need to be taken if it turns out that the arrangements were not proper. For those reasons, the Greens will not be supporting the motion.

Mr JENNINGS (Special Minister of State) — Mr Rich-Phillips and Mr Barber have not disappointed me today; they have disappointed me previously. With their arguments today in terms of living in denial of

their circumstances, Mr Barber had a higher degree of denial than Mr Rich-Phillips, who at least acknowledged that staff pooling arrangements exist and have existed in various forms and who recognised that they have applied within guidelines. They have been formalised by funding and pooled staffing arrangements, so Mr Rich-Phillips was somewhat more honest and fulsome in his appreciation of these matters than I think Mr Barber was.

Nonetheless, they joined to say that the only reason why the Labor Party should be investigated in relation to the way in which those resources have been used is on the basis of the allegations of one or two individuals who have made claims about certain potentially inappropriate administrative arrangements or the diversion of resources, and they have not done so in the form of a protected disclosure, which would have invoked an examination by the Ombudsman.

Indeed in my contributions as far back as 2005 I did acknowledge that if a protected disclosure had been made to the Ombudsman, then the Ombudsman would have had the ability to have an own-motion investigation into these matters, and from the view of the government that would be a totally appropriate pathway within the scope of the act and a means by which the Ombudsman could have embarked upon that investigation, but that was not the basis of the investigative pathway.

The government's contention is that the investigative pathway of a motion of this chamber to step outside the jurisdictional and investigative structure of the Ombudsman Act failed in terms of being mindful of the restrictions of the act, and in that context it failed in the context of how the Ombudsman's responsibilities fit into the accountability framework in relation to IBAC's responsibility, the Auditor-General's responsibility and the responsibility of the police in this matter.

At no stage did I say that they were ambiguous, as Mr Rich-Phillips has indicated today. I actually said that it continues to be the government's view that a referral in this manner falls foul of the structure and integrity of the purpose of the Ombudsman Act and the investigative pathways that are outlined within the Ombudsman Act, and it would open up the possibility for a resolution of this chamber, a resolution of a committee of the Parliament or a resolution of the Legislative Assembly on any subject matter — any subject matter, applying the current interpretation — far beyond the scope of what the Ombudsman is responsible for.

The logic that concerns me is that if the Legislative Assembly wants to investigate the behaviour of ministers in the Legislative Council in the former Parliament, then according to your logic, they are quite entitled to do so. If this chamber resolves to say the Ombudsman should immediately investigate what has caused an escalation in the price of fish at the market this week, then in fact the Ombudsman would be obliged to undertake that investigation. That construction is ludicrous, but that construction is logically consistent with the one that Mr Rich-Phillips and Mr Barber have put in the chamber today.

Mr Barber — I was the mover of the motion, Minister.

Mr JENNINGS — Yes. So if Mr Barber thinks it is appropriate to have a resolution of this chamber that passes and then forces the Ombudsman to have a look at the price of fish in the market this week, then the logic of his position is that that is quite okay.

Mr Barber — That would be a dumb thing for the Parliament to do.

Mr JENNINGS — I think it would be a dumb thing for the Parliament to do, and my point is that it is not beyond the capability of this Parliament to make dumb decisions. It is not beyond this Parliament to take inappropriate actions that may flow from the views and capricious ways in which sometimes this Parliament has operated. That is the argument that I have consistently mounted from 2015 to this day, and I understand that it is an easy conspiracy theory to actually say the government has tried to avoid scrutiny in this matter. It is an easy argument to mount, and it actually probably rings true with a lot of people because in fact that is a reasonable construction about many of the actions of many political operatives in this jurisdiction and around the world. All I can say is that I have an obligation to protect the integrity of the act, and I have taken that responsibility. If there is going to be an examination by the Ombudsman, I think we should all be assessed by the same rules.

In relation to the comments that were made by the President today, I am very comfortable with the comments and the clarification that the President made today. The President had the courtesy this morning of showing me the comments that he was going to put on the public record. I was totally comfortable with them. The President made it very clear that he took advice from the counsel that represented the President in the Supreme Court to ascertain what had been said in the court proceedings, as distinct from the written submission of the counsel representing the President.

Indeed it was clear that in fact the counsel had indicated that, in the context of the legislation of protected disclosures, there was no allegation of improper conduct or of corrupt conduct, and I had inappropriately bundled the concept of fraud in with my interpretation of that. I am happy to clarify that I misspoke in the bundling of those issues. I was cumulatively talking about the fact that the police had examined this matter and that the entry point for their considerations in terms of their responsibilities was to ascertain whether a fraud had occurred or whether money had been garnered for inappropriate personal circumstances. I, perhaps inadvertently and inappropriately, had slid from a description of the outcome of the police investigation into the commentary that occurred within the Supreme Court.

I am very happy for my record to be understood in that context. I am very happy for the clarification that has been issued by the President. I would be very happy for the High Court to make a determination one way or another to clarify the standing of the legislation: about whether it is open for the types of references that Mr Barber has indicated today that he is interested in — that the Ombudsman perhaps should have the prerogative to look at the price of fish. He and other members of the chamber should perhaps look into a mirror to say, 'If you are going to apply scrutiny to one part of the Parliament, maybe apply the same scrutiny to the entire Parliament'.

I would fully anticipate that if and when the Ombudsman investigates these matters, then it will be pretty clear that the guidelines are sufficiently open for varying interpretations about the way in which staffing allocations should be made, whether they are prescriptive enough or whether in fact wiser actions should have been undertaken. I am sure they will be relevant matters to take into consideration, and ultimately all of us should be prepared to have that scrutiny applied to us if that scrutiny is applied to us through any of the investigative pathways — through the Parliament, through the audit committee, through the police, through IBAC or through the Auditor-General. Wherever that examination occurs, of course we should be mindful of our obligations to the public.

As I say I am not disappointed by the living-in-denial attitude, the abrogation of any responsibility for proper scrutiny of these matters and for the appropriate use of parliamentary procedure in Victoria, so Mr Rich-Phillips and Mr Barber have not disappointed me. They have disappointed me previously, and I am pretty clear about what the success or failure of this resolution will be, but I actually think all of us should be prepared to be judged and assessed by the same standard, and we should all make decisions that last the test of time. If our interest is in fact to undermine the spirit and the intent of the Ombudsman Act, then I would encourage all of us to reflect on that matter over time, because it is my enduring responsibility to protect the structure of the act, and I think this reference will be tested in the High Court. Then we will know in a better situation whether the act is open to this interpretation or not.

House divided on motion:

Ayes, 15

Dalidakis, Mr	Patten, Ms
Eideh, Mr	Pulford, Ms
Herbert, Mr	Purcell, Mr (*Teller*)
Jennings, Mr	Shing, Ms
Leane, Mr (*Teller*)	Somyurek, Mr
Melhem, Mr	Symes, Ms
Mikakos, Ms	Tierney, Ms
Mulino, Mr	

Noes, 23

Atkinson, Mr	Morris, Mr
Barber, Mr	O'Donohue, Mr
Bath, Ms (*Teller*)	Ondarchie, Mr
Bourman, Mr	O'Sullivan, Mr
Carling-Jenkins, Dr	Pennicuik, Ms
Crozier, Ms	Peulich, Mrs
Dalla-Riva, Mr	Ramsay, Mr
Davis, Mr	Rich-Phillips, Mr
Dunn, Ms	Springle, Ms
Finn, Mr	Wooldridge, Ms
Fitzherbert, Ms	Young, Mr
Hartland, Ms (*Teller*)	

Pairs

Elasmar, Mr	Lovell, Ms

Motion negatived.

HERITAGE BILL 2016

Second reading

Debate resumed from 24 November 2016; motion of Ms MIKAKOS (Minister for Families and Children).

Mr DAVIS (Southern Metropolitan) — I am pleased to rise, make a comment and put the opposition's position with respect to the Heritage Bill 2016. This is a bill that the opposition will not oppose. However, we put it on record at the start that we think this is a weak and fairly useless contribution from the government. What is required is a more comprehensive examination of the heritage protections that are needed and a proper balancing of those requirements to protect our heritage more broadly, and to do that in a way that

is responsible, that recognises the population growth that we face and that does not unreasonably or foolishly inhibit our construction and other key development industries. But it is true to say that with the significant population growth and the pressures that are faced we can lose very important heritage assets without proper protections and without proper processes.

It is important, I think, to put on the record that the government went through a lengthy process with this — a very lengthy process: a review of the Heritage Act 1995, with the circulation of discussion papers and other points. It is in that context that it is so disappointing that what has come forward here is a pale, limp bill, a pale, limp approach that does not really deliver anything terribly much.

Ms Symes interjected.

Mr DAVIS — It is both. It is very disappointing. This is an opportunity that has been lost — to properly balance the challenges that we face to put in place a proper regime to protect Victoria's heritage. As I said, we have very significant population growth — 2.1 per cent in the last year, 123 100 in aggregate, both natural growth and overseas migration, and 16 500 peoples net coming to Victoria from other states. So this is real, significant pressure, and we feel this with respect to the congestion on the roads. We feel it when the government has this huge pressure for densification that is part of its Infrastructure Victoria agenda. It is in both the discussion papers and the interim report, and in the final report they singled out densification as their first and apparently most important objective. I would have thought a better quality of life — a better outcome in this respect — would have been a much more important objective, but densification it is for this government, and it is pretty clear from what the Premier has said and what the planning minister has said that this is wholeheartedly supported by the government as its principal objective.

It is also pretty clear that the need to maintain our livability is a key task for us as a community, and it is pretty clear that the pressures that are there from population have put that livability under deep threat. Livability means many things: it means the social construct and it means the safety of our community, which is under significant threat as the crime rate surges and the government's inappropriate management of that puts so many people at risk. It is the case that the population growth pressure also means that much of our heritage is under threat. It is true that other objectives of adequate open space are a part of that livability, and it is absolutely clear that the protection of much of our historic vegetation is also a critical aspect of protecting heritage.

It is so clear, with many of the recent examples that we have seen around the state, that the government has simply failed to face up to its responsibilities, whether it is the sky rail, with the hideous construction that has begun there and the trashing of massive strands of trees over a long distance — many ancient trees; whether it is the destruction of trees that has occurred in other areas of the state, such as at Blackburn; or whether it is the destruction of trees that has occurred in ways that could have been very different in key corridors where other construction is occurring. Also, and I am sure that Ms Fitzherbert will have more to say about this, the threats that are posed unnecessarily by the government's method of construction of the Metro Tunnel project on many of the heritage trees along St Kilda Road are other examples of how the government's heritage protection systems are not working. In that case study Heritage Victoria has been slow, ponderous and frankly weak in its responses. It fills nobody with confidence to see the weakness and the tardy response that is occurring here.

I am sure, again, that Ms Fitzherbert will have more to say about this, but Barry Jones, Tom Harley and others having pleaded with the federal government for interim heritage protection and having been successful in obtaining it for those trees is an example of where our processes have let us down — processes in Victoria which should be robust and should be able to protect key historic assets such as the trees in Kings Domain and along St Kilda Road and key heritage assets like the Shrine of Remembrance.

The need to protect our heritage is a very deep and emotional response that people have. It is about familiarity. It is about connection with the past. It is about the need to have an understanding of our history and our roots. I include in this our Indigenous history as well, because it is critically important to protect Indigenous relics and Indigenous history of all types. Again I have to say that the government's approach on key issues like the sky rail has not filled me with confidence. The processes inside Aboriginal Victoria in that case did not appear to me to be robust, did not appear to be transparent, did not appear to be in any way open and I have no confidence that important relics have not been lost in some of those key construction steps.

This also applies in other areas around the state. We need to have early decision-making, early information and early interventions to ensure that projects are not hampered or delayed unnecessarily. It is no good

getting two or three years down the long cycle of a construction project and then, 'Oops! We didn't do the proper checking. We didn't do the proper early work. Now we've discovered that there are important cultural and heritage aspects that have not been taken account of'. That is a very bad way to go. We need to have those processes brought up-front, so that those who seek to undertake construction projects are very clear about what is important in a local area, and that they have better signals, better information, better cataloguing and better recognition of what is important ahead of time. We need better processes. This bill is a massive disappointment. It is a big doorstop of a bill, but it does not carry much weight. It does not actually change terribly much at all. In fact there are some issues that would cause one to believe that in some areas it is somewhat weaker than what we have.

I make the point about the sadness of the process that the government has gone through. It had a review but it has been inadequate, and in the end the decision-making process has not been up to scratch. This is an area that is ripe for a focus that will achieve a better process, with better early management of these matters. I think this will potentially fall to a new government coming in in 2018.

Mr Barber interjected.

Mr DAVIS — Well, I put on record that if I am the planning minister we will undertake a proper review of this process.

Mr Barber interjected.

Mr DAVIS — I have done shadow planning twice and I quite enjoy it, Mr Barber. It is an area that I am interested in. I am deeply interested in the future of our city. I am interested in how we manage significant population growth, how we preserve vegetation and preserve heritage and actually manage the challenges of transport and congestion. These are all challenging — —

Mr Barber interjected.

Mr DAVIS — Not with this piece of legislation. We will not manage anything much, Mr Barber.

Mr Barber interjected.

Mr DAVIS — You and I may have different views on many things, but I suspect this is one thing you actually agree with me on — that this bill does not go very far at all.

Mr Barber interjected.

Mr DAVIS — Well, 1989 is the planning scheme, I think.

Mr Melhem — On a point of order, Acting President, Mr Davis and Mr Barber are having a nice conversation. Mr Barber is not in his seat and Mr Davis is being rude to the Chair. He is not talking through the Chair. I ask you to remind him to be mindful.

The ACTING PRESIDENT (**Mr Morris**) — Order! Thank you, Mr Melhem. I am terribly offended. Mr Davis to continue.

Mr DAVIS — Acting President, I thought it was a very friendly conversation. I was quite enjoying it. But the essence of the conversation was that we do have these challenges and these are things that the opposition is up for. We are actually determined to get these processes right. We did a lot in the period when we were in government. The *Plan Melbourne* changes were significant and the protections within the neighbourhood residential zones that were put in place were very important in helping protect vegetation and key areas of our metropolitan area. We note that Richard Wynne, the planning minister, and Daniel Andrews, the Premier, have firmly in their sights the neighbourhood residential zones and no doubt intend to tear them up in forthcoming weeks and leave swathes of our suburbs exposed to inadequate protection from excess development. I know that the government with its densification objective wants to see buildings go higher and developments become more dense and more intense. But that is not a sophisticated approach. We need to be more clever. Michael Buxton has actually said a lot about this, and there are infill sites available around the city, but all of that is dependent on having proper processes and making sure that we can move forward and take proper account of heritage in the context of this bill.

The bill changes the heritage nomination process to allow the executive director of Heritage Victoria to reject a nomination which has no reasonable case for inclusion. That does not fill me with great enthusiasm. It enables more selective protection of Victoria's archaeology by including only significant sites over 75 years old on the inventory, rather than all sites over 50 years old, as in the current arrangements. Again, that does not fill me with great enthusiasm. There is the claim that this is to be transparent and a useful management tool. I am not sure why the dates needed to be changed in the way they have been. I think this is all in the mode of tinkering, which is what a lot of this bill seeks to fundamentally do.

There is concern about the introduction of a fee for the review of permit decisions to recognise costs and deter opportunistic requests. This risks putting in a barrier which will reduce heritage protections. It removes undue financial hardship considerations in permit decisions. It increases maximum penalties.

I should say on the matter of penalties, in the context of the recent Corkman decisions, Corkman, I guess, is the archetype of bad process and shocking outcomes. An important historical site has been lost. I have to say that I am not filled with any confidence that the government has got a way forward there. We did offer it support to achieve this, but it does not appear that this is going forward very well at all, with the applicants at VCAT seeking to wriggle out of many of the responsibilities they initially undertook publicly. Goodness knows what the actual outcome will be. The government's approach has been sloppy and ponderous and really I do not think any of us can have any confidence if a similar incident occurred again. Certainly this bill will not provide those protections. The penalties that are part of this bill are more carefully modulated than some of the other government approaches that are contemplated. Certainly we do not oppose these increased penalties.

There are new compliance and enforcement tools that are tailored to protect heritage, including introducing infringement notices to reduce the likelihood of works being undertaken without a permit. It provides for a stop order tool to halt unauthorised works without permit or permit exemption. There are changes to the membership of the Heritage Council of Victoria to increase expertise, including new membership categories for people with recognised skills in financial management and planning and for an Aboriginal person with relevant experience and knowledge. It acknowledges that many registered places and objects have a series of shared values. All of these carry some merit but, as I say, they are all very, very modest steps and really I do not think you could get very excited about what this will do in terms of protecting our heritage.

The opposition has consulted widely on this bill with the development industry but also with a range of heritage organisations and those who would seek to protect our heritage. We have balanced these responses. I have also read many of the submissions that were made to the review and again I just do not think this bill gets there. It is a really limp and unexciting outcome that has been achieved.

I was pleased to receive a response from a number of key heritage groups and some smaller groups, but particularly the Royal Historical Society of Victoria. I thank the historical society for their careful and considered points. They are largely supportive of the general direction, but they say:

> Similarly, the Heritage Bill 2016 offers no apparent improvement in the procedure for interim protection orders where a building comes under threat of demolition before it has been nominated for heritage protection, an important point also raised by the National Trust.

I put on record my thanks to the National Trust for the support and advice that they have provided on this and a number of other key issues in the recent period. I think their people are doing some very good work at the moment. I really do think that their role and the significance of their role is going to grow as we go forward. The need for heritage protection is going to grow and the need for the expertise and advice that comes from groups like the National Trust will also grow. and we need to be prepared to listen to organisations of this type.

