PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-EIGHTH PARLIAMENT

FIRST SESSION

Tuesday, 2 May 2017

(Extract from book 7)

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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)

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Deputy Premier, Minister for Education and Minister for Emergency Services	The Hon. J. A. Merlino, MP
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Minister for Training and Skills, and Minister for Corrections	The Hon. G. A. Tierney, MLC
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Cabinet Secretary	Ms M. Thomas, MP

Legislative Council committees

Privileges Committee — Ms Hartland, 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 Barber, 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 — #Mr Barber, #Ms Crozier, #Mr Elasmar, Ms Fitzherbert, #Ms Hartland, Mr Mulino, Mr O'Donohue, 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*): Mr O'Sullivan, 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, Ms Garrett 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 O'Sullivan, Mr Ramsay and Mr Young. (*Assembly*): Mr J. Bull, Ms Halfpenny, Mr Richardson and Mr Riordan.

Family and Community Development Committee — (*Council*): Mr Finn. (*Assembly*): Ms Britnell, 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 Patten, 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

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FIFTY-EIGHTH PARLIAMENT — FIRST SESSION

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Deputy President:
Mr K. EIDEH

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

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Mr L. B. O'SULLIVAN

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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
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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 [5]	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
[5] Resigned 6 April 2017

[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

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TUESDAY, 2 MAY 2017

Tuesday, 2 May 2017

The PRESIDENT (Hon. B. N. Atkinson) took the chair at 12.05 p.m. and read the prayer.

ACKNOWLEDGEMENT OF COUNTRY

The PRESIDENT — Order! On behalf of the Victorian state Parliament I acknowledge the Aboriginal peoples, the traditional custodians of this land which has served as a significant meeting place of the first people of Victoria. I acknowledge and pay respect to the elders of the Aboriginal nations in Victoria, past and present, and welcome any elders and members of the Aboriginal communities who may visit or participate in the events or proceedings of the Parliament this week.

RESIGNATION OF MEMBER

Mr Herbert

The PRESIDENT — Order! I have been advised by the Governor, by way of a letter dated 6 April 2017, of the resignation of Steve Herbert from this place. The Governor wrote:

> The Governor transmits to the Legislative Council notification of the resignation of the Honourable Steve Herbert, member for Northern Victoria Region in the Legislative Council.

As I said, that was signed on 6 April.

ROYAL ASSENT

Message read advising royal assent on 27 March to:

Education and Care Services National Law Amendment Act 2017
Urban Renewal Authority Victoria Amendment (Development Victoria) Act 2017
Victorian Planning Authority Act 2017
Wrongs Amendment (Organisational Child Abuse) Act 2017.

DRUGS, POISONS AND CONTROLLED SUBSTANCES MISCELLANEOUS AMENDMENT BILL 2017

Introduction and first reading

Received from Assembly.

Read first time on motion of Mr JENNINGS (Special Minister of State); by leave, ordered to be read second time forthwith.

Statement of compatibility

Mr JENNINGS (Special Minister of State) 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 Drugs, Poisons and Controlled Substances Miscellaneous Amendment Bill 2017.
>
> In my opinion, the Drugs, Poisons and Controlled Substances Miscellaneous Amendment Bill 2017, as introduced to the Legislative Council, is compatible with human rights as set out in the charter. I base my opinion on the reasons outlined in this statement.
>
> **Overview**
>
> The bill amends the Drugs, Poisons and Controlled Substances Act 1981 to, among other things, prohibit the production, sale and promotion of substances (psychoactive substances) that either have a psychoactive effect when consumed, or are represented as having such an effect. Amendments to existing police search, seizure and forfeiture powers under both the Drugs, Poisons and Controlled Substances Act and the Confiscation Act 1997 will ensure those powers apply in relation to psychoactive substances. The bill also amends schedule 11 of the Drugs, Poisons and Controlled Substances Act to reduce the large commercial and commercial trafficking quantities for methylamphetamine.
>
> **Human rights issues**
>
> Psychoactive substances reforms
>
> In order to consider the impact of the reforms related to psychoactive substances, it is necessary to turn to their purpose. The reforms are intended to overcome many of the practical difficulties in enforcing existing illicit drug prohibitions to newly emerging synthetic drugs, and prevent the harm that can be caused when they are consumed.
>
> Synthetic drugs are developed to mimic the effects of existing illicit drugs such as cannabis and ecstasy, while attempting to avoid drug control measures. They are often marketed as 'legal highs' and have been sold openly in some Victorian shops for the last 10 years. Prospective users may interpret the marketing and overt supply of these substances as meaning they are legal and safe to use, or less harmful than illicit drugs. However, many of these substances have not been tested on humans, and their ingredients and purity is generally unknown.
>
> Synthetic drugs have been linked to Australian hospital emergency admissions and even fatalities. For example, synthetic drugs were linked to three deaths in Victoria in a four-month period between 2013 and 2014, and last year the Alcohol and Drug Foundation issued a warning after 20 people were hospitalised after taking a new synthetic drug.
>
> The health and safety of others may also be at risk from those who consume synthetic drugs. For example, the United Nations Commission on Narcotic Drugs has highlighted the potential for harm caused by instances of driving under the influence of synthetic drugs, and various symptoms

associated with consumption of some synthetic drugs, such as severe agitation, violent behaviour, psychosis, and paranoia.

Prohibition against production, sale and promotion of psychoactive substances

Clause 8 of the bill inserts new offences into the Drugs, Poisons and Controlled Substances Act. These new provisions will make it an offence to produce (new section 56D), sell or supply in the course of carrying out a commercial activity (new section 56E) or advertise (new section 56F) psychoactive substances. The bill defines psychoactive substances to mean substances that either have a psychoactive effect when consumed, or are represented as having such an effect, subject to a range of exclusions to prevent the overreach of the new offences.

The right to be presumed innocent until proved guilty (section 25(1))

I note that the right to be presumed innocent until proved guilty (section 25(1)) is not limited by the new offences. Section 25(1) of the charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. New section 56B of the Drugs, Poisons and Controlled Substances Act provides that existing section 104 of the Drugs, Poisons and Controlled Substances Act — which provides that persons accused of offences under the act generally bear the burden of proving any matter of exception, qualification or defence they wish to rely upon — does not apply to the new offences.

The right to freedom of expression (section 15(2))

New section 56F will create two new offences prohibiting a person from displaying, or causing or permitting to be displayed certain advertisements in or on public places — including in or on vehicles and vessels in a public place (which clause 4 of the bill clarifies has the same meaning as in the Summary Offences Act 1966). The first offence in new section 56F(1) will only apply where the person intends the advertisement to promote the consumption, sale or supply of a psychoactive substance. The second offence in section 56(2) will apply where the person knows that there is a substantial risk that the consumption, sale or supply of a psychoactive substance may be promoted by the advertisement.

These two offences will, therefore, limit the right to freedom of expression (section 15(2)), which includes the freedom to impart information and ideas whether orally, in writing, in print, by way of art or any other medium. However, special duties and responsibilities are attached to the right to freedom of expression, and this right may be subject to lawful restrictions, including where reasonably necessary to protect public health or public order.

I consider that prohibiting the advertisement of psychoactive services as described is necessary to protect public health and public order. As I have already identified, psychoactive substances have been marketed and sold openly in Victoria in a way that prospective users — many of whom may be young or naïve — may interpret as meaning the substances are legal and safe to use, or less harmful than illicit drugs. However, for the reasons I have explained, this is not the case.

Further, the offences are appropriately limited. They do not prohibit all advertisements that relate to psychoactive substances but only those that are either intended to promote the consumption, sale or supply of psychoactive substances or where the person displaying or causing or permitting the advertisement to be displayed knows that may be the result. Importantly, the offences also do not interfere with a person's right to freedom of expression in their home or online.

Search, seizure and forfeiture powers

To ensure the new psychoactive offences are effective in preventing the harm that can be caused when synthetic drugs are consumed, clauses 13–15 and 22–23 of the bill extend existing police search, seizure and forfeiture powers under both the Drugs, Poisons and Controlled Substances Act and the Confiscation Act to psychoactive substances and related items.

Section 82 of the Drugs, Poisons and Controlled Substances Act empowers a police officer to search, without warrant, a person, animal or vehicle when in a public place or a boat or aircraft where they suspect on reasonable grounds that there is a prohibited drug of dependence in respect of which an offence under part V of the act has been committed or is reasonably suspected of having been committed. In carrying out such a search, section 82 also authorises the police officer seize any drug of dependence or instrument, device or substance they believe to be used or capable of being used for or in the manufacture, sale, preparation for manufacture, preparation for sale, or use of any drug of dependence.

Section 83 of the Drugs, Poisons and Controlled Substances Act allows the Magistrates Court to order the forfeiture of the same substances and items capable of being seized under section 82. These substances and items may also be destroyed or disposed of under section 91 of the act with the authorisation of the Chief Commissioner of Police or relevant delegate (that is, without a court order) where required in the interests of health or safety.

Clause 13 of the bill expands the search and seizure powers in section 82 to also apply where a police officer has reasonable grounds for suspecting that there is a psychoactive substance, albeit without the need for the police officer to suspect that an offence has been committed in respect of the psychoactive substance before the search power is triggered. Similarly, clauses 14 and 15 expand the forfeiture and destruction powers in sections 83 and 91 to also apply to psychoactive substances and instruments, devices or substances that may be used for or in the production, sale, commercial supply or preparation for sale or commercial supply of a psychoactive substance.

Finally, clauses 22 and 23 of the bill amend the Confiscation Act so that, upon conviction of one of the new psychoactive substance offences, a court may order the forfeiture and disposal of any related psychoactive substance or instrument, device or substance that may be used for or in the production, sale, commercial supply or preparation for sale or commercial supply of a psychoactive substance.

The rights to freedom of movement (section 12) and freedom of expression (section 15)

Where police use the expanded power in section 82 to search a person, they will need to, at least temporarily, limit the person's freedom of movement (section 12) while conducting the search. Section 12 of the charter provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live. The use of these powers may also, in certain circumstances, limit the right to freedom of

expression. These rights may also be limited where police use the powers to search a vehicle, animal, vessel, boat or aircraft in or on which a person is travelling.

However, I consider that such limitations are justified in accordance with section 7(2) of the charter. As with the new psychoactive offences, the extension of existing search powers is designed to prevent public health and safety consequences that may result from the consumption of new synthetic drugs. Failing to extend these powers would mean that police would be powerless to prevent a potential user from consuming a synthetic drug — even where police are aware that doing so may have serious health risks.

The new powers also include a range of safeguards that minimise any limitation on the relevant charter rights. For example, the powers may only be lawfully exercised where a police officer suspects on reasonable grounds that there is a psychoactive substance on the person, vehicle, boat, vessel or aircraft. While this will ultimately be determined on the individual facts of each case, cases such as *Nguyen v. Elliot* 6/2/1995 SC Vic demonstrate, the power does not extend to circumstances where the police officer is, for example, merely curious as to whether there is a psychoactive substance.

Unlike the existing powers in section 82 for drugs of dependence, police will not also need to suspect that an offence has been committed. This does not mean that police will be able to search a person for legitimate products. As I have already outlined, the bill includes new offences that prohibit the production, sale or commercial supply of these psychoactive substances. Several other Australian jurisdictions, including New South Wales, South Australia and Western Australia, have similar offences and the importation of psychoactive substances into Australia is an offence under section 320.2 of the commonwealth Criminal Code Act 1995.

Rather, the difference between the existing search and seizure powers in relation to drugs of dependence, and their proposed extension to psychoactive substance reflects the fact that the bill does not criminalise the simple possession of psychoactive substances (whereas possession of a drug of dependence is an offence under section 73 of the Drugs, Poisons and Controlled Substances Act). This decision to target the new offences at those responsible for making synthetic drugs available in Victoria does not reduce the need for police to have appropriate powers to search persons in the circumstances described to prevent potential harm to both the user and the wider public from the consumption of these substances. This may not be possible in all cases if police were required to suspect that an offence had been committed.

I also note that any limitation of the right to freedom of movement is confined only to the period of time reasonably necessary to conduct the search.

The right to privacy (section 13(a))

Section 13(a) of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. A person's right to privacy may also be interfered with when a police officer conducts a search under the expanded powers, as it will either involve an interference with a person's bodily integrity or, in the context of searches of vehicles, animals, boats, vessels or aircraft, through the intrusion into a person's personal environment. However, the charter only protects against the unlawful or arbitrary interference with a person's privacy.

The proposed inclusion of the expanded search power in the Drugs, Poisons and Controlled Substances Act means that the compatibility with the right to privacy turns on whether any interference is arbitrary, as the new powers will be lawful. The prohibition on arbitrariness requires that any interference with privacy must be reasonable or proportionate to a law's legitimate purpose. As described above, the consumption of psychoactive substances can have critical impacts on a person's health and it is essential that police have the ability to prevent that from occurring.

Further, the power to search is limited to where the person, vehicle, animal, boat, vessel or aircraft is in a public place. This requirement is expressly stated in relation to searches of persons, vehicles or animals but it is also implied in relation to vessels and aircraft as section 82 does not authorise entry onto private premises. The search powers, therefore, do not interfere with a person's home.

While the expanded search powers in section 82 do not specify the manner in which any search may be conducted, this question must necessarily be determined by balancing the circumstances giving rise to the need for the search against any impacts of a search on the rights of the person. Section 38 of the charter ensures that police officers must act in a way that is compatible with a human right, and give proper consideration to relevant human rights. In doing so, section 7(2) of the charter would also require the police officer to consider any less-restrictive options available. Therefore, the police officer would need to consider, for example, the necessity of the search against the degree of force used, if any, the extent of the search, or the inconvenience caused by the search. These considerations will need to be made on a case-by-cases basis, taking into account all relevant factors.

Therefore, I consider that any interference with a person's privacy under the extended search powers is lawful and not arbitrary. In particular, I consider that any interference will be proportionate to the purpose of preventing the harms that may result from the consumption of synthetic drugs.

Property rights (section 20)

The proposed extension of seizure, forfeiture and destruction powers in accordance with clauses 13–15 and 22–23 of the bill also raise 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. A deprivation of property is, therefore, permitted where authorised by legislation and is appropriately confined and structured. I consider that the proposed extension of the existing powers satisfies these requirements.

The power to deprive a person of their property under the extended powers will be conferred by statute and for the purpose of preventing the consumption of synthetic drugs. As stated earlier, and consistent with the purpose of preventing the consumption of synthetic drugs, only psychoactive substances and instruments, devices or substances which a police officer reasonably believes to be used or capable of being used for or in the production, sale, commercial supply or preparation for sale or commercial supply of any psychoactive substance may be seized, forfeited or destroyed under the amendments made by the bill.

Further new section 82(2) of the Drugs, Poisons and Controlled Substances Act provides that any such item that is seized must be dealt with according to law. That is, police could only continue to hold or dispose of a psychoactive substance or other item seized under section 82 in accordance with a lawful power to do so. The amendments to section 83 in clause 14 provide one such mechanism for doing so. Under those amendments, police may apply to the Magistrates Court for their forfeiture and disposal upon proof that they are such substances or items. This provides a well-established, independent court-based process and expressly provides an opportunity for the court to direct notice to first be given to relevant persons, such as the person from whom the person was seized. The amendments to the Confiscation Act in clauses 22 and 23 of the bill provide another similar process, albeit post-conviction, for one of the new psychoactive substance offences.

As with the initial power to search for psychoactive substances and related items under section 82, the power to seize any such substances or items once found need not be linked to a suspected offence. Nor is a successful prosecution necessarily required before substances and items seized may be forfeited and destroyed. I recognise that the provision of forfeiture and destruction powers in particular are not commonly applied in relation to property that is not linked to offending. However, as I have already explained, it is essential that these powers apply in those circumstances. The alternative would completely undermine the public health and safety purposes of clauses 13–15 and 21–22 of the bill by requiring police to return psychoactive substances that have been seized to users if they are unable to commence proceedings under the new psychoactive substance offences or any other relevant offences.

Finally, while the Drugs, Poisons and Controlled Substances Act does not provide any separate power for a person to seek the return of property seized from them in accordance with section 82, such persons still have common-law remedies available to them where they believe police have no right for possession of the property. For example, a person may be able to apply to a court for an injunction for the return of property.

Reduction of large commercial quantities for methylamphetamine

Clause 18 of the bill amends part 3 of schedule 11 to the Drugs, Poisons and Controlled Substances Act, including by reducing the large commercial quantities of methylamphetamine from 750 grams (pure) and 1 kilogram (mixed) to 500 grams and 750 grams respectively.

The purpose of reducing the large commercial quantity for trafficking in methylamphetamine is to reduce the availability of ice in Victoria by enabling courts to give greater deterrence and denunciation to trafficking of ice in particular, in light of its prevalence and the harmful effects it has on the community.

In addition to exposing offenders to higher penalties, the reduction in the large commercial quantities for trafficking in methylamphetamine will also expose a greater range of cases to the 'serious drug offender' asset confiscation regime under the Confiscation Act. That regime provides for the automatic forfeiture of all property in which a person has an interest.

Property rights (section 20)

Expanding the types of cases in which the confiscation of property under the serious drug offender regime applies raises the section 20 property rights. As I have already indicated, those rights permit a deprivation of property where authorised by legislation and appropriately confined and structured.

I consider that the proposed expansion of cases that may trigger the existing serious drug offender regime satisfies these requirements. The powers in the Confiscation Act only apply to persons convicted of trafficking in large commercial quantities of ice. These are the most serious cases of trafficking and it is reasonable to assume that in those cases much of the offender's property has been obtained using the proceeds of criminal activity linked to drug trafficking. While the bill lowers the threshold for trafficking in a large commercial quantity of methylamphetamine, it only does so to better reflect the particular seriousness of the harms ice caused to the community from the availability of ice in comparison to other drugs of dependence in the same quantity.

Further, forfeiture of property under the serious drug offender regime will continue to be subject to various important safeguards regarding the restraint and forfeiture of property. For example, section 24 of the Confiscation Act provides that an accused may retain certain 'protected' property, such as ordinary household items, clothing, tools of trade and property used as transport under a prescribed value. These items cannot be included in a restraining order and will not be subject to automatic forfeiture limiting the impact on property rights.

Additionally, if a court makes a restraining order, any person claiming an interest in the property other than the accused can apply for an exclusion order, which will exclude certain property from the operation of a serious drug offence restraining order, where the interest was not subject to the effective control of the accused.

Protection of families and children (section 17)

Section 17 of the charter states that families are the fundamental group unit of society and are entitled to be protected by society and the state. It also provides that every child has the right without discrimination to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

Expanding the types of cases in which the confiscation of property under the serious drug offender regime applies also has the potential to affect families and the ability of a child's parents to provide for that child's needs. However, the safeguards under that regime will continue to protect families and children who may otherwise be adversely affected.

For example, in addition to the safeguards under section 24, the Confiscation Act provides that an accused person may apply to the court for reasonable living and business expenses at any stage throughout the court proceedings, which may include medical expenses, rental or mortgage expenses or school fees. Section 26 of the Confiscation Act also enables a court, when it makes a restraining order or at any later time, to make such orders in relation to the property to which the restraining order relates as it considers just. For example, orders can be made under both these powers to ensure that an accused person is able to provide

or maintain a reasonable standard of living for his or her dependants.

The Confiscation Act also specifically mitigates the risk that family dependants will be left without a home as a result of forfeiture of their residence. After forfeiture, dependants are able to apply to the court for the payment of a prescribed amount of money from the sale of the property to secure alternative accommodation. The court has the discretion to order this payment if satisfied that the residence is not tainted property and the dependant does not have sufficient financial resources to purchase or rent alternative accommodation.

The Hon. Gayle Tierney, MP
Minister for Police

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Special Minister of State).

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

That the bill be now read a second time.

Incorporated speech as follows:

The Drugs, Poisons and Controlled Substances Miscellaneous Amendment Bill 2017 delivers important reforms to target those responsible for the trade in ice as well as synthetic drugs. The bill also includes sensible reforms to facilitate the provision of appropriate treatment for drug-dependent persons while in police gaol.

Lowering of commercial trafficking quantities for methylamphetamine

The Victorian government will ensure that those most responsible for Victoria's illegal ice trade face tough and appropriate penalties that recognise the particularly harmful effects of ice on the community.

Ice is a horrific drug that causes devastating harm to individuals and communities across Victoria. According to the Australian Criminal Intelligence Commission the market for ice in Australia is entrenched and expanding, and of all illicit drugs, ice poses the highest risk to the Australian community. In Victoria, a Sentencing Advisory Council report released in March 2015 found that ice was the most common drug trafficked in commercial quantities in Victoria over the preceding five years.

Ice is highly addictive and its use can have both physical and psychological health consequences for users, disrupts families and communities, is linked to violence and property crime, and damages the environment.

More specifically, the use of ice can make people aggressive or violent. It can also lead to serious sleep deprivation that wreaks havoc with a person's moods, anxiety levels, and can lead to symptoms of psychosis. This can have a significant impact on family and friends, leading to conflict and isolation.

Victorian courts sentencing offenders for drug trafficking matters are required to sentence based on the quantity of the drug being trafficked, and to disregard the harmfulness of the drug. Under this system, drug traffickers face one of three offences based on the quantity of drugs being trafficked: trafficking, trafficking in a commercial quantity, or trafficking in a large commercial quantity. The higher the quantity, the greater the penalty that can be imposed by the courts.

However, the Drugs, Poisons and Controlled Substances Act 1981 generally applies similar quantity thresholds to a range of illicit drugs of dependence. For example, the large commercial trafficable quantities of methylamphetamine are the same as those for MDMA and cocaine. In the case of *Ziad Haddara v. The Queen*, the Court of Appeal stated that the prevalence of trafficking in ice is so great that general deterrence must be given more focus in the case of ice than other drugs and recommended that the trafficable quantities for methylamphetamine be revisited and that Parliament 'legislate for lesser quantities to constitute both a commercial quantity, and large commercial quantity, of this very dangerous drug'.

Consequently, the bill will reduce the large commercial and commercial trafficable quantities for methylamphetamine — both when measured in its pure form and when mixed or cut with other substances.

The new large commercial trafficable quantities for methylamphetamine will be reduced from 750 grams to 500 grams of pure methylamphetamine and from 1 kilogram to 750 grams when mixed. The commercial trafficable quantities will be reduced from 100 grams to 50 grams of pure methylamphetamine and from 500 grams to 250 grams when mixed.