The historical society also goes on to say:

> The new bill does not appear to address the issue of VCAT's failure to give adequate weight to heritage considerations. As the review paper implied, VCAT does not have the expertise to deal appropriately with heritage issues. These issues are often raised in the context of planning disputes which submerge the heritage aspects. The bill does not even address the review's suggestion 'to require the tribunal [in certain circumstances] to consist of a member or members with an in-depth and up-to-date knowledge of heritage legislation and practice … The RHSV submitted that 'When considering planning issues involving local heritage overlays, local councils and, a fortiori, VCAT, be required to seek advice from the heritage council and take into consideration the long-term cultural impact of the proposal'. We do not resile from this position. We accept, however, that this issue may be more appropriately dealt with under VCAT legislation …

The bill, they say at point 9 in their communication:

> … provides for the possibility of fees for applications for requests for reviews as well as for supplying documents (clause 255). The RHSV does not object in principle to such fees and indeed supports their application to developers, but we are concerned about the possibility that they could be used as a dissuasive mechanism against community groups. We would like to see community groups, such as local historical societies, the National Trust, and local councils exempted from fees for appeals against decisions of the heritage council and against decisions of the executive director to reject a proposal without referral to the council.

The bill maintains the minister's call-in powers. The historical society points out at point 10.2 in their communication:

> We do not accept that the minister should be able to override council decisions without any avenue of appeal. This opens the minister to pressures …

and it goes on.

Point 10.3 says:

> Calling in an application before it goes to the heritage council is an egregious overreach that could be misused by future ministers.

They point out that the Heritage Bill in clause 11 maintains Heritage Act 1995 provisions for the heritage council to advise government departments and agencies and municipal councils on matters relating to the protection and conservation of places and objects of cultural heritage significance. However, they say:

> We regret, however, that this provision has not been strengthened. Local councils are under-resourced to deal with heritage matters. We believe that the state should provide adequate heritage expertise and support to local councils where appropriate. We regret that the Heritage Bill 2016 does not offer any such provision. In its absence, the RHSV renews its call for the state to provide financial support for local councils to deal with heritage matters.

I think there is a legitimate case for a pool that can be drawn upon by councils, sometimes smaller councils that have relatively shallow and modest planning departments. We had very strong support through the flying squad, which has been supported in a number of contexts and has been singled out as a good approach in the national context, but I think there is scope for a better system where there is a pool of expertise that can be drawn upon and support provided to councils in this role that they have. I think councils will increasingly need to get ahead of the curve on heritage assets, understanding that as the population density does increase we do need to have a better system in place.

I note again the contributions of the National Trust, and I thank Felicity Watson in particular for her sensible and thoughtful contributions to some of these aspects and for informing me and the opposition. I know my colleague Mr Finn will have something to say in the committee stage with respect to aspects of the Sunbury developments that may put some pressure on key heritage aspects of the Sunbury landscape, and I again welcome the contribution of the National Trust on those issues. I think that Mr Finn has flagged with me he has some questions he wishes to follow through with in committee on the application of this bill to such cases.

As I said, in the case of penalties the opposition does not oppose the penalties that are laid out in a cascade in this bill. These are an improvement, and in that context we support appropriate changes. It is, however, the case that there is going to need to be a proper grappling with the challenges we face on heritage points. I know the Greens have flagged a number of amendments, and I am probably jumping ahead, Ms Dunn, with your approval, to make some comments about that now. I thank them for their suggestions, which I think are well motivated, and I do not in any way diminish the attempt that is made there. I do, however, think that tinkering with aspects of this bill is not going to achieve a great deal. I think the bill itself is so weak and so flawed that changes that might be made through small, incremental steps are not to be thought of as a replacement for a wholesale, proper outcome with respect to managing our heritage.

I think we need to do more in this area. This bill does not do it. If we are elected, we will seek to grapple with this area in a way that provides proper processes and better outcomes both for industry but particularly for protection of what are often precious assets in local communities. I have seen in this recent period and over a longer period in metropolitan Melbourne that my electorate, Southern Metropolitan Region, is often the epicentre of these things. We face significant pressure, and often governments — indeed of both colours — have not got things right. But some of the things we have seen in the recent period have been really great losses.

I think the government should have done more with the developments that have seen the loss of the Princess Mary Club. I think the government should have done more to protect some of the aspects along the sky rail corridor. I think the government is on the wrong track currently and shows no sign of deviating in the case of the Metro project and its method of construction. We are very supportive of the Metro project in its essence, but we are not supportive of its mechanism, which does not seem to want to take account of what are important protections that should be in place.

European cities do not trash their heritage. The great European cities that we would look to and compare ourselves with, and indeed increasingly the great American cities, do not trash their heritage. They actually seek to protect it, to preserve it and to incorporate it, because it is a significant part of their culture. It is a part of their heritage in the broad sense of that word. Places where important things happened ought to be seen as significant for the future of our country. Buildings that convey important examples of our history also ought to be seen as things that we protect. Artefacts that are part of archaeological excavations and sometimes uncovered as part of a construction or other process ought to be thoughtfully protected, but the processes behind this have to be got right. More needs to be done early. There need to be better processes in place and better signalling to the construction and other sectors to make sure that they are cognisant of their responsibilities and that they are able to manage these things in a more constructive way. We want good outcomes where costs are not escalated

unfairly, but equally there are some times when protections must trump development outcomes, and those protections for sacred and important centres, sacred and important buildings and other heritage assets should be very much to the forefront of our focus. I know many in this chamber would share my views on this and share my view that the balance that needs to be struck needs to be struck carefully, and this bill sadly does not strike that balance.

Ms DUNN (Eastern Metropolitan) — I rise today to speak on the Heritage Bill 2016. The Greens welcome the reinvigoration of heritage protection legislation, and there is much in this bill for which credit must be given to the advocacy organisations, community representatives and local governments that spoke up during the consultation period that informed the drafting of the bill. The protection of heritage is critical to our common identity as a community. It provides the backdrop of our narrative of who we are as a state. Our state's rich Indigenous heritage is at the heart of living Indigenous culture. Early settler heritage defines the edifices and grandeur of our city streets and our country towns. Successive waves of migration have left their mark in the form of heritage buildings, places and things throughout our towns and suburbs that create the globally recognised cosmopolitanism of modern Melbourne and Victoria.

My electorate of Eastern Metropolitan Region is particularly rich in heritage icons. An example is Montsalvat in Eltham. Founded in 1935 by Justus Jorgensen, Montsalvat is Australia's oldest artist community and a place where art is made, taught, exhibited, performed and celebrated in the most glorious of buildings, constructed of bluestone — a wonderful example of heritage in our state. Another example in Eastern Metropolitan is Heide, the home of the Heidelberg School, which held amongst its members such greats of Australian painting as Frederick McCubbin and Tom Roberts.

Yet greed has too frequently got the better of our senses when it comes to heritage. The central business district is a prime example of this. It is now a hotchpotch of heritage remnants, towered over by giant skyscrapers. There is no sense of proportion. Accommodation of light has been a rarity. Heritage-listed churches are dwarfed by towering monuments to high finance, which have been built on the remnants of neighbouring iconic gold rush era buildings.

A recent example of this lack of foresight in development approvals is the Palace Theatre, which can be spied from my office at the front of this building. When operating, the Palace Theatre, previously the Metro Nightclub, at 30 Bourke Street held the distinction of being the largest nightclub in the Southern Hemisphere. I wonder how many members in this place in fact attended the Metro Nightclub. It brings much joy to me to remember times at the Metro, particularly seeing what we would call a classic shoegaze band, the Jesus and Mary Chain. That venue has hosted bands such as Guns N' Roses. Britpop legends Blur played there. Melbourne's own The Cat Empire cut their teeth there. Its club nights were mainstays of the electronic and underground scenes in the 1990s and 2000s. Millennials flocked to see Major Lazer play there as recently as 2014.

I know some people in this place could not care less for these musical genres — I am sure you do not all feel that way — or the places in which they are expressed, but they matter to many thousands of people across generations, from boomers to millennials. As such, the loss of the Palace Theatre is mourned by music lovers across Melbourne. A long community campaign continues to try its best to save the Palace from demolition, but in the meantime the iconic internal furnishings have been gutted. All that will remain of the Palace is the ghostly facade, if indeed any development ever takes place, and that appears to be a troubled endeavour.

The tragedy of the Palace is that it could have been saved by the state government if the Minister for Planning had intervened, or if the government had purchased the estate and conserved it as the cultural icon that it is to thousands in this city. While legislation such as what has been put to us today in this bill provides the necessary framework for heritage conservation, it takes a proactive government to make sure the intent is achieved through the judicious exercise of ministerial discretion.

Unfortunately successive governments from both the old parties have been too deferential to the interests of developers, and the loss of the Palace and other wonderful buildings has been the result. It is worth noting that there is always an inherent tension in that the Minister for Planning has jurisdiction over development, planning and heritage, and when the rubber hits the road and a decision has to be made, which trumps which? I think more often we have seen that heritage falls to the bottom rung of the ladder in those considerations.

There are some positive changes in this bill. It streamlines heritage registration processes. It gives an up or down response to heritage registration applications in a reasonable time frame, with sensible if somewhat restricted appeal rights. It places the Heritage

Council of Victoria as the preferred planning authority for developments on heritage-registered places, which removes duplicative planning processes. The removal of the financial hardship clauses takes away a provision that was sometimes abused when heritage places were transferred between owners with varied financial capacities.

Following consultation with heritage advocates and local government planning experts the Greens do have some concerns with the bill. These include the lack of third-party rights of appeal for permit decisions. Currently the permit approvals process is opaque, with only the applicant entitled to appeal a permit decision and little information provided to the public regarding the decision-making process. The reasonable and economic use clause in the act regularly results in permits being issued which detrimentally impact on the significance of places on the register. However, there is currently no mechanism for the public to scrutinise or interrogate the evidence provided by applicants. The display period for permit applications of 14 days is too short. In reality that is 10 business days. It should be increased to be in line with planning application display periods.

I would like to turn now to some comments made by the National Trust of Australia (Victoria), and I thank Felicity Watson, the advocacy manager of the trust, for providing us with some information. In summary, the trust notes in relation to the bill that the greatest deficiencies in the current act are the requirement for consideration impact of refusal of a permit on the reasonable or economic use of a place. This is frequently called up by commercial developers to justify otherwise poor heritage outcomes. There is a lack of third-party appeals under the act, the poor relationship in decision-making to local heritage issues and integration into local heritage planning, and the inability for places deemed by the heritage council to be locally significant to be included in an interim heritage overlay control.

I also want to refer to some commentary made by the trust in relation to the referral of nominations to local councils. The trust states:

> Under the current provisions, if a place is not found to reach the threshold for state significance, a recommendation can be made to the local council to pursue protection under the planning scheme — but the recommendation is not binding. In recent years, in practice, this has allowed a number of locally significant places to 'fall through the cracks' of this two-tiered planning system, with local councils (particularly at councillor level) often using a refusal from Heritage Victoria as an excuse to abandon the prospect of heritage listing. This confusing distinction between Heritage Victoria and local council processes appears to be poorly understood by the community, the media, councillors, and sometimes even council planners. The National Trust would like to see a provision in the Heritage Act for unsuccessful nominations to the Victorian Heritage Register that clearly demonstrate local significance to trigger interim local heritage controls, with a requirement for councils to investigate permanent protection. With extensive research required for a nomination to Heritage Victoria to be accepted, most of the work has usually already been done. What is missing is a clear trigger for implementation.

I would just like to put a different perspective on that in that local councils, when they receive advice from Heritage Victoria about what they might consider a property for local protections, are in a bit of a bind, because the reality is that local councils are not awash with money; they cannot for every single nomination necessarily mount an individual planning scheme amendment process. They are very expensive processes for local councils, and often they will collate a number of different heritage amendments for one planning scheme amendment so they can get it all done at one time. Certainly that was the case in my experience on Yarra Ranges council.

Of course the difficulty in relation to that approach is that you have a number of properties that may well be included in a heritage overlay into the future, but in the intervening period, between a suggestion for nomination for local heritage significance and council actually undertaking that planning scheme amendment and going through the proper process, which generally can take in the order of 18 months, the property has no protections at all — no interim planning controls. This is clearly a deficiency when it comes to heritage properties, and certainly a lot of heritage properties do slip through the gap. It is often around resourcing, and that should not be the case.

The Greens will be moving some amendments to ameliorate some of these concerns when the bill proceeds to the committee of the whole. I thank Mr Davis for his commentary in relation to those amendments that have been circulated so far. I certainly will be exploring the intent of those amendments in the committee of the whole when we get to that, and I will also be exploring the concerns expressed by stakeholders when we get to the committee process, but with that the Greens support the bill.

Mr SOMYUREK (South Eastern Metropolitan) — I rise in support of the Heritage Bill 2016, a bill that delivers upon another election commitment and one that is vital to Victoria's livability and its proud history and cultural significance. Victoria was Australia's first state to enact heritage legislation in 1974, and it has remained a national leader in the identification, conservation and management of heritage. The

Heritage Act 1995 is Victoria's principal legislation for the identification and management of heritage places and objects of state significance. This act has not been thoroughly updated for the past 20 years or so.

The Heritage Bill will modernise and improve the processes and protections provided under the Heritage Act 1995. It will simplify key statutory processes to reduce regulatory burden and provide clarity and certainty for users. It will improve compliance and enforcement to ensure higher level protection for state-significant heritage and provide an appropriate fee structure for heritage approvals, appeals and penalties. It will also provide for procedural changes that simplify nomination and selection processes.

In my brief contribution I would like to comment on the aspects that I consider to be the most important for the protection of heritage in my electorate and for heritage in this state. The protection of our heritage is vitally important in understanding the past of a particular community or nation. In Australia we have been slow to realise the importance for current and future generations, having lost many significant heritage sites throughout the nation.

Mr Finn interjected.

Mr SOMYUREK — I am sure Mr Finn would have gone to this in his time. The Corkman Irish Pub in Carlton was not protected by the heritage register but instead under a heritage overlay of Melbourne City Council. However, it was a prime example of the need for greater protection of our significant heritage. The Corkman Irish Pub was demolished illegally without regard or respect for Victoria's built and cultural heritage. Developers who were driven exclusively by the profit motive managed to destroy the legends of the 159-year-old pub that had been etched into the tradition of so many Melburnians and indeed visitors to our magnificent state.

For those sites protected on the register, penalties will double under the new amendments for all unauthorised works to deter damage to state-listed heritage. They will increase to $746 208 for an individual — that is a lot — and $1.49 million for a body corporate. The maximum penalty amounts are consistent with other jurisdictions and will provide a firm signal that unauthorised works on heritage places are absolutely unacceptable — unless you want to pay $746 000 out of your own pocket as an individual. New compliance and enforcement tools will also protect heritage, including infringement notices to reduce the likelihood of works being undertaken without permit and a stop order tool to halt unauthorised works without a permit or a permit exemption.

In my electorate of South Eastern Metropolitan Region there are many significant heritage sites, too many to mention in this humble contribution here today. However, I will make mention of Heritage Hill in Dandenong, which, thanks to the City of Greater Dandenong and Heritage Victoria, has been retained and maintained — that sounds tautological; no, it is not really — for the benefit of all Victorians. Heritage Hill is a unique historic precinct featuring three well-preserved buildings: Laurel Lodge from 1869, Benga House from 1936 and St James Anglican Church from 1864. These are set on 2 acres of landscaped 1930s gardens in the heart of Dandenong — away from the western suburbs, in Dandy. Heritage Hill offers insights into Dandenong's transformation from a rural market town to a busy multicultural city.

Mr Finn interjected.

Mr SOMYUREK — Heritage Hill dates back to 1864, Mr Finn. It was the last time Richmond won a flag. The historic precinct now provides an opportunity to turn the clock back for a day and feel part of 19th century Dandenong, with its social and cultural heritage proudly on display.

The amendments also provide a greater role for local government in permit processes, including providing a clearer opportunity to comment on permit applications and allowing local government to be heard in any permit review before the heritage council. This measure is appreciated by councils, which are really the knowledge keepers of all significant local history. This bill will add a range of measures that will complement and enhance this government's commitment to the protection and preservation of our significant past. For the reasons that I have mentioned in my contribution today, I commend the bill to the house.

Mr MORRIS (Western Victoria) — I rise to make a short contribution to the debate on the Heritage Bill 2016. I note that it is a piece of legislation of significant size.

Mr Finn — Size, but no substance.

Mr MORRIS — The substance is a matter of question there, Mr Finn. Heritage is exceptionally important here in Victoria, and I think it can probably be said unchallenged that Ballarat is of course our most significant heritage city. Heritage in the great City of Ballarat is something that I have taken great interest in over a period of years. I recognised the significance of heritage in Ballarat when I returned from living

overseas for a period of time. I actually looked up at the magnificent streetscapes that we have in Ballarat and understood that not everybody is fortunate enough to live in a place like Ballarat that has such a remarkable heritage. As Mr Davis said earlier, it is incredibly important that we learn the lessons from European and American cities that do protect and embrace their heritage. These communities and cities are much better for all of this work.

Mr Finn interjected.

Mr MORRIS — Mr Finn, I am glad that you raised the heritage railway gates, because they are still in place. They have not been on the government's level crossing removal program, from what I understand. However, there are quite significant concerns about the heritage aspects of the Ballarat station at the moment, as the government goes through its redevelopment of that precinct. In doing so, they seem to have forgotten that the railway precinct is a transport hub and the needs of commuters need to be addressed at that place. Cutting the number of car parks from over 400 to 270 is not going to increase the usability or practicality of that particular transport hub.