This means, for example, that persons found to have trafficked anywhere between 50 and 100 grams of high-purity ice could now find themselves being prosecuted for commercial trafficking instead of simple trafficking. Similarly, those found to have trafficked between 500 and 750 grams of high-purity ice could now face large commercial trafficking charges.

The penalties for commercial-level drug trafficking are very serious. The maximum penalty for large commercial trafficking is life imprisonment and a fine of up to 5000 penalty units (which currently equates to approximately $777 300), and for commercial trafficking, 25 years imprisonment and a fine of 3000 penalty units (approximately $466 380). In addition, offenders may also face asset confiscation under the Confiscation Act.

Reducing the trafficable quantities for methylamphetamine could therefore provide an increased deterrent as more trafficking will fall into the large commercial and commercial offence categories. Any corresponding reduction in trafficking of ice will in turn reduce the amount of ice being circulated at any one time and restrict its availability to users.

Significant work has been undertaken, and is continuing, on a comprehensive response to ice under Victoria's Ice Action Plan. Reducing the trafficable quantities for methylamphetamine as recommended by the Court of Appeal will provide an important addition to the supply reduction measures contained in the plan. It is intended that doing so will act as an important deterrent to drug traffickers and reduce the overall availability of ice in the community.

New synthetic drug offences

The second set of reforms included in this bill is aimed at closing the loopholes in the Drugs, Poisons and Controlled Substances Act 1981, which has resulted in some Victorian retail outlets — including tobacconists and sex shops — openly selling the synthetic drugs.

Synthetic drugs are developed to mimic the effects of illicit drugs such as cannabis and ecstasy, while attempting to avoid existing drug control measures. They are often marketed as 'legal highs'.

Prospective users may interpret the marketing and overt supply of these substances as meaning they are legal and safe to use, or less harmful than illicit drugs. However, we know this simply is not the case. There is often no testing done to gauge the suitability of these synthetic chemicals for human consumption prior to distribution. As a result, the effect on drug users is unpredictable and potentially volatile, addictive and toxic, especially if mixed with other substances.

The World Health Organization's Expert Committee on Drug Dependence has highlighted the dangers posed by synthetic drugs. It has indicated that the harmful effects vary between substances but can include seizures, heart problems, high blood pressure, withdrawal symptoms and dependence-producing properties, transmission of bloodborne infectious diseases through drug injection and overdoses. Further risks are associated with instances of driving under the influence of synthetic drugs.

In Australia, these risks have been realised, with synthetic drugs linked to hospital emergency admissions and even fatalities, including three deaths in Victoria in a four-month period between 2013 and 2014.

Victoria has sought to prohibit the sale of synthetic drugs by adding specific synthetic drugs — that is, by reference to their chemical structure — to the list of illicit drugs prohibited in Victoria. There are currently 37 types of synthetic cannabinoids and 26 other new psychoactive substances or classes of substances currently prohibited under the act and its supporting regulations. However, the diversity of substances available and the speed with which new drugs are developed has frustrated the operation of Victoria's schemes, creating ambiguity around what substances are prohibited and making enforcement costly and time-consuming.

This new scheme, which is based on similar provisions already in place in several Australian and international jurisdictions, including New South Wales, South Australia, Western Australia, the UK and Ireland, shifts away from listing specific substances by their chemical composition and instead seeks to capture substances based on their effect or purported effect.

Substances captured by the scheme

The scheme will apply to what are referred to in the bill as psychoactive substances. These are substances that, when consumed, have a psychoactive effect, or substances that are represented as having a psychoactive effect when consumed. For the purposes of the scheme, a psychoactive effect is defined to mean either the stimulation or depression of the person's central nervous system, resulting in hallucinations or in a significant disturbance in, or significant change to, motor function, thinking, behaviour, perception, awareness or mood, or causing a state of dependence, such as addiction.

It may not always be possible to prove that a new substance has a 'psychoactive effect', such as because there has been insufficient research on the substance to establish its effects. That is why the scheme also applies to substances represented as having a psychoactive effect. Representations may be explicit. For example, it is intended that oral or written comments likening the effects of the substance to those of another drug of dependence, getting 'high', or helping a person party could be captured under the new scheme. There may also be many other ways in which a substance could be represented as having a psychoactive effect. Packaging that includes images of marijuana leaves or psychedelic imaging and selling a substance in a form commonly associated with illicit drugs such as dried leaves, powder or pills, and even selling a substance, the location a substance is sold are further examples of when a substance may be captured by the scheme.

The bill includes two safeguards so that the scheme does not inadvertently capture lawful products that may also stimulate or depress the central nervous system. First, substances will only be captured where any disturbance or change resulting from the stimulation or depression of the central nervous system is 'significant'. Otherwise legitimate products that may have some very low level psychoactive effects are not intended to be captured. For example, while products such as chocolate and coffee may make a person feel good or slightly more alert when they consume it, it is not intended that these substances would be captured on the basis that the changes resulting from consumption are not considered 'significant' or noteworthy (as an additional safeguard, chocolate and coffee would also be excluded from the definition as types of food within the meaning of the Food Act 1984 where they comply with the food standards code). By contrast, a substance that makes a consumer feel 'high' or results in the consumer feeling a state of euphoria is intended to be captured within the definition.

Second, the scheme also excludes other specified types of substances that are already regulated or controlled elsewhere, such as food, liquor, poisons, therapeutic goods and medicinal cannabis.

The safeguards do not, however, apply in cases where a lawful product is mixed with another substance that is a psychoactive substance. For example, the scheme would apply in relation to a substance that contains tobacco leaves mixed with another substance that has a psychoactive effect when consumed or which is represented as having a psychoactive effect when consumed.

Other illicit drugs will also be exempt. This means that persons found manufacturing or selling drugs such as ice will continue to be subject to higher penalties under existing trafficking offences. Synthetic drugs already listed in schedule 11 of the Drugs, Poisons and Controlled Substances Act will also attract the higher penalties. In this respect it is also important to note that the new scheme will complement, not replace, the current approach of prohibiting specific synthetic drugs based on their chemical structure. Consequently, the bill also updates the current list of illicit drugs to include several other specific synthetic drugs or classes of synthetic drugs that are subject to temporary prohibitions under regulations.

Scope of new offences

The new offences will prohibit the production, sale, commercial supply and promotion of all psychoactive

substances. Persons found contravening the new offences will face a maximum penalty of two years imprisonment and/or a fine of 240 penalty units (which currently equates to over $37 000).

Consistent with the approach taken in New South Wales and several other of these jurisdictions, the bill is targeted at those responsible for bringing synthetic drugs into our community. It does not criminalise the simple possession of a psychoactive substance. However, where a synthetic drug has already been listed as an illicit drug of dependence the offence of possession of a drug of dependence (under section 73 of the Drugs, Poisons and Controlled Substances Act 1981) will continue to apply.

Similarly, while the bill prohibits the sale and commercial supply of psychoactive substances, it does not extend to persons who, for example, may purchase a psychoactive substance on behalf of a group of friends and then share it with them. However, the offence would capture any 'free steak knives' type offers. For example, it will be an offence to supply a psychoactive substance for free as part of a separate purchase to ensure shops cannot use such supply to avoid liability under this offence.

The new offence of promoting psychoactive substances gives police the necessary powers to prevent the supply of synthetic drugs before it is too late. The offence will apply where a person:

> displays, or causes or permits to be displayed, an advertisement in a public place; and
>
> either intends that the advertisement promote the consumption or sale of a psychoactive substance, or is aware of a substantial risk that the advertisement may have that effect.

The promotion offence is only intended to capture physical advertisements. It is not intended to capture online advertisements. This ensures that the offence does not inadvertently capture young people who may post online about substances they have heard of or tried. Persons advertising psychoactive substances for sale online will still be able to be caught before any purchase is made as the definition of 'sell' includes offering for sale.

Police search and seizure powers

The bill applies the existing illicit drug search, seizure and forfeiture powers to psychoactive substances. This will ensure that the new synthetic drug offences can be effectively enforced as well as empowering police to prevent potential harm from synthetic drugs.

For example, police will be able to search without warrant persons or vehicles for psychoactive substances in the same way that they can currently search for other illicit drugs. The search powers only apply in public places and where police have reasonable grounds for suspecting that they will find a psychoactive substance. Any psychoactive substance or related instrument found may then be seized.

The bill also enables courts to order the forfeiture of any property tainted in connection with the proposed new psychoactive substance offences (such as the profits from the sale of psychoactive substances) upon conviction of such offences. This will provide a further strong deterrent against the sale of synthetic drugs.

Facilitating opioid substitution therapy in police gaols

Finally, the bill includes reforms that will facilitate the treatment of opioid-dependent persons in police gaols.

Opioid substitution therapy is an effective treatment for opioid dependence, resulting from long-term heroin use or the problematic use of prescription opioids and over-the-counter codeine containing analgesics.

Drugs such as methadone and buprenorphine, which are administered as part of opioid substitution therapy, are classified as schedule 8 poisons under the Drugs, Poisons and Controlled Substances Act. This means that medical practitioners or nurse practitioners wanting to administer, supply or prescribe opioid substitution therapy must first apply to the Department of Health and Human Services for a permit before doing so.

The permit system is designed to enable the tracking of a patient's treatment with schedule 8 poisons to avoid the risk of inadvertent multiple dosing and poisoning where the patient seeks opioid substitution therapy from multiple practitioners.

However, these risks do not arise where the person is in custody. Further, the temporary nature of detention in police gaols and high turnover of persons withdrawing from opioids means that medical practitioners and nurse practitioners within Victoria Police's custodial health service often have insufficient time to apply for a permit to treat detained persons who are withdrawing from opioid substances before they are released.

Consequently, the bill will exempt practitioners within custodial health service from requiring a permit. A similar exemption already applies in relation to the treatment of prisoners by Corrections Victoria medical staff under section 34F(a) of the Drugs, Poisons and Controlled Substances Act 1981. As with the existing exemption, custodial health service practitioners would be authorised to administer, supply or prescribe schedule 8 poisons both for the period a person is detained in a police gaol, and also for a period of up to seven days after they are released. This will ensure that the detained person's treatment can continue until such time they are able to make an appointment with another medical practitioner in the community.

Appropriate safeguards will continue to apply to the administration of opioid substitution therapy in police gaols. Custodial health service practitioners will continue to be required to complete specialised training before they can administer such treatment. Custodial health service will also continue to be required to notify the Department of Health and Human Services when they have treated a drug-dependent patient with a schedule 8 poison so that the tracking of treatment is maintained.

I commend the bill to the house.

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

Debate adjourned until Tuesday, 9 May.

FAMILY VIOLENCE PROTECTION AMENDMENT BILL 2017

Introduction and first reading

Received from Assembly.

Read first time on motion of Mr JENNINGS (Special Minister of State); by leave, ordered to be read second time forthwith.

[Statement of compatibility and second-reading speech expunged by order of the house on 9 May.]

JURY DIRECTIONS AND OTHER ACTS AMENDMENT BILL 2017

Introduction and first reading

Received from Assembly.

Read first time on motion of Ms PULFORD (Minister for Agriculture); by leave, ordered to be read second time forthwith.

Statement of compatibility

Ms PULFORD (Minister for Agriculture) 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 Jury Directions and Other Acts Amendment Bill 2017.

In my opinion, the Jury Directions and Other Acts Amendment Bill 2017, as introduced to the Legislative Council, is compatible with human rights as set out in the charter. I base my opinion on the reasons outlined in this statement.

Overview

The bill addresses a number of problematic areas of law to provide for clear and simple jury directions on:

- the giving of evidence by an accused;
- interest in the outcome of the trial;
- motive to lie, and
- differences in a complainant's account of an alleged sexual offence.

The bill also:

- abolishes an unhelpful common-law direction on the truthfulness or reliability of a complainant's evidence;
- provides that problematic common-law directions on previous representation evidence are not required;
- improves the timing of majority verdict and perseverance directions and allows for more helpful directions on jury deliberations;
- makes amendments in relation to the exceptions to the hearsay rule relevant to previous representations, the giving of evidence by alternative means and accepting majority verdicts;
- provides legislative backing for a general jury guide to assist jurors during the trial and their deliberations; and
- applies relevant aspects of the Jury Directions Act 2015 to criminal proceedings that do not involve a jury.

Finally, the bill amends the Juries Act 2000 in relation to peremptory challenges in criminal trials.

Human rights issues

Jury directions are the directions a trial judge gives to a jury to help them to decide whether the accused is guilty or not guilty. Jury directions aim to ensure that jurors reach their verdict according to the law, by informing jurors about the relevant law, and on how they should (or should not) use or assess the evidence in the trial.

The reforms in the bill are relevant to the right to a fair hearing (section 25) and rights in criminal proceedings (section 24) of the charter. In addition to these rights, the bill also engages the freedom of expression (section 15) and the protection of children (section 17).

Right to a fair hearing (section 24)

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

The bill promotes this right through a number of improvements to jury directions. The aim of the Jury Directions Act 2015 is to assist judges in providing simple, clear and focused directions on the law and the evidence in the case that jurors are likely to listen to, understand and apply. This enhances the fairness, competency and integrity of jury trials. The bill extends this by inserting specific evidentiary jury directions on problematic areas of law: the evidence of an accused, interest in the outcome of the trial and motive to lie (clause 5, new sections 44H–M), and differences in a complainant's account (clause 7, new section 54D, which is relevant only to sexual offence trials). The bill also prohibits or discourages problematic directions on previous representations (clause 5, new sections 44B–D) and on the truthfulness or reliability of a victim's evidence (clause 5, new section 44F).

The bill also promotes the right to a fair hearing by clarifying when trial judges may and may not give perseverance and majority verdict directions (clause 9, new sections 64B–C). By separating the perseverance and majority verdict directions, each direction will be clearer and more helpful for the jury in understanding what it may or must do at a relevant stage of deliberations. The bill also enables trial judges to accept majority verdicts at any time if they consider that the jury has had a reasonable time for deliberations, having

regard to the nature and complexity of the trial (clause 22), rather than having to wait for the arbitrary time period of 6 hours to lapse.

In relation to jury deliberations, the bill allows trial judges to direct juries on the order in which certain matters are considered during deliberations, such as alternative offences, elements of offences and defences (clause 9, new sections 64E–F), and facilitates the use of a jury guide (clause 12). These changes will have a positive impact on jury trials by providing more guidance to juries in working through complex issues and will improve the structure and efficiency of deliberations.

The bill also repeals mandatory directions relating to giving evidence by alternative means (clauses 13 and 19). Alternative arrangements such as prerecording of evidence or giving of evidence by CCTV are now commonplace. Research shows that 'limiting' directions such as these (e.g. where the jury is told not to draw adverse inferences from the use of such arrangements) often have the opposite effect to what is intended. However, while such directions will no longer be mandatory, trial judges will be able to continue giving these directions if the circumstances of the case require.

By encouraging the use of a general jury guide which will assist jurors to understand key concepts relevant to all criminal trials and provide information about how to organise jury deliberations (clause 12), the bill will promote better informed jurors. This will increase the likelihood of verdicts based on the relevant law and evidence, and enhance the integrity of the trial process.

Finally, the bill sets out the law relating to peremptory challenges during jury selection in a criminal trial (clause 21). This amendment promotes fair trial rights by ensuring that an accused has an adequate opportunity to assess potential jurors and participate in the process of empanelling the impartial jury that will determine their innocence or guilt.

In my opinion, the changes contained in the bill promote, and in no way limit, the right to a fair trial.

Rights in criminal proceedings (section 25)

Section 25 of the charter sets out rights in criminal proceedings: subsection (1) provides for the right to the presumption of innocence while subsection (2) sets out specific minimum guarantees in these proceedings.

Directions on the evidence of the accused and interest in the outcome of the trial (clause 5, new section 44I) and motive to lie (clause 5, new section 44L) expressly promote the right to the presumption of innocence by requiring trial judges to reiterate the onus of proof on the prosecution when giving these directions. The direction in new section 44I also promotes the right of the accused not to be compelled to testify against themselves (section 25(2)(k) of the charter) by providing that trial judges must inform the jury that an accused is not required to give evidence and that their evidence must be assessed in the same way as the evidence of any other witness.

The bill also introduces a provision that prohibits certain generalised statements or suggestions by the trial judge and counsel about the interest of the accused or a witness in the outcome of the trial (clause 5, new section 44H). I do not consider that this provision limits any of the rights in section 25(2), such as the right to defend oneself (section 25(2)(d)) or the right to examine witnesses (section 25(2)(g)). The prohibition applies equally to both parties, as well as the trial judge, and relates to general comments about interest in the outcome of the trial, which does not preclude defence counsel making an argument as to a particular interest held by a witness.

Freedom of expression (section 15)

Section 15 of the charter contains the right to freedom of expression. The bill contains provisions that prohibit certain statements or suggestions (clause 5, new section 44H — interest in the outcome of the trial) as well as prohibitions on trial judges making certain directions (clause 5, new section 44F — regarding truthfulness or reliability of a victim's evidence and clause 5, new section 44J — regarding evidence of an accused). These minor restrictions on the right to freedom of expression fall within section 15(3)(a) of the charter, as they are reasonably necessary to protect the rights of persons in the proceedings, such as the accused and the alleged victim.

Protection of children (section 17)

Section 17(2) of the charter provides for a child's right to protection without discrimination. The bill promotes this right by extending the current exception to the hearsay rule in section 377 of the Criminal Procedure Act 2009. The current exception applies to complainants in sexual offence matters who are under 18 when the matter reaches court. The amendments to section 66 of the Evidence Act 2008 will apply the hearsay exception to alleged victims of any criminal offence who are under 18 years of age when they make the representation (clauses 14 and 17). Including representations made by any person before they turn 18 reflects that there can be lengthy delays between the alleged offending and the start of proceedings, and that it is unfair to exclude relevant evidence from a child just because they turn 18 before the matter reaches court.

For the reasons outlined above, I consider that the amendments contained in this bill are compatible with human rights as set out in 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 PULFORD (Minister for Agriculture).

Ms PULFORD (Minister for Agriculture) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Introduction

This bill continues the very important process of jury directions reforms in Victoria.

Jury directions are the directions a trial judge gives to a jury to help them to decide whether the accused person before them is guilty or not guilty. Given the fundamental importance of trial by jury to Victoria's criminal justice system, these directions must be as helpful, relevant and fair as possible.

The jury directions reform process has been underway for some years. The first Jury Directions Act commenced in 2013. That act created a new framework for determining which directions are given in a criminal trial and encouraged a collaborative culture between trial judges and counsel by requiring discussions about which directions should be given and the content of those directions. The act also supported trial judges giving a short and tailored summing up, encouraged better ways of communicating with juries, and addressed two problematic jury directions.

The current Jury Directions Act 2015 made improvements to the 2013 act and added new provisions to clarify and simplify jury directions on issues such as unreliable evidence, and delay and credibility. The act has been very well received by the courts and other stakeholders.

This bill will build on these reforms by amending the Jury Directions Act 2015, and making related amendments to other acts including the Criminal Procedure Act 2009 and the Juries Act 2000. These reforms include clarifying the content of particular directions, discouraging or abolishing unhelpful and confusing directions, removing arbitrary time requirements for jury deliberations and introducing new directions to address common misconceptions.

The Department of Justice and Regulation (the department) has prepared a report, *Jury Directions: A Jury-Centric Approach Part 2*, which sets out in detail the reasons for these reforms.

Like the previous jury directions reforms, the reforms to the Jury Directions Act and the related reforms to other acts have been discussed in detail by the expert advisory group established by the department to assist in the reform process. The input of the advisory group has been vital to ensure that the proposed jury directions reforms are fair, clear and effective. I thank the members of the advisory group for their contributions over the last six years.

Amendments to the Jury Directions Act 2015

This bill builds on the current act by addressing a number of problematic jury directions. The bill will also clarify how the Jury Directions Act applies to criminal proceedings before magistrates and appellate judges. For example, the Jury Directions Act provides that forensic disadvantage to an accused due to delay may only be taken into account if the court is satisfied that the accused has actually experienced a significant forensic disadvantage. It is appropriate that a magistrate hearing a criminal case involving delay and forensic disadvantage uses this same reasoning.

Directions on previous representations

A previous representation is a statement made outside of the court proceeding, such as a witness's earlier statement to police. Jury directions on this evidence aim to instruct juries on how they may use (or not use) the evidence and, where relevant, its potential unreliability. Directions on use of this evidence are working well, and do not need specific legislative intervention, and the Jury Directions Act already contains directions on unreliable evidence.

However, the common law currently requires trial judges to give additional directions on previous representations that are confusing or unhelpful for jurors. For example, judges must sometimes direct that evidence from a witness who heard a statement is not independent proof of the facts stated. This direction could be misunderstood by jurors to mean that a complainant's evidence needs to be independently confirmed, which is not correct.

The bill will clarify and simplify this area of the law by making it clear that this, and other problematic common-law directions, are not required. While trial judges may still give such directions if appropriate, these provisions will reassure trial judges that they do not need to 'appeal proof' their trials by giving these directions in each case.

Directions on the accused giving evidence and interest in the outcome of the trial

The accused is not required to give evidence in a criminal trial. However, if an accused decides to give evidence, the common law may require the trial judge to give certain directions about that evidence that are confusing, unnecessary or inaccurate. These include a direction which provides that the jury should treat the accused's evidence in the same way as other witnesses, but that the accused is probably under more stress than any other witness.

On a related issue, the common law prohibits trial judges from directing the jury that an interest in the outcome of the trial is a factor to consider when assessing witnesses, including the accused. The rationale is that such a direction would undermine the presumption of innocence, because the accused always has an interest in the outcome of the trial. The prosecution is also prohibited from raising this issue. However, uncertainty as to the scope of this prohibition has led to appeals and retrials, while juries do not receive assistance on how to assess interest in the outcome of the trial.

The bill will clarify what can and cannot be said about both the evidence of an accused and interest in the outcome of a trial. For example, trial judges and parties will be prohibited from suggesting that an accused's evidence is less credible or requires more scrutiny than the evidence of other witnesses. However, consistent with other credibility directions in the Jury Directions Act, trial judges and the parties will continue to be able to comment on how a witness's or accused's particular interest in the outcome of the trial does or may affect their credibility.

The bill will allow a trial judge to remind the jury that the accused is not required to give evidence and that the onus of proof has not changed because the accused gave evidence. The judge may also direct the jury to assess the evidence of the accused in the same way as any other witness. This will guide the jury on how to assess the accused's evidence fairly.

The bill will also prohibit trial judges from giving certain problematic common-law directions.

Directions on motive to lie

During a trial, counsel may argue that a prosecution witness, including the complainant, has a motive to lie about the alleged offence, for example, financial gain. The prosecution may rebut that motive, or it may be suggested that the witness does not have a motive to lie (for example, the witness may say 'Why would I lie about this?'). Trial judges must currently give lengthy directions on motive to lie that are unclear in scope and may reinforce outdated notions that victims, particularly of sexual offences, frequently lie. For example, trial judges must direct the jury that the absence of a motive to lie cannot enhance a complainant's credibility as there are many reasons people may lie. Confusingly, juries are then told not to speculate about any motive to lie.

The bill will ensure that directions on motive to lie focus on the burden of proof and are fair to both the accused and the alleged victim. The bill sets out what trial judges must include in a direction (e.g. that the prosecution bears the burden of proof and the accused does not need to prove a witness had a motive to lie). Other than this direction, the bill makes it clear that trial judges are not permitted to direct on motive to lie. This will ensure that the question of credibility of a witness is left to the jury to assess, as is appropriate.

Directions on differences in a complainant's account

Defence counsel often use differences in accounts to discredit the complainant's credibility or reliability. Research shows that people retain and recall memories differently, and that truthful accounts often contain differences. For example, an August 2016 report published by the Royal Commission into Institutional Responses to Child Sexual Abuse found that in the sample study, defence counsel raised inconsistencies within the complainant's own evidence in more than 90 per cent of cases. Trauma can also exacerbate the normal variability of memory. However, these issues are not commonly understood. Instead, it is a common misconception that a 'real' victim would remember all the details of an offence, and describe that offence consistently each time, to any person, in any context.

The bill will allow trial judges to address this misconception in appropriate cases. The direction will include that people may not remember all the details of a sexual offence or describe an offence consistently each time, and that it is common for there to be differences in accounts. However, the direction will also emphasise that it remains up to the jury to decide whether any differences are important and whether they believe some, all or none of the complainant's evidence.

In line with the current directions on delay and credibility, the direction would address the risk that a juror will make an unwarranted assumption about differences in a complainant's account. It would encourage jurors to consider the complainant's evidence with an open mind, while not restricting the ability of defence counsel to argue how differences in the particular complainant's account may affect their credibility or reliability.

Directions on perseverance and majority verdicts

Majority verdicts in criminal trials are available for all Victorian criminal offences, except for murder, treason and certain major drug offences. This bill will not change these rules.

However, the bill will affect the order and timing of perseverance and majority verdict directions. If a jury is having difficulty reaching a unanimous verdict, trial judges can give a direction encouraging the jury to persevere. If this direction is given, trial judges can simultaneously explain the procedure for returning a majority verdict. For example, a judge may say 'in some circumstances, I can allow you to give a majority verdict instead of a unanimous one. But it is not yet time for that, and may never be. So I urge you to return to the jury room and try to resolve your differences'. While these statements are technically correct, giving them at the same time is confusing and unhelpful, and may also put pressure on juries to compromise.

Accordingly, the bill will clarify this area by providing that trial judges must not give a perseverance direction immediately before, at the same time as, or immediately after, a majority verdict direction. In addition, trial judges will no longer have to direct the jury to persevere before accepting a majority verdict (as they are in the best position to determine whether such a direction is appropriate in the particular case). By separating the perseverance and majority verdict directions, each direction will be clearer and more helpful for jurors in understanding what they may or must do.

Directions on jury deliberations

Presently, trial judges can only direct the jury as to the sequence in which verdicts must be delivered in court, not the particular order in which it should consider alternative charges or elements of an offence. For example, a judge cannot direct the jury to consider the offence of murder before considering the alternative offence of manslaughter or direct when the jury must consider self-defence. This distinction is arbitrary, and gives juries little assistance in structuring their deliberations. In some trials, there is a logical order in which to consider offences or elements.

The bill will allow trial judges to direct on the order in which juries must consider the offences charged, as well as some or all of the elements of an offence or alternative offence, any defences and relevant issues in dispute. This will provide clear guidance to juries about how to structure their deliberations, which may assist in more complex cases.

Directions on doubts regarding the truthfulness and reliability of a complainant's evidence

The New South Wales case of *R v. Markuleski* [2001] 52 NSWLR 82 requires trial judges, in word against word cases (commonly sexual offence cases), to direct juries that if they have a reasonable doubt concerning the truthfulness or reliability of the complainant's evidence in relation to one or more charges, that must be taken into account in assessing the truthfulness or reliability of the complainant's evidence generally.

Victorian courts have criticised the direction for being confusing, misleading and inconsistent with other directions, such as the direction to consider each charge separately. It is also criticised for being overly advantageous to the accused.

While it is unlikely that the direction would often be given under the Jury Directions Act, there are good reasons for not giving the direction at all. Accordingly, the bill will specifically prohibit Markuleski directions.

Jury directions related amendments to other acts

In addition to amending the Jury Directions Act 2015, the bill will make related reforms to a number of other acts.

Alternative evidence directions — amendments to the Criminal Procedure Act 2009 and the Evidence (Miscellaneous Provisions) Act 1958

The Criminal Procedure Act allows certain witnesses, including witnesses in sexual offence and family violence proceedings, to give evidence by alternative means (e.g. by CCTV). Other witnesses, such as child complainants, may have their evidence prerecorded. These provisions recognise that the conventional way of giving evidence can be highly traumatic and confronting in such cases, and that the alternative arrangements do not interfere with an accused's right to a fair trial. The use of such arrangements is now common.

When evidence is given in such a way, provisions in the Criminal Procedure Act require trial judges to warn jurors not to draw any adverse inference to the accused, or give the witness's evidence any greater or lesser weight, because of the making of the arrangements. Section 42V of the Evidence (Miscellaneous Provisions) Act 1958 is an equivalent provision relating to audiovisual links.

These directions are meant to minimise the risk of prejudice to the accused. However, as CCTV and video recordings are now commonplace, the directions are no longer necessary in each case.

Accordingly, the bill will repeal these provisions.

Exceptions to the hearsay rule — amendments to the Criminal Procedure Act 2009 and the Evidence Act 2008

The hearsay rule generally prevents a jury from hearing evidence from an alleged victim of an offence about what he or she said about the offence out of court. It may also prevent other people giving evidence about what the alleged victim told them about the offence.

Exceptions to the rule recognise that there are circumstances in which hearsay evidence should be admitted (e.g. because it is particularly relevant or likely to be reliable). There are currently two exceptions that apply in criminal trials when the maker of a representation is available to give evidence: section 66 of the Evidence Act and section 377 of the Criminal Procedure Act. Section 377 is limited to child complainants in sexual offence trials who are under 18 years of age when the trial commences, while section 66 applies to criminal trials more generally.

Section 377 would be better located in the Evidence Act alongside the other hearsay provisions. Accordingly, the bill will consolidate the two provisions in the Evidence Act, and improve the operation of the hearsay exception currently in section 377.

The new provision would provide an exception to the hearsay rule if the occurrence of the asserted fact was fresh in the memory of the maker of the representation (consistent with current section 66) or the maker of the representation is an alleged victim in the proceeding and was under 18 years of age when he or she made the representation. Children may often delay in reporting an offence, and are likely to first tell a parent, teacher or friend. Given this, a child's initial complaint or statement about an alleged offence will often be the best evidence of contested facts. Broadening this exception to all criminal proceedings, not just sexual offence proceedings, will ensure that other serious criminal offences are covered, such as family violence offences. Including representations made by any person before they turn 18 reflects that there can be lengthy delays between the alleged offending and the start of proceedings, and that it is unfair to exclude relevant evidence from a child just because they turn 18 before the matter reaches court.

Legislative support for a jury guide — amendments to the Criminal Procedure Act 2009

Section 222 of the Criminal Procedure Act gives trial judges broad discretion to address juries on matters that are relevant to the performance of the jury's functions. Section 223 of that act allows judges to give juries a variety of documents to help them understand the issues and evidence in the trial.

The expert advisory group that was formed to assist with the jury directions reform process has developed a general jury guide, which is a written document summarising preliminary directions given in all criminal trials (covering, for example, the role of the judge and jury, and fundamental legal concepts such as the presumption of innocence). The guide also assists the jury with their deliberations. The guide is currently being trialled in the County and Supreme courts. Jurors will be surveyed to see whether the jury guide is effective or could be improved. If the guide proves to be as useful as is expected, the bill will enable regulations to be made requiring its use in every trial.

Time limits for taking majority verdicts — amendments to the Juries Act 2000

Currently, trial judges may only accept a majority verdict if the jury has deliberated for at least 6 hours. If the jury indicates that it has become deadlocked (in an unresolvable way) early in its deliberations, particularly in simple trials, the judge must still wait until the 6-hour mark before directing the jury about returning a majority verdict. This contributes to unnecessary court delays and does not assist in promoting effective jury deliberation processes. Accordingly, the bill will give trial judges the discretion to accept majority verdicts at any time if they consider that the jury has had a reasonable time for deliberations, having regard to the nature and complexity of the trial. Each trial is different, and the trial judge will be in the best position to determine the most appropriate course of action.

Amendments relating to peremptory challenges in criminal trials

During selection of a jury in a criminal trial, an accused may make a limited number of peremptory challenges to prospective jurors. Varying practices amongst trial judges has led to recent appeals where convictions were overturned on the basis that the accused did not have an adequate opportunity to view prospective jurors' faces, which impacted on their right to challenge jurors. The bill amends the Juries Act 2000 by codifying the common law to expressly provide that an accused must have a reasonable opportunity to exercise a peremptory challenge. This will require the accused to have an adequate opportunity to view the faces of prospective jurors, but will not require jurors to 'parade' in front of the dock.

Conclusion

Jurors perform a vital role in our criminal justice system and should be supported and assisted in performing that role. The Jury Directions Act 2015 uses a jury-centric approach that enables and encourages trial judges to give directions that are as clear, brief, simple and understandable as possible. Adopting the same approach, this bill addresses additional jury directions and related provisions that require reform to assist jurors.

I commend the bill to the house.

Debate adjourned for Mr RICH-PHILLIPS (South Eastern Metropolitan) on motion of Mr Ondarchie.

Debate adjourned until Tuesday, 9 May.

PORTS AND MARINE LEGISLATION AMENDMENT BILL 2017

Introduction and first reading

Received from Assembly.

Read first time on motion of Ms PULFORD (Minister for Agriculture); by leave, ordered to be read second time forthwith.

Statement of compatibility

Ms PULFORD (Minister for Agriculture) 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 Ports and Marine Legislation Amendment Bill 2017 (the bill).

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

Overview

The bill makes amendments to the Marine Safety Act 2010, the Port Management Act 1995 and the Marine (Drug, Alcohol and Pollution Control) Act 1988. The following of such amendments are relevant to human rights:

removing the ability of children between the ages of 12 and 16 to apply for a personal watercraft endorsement on their marine licence;

permitting waterway managers to relocate, seize and dispose of things abandoned on waterways under their control and recover all associated costs of relocating, seizing and disposing of abandoned things;

providing for new arrangements for the use and disclosure of information collected and held by the safety director; and

amending provisions relating to criminal liability of officers of bodies corporate.

Human rights issues

Recognition and equality before the law (s 8)

Section 8(3) of the charter provides that everyone is entitled to the equal protection of the law without discrimination on the basis of the attributes defined in the Equal Opportunity Act 2010, which includes the basis of age.

Age distinctions in licence endorsement

Clause 11 amends section 55 of the Marine Safety Act 2010 to restrict applications for an endorsement of a marine licence to persons aged 16 years or older. This provision treats persons less favourably by reason of their age, and accordingly is a limit on the right to equality. However, in my view this limitation is reasonably justified in the interests of health and safety.

An endorsed marine licence authorises the holder to be the master of a prescribed class or type of vessel, or a vessel undertaking a prescribed type of activity. This includes personal watercrafts, such as an aquascooter, jet bike, jet ski, wave runner, motorised surfboard or any similar vessel that has an engine used for propulsion. The requirement for an endorsement recognises the additional knowledge and skills required to act as the master of a personal watercraft, as such vessels are generally much more powerful and manoeuvrable than traditional powerboats and, in the wrong hands, can present a danger to the operator and to other people using waterways.

The purpose of the age distinctions with respect to licensing and operating a vessel under supervision is to ensure that those operating vessels have sufficient maturity to operate them safely and comply with the additional requirements that apply to operating such vessels. It is reasonable for Parliament to set an age limit reflecting its assessment of when most persons will have sufficient maturity to ensure responsible decisions which enhance marine safety are made in these particular contexts. The specified minimum age limit of 16 years is consistent with national standards on regulating the minimum age of operating a personal watercraft. Accordingly, I am satisfied that this provision is compatible with the right to equality in the charter.

Distinctions regarding 'medical fitness'

Clauses 24 and 25 insert 'appropriate medical fitness' as a requirement to granting a ship pilot licence, including that evidence of medical fitness accompany an application for a pilot licence and that a licence may be conditional on a pilot maintaining medical fitness. These requirements and conditions may adversely impact a person on the basis of their disability, physical features or age. However, in my view the requirement and condition of ongoing medical fitness to pilot is reasonable and therefore does not amount to discrimination so as to limit the right to equality. In any event, any limit on the right to equality would be reasonably justified in the interests of health and safety. Marine safety is of paramount importance to pilots, passengers and the general community, and the inherent requirements of safety include that pilots maintain an appropriate standard of medical fitness in order to be granted and/or retain their pilot licence. The Equal Opportunity Act 2010 recognises, through its express exemptions, that a person may be discriminated against on the

basis of disability or physical features if such discrimination is reasonably necessary to protect health, safety and property of any person or the public generally. Accordingly, I am satisfied these provisions are compatible with the right to equality in the charter.

Right to privacy (s 13)

Section 13 provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with. Provisions which provide for the use, sharing and disclosure of personal information will involve a degree of interference with this right.

Use and disclosure of information

Clause 27 inserts part 8.8A into the Marine Safety Act 2010, providing for an expanded regime on the use and disclosure of information under the act, which replaces the previous regulation on these matters contained in section 306 of the act.

The new part 8.8A is more extensive than the previous regime, and outlines with greater clarity the instances in which information may be disclosed. New section 298A provides definitions for terms such as 'relevant representative', 'consent', 'law enforcement agency', 'relevant information' and 'relevant person'. It applies to information collected or received by the safety director in relation to the performance or exercise of functions or powers under the Marine Safety Act 2010, and which identifies an individual or from which an individual's identity can be reasonably ascertained (including an individual's facial image).

New section 298C provides that the safety director or relevant person may disclose or use relevant information for a variety of specified purposes. These purposes include in connection with administering the act or regulations, providing information of community interest or benefit, for the purpose of research (albeit not extending to use in the publishing of research which may identify any individual), for the purpose of monitoring compliance with relevant marine safety law, for the purpose of any legal proceedings arising out of this act, at the direction of the minister, in circumstances of emergency to prevent threat to life or health, to not-for-profit organisations to assist to locate a missing person or facilitate the reunion of persons, for the purposes of law enforcement or as otherwise required or authorised by law.

In relation to some of these purposes, such as research, to assist not-for-profit organisations for specified purposes or for law enforcement purposes, new section 298E requires a person to have entered into an information protection agreement with the safety director before information can be disclosed. An information protection agreement must specify a variety of matters relating to the disclosure of such information (with certain exceptions), including the purpose of disclosure, the authority for disclosure, the means of disclosure and how compliance with the agreement and privacy obligations will be managed.

New section 298D provides an additional ground for disclosure in emergency situations. It provides that the safety director, or relevant person, may use or disclose relevant information if the minister is satisfied that exceptional circumstances exist and it is appropriate to use or disclose relevant information in the circumstances. Exceptional circumstances are defined in the provision to include situations endangering health, safety or property such as natural disasters or disruptions to essential services. If the minister is so satisfied, the safety director must publish notice of this on the relevant internet website. New section 298D(3) then provides the circumstances in which information may be disclosed under this provision, including to persons affected by the exceptional circumstances or to an agency involved in managing or assisting in the exceptional circumstances. The provision also mandates that no disclosure can be made to a media organisation. Finally, disclosure of information relating to an exceptional circumstance must cease after 12 months following the publishing of notice.

In my view, any interferences with the right to privacy resulting from the use and disclosure of information in accordance with the above provisions will not be arbitrary. The purposes for which disclosure may occur are clearly prescribed and relate to ensuring the proper functioning of the act, including furthering matters of public interest such as ensuring better marine safety and prevention of incidents. The relevant information is largely information that has been voluntarily provided to the safety director by persons in the course of participating in this regulated industry as operators, owners, manufacturers, suppliers, safety workers, passengers and licence-holders. Safeguards on the improper use of information also apply, with new section 298H providing for an offence to use or disclose relevant information without authorisation.

Finally, new section 298F provides the safety director or relevant person with a discretion not to disclose information in the absence of a legal obligation to disclose it. In addition to a discretion not to disclose, the safety director remains a public authority under the charter, and will be required to give proper consideration to, and act compatibly with, the right to privacy when making decisions regarding the use and disclosure of personal information under the act. For these reasons, I consider that these new provisions do not limit the right to privacy, and in fact provide better protection of the right to privacy by ensuring more clarity on disclosure of information than was previously provided for by the act.

Right to property (s 20)

Section 20 of the charter provides that a person must not be deprived of their property other than in accordance with law. This right requires that powers which authorise the deprivation of property are conferred by legislation or common law, are confined and structured rather than unclear, are accessible to the public and are formulated precisely.

Removal of things

Clause 22 inserts new section 219A into the Marine Safety Act 2010 which provides for the removal of things from waters under the control of the waterway manager if the thing has been left unattended on those waters for more than one month and the identity or location of the owner of the thing cannot be established or the waterway manager reasonably believes that the owner of the property will not move the property. In addition, new section 219A also provides the waterway manager with an immediate power of removal concerning unattended things from waters under the control of the manager in specified circumstances (such as where the thing is impeding use, causing an environmental hazard, risking safety or is a danger to public health) and the identity of the owner cannot be established or the waterway manager reasonably believes the owner will not move the property. Once a thing has been moved under these provisions, a

waterway manager has the power to dispose of that thing either by gift, sale or destruction of the thing if the waterway manager is unable to establish the identity or location of the relevant owner.

I am of the view that any interference with a person's property right by way of the exercise of these powers will be lawful, as any deprivation of property will only occur in limited circumstances clearly set out in these provisions and subject to any number of procedural safeguards. When moving a thing under these powers, a waterway manager must move it to a place that is the nearest safe and convenient place, and must subsequently make all reasonable enquiries to establish the identity or location of the owner of the property. Any action to dispose of a thing moved under these powers (which is not a perishable item) cannot be undertaken until the relevant waterway manager has given 28 days notice of the intended disposal of that thing, and must cause such notice to be published by way of a circulating newspaper and the relevant internet website. If the identity of the owner is known, notice must be provided in writing to the owner. Finally, an owner (and any party with an interest in the property) is entitled to be compensated by the waterway manager for any disposal occurring under these provisions, after costs spent moving and disposing the thing are recovered. Further, a person with an interest in a disposed thing may apply to the Magistrates Court for a compensation order within 12 months of the date of disposal.

Clauses 43 and 44 insert similar powers into the Port Management Act 1995 to permit a port manager to move anything from a relevant port. Similar provisions regulating disposal of such things and payment of compensation are already provided for in existing section 88T to 88W. I am of the view that these provisions are also compatible with the right to property for the reasons as discussed above.

Rights in criminal proceedings (s 25)

Section 25(1) provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Deemed criminal liability for officers of bodies corporate

Clause 26 inserts new section 285 into the Marine Safety Act 2010 to provide for criminal liability of officers of bodies corporate for a failure to exercise due diligence. New section 285 provides that if a body corporate commits an offence against specified provisions, an officer of the body corporate also commits that offence if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate. Clause 41 inserts new section 67 into the Marine (Drug, Alcohol and Pollution Control) Act 1988 to provide for similar criminal liability of officers of bodies corporate when failing to exercise due diligence. This is relevant to the presumption of innocence as the provision may operate to deem as 'fact' that an individual has committed an offence for the actions of the body corporate.

A person who elects to undertake a position as officer of a body corporate accepts that they will be subject to certain requirements and duties in participating in these regulated industries, including a duty to ensure the body corporate does not commit offences under the relevant acts. In my view, these provisions do not limit the right to presumption of innocence as the prosecution is still required to prove that the officer failed to exercise due diligence to prevent commission of the offence. In determining whether or not an officer failed to exercise due diligence, a court may have regard to a number of factors, including the knowledge of the officer, the officer's position of influence on the body corporate and what steps the officer took to prevent the commission of the offence by the body corporate. Accordingly, the burden of proving the main element of the offence, which is the 'failure' to exercise due diligence, remains on the prosecution.

Courts in other jurisdictions have held that protections on the presumption of innocence may be subject to limits particularly in the context of compliance offences in regulated industries. Accordingly, I am of the view that these provisions are compatible with the charter's right to the presumption of innocence, in light of the special responsibilities attached to officers of a body corporate operating in a regulated industry.

The Hon. Jaala Pulford, MP
Minister for Agriculture

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Ms PULFORD (Minister for Agriculture).

Ms PULFORD (Minister for Agriculture) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The bill makes several important changes to marine and port legislation to:

facilitate improvements in safety by addressing gaps in the scope and coverage of safety duties under the Marine Safety Act 2010;

enable more efficient and effective management of state waters by amending waterway rule-making powers and providing powers to local ports and waterway managers to deal with abandoned vessels;

reduce public safety risks by making specific changes to licensing requirements for pilots and masters of recreational vessels aged between 12 and 16 years of age;

support more effective cross-portfolio enforcement and enables administrative cost savings to be achieved by removing unnecessary limitations on disclosure of marine licensing and registration information to enforcement authorities; and

reduce red tape and enable cost savings to be achieved by making other minor, technical and miscellaneous amendments.

The primary purpose of the bill is to address identified safety problems and facilitate improved public safety outcomes in the future.

The secondary purpose of the bill is to remove red tape and enable administrative cost savings to be achieved.

Part 2 of the bill makes amendments to the Marine Safety Act 2010. Part 3 makes amendments to the Marine (Drug, Alcohol

and Pollution Control) Act 1988 and part 4 makes amendments to the Port Management Act 1995. An amendment to the Road Safety Act 1986, which is consequential to changes included in part 2 is specified in part 5.