The Ballarat railway precinct is a significant heritage space, and it is one that is under threat at the moment as a result of this government's actions in not providing for a bus hub within the precinct itself and forcing buses, both local and V/Line, out onto the historically significant Lydiard Street North. I am pleased that Mr Davis late last year made the trip to Ballarat to meet with concerned residents about what was happening in Lydiard Street North, because it really is an abomination. Rather than appropriately funding the railway precinct and ensuring that the bus hub was contained within the site, Labor has created a shortcut and forced all of these buses onto Lydiard Street North, with the diesel fumes and visual impact that this has on what is most definitely one of Ballarat's most significant heritage streets. It is absolutely shameful in my and many residents' view.

I am pleased that Ms Dunn has returned to the chamber, because I was going to make some comments about what she said in her contribution.

Ms Dunn interjected.

Mr MORRIS — No, they will not be unfair. I note that Ms Dunn and I have a history in local government, and of course local government has a significant role to play in planning and these heritage aspects. Ms Dunn did make some comments with regard to Heritage Victoria, noting that sometimes there are buildings that Heritage Victoria see as not necessarily being of state significance and it refers these buildings and these dwellings and the like back to local councils for a determination on whether or not these buildings could be considered to be of local significance.

This is something that has been of note in Ballarat, where the saga of the civic hall has been going on for far, far too long. Heritage Victoria, in this case, did make a determination that the civic hall was not a building of state significance but asked the council to consider whether or not it could be seen as a building of local significance. Heritage Victoria did not determine that it was of local significance but determined that perhaps it could be.

As Ms Dunn said, there needs to be greater clarity for councillors and the community about what those determinations mean. But in my view Heritage Victoria in this particular instance made the decision that it was up to the local council to determine whether or not that building was of significance and whether or not the demolition of that building would be a possibility in the future. I note the Ballarat council has not taken that view at this point in time and they are proceeding with a development of sorts in that particular building.

What should really be happening at the civic hall site in Ballarat is the relocation of 600 jobs — VicRoads, the department that former Premier Denis Napthine committed to relocate to Ballarat if the government were re-elected in November 2014. Unfortunately that did not happen, but I am very pleased that Mr Guy, the now Leader of the Opposition, has reaffirmed that commitment to ensure that those 600 jobs will be relocated to Ballarat — —

Mr Finn interjected.

Mr MORRIS — He is an outstanding leader indeed, Mr Finn. Ballarat will progress forward with that. However, in saying that, this bill obviously does cover quite an extensive array of elements with regard to heritage, and I might allow others in the chamber to expand on those particular points.

Mr FINN (Western Metropolitan) — As Mr Morris has pointed out in his contribution, the Heritage Bill 2016 is a substantial bill. It is voluminous; a bloke could do his back just lifting the thing. It is quite extraordinary that we could have a piece of legislation with so much in it but indeed with so little in it. We could almost describe it as much ado about nothing. That pretty much sums up — —

An honourable member — It is one of my favourites.

Mr FINN — Is it one of yours? That is good. I think that is how we could sum it up, because this legislation really does not do much for anybody. We on this side of the house are not opposing the bill. Quite frankly it is very hard to have much of an opinion on the bill because there is nothing much in the bill despite it going to 212 pages and being about an inch thick.

As members of the house would be aware, I am a conservative.

An honourable member — Really?

Mr FINN — I am. And that means that I believe in conservation. I believe in preserving and conserving those things that are worth conserving and preserving. That is one of the basic tenets of conservativism.

An honourable member interjected.

Mr FINN — Well, we could get to Werribee South in a minute. We certainly will get to Sunbury. I just want to reflect briefly on some of the buildings that have shaped my life and buildings that I have been very, very fond of over the years. These are and have been a very important part of Melbourne's heritage. Of course when I think of Melbourne I think of the MCG; that is the iconic place in Melbourne. One structure that I was particularly fond of was the old Melbourne Cricket Club smokers stand. It was, I have to say, a bit rough when they banned smoking in the smokers stand, because it sort of confused a few people. But when they ripped it down altogether I thought that was particularly nasty.

I am sure you, Acting President Melhem, would be an outer man. You would be a man who sat in the outer with a pie and a can of VB in the old days, I am sure. Of recent years you have been particularly in the outer, but I am sure you would be very familiar with the old smokers stand. I thought it very much epitomised an old part of Melbourne that we all loved. I thought it rather sad when it was ripped down and they put up the new stand, which is all very nice and shiny and glamorous, but it does not have the character of the old smokers stand. I very much regret that that smokers stand was pulled down. In fact I thought to myself, 'It's a pity that Norm Gallagher isn't still with us', because I reckon Norm, if he had been still with us, would have pulled the boys out and they would have protected the old smokers stand. The Construction, Forestry, Mining and Energy Union, they just have not got what it takes these days; they are all into bribery and taking brown paper bags. They did not have what it took to save the old smokers stand, which is a pity.

That leads me to another building that I have, over a period of time, had quite a bit to do with, and that is the Celtic Club in Queen Street. For those who might remember, 3AW, a radio station that I have had a bit to do with over the years, was situated just around the corner in La Trobe Street — 382 La Trobe Street — and the Celtic Club was our local watering hole. If I could — —

An honourable member interjected.

Mr FINN — Both. Tony Bell was heavily into Melbourne Bitter for reasons that I could not quite — —

The ACTING PRESIDENT (**Mr Melhem**) — Order! Mr Finn, get back on message.

Mr FINN — I am sorry, Acting President. I am on message; I was dragged away.

The ACTING PRESIDENT (**Mr Melhem**) — Order! Do not let Mr Ondarchie distract you.

Mr FINN — I wish that I could write a book on some of the things that I have seen inside the Celtic Club. Unfortunately it will have to wait until my mortal demise, because you cannot sue a dead person and I fear that if I put pen to paper about some of the things that I have seen in that building, they would take the house and everything else that I have got off me. The Celtic Club is a classic Melbourne building, and it saddened me enormously to hear recently that they are going to rip it down and turn it into a block of flats. I think it is sad to see old buildings with character of that nature just thrown out — —

An honourable member interjected.

Mr FINN — There are quite a few characters in there, I can tell you. It is a part of our history that we are never going to get back, and that is sad.

Out in my part of the world, out near Sunbury, of course we have some magnificent old buildings. One in particular is Kismet Park. I do not know if you, Acting President, are familiar with Kismet Park, but it is a very, very old and historic building that was built in Sunbury. It is famous for two things of recent years.

The first is it was the place where Paul Keating made his famous banana republic comments. He did that in an interview. He was on the phone in Kismet Park after speaking at a Labor Party breakfast in Sunbury. They had, I think, only about seven or eight people there. He was there at Kismet Park, and in an interview he made the comments that went around the world about

Australia becoming a banana republic, and then he did everything he possibly could to make that come true, because as we know he was not exactly the greatest Treasurer or the greatest Prime Minister this country has ever seen. That is Kismet Park.

Of course the second most outstanding — I suppose that would be one way of describing it — event that occurred there was my preselection prior to the 1992 election, when I was chosen to represent the Liberal Party for the seat of Tullamarine in 1991. The rest, as they say, is history, which is entirely appropriate given we are talking about the Heritage Bill.

Honourable members interjecting.

Mr FINN — We will get to the fundraisers; do not worry about that.

Sunbury in particular is a very historic town. I am sure that many members of this house have been to Emu Bottom, which is the oldest homestead in Victoria. It is a sensational spot. I have been there many times, and it never fails to not disappoint, because it is superb. Receptions are now held there and gatherings are held there. It is a place of historical significance, but a place of great beauty as well, and that is something that I treasure. It is still of course operating as a reception centre — and a very, very good one — the Emu Bottom Homestead.

One that I am perhaps even more familiar with, and one that is particularly iconic, is the Rupertswood Mansion. I attended school at the Salesian College at Rupertswood for a couple of years a while back. Rupertswood Mansion of course was the place where the famous cricketing Ashes began. It has become a part of cricketing folklore around the world, and it is interesting to see people travelling from India and various parts of the cricketing world to actually just visit the place where the Ashes began. The Rupertswood Mansion itself is still very much in one piece and is iconic, as I say, in many ways. It is very much a part of the Sunbury landscape and indeed was on my calendar fridge magnet that I put out before Christmas last year.

I am sorry, Ms Shing, I did not send you one. I will see if we have got any left. That will be — —

Ms Shing — I am so devastated. Let *Hansard* record my grief!

Mr FINN — I will see if I can send you two in fact.

There is much history and there is much heritage in the Sunbury area. Down in Werribee I could look at the Werribee Mansion. That unfortunately is going to, I suppose, have its heritage value threatened by the building of a youth prison just near the mansion. It is quite extraordinary that any government would build a prison opposite the heritage area that is the Werribee tourism precinct. It is not just the Werribee Mansion; it is also the rose garden, it is the equestrian centre and it is the zoo. I do not know if many members have been to the Werribee Zoo, but it is a delight to go there. I particularly enjoy the meerkats, I have to say, and as I look across at Ms Shing, I think to myself — —

The ACTING PRESIDENT (**Mr Melhem**) — Order! Mr Finn! I ask Mr Finn to come back to talking about the bill instead of drifting off.

Mr Ondarchie — He is; he is talking about the Werribee Mansion.

The ACTING PRESIDENT (**Mr Melhem**) — Order! Mr Ondarchie, I was not addressing you. I was addressing Mr Finn. Mr Finn, please go back to the bill.

Mr FINN — If Werribee Mansion, Acting President, is not an important part of Victorian heritage, I am not sure what is.

Ms Shing — Meerkats! Come on, keep going and finish the line.

Mr FINN — No, I am not allowed to talk about meerkats anymore apparently. But the Werribee Mansion, an important part of Victorian history and an important part of Victorian heritage, is being devalued by a government which is sabotaging it. This government is involving itself in historic and heritage vandalism by putting a youth prison in Werribee South at the spot that it is proposing.

Mr Morris — Does he live in his electorate?

Mr FINN — I do not think he does. It is interesting to note that of the three lower house members that represent Wyndham, none of them actually live in their electorates. You have got Ms Hennessy, who is — —

The ACTING PRESIDENT (**Mr Melhem**) — Order! Mr Finn, I asked you to go back to addressing issues relating to the bill. I do not see how whether or not members of Parliament live in their electorates relates to the bill. I am not going to remind you again.

Mr FINN — Acting President, I accept that, but I will just draw a parallel. It is related to the bill because come the next election all three of them are going to be history, and that is the truth of the matter. This bill is largely a waste of time, to tell you the truth. I am not

sure why I have spoken on it for so long, but it is something that the opposition will not oppose.

I have to say I am a very proud Victorian. The heritage and the history of our state are things that I am very proud of. And I do live in my electorate. I do hope that we will always be very protective of what is important to our state and that we will be on the lookout for anything that endangers that heritage we are so very, very proud of.

Motion agreed to.

Read second time.

Ordered to be committed next day.

CONSUMER ACTS AMENDMENT BILL 2016

Introduction and first reading

Received from Assembly.

Read first time on motion of Ms TIERNEY (Minister for Training and Skills); by leave, ordered to be read second time forthwith.

Statement of compatibility

Ms TIERNEY (Minister for Training and Skills) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the 'charter'), I make this statement of compatibility with respect to the Consumer Acts Amendment Bill 2016.

In my opinion, the Consumer Acts Amendment Bill 2016, as introduced to the Legislative Council, is compatible with human rights as set out in the charter. I base my opinion on the reasons outlined in this statement.

Overview

Relevantly, the bill will:

a) amend the Associations Incorporation Reform Act 2012 (AIR act) to enhance inspectorial powers under the act;

b) amend the Conveyancers Act 2006 to insert a requirement that a person must not, without reasonable excuse, refuse or fail to comply with a requirement of an inspector or the director of Consumer Affairs under part 8 of that act;

c) amend the Motor Car Traders Act 1986 to enable a licensed motor car trader to sell a motor vehicle subject to a security interest registered in favour of the sheriff of Victoria where the trader has been engaged by the sheriff to sell that vehicle, notwithstanding the registration of any other security interest subsequent to that of the sheriff; and

d) amend the Sale of Land Act 1962 to abrogate any pre-existing right based on the Supreme Court decision in *Tan v. Russell* (No. 93 of 2016), for a vendor to commence action against a purchaser under a contract for sale of land.

Human rights issues

Privacy

Section 13 of the charter provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with. An interference with privacy will not be unlawful if it is permitted by law that is accessible and precise. An interference with privacy will not be arbitrary if the restrictions it imposes are reasonable, just and proportionate to the end sought.

A number of provisions in part 2 of the bill engage the right to privacy. However, for the reasons set out below, none of the provisions limit this right, because they are lawful and not arbitrary.

Clause 9 of the bill will substitute a new section 168 of the AIR act. Substituted section 168 provides for the issue of a search warrant by a magistrate on application by an inspector. It will enable a search warrant to be issued where a magistrate is satisfied by evidence on oath or by affidavit that there is on the premises or that there may be on the premises within 72 hours evidence that a person may have contravened the AIR act or regulations or that there is evidence in digital or electronic format accessible from the premises that a person may have contravened the AIR act or the regulations.

Section 168, as substituted by the bill will be clear in its intent and the issue of any warrant remains subject to a decision of an independent magistrate. I am therefore of the opinion that any interference with privacy occasioned by the operation of section 168 of the AIR act as substituted by clause 9 of the bill will be lawful and not arbitrary.

Clause 10 of the bill will amend section 169 of the AIR act. Section 169 provides for the form and content of search warrants issued under section 168. Clause 10 will insert into section 169 the ability to make an image of a computer hard drive and to access information in digital or electronic format from premises where the inspector believes on reasonable grounds that the information is connected with the alleged contravention of the AIR act or regulations.

Clause 11 of the bill will insert new section 169A into the AIR act. New section 169A will authorise a magistrate when issuing a warrant under section 168 to authorise the inspector named in the warrant to require a person to provide any information or assistance that is reasonable and necessary to enable the inspector to access information held in or accessible from any computer or electronic device on the premises or to download or make an electronic or physical copy of that information.

In my view, section 168 and new section 169A are lawful and not arbitrary, as the provisions are clear in their intent and their operation is subject to independent oversight by the Magistrates Court.

Freedom of expression

Section 15 of the charter protects a person's right to freedom of expression, which has been interpreted to include a right not to impart information. The right to freedom of expression is not absolute; lawful restrictions reasonably necessary to protect rights of other persons, or for the protection of public order are permissible under the charter.

Clause 11, which will insert new section 169A into the AIR act, will enable an inspector to be authorised by warrant to require a person to provide reasonable and necessary assistance or information to enable information in electronic or digital format to be accessed from the premises the subject of the warrant.

These provisions enable appropriate oversight and monitoring of compliance with the AIR act. They only allow an inspector or the director of Consumer Affairs Victoria (the director) to require information, documents or assistance to the extent that it is reasonably necessary to determine compliance or non-compliance with the AIR act. A warrant issued under section 168 compelling the provision of information or assistance can only be issued if a magistrate is satisfied that an inspector has reasonable grounds to believe a contravention has occurred and after consideration of the rights and interests of the parties to be affected by the warrant.

The assistance of the persons to whom these provisions relate is necessary to conduct investigations into whether or not the regulatory obligations of the AIR act are being complied with.

It is important to provide for appropriate monitoring and oversight of incorporated associations noting that incorporation under the AIR act is granted under a law of the state, enables the association to enter into contracts and incur debts in its own right and protects members of the association from personal liability for the debts of the association.

In addition there are specific requirements under the AIR act to maintain appropriate financial records, to file annual returns with the registrar of incorporated associations, and office-holders of incorporated associations are under a statutory duty to ensure that an incorporated association does not trade while insolvent.

I also note that incorporated associations often play an important role in the community and may be responsible for delivery of funded community services. There is an expectation from the public that they will be well and transparently managed.

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.

Clause 18, which will insert new subsection 48(3) into the Motor Car Traders Act 1986, may engage the right to property in that it relates to the ability of a licensed motor car trader to sell a motor vehicle on behalf of the sheriff of Victoria notwithstanding that there are undischarged security interests registered against that vehicle on the national Personal Property Securities Register (PPSR).

However, for the following reasons, I am of the view that clause 18 will not affect the interests or entitlement of any relevant registered secured party in respect of the seized vehicle and accordingly, does not limit the right to property under the charter act:

> the rights, obligations and requirements that exist under the PPSR will continue to apply in respect of any sale by a licensed motor car trader of a vehicle seized by the sheriff. This means that the proceeds from the sale of the seized vehicle must continue to be applied in order of priority of registered interests; and
>
> the amendment will not affect the obligation of the sheriff to provide notice to other secured parties of the sheriff's intention to sell the seized vehicle pursuant to its security interest.

Clause 21 may engage the right to property in that one effect of new section 31A to be inserted into the Sale of Land Act 1962 (SLA), will be that the right of any vendor to commence action against a purchaser under a contract for sale of land based on the Supreme Court decision in *Tan v. Russell* (No. 93 of 2016) will be abrogated. I note that proposed subsection 31A(2) provides that this abrogation does not affect the rights of the parties in *Tan v. Russell* itself or of parties who had already commenced proceedings prior to the commencement of clause 21.

A right to commence legal proceedings to recover a debt is an intangible personal property right.