In recent years there has been significant investment in safety education and delineation of boating zones in Port Phillip Bay and throughout the state to help manage and address safety risks associated with the interaction between vessels and swimmers. Despite these investments, safety incidents involving personal watercraft, commonly referred to as jet skis, continue to occur near swimmers and other water users.

The investments that have been made are no doubt having a positive impact. The messages are getting through to most jetski users, however, it is apparent that a small group of users are spoiling the fun for everyone else. The government recognises that action must be taken to address unsafe conduct and is developing a new compliance monitoring and enforcement strategy to target those that continue to operate illegally, threatening their own safety and the safety of others.

The bill includes a related measure aimed at reducing injuries to minors and avoiding the loss of life.

Minors between the ages of 12 and 16 years may currently apply for, and obtain, a restricted marine licence. The restrictions imposed are that licence-holders must not:

operate at a speed greater than 10 knots;

operate between sunset and sunrise; and

tow persons or other vessels.

Minors that hold restricted licences are currently able to have those licences endorsed so that they can operate jet skis. People using jet skis generally do so with the intention of operating at speeds significantly more than 10 knots. The unsupervised use of jet skis by minors is therefore seen by many as inconsistent with the purpose of restricted licences, that is, to enable minors to get involved in recreational boating in a controlled way without exposing them to significant risks.

The available evidence, largely in the form of hospital admissions and emergency presentation data, indicates that a disproportionate number of minors are being injured on personal watercraft when compared with the rate of injury observed in other age groups. This data and anecdotal evidence made available by the water police, Transport Safety Victoria and local waterway managers tends to support the view that that there is a genuine safety problem that needs to be addressed.

Clause 11 of the bill makes an amendment that prohibits persons less than 16 years of age from having their licences endorsed so that they are not able to operate a jet ski without supervision. Supervised operation of jet ski by minors is still possible, so there will continue to be avenues available to minors to learn responsible jetski operation. However, the government believes that a clear signal needs to be sent to parents and guardians that minors, who are not adults and cannot be held accountable to the same extent, are not permitted to operate jet skis without supervision. Ensuring that there is adequate adult supervision is expected to reduce observed injury rates and potentially save lives.

The Marine Safety Act 2010 imposes duties on a range of different parties to identify risks and implement measures that minimise safety risks so far as reasonably practicable. Duty holders are required to remain vigilant in respect to the management of safety risk. Governments must do the same. Governments must review and refine regulatory settings and arrangements to ensure death and injuries are avoided wherever possible. Good management, not just good luck, is needed to avoid injuries and the loss of life.

This bill will address gaps in safety duties and safety requirements that have been identified as a consequence of incidents on state waters in recent years. For example, the Anaconda ocean paddling event held in 2011 involved 600 participants. The event proceeded despite the prevailing weather conditions not being suitable to support the conduct of such an event. As a result, many participants found themselves in difficulty. More than 100 rescues were necessary. If not for the actions undertaken by the providers of marine search rescue services, many lives could have been lost.

Organisers of such events have a high level of influence and control over marine safety risks that may arise during the undertaking of such events. It is necessary to make sure that event managers are accountable for taking reasonable precautions so that risks are minimised and the costs of risk control measures are paid for by participants instead of third parties. In the case of the Anaconda ocean paddling event, the costs of uncontrolled risks were imposed on volunteers who provide marine search and rescue services and taxpayers who fund the services provided by the water police.

To ensure that suitable accountabilities exist clause 8 of the bill applies safety duties to managers of events held wholly or partly on state waters. This will ensure that Transport Safety Victoria has the capacity to act to ensure risks are minimised. Similarly, to enable Transport Safety Victoria to more effectively oversight safety risk management in local ports clauses 7 and 9 of the bill extend the safety duties currently applied to commercial port management bodies to the managers of local ports. Local port managers already have these duties under occupational health and safety law but Transport Safety Victoria has no role in ensuring compliance with these duties. The effect of clauses 7 and 9 is therefore to confirm and clarify the role Transport Safety Victoria has in oversighting the safety of local port operations.

Pilotage of large ships to berths in commercial ports is a risky operation that, if not conducted properly, has significant safety and economic consequences, for example, the closure of the port of Melbourne following an incident. Accordingly, safety accountabilities need to be clear and risk management obligations need to be enforced. Equally, there needs to be a high level of assurance that pilots are medically fit and competent.

Clauses 24 and 25 of the bill include amendments that enable Transport Safety Victoria to impose conditions on pilot licences relating to competency and medical fitness. These amendments, and amendments to general regulation-making powers in clause 29, will be used to ensure that the competency and medical fitness of pilots is tested periodically. Clause 10 of the bill also ensures that pilotage service providers have an obligation to minimise risks of their operations so far as is reasonably practicable, irrespective of the type of vessel under pilotage. The scope of the duty imposed on pilotage service providers is currently limited to circumstances where pilotage services are being provided to the owners and operators of domestic commercial vessels.

Abandoned vessels can pose safety risks and may occupy moorings, berths and other facilities at the expense of other uses and users. Significant costs can also be incurred by responsible bodies if they are required to move, store or dispose of these vessels. Under part 5B, division 4 of the Port Management Act 1995 the Victorian Ports Corporation has powers to deal with abandoned things left on port land or in port waters. Other port and waterway managers, other than the Victorian Ports Corporation, do not have explicit powers to deal with abandoned vessels. The amendments made by part 4 and clause 22 of the bill ensure that all port and waterway managers have the power to relocate, seize and dispose of abandoned vessels and, if necessary, recover the costs of disposal from vessel owners.

Transport Safety Victoria has a duty under the Transport Integration Act 2010 to independently seek the highest transport safety standards. A tool that Transport Safety Victoria uses to achieve the highest possible safety standards on the water is to establish, amend or modify waterway rules. The capacity of Transport Safety Victoria to make waterway rules is currently limited in a number of ways. These limitations are unnecessary and impede Transport Safety Victoria taking timely action to manage identified safety risks.

Clauses 14 and 15 make amendments to ensure that Transport Safety Victoria has the authority to act when needed. Clauses 16, 17, 18 and 19 remove red tape around the rule-making process, by enabling notice requirements for proposed rules, urgent safety rules and exclusion zones to be tailored to the intended audience.

A number of state and commonwealth agencies, including customs and state and federal fisheries regulators, regularly seek access to vessel or operator information for the purposes of enforcing or monitoring compliance with important non-safety related legislation.

However, Transport Safety Victoria is only permitted to disclose this information in limited circumstances. Clause 27 of the bill establishes a new regime for the use and disclosure of information that is modelled on information disclosure provisions in the Road Safety Act 1986. This will assist cross-portfolio coordination and enable administrative cost savings to be achieved.

Finally, it should be noted that the bill implements a number of miscellaneous, minor and technical changes to legislation in the ports portfolio that are largely consequential to other reforms already approved by the Parliament. For example:

part 3 of the bill makes changes to drug and alcohol testing requirements that are consequential to changes to the road safety drug and alcohol scheme made by the Road Legislation Further Amendment Act 2016;

implements director liability provisions that are consistent with formulations that have been agreed at the national level and which are being progressively implemented across all Victorian statutes.

I commend the bill to the house.

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

Debate adjourned until Tuesday, 9 May.

PETITIONS

Following petition presented to house:

Crime prevention

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council our concerns.

The petitioners request that:

significantly increase police numbers in Greater Dandenong;

reform legislation so that those who commit crime on bail are not available to go on bail again;

do not tolerate poor and criminal behaviour from young offenders when incarcerated in juvenile justice centres.

By Mr RICH-PHILLIPS (South Eastern Metropolitan) (422 signatures).

Laid on table.

The PRESIDENT — Order! At this point I would just like to make a short statement to alert the house to the procedure for the introduction of the budget papers today in the other place. I wish to make a brief statement in relation to our formal business program today. In order to comply with section 27E of the Financial Management Act 1994 the budget papers will not be tabled in this house until such time as the Treasurer has commenced the second reading of the annual appropriation bill. The Treasurer will likely not begin his speech until after 1.00 p.m. as the Assembly will not hold formal business until after the conclusion of its question time. In order for this house to see the budget papers tabled today at the earliest opportunity and to comply with the Financial Management Act 1994, I will interrupt business before question time to allow the budget papers to be tabled both under the act and by a motion by leave of the Leader of the Government. Once the Treasurer has commenced his speech in the other place one copy of the budget per member will be available in the Council's table office.

AUDIT COMMITTEE

Review of members second residence allowance

The PRESIDENT, by leave, presented PwC reports on phase 2 and phase 3.

Laid on table.

Ordered to be published.

UNIVERSITY OF DIVINITY

Report 2016

Ms TIERNEY (Minister for Training and Skills), by leave, presented report.

Laid on table.

AUDIT COMMITTEE

Review of members second residence allowance

The PRESIDENT — Order! I take this opportunity to make a short statement to the house in regard to the two reports that I have tabled today. The statement I make is in regard to the Audit Committee's role.

Further to the tabling of reports of the Parliament's internal Audit Committee, I wish to make the following statement about the appropriate role of that committee. The Audit Committee is an internal administrative committee of the parliamentary organisation. In my view it should not be the role of the Audit Committee to publicly report, as it has been required to do in recent weeks. I will explain why this is the case, but firstly I will point out that the only reason the Audit Committee conducted this particular type of investigation of second residence allowances and then reported publicly was the very public referrals of the matter to the committee in the first place.

The Audit Committee is an internal committee of the parliamentary organisation. Its role is to advise the Presiding Officers on matters of administration and risk management to better administer the parliamentary departments. It is not a committee set up by statute or standing orders. It therefore has no formal investigative powers, no parliamentary privilege, including immunities, and no reporting framework. This means that any formal and publicly reported investigation creates potential vulnerabilities for the committee and the people it seeks to investigate and report on. It similarly creates vulnerabilities for the contracted auditors, who conduct the operational inquiries on behalf of the committee but also in order to create some independence of process from the Presiding Officers.

There are committees, such as privileges committees, which are set up with powers and reporting frameworks to investigate certain matters.

I strongly encourage members to take these matters into consideration and in future circumstances to avoid misplacing pressure on the Audit Committee to publicly report.

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

Alert Digest No. 5

Mr DALLA-RIVA (Eastern Metropolitan) presented *Alert Digest* No. 5 of 2017, including appendices.

Laid on table.

Ordered to be published.

ELECTORAL MATTERS COMMITTEE

Electronic voting

Ms PATTEN (Northern Metropolitan) presented report, including appendices and transcripts of evidence.

Laid on table.

Ordered that report be published.

Ms PATTEN (Northern Metropolitan) — I move:

That the Council take note of the report.

I am very pleased to present the Electoral Matters Committee's report on its inquiry into electronic voting. As many members will recognise, this is a very current issue and certainly one we have all discussed at the pub or around the dinner table. The committee received 34 written submissions, which is the second highest number of submissions the Electoral Matters Committee has ever received. I would like to thank all the individuals and organisations who made those submissions.

The committee had to consider two competing forces as a consequence of this inquiry. Firstly, the committee received evidence that it is hard to guarantee the security of votes lodged electronically. In many ways the bar is set higher for electronic voting than it is for the current system, but the opportunity for widespread electoral fraud is made easier by technology.

Secondly, the committee recognises the growing desire across the voting public for electronic voting. Often this is expressed in the somewhat simplistic but valid question: we have online banking and online tax returns, so why can we not have online voting? The expert evidence gathered by the committee answered this and advised that the success to banking online is guaranteed by linking the name of the person doing the banking and the transaction. The same goes for the tax department. But a secret ballot is a fundamental right of

every individual in Australia, and this requirement for anonymity makes electronic voting a far more difficult technical proposition — but not an impossible one, and certainly the advent of blockchain technologies has proved this.

The postal system, on which we will rely for postal votes for the next state election in 2018, is very different than the one that operated decades ago. In fact the current postal system struggles with postal voting, and we saw that very clearly in the recent council elections. The inquiry also took place during the 2016 federal election, where results took weeks to be confirmed, and then there was the census. This provided two perfect examples of the issues the committee faced.

The committee has been cautious in its recommendations, and these include: that the committee supports electronic voting in principle for a limited classification of voters, comparable with the New South Wales iVote model, which has operated for three elections and was used by over 280 000 voters in last year's state election. Specifically this system applies to people with a vision impairment or disability and to people who would be out of Victoria on election day, either interstate or overseas. The committee also favours a combined approach from the commonwealth and various state electoral authorities, particularly given the extremely high cost of establishing remote voting options and the need for rigorous security.

I wish to thank the members of the committee — the chair, Louise Asher, the deputy chair, Ros Spence, along with Martin Dixon, Russell Northe, Lizzie Blandthorn and Adem Somyurek. It really was a pleasure to work with them on this very interesting subject. I would also like to thank the staff of the Electoral Matters Committee, led by Mark Roberts, the executive officer, and backed by Nathaniel Reader, the research officer, and Bernadette Pendergast and Maria Marasco, the administrative officers. I also wish to thank the assistant clerk, Robert McDonald, who supported the work of the committee during this inquiry.

I commend this report to the house.

Motion agreed to.

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

Operation Nepean

The Clerk, pursuant to section 162 of the Independent Broad-based Anti-corruption Commission Act 2011, presented special report concerning an investigation into conduct of former employee of Dame Phyllis Frost Centre Jeff Finlow, April 2017.

Laid on table.

Ordered to be published.

OMBUDSMAN

Apologies

The Clerk, pursuant to section 25AA of the Ombudsman Act 1973, presented April 2017 report.

Laid on table.

Ordered to be published.

PAPERS

Laid on table by Clerk:

Bendigo Kangan Institute — Report, 2016.

Box Hill Institute of TAFE — Report, 2016.

Centre for Adult Education — Report, 2016.

Chisholm Institute — Report, 2016.

Deakin University — Report, 2016.

Falls Creek Alpine Resort Management Board — Minister's report of failure to submit 2016 report to the minister within the prescribed period and the reason therefor.

Federation University Australia — Report, 2016.

GOTEC Limited — Report, 2016.

Goulburn Ovens Institute of TAFE — Report, 2016.

Holmesglen Institute — Report, 2016.

Interpretation of Legislation Act 1984 —

Notice pursuant to section 32 in relation to Statutory Rule No. 9.

Notices pursuant to section 32(4) in relation to the Environment Protection (Ships' Ballast Water) Regulations 2006) and Waste Management Policy (Ships' Ballast Water) 2004.

Lake Mountain Alpine Resort Management Board — Minister's report of failure to submit 2016 report to the minister within the prescribed period and the reason therefor.

La Trobe University — Report, 2016.

Melbourne Polytechnic — Report, 2016.

Members of Parliament (Register of Interests) Act 1978 — Summary of Variations Notified between 7 December 2016 and 28 April 2017 *(Ordered to be published)*.

Monash University — Report, 2016.

Mount Baw Baw Alpine Resort Management Board — Minister's report of failure to submit 2016 report to the minister within the prescribed period and the reason therefor.

Mount Buller and Mount Stirling Alpine Resort Management Board — Minister's report of failure to submit 2016 report to the minister within the prescribed period and the reason therefor.

Mount Hotham Alpine Resort Management Board — Report, 2016.

Planning and Environment Act 1987 — Notices of Approval of the following amendments to planning schemes —

Ballarat Planning Scheme — Amendment C200.

Bass Coast Planning Scheme — Amendment C148.

Boroondara Planning Scheme — Amendments C236, C239 and C259.

Cardinia Planning Scheme — Amendment C224.

Colac Otway Planning Scheme — Amendment C91.

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Glen Eira Planning Scheme — Amendments C147 and C148.

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Stonnington Planning Scheme — Amendment C233.

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Surf Coast Planning Scheme — Amendment C106.

Swan Hill Planning Scheme — Amendment C59.

Victorian Planning Provisions — Amendments VC110, VC134, VC135 and VC136.

Wodonga Planning Scheme — Amendment C124.

Wyndham Planning Scheme — Amendment C190.

Yarra Planning Scheme — Amendments C198 and C229.

Professional Standards Act 2003 — Instruments pursuant to section 14 of the act amending the —

Law Society of South Australia Professional Standards Scheme, dated 27 April 2017.

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Racing Victoria Limited — Modification of Racing Victoria Limited constitution pursuant to section 3B(2) of the Racing Act 1958.

Royal Melbourne Institute of Technology — Report, 2016.

Statutory Rules under the following Acts of Parliament —

Children, Youth and Families Act 2005 — Nos. 19 and 20.

Domestic Building Contracts Act 1995 — No. 18.

Drugs, Poisons and Controlled Substances Act 1981 — No. 13.

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Subordinate Legislation Act 1994 —

Documents under section 15 in respect of Statutory Rules Nos. 9 to 15, 17, 18, 20 and 21.

Legislative instruments and related documents under section 16B in respect of —

Environmental Protection Act 1970 — Variation to the Protocol for Environmental Management — Domestic Ballast Water Management in Victorian State Waters, dated 20 March 2017.

Estate Agents Act 1980 — Determination of the Melbourne Metropolitan Area, dated 12 April 2017

Estate Agents Act 1980 — Guidelines for Selecting Comparable Property Sales — residential property, dated 12 April 2017.

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William Angliss Institute of TAFE — Report, 2016.

Proclamations of the Governor in Council fixing operative dates in respect of the following acts:

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Food Amendment (Kilojoule Labelling Scheme and Other Matters) Act 2017 — Part 2 and 3 — 1 May 2018 *(Gazette No. S111, 4 April 2017).*

National Domestic Violence Order Scheme Act 2016 — Parts 1 and 9 — 5 April 2017 *(Gazette No. S111, 4 April 2017).*

Racing and Other Acts Amendment (Greyhound Racing and Welfare Reform) Act 2016 — remaining provisions — 10 April 2017 *(Gazette No. S111, 4 April 2017).*

Transport Integration Amendment (Head, Transport for Victoria and Other Governance Reforms) Act 2017 — Whole Act except sections 1 and 2 — 12 April 2017 *(Gazette No. S117, 12 April 2017).*

Urban Renewal Authority Victoria Amendment (Development Victoria) Act 2017 — 1 April 2017 *(Gazette No. S94, 27 March 2017).*

Working with Children Amendment Act 2016 — Parts 1 and 3 — 1 May 2017 *(Gazette No. S111, 4 April 2017).*

STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

Reporting date

The PRESIDENT — Order! I have been forwarded a letter dated 2 May from the Honourable David Davis as chair of the Standing Committee on the Environment and Planning. The letter says:

I am writing in relation to the environment and planning standing committee's inquiry into fire season preparedness, which it self-referenced on 5 May 2016, pursuant to sessional order 6.

Given the scope of this inquiry, the committee resolved at its meeting on 2 May 2017 to extend the reporting date for this inquiry to 22 June 2017.

BUSINESS OF THE HOUSE

Adjournment

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I move:

That the Council, at its rising, adjourn until 12.00 p.m. on Tuesday, 9 May 2017.

Motion agreed to.

STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

Reporting date

Mr DAVIS (Southern Metropolitan) — By leave, I move:

That the resolution of the Council of 8 December 2016 requiring the environment and planning committee to inquire into and report by 11 May 2017 on the Owners Corporation Amendment (Short-stay Accommodation) Bill 2016 be amended so as to now require the committee to present its report by 8 June 2017.

Motion agreed to.

MEMBERS STATEMENTS

Western Metropolitan Region constituent

Mr FINN (Western Metropolitan) — Since the house last met, which does seem like a very, very long time ago I have to say, I had the opportunity to meet with Jayden D'Barco and his family — his mother, Tess, and his father, Frank. Members may be aware that Jayden is a 17-year-old autistic boy who was bashed on a bus by a gang in Tarneit recently.

To say that his mother is distressed by this occurrence is an understatement — she is upset beyond words, quite literally at times. His father, Frank, is angry, and I can understand why he is angry: that this should be allowed to happen to his son, who is trying to find his way in the world. Quite frankly, as the father of a child with autism of a similar age, it appals me that a kid cannot get a bus in Melbourne in broad daylight without the threat of being bashed by a gang.

This is not South Africa. This is not South America somewhere. This is Melbourne, and this happened in Tarneit. It is a disgrace that this kid's life has been ruined. And I say that advisedly: it has been ruined. His independence has been taken from him. No more can he go by himself to do whatever he wants to do. It is despicable that this was allowed to happen, and it is about time it was stopped.

West Gate tunnel project

Ms HARTLAND (Western Metropolitan) — Recently we wrote to the planning minister, Mr Wynne, to ask for an extension of time to be given so we could respond to the environment effects statement (EES) for the western distributor, which this week is called the West Gate tunnel. There are 17 documents in the EES that my office, local volunteer community groups and local councils have to respond to. We requested that the minister allow us more than 30 days. It is simply not enough.

This request has been refused. Clearly the minister has no regard for a transparent process that the community can actually engage in. This is a major project that so far has had a very poor consultation process, and it will have a massive effect on the community. Yet Mr Wynne has such little regard for my community that he has refused an extension of time that would allow us to actually deal with the 17 complicated and technical documents.

The government at this stage has not proved basic things such as: will it actually take as many trucks off the road as they claim, how will the truck ban work, when will the work actually start and what will the tolls be for this? Also, does it mean, especially if there are tolls, that the major companies will still organise to rat-run through Yarraville, Spotswood and Footscray? A bit of consideration for the community, please, Mr Wynne. I do not think having an extension of time on the EES would have hurt the process at all.

Warrnambool May Racing Carnival

Mr PURCELL (Western Victoria) — Warrnambool's famous three-day racing carnival kicked off this morning. This is the best jumps carnival in Australia and is certainly one of the best throughout the world.

This year there will be a record seven jumps races, some of which will include full fields, and the highlight will be the Grand Annual Steeplechase, which is over 5500 metres and has a world record 33 jumps. This is a highlight to be savoured from the Warrnambool hill. This year it includes a full field, including many from overseas. It is a pleasure to be associated with a sport that has improved its safety record over recent years through the support of the previous Liberal government and the current Labor government.

In addition to that, this year's event will see 18-year-old Laura Lafferty as the ambassador for the carnival. Laura is the granddaughter of Kevin Lafferty, who was a great trainer, and the daughter of well-respected trainer Peter Lafferty. Laura said she loves the Grand Annual Steeplechase and believes the sport of jumps racing should be promoted. She said:

> We have such a great carnival and we pride ourselves on the feature races, the jumps races — the Grand Annual and the Brierly Steeplechase.

Well done to Laura, and well done to jumps racing.

Member for Melton

Mr MORRIS (Western Victoria) — In news reports the rorting member for Melton, Don Nardella, has said he will pay back nearly $100 000 of taxpayers money that he claimed from the Parliament as a second residence allowance. Well, I have news for Mr Nardella. Instead of paying back just shy of $100 000, he should be repaying closer to $200 000, because that is how much money he has rorted from the taxpayer. The taxpayer should not be picking up the bill because Mr Nardella wants to live in Lake Wendouree or allegedly in Ocean Grove.

The PRESIDENT — Order! I counsel the member that to refer to a member in another place in respect of the matters that he appears to be travelling along really needs to be by a substantive motion rather than by a 90-second statement. Perhaps the member might consider that as he proceeds with the statement.

Mr MORRIS — Thank you, President, for that guidance. I make these comments as I have been approached by many constituents with regard to this particular issue. I do note that there have also been some adverse findings from the Audit Committee on this particular matter.

I will continue by saying that instead of allegedly living in an Ocean Grove caravan park, the member for Melton should have been living in Melton, the electorate that he is supposed to represent. I have spoken to many of Mr Nardella's constituents of late, and they have a message that they have asked me to pass on to him. That message has been very loud and clear — that is, that the member for Melton needs to repay $174 836 of taxpayers money that he has rorted from the Parliament and he must resign, as the good people of Melton deserve nothing less.

Plastic bag ban

Ms SPRINGLE (South Eastern Metropolitan) — I would like to use my members statement today to express my extreme concern over the second day of hearings for the environment and planning committee's

inquiry into the Environment Protection Amendment (Banning Plastic Bags, Packaging and Microbeads) Bill 2016.

As the sponsor of the bill, I did sit in on the hearings towards the end of April, and I was dismayed to find that there were only two members of the committee in attendance that day. At the outset I would like to express my thanks to the government and obviously to my colleague Samantha Dunn, who was in attendance that day. However, that is a committee made up of eight members. There was no-one from the Liberal Party, The Nationals or the Shooters, Fishers and Farmers Party there that day. We did hear all day from different sections of industries that this bill would impact on, and I myself also offered some information. Ironically, the evening before we had seen on *The Project*, which is a mainstream commercial television news source for many people, a campaign launched around banning plastic bags and the extreme need and urgency around that.

Since that time, which was a little under two weeks ago, there have been 125 000 signatures on a petition, 1.3 million views on Facebook, just over 12 000 likes, 2000 comments and 16 000 shares. I am very concerned that this chamber and some of the people in it are not in touch with the community sentiment around this issue and its importance.

International Parliamentarians for West Papua

Dr CARLING-JENKINS (Western Metropolitan) — I rise today to speak about the International Parliamentarians for West Papua group, or IPWP, which I have recently joined. This is a cross-party group of politicians from around the world that is growing in number and supporting self-determination for the people of West Papua. The right to self-determination was violated by the undemocratic and unjust act of free choice in 1969. Ever since, the West Papuan people have been subjected to not just political and cultural oppression but in fact some of the most horrible human rights abuses imaginable. Benny Wenda, the West Papuan independence leader currently living in exile in the United Kingdom, has written to me saying:

> By joining IPWP, you have shown that there are people in this world who care for those in West Papua, which inspires hope in my people that change will come.

I take this opportunity to urge all parliamentarians to support the plight of West Papuans and to join in the efforts of the IPWP to help West Papuans achieve the right to democratically decide their own future in accordance with international standards of human rights, the principle of international law and the charter of the United Nations.

Local government elections

Mr DAVIS (Southern Metropolitan) — Today I want to draw the chamber's attention to the very concerning issues around the recent council elections, the issue of postal votes and the failure of the electoral commission, it appears strongly, to conduct this process with sufficient good outcome. I am aware of a number of complaints; there are in fact many, and I am only going to choose one by way of illustration. The Clarke family, Stacey and Terry Clarke, have provided a submission to a number of MPs that makes clear that they did obtain the relevant documents from a Victorian Electoral Commission (VEC) office, and I make the point that this local government election saw a change from shire offices or council offices providing the relevant voting slips to the VEC doing this centrally.

This is a concern. It strikes at the heart of our democracy if people who vote do not have their vote counted or people who seek to vote are not able to vote. The VEC, I think, has a lot to answer for here. It is pretty clear that this was widespread. It is not one municipality; it is right across the metropolitan area and certain areas of the country, and it is unclear exactly how many cases are involved. Either way it may well in some cases have changed electoral results. We need a clean and efficient system, so what I am seeking from the Minister for Local Government is that she launch a full independent review of this process to ensure that our electoral system is cleaned up and that this kind of mistake with postal voting does not occur again.

Safe access zones

Ms PATTEN (Northern Metropolitan) — I would like to mark that today is the anniversary of the implementation of the safe access zones in Victoria. The zones provide a buffer zone against the harassment of clients around the premises offering reproductive health services. In just 12 months it has been a great success. Staff at the clinics report that there is no further harassment of themselves or their clients, who are often seeking the services of the clinics in very, very difficult situations. That harassment and violence has ceased.

The purported challenges that were to be made to this legislation did not come to pass. The freedom of speech that was going to be quashed did not come to pass. People are still expressing their views and their opinions on these reproductive health services; they are still out the back of Parliament House expressing those views vocally and in a respectful manner. Despite the

late-night debates, freedom of speech in this state still exists. Those late-night debates raised issues of blimps carrying messages around reproductive rights; we still have not seen those blimps. None of them have been charged under this legislation. There were those chats in the surrounding flats that were going to get caught by this legislation; I am pleased to say that none of that happened. Those people are still speaking freely in their flats. The blimps still may be going across Wellington Parade for all I know, but the police have certainly not been interested.

Latrobe Valley employment

Ms BATH (Eastern Victoria) — Australian Bureau of Statistics March regional jobs figures highlight the lack of attention the Andrews Labor government is showing in the Latrobe Valley's youth. Latrobe-Gippsland's youth unemployment rate was at an alarming 14.6 per cent at the end of March 2017, compared to the state average of 9.9 per cent. Since Daniel Andrews was elected in 2014 thousands of young people have been left without work. There are 3768 fewer young people employed in full-time work and 2523 fewer in part-time work. The Andrews Labor government is missing in action for more than 6000 young people in the Latrobe Valley and Gippsland area. A young person looking for work in our local jobs market would be hugely disheartened. Gippsland has lost hundreds of jobs at the Hazelwood power station and there may be 260 further jobs lost at the Heyfield mill. The only job Daniel Andrews is looking after is his own.

Cherished Mother and Child

Ms BATH — With Mother's Day fast approaching I pay tribute to the many Victorian women who as a result of past adoption policies and practices had their babies taken from them during the 1950s, 1960s and 1970s. Recently I attended the unveiling of a very special memorial to those women in Sale, Gippsland, called *Cherished Mother and Child*. The bronze sculpture of a mother cradling her newborn baby embodies love and tenderness, and acknowledges the women's loss and heartbreak. Congratulations to Brenda Coughlan and the ladies of the Independent Regional Mothers for their vision and commitment to seeing this come to fruition.

Anzac Day

Mr O'SULLIVAN (Northern Victoria) — Last week I had the pleasure of attending a couple of Anzac Day services in my electorate of Northern Victoria Region. I attended the dawn service at Nathalia with RSL president Mackenzie Craig, who was the key speaker on the day. More than 200 people were in attendance at the dawn service. The pouring rain, I was glad to see, did not frighten anyone away from attending — it was one of the best turn-ups that they have had had in a long time. The light horsemen were also part of that parade, and the bugle playing the *Last Post* was a key feature. It still sets up the hairs on the back of my neck every time I hear that played.

Later in the day I also attended a parade and service in Tongala with RSL president John Rogers. It was very pleasing on this occasion that schoolchildren played a key role in that service. They were reflecting on what Anzac Day actually meant to them, and their contribution was most heartwarming. I was also privileged to lay a wreath in Tongala. Lest we forget.

Holmesglen Private Hospital

Ms FITZHERBERT (Southern Metropolitan) — On 27 April I attended the opening of Holmesglen Private Hospital by the federal Minister For Health, Greg Hunt, with a number of colleagues, including the members for Sandringham and Bentleigh and also the federal member for Goldstein. This hospital is a welcome addition to the south-eastern suburbs health facilities. In particular it includes an emergency department. The intent is that people can attend this if it is unfortunately necessary and have all the treatment they need, including surgery, in one place. The extra emergency department is a terrific gain for the local area. I note also that there are oncology services, which are needed very much as well.

It is important to have a strong private health sector as a complement to a strong public health sector. If people can pay, and want to, for their medical care, then they should be allowed to do so and be encouraged to do so and not take up a place in the public sector that could be used by someone else. This is why what happened at Peter Mac Private is nothing short of disgraceful. It shows the decision by the Premier is not only out of step with existing practice in the sector, for example at the Royal Women's Hospital and a range of other medical facilities, but is also way out of step with community views on how our health sector should function. I note that as far as I know that floor is still largely unused, even though it is a couple of years after things have opened.

Getting back to the Holmesglen site, given its history it is particularly appropriate that more than 100 nurses will do their practical training at the hospital, and I am sure this will be an excellent location to do so. I congratulate the hospital on a successful opening.

Regional rail funding

Mr RAMSAY (Western Victoria) — I was very disappointed over the weekend that the Andrews government saw fit to politicise the regional rail announcement. This is a $1.45 billion announcement. The coalition supports the need for projects but does not support the sham money concocted for the announcement. None of that money is real. It is federal government money they have announced, relying on the asset recycling grant from the federal government emanating from the sale of the lease of the port of Melbourne. This deal has not been done with the federal government, and Dan Andrews should be spending his own money and not someone else's. A headline alone will not build a better rail system.

The Andrews government rail package includes $435 million to the Gippsland line; $200 million for the upgrade at Barwon South West, including Warrnambool; $110 million for stage 1 of the Surf Coast rail project to Torquay; $91 billion to enable faster trains to Bendigo and Echuca; and $39 million for stage 2 of the Ballarat line to enable another train journey from Ararat. But there is no money in the budget for the much-needed upgrades to the Geelong railway station, where parking spaces are at a premium. There is no money for a fast train between Geelong and Melbourne. There is no money for a Geelong convention centre. Earlier this year the Dan Andrews government said the centre would be considered for funding; clearly it was not considered important enough. But wait for next year and Labor's preselection fanfare, when you can bet they will ride into Geelong boasting funds for the convention centre and claiming much love and affection for the city. This convention centre is not a political toy. It is a desperately needed facility that is required right now. Geelong is leaking opportunities to other towns and cities, and that represents lost jobs and growth. There — —

The PRESIDENT — Order! The honourable member's time has expired.

Member for Melton

Ms CROZIER (Southern Metropolitan) — I wish to make just a couple of brief comments in relation to the Nardella saga that has rolled on since we were last in this place. I think it is absolutely disgraceful that Mr Nardella, who has finally been pulled into line to repay part of what he owes, had the audacity to pay his relatives $200 a week for something that had a no-residence policy. In relation to that ongoing issue that has arisen out of this, I think the Premier has absolutely been very weak in accepting all those issues that surround Mr Nardella. I think it reflects on all of us, and I indicate how disappointed we all are.

Anzac Day

Ms CROZIER — On a brighter and much happier note, I wish to make some comment around a publication that was launched on Anzac Day. The member for Caulfield, Mr David Southwick, spoke on this fantastic publication, *A Soldier Lived in My House — A WWI History of Caulfield.* There were many community members that came together: the Glen Eira Historical Society, the Caulfield RSL, individuals, schools and community groups. This publication points to those who lived in the Caulfield area that participated in World War I and the related histories of those in the Caulfield district. That is in this very fine publication, which speaks to the dedication, the commitment and the service of so many men and women during the Great War, and it — —

The PRESIDENT — Order! The honourable member's time has expired.

Government performance

Mr ONDARCHIE (Northern Metropolitan) — Rorters, deceivers, fraudsters — these are all terms that are used by my constituents and the media to describe this insipid United Firefighters Union-led (UFU) autocracy that is the Andrews Victorian government, a government that has disenfranchised and ignored the over 60 000 Country Fire Authority volunteers across the state who are the heart and soul of our local communities and who give up so much of their home life, their free time, their recreation and often their livelihoods for those communities. This government has disrespected them in favour of Peter Marshall, and the UFU simply have to repay their debt owed.

It is a government that has positioned Victoria as the place to be scared. Law and order are out of control in this state. Crime is growing rapidly: carjackings, armed robberies, violence on our streets, gang wars and parole violations. People are scared. Victorians are scared. Victoria is not safe, and this government has attempted in its usual amateurish way to try and play catch up and con Victorians. Add to this dogs in limousines, sky rail deceit, pizza and soft drinks at the youth detention centre, the rort of Labor staff being used in the last election campaign and the rorts of over $100 000 in Nardella-gate and Telmo-gate — those members who conned Victorians. Victorians have had enough of this insipid rorting government. Once the guilty party, still the guilty party.

Upper Ferntree Gully building height limit

Mr O'DONOHUE (Eastern Victoria) — Last Friday I was very pleased to have the shadow Minister for Planning, David Davis, visit Upper Ferntree Gully and hold a community forum with upwards of 80 or 90 residents in attendance expressing their concern at the potential for large-scale development in the Upper Ferntree Gully retail precinct at the foothills of the Dandenongs — a beautiful area and part of the iconic Eastern Victoria Region.

This saga has been going on now for some time. The Knox City Council commissioned a full planning process, including the appointment of a planning panel. That planning panel reported back and made recommendations to implement height limits of 8.5 metres in the Upper Ferntree Gully commercial activity area. The council then abandoned that planning scheme amendment, but I am pleased to say that after a lot of feedback and pressure from the local community, the council has now done an about-face and is proposing a new planning scheme amendment to implement mandatory height limits in the Upper Ferntree Gully township.

The ball is now fairly and squarely in the court of the Minister for Planning, Richard Wynne. It is time for him to bring this long process to an end, to reflect the community's expectations and to implement the planning scheme amendment to provide mandatory height limits in the Upper Ferntree Gully community.

LORD MAYOR'S CHARITABLE FOUNDATION BILL 2016

Second reading

Order of the day read for resumption of debate.

Declared private

The PRESIDENT — Order! I seek a motion from Ms Mikakos. At the moment this is a private bill, and it is my understanding that the government's intention is to allow for it to be treated as a public bill. Having had the opportunity of examining the bill, in my opinion it is a private bill at this stage. I would therefore seek a motion from the minister if it is the government's intention to treat it as a public bill.

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

That this bill be dealt with as a public bill.

Motion agreed to.

Second reading

Debate resumed from 13 October 2016; motion of Ms PULFORD (Minister for Agriculture).

Ms WOOLDRIDGE (Eastern Metropolitan) — I am very pleased to rise today to speak on the Lord Mayor's Charitable Foundation Bill 2016. While this is a bill that is very specific, of course, to one important organisation in Melbourne and in the future in Victoria, it does have ramifications for Victorians across the board because of the important work that the Lord Mayor's Charitable Foundation does. The changes in this bill will enable it to have a much further reach and to modernise and improve its governance structure, so it is an important bill from that perspective. It will have an impact for many, many Victorians as well as of course for the organisation itself.

The purpose of the bill is to modernise the governance and administrative structure to reflect the foundation's current purpose. These changes to the structure are intended to ensure that the foundation is best placed to attract donations and to make a meaningful difference to improve the lives of Victorians in need.

This bill has a history of bipartisan support. We were first approached about these changes when we were in government, and we were pleased to work constructively with the Lord Mayor's Charitable Foundation to progress that. It is something that has carried over into this term of government, and I am pleased that we are now seeing it today. I thought it was a bit disappointing that in the other place the member for Macedon tried to make some political mileage out of the fact that it had covered two terms of government by criticising the time frame, when of course it is nearly eight months since this was debated in the lower house and now we are seeing it in the upper house. That is why I think it is a good thing that we now have it before us today — so that it can be concluded and the organisation, hopefully with the support of the house, can make the changes that the foundation members are seeking.

The Lord Mayor's Charitable Foundation has an impact on so many of the lives of those in Melbourne. It seeks to increase life opportunities and promote social inclusion. It does this through research, through grants, through communications and through investment tools. It also seeks to build strong communities. As Melbourne's community foundation and the largest in Victoria, it has a role in leading the growth and development of community foundations and of course their objectives in terms of building strong communities. The foundation has a number of different

areas that it focuses on, including important areas such as education and employment, homelessness and affordable housing, healthy and cohesive communities, and a sustainable Melbourne.

It has a long history as well, of course. It was established in 1923, and this Parliament actually enacted the Lord Mayor's Fund Act 1930. That has been amended. It did take 66 years to do that, and it did so by creating the Lord Mayor's Charitable Fund Act 1996. Now the Lord Mayor's Charitable Foundation Bill 2016 is the next level of modernisation. It is fair to say that the foundation has had a significant impact. When you read its annual reports and you understand the work it has done, you can see the significant impact that it has had. It has a very impressive corpus, and in fact last year, 2015–16, it made just over $9.5 million in grants. They ranged from $3.8 million for education and employment to $1.1 million for healthy and cohesive communities, $2.4 million for homelessness and affordable housing and just over $2 million for a sustainable Melbourne.

It is seeking to drive innovation through its grants, and nearly half of all those grants for those areas were innovation, exploration, and proactive and initiative grants. It also takes very seriously the role of building the capacity of the charitable sector, with over $3 million of the grants directed to that area. Many people choose to put their money with the Lord Mayor's Charitable Foundation and then direct grants; about $1.8 million in grants were donor-advised grants. So it does very significant work across the board.

I do want to take this opportunity to particularly acknowledge the Lord Mayor and his role and the roles of his predecessors, which they have taken and do take very seriously in relation to the important work of the Lord Mayor's Charitable Fund. I acknowledge also the CEO, Catherine Brown. I have been very fortunate to know Catherine for what is coming on to probably 16 or 17 years, initially from her work at the Foundation for Rural and Regional Renewal, working with the Sidney Myer Fund to establish the FRRR. She has had a role in many different ways in the philanthropic sector and with community foundations. It has been a very significant role, and the work she does in leading the Lord Mayor's Charitable Foundation continues to be very significant and very important for Victorians.

The bill we have at hand does a number of things. It renames the fund as the Lord Mayor's Charitable Foundation. It makes some changes to the role of the Lord Mayor from that of having automatic board membership and being the chair to that of being founding patron of the foundation. I think it is probably an appropriate transition to that role of patron, which can still be very significant in terms of its leadership and its contribution to and engagement with the foundation but from a governance perspective not necessarily being the chair.

The bill also reduces the size of the board from 21 members to nine members, selected on the basis of a particular range of skills. It also limits the terms of members to three-year terms for a maximum of three terms. This is an area that of course often engages non-profit and philanthropic organisations actively — first of all, the size of their boards and, secondly, term limits. This decision has been made, which is probably consistent with advice across the board in relation to board size, board governance and board terms, to recommend this way forward.

The bill also allows the foundation to pool funds held by separate trusts and funds for investment purposes. This I think will give the foundation a financial benefit in terms of being able to more effectively and efficiently manage and invest donor funds for returns to then be invested back into the community.

From my perspective the most significant change is that the bill allows the foundation to apply money from the fund to anywhere in Victoria, not just Melbourne. I know and have spoken over the years to a number of non-profit organisations who are excited about the Lord Mayor's Charitable Foundation but are unable to apply for funding because of the constraint previously of having to be a Melbourne-based charity. This capacity for the Lord Mayor's Charitable Foundation to be able to invest statewide will be cause for significant excitement for non-profits in rural and regional Victoria and will also allow that vital investment. What we know is that there is great innovation happening in rural and regional Victoria. There are certainly needs on the fronts of education, homelessness and healthy and cohesive communities, so the capacity for the fund to be able to go beyond Melbourne's boundaries will be very positive.

This bill obviously comes at the request of the Lord Mayor's Charitable Foundation. They believe that this is what they need to establish themselves on a good footing for the future. It will improve their governance structures and will also enable them to present themselves as an attractive option for other donors to expand the size of the funds that they have under management and therefore the grants that are being made across the board, which is the reason why the Liberal and National parties are supporting the bill and are pleased that it will be progressing.

I do want to take the opportunity to talk a little bit about the work of some of the foundations that I have been involved in, and interestingly I have had some connection with the Lord Mayor's Charitable Foundation. I was very pleased to have had the opportunity previously to be on the board of Foundation Boroondara, a community foundation for the City of Boroondara where I was formerly a resident. Foundation Boroondara no longer exists; it has now become the Boroondara Cares Foundation, but there is no doubt that some of that early work of the community foundation is still very prevalent and present in its operations today.

I had the opportunity to work as a board member under the chairmanship of Ben Bodna, who will be known to many people in this chamber and beyond. Ben was inspirational in terms of his view of the role of community foundations, the role of philanthropy and the impact that community organisations can have on addressing some of the very significant issues of disadvantage. In fact it was some 2005 research that was undertaken at Ben's insistence while I was a director that identified — even in Boroondara, which people consider to be a very wealthy suburb — that 4000 young people were living in poverty. We established the Chances scholarship, which I think from memory was based on Western Chances, a fabulous organisation that goes from strength to strength under the significant involvement of Terry Bracks. We established Chances in Boroondara to provide scholarships for students to engage with schooling and to stay in school and go on to further education. That Chances program still continues today and has made a big difference for many, many students in Boroondara. Of course community foundations continue to grow and expand and play absolutely vital roles in communities across the board.

My other involvement, which was prior to my being elected, was as the chief executive of the Foundation for Young Australians (FYA), a philanthropic trust to address disadvantage and promote leadership for young people. Having the opportunity to work in the philanthropic sector for a period of four years and get to know the commitment and passion of those in the philanthropic sector was a wonderful opportunity, a great learning experience and something that I have always valued and will continue to value, I am sure, into the future.

One of the critical things that we did at the Foundation for Young Australians was to invest in young people leading decision-making and leading in very significant roles. That was actually some work we did with the Lord Mayor's Charitable Trust at the time where we coinvested in some research, some tools and some information about how you put young people at the centre of decision-making. It was another example of collaboration that I think still continues today amongst those in the philanthropic sector and between the Lord Mayor's Charitable Foundation and the Foundation for Young Australians. FYA is now very ably led by Jan Owen, who is a real innovator and leader and is passionate about the role of young people in the community as leaders, as innovators and as change agents. Jan does an excellent job in continuing to lead and drive the use of a significant corpus to invest in young people right across the country.