For the following reasons, I consider that the number or class of persons whose right to property may be affected by clause 21 is likely to be minimal:

> clause 21 is consequent upon clause 20 which will amend section 31 of the SLA to clarify that a purchaser may validly serve a cooling-off notice under a contract for the sale of land on an estate agent who has been engaged by the vendor to sell the land. This amendment confirms longstanding and commonly accepted commercial and industry practice;
>
> a vendor would only have a right to commence proceedings where:
>
> > a purchaser under a contract for sale of land had invalidly purported to exercise their cooling-off right to terminate the contract by serving notice on the vendor's estate agent (where the estate agent had not been explicitly authorised by the vendor to accept service of the cooling-off notice); and
> >
> > the vendor had subsequently sold the property to another purchaser (consistent with their duty to mitigate any loss resulting from repudiation by the purchaser under the previous contract); and
> >
> > the vendor had received a lower purchase price than that stipulated in the original contract of sale.
>
> any cause of action would lie against the purchaser under the original (repudiated) contract for loss suffered by the vendor — being the difference between the sale price in the original contract and the sale price actually realised under the subsequent contract; and

section 5 of the Limitations of Actions Act 1958 will, in any event, limit the period within which any such action could be commenced to six years from the date on which the cause of action accrued.

Taking these matters into account, and noting that any abrogation of a right to sue under clause 21 will be effected in accordance with law (i.e. by operation of new section 31A of the SLA), I conclude that to the extent that clause 21 limits the right to property the limitation is reasonable and justifiable.

Right to protection against self-incrimination and right to a fair trial

Section 25(2)(k) of the charter provides that a person who has been charged with a criminal offence has the right not to be compelled to testify against him or herself or to confess guilt. It is also an aspect of the right to a fair trial protected by section 24 of the charter. This right under the charter is at least as broad as the privilege against self-incrimination protected by the common law. 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.

As I have noted earlier, clause 11 of the bill will insert new section 169A into the AIR act which will enable a warrant issued under section 168 of that act to authorise an inspector to require a person to provide reasonable and necessary information or assistance. Clause 12 of the bill will insert a new section 177(3) into the AIR act which provides that it is not a reasonable excuse for a natural person to refuse or fail to provide information or assistance that a person is required to provide under new section 169A if the provision of the information or assistance would tend to incriminate the person.

Clause 11 and clause 12 of the bill are directed to addressing the increasing prevalence of storage of business documents and information in digital or electronic format, including 'off-site' storage in cloud networks. Commonly, access to such information is subject to security requirements such as passwords or encryption technology. If an officer of an incorporated association were able to refuse to provide a necessary password or de-encryption key to access business documents compliance with the requirements of the AIR act would increasingly become unable to be effectively monitored.

The information or assistance contemplated under clause 11 and clause 12 is for the purpose of enabling access to information concerning an alleged contravention of the AIR act. A duty to provide such information or assistance is consistent with the reasonable expectations of persons who participate in a regulated activity with associated duties and obligations. Moreover, it is necessary for regulators to have access to such information to ensure the effective administration of the scheme.

The bill does not limit section 25(2)(k), because the person required to assist an inspector is not a person who has been charged with a criminal offence. The execution of the warrant occurs before any action for a contravention of the act or regulations is taken. In addition, the person is not being required to testify against himself or herself because they are not giving evidence in court. Finally, the person is not being required to confess guilt. While the information the person provides may enable an inspector to obtain evidence that incriminates the person, the giving of that information, such as a computer password or similar, is not in itself a confession of guilt.

Even if the bill could be said to limit section 25(2)(k), the limitations are reasonable and justified because of the fact that the investigation could be blocked by non-disclosure of the relevant information (such as a password to access a computer). If a person has locked hard copy business documents in a cupboard, an inspector would not need the person's assistance in opening the cupboard, under warrant, to seize that evidence and the person has no right to try to block the inspector from opening that cupboard. If the person has also stored 'locked' business records inside a computer through encryption, the person should not, simply because of their use of more sophisticated technology, now be empowered to stymie investigations by refusing to divulge the electronic key to that evidence.

There is also the safeguard that the magistrate issuing the search warrant will have discretion not to include such a power in the warrant where the inspector applying for the warrant has not made out an adequate case for the need for such a power.

The bill does not provide a use immunity in relation to material seized as a result of the disclosure of a password. To do so would undermine the central point of the new power, to enable inspectors to access material that has been intentionally hidden or encrypted. As I have noted, a person who locked records in a cupboard cannot prevent an inspector from accessing those records under a search warrant. Where the person has simply used a more technologically sophisticated form of locking device (computer encryptions), they should not have any greater power to stymie an investigation.

There are no less restrictive means available to achieve the purpose of enabling regulators to have access to relevant digital or electronic information. To excuse the provision of information and assistance to enable access to digital or electronic records would significantly impede the regulator's ability to investigate and enforce compliance of the scheme in the contemporary business environment.

To the extent that clause 11 and clause 12 of the bill could enable a person's right to protection against self-incrimination and a right to a fair trial to be limited in compliance with a warrant authorising an inspector to require information, which is likely to be minimal, I consider this to be reasonable and justifiable.

Clause 17 of the bill will amend the Conveyancers Act 2006 to insert a new section 172A. New section 172A provides that a person must not, without reasonable excuse, refuse or fail to comply with a requirement of an inspector or the director under part 8 of the Conveyancers Act.

Clause 17 may engage the charter act's right to be presumed innocent until proved guilty according to law. A provision which imposes the burden of proving their innocence on an accused can limit this right.

Part 8 of the Conveyancers Act sets out the enforcement provisions and includes a number of provisions under which an inspector or the director may require a person to provide

information, documents or assistance. Those provisions include:

section 154, an inspector may require a licensee under the act, a specified person or other person with control over relevant documents and information to produce documents or answer questions;

section 155, an inspector may require a person with possession control or custody of documents relating to a licensee's conveyancing business to produce those documents or to answer questions;

section 157, authorises the director or an inspector to require a specified person or body to answer questions orally or in writing or to give information orally or in writing; and

section 172, which requires that reasonable assistance be given to an inspector (including the giving of information or the production of documents) when the inspector exercises a right of entry under part 8 of the Conveyancers Act.

I consider that a provision in which the onus is on the defendant to adduce or point to some evidence ('reasonable excuse') and then the burden transfers to the prosecution to prove beyond reasonable doubt the absence of the exception raised, does not limit the right to be presumed innocent until proven guilty according to law. Furthermore, the burden does not relate to essential elements of the offences and is only imposed on the defendant to raise facts that support the existence of an excuse that relate directly to matters within the knowledge of the defendant.

Accordingly, in my view, section 25 is not engaged by clause 17 of the bill.

Philip Dalidakis, MLC
Minister for Small Business, Innovation and Trade

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Ms TIERNEY (Minister for Training and Skills).

Ms TIERNEY (Minister for Training and Skills) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill illustrates the government's ongoing commitment to improving and updating the consumer protection framework in Victoria. It will amend several acts within the consumer affairs portfolio to improve their operation, clarify their requirements and update outdated references.

Part 2 of the bill will amend the Associations Incorporation Reform Act 2012 to make it simpler to reduce red tape and duplicated reporting requirements for a range of not-for-profit incorporated associations. It will do this by inserting into that act a discretion for the responsible minister, by order published in the gazette, to exempt an incorporated association or a class of incorporated associations, from one or more of the annual reporting requirements under the act.

An exemption will be able to be made subject to any conditions specified by the minister.

An example of where such a discretion could be exercised is where an incorporated association is also registered with, and required to report to, another regulator. The minister could consider exempting incorporated associations that are registered with the other regulator from the reporting requirements under the Associations Incorporation Reform Act on condition that they comply with their annual reporting requirements to the other regulator. Such an exemption could be supported by an agreement between the registrar of incorporated associations and the other regulator to share annually reported information, including financial statements submitted by relevant associations.

To this end, the bill will also amend the act to authorise the registrar to enter into appropriate information-sharing arrangements with other regulators.

The bill will also make a number of amendments to the entry and inspection powers under the Associations Incorporation Reform Act to align them with the equivalent provisions in the Australian Consumer Law and Fair Trading Act 2012 on which they are modelled.

The entry and inspection powers provisions in the Australian Consumer Law and Fair Trading Act were amended in June 2016 by the Consumer Acts and Other Acts Amendment Act 2016 to enhance a nationally uniform approach to consumer law enforcement and to address developments in contemporary business practices.

For example, existing search warrant provisions are predicated upon the presence of physical evidence, including documents and business records, at a location specified in the search warrant. However, in large businesses, computer users are often connected to a network via a computer that simply functions as a terminal with data actually stored on servers located elsewhere in the network. If an inspector simply searches a computer at a specified physical location, little data may be found because all important records are stored elsewhere on the network.

In addition, in many instances contemporary business practice is shifting to electronic document storage on the internet rather than on a corporate network, for example, cloud storage of electronic business records.

To address these developments, the search warrant provisions of the act will be amended, consistent with the amendments made to the Australian Consumer Law and Fair Trading Act, to enable a warrant to be issued that will authorise an inspector to access electronic material via any computer or electronic device located on premises and to require any necessary assistance to do so, such as logon details, passwords or relevant software to view encrypted data.

To address the new online MyCAV transaction system, the bill will also amend the Associations Incorporation Reform Act to enable provision or inspection of a physical document (where that is available) or provision or inspection of a physical record of the relevant transaction showing the data entered through that transaction.

The bill makes a minor amendment to the Conveyancers Act 2006 to insert a general offence provision, consistent with other licensing acts in the consumer affairs portfolio, for failing to comply with a requirement of an inspector or the director of Consumer Affairs Victoria under the enforcement provisions in part 8 of that act.

It will also make a minor amendment to the Second-Hand Dealers and Pawnbrokers Act 1989 to provide a discretion to the registrar of the Business Licensing Authority to reduce or waive fees for applications under that act where it may be appropriate to do so.

The bill will amend the Motor Car Traders Act 1986 to enable a licensed motor car trader to sell a motor vehicle subject to a security interest registered on the national Personal Property Securities Register in favour of the sheriff of Victoria where the trader has been engaged by the sheriff to sell that vehicle, notwithstanding the registration of any other security interest subsequent to that of the sheriff.

The sheriff, upon seizing a motor car pursuant to a court order in satisfaction of a judgement debt, registers its right to sell the car on the Personal Property Securities Register under the commonwealth Personal Property Securities Act 2009. The sheriff relies on this registered interest to sell the car and commonly engages a licensed motor car trader to sell the vehicle on its behalf. Where the vehicle is sold, the sheriff is entitled to satisfy the debt owing with the proceeds of sale, subject to the sheriff's position as a priority creditor.

However, under section 48(1) of the Motor Car Traders Act, a licensed motor car trader is unable to sell a motor car without first procuring the cancellation of any security registration relating to the motor car. This essentially serves to prevent them from selling the vehicle unless they first cancel all other security registrations relating to the vehicle, including any entered into the register after that of the sheriff.

There have been instances where a third party, often a colleague or relative of the debtor, has been able to prevent the sheriff's sale of a vehicle by registering an interest over the seized vehicle subsequent to its seizure. The third party's interest, created by a transaction such as a sham loan from the third party to the debtor, is often of similar or of greater value than the seized vehicle. Such a loan would, in effect, have been made against a false security. The third party can then refuse to remove its interest from the register, and effectively block the sale.

To address this issue, the bill will amend section 48(1) of the Motor Car Traders Act to exempt a licensed motor car trader from the requirement to procure cancellation of any security interests registered in respect of the seized motor car before sale, where a sale is being conducted on behalf of, or pursuant to, a registered interest of the sheriff to sell.

It is important to note that all the existing rights, obligations and requirements under the Personal Property Securities Act will continue to apply in respect of any sale by a licensed motor car trader of a vehicle seized by the sheriff and the proceeds from the sale of the seized vehicle will continue to be applied in order of priority of registered interests. That is, proceeds of the sale will continue to be required to be applied to satisfy any valid security interest registered prior to the registration of the sheriff's interest.

The bill will also amend the cooling-off provisions in the Sale of Land Act 1962. The cooling-off provisions are an important consumer protection in the Sale of Land Act which allow a purchaser under a contract for the sale of land to give notice to the vendor that they do not wish to go ahead with the contract. A cooling-off notice must be given within three clear business days after the purchaser has signed the contract.

Section 31(3) of the Sale of Land Act currently provides that the cooling-off notice 'shall be given to the vendor or his agent or left at the address for service of the vendor specified in the contract …'.

It has been standing industry practice that where a vendor has engaged an estate agent to act on their behalf in the sale of land, that estate agent can accept service on behalf of the vendor of any cooling-off notice given by a purchaser. Service of a cooling-off notice on a vendor's estate agent has commonly been assumed by each party to have been a valid exercise of the cooling-off rights under the act.

However, in a decision of the Supreme Court in the matter of *Tan v. Russell* in early 2016, the court held that the term 'agent' in section 31(3) meant 'agent at law'. The court found that the authority commonly granted by a vendor to an estate agent to sell a property does not make the estate agent an agent for the vendor for all purposes, including for the purpose of accepting service of a cooling-off notice on behalf of the vendor.

The bill will amend section 31 of the Sale of Land Act to expressly include reference to the vendor's estate agent. This amendment will remove any uncertainty about service on the vendor's estate agent and, as I have noted earlier, accords with longstanding industry practice.

To further address any uncertainty in instances where a purchaser has, in good faith, served a cooling-off notice on a vendor's estate agent, the bill will also amend the Sale of Land Act to retrospectively validate any such service. Importantly, however, in making such a retrospective validation, the bill clearly provides for an exception in the case only of the parties in the Supreme Court matter of *Tan v. Russell* and in the case of any other parties who may have already commenced court proceedings based on the decision in that matter.

Lastly, the bill will make minor amendments to the Veterans Act 2005 to enable patriotic funds to be used to support a wider range of ex-service personnel and their dependants than is currently the case, and to enable the director of Consumer Affairs Victoria to approve the amendment or adoption of a new trust deed for a patriotic fund where the objects and purposes of the new deed or amended deed are generally consistent with the purposes of a patriotic fund as specified in section 23 of the act.

I commend the bill to the house.

Debate adjourned for Mr O'DONOHUE (Eastern Victoria) on motion of Mr Ondarchie.

Debate adjourned until Thursday, 2 March.

CRIMES (MENTAL IMPAIRMENT AND UNFITNESS TO BE TRIED) AMENDMENT BILL 2016

Introduction and first reading

Received from Assembly.

Read first time on motion of Ms TIERNEY (Minister for Training and Skills); by leave, ordered to be read second time forthwith.

Statement of compatibility

Ms TIERNEY (Minister for Training and Skills) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 ('the charter'), I make this statement of compatibility with respect to the Crimes (Mental Impairment and Unfitness to be Tried) Amendment Bill 2016.

In my opinion, the Crimes (Mental Impairment and Unfitness to be Tried) Amendment Bill 2016, as introduced to the Legislative Council, is compatible with human rights as set out in the charter. I base my opinion on the reasons outlined in this statement.

Overview

The Crimes (Mental Impairment and Unfitness to be Tried) Amendment Bill 2016 (the bill) amends the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (the CMIA). The bill implements reforms recommended by the Victorian Law Reform Commission in its report on the *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (the report). The changes made by the bill include:

- the introduction of general statutory principles to guide the exercise of functions and powers;
- streamlining procedure and clarifying legal tests;
- creating a new test for fitness to plead guilty; and
- replacing the current review framework with a system of regular progress reviews.

Human rights issues

The current CMIA regime of supervision

The bill maintains the CMIA's regime of supervision and management of people found unfit to stand trial or not guilty because of mental impairment.

If a person is declared liable to supervision under the CMIA, the court must make a supervision order with respect to the person. A custodial supervision order commits the person to custody in an appropriate place or, as a last resort, in a prison. An appropriate place is defined as a designated mental health service, a residential treatment facility or a residential institution. A non-custodial supervision order involves release of the person on conditions decided by the court.

The framework provided by the CMIA, the Mental Health Act 2014 and the Disability Act 2006 allows for the compulsory treatment of people subject to custodial supervision orders. A person released on a non-custodial supervision order on conditions decided by the court may be required to undergo treatment or receive services.

General statutory principles for adults

Clause 5 of the bill introduces the following general statutory principles that guide the exercise of functions and powers in the CMIA with respect to adults:

- restrictions on a person's freedom and personal autonomy should be kept to the minimum consistent with the safety of the community;
- in conducting any proceeding, making any decision or taking any action, the safety of the community should be considered;
- unreasonable delay should be avoided, particularly in matters involving the question whether an accused is fit to stand trial or where the defence of mental impairment is raised or where the accused is a child;
- consideration should be given to the needs of everyone affected by the offence, including the accused, family members of the accused and the victim or victims of the offence; and
- any proceeding should be conducted and, where appropriate and consistent with the rights of the accused, modified in a manner that acknowledges the need to involve and provide support to all the people affected by the proceeding, including the victims of the offence, the accused and family members of the accused.

These principles are relevant to a number of rights in the charter and in particular promote:

- the right to liberty and security of person — section 21 of the charter;
- the right of all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person — section 22 of the charter;
- the right to be tried without unreasonable delay — section 25(2)(c) of the charter.

Statutory principles for children

The bill inserts a statutory principle which applies specifically to proceedings in the Children's Court. In deciding whether to make, vary or revoke a supervision order the court must have regard to the need to strengthen and preserve the relationship between the child and the child's family, the desirability of allowing the living arrangements, education, training or employment of the child to continue without disturbance and the need to minimise the stigma and discrimination to the child from a court determination.

These principles enhance the protection of families and children under section 17 of the charter and the right of a child charged with a criminal offence to procedure that takes into account the age of the child and the desirability of promoting the child's rehabilitation under 25(3) of the charter.