I had the opportunity to work with some very significant people as well at that time. Bill Conn was the chair of the Foundation for Young Australians and brought his extensive business expertise to his leadership role to drive positive change for young people right across the country and to the merger of the two philanthropic trusts to form FYA. Wonderful individuals like Frank Oberklaid — known to many — Rob Trenberth, Will Bailey, Alex McDonald, Jill Reichstein and Rob Moodie were all on the board. I had the opportunity to learn from them in that role, which was very significant, and of course from colleagues in the philanthropic sector such as Helen Morris from the Myer family and the Sidney Myer Fund, Mary Crooks, Dorothy Scott and Sylvia Adams. There are so many really impressive, passionate, committed individuals in the philanthropic sector who work every day to make a very significant difference to our state and our country and particularly to communities, families and individuals.

This is a very important sector that I know has the backing of all in the house. Victoria's history has led us to having the strongest, deepest and most extensive philanthropic sector of anywhere in the country. It is a result of tax laws and other historical situations, but what we have seen are significant families, passionate individuals and committed businesses all establishing philanthropic organisations or investing through groups like the Lord Mayor's Charitable Foundation to invest in our community in relation to the issues that matter and the things that keep people awake at night to try to drive some positive change for all people, particularly those who are less advantaged. This is a vital sector. It makes a big difference. It provides a significant investment that also brings skills and expertise to lead and drive that change working with the non-profit sector to achieve it. The Lord Mayor's Charitable Foundation is a very significant part of that picture with a long history that has been well supported by all sides of the Parliament and the community at large. The changes we are considering today will enable it to be

modernised, have strong governance structures and give it a broader reach to make sure it can continue the very significant work it undertakes for many, many decades to come.

Ms HARTLAND (Western Metropolitan) — Ms Wooldridge has just given such a wonderfully comprehensive description of the bill. The Greens will support this bill. It is a very clear and straightforward bill. It is about updating governance. It is about a fund that is really important to the state and making sure that people have good access to it. With those few words, the Greens will be supporting this bill.

Ms SYMES (Northern Victoria) — Ditto, but I will just make a few brief comments. I had not heard about the Lord Mayor's Charitable Foundation until I saw this bill come into the Parliament quite some months ago. It is fascinating. The foundation has been going since 1923 and doing really good work. The reason that I have chosen to speak on the bill today is to thank the foundation for the work it does. It has a long history, I found out, of funding a range of priorities, including public hospitals, refugee and migrant services, medical care and, recently, homelessness. I would like to thank the foundation for all it does. I would like to acknowledge the CEO, Catherine Brown, and thank her for her tireless commitment to positive social change.

The main reason I am particularly excited by this bill is the fact that the fund, as a result of the changes, will continue in its charitable status but will have an expanded geographic scope. Currently the foundation can only direct money to hospitals and charities within metropolitan Melbourne, and outside metropolitan Melbourne it can only direct funds with the approval of the minister. Under the bill, charities and hospitals anywhere in Victoria are going to be able to benefit. I think this is a great change, particularly for country Victoria. As a country member, I look forward to working with the foundation on projects that might be of importance to my electorate of Northern Victoria Region. I commend the bill to the house.

Ms FITZHERBERT (Southern Metropolitan) — Like Ms Hartland and Ms Symes, I was listening to Ms Wooldridge's comments and deleted some of the words I had intended to say today. I think we find ourselves in furious agreement. It is a pleasure to be able to rise and briefly speak and register my support of the Lord Mayor's Charitable Foundation Bill 2016. The organisation has been operating for a very, very long time and the legislation proposed is intended to replace the 1996 legislation and put in place a structure for the governance, management, powers and object of the body corporate that administers the fund and for the administration of the fund.

Ms Wooldridge has gone through the specific updates in a way that is quite comprehensive and does not need to be repeated. The bill does of course change the role of the Lord Mayor. It puts in place some transitional structures which are needed. Ms Wooldridge has spoken of the contribution that the organisation has made to our state. In my view it has done this in a couple of ways. It has overseen the administration and distribution of millions of dollars worth of funds that have gone to very worthy organisations for their use. It has also done a very useful thing in terms of building capacity in the charity sector. This is a sector that often needs support and needs an organisation and leaders that are visionary to provide the sort of insight and learning so that people who want to make a contribution through the sector can do so.

The foundation is a leader in the sector in terms of its financial contribution and the role it takes with other charities. The changing role of the Lord Mayor has been noted in the debate, and also there has been acknowledgement of the contribution of Catherine Brown, who I have also had the pleasure of knowing and working with through the Queen Victoria Women's Centre Trust, which Ms Brown formerly headed in her typically warm and efficient way. Organisations like the Lord Mayor's fund are special and rare. There are many charities that start off; there are very few that make such a big contribution over a long time. This organisation has done exactly that and deserves our support. For that reason, along with the rest of the coalition members, I will be supporting this bill.

Motion agreed to.

Read second time.

Third reading

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

That the bill be now read a third time.

In doing so I acknowledge the contributions that have already been made by various members about the rationale for debating this bill today. I also acknowledge the very important work that the Lord Mayor's Charitable Foundation is doing. As the Minister for Families and Children and the Minister for Youth Affairs, I am always very interested in organisations that also fulfil a social welfare role and support young people in our state. I am very grateful to

the foundation for its generous contributions to many fine causes across our state over many years.

I am a bit of a history buff and I was quite intrigued by a connection it has had dating back to 1923. In fact before the Lord Mayor's foundation actually became incorporated in 1930, there was a Greek connection there in that the Lord Mayor's fund at that time also financially assisted Greek refugees fleeing Asia Minor and moving into northern Greece. It was a very significant source of funds at that time. When I was in that part of the world some years ago I was quite intrigued to see references to the Lord Mayor of Melbourne in different parts of northern Greece. I just wanted to acknowledge the very interesting history there of the generosity of spirit of the Lord Mayor's fund, which has made contributions particularly to support misplaced people and the most vulnerable people in our community. I am very pleased that that connection to supporting refugees and asylum seekers continues to this day in the important work that the foundation is doing.

I too want to acknowledge Catherine Brown, the CEO, the staff and others — and of course there are many people who support the foundation and its work. I thank them for that work and I wish them all the very best in their continued endeavours. I am very pleased to have an opportunity to join in and say a few words in the debate today.

Motion agreed to.

Read third time.

CREATIVE VICTORIA BILL 2016

Second reading

Debate resumed from 7 February; motion of Mr DALIDAKIS (Minister for Small Business, Innovation and Trade).

Ms CROZIER (Southern Metropolitan) — I am very pleased to rise this afternoon to speak in the debate on the Creative Victoria Bill 2016. As I think most people in this chamber are well aware, we are very appreciative of the creative industries in Victoria, and we have a very proud history of that.

I note this bill has a number of functions, although in essence it is fairly uncomplicated. It is mainly a symbolic bill which deals with what the government says is outdated legislation, the Arts Victoria Act 1972. If you think about it, in 1972 Victoria was very proactive in many ways. The Premier at the time set up this act in recognition of what the state had achieved in so many areas of the arts.

This bill looks at those creative industries, which include a whole range of different elements of the arts and creative industries that thrive in this state. These include industries involved in craft, design, fashion, film and television, games, literature, music, theatre and the visual and performing arts. While thinking about what has been achieved in the arts, I think about the White Night festival held in March and what that festival of art, technology and innovation has brought to Melbourne.

I have to commend former Premier Ted Baillieu for having the foresight to bring such a wonderful festival to our city, and also I compliment the government for actually taking that out into the broader regions of Victoria, because the festival really opens up so many avenues for everybody to enjoy the arts in so many different ways. The spectacle is quite simply magnificent and shows what is able to be achieved through one festival. It never ceases to amaze me just how many people come into our city and have a look at that great festival.

In fact Mr Ramsay might be able to confirm that when our former colleague Mr David O'Brien was in the Parliament he performed — did he not? — in the White Night festival a number of years ago.

Mr Ramsay — He did.

Ms CROZIER — I think he did.

Mr Ramsay — He's still performing.

Ms CROZIER — He is still performing, but he was part of that festival, so I think that gives us an even closer connection to that great festival. When I think about what it is about, I love this line in the information material:

> For one night only, from dusk 'til dawn, local, national and international artists, musicians and performers will weave a spell over the city's streets, parklands, laneways, public spaces and cultural institutions in a celebration of creativity.

I think that is exactly what the White Night festival does.

There are so many more elements to our arts and creative industries in this state. Of course we have got a fabulous precinct, with the Arts Centre Melbourne and the Australian Ballet Centre, where there are so many performances at an international, a national and a local level. That is tremendous not only for those who are participating but for giving the community such

accessibility and a great understanding of all of those creative and very talented performers, in whatever field they are involved in.

I was with my colleagues Mr Davis and Ms Fitzherbert on Sunday attending the *Van Gogh and the Seasons* exhibition, which is just another magnificent Melbourne Winter Masterpieces exhibition that the National Gallery of Victoria is putting on. In fact there was a record crowd on Sunday. The queues were 1½ hours long. This was an extraordinary acknowledgement not only by the Victorian community but also by others, including the international and interstate visitors to that exhibition. I would like to place on record my appreciation of the work of Tony Elwood and how terrifically he manages our very own art gallery.

There are so many aspects of what our creative industries do. I have mentioned just a couple of very high profile ones that we are aware of. We have got galleries in regional Victoria, which are incredibly important to those local communities as well. There is the Hamilton Gallery, where my great friend Jane MacDonald has an involvement. She is very proud of the work that her local community does in supporting that art gallery. There are galleries in other regional towns and cities — for example, Bendigo. I reflect on the magnificent *Grace Kelly: Style Icon* exhibition of a few years ago, which was held at the Bendigo Art Gallery. Communities have the ability to visit those exhibitions, and the exhibitions provide a tremendous economic boost to those regional areas.

There is much to be celebrated and much to be thankful for. We have a tremendous arts industry here in Victoria. Governments of all persuasions, and I think I can say members of all persuasions, are very supportive of the arts industry here in Victoria and all those people who are involved in it.

As I said, this bill is not terribly complicated. It is just an administrative bill that recognises the operation of Creative Victoria. It repeals the Arts Victoria Act 1972, which I have previously mentioned. It recognises the operation of Creative Victoria and its key officeholder and expresses the government of the day's commitment to policy and support for the creative industries.

I would like to make a couple of comments on some shortfalls or oversights in the bill, which I am hoping the government will be able to address in the months to come. Those within the sector feel that the issue of funding has not been addressed in the bill. They would like that funding commitment to be ongoing. As I said, there is an enormous economic benefit from the creative industries to not only the City of Melbourne and the state of Victoria but also our country and regional areas, where many of these industries are established — and they are ongoing. We have got Indigenous art, we have got traditional and more creative and innovative elements — we have all types of art. That needs to be recognised in the ongoing funding for all those involved in the sector.

The other aspect about which some concerns were raised was that there was not widespread consultation prior to the bill being drafted, contrary to what the minister indicated in his second-reading speech. It appears that there was not the extent of consultation that many within the sector would have preferred and would have appreciated. Hopefully, the industry might be able to provide feedback on the bill and undertake the ongoing research that is required to enable an evaluation of the economic returns and other benefits that the sector contributes and to promote the diversity and excellence of the arts sector to everyone within the community.

As members know, my colleague Heidi Victoria in the Legislative Assembly is very passionate about the arts. She has a true commitment to the arts and does a tremendous job. She spoke to a number of people, and there was absolutely a concern about the bill from some of those people she spoke to. They understand the commitment that the government has to supporting the arts, but they had concerns in relation to the areas that I have highlighted — for example, that the bill does not seem to have any link to innovation. It also does not have a huge focus on the rural or regional areas of our state. The bill could then inadvertently not support those creative industries out in the rural areas, as opposed to a city-centric focus. I am hoping that will not be the case, but these are concerns that have been raised with the shadow minister for arts and culture, and I would hope that the government in their ongoing support, funding and dialogue with all aspects of the creative industries sector would be getting that feedback and evaluation, also understanding that there is an immense commitment from regional and rural areas to really promote various art programs.

I have already commended the government on their initiatives in terms of the White Night festival. I am not sure if an evaluation has actually been made available as yet, but it would be interesting to see how the festival was received, whether it is economically viable, what the returns were for the areas and how that might play out into the future.

I do not think there is too much more I need to say in relation to this bill, only that I urge the government to

widely seek feedback and evaluation from a broader range of stakeholders, not just the periphery that was undertaken when seeking comments and feedback on this bill. As I said, I think we are all in agreement that there is much to be enjoyed and celebrated, recognising that we have a strong and vibrant history of the arts and creative industries in this state. I think governments of all persuasions going forward will continue to support those industries.

Ms PENNICUIK (Southern Metropolitan) — I am happy to rise today to speak on the Creative Victoria Bill 2016. The bill will be supported by the Greens. It does a number of things, including recognising principles relating to the arts and creative industries in Victoria. Those principles are worth going to immediately in terms of what they do and how they are set out in the bill. Clause 4 of part 2 of the bill states:

> (1) The Parliament recognises that—
>
> (a) the arts have an intrinsic value that contributes to the cultural depth, diversity and life of Victoria; and
>
> (b) the arts and creative industries contribute significantly to Victoria's wealth and prosperity.
>
> (2) The Parliament further recognises that—
>
> (a) the arts and creative industries are means to improve the quality of life for all individuals in Victoria and improve the community of Victoria as a whole; and
>
> (b) all individuals in Victoria are equally entitled to access opportunities and participate in and contribute to the arts and creative industries in Victoria; and
>
> (c) all individuals should be free to express their ideas and opinions through the arts and creative industries.

Clause 5 clarifies that the Parliament does not intend part 2 of the bill to create in any person any legal right or to give rise to any civil cause of action in respect of the principles outlined in clause 4, which is very interesting. I think these principles are good high level principles in terms of establishing creative industries under the Department of Economic Development, Jobs, Transport and Resources, or DEDJTR, a very long acronym. Whilst these principles are set out in the bill, the question really is how they are actually implemented, and as the previous speaker, Ms Crozier, said and as the government outlined in the second-reading speech, the arts are very important to the Victorian community and to all Victorians.

All Victorians participate in the arts in some way by being artists, performing artists or musicians, by acting in theatre productions or by being involved in painting, pottery or musical endeavours, not only in Melbourne but across regional Victoria. All communities are involved. It is very difficult to imagine a life without involvement in the arts either as a participant or as a person who is part of the audience supporting artists. These principles, as I understand it, are replacing the objectives of the Arts Victoria Act 1972, which this bill is repealing. It is 45 years this year since that act was enacted.

The bill also sets out the administrative functions of Creative Victoria. For example, the chief executive officer will be employed under the Public Administration Act 2004 and will be appointed by the Secretary of the Department of Economic Development, Jobs, Transport and Resources. The bill also sets out the functions of the chief executive officer, which I do not necessarily need to go into in great detail, but it does include consulting with bodies and people in the arts and creative industries to understand the opportunities and challenges facing them and developing strategies to respond to these opportunities and challenges. I think that is a very important point, which was also raised by the previous speaker, in regard to the ongoing engagement and consultation with people who are involved in the arts in Victoria to make sure that Creative Victoria is always in touch with what is going on and what the needs of our artists and artistic communities are, particularly solo artists and small arts organisations, which can often be overlooked in favour of larger organisations. That is an important provision in the bill.

Clause 12 of the bill requires the minister to ensure a strategy for the arts and creative industries is prepared every fourth year by 1 September after clause 1 comes into operation. I am presuming that means that we will not see a strategy until four years from this year — that is, 2021. It will be interesting to see whether the government has anything to say on when the strategy will be due, given that this bill has been somewhat delayed in its passage through the Parliament.

Paragraph (2) of clause 12 details the information that must be contained in the strategy, including improving the knowledge and appreciation of the arts in Victoria, encouraging and assisting the growth and impact of arts in Victoria, promoting and improving access to the arts and supporting and promoting the practice of Aboriginal and Torres Strait Islander arts in Victoria. They are all very important parts of the strategy, particularly the last one. As I said, it is very important not just that the strategy be centred on Melbourne but

that it include regional areas and all of the various ethnic communities in Victoria, in particular the Aboriginal and Torres Strait Islander communities and their artistic endeavours.

The bill also repeals the arts fund. I did ask what the implications of that would be, and I thank the minister's office for responding to my question regarding the abolition of the arts fund. They have outlined that the arts fund was originally created as a mechanism for holding funds appropriated through the state budget to achieve the objectives of the Arts Victoria Act 1972. They indicated that the fund has never been used in this way and that contemporary accounting practice for the holding and management of appropriated funds does not rely on the use of such trust funds. The information from the office goes on to say that should a need like this arise in the future, a general trust fund maintained by the department could be used by Creative Victoria in the same way as it is used by other departments, and also that the arts fund balance at the time the bill will come into force is expected to be zero.

I also asked the department about the mechanisms for applying for arts funding grants, and we have not received a lot of information. Of course there is some information available on the Creative Victoria website, but I suppose what is not very clear, and perhaps the government could clarify this, is what the criteria are for the allocation of grants. Grants start from $5000, and go up to $20 000, for solo projects, for individuals, for organisations — including the arts and non-arts community — and for local government organisations. But there is not much information on how the actual grants are assessed nor on the criteria on which they are assessed. It would be useful to have that information more publicly available on the Creative Victoria website.

Of course Creative Victoria was established some time ago, so in fact this bill actually underpins Creative Victoria, which has been operating for some time.

The Greens are supportive of the bill. We are very supportive of the arts in Victoria and the continuing funding of the arts in Victoria. Over my time in this Parliament I have raised quite a number of issues about music, for example, the Victorian College of the Arts and other issues where funding has been removed from community organisations. Whilst it is great to have Creative Victoria set up under the department, for its functions to be so clearly set out in the legislation and for the principles underpinning it to be in the act and supported by the full Parliament, of course it always depends at the end of the day on how it is implemented and on the funding that is available to support artists — be they solo artists or community arts organisations — to pursue the arts in Victoria.

Mr EIDEH (Western Metropolitan) — I rise to speak on the Creative Victoria Bill 2016. This bill consolidates and enhances Victoria's cultural and arts capacity, and it is an important part of the Victorian government's approach to our creative industries. Our creative sectors account for $23 billion in gross value added and make up about 8 per cent of the Victorian economy. Our creative industries employ around 220 000 people and provide Victoria with over $1 billion in annual cultural tourism. The Andrews Labor government knows that our arts and cultural sectors are integral to the overall wellbeing of all Victorians, including mental and physical health. Our arts and cultural sectors also provide social and recreational benefits to Victorians.

Our creative industries are many and varied, ranging from design, film and television to music, craft, theatre, literature and many more. This is not just a matter for government. As a society, we must all support and cherish our cultural existence, and of course most Victorians do. Our theatres, our film and television industries and our museums are some of the best in the world, and they must be protected from the ravages of those who would see them disappear. Our creative industries also have a profound impact upon our science and technology capacity and the environment and sustainability sectors in a diverse number of areas, including education and communication. We simply cannot attempt to quantify the value of our creative industries in terms of numbers and dollars, as this overlooks their true and intrinsic value to the recreational, social and also educational life of all Victorians.

The term 'creative industries' recognises a new approach to developing Victorian creativity, and it is needed to reflect that creative practice is increasingly taking place across areas of cultural and creative activity previously considered distinct. There is value in approaching the issues that cross the arts and broader sectors and in supporting the whole, rather than just focusing on individual sectors. This does not mean that individual creatives will be regarded as having the same motivations, challenges and needs as large corporations. Nor does it mean that producing art is to be measured solely against business objectives, although art's economic value must be clearly recognised. It also does not mean that creative products and services developed commercially do not have artistic value. This is why the government has clarified and consolidated our approach to Victoria's arts and

creative industries, with the creation of and with significantly increased funding to Creative Victoria.

The Creative Victoria Bill will repeal the Arts Victoria Act 1972 to establish legislative recognition of the status and operation of Creative Victoria. As the minister has stated, while aspects of the Arts Victoria Act 1972 are now well out of date, its symbolic function remains of continuing importance. The government recognises that Victoria's cultural growth is an essential part of what makes us unique, and streamlining and updating our legislative and organisational approach to the diverse number of creative industries and sectors is a fundamental step in this process.

This legislation will provide a new whole-of-sector approach to focus on and recognise the private and public benefits of our arts and creative industries. It is an overt demonstration of this government's vision and makes a tangible contribution to modernising our creative and arts sectors.

Section 12 of this legislation introduces a requirement that the minister must prepare an arts and creative industries strategy every four years. This is essential given that this review process did not occur in the 10 years prior to the current legislation. Section 12 of the legislation will ensure that the government's key focus for the arts and creative industries in Victoria is reviewed and that it is achieving the objectives set out in this bill.

This bill also ensures that governance arrangements for Creative Victoria will be strengthened by the appointment of a chief executive, Creative Victoria, whose responsibilities include expanding the knowledge, understanding, appreciation and practice of the arts in Victoria. The chief executive role will not impact upon Creative Victoria's operational relationship with the Department of Economic Development, Jobs, Transport and Resources, with the secretary as departmental head or with the minister.

This legislation appears before the house as an example of the many views expressed during a focused and concerted process of public and industry consultation, and the government is proud to be expanding the cultural diversity and enrichment of our great state.

I commend the bill to the house.

Motion agreed to.

Read second time.

Third reading

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

> That the bill be now read a third time.

On behalf of Minister Pulford, I thank all members for their contributions on this bill.

Motion agreed to.

Read third time.

BUDGET PAPERS 2017–18

Mr JENNINGS (Special Minister of State), pursuant to section 27E of the Financial Management Act 1994, presented budget paper 2, 'Strategy and Outlook'; budget paper 3, 'Service Delivery'; and budget paper 5, 'Statement of Finances' (incorporating quarterly financial report no. 3); and, by leave, presented budget paper 1, 'Treasurer's Speech'; budget paper 4, 'State Capital Program'; 'Overview'; budget information paper, 'Rural and Regional'; budget information paper, 'Suburban'; and 'Gender Equality Budget Statement'.

Laid on table.

Ordered to be considered next day on motion of Mr JENNINGS (Special Minister of State).