The bill also introduces a statutory principle that unreasonable delay should be avoided where the accused is a child or was a child at the time of the alleged offence. This principle is relevant to, and enhances, the right to be tried without unreasonable delay in section 25(2)(c) of the charter.

Reframing the test for unfitness

The bill amends the statutory test for when a person is unfit to stand trial. The test has been amended to focus on the fairness of the trial and so enhances the right to a fair hearing under section 24 of the charter.

The bill will also require the court, when determining whether a person is unfit to stand trial, to consider the extent to which certain modifications can be made to facilitate the person's effective participation in the trial, including whether more appropriate communication methods can be used in court. This is consistent with rights in criminal proceedings under section 25 of the charter and, specifically, the right to have the assistance of specialised communication tools and technology if the person has communication or speech difficulties under section 25(2)(j).

Fitness to plead guilty

The bill inserts a statutory test for fitness to plead guilty on the basis that while a person may be unfit for trial, they may have sufficient capacity to make an informed decision to plead guilty. The insertion of a statutory test for fitness to plead guilty will allow a person who is fit to plead guilty to access the normal criminal process, and is based on the rationale that where an accused has the capacity to make a particular decision that decision should be given effect as far as possible. The test for fitness to plead guilty incorporates several safeguards to protect the right of an accused not to be compelled to confess guilt and so complies with section 25(2)(k) of the charter.

Reconsidering a finding of fitness

The bill enables the court (not including the Children's Court), at any time before a supervision order is made, to set aside a finding of unfitness and make a finding of fitness. Although this provision does not strictly engage the right not to be tried or punished more than once in section 26 of the charter, this provision is unconventional in Victorian legislation because it disturbs the finality of a court's finding of fact. It is justified by the need to protect the integrity of the CMIA process and to provide a process for the rare cases in which a court is satisfied that new evidence not considered as part of the initial investigation demonstrates a high degree of probability the person was feigning unfitness.

The defence of mental impairment

The bill introduces a statutory definition of mental impairment. The definition is non-exhaustive, but makes clear that a cognitive impairment, such as an intellectual disability, is capable of qualifying as a mental impairment for the purposes of the CMIA, while a temporary condition such as a drug-induced psychosis cannot qualify. This is consistent with the current position at common law. The definition also excludes personality disorders.

Excluding personality disorders and temporary disorders arising from an external cause (such as the consumption of drugs or alcohol) from the definition of mental impairment engages the right to a fair hearing, as it prevents people with these disorders from accessing the defence of mental impairment.

However, the right is not limited because in practice people with personality disorders generally cannot establish that they did not know the nature and quality of their conduct or that it was wrong, and therefore are unlikely to be able to establish the defence of mental impairment in any event. Similarly, it is inappropriate that for a person who does not have a mental impairment that exists independently of an external cause to be subject to a supervision order. Excluding such persons from CMIA processes is consistent with the purpose of the defence.

Making fitness to stand trial a question for the judge not the jury

The bill amends the CMIA so that a judge, rather than a jury, determines the question of a person's fitness to stand trial. This amendment aims to expedite fitness investigations and increase the efficiency of court processes.

This amendment is relevant to, and enhances, the right to be tried without unreasonable delay under section 25(2)(c) of the charter. As the jury will still make the ultimate determination of criminal responsibility this amendment is consistent with the right to a fair hearing under section 24 of the charter.

Only directing on relevant findings at special hearings

The bill will change the way jury directions are given in CMIA matters, to bring them into line with contemporary practices for directing juries. The bill will provide that at special hearings judges need only direct the jury on findings that are reasonably available on the evidence. The bill will also make clear that the Jury Directions Act 2015 applies to special hearings.

These amendments aim to eliminate inefficient practices, reduce uncertainty about what is required and decrease appeals. They are therefore relevant to, and enhance, the right to a fair hearing under section 24 of the charter and the right to be tried without unreasonable delay in section 25(2)(c) of the charter.

Power to remand following a finding that the accused is unfit to stand trial and is not likely to become fit within 12 months

The bill remedies a drafting anomaly to allow the judge to remand an accused in custody in a prison or an 'appropriate place' between a finding of unfitness and a special hearing. 'Appropriate place' is defined to mean a designated mental health service, a residential treatment facility or a residential institution.

This power limits the right to liberty and freedom of movement. The purpose of the limitation is to allow the accused to receive treatment and services between the outcome of a fitness investigation and a special hearing, while also detaining the accused pending the outcome of the special hearing for community safety reasons. The requirement that a person will only be remanded in custody in a prison if the judge is satisfied that there is no practicable alternative in the circumstances ensures that prison is a last resort and the least restrictive means reasonably available to achieve the limitation's purpose. This limitation is therefore reasonable and proportionate with reference to the purpose of the limitation.

Attendance at special hearings and review hearings

The bill allows an accused to 'attend' a special hearing by audiovisual link, with the consent of both parties. This

amendment engages the right contained in section 25(d) of the charter for a person to be tried in person. A special hearing is conducted before a jury after the accused has been found unfit to stand trial. The accused still participates in their hearing 'in person' even if they attend by audiovisual link. The accused is not being tried in absentia.

Appeal against any finding of fitness to stand trial

The bill will provide a right to appeal against a finding of fitness to stand trial. The right to appeal a finding of fitness will protect against situations where a person is subject to the trial process when they should not be.

Although this appeal right relates to a pre-trial issue, considering the significance of fitness investigations to the outcome of criminal proceedings, this amendment promotes the right to a fair hearing and the right to have conviction and sentence reviewed by a higher court in accordance with law contained in section 25(4) of the charter.

Ancillary orders

The bill will make ancillary orders and consequences available following a CMIA finding. Where the court considers it appropriate to do so, orders may be made under the Sentencing Act 1991, the Confiscation Act 1997 and the Road Safety Act 1986.

It is intended that ancillary orders imposed following a CMIA finding will not be punitive in nature. Orders will only be available under the Confiscation Act in relation to proceeds of crime, and under the Sentencing Act for the purposes of preserving property to satisfy potential restitution and compensation orders. Where orders are mandatory, such as under the Road Safety Act, it is proposed to provide the court with discretion, so orders are only made in appropriate circumstances.

These amendments engage the right contained in section 20 of the charter, which provides that a person must not be deprived of his or her property other than in accordance with law. Although this right is relevant, it is not limited, because a person subject to these provisions will not be deprived of property other than in accordance with procedures established by law.

Reviews of supervision orders

The bill will maintain the indefinite nature of supervision orders and the current system of nominal terms but will provide for a system of mandatory, regular progress reviews. These progress reviews will occur at intervals of five years or less, acting as a safeguard against arbitrary detention.

The frequency of reviews is not linked to criminal penalty but reflective of the CMIA principles of least restriction and gradual integration. The frequency of reviews under the progress review system promotes the right of a person not to be subject to arbitrary detention in section 21(2) of the charter. The presumptions attached to progress reviews also act as safeguards against arbitrary detention as the onus eventually shifts from the applicant to the state to justify that continued detention is appropriate.

A new test of unacceptable risk

The bill replaces the legislative tests that refer to whether the supervised person is likely to seriously endanger themselves or other people with a modernised unacceptable risk test. The new unacceptable risk test will be used by decision-makers when reviewing and varying existing supervision orders and deciding whether to grant short-term or extended leave from a person's place of custody.

Decision-makers will be required to consider whether the person subject to a custodial supervision order poses an unacceptable risk of serious harm when deciding whether to:

vary custodial supervision orders at progress review and on application;

grant or suspend a special leave of absence;

grant or suspend on-ground or limited off-ground leave;

grant, suspend or revoke extended leave;

apprehend a person subject to a non-custodial supervision order;

increase the level of supervision of a person transferred to Victoria from interstate or overseas.

Decision-makers will be required to consider whether the person subject to a custodial supervision order poses an unacceptable risk of harm when deciding whether to:

revoke non-custodial supervision orders at progress review and on application.

The unacceptable risk test, in its various forms, balances the principle of least restriction with community safety, and is therefore relevant to the right to liberty and the right to security of person in section 21 of the charter. Decision-makers must be satisfied that the applicant does not pose a risk of 'serious harm' before granting various forms of leave and before varying a custodial supervision order to a non-custodial supervision order. This ensures that people are only kept on the highest level of supervision — in custody — if they pose a risk of serious harm to the community.

This is balanced by requiring a court to be satisfied that a person does not pose a risk of harm to the community before finally discharging a person from a non-custodial supervision order. This approach balances the principle of least restriction with the need to protect the community by subjecting a person to the least restrictive order while there is still a risk of harm to the community.

Supervision of people with a cognitive impairment or disability

The bill amends the Disability Act 2006 to expand the functions and powers of the senior practitioner, disability. The senior practitioner will be responsible for ensuring that the rights of individuals with an intellectual disability on CMIA supervision orders are protected, and appropriate standards applied to their treatment.

These measures promote the right of all persons who are deprived of liberty to be treated with humanity and with respect for the inherent dignity of the human person under section 22 of the charter.

The Hon. Gayle Tierney, MP
Minister for Corrections

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Ms TIERNEY (Minister for Training and Skills).

Ms TIERNEY (Minister for Training and Skills) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (CMIA) abolished the Governor's pleasure system, establishing new procedures to deal with people found unfit to stand trial or not guilty because of mental impairment. The act represented the first time such rules had been set out comprehensively, in a single Victorian statute.

The CMIA replaced a system that was considered antiquated and unjust. It brought transparency and legal certainty to people subject to the CMIA regime. After nearly two decades of operation, growth in the number of people supervised under the CMIA, and changes in the types of people and cases affected by its provisions, it was time for it to be reviewed.

Accordingly, in 2012, the previous government asked the Victorian Law Reform Commission (VLRC) to review the operation of the CMIA. Its report was tabled in Parliament on 21 August 2014. I thank the VLRC for its wideranging and comprehensive review. This bill implements a number of recommendations made by the VLRC.

The reforms in this bill will streamline processes, modernise legal tests and make systemic improvements to the CMIA, enhancing the operation of the act for those subject to it, and all users of the act.

The reforms will help ensure that the CMIA operates consistently with its underlying principles, as identified by the VLRC. These include protecting the rights of the accused, such as by ensuring that they are afforded a fair trial, are only punished where they are morally blameworthy, and have their freedom and autonomy restricted only so far as is necessary.

The reforms also recognise the rights of others, including victims and family members, and the need to protect the community from dangerous individuals. Finally, they uphold the therapeutic focus of the CMIA, and encourage the gradual reintroduction of supervised people back into the community when it is safe to do so.

Statutory principles

The bill introduces a set of statutory principles to guide decision-making under the CMIA, in accordance with one of the VLRC's recommendations. The statutory principles will ensure that courts and other decision-makers under the CMIA will always have regard to the needs of victims and family members, consider the safety of the community, avoid unreasonable delay, and modify proceedings in a way that acknowledges all people affected by the proceeding. At the same time, it gives prominence to the 'principle of least restriction', which provides that the restrictions imposed on a supervised person must be kept to the minimum consistent with community safety.

The bill also provides for a list of considerations to which the Children's Court must have regard when making, varying or revoking a supervision order in relation to a child, as recommended by the VLRC. These include the need to strengthen and preserve the child's relationship with their family, the desirability of not disrupting their living and educational arrangements, and the need to minimise stigma and discrimination against the child.

Clarifying and modernising legal tests

The bill clarifies and modernises a number of legal tests in the CMIA. In accordance with the VLRC recommendation, the bill reframes the test for unfitness to stand trial to clarify the law and focus the fitness criteria on the crucial decisions relevant to participation in a criminal trial. Importantly, the focus of the test is now on whether the accused can receive a fair trial.

The bill also introduces an inclusive definition of 'mental impairment', in line with a VLRC recommendation. The definition will make clear that, for the purposes of the CMIA, 'mental impairment' includes mental illness and cognitive impairment (such as intellectual disability). Further, it excludes any temporary impairment of an otherwise healthy mind caused by an external event, such as the consumption of a drug. The definition also excludes personality disorders.

As recommended by the VLRC, the bill introduces the concept of 'unacceptable risk' to decisions made under the CMIA, replacing the existing 'serious endangerment' test. For example, in deciding whether to grant extended leave to a person, the court will be required to consider whether granting leave will result in an unacceptable risk of the supervised person causing serious harm to another person. The new wording will also apply to other categories of leave, and decisions as to the appropriate level of supervision.

This terminology is consistent with other contemporary legislative schemes, such as those relating to bail and serious sex offender supervision. In addition, the bill implements the VLRC recommendation to remove the risk the person poses to themselves as a consideration for decisions where civil orders would be available to manage the risk.

Introducing a test for fitness to plead guilty

The bill creates a test of fitness to plead guilty, implementing a VLRC recommendation. The judge presiding over the fitness investigation will be able to find that a person is capable of pleading guilty, even though they are not capable of undergoing the trial process. In such a case, the person is sentenced as usual under the criminal law.

The bill includes safeguards to ensure that an accused person can only be found fit to plead guilty if they have the capacity to do so. It must be established that the person can understand the offence with which they have been charged and the consequences of pleading guilty before a finding of fitness to plead guilty is made. In addition, the finding can only be made where the person is legally represented, and if it has been requested by the defence. Allowing a person who has sufficient capacity to enter a plea of guilty to do so has the advantage of saving court time, and reducing the burden on the CMIA supervision system.

Transferring assessment of fitness from the jury to the judge

The bill removes the jury as the decision-maker for fitness to stand trial, making this a decision for the judge. This reflects contemporary practice by acknowledging that the question of fitness is more in the nature of a pre-trial determination, appropriately handled by a judge and not a jury. This implements a VLRC recommendation that juries no longer be involved in the determination of fitness, because they deliver few benefits, while increasing cost and stress to the accused.

Optimising fitness investigations

The bill will improve the conduct of fitness investigations by enabling courts to consider any treatment, services or education that have been provided to the accused or that could be provided to them to assist them to understand a trial.

The bill also expands appeal rights in fitness proceedings and allows for an appeal against a finding that a person is fit to stand trial.

Power to reconsider a finding of unfitness

Under the CMIA as currently in force, if the court has found a person unfit and then evidence emerges prior to a supervision order being made that the accused feigned symptoms of unfitness, the court can only make a supervision order or unconditionally release the person. The bill will give courts the power to vacate a finding of unfitness if there is a high probability the person was feigning unfitness, to avoid this situation arising.

Introduction of 'progress reviews'

At present, a person subject to a supervision order is only entitled to a review of their supervision order shortly before the end of their 'nominal term'. The length of the nominal term is set by reference to the person's principal offence and can be up to 25 years. Under this system, some supervised people go for a very long time before being reviewed. While reviews can be ordered by the court when the order is imposed, this is not mandatory.

Under the bill, all persons subject to CMIA supervision orders will be entitled to regular 'progress reviews' which will occur at intervals of five years or less. There will continue to be a 'major' progress review at the end of the nominal term. People already subject to CMIA supervision orders will transition to this new system of review, and so will also be entitled to regular progress reviews.

The bill provides for presumptions for and against the reduction of supervision that depend on how far the person has progressed through the review pathway. These presumptions are designed to encourage the gradual reduction of supervision over time, where this is consistent with community safety. Regular reviews ensure that people subject to CMIA orders are not detained longer than is necessary, and that their treatment and support needs are continually evaluated.

Supervision orders

The bill will allow courts to decline to make a further supervision order in respect of a person already subject to one, consistently with a VLRC recommendation. As supervision orders for adults are indefinite, a subsequent supervision order is unlikely to change the intensity or length of supervision, and has the potential to create inefficiencies and confusion. In such circumstances, the court will be able to make a 'record of subsequent offending order', ensuring that the person's conduct is acknowledged and relevant victims are included in future court processes.

In accordance with the VLRC's recommendation, the bill will require courts to have regard to available civil orders, under the Mental Health Act 2014 or the Disability Act 2006, when considering whether a less restrictive order would be more appropriate. This will help to ensure that a person is subject to the CMIA regime only when necessary.

The bill implements a number of VLRC recommendations to improve the process of review of supervision orders, including:

enabling attendance at hearings via audiovisual link;

allowing reviews to be held 'on the papers' where an order is expected to be unchanged; and

reducing the current three-year restriction on a person reapplying for variation of a custodial supervision order after refusal to 18 months. The change will allow the point at which a supervised person's restrictions can safely be reduced to be identified as promptly as possible.

Ancillary orders

The VLRC recommended that a review be undertaken of the consequences that can follow from a finding under the CMIA, with a view to addressing uncertainty and inconsistencies in the law as it stands. It recommended that any changes not be punitive in intention or effect, so far as possible, and only made where necessary for the safety of the community.

Applying these principles, the bill allows for certain orders to be made following the imposition of a supervision order under the CMIA. These include:

allowing a court to make orders under part 4 of the Sentencing Act 1991, such as for restitution and compensation, where it is appropriate to do so;

allowing for orders under the Confiscation Act 1997 relating to the proceeds and benefits of crime; and

permitting a court to cancel, suspend or vary a driver licence under the Road Safety Act 1986, where such an order is necessary to reduce risk to other road users.

Transfer of functions from the Forensic Leave Panel to the Mental Health Tribunal

Applications for short-term leave by people on CMIA supervision orders are currently determined by the Forensic Leave Panel. Under the bill, the Forensic Leave Panel will cease to operate and this role will be transferred to the Mental Health Tribunal.

The tribunal has well-established systems of scheduling and conducting hearings, generating determinations and statements of reasons, and already conducts hearings at Thomas Embling Hospital. There is considerable overlap in the membership of panel and the tribunal and this change will result in a more efficient system.