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Member for Melton

Mr RICH-PHILLIPS (South Eastern Metropolitan) — My question is to the Leader of the Government. In relation to the member for Melton, the Premier said last week:

> If he does not pay the money back, we will take it out of Mr Nardella's hands and we will recover that money.

How much money was the Premier referring to — the $76 582 claimed for living in Ballarat or the $98 254 claimed for living in Barwon Heads?

Mr JENNINGS (Special Minister of State) — I thank Mr Rich-Phillips for his question. Given that they were comments that were made by the Premier, even though I was in the Premier's company, at no stage did he or I discuss what he meant by that phrase.

Supplementary question

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I thank the minister for his extraordinary response.

Mr Jennings — It is an honest response.

Mr RICH-PHILLIPS — Honest, Mr Jennings?

Mr Jennings — It is complete and honest.

Mr RICH-PHILLIPS — A brutally honest response, Mr Jennings. Given the member for Melton has not agreed to repay the $174 000 he received, will the government still take it out of Mr Nardella's hands and recover the money, as the Premier suggested last Monday?

Mr JENNINGS (Special Minister of State) — I do not know whether Mr Rich-Phillips has heard or seen the complete transcript of what took place in terms of the press conference that I was party to last week. At the press conference that I was party to and in my contribution I made it very clear that the government is intending to introduce legislation to provide for powers that currently are not available to the Parliament in relation to reclaiming money and the means by which that could actually be undertaken and indeed additional penalties that may be incurred through inappropriate claims and payments of money. It is the intention of the government to introduce that legislation in the second half of this year, and I imagine that that will be an opportunity for us to fully discuss those issues as the government is joined by the opposition, presumably, in supporting that initiative.

Member for Melton

Ms WOOLDRIDGE (Eastern Metropolitan) — My question is also to the Leader of the Government. Ordinary Victorians are required to repay money to the state and they are often subject to penalty interest currently set by the Attorney-General at 9.5 per cent per annum. Is the member for Melton required to pay penalty interest on his repayment scheme?

Mr JENNINGS (Special Minister of State) — Not for the first time Ms Wooldridge clearly does not understand either the Parliament's powers, the obligation — —

Mrs Peulich — You're just saying that because she's a woman.

Mr JENNINGS — No, in fact I would say that of many members of the opposition, Mrs Peulich. I could actually say that there are many members of the opposition who clearly do not actually understand how Parliament works and in fact are pretty capricious in the way that they believe it works. Can I suggest to you that the matter that the member has referred to in terms of the arrangement that has been reported in the media — the arrangement between the member for Melton and the Parliament to return those moneys — is a matter for the Parliament and the member for Melton. I have not, and I do not believe the Premier has, had a conversation with the member for Melton about the terms of that repayment.

Supplementary question

Ms WOOLDRIDGE (Eastern Metropolitan) — Thank you for that answer, Leader of the Government. Can I then ask: has any member of the government had a role in negotiating the repayment terms with the member for Melton?

Mr JENNINGS (Special Minister of State) — The answer to Ms Wooldridge's question is: not to my knowledge.

Prison capacity

Mr O'DONOHUE (Eastern Victoria) — My question is to Minister for Corrections. Minister, can you confirm, following now three budgets of the Andrews government and despite serious crime exploding across Victoria under your government's watch, that the number of maximum security prison beds within Victorian correctional facilities is now less than at the change of government in November 2014?

Ms TIERNEY (Minister for Corrections) — One thing is true, and that is that the prison population has increased by 67 per cent in the last 10 years, and indeed there has been a doubling of remand prisoners since 2013. The fact of the matter is that we have not sat there and done nothing. What we have done is a number of things. Firstly we have introduced and rolled out a very effective court conferencing arrangement. We have funded that, and that has been extended. We have also heard from the commissioner for corrections time and time again that, yes, we have got a system that is reaching capacity, but the fact of the matter is that we have been able to manage this situation well.

Ms Crozier — No you haven't; it's out of control.

Ms TIERNEY — It is not out of control. If you believe that, you are not believing the commissioner for corrections, who has time and time again outlined how the prison system is managed. A lot of work goes into managing the prison population.

Honourable members interjecting.

Ms TIERNEY — I know quite a bit, Mr — —

Mr Ondarchie — What have you done?

Ms TIERNEY — What we have done is maintain a stable environment, unlike those opposite. The number of escapes that took place under your watch is significantly higher than what has occurred under our government. We have worked tirelessly to work through the issues of prison population, and we do look forward to the Ravenhall prison coming on stream later this year.

Supplementary question

Mr O'DONOHUE (Eastern Victoria) — I ask by way of supplementary: Minister, is the shortage of maximum security beds across the state — and I note you did not refute the proposition I put in the substantive question — one of the reasons why there has been so much prisoner unrest throughout the corrections system, including the recent escape last month from Langi Kal Kal Prison by convicted sex offender Barry Dettman, who had been transferred to that prison just the day before from Port Phillip?

Ms Tierney — There are a number of issues in that question. I am really not clear about what the question is, President.

The PRESIDENT — Order! I can understand the minister's reaction to that in the sense that I was concerned as to whether or not the supplementary question was apposite to the substantive question. I actually thought that it tended to go to new material and perhaps in a multi-choice format. Minister, would you like the question repeated?

Ms Tierney — Yes, thank you.

Mr O'DONOHUE — Minister, is the shortage of maximum security prison beds across the state one of the reasons why there has been so much prisoner unrest throughout the corrections system, including the recent escape last month from Langi Kal Kal Prison by convicted sex offender Barry Dettman?

Ms TIERNEY (Minister for Corrections) — I will attempt to answer that question. I think what really comes to the heart of the question that Mr O'Donohue has attempted to ask is whether prisoners are being accurately assessed in terms of their security assessment. That being the case, I certainly believe that Corrections Victoria does assess prisoners at the correct level. Indeed the reference to the Langi Kal Kal situation was that Corrections Victoria did go through a very thorough assessment in relation to that prisoner, and they do stand by that assessment. They took, I think, a number of elements into that case to filter and shake through issues that may have been of concern, but they absolutely stand by their decision that that was the accurate and proper response in terms of allocating that person to that prison.

Heyfield timber mill

Ms BATH (Eastern Victoria) — My question is to the Minister for Agriculture. With respect to the Heyfield timber mill and its workers, the Premier has broken his commitment to visit the mill and the government has been silent for the sixth week since the mill's potential closure was announced. Minister, is it on your instruction that the Premier has abandoned the Heyfield timber mill workers?

Ms PULFORD (Minister for Agriculture) — I thank Ms Bath for her very strange question. The government continues to work to provide a resolution to the very challenging circumstances that exist at Heyfield. As the member well knows, the Premier has indeed met with a group of the affected employees. I have met with, I imagine, most but not all of the Heyfield employees in a visit to the mill, addressing both shifts. Ms Shing is, I think, in regular contact with people involved in the mill as well. We continue to work with the company, with the union that represents the employees and with community leaders to bring a resolution to these challenging issues. We have not gone missing at all — nothing could be further from the truth.

Supplementary question

Ms BATH (Eastern Victoria) — I thank the minister for her response. The Premier has broken his promise to visit the mill, his offer to buy the mill is widely derided as a stunt and even your local MP, Ms Shing, has backed out of a planned visit. Minister, have you signed the Construction, Forestry, Mining and Energy Union's (CFMEU) pledge to protect the Heyfield jobs or, like the Premier, have you also abandoned the Gippsland timber mill workers?

Ms PULFORD (Minister for Agriculture) — I thank Ms Bath for her further question. I have had many, many discussions with the CFMEU about this matter. I met with their delegates at Heyfield and here in my office — at multiple locations on numerous occasions — and have had discussions with the management of the company as well. We will continue to work constructively to seek a resolution to these

issues. We certainly remain willing to be a buyer of last resort of this company, as we have stated.

Caulfield–Dandenong line elevated rail

Mr DAVIS (Southern Metropolitan) — My question is for the Leader of the Government, and I refer to a post on the reputable railpage.com.au, which says:

> Railpage has received information the current design of the above-ground —

sky rail —

> system —

this refers to the Caulfield–Dandenong line —

> will not support the weight of freight trains between Melbourne and Gippsland, requiring freight to be removed from the line.

Minister, can you assure the house that the Andrews Labor government's Caulfield–Dandenong sky rail project will support the continuation of rail freight from Gippsland to the port of Melbourne, and if not, why not?

Mr JENNINGS (Special Minister of State) — I thank Mr Davis for his question. I am not too sure whether in fact Mr Davis relies on my knowledge of a website in terms of answering his question, because it would not be the first time that Mr Davis has come into this Parliament and reported as fact something that actually appears on websites or Facebook or in some other social media commentary as if it is fact, then made an assertion based upon it and then expected me to respond to it on behalf of the government as if it is fact.

In relation to the matter that goes to the heart of the question, regardless of his intrigue about the construction of the question, I have great confidence in the ability of my colleague the Minister for Public Transport and the people who are working with her in relation to the redevelopment of the Melbourne metropolitan railway system, including the Cranbourne-Pakenham line and the level crossing removal program, to design, implement and project manage this important undertaking on behalf of the Victorian government. As Mr Davis would be aware, this is an extraordinary undertaking in relation to the 50 level crossing removals program that the government is making excellent headway on, and indeed there is further support in the budget today for that important initiative to get a further eight level crossings removed. So the government, in terms of its schedule of level crossing removals, will be well in advance of what was originally envisaged within this program.

Within that design and that project delivery, I am confident that the Minister for Public Transport, the Level Crossing Removal Authority (LXRA) and those who are charged through Public Transport Victoria will address the concerns about freight movements and indeed safe and reliable commuter transport for Victorians in the future along that corridor. If he has any further detailed questions, I am certain that my colleague would be well versed and able to answer them.

Supplementary question

Mr DAVIS (Southern Metropolitan) — I am not assuaged by that response, and I am going to quote for the member's benefit — —

Mr Dalidakis — Let's use an anonymous forum on a website!

Mr DAVIS — No, it is not. It is a well-respected — —

Mr Dalidakis interjected.

Mr DAVIS — I am quoting:

> It is believed if the current design —

the website says —

> with limitations is allowed to continue, freight trains will be required to terminate at Dandenong and containers placed on trucks for the journey to and from the port. This situation is likely to lead to freight services on the Gippsland corridor being unviable economically, placing thousands of additional truck journeys on our road network.

It goes on to say that:

> Railpage has written to the Level Crossing Removal Authority requesting clarification on the issue but is yet to receive a response.

Minister, will you ensure that there is a proper response to Railpage, to the community and to the people of Gippsland?

Mr JENNINGS (Special Minister of State) — The President will note that it is probably not my usual wont to refer to a text or a screen in my answers, but Ms Shing has provided me with a direct feed of the Level Crossing Removal Authority website currently on this particular matter.

As far as the commitments of the government and the LXRA are concerned, in answer to the question:

> Will you continue to run diesel trains on the old tracks underneath the new rail line?

the answer is:

> The new elevated structure will be designed to safely carry both Metro passenger trains and diesel freight trains. Just as passenger and freight trains share tracks currently, they would continue to share tracks in the elevated design. The tracks underneath the elevated structure will be removed to create new community spaces.

That is online, and the government stands by those undertakings.

Portland aluminium smelter

Mr BARBER (Northern Metropolitan) — My question is for Mr Jennings, representing the Minister for Energy, Environment and Climate Change. Minister, in the funding agreement that your government has made with the Alcoa Portland smelter, was there a requirement that they take part in the demand-side participation program — that is, that they will agree to be voluntarily powered down during a few days a year when electricity demand is extremely high?

Mr JENNINGS (Special Minister of State) — I thank Mr Barber for his question. Mr Barber has asked me a series of questions about the undertakings that were reached by the government in providing support to Alcoa earlier this year. Without knowing the level of detail in relation to the specifics he has raised with me in that question, what I can say is it is a longstanding arrangement that Alcoa for many, many years has been party to undertaking this in relation to load shedding. That actually happens at times of acute need in relation to the state's energy needs at times of peak demand and some pressures within the distribution network. That is a longstanding arrangement. If that has been augmented by this agreement, I would need to have some advice, but at this moment I do not know of the specific arrangement that he may be referring to.

Supplementary question

Mr BARBER (Northern Metropolitan) — That was certainly the case in relation to the Point Henry smelter, which is now closed, and of course Hazelwood has closed in the meantime. So if it has not been a specific condition that has been made in relation to this funding, then if the Minister for Energy, Environment and Climate Change knows something about their own voluntary participation through the energy market, if we could also be informed of that, that would be most helpful. Thank you, Minister.

Mr JENNINGS (Special Minister of State) — There is a very good chance, Mr Barber, that the President may encourage me to actually try to obtain an answer to your question in two days.

The PRESIDENT — I am being channelled!

Child sexual abuse

Ms PATTEN (Northern Metropolitan) — My question is to the Minister for Corrections, representing the Attorney-General. It has been reported this week that young Victorian schoolgirls are being unlawfully forced into marriage in record numbers, with authorities investigating dozens of child bride and forced marriage claims. I think we should call it what it is: this is child abuse. Despite numerous amendments to the Crimes Act 1958, why does the act include the defence of consent to sexual penetration of a child under the age of 16, indecent act with a child under the age of 16 and other child sex offences? So what I mean is: there is a defence in the act where the accused believed on reasonable grounds that he or she was married to the child.

Ms Tierney — Sorry, I missed the last line of the question.

Ms PATTEN — Within the Crimes Act 1958 — and we have had numerous amendments to the act over my time here — there is still a defence of consent to sexual penetration of a child where the offender, the accused, and I quote the act:

> … believed on reasonable grounds that he or she was married to the child.

The PRESIDENT — Order! But what is the question?

Ms PATTEN — The question is: why is this still in the act?

Ms TIERNEY (Minister for Corrections) — Thank you, Ms Patten, for this question. This is an issue that is of broad concern across the community regardless of where people have been born or indeed cultural background. It is a significant issue in this state, but it is also a contemporary issue across the world. As I understand it, there are commonwealth laws that apply in terms of certain elements and then there are some state laws. Clearly I will refer this matter to the Attorney-General. I am sure that he has been looking at this in recent times, as it has had increased currency,

and I look forward to providing that information back to you, Ms Patten.

Supplementary question

Ms PATTEN (Northern Metropolitan) — Thank you, Minister. I look forward to that. As you say, as a Melbourne man is set to be the first person convicted under federal forced marriage and illegal child marriage laws, it has been reported that he pleaded guilty to marrying the girl only after prosecutors dropped a sexual abuse charge. So can the minister confirm on how many occasions the Director of Public Prosecutions has withdrawn child sexual abuse charges because of the existence of this child bride defence?

The PRESIDENT — Order! Can you focus on a period?

Ms PATTEN — The last five years.

Ms TIERNEY (Minister for Corrections) — Again, I will ask the Attorney-General to incorporate the answer in terms of your substantive with the supplementary. Clearly in terms of the specifics I cannot comment, given the matter is before the courts.

Naloxone supply

Ms PATTEN (Northern Metropolitan) — My second question is for the Minister for Families and Children, representing the Minister for Mental Health. In response to my supervised injecting centre bill and the coroner's related recommendations around a medically supervised injecting centre, the minister announced in February a $1.3 million package to subsidise the cost of naloxone. I am advised by the Pharmacy Guild of Australia that since naloxone has been available across the counter, there have been persistent issues with low wholesaler stock and naloxone is regularly unavailable. What is the government doing to guarantee the supply of naloxone across Victoria other than subsidising a product that may not be available?

Ms MIKAKOS (Minister for Families and Children) — I thank Ms Patten for her question directed to the Minister for Mental Health. It is a very specific question, so I will direct that question to Minister Foley for a response. What I can say more broadly is that Minister Foley did make some announcements late last week in relation to some additional resources around drug rehabilitation beds that I am sure the member would be aware of. That is part of our government's continued investment to provide additional resources and services and supports for people who might be experiencing drug addiction. But I am very happy to refer the specifics to Minister Foley for a written response.

Supplementary question

Ms PATTEN (Northern Metropolitan) — I thank the minister. I look forward to that, and obviously this will apply to my supplementary as well. I have been advised by the guild that the adrenaline EpiPen that is commonly used in other jurisdictions for naloxone is not available here. For administration here, naloxone has to come in either a prefilled syringe which a needle has to be attached to or an ampoule that is then drawn into a syringe. It is very complicated. The minister has announced a policy to assist in the distribution of naloxone to peers, families and communities as an important part of strengthening Victoria's response to overdose. Does the government's policy expect that ordinary members of the community encountering overdoses are now going to be forced to sort of fumble with needles and syringes before administering what could be a life-saving drug, naloxone?

The PRESIDENT — Order! Again I have some concern. I think this goes to a quite separate issue, but there is obviously a relationship. The common thread is overdoses, deaths in the community, survival rates and so forth, and certainly the availability of certain treatments. So on that basis I will allow it, but it is pushing the envelope a little bit.

Ms MIKAKOS (Minister for Families and Children) — I will take the supplementary question on notice and refer that to Minister Foley. It is a matter that is outside my area of expertise, that particular issue. But what I can say to the member, further to what I said earlier, is that there is $81.1 million in the budget handed down today for the third stage of the government's *Ice Action Plan*. I know that Minister Foley is absolutely committed to providing more resources through early intervention and treatment for Victorians struggling with dangerous drug usage, and I will be very happy to forward the member's supplementary question to Minister Foley for a written response.

Correctional facility disability services

Dr CARLING-JENKINS (Western Metropolitan) — My question is for the Minister for Corrections, Minister Tierney, and it is in relation to communication accessibility for prisoners with disability. The *Corrections Victoria Disability Framework 2016–2019* focused on reducing barriers for offenders and prisoners with a disability to services, programs and facilities while serving their sentence.

While the framework recognises the need for a targeted response for prisoners and offenders with poor communication skills associated with specific disabilities, it does not outline in detail which steps are to be taken. There is still a lot of work to be done to ensure that people with a disability are able to properly communicate and be communicated with in correctional facilities. Minister, will the government commit to seeing that all correctional facilities communications are accessible for people with a disability through, for example, the publication of forms and instructions in plain English form, which is a common tool used to ensure communication accessibility?

Ms TIERNEY (Minister for Corrections) — I thank Dr Carling-Jenkins for her question and her ongoing advocacy for those who are vulnerable and who have got disabilities. In an incarceration system I think it is particularly important that we make sure for those that are already experiencing difficulties as a result of having disabilities that their issues are addressed. I am more than happy to review the current situation and work out a way forward to improving what can be improved, and I look forward to having discussions with her on that as we progress the matter.

Supplementary question

Dr CARLING-JENKINS (Western Metropolitan) — I thank the minister. I do really appreciate that response, and I look forward to having a more in-depth conversation with her about this. As I mentioned in my substantive question, a really great tool to ensure communication accessibility is the translation of documents into plain English, so I ask: will the government consider publishing reports such as the *Corrections Victoria Disability Framework 2016–2019* and its annual report in plain English in order to include people with disability, who are currently being excluded from this conversation because of inaccessible communications?

Ms TIERNEY (Minister for Corrections) — As part of my inquiries in determining what information is readily available, I will certainly take that into consideration. Can I say in terms of language and written form in straightforward language, that it is an absolute priority. I understand that priority in terms of people that have got disabilities, but I also understand that in terms of previous work experience with those that come from other countries where English is not their first language. Indeed their own language is often denied to them in a written form. So I do understand the importance of communication and again look forward to that conversation with the member.

QUESTIONS ON NOTICE

Answers

Mr JENNINGS (Special Minister of State) — I have answers to the following questions on notice: 7658, 7703–4, 7721, 9723–4, 10 503–8, 10 510–11, 10 513–14, 10 523–59, 10 561–70, 10 576–9, 10 583–5, 10 587–98, 10 601–4, 10 606–7, 10 609–18, 10 909, 10 911–19, 10 925–47, 10 950–62, 10 964–70, 10 973–4, 10 979–80, 10 982, 10 984–8, 11 016–18.

QUESTIONS WITHOUT NOTICE

Written responses

The PRESIDENT — Order! In relation to today's questions without notice, and in regard to Ms Patten's first question to Ms Tierney, which was on matters related to the Attorney-General's portfolio, for the substantive and supplementary questions, that is two days.

In regard to Ms Patten's second question, for the substantive and supplementary questions, that is two days.

In regard to Mr Barber's question to Mr Jennings, for the substantive and supplementary questions, that is two days.

Mr Rich-Phillips — On a point of order, President, in relation to my principal question to the Leader of the Government, Mr Jennings was really honest in his response when he said, 'I don't know'. I am wondering on that basis if you might ask the minister if he can provide a written response to that question about what the Premier meant in his statement last week.

The PRESIDENT — Order! After having taken advice from the Clerk on this occasion the indication is that the minister's response that he did not know — in the Clerk's view, and therefore I will accept the advice on this occasion — is a response that is apposite to the question that was asked. There is an opportunity for members to further pursue the matter by way of a question on notice. Obviously the Premier is in another place and the question related to the Premier's view of this matter or his comments on this matter. The question obviously went to what he meant by the remark that he made, and clearly the Premier is in a position to actually satisfy that sort of question in the other place as well. So on that basis I will not reinstate that question.

Mr O'Donohue — I raise a point of order, President, in relation to my substantive question, which was in effect: can the minister confirm that following three budgets there are fewer maximum prison beds now than in November 2014? I submit that the minister did not answer that question and was not responsive to that point.

The PRESIDENT — Order! I have some sympathy with Mr O'Donohue's proposition, in the sense that I had some difficulty during parts of question time with the interjections that went across the chamber and did not pick up all of the responses. I must say I was actually tempted to ask Mr Davis to repeat his supplementary question. I only did not do so because I thought that the minister did have a reasonable grasp of what the question was about, but there certainly was a lot of noise and interjection across the chamber as Mr Davis posed that question. In regard to Mr O'Donohue's request, I did actually seek the courtesy of seeing that question to establish whether or not I should actually seek a written response, and on the basis that has been raised I will actually seek a written response on the substantive question put by Mr O'Donohue. That is one day.

Mr O'Donohue — On a further point of order, President, I notice that the Leader of the Government said there are several hundred answers to questions on notice. Without taking the time of the chamber, I currently have 2394 questions on notice that are outstanding. The vast majority of those 2394 questions are to the Minister for Corrections or to the Minister for Corrections in her capacity representing the Minister for Police, and I seek some advice as to whether those 2394 answers are coming in the near future.