Leave applications

The bill implements the VLRC recommendation that both the court and the Mental Health Tribunal be required to have regard to any on-ground or off-ground leave the person has been granted, and their compliance with leave conditions, when deciding whether to grant further leave. This will promote continuity in decision-making.

The bill also requires courts and the Mental Health Tribunal to consider a supervised person's recovery and progress when exercising decision-making powers under the CMIA, consistent with the therapeutic focus of the CMIA.

Finally, the bill implements the VLRC's recommendation that a person be able to apply for short-term leave during a period of suspension of extended leave. This will allow people subject to suspension to continue to undertake safe activities, enabling them to demonstrate progression and treatment compliance.

Improving the treatment of people with cognitive impairment under the CMIA

The CMIA applies to people with mental illness and people with a cognitive impairment. The significant consideration is the person's ability to understand and participate in the criminal justice process so that the trial process is fair, rather than the type of illness or disability the person has. However, a theme in the VLRC's report was the need to differentiate between people in each category when considering their treatment and supervision needs after a CMIA order is made. The VLRC found that the model of supervision for people with a disability could be improved. Accordingly, it made a number of recommendations designed to provide a clearer treatment pathway, more safeguards and better clinical oversight of persons with cognitive impairment.

The bill will, in accordance with a VLRC recommendation, require courts to consider whether there are adequate facilities or services available in the community for the care or treatment of the person, as the case requires. It also implements recommendations relating to the inclusion of treatment plans in relevant reports for people with cognitive impairment. In preparing annual reports for the court to consider a person's progress under a supervision order, in addition to reporting on the person's treatment the supervisor must also report on the person's progress towards attaining independence and physical, mental, social and vocational ability. This recognises that the progress milestones for a person with disability may be measured against broader criteria than just response to treatment.

Finally, the bill amends the Disability Act 2006 to expand the functions and powers of the senior practitioner, disability. The senior practitioner will be responsible for ensuring that the rights of individuals with an intellectual disability on CMIA supervision orders are protected, and appropriate standards applied to their treatment. This change is in keeping with the VLRC's recommendation.

Transfer of functions to the Director of Public Prosecutions

Consistently with a VLRC recommendation, the bill transfers the function of appearing at supervision orders reviews and extended leave hearings from the Attorney-General to the Director of Public Prosecutions. The director is well placed to take on this role, being independent from government and having expertise in dealing with victims.

Procedural improvements

In addition to these changes, the bill also makes a range of procedural improvements to the CMIA, intended to streamline its operation. These affect reports prepared under the CMIA, jury directions, applications to vary supervision orders and leave from a supervision order. Many provisions have also been rewritten to improve the clarity and accessibility of the CMIA.

Interests of victims and family members

Although people who are subject to CMIA supervision are not 'convicted' of their offences in the usual way, there are still victims of their conduct, whose rights and concerns must be considered and respected. In addition, family members of people subject to CMIA orders are often affected by decisions to vary the supervision order or to grant leave to the supervised person.

The bill will improve consideration of the rights of victims and family members. In addition to the statutory principles mentioned earlier, it will allow victim and family member reports to be read aloud at the relevant court hearing, as currently allowed for victim impact statements in sentencing hearings. It will also modernise processes for notifying victims and family members of upcoming hearing dates.

In addition, the bill will improve consideration of victims by requiring the Mental Health Tribunal to have regard to the circumstances of victims and family members, where they are known to the tribunal, in setting conditions of short-term leave granted to people on CMIA supervision orders. For example, if known to it, the tribunal would be able to take into account the home and work addresses of a victim when setting the conditions of the supervised person's short-term leave.

Conclusion

This bill will ensure that the CMIA continues to achieve its underlying objectives, while being responsive to changes in those supervised under the CMIA. It reflects a continuing evolution in our understanding of mental impairment and responds to the detailed and valuable work of the VLRC. At the same time, the bill strikes a balance between the need to protect the rights of those charged with crimes but suffering a mental impairment, against the need to protect community safety and uphold the rights of victims.

I commend the bill to the house.

Debate adjourned for Mr O'DONOHUE (Eastern Victoria) on motion of Mr Ondarchie.

Debate adjourned until Thursday, 2 March.

ELECTRICITY SAFETY AMENDMENT (BUSHFIRE MITIGATION CIVIL PENALTIES SCHEME) BILL 2017

Introduction and first reading

Received from Assembly.

Read first time on motion of Ms TIERNEY (Minister for Training and Skills); by leave, ordered to be read second time forthwith.

Statement of compatibility

Ms TIERNEY (Minister for Training and Skills) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006, (the charter), I make this statement of compatibility with respect to the Electricity Safety Amendment (Bushfire Mitigation Civil Penalties Scheme) Bill 2017.

In my opinion, the Electricity Safety Amendment (Bushfire Mitigation Civil Penalties Scheme) Bill 2017 (the bill), as introduced to the Legislative Council, is compatible with human rights as set out in the charter. I base my opinion on the reasons outlined in this statement.

Overview

This bill amends the Electricity Safety Act 1998 (the act) to impose additional bushfire requirements on major electricity companies, enable the enforcement of those additional requirements, and provide for information notices and other matters. As the majority of the amendments apply only to major electricity companies, rather than individuals, and corporations do not have human rights, the charter does not apply to those provisions of the bill. There are, however, some provisions of the bill that apply to individuals and to which the charter may be relevant.

Human rights issues

Freedom of expression and presumption of innocence

Clause 5 of the bill amends section 141AB of the act, which provides for Energy Safe Victoria (ESV) to issue notices to collect information in relation to the performance of distribution companies in complying with divisions 1A, 2 and 4 of part 8, and part 10 of the act. A person who is given a notice must comply with it, unless they have a lawful excuse. The penalty for failing to comply with such a notice is, in the case of a natural person, 50 penalty units and, in the case of a body corporate, 200 penalty units.

Clause 5 broadens section 141AB by allowing ESV to require such information for the purposes of verifying the compliance of distribution companies, whereas currently ESV may only require such information for the narrower purpose of preparing annual reports in relation to the performance of those obligations.

To the extent that new section 141AB imposes information-provision obligations on individuals in a broader range of circumstances than previously, the right to freedom of expression as protected by section 15 of the charter may be relevant to clause 5 of the bill. However, in my view, any interference with this right either falls within the internal qualifications on the right, or is reasonably justified under section 7(2) of the charter.

Section 15 of the charter provides that every person has the right to freedom of expression, which includes the freedom to impart information and ideas of all kinds and, potentially, the right not to impart information. However, section 15(3) of the charter provides that special duties and responsibilities attach to this freedom and that the right may be subject to lawful restrictions that are reasonably necessary in the interests of public order and health (amongst other things).

To the extent that the broadened information-gathering power in section 141AB imposes any restrictions on the freedom of expression of an individual, in my view the powers are reasonably necessary for the protection of public order and health under section 15(3) of the charter. This is because the broadened power to acquire information under section 141AB will enable ESV to obtain certain information relating to bushfire mitigation (for example, annual fire start data), which may be relevant and reasonably necessary for distribution businesses to provide to evidence the safe operation of their networks for the purposes of public safety. For these reasons, I consider that clause 5 does not limit section 15 of the charter. In any event, in my view any resulting limit on the right is minimal, serves the clear and important purpose of promoting public safety, and is therefore demonstrably justifiable.

To the extent that clause 5 broadens a provision that imposes obligations to which penalties attach for non-compliance, except if a person has a lawful excuse, the right to be presumed innocent may also be relevant. This is because the lawful excuse defence could be said to impose an evidential onus on a person (to make out the defence). However, in my view, this does not transfer the legal burden of proof, because once the defendant has adduced or pointed to some evidence, the burden is on the prosecution to prove the absence of the exception raised. Courts in other jurisdictions have generally taken the approach that an evidential onus on a defendant to raise a defence does not limit the presumption of innocence. The exception that is provided relates to matters within the knowledge of the defendant and, if the onus were placed on the prosecution, would involve the proof of a negative which would be very difficult.

For these reasons, I consider that it is appropriate for an evidential burden to be placed on a defendant in this instance.

Hon. Gavin Jennings, MP
Special Minister of State

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Ms TIERNEY (Minister for Training and Skills).

Ms TIERNEY (Minister for Training and Skills) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This week marks the eighth anniversary of the Black Saturday bushfires of 7 February 2009. We reflect on the fact that powerline ignitions caused the loss of 159 of the 173 lives lost and contributed to the loss of over 2000 homes and $4.4 billion suffered by Victorians in this tragic event.

The Electricity Safety Amendment (Bushfire Mitigation Civil Penalties Scheme) Bill 2017 (the bill) is an important measure to reduce the bushfire threat posed by powerline faults to regional and rural Victorian communities. The bill will provide powers in the Electricity Safety Act 1998 (the act) for the director of energy safety and the Minister for Energy, Environment and Climate Change to pursue civil penalties against the electricity distribution businesses as a measure of last resort to ensure that the distribution businesses deliver specified bushfire safety measures on time and to the correct standard. This bill will ensure that the electricity distribution businesses meet enhanced powerline fault detection and suppression obligations and replace bare wires with covered conductor or undergrounded powerlines in areas of the state of highest bushfire risk. The bill will also amend the act to allow the director of energy safety to compel more transparent reporting from the distribution businesses on how they plan and deliver the enhanced standards and their broader bushfire mitigation activities.

Through this strengthened compliance mechanism, the bill seeks to provide Victorian regional and rural communities with an assurance that they will receive the full safety benefit from enhanced bushfire mitigation technology.

The bill will require the distribution businesses to achieve these bushfire mitigation obligations by prescribed program delivery milestones.

The first obligation specifies that AusNet Services, Powercor and Jemena must demonstrate compliance with the enhanced fault detection and suppression standards on all 22-kilovolt powerlines emanating from their share of 45 targeted zone substations in rural and regional Victoria. The bill requires the businesses to deliver these upgrades according to a 'points' scheme. The businesses must achieve 30 points of zone substations by 1 May 2019, 55 points by 1 May 2021 and all residual points by 2023. This obligation does not specify a type of technology, but the distribution businesses may meet the prescribed fault detection and suppression capability by deploying rapid earth fault current limiters (REFCLs).

The second obligation in the bill specifies that the distribution businesses must construct or replace high-voltage bare-wire powerlines in 33 specified electric line construction areas, either by undergrounding or constructing covered conductors. These powerlines must be compliant with this standard upon inspection by Energy Safe Victoria (ESV).

The third obligation in the bill requires that the distribution businesses deliver all remaining single wire earth return (SWER) powerline automatic circuit reclosers (ACRs) by 31 December 2020.

The current Electricity Safety (Bushfire Mitigation) Regulations 2013 will retain the obligation of the distribution businesses to include the three enhanced bushfire mitigation standards in their bushfire mitigation plans (BMPs).

The bill applies civil penalties for non-compliance with these obligations on both an initial and an accrued daily basis. The businesses will be penalised a maximum of $2 million for every point under the total required for each delivery milestone for the 45 zone substations and $5500 for every day of non-compliance following. Distribution businesses will face a maximum initial civil penalty of $350 000 for every kilometre of installed powerline in the 33 specified electric line construction areas that has been found to be non-compliant with the new standards, with $1000 for every kilometre each day after; and a maximum initial penalty of $50 000 for each SWER ACR not installed and $150 for each day following.

The bill also includes specific reporting and audit powers in the act in relation to the bushfire mitigation obligations and broader distribution network bushfire safety performance.

The bill will amend the act to require the electricity distribution businesses to demonstrate to the director of energy safety annually in dedicated bushfire mitigation obligation reports how they are complying with the new bushfire mitigation obligations. These status reports must detail the actions and works that the businesses have undertaken to deliver the new bushfire mitigation obligations in the last 12 months and provide delivery plans for the next 12 months, covering 1 May to 30 April each year. These annual reports shall be signed off by the businesses at a board level and should reflect a rolling plan to be included in the businesses' BMPs. Failure by the electricity distribution business to submit these reports by 31 July each year from 2018, at the required standard, will incur a maximum civil penalty of $10 000 in the first instance and $1000 for each day until rectified.

The bill contains new provisions to allow ESV to require an electricity distribution business to obtain an independent audit with respect to its progress towards complying with the new direct bushfire mitigation requirements. The results of these reports must be provided to ESV. This amendment will also allow ESV to conduct these audits itself. Failure to deliver these reports to a standard satisfactory to ESV will attract a maximum initial civil penalty of $50 000 and a $5000 daily penalty until rectified.

As an additional compliance mechanism, the bill will give ESV new audit and information notice powers in relation to the new bushfire mitigation obligations. This will allow ESV to verify the information provided by the distribution businesses regarding delivery of the new bushfire mitigation obligations. The bill will also expand ESV's existing information notice powers to allow interrogation of all bushfire mitigation activities undertaken by the distribution businesses in the performance of their existing obligations under the act.

The bill aims to provide greater bushfire risk reduction safety. However, there may be limited cases where delivery timelines or full compliance with the fault detection and suppression standards cannot be met.

The bill allows distribution businesses to seek timeline variations for specific zone substations where the full

standards can still be met. Under the act, ESV may set a new delivery date for full compliance in consultation with the Minister for Energy, Environment and Climate Change.

In cases where the fault detection and suppression standards cannot be met for specific zone substations, the distribution businesses may apply to ESV to advise the minister to seek a Governor in Council exemption. Every effort must be made and evidenced before any exemption is considered. These exemptions are subject to such terms and conditions as are specified and will consider requirements for electricity network infrastructure capital works that deliver equivalent powerline bushfire risk reduction.

This bill will establish a stronger compliance mechanism which will ensure that the powerline bushfire protection benefits recommended by the Victorian Bushfires Royal Commission (VBRC) are safeguarded for Victorians.

I commend the bill to the house.

Debate adjourned for Mrs PEULICH (South Eastern Metropolitan) on motion of Mr Ondarchie.

Debate adjourned until Thursday, 2 March.

FAIR WORK (COMMONWEALTH POWERS) AMENDMENT BILL 2017

Introduction and first reading

Received from Assembly.

Read first time on motion of Ms TIERNEY (Minister for Training and Skills); by leave, ordered to be read second time forthwith.

Statement of compatibility

Ms TIERNEY (Minister for Training and Skills) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the charter), I make this statement of compatibility with respect to the Fair Work (Commonwealth Powers) Amendment Bill 2017.

In my opinion, the Fair Work (Commonwealth Powers) Amendment Bill 2017 (the bill), as introduced to the Legislative Council, is compatible with human rights as set out in the charter. I base my opinion on the reasons outlined in this statement.

Overview

The purpose of the bill is to amend the Fair Work (Commonwealth Powers) Act 2009 (Vic) (the referral act) in relation to certain Victorian public sector employers and employees to expand the range of matters able to be bargained over and included in an enterprise agreement across the Victorian public sector. The referral act operates to refer certain matters relating to workplace relations to the commonwealth Parliament for the purposes of section 51(xxxvii) of the Australian constitution. That reference of matters by the state permits the commonwealth Parliament to extend the application of the Fair Work Act 2009 (cth) (the commonwealth Fair Work Act) to Victorian employers and employees it would not otherwise cover, subject to the exclusions and limitations set out in section 5 of the referral act.

At present, under section 5 of the referral act, certain matters relating to Victorian public sector employees who are not law enforcement officers are excluded from the state's reference, including matters pertaining to the number, identity or appointment (other than terms and conditions of appointment) of those employees. The bill amends the referral act in relation to the exclusions that currently apply to those employees, in order to:

provide for Victoria public sector employees who are not law enforcement officers to enter into enterprise agreements that include terms about matters pertaining to the number, identity or appointment (other than terms and conditions of appointment) of those employees;

provide for some other aspects of the provisions of the commonwealth Fair Work Act to apply in respect of those matters, in order to support bargaining for the inclusion of those matters in enterprise agreements and enforcing terms about those matters;

provide for other, minor related matters.

Human rights issues

The bill would insert a new section 5A into the referral act to provide for the further reference of certain matters pertaining to certain public sector employees. In effect, new section 5A would constitute a limited exception to the present exclusion from Victoria's reference to the commonwealth contained in section 5(1)(a) of the referral act.

New section 5A would provide that, despite the exclusion in section 5(1)(a), the matters referred by the principal act include matters pertaining to the number, identity, or appointment (other than terms and conditions of appointment) of employees in the public sector who are not law enforcement officers ('section 5(1)(a) matters'), to the extent of:

an enterprise agreement made or proposed to be made under the commonwealth Fair Work Act;

a workplace determination being made or proposed to be made that includes an agreed term dealing with a section 5(1)(a) matter; and

the Fair Work Commission dealing with bargaining disputes about section 5(1)(a) matters by arbitration (however described) under section 240 of that act.

However, new section 5A would not allow the Fair Work Commission to:

make an order in relation to transfer of business that a transferable instrument which includes a section 5(1)(a) matter will cover a referral employer; or

provide that a section 5(1)(a) matter of a transferable instrument be enforceable where that instrument will cover a referral employer.

Right of equal access to the Victorian public service (section 18(2)(b))

Section 18(2)(b) of the charter provides that every eligible person has the right, and is to have the opportunity, without discrimination, to have access, on general terms of equality, to the Victorian public service and public office. Discrimination in the context of the charter has the same meaning as in the Equal Opportunity Act 2010 (Vic) (Victorian EO act).

This right is relevant to the bill to the extent that the amended referral will allow enterprise agreements to include terms relating to the identity and appointment of employees (which could include criteria or minimum qualifications) within the Victorian public service. I note that the amended referral will mean that all public sector employees (both those who are covered by the referral act and those who are employees of constitutional corporations) are treated equally in terms of employers and employees being able to bargain over matters pertaining to the number, identity or appointment of those employees. This will create a greater level of fairness and consistency in the bargaining process.

Additionally, I am satisfied that the right in section 18(2) is not limited by the bill because, under the commonwealth Fair Work Act, an enterprise agreement cannot be approved by the Fair Work Commission if it contains unlawful terms, including terms which are discriminatory within the meaning of that act. Further, while the terms of an enterprise agreement will generally prevail over state laws, the commonwealth Fair Work Act provides that an enterprise agreement will apply subject to the Victorian EO act.

Other relevant rights

Although there are no further rights under the charter that are directly relevant to the bill, I note that the further reference of matters under the bill will permit the application of certain provisions of the commonwealth Fair Work Act to public sector employees in respect of section 5(1)(a) matters. Some of the applicable provisions of the commonwealth Fair Work Act may raise human rights issues, including in relation to the right to freedom of association in section 16(2) of the charter, the right to freedom of expression in s 15(2), and the right to privacy in s 13(a).

Section 16(2) of the charter protects the right to freedom of association with others, including the right to form and join trade unions. In the context of workplace relations, the right protects the freedom of persons to join, or not join, associations or organisations for the purpose of acting collectively in the common pursuit of member interests. Some of the provisions of the commonwealth Fair Work Act may engage the right to freedom of association; for example, those that relate to the making of enterprise agreements (part 2-4) and those that regulate employers and their employees taking protected industrial action (part 3-3). In my view, the provisions of the commonwealth Fair Work Act that regulate the making of enterprise agreements do not limit the right in section 16(2) of the charter (to the extent that that right may protect the right to collective bargaining), as they do not undermine, but in fact support the activity of workers joining together to negotiate agreements. Employees maintain the right to freedom of association. Additionally, the bill enhances the right to freedom of association for certain public sector employers who will now be able to bargain collectively in relation to section 5(1)(a) matters, where previously this was excluded. Similarly, the commonwealth Fair Work Act's regulation of industrial action is unlikely to amount to a limit on the right to freedom of association; and, even if it did, I am satisfied that any such limit is proportionate, reasonable and demonstrably justified given the objectives of the legislation to achieve a balanced framework for cooperative and productive workplace relations.

I am also satisfied that the provisions of the commonwealth Fair Work Act that regulate industrial action, which may now apply in respect of s 5(1)(a) matters, do not limit the right of freedom of expression in section 15(2) of the charter. Although such provisions may affect the ability to communicate opinions in certain circumstances, section 15(3) provides that the right to freedom of expression may be subject to lawful restrictions reasonably necessary for, among other things, the protection of public order. The restrictions on freedom of expression through the clear regulation of industrial action in part 3-3 are reasonably necessary and rationally connected to the objectives of the legislative scheme.

The right in section 13 of the charter, which provides that a person has the right not to have his or her privacy, home or correspondence unlawfully or arbitrarily interfered with, is relevant to the rights of entry and associated investigative powers under part 3-4 of the commonwealth Fair Work Act. These are existing powers in the Fair Work Act; however, the bill will permit them to be exercised with respect to suspected contraventions of terms pertaining to section 5(1)(a) matters. To the extent that these powers may interfere with the privacy of the employer or persons in the workplace, it is my view that any interference will be neither unlawful nor arbitrary. The powers serve an important purpose of ensuring compliance with the act, and the manner in which they may be exercised is proportionate to that purpose, particularly as their exercise must be relevant to the investigation of a suspected contravention. The commonwealth Fair Work Act also includes safeguards to protect personal information. Moreover, the entry rights promote the right to freedom of association in section 16(2) of the charter, for example by allowing a union representative to access the records of their members for the purpose of investigating a suspected breach of a section 5(1)(a) matter.

The Hon. Gavin Jennings, MLC
Special Minister of State

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Ms TIERNEY (Minister for Training and Skills).

Ms TIERNEY (Minister for Training and Skills) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill implements the government's commitment to expand the range of matters that may be included in an enterprise agreement made under the Fair Work Act 2009. The bill would amend the Fair Work (Commonwealth Powers) Act 2009 (referral act) to enable public sector employers that are covered by this act (referral employers) to bargain over, and reach agreement on, the subject matters of

the number, identity or appointment of employees in the public sector. This would, for example, allow public sector employees (excluding law enforcement officers) to collectively bargain over and reach agreement on matters such as minimum staffing levels, restrictions on how staff are to be engaged or the number of casual, seasonal or fixed-term employees.

This will enable referral employers and their employees to bargain over these matters in the same way that public sector employers and employees of constitutional corporations may now bargain. It will ensure a greater level of fairness and consistency in the bargaining and enterprise agreement making process across the Victorian public sector.

Background

In 2009, the government undertook to ensure that all Victorians had the benefit and protection of the federal workplace laws by referring certain workplace relations matters to the commonwealth (referral). The referral act fulfilled that promise.

An important objective of the referral was to safeguard the ability for employers and employees to collectively bargain and make enterprise agreements under the federal workplace laws. Since that time, most workers in Victoria have had the benefit of the federal Fair Work Act 2009 and many would be covered by an enterprise agreement approved by the Fair Work Commission (commission).

The referral act was necessary because, in its absence, only workplaces where the employer was a constitutional corporation could be assured of proper coverage by the federal workplace laws. Employers that were not constitutional corporations, being primarily small businesses, partnerships, non-trading community and some public sector organisations and the Victorian public service would have been excluded. The referral act, with some exceptions, captured those employers to ensure that all Victorian businesses and their employees were treated equally.

At that time, Victoria did not refer certain matters in relation to public sector employees. These exclusions are set out in section 5(1) of the referral act (section 5(1) exclusions). In particular, Victoria did not refer matters relating to the number, identity and appointment of public sector employees (section 5(1)(a) matters). These matters were excluded from the referral as they related to matters that the High Court in the *Re Australian Education Union; Ex parte Victoria* (re AEU) decision held to be essential to the functioning of the states. The High Court decided that such matters were beyond the legislative power of the commonwealth.

The Fair Work (Commonwealth Powers) Amendment Bill 2017 is a further step to ensure that the objectives of the referral act continue to be met, by removing the limitation that prevents referral employers and their employees from bargaining about section 5(1)(a) matters.

Why is the bill necessary?

Since the 2009 referral, the legal position with respect to the jurisdiction that may properly be exercised by the commission under the Fair Work Act has evolved.

The Full Court of the Federal Court in *United Firefighters Union v. Country Fire Authority* (UFU v. CFA) recently clarified the position of section 5(1)(a) matters in an enterprise agreement covering a public sector employer that is a constitutional corporation. It held that such terms could validly be included in an enterprise agreement voluntarily made and were enforceable as terms of the agreement. Presently, the section 5(1) exclusions, as they apply to enterprise agreements, result in different outcomes for public sector employers that are constitutional corporations and those that are not constitutional corporations because such terms may not be validly included in an enterprise agreement covering a referral employer and its employees.

Objective of the bill

The central purpose of the bill is to remedy the disparity between public sector employers that are constitutional corporations and public sector employers that are not constitutional corporations (referral employers) by legislating to ensure that section 5(1)(a) matters may be included in public sector enterprise agreements covering referral employers and those terms may be enforced by way of civil remedy provisions under the commonwealth Fair Work Act.

If an amended referral is not made in the manner proposed by the bill, some public sector employers and their employees are free to bargain about section 5(1)(a) matters, while others are not.

Overview of the bill

The bill would allow for referral employers and their employees to bargain over and make enterprise agreements containing terms pertaining to the subject matters of number, identity or appointment of employees in the public sector. Bargaining about such terms will be subject to the bargaining processes in the Fair Work Act, including the good faith bargaining requirements. Parties will be able to apply for bargaining orders and serious breach declarations if there are concerns the good faith bargaining requirements are not being met. Employers and their employees will also be able to take protected industrial action in support of claims in relation to terms about section 5(1)(a) matters and the bill would permit right of entry for suspected contraventions of such terms.

The commission will have jurisdiction to approve enterprise agreements that contain terms about section 5(1)(a) matters and such terms will be enforceable under the Fair Work Act and subject to the enterprise agreement's dispute resolution procedures. The commission may deal with a dispute about a term of an agreement about a section 5(1)(a) matter by mediation or conciliation, by expressing an opinion or making a recommendation or arbitration (where arbitration is expressly provided for in the enterprise agreement).

The bill would also allow for the civil remedy provisions, as set out in the Fair Work Act, to apply to a contravention of a term of an enterprise agreement about a section 5(1)(a) matter. This means that the relevant courts would have power to impose penalties and other orders on public sector employers in respect of breaches of such terms.

However, the bill would not permit a term pertaining to a section 5(1)(a) matter to be imposed on a referral employer and as such, the bill limits the inclusion of section 5(1)(a) matters in some industrial instruments. The principal effect of these limitations is to ensure that a section 5(1)(a) matter is only included in an industrial instrument with the agreement of the parties and not as the result of any arbitral function on the part of the commission.

This means that the commission would not have jurisdiction to arbitrate (even with the agreement of the parties) a bargaining dispute about a section 5(1)(a) matter. This also means that the commission would be able to make a workplace determination containing terms pertaining to a section 5(1)(a) matter but only where those terms are 'agreed terms' as defined by the Fair Work Act. The bill would not permit the commission to make an award, where that award includes a section 5(1)(a) matter. The bill will also not permit a section 5(1)(a) matter to apply to a referral employer by way of transfer of business. This means that a section 5(1)(a) matter in a transferring instrument (as defined by the Fair Work Act) will not be enforceable where that instrument covers a referral employer. Further, the commission will not be permitted to make an order in relation to transfer of business that a transferable instrument which imposes a section 5(1)(a) matter will cover a referral employer.

Who is not covered by the amended referral?

In 2009, Victoria did not refer certain matters in relation to law enforcement officers as they were considered necessary to maintaining the integrity of state laws governing law enforcement officers. The exclusions for law enforcement officers are set out in section 5(2) of the referral act. It is appropriate to maintain the existing exclusion pertaining to law enforcement officers to ensure the integrity and operational independence of state laws governing law enforcement officers. As such, the bill would not alter the position with respect to law enforcement officers.

I commend the bill to the house.

Debate adjourned on motion of Mr ONDARCHIE (Northern Metropolitan).

Debate adjourned until Thursday, 2 March.

ADJOURNMENT

Ms TIERNEY (Minister for Training and Skills) — I move:

That the house do now adjourn.

Ms Fitzherbert — On a point of order, Acting President, following on from my constituency question earlier today, which was in relation to the Sage Institute of Education, I believe the minister may have misled the house. She said the decision of Sage Institute to close was taken without prior notice to the department and also said that students can contact the Australian Skills Quality Authority (ASQA) in relation to their records. My understanding is that Sage is currently in administration under Ferrier Hodgson, under deed of company arrangements, but it is still trading and staff are still active. Also clearly Minister Tierney was misinformed in stating that ASQA can assist students with their inquiries or issue transcripts, given that their records have not been released. I suggest that the minister appears to have misled the house, and she should give a personal explanation in response to this, preferably this evening.

The ACTING PRESIDENT (**Mr Melhem**) — Order! Ms Fitzherbert, can I ask a question: was this a constituency question or a question on notice?

Ms Fitzherbert — I asked a constituency question in relation to Sage Institute this afternoon, and the minister responded directly. Yesterday Ms Pennicuik raised a question without notice; I followed up today with a constituency question directly.

Ms Wooldridge — Further on the point of order, Acting President, it is a very serious issue that requires immediate dealing with, because of course to inform the Parliament and hence the Victorian public that an agency is insolvent and not trading when it actually is can undermine the confidence of students in that organisation and can undermine negotiations that are underway currently in relation to a future transition of those students to a new provider. It is a very grave error to say that an organisation is basically not functioning when it is. It undermines the private sector and the private provision of these services, so it is important that the minister correct this misinformation, and the fact that she misled the house, as urgently as possible.

The ACTING PRESIDENT (**Mr Melhem**) — Order! In my understanding it is a constituency question, and I do not think the house can deal with that, but I understand the point you have made. I am sure the minister will respond at the appropriate time. We have started the adjournment debate. I am sure the minister will take that matter up and respond accordingly, but my advice is that it is a constituency question and we cannot deal with it.

Mr Ondarchie — On a point of order, Acting President, this relates to a question without notice in the house where a minister has given a statement that clearly was not correct. It affects the market and of course Victorians more widely. We had not in fact commenced the adjournment debate because the point of order was raised before we commenced the adjournment debate, so it is still live.

The ACTING PRESIDENT (**Mr Melhem**) — Order! The difficulty I have is that from here the Chair cannot verify the information — whether it is accurate or not — and cannot compel the minister to answer the question. But having said that, should the minister wish to answer the question, or if the minister had failed to answer the question, I think you have made your point. I think that is where I will leave it at this point in time. I will leave it to whenever the minister wishes to answer the question.

Mr Ondarchie — On the point of order, Acting President, just to help you with clarification on this matter, I am happy to table a copy of *Hansard* from yesterday that reflects the minister's answer. It certainly was part of the questions without notice debate, if that will help you at all. If you wish to invite the minister to correct the record, she could do that now.

The ACTING PRESIDENT (**Mr Melhem**) — Thank you, Mr Ondarchie. It is up to the minister to answer the question. As you know, I cannot compel the minister to answer.

Mr Ondarchie — She is here.

The ACTING PRESIDENT (**Mr Melhem**) — Order! Well, I cannot compel the minister. I think the standing orders are very clear, so in the absence of that we will move on to adjournment matters.

Mr Ondarchie — But you can invite the minister.

The ACTING PRESIDENT (**Mr Melhem**) — Order! I have invited the minister, and the minister chose not to. It is a matter for the minister.

Land 400 project

Mr RAMSAY (Western Victoria) — My adjournment matter tonight is for the Minister for Industry and Employment, the Honourable Wade Noonan. The action I seek is that the minister commit to supporting Geelong as an optional site for the $5 billion Land 400 project. I ask for this on the basis that the minister was quoted in the *Geelong Advertiser* as saying that the two tenderers for the $5 billion Land 400 project, BAE Systems and Rheinmetall Defence Australia, preferred only the Fishermans Bend site in Victoria, not Geelong. That has actually been proven incorrect, because both companies reported in the *Geelong Indy* and followed up with calls to say that they were willing to work in Geelong but that the Andrews government wanted the project based in Melbourne at Fishermans Bend. In fact Rheinmetall Defence chairman Andrew Fletcher said his company had no site preference, and BAE's Brian Gathright said Geelong's disused Ford factory was still an option for the Land 400 project for them.

This is an important project for Geelong and for Victoria, and the record does need to be corrected in relation to the minister's statement that he made to the *Geelong Advertiser*. Also, I do seek the Andrews government's support in taking a bipartisan approach to Geelong as a potential site option, given that its much-heralded defence procurement office was located in Geelong, and to support the city's advocacy for defence projects like the Land 400.

Emerald Secondary College

Mr MULINO (Eastern Victoria) — My adjournment matter is for the Minister for Education in the other place and relates to a secondary college in my electorate, Emerald Secondary College. The first two budgets of this term have involved record spends on education, and Emerald Secondary College has received a commitment for $1.5 million to fund and build new classrooms. This college has also received some additional funding in relation to other areas of its operation — for example, it received over $246 000 in equity funding, which was an increase from zero the year before — but what I am specifically asking for action on from the minister in this adjournment matter relates to the $1.5 million in funding for new classrooms. The action I seek is that the minister provide me with some clarification in relation to when construction will begin on those classrooms for which funding has already been announced.

As I am sure everybody in this place could well understand, that funding commitment was very much welcomed by that school and by members of the broader Emerald community, and they are very much looking forward to that project getting underway. Those classrooms are greatly needed by that school. Like so many others in my electorate, they are under great strain from greater numbers in terms of the school population, and this massive infrastructure boost in the electorate, which reflects a broader commitment across the budget, is very much needed. I very much look forward to getting clarification on that and will of course share that with the school and the broader community, and then I look forward to working with the school on the actual construction itself.

Thompsons Road duplication

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I wish to raise a matter for the attention of the Minister for Roads and Road Safety regarding the duplication and triplication of Thompsons Road in Cranbourne and Berwick in my electorate. In particular it is in relation to the upgrade of Thompsons Road at the Thompsons Road–Western Port Highway intersection. As members of the house would be aware, the previous coalition government announced the complete development of that project at a cost of $310 million, including a full grade separation and full diamond interchange at Western Port Highway and Thompsons Road. With the change of government, the Labor government downgraded that project from a

$310 million complete project to a $170 million-odd project which does not have the grade-separated intersection at Western Port Highway and of course consequently does not have the diamond interchange.

Along with the Leader of the Opposition in the other place, the Honourable Matthew Guy, I recently met with traders from the service centre located on the south-east corner of the Thompsons Road–Western Port Highway intersection — this is a large service centre with retailers such as Red Rooster, McDonald's, a BP service station et cetera — regarding the access proposed for that centre from Thompsons Road once the government's proposed project goes ahead.

The issue with that particular plan is that eastbound traffic will not be able to access the service centre located at that intersection. What the traders are therefore seeking, as part of the works which will commence shortly as stage 2 of the project, is that a connection known as Faraday Boulevard, which is connected off Lyndhurst Boulevard, be completed as part of stage 2. It is a minor connection of only a couple of hundred metres, but it would allow access by eastbound traffic into that service centre. It would seem that while plant is on site — while the stage 2 project is underway — would be the time for those works to be completed, not for it to be done as a separate project.

The traders are likewise also concerned that the signalisation of that intersection as proposed will lead to the installation of a lot of temporary, short-term infrastructure which will need to be ripped out when the full grade-separated diamond interchange is built, so their request is also that the proposed alignment which will be required for the grade separation be used as part of this upgrade project rather than the simple, direct signalised intersection as is currently proposed — so that that infrastructure is built in. I ask the Minister for Roads and Road Safety to ensure that funding is provided in this year's budget so that those two elements of the project can be completed at the same time as the stage 2 upgrade.

Seymour Football Netball Club

Ms SYMES (Northern Victoria) — My adjournment matter this evening is for the Minister for Sport, who I know is a great supporter and advocate of country sporting clubs and the beneficial impact that they can have on our regional communities. I grew up in sport clubs in Benalla, and since coming to office I have visited a number of clubs in lots of towns across northern Victoria. I am constantly impressed by the extent to which local volunteers and supporters are the linchpin which keep them running, giving our kids the chance to experience all the benefits of a team environment, the lessons that come from winning and losing, and the long-term wellbeing of being part of a sporting community. These country clubs thrive as a result of community spirit and very often in the absence of pristine facilities.

There are several applications in for the minister's consideration. It is always good if you can say yes to all of them, but one that I am particularly interested in stems from my involvement with the Seymour Football Netball Club. Last Friday I really enjoyed a two-hour stint volunteering on their fundraising sausage sizzle at the Seymour Alternative Farming Expo. It is a great club. It has great volunteers, who I managed to make some burgers with last Friday. The football club is doing all right, but very often you have got the scenario of the netball club being second best in terms of their facilities. They are a growing club. They are bringing in a lot of quality players — they have some who are approaching elite levels in fact — but what they really need is an additional court. They are operating with only one at the moment, so that is putting a lot of pressure on the club. To take their players to the next level they really need the extra space, so I would encourage the minister to look favourably on this application for a new court — preferably with lighting so that it can be used day and night — at the Seymour Football Netball Club in Kings Park.

Buckley Street, Essendon, level crossing

Mr FINN (Western Metropolitan) — I wish to raise a matter this evening for the Minister for Public Transport. It concerns the issue of the removal of the level crossing in Buckley Street, Essendon. I have raised this with the minister earlier, in fact the last sitting week — the first sitting week back — and I have received a response which I found to be totally inadequate. In fact it was very much the minister playing politics. Quite frankly this is a very important issue for the future of Essendon and Moonee Ponds and far too important for game playing by this minister.

As I have explained previously, I have met with the mayor and the CEO of the Moonee Valley council, and they have expressed to me their very grave concern about the plan that is being proposed by the government to remove the Buckley Street level crossing singly. They would be much more comfortable, and indeed much more supportive, if the government was to remove not just the level crossing in Buckley Street but also the level crossings in Park Street and in Puckle Street in Moonee Ponds. Not only would this be a far better outcome for the local area but it would also be far more cost effective for the government. As has been

explained previously, the plan that the level crossing removal crew are putting forward at the moment is going to cause major traffic hazards for a very, very long time to come. In fact it will be traffic chaos on a permanent basis.

I think that what we have here is a government that just wants to say, 'We have done this'. It does not care how it is done; it just wants to do it. I want to see this done properly, and if that means that we have to wait a little while so that we can do the three together — the Park Street, Puckle Street and Buckley Street crossings together — then I think that is the way to go.

I ask the minister to put on hold those plans that are currently underway to remove the Buckley Street level crossing and to put them on hold until such time as the government is in a position to remove all three level crossings — Park Street, Puckle Street and Buckley Street in Essendon — so that we can get the best possible result. The government needs to get this right and needs to do it properly.

Syndal–Heatherdale pipe reserve trail

Ms DUNN (Eastern Metropolitan) — My adjournment matter is for the Minister for Roads and Road Safety. To celebrate the completion of the first section of the Syndal to Heatherdale pipeline trail, the Gardiners Creek Trail Commuters Group led a commuter group ride yesterday morning, starting from the northernmost point of the new trail at Ballantyne Street, East Burwood, riding to the Melbourne CBD as part of their daily commute to work. The purpose of the ride was to highlight parts of the trail that need further investment to provide a safer route for bicycle commuters. The action I seek is that the Minister for Roads and Road Safety, Luke Donnellan, close the gaps along this route to complete the full pipeline trail; to link it with others in the area, such as the Box Hill to Ringwood shared-use path and the Healesville Freeway Reserve Trail; and to enable safe off-road access to places like Monash and Deakin universities, where traffic congestion and parking limitations remain a serious issue.

Monbulk sewerage project

Mr O'DONOHUE (Eastern Victoria) — My adjournment matter this evening is for the Minister for Water. The action I seek is for her to provide a timetable for when the Monbulk sewerage system will be upgraded and when those houses and properties that are not currently connected to the sewerage system will be connected. The history of this issue goes back to the days before the amalgamation of the Shire of Sherbrooke and the Shire of Lillydale, where one side of Main Street in Monbulk had a sewerage system and the other did not. There have been some changes here and there ever since in the commercial centre of Monbulk, but fundamentally that delineation remains.

The Shire of Yarra Ranges is currently conducting a structure plan for the Monbulk township. As I am sure you are aware, President, Monbulk plays a very important role in the hills of the Dandenongs. It is the commercial centre for many of the surrounding farming communities and the district, so this structure plan is very important. But what additional avenues for development or reasonable growth the structure plan identifies will be contingent on the sewerage system for Monbulk being upgraded. As I say, this is an issue that has been on the books now for many, many years, and it is time the government gave a commitment. It is time for the minister to work with Yarra Valley Water to ensure that a clear timetable is identified for the delivery of this important project.

I am advised that currently there are many farmers and other people of retirement age in the area who are looking to downsize. They have to leave the area to find appropriate accommodation because of the lack of accommodation in the Monbulk district. In such a close-knit community that is a problem. I know there are many that would support the construction of a modest number of townhouses or other dwellings for people to downsize to while staying in the community they know and love and where other members of their family are located.

So for the commercial interests of the Monbulk traders and the Monbulk community and for the options of residential accommodation for people as they go through life, it is important not only that the structure plan be completed but that the infrastructure to implement the structure plan be delivered. That is where the Minister for Water, Lisa Neville, has a critical role, in working with Yarra Valley Water to ensure that the sewer, the sewerage system and those not connected to the sewerage system are upgraded to accommodate reasonable and responsible future growth.

Port Phillip Bay bait fishing

Ms PATTEN (Northern Metropolitan) — My adjournment matter is for the Minister for Agriculture. The matter I would like her to consider is strategies to allow a small amount of bait fish — pilchards and whitebait — to continue to be caught in Port Phillip Bay to supply the ever-growing number of recreational fishers in the bay. As we saw with the closure of

commercial fishing in Port Phillip Bay, not only did that close down commercial fishing but it also closed down the fishers who were catching bait fish. Now, with the ever-growing number of recreational fishers and the government's Target One Million for recreational fishers, one has to wonder where they are going to get the bait to continue fishing, because this was the only source of bait.

One way to resolve this would be to bring in imported bait, but that really does raise a whole bunch of environmental issues. We saw this recently in Queensland with the white spot disease on our prawn farms up there. In the 1990s we saw, sadly and with an unfortunate name, the sardine herpes outbreak that occurred in Victoria. This was an outbreak of a disease that was brought in by imported fish. Again, and much to my dismay, there was the devastation of the abalone market in Western Australia for the same reason — imported bait was being brought in.

As my colleagues the Shooters, Fishers and Farmers Party, who are not with me today, would know, local bait is best — if you are trying to catch local fish, you want to use local bait to do that.

Ms Symes interjected.

Ms PATTEN — Yes, it is true, isn't it, Ms Symes? You need local bait to catch local fish. We know that fresh bait is best, but at the moment we have closed down all of the bait fisheries, with the exception of one, in Port Phillip Bay. That one uses a very sustainable form of fishing. It is not like the general netting. It is very small netting and it is a very small number of fish. The action I seek is for the minister to consider a way that we could continue to commercially fish some bait to supply to the ever-growing number of recreational fishers in Victoria and in Port Phillip Bay.

Environment Victoria

Mrs PEULICH (South Eastern Metropolitan) — I wish to raise a matter for the attention of the Special Minister for State in his role as the person responsible for Victoria's integrity regime. It follows a campaign outside my office today involving Environment Victoria. I noted that they had some fairly large posters and billboards mounted on a trailer pulled by a car and there were three or four people there.

I also note from their 2015–16 annual report that there were government grants they were beneficiaries of, and I want an assurance that no taxpayer or public money is being used to fund this particular activity either directly or as a cross-subsidy from other grants they may have received, with public resources being used to design the material, pay for the material and develop and implement the campaign. In addition I would like to know whether the protesters were paid or if indeed they are volunteers. If they are volunteers — —

Ms Mikakos — On a point of order, President, I think so far the member has asked about half a dozen to a dozen questions in this adjournment matter. I do not think it is appropriate that the adjournment debate be used as a multiple question time.

The PRESIDENT — Order! The member has actually called for an investigation, so that is the action sought. The other matters that she has raised are part of what she would hope would be part of that investigation, but the actual action sought is to have the investigation. Nonetheless, Ms Mikakos's timely reminder is worthwhile for us all.

Mrs PEULICH — I would like to know whether the protesters involved were paid or whether they were volunteers and, if they were volunteers, whether there were any public funds used to recruit them or to organise them.

I note also from reading their annual report that Environment Victoria is claiming to be heading to financial independence, but there is still at least 16 per cent of funding from governments. I would be concerned that this would be a misuse of funds. In addition to that, they have $2.6 million in members reserves and $1.8 million in the Green Future Fund. I am not sure exactly what that means. Whilst it claims to be from donations, I would want to know the source of those reserves, which are a substantial source for their campaigns. They are spending approximately $1.2 million of their income on campaigns, $600 000 is invested in raising funds and $600 000 is spent on essential administration and organisational leadership.

I think organisations of this nature, which ultimately play a very political role given their activities during the recent federal election and obviously their ongoing activity targeting members of Parliament, need to be open and transparent with their donors and supporters, but also there needs to be an assurance that the funds from the public purse are not being used to fund these political activities or cross-subsidise them from other programs.

Richmond railway station

Ms PENNICUIK (Southern Metropolitan) — My adjournment matter this evening is for the Minister for Public Transport. It concerns the platform interchange

at Richmond station. This morning on my way in on the Sandringham line I had to change at Richmond station, as always, because the Sandringham line does not go through the loop and almost three-quarters of the people on the train get off and look for a loop train.

As occasionally happens, you are directed by the electronic notices on the platform that tell you where the next loop trains are. They are usually at platform 8, platform 3 or platform 5. Everybody moved to platform 8 and, as often happens, after they arrived they were told that the next loop train had all of a sudden turned into a direct-to-Flinders Street train, which would be a similar service to the one that everybody had just gotten off. Some people would leave that platform and go back to platform 5 or platform 3 or whatever it is for the next loop train.

The issue I want to raise is that often the station announcers will say, 'We'd like people to get on all sections of the train, particularly the front of the train. There are not enough people getting on the front of the train'. The reason for that is that at the interchange between the platforms — and the western interchange is closest to the city — there is no electronic information to tell passengers where the next loop train is or where the next direct-to-Flinders Street train is. If they disembark from their direct-to-Flinders Street train looking for a loop train on platform 1 or platform 3, they have to look at the electronic information on that platform and memorise it if they are going to go through the western interchange, because there is nothing there to tell them. That is why people do not use that interchange: because there is no information there about where the next trains are departing from.

The action I require of the minister is that she actually install electronic information on the western platform interchange at Richmond station so that people can use that and know where the next trains are coming from.

North Road, Ormond, level crossing

Ms CROZIER (Southern Metropolitan) — My adjournment matter this evening is for the minister responsible for the removal of level crossings. The action I am requesting of the minister is that she provide a detailed list of works carried out by the Level Crossing Removal Authority (LXRA) on drainage at the North Road level crossing in Ormond. The reason I am doing that is that on 29 December, as members have heard me speak about, there was rain and then subsequent flooding within the Bentleigh area. At North Road there were significant drainage issues. In fact a letter of 27 January from the Level Crossing Removal Authority to various residents who were affected by that flooding speaks about the works that were carried out in relation to the underground pipe network, and it also makes reference to the Elwood canal catchment, which is of course true.

What we have got here is a number of areas that were affected. I have referred in a previous matter to the McKinnon level crossing. Adjacent to that there was significant flooding and also drainage issues, where it was thought that some concrete was inadvertently pulled into a drain. Nevertheless I am talking about North Road. There was significant flooding around level crossings at Ormond and McKinnon, and I would like to get an understanding of what work was actually carried out by the LXRA on the drainage at the North Road level crossing site so that residents can have an understanding of whether this situation is going to be resolved by the works being undertaken or whether more work will need to be undertaken to ensure that flooding events, such as what we saw on 29 December but more recently also, which was not as bad, will not cause the massive sort of damage that occurred on 29 December.

Rushworth police numbers

Ms LOVELL (Northern Victoria) — My adjournment matter is for the Minister for Police, and it is regarding police numbers in Rushworth and other regional areas in Northern Victoria Region. My request of the minister is that she advise the Rushworth community of what immediate action the government will take to provide an improved police presence and so improve community safety for the Rushworth and surrounding community, and I ask when she will allocate more police to stations in my region so that police from the various stations are not being called on to cover vacancies in other areas.

I am getting more and more feedback from residents in regional areas who do not feel safe in their local communities and do not feel like there is a sufficient local police presence. Rushworth is the most recent community to add their concerns to the ever-growing list of small towns that do not feel safe. A number of constituents from the town have contacted me, outlining hoon driving and mindless vandalism as some of their concerns. Everything traces back to the lack of police presence in these communities, particularly on weekends and after hours, and it is a direct result of this government's two-up policy. This has forced police in regional areas to cover multiple areas in a given shift and has therefore diluted the police presence across the designated area as well as any other areas they are expected to cover. Basically, they cannot be in two places at once, and this is becoming a real concern in

regional areas — to add on to the lack of safety that all Victorians are feeling.

Last week's Galaxy poll shows that more than half of Victorians think our state is less safe now under the Andrews Labor government than it was under the former coalition government. Tellingly, even one in three Labor supporters accept there has been a direct deterioration of safety since the Labor government was elected, and most Labor MPs acknowledge that law and order has been the Achilles heel of their government. It is no surprise. Our state is falling apart at the seams. More and more small and medium towns across the region, including Tatura, Mooroopna, Tongala, Timmering, Nanneella, Rochester and Lockington, are feeling like they are being left to fend for themselves. Youth justice is out of control, with gang activity, home invasions, store robberies, and riots at youth detention facilities now commonplace. Drug use, addiction and dealing, most prominently relating to the drug ice, is rife, and rehabilitation services are not able to keep up with the ever-increasing demand.

Pick up almost any regional newspaper and you will see a story that is dedicated to this. The front page of Monday's Echuca paper, the *Riverine Herald*, bears the headline 'Drug driving now "epidemic"'. The front page of the weekend edition of the *Shepparton News* reads 'Ice age is here', and on Saturday and Monday the front pages of the Bendigo *Advertiser* were dedicated to the region's drug problem.

My request of the minister is that she advises the Rushworth community of what immediate action the government will take to provide an improved police presence and so improve community safety for the Rushworth and surrounding community and when she will allocate more police to stations in my region so police from one area are not being called to cover vacancies in other areas.

The PRESIDENT — Order! I made some remarks last night about setpiece speeches. I must say that that was pretty much a set piece. I can read the *Shepparton News* in my mind right now. Members do need to be careful about setpiece speeches. The adjournment is an opportunity to put into context the question or the action sought and not to, as I said, develop the press release.

I indicate that earlier today in constituency questions Mr Herbert posed a constituency question, the validity of which was challenged by a point of order from the Leader of the Opposition. Having looked at *Hansard* — at both the question and the point that was raised by the Leader of the Opposition by way of a point of order — I uphold the point of order and rule out the constituency question. Mr Herbert referred to matters which, apart from anything else, were not within his constituency.

Responses

Ms MIKAKOS (Minister for Families and Children) — This evening I have received adjournment matters from the following members: Mr Ramsay to the Minister for Industry and Employment; Mr Mulino to the Deputy Premier; Mr Rich-Phillips to the Minister for Roads and Road Safety; Ms Symes to the Minister for Sport; Mr Finn to the Minister for Public Transport; Ms Dunn to the Minister for Roads and Road Safety; Mr O'Donohue to the Minister for Water; Ms Patten to the Minister for Agriculture; Mrs Peulich to the Special Minister of State; Ms Pennicuik to the Minister for Public Transport; Ms Crozier to the Minister for Public Transport; and Ms Lovell to the Minister for Police. I will refer all those adjournment matters to the appropriate ministers for response.

QUESTIONS WITHOUT NOTICE

Sage Institute of Education

The PRESIDENT — Order! I have been approached by Minister Tierney, who in response to the concerns expressed by a member about an answer given yesterday, which was no doubt contemporary at that time, has indicated that by leave she would be prepared to update the house on the current situation.

Ms TIERNEY (Minister for Training and Skills) (*By leave*) — I thank the member for raising the matter this afternoon. Can I say by way of a short statement that I certainly do not believe that I have misled the house. I did in fact receive preliminary advice that Sage Institute of Education was to close. I have since confirmed that Sage Institute will continue to trade through this period of voluntary administration and train the current students, which I think is really good news. My department will continue to work with the administrators for a satisfactory outcome for all students.

The PRESIDENT — Order! The house stands adjourned.

House adjourned 6.22 p.m. until Tuesday, 7 March.