The PRESIDENT — Order! In respect of process the pursuit of this type of matter needs to occur on an opposition business day, which is Wednesday, so on this occasion, under our standing orders, I am unable to take it up. I will point out that I have actually had some correspondence from the Minister for Police in regard to some of the questions that you are no doubt referring to, and there are some matters of judgement that she has asked me to consider — and I will do so — in terms of what is an appropriate level of monitoring of the system. I certainly think that some of those questions that you are concerned about may well fall into the area upon which she has asked me to adjudicate. I have indicated to her that this process on this occasion should proceed, but I will take into account the matters she has raised with me in going forward and thinking forward.

CONSTITUENCY QUESTIONS

Southern Metropolitan Region

Ms PENNICUIK (Southern Metropolitan) — My constituency question is for the Minister for Planning. The community of St Kilda and beyond is extremely concerned about the apparent imminent demolition of the Greyhound Hotel. The community values the Greyhound as a historic landmark, a local pub and a music and entertainment venue, especially for the LGBTI community. At its ordinary meeting on 19 April 2017 the City of Port Phillip resolved to request that the Minister for Planning authorise the preparation and exhibition of amendment C148 to the Port Phillip planning scheme to apply a permanent heritage overlay and associated controls to 1 Brighton Road, St Kilda, and to request the minister prepare and approve amendment C147 to apply an interim heritage overlay to 1 Brighton Road, St Kilda, while permanent controls are progressed. I ask the minister to act with urgency on this issue to prevent the loss of yet another much-loved heritage building.

Western Metropolitan Region

Mr FINN (Western Metropolitan) — My constituency question is to the Minister for Public Transport. The government often likes to talk about its willingness to consult with the community. As we have just as often seen, these claims of consultation are entirely empty. The latest community to feel the brunt of the Andrews government's so-called consultation is that of Essendon. That community's concerns about the removal of the Buckley Street level crossing are being completely ignored. I ask: will the minister change her attitude and listen to the strong opposition of the Moonee Valley council and local residents to the government's plans for the removal of the level crossing?

Western Victoria Region

Mr MORRIS (Western Victoria) — My constituency question is directed to the Minister for Planning, and it relates to wind farm planning applications in my electorate. Two specific wind farms of concern are the Lal Lal and Moorabool wind farms. The planning panel recently handed down its report on the Lal Lal wind farm and made recommendations with regard to secondary consent relating to future changes to turbine height. The minister promptly ignored these recommendations when granting the planning permit. Residents were not adequately notified about the relevant panel hearing for the Moorabool wind farm, and they have concerns that the same approach may be

taken by the minister and that the views of the community may be ignored along with the recommendations of the planning panel report which is due to be handed down in the near future.

My question is: will the minister take into account the very real, serious concerns of local residents about the impact these wind farms will have upon their community when he is determining the outcome of the planning permit application?

Western Metropolitan Region

Dr CARLING-JENKINS (Western Metropolitan) — My constituency question is to the Minister For Roads and Road Safety, Luke Donnellan, in the Legislative Assembly, and it is in regard to an initiative of my constituents calling for the installation of traffic lights at the intersection of Perth Avenue and Ballarat Road in Albion. A report by Brimbank City Council of 21 February confirms that Albion residents have no controlled intersection from which they can access Ballarat Road to head towards the Melbourne CBD. It endorses the Perth Avenue intersection with Ballarat Road as the most appropriate location for a signal to provide that controlled access. Further, traffic signals would also provide a much-needed safe crossing of Ballarat Road for pedestrians. The Albion action group and the Albion and Ardeer Community Club are actively campaigning on this issue and seek a resolution. So my question is simply: when will the government facilitate the installation of traffic lights at the intersection of Perth Avenue and Ballarat Road in Albion?

Eastern Victoria Region

Ms BATH (Eastern Victoria) — My constituency question is for the Minister for Energy, Environment and Climate Change. To assess the effectiveness of possum protection mechanisms while maintaining a sustainable timber industry, the Leadbeater's Possum Advisory Group's 2014 recommendation clearly states that the state government should initiate a review of the timber harvest exclusion zones once 200 new colonies are identified. The trigger of 200 was reached almost two years ago, and today there are over 600 confirmed colonies.

The release of this report will assist in providing the vital information needed to support the future of the Australian Sustainable Hardwoods — ASH — timber mill in Heyfield, which has been offered a significantly reduced timber supply, and therefore hundreds of jobs are at risk. The overdue report, which will show an increase in the abundance of the Leadbeater's possum, was to be released in April. It is now May, and there is no sign of it. So I ask the minister: when will she release the report, which will enable a change in policy settings so that possums and timber can both be sustainable?

Southern Metropolitan Region

Ms FITZHERBERT (Southern Metropolitan) — My question is to the Minister for Roads and Road Safety. It comes from local residents who are concerned about the increasing number of large trucks that rat-run through parts of Beaconsfield Parade and Beach Road. This issue has been a major concern for residents, who tell me of their disappointment that the member for Albert Park has failed to address this issue despite their raising it with him many times over the past six years.

Mr Finn — Probably because he's useless.

Ms FITZHERBERT — He may well be useless, Mr Finn, but what they put it down to is his proximity to the Transport Workers Union, both literally and figuratively, as the member and the union share a building — I am only repeating what a constituent said to me. My question to the minister is: when will the minister release two relevant reports that have been done on this issue? The first is a VicRoads online survey regarding community attitudes towards the existing truck curfew. The second is the truck counts that were done on the coastal road from Port Melbourne to Black Rock. That report includes, as I understand it, the number of trucks and the number of breaches of the existing curfew. My question is again: when will these reports be publicly released?

Western Victoria Region

Mr RAMSAY (Western Victoria) — My question is to the Minister for Planning, the Honourable Richard Wynne. It is in relation to an application by MCG Quarries for an extractive licence for a proposed quarry in Mooleric Road, Birregurra. This is a very contentious planning application given that landholders are concerned about the impact on the water table in relation to the depth of this proposed quarry and the extraction of rock for road material and for the concrete pads of the Mount Gellibrand wind farm. The application went through a planning panel last December. It has since been sitting on the minister's desk for his approval, or not, and my question is: when will the minister make a decision in relation to that application by MCG Quarries, because the landholders are very concerned that there is an ongoing delay in relation to the minister making a decision on a very contentious application, which is going to affect, they

believe, their ability to farm without the water table being contaminated?

Southern Metropolitan Region

Mr DAVIS (Southern Metropolitan) — My question is to the attention of the Minister for Planning. It relates to his decision to declare planning scheme amendment VC110, which changed the neighbourhood residential zones (NRZ) and the general residential zones (GRZ) across our city. In particular I am aware of the interest in the property sector and academics analysing the impact of these changes. Ed Farquharson from Moda Group has said that properties over 1000 square metres will be a significant target for developers, who will seek to put in more units. The NRZ changes basically strip away two-dwelling protection. Bayside, Boroondara, Glen Eira, Monash, Kingston, Port Phillip, Melbourne and Whitehorse councils are within my area. I would seek specifically from the minister information on how many properties over 1000 square metres are in neighbourhood residential zones in those areas or indeed in general residential zones in those areas, which will see three-storey developments in GRZs across our suburbs.

CONSUMER ACTS AMENDMENT BILL 2016

Second reading

Debate resumed from 23 February; motion of Ms TIERNEY (Minister for Training and Skills).

Mr O'DONOHUE (Eastern Victoria) — I am pleased to speak on behalf of the opposition in relation to the Consumer Acts Amendment Bill 2016. This is a relatively uncontentious bill. It is an omnibus bill that seeks to make various amendments to a range of consumer-related acts. These amendments, I think, would be best described as a tidy-up of various sections of those acts, including the Associations Incorporation Reform Act 2012, the Conveyancers Act 2006, the Motor Car Traders Act 1986 and the Sale of Land Act 1962. Indeed the explanatory memorandum in the bill says:

> The object of this bill is to amend a number of consumer acts to make miscellaneous amendments to improve their operation.

That is an accurate summary of what this bill seeks to do. As I said, the bill is largely uncontentious. The bill amends the Associations Incorporation Reform Act 2012 to enable the minister responsible for that act's interpretation to make an order exempting either one incorporated association or a class of incorporated associations from reporting requirements. Some of these issues have been raised with me in constituent correspondence about those reporting requirements for various associations that have limited activities and perhaps limited capacity. The bill also enables the registrar of incorporated associations to enter into information-sharing arrangements and aligns provisions concerning investigations in that act with relevant provisions in the Australian Consumer Law and Fair Trading Act 2012.

The bill creates a new offence in the Conveyancers Act 2006 to insert an offence of failing to comply with the requirement of the director or an inspector without reasonable excuse. The bill amends the Motor Car Traders Act 1986 to enable a motor car trader to dispose of the motor car for the sheriff of Victoria subject to a security interest. The bill amends the Sale of Land Act to clarify that a person wishing to exercise their right to withdraw from a contract to purchase land may serve the termination notice on the estate agent engaged by the vendor to sell the land. That would appear to be a relatively appropriate amendment. The bill amends the Second-Hand Dealers and Pawnbrokers Act 1989 to enable the registrar of second-hand dealers and pawnbrokers to waive, refund or reduce fees, thus providing the registrar with some flexibility in relation to those matters.

The bill also amends the Veterans Act 2005 to clarify that the director of Consumer Affairs Victoria can consent to the amendment of an existing trust deed or the adoption of a new trust deed provided the purposes of the amendment or adopted trust deed are consistent with the purposes of a patriotic fund set out in section 23 of the Veterans Act and expands the class of persons who can benefit from patriotic funds.

This is an ominous bill that does some tidying up of the house processes and reviews from time to time. The administrative arrangements in relation to these types of bills can vary as technology changes and as the application of rules needs to be provided with greater flexibility and the like, and that is what this bill seeks to do.

I do not propose to speak for long on this bill, save to say that the opposition does not oppose its passage and to note, as we amend the Veterans Act today with the passage of this bill, that we recently recognised Anzac Day. I had the great pleasure of being at the Koo Wee Rup Anzac Day dawn service, where the president of the Koo Wee Rup RSL told the enormous audience that was there in the rain, together with many of our friends from New Zealand who were there and representatives from HMAS *Cerberus*, which is not too far away from

Koo Wee Rup, that in the First World War, regrettably, 40 men from Koo Wee Rup lost their lives and in the Second World War 50 local men lost their lives. That was an enormous sacrifice from what is still a relatively small farming community. At that time it was a very small farming community, and a significant proportion of the young men from that community lost their lives in the First World War and then later even more lost their lives in the Second World War.

It was a privilege to participate in Anzac Day commemorations at Koo Wee Rup and at other locations, but as we amend the Veterans Act let us acknowledge here today those who made that sacrifice for us as we participate in our democracy and acknowledge just how lucky we are to live in a state that has such freedoms and such a democratic tradition. With those few words, I indicate the opposition will not oppose the bill.

Ms SPRINGLE (South Eastern Metropolitan) — I can confirm that the Greens will be supporting the bill. As we have heard, this bill makes amendments to a number of bills aimed at ensuring greater clarity and consistency and ensuring that our laws keep pace with contemporary working practices.

We support the proposed amendment to the Associations Incorporation Reform Act 2012. Requiring non-government organisations to comply with multiple, duplicate reporting duties is neither sensible nor reasonable. This amendment will enable the minister to waive duplicate reporting requirements, and the effect should be to enable non-government organisations to dedicate more time to their core business.

In relation to the amendments aimed at broadening the definition of records which can be obtained as part of an investigation, this is obviously a much-needed change in line with changing business practices. Any failure to keep pace with technological developments in the workplace and their potential impact on the accountability of organisations is clearly problematic, and this amendment will deal with an aspect of that problem.

We support proposed changes to the Veterans Act 2005 that broaden the definition of allowable expenditure. As we know, veterans often face a range of complex and debilitating challenges in reintegrating into normal life, and the range of areas on which veteran support organisations are able to work should reflect that. Federal governments take decisions to put members of our armed forces in danger, and we as a society must be prepared to deal with the consequences of those decisions.

We have no issues with the other amendments contained in this bill. On that note I would like to reiterate our support for the bill.

Mr SOMYUREK (South Eastern Metropolitan) — I rise to speak in support of the Consumer Acts Amendment Bill 2016. This bill, as previous speakers have said, will amend a number of acts within the consumer affairs portfolio to improve their operation, clarify their requirements and update outdated references.

The bill will amend the Associations Incorporation Reform Act 2012, the Conveyancers Act 2006, the Motor Car Traders Act 1986, the Sale of Land Act 1962, the Second-Hand Dealers and Pawnbrokers Act 1989 and the Veterans Act 2005. Some of these amendments have been requested by the relevant sectors to address unnecessary regulatory burden, legal complexity that requires clarification, greater powers and enhanced protection. All measures are welcomed by the relevant sectors and industry. I will address some of these amendments and how they will benefit the relevant sector.

The Associations Incorporation Reform Act 2012 regulates the 38 000 Victorian incorporated associations which are clubs or community groups operating not-for-profit organisations. Consumer Affairs Victoria (CAV) ensures the compliance of incorporated associations through this act by in part monitoring the lodgement of annual statements to ensure that financial reporting requirements are met.

The Associations Incorporation Reform Act 2012 will be amended to authorise the minister to exempt an incorporated association or a class of associations from annual financial reporting requirements under that act where they are also registered with and reporting to another regulator, and it will enable the registrar of incorporated associations to enter into information-sharing arrangements with other regulators.

These amendments will assist incorporated associations to reduce some of the regulatory burden they face in the operation of their not-for-profit organisations that exist to contribute to the betterment of their community. The burden of regulation is one of the greatest issues for community organisations, whether they are the local footy, netball or soccer clubs or community centre or senior citizens organisations. These organisations are established to serve a purpose — that is, the purpose of contributing to their community by way of service or

participation provision, but often they feel that this main function takes a back seat to the onerous reporting obligations.

Consumer Affairs Victoria requires incorporated associations to report annually, and its reporting requirements vary depending on the revenue generated and what tier organisation it is. In any event not-for-profit organisations, depending on their status and functions, can be required to report to CAV, the Australian Charities and Not-for-profits Commission, various departments within the education department if they deliver training programs and other funding bodies, and most require audited financials. These amendments will assist in easing the burden for some not-for-profits, and that has certainly been welcomed by the not-for-profit sector. Importantly also the amendments will provide for updated enforcement and inspection powers in the case of alleged contravention of the Associations Incorporation Reform Act 2012.

Another welcome and very interesting amendment is the amendment to the Sale of Land Act 1962 to clarify that a cooling-off notice under section 31(2) of that act can be validly given to the vendor, the vendor's agent or the vendor's estate agent. I will explain why this has been amended.

In the recent case of *Tan v. Russell* [2016] VSC 93, after signing a contract of sale to purchase Russell's home, three days later and within the cooling-off period Tan did what he thought was the right thing — that is, he notified via email Russell's real estate agent that he wished to end the contract, thus exercising what he thought were his cooling-off rights. The vendor, Russell, denied the validity of the contract termination, and the court determined that the email was invalid because the real estate agent was not an agent of the vendor with the necessary authority to receive the notice of termination. I certainly would have thought that the real estate agent would have been an 'agent' of the vendor, but apparently that was not the case, and that is why we are putting forward this amendment. The purchasers presumed the real estate agent had authority to receive such notification. According to the court, although it is:

> … a common occurrence in commercial life for parties to assume that a real estate agent is an agent for the vendor of a property for all purposes … this is not necessarily the case.

The Court of Appeal subsequently overturned the previous finding, but this situation highlighted the need for further clarification that a cooling-off notice is valid if provided to the vendor, the vendor's agent or the vendor's real estate agent.

Another act requiring minor revisions is the Veterans Act 2005, which deals specifically with patriotic funds. Patriotic funds are a type of trust fund created after the First World War, when Victorian communities raised money to assist soldiers and their families. They provide welfare services and club facilities for returned service personnel and their dependants. Patriotic funds are established if an organisation collects funds, receives subscriptions or requests donations for any purpose related to any military service or duty. There are approximately 600 patriotic funds in Victoria administered by legally appointed trustees. I will just mention a couple of these. They include the Returned Services League, or RSL, branches of Legacy and the Vietnam Veterans Association of Australia, Victorian branch. There are number of others, which I will not go into due to time constraints. The act ensures that there are reporting obligations in order to detect and prevent maladministration. These amendments were requested by the RSL, and their implementation will ensure greater fairness in the provision of assistance from the patriotic funds to current and former personnel and their families in times of need.

There are several other amendments to the act that I mentioned at the outset of my speech, but I will not go into all of those amendments. Needless to say, they were welcomed by the various industry groups and by the various sectors and the stakeholders within those sectors.

In concluding, I wish to congratulate the Minister for Consumer Affairs for bringing these necessary amendments to the Parliament and for her proactive approach in implementing solutions and creating good public policy.

I commend the bill to the house.

Motion agreed to.

Read second time; by leave, proceeded to third reading.

Third reading

Motion agreed to.

Read third time.

STATUTE LAW REPEALS BILL 2014

Second reading

Debate resumed from 12 February 2015; motion of Mr JENNINGS (Special Minister of State).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to rise briefly to speak to the Statute Law Repeals Bill 2014 this afternoon, which is a bill of four clauses and one single operative clause, which is to repeal the Appropriation (2010/2011) Act 2010, the Appropriation (Parliament 2010/2011) Act 2010, the Appropriation (2011/2012) Act 2011 and the Appropriation (Parliament 2011/2012) Act 2011. This is a simple bill that does not require any debate. These bills are spent bills, and it is appropriate that the statute book be cleaned up and they be repealed.

It is ironic that the government has brought on this bill to repeal these previous appropriation bills today, the day on which it has brought down its latest budget — a budget which, contrary to the promises made by the Premier, imposes some six new taxes on Victorians. We saw the Premier looking into the camera on Channel 7, two days before the election in 2014, promising no new taxes. He said:

> I make that promise … to every single Victorian.

Of course in every budget this government has brought down we have seen a raft of new taxes and tax measures introduced. In fact in this year's 2017–18 budget tax revenue is some $4 billion higher than was forecast in the pre-election budget update back in November 2014 — around $2000 extra for every Victorian family under the budget of this government. What we are not seeing in return is the services and infrastructure that Victorians need.

This budget once again has failed to fire with Victorians. It has been remarkable to watch the commentary today about the lack of substance that this budget has. If you get beyond the tax increases, there is actually very little there for Victorian families. But we have come to expect that from this government. That was the case with the earlier budgets, and as we properly assess this budget over the coming weeks and as this house has the opportunity to debate this budget properly, we will see that in detail.

This budget simply repeals the appropriation bills of 2010–11 and 2011–12. It does nothing more than that, and I imagine it will have speedy passage through the house.

Ms HARTLAND (Western Metropolitan) — The Greens support this bill. We think it should go forward straightaway.

Mr ELASMAR (Northern Metropolitan) — I rise to speak to the bill before the house, the Statute Law Repeals Bill 2014. This is purely a housekeeping bill which seeks to make minor amendments to 68 current acts. Over time multiple small errors and typos have been identified. They must be amended in order for the legislation to make sense and be relevant to legal practitioners and the public who are governed by them. Some divisions and offices have been abolished, and this requires rectification — the removal of references to them from present-day legislation. The bill also repeals principal acts which have no ongoing operation.

I note the comments from the other side in relation to taking greater care in the drafting of legal phraseology, but I have to say that times change and acts sometimes become obsolete and, dare I say, interpretations change too. I believe that our parliamentary legal counsellors have been scrupulous and attentive in their duty of care in drafting legislation for this Parliament.

This statutory repeal bill is part of a normal and longstanding process of ensuring that Victoria's statute book remains current and relevant. No substantive changes will be made to any existing legislation, and as I have said, this is simply a housekeeping bill. I commend it to the house.

Motion agreed to.

Read second time; by leave, proceeded to third reading.

Third reading

Motion agreed to.

Read third time.

SMALL BUSINESS COMMISSION BILL 2016

Second reading

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

Mr ONDARCHIE (Northern Metropolitan) — I rise to speak on the Small Business Commission Bill 2016, noting that it is in fact only now, in 2017, that we are starting to address this bill. The purpose of this bill is to repeal the Small Business Commissioner Act 2003

and to re-enact the law in relation to the Small Business Commission with amendments to establish the Small Business Commission so as to enhance a competitive and fair operating environment for small business in Victoria and for other purposes.

The bill also introduces new amendments in relation to the Small Business Commission's functions and powers which will enable the commission to do a number of things. It will enable the commission to resolve a broader range of disputes between businesses and particular types of organisations, including professional organisations, educational institutions and certain special bodies within government; the commission will provide comment on legislation that may adversely affect small businesses, provided it is undertaken in consultation with the secretary and requested by the minister; and the commission will work collaboratively with equivalent small business commissioners in other jurisdictions.

Interestingly enough this government came to power promising to support small business, but a total of 886 days have passed and we are only now seeing anything associated with support for small business. This is the first time they have done anything to support small business in this state, and it has taken them 886 days to do so. But wait, there is more! This bill was first introduced in the Legislative Assembly 5 months and 25 days ago — 176 days ago this bill was first introduced in the Assembly, and it has finally arrived here. It was introduced on 8 November 2016, and here we are on Tuesday, 2 May 2017. So important is small business to this government that it has taken them 176 days to get this legislation from one house to the other. It is clearly not a priority for them.

But it is a priority for the state opposition. It is a priority for the Matthew Guy coalition to support the lifeblood of the Victorian economy that is small business, so we have done something the government has not done: we went out and consulted with small business. We went and spoke to industry associations and to small businesses to see what they thought about this bill, and I have to say they were underwhelmed. They did say, 'It has taken 886 days' — they are my words, not theirs — 'and this is it? This is the sum total of the bill after all that time?'. Government and, to be fair, several ministers have offered to support small business. They have finally brought a bill to the upper house to be supported, and this is the extent of it.

We spoke to over 127 Victorian industry associations. Not all of them responded, I have to say, but we will talk about that a little bit later. The main provision of this bill is the establishment of the Small Business Commission, which is to be constituted by the commissioner. The bill will provide for new functions and powers for the commission. The commission may request information to perform its functions. The obligations of public entities and public service bodies will be enshrined by this legislation. The commission must seek consent before it discloses confidential information. The commission may refuse to deal with certain complaints. The commission's alternative dispute resolution function will be enshrined in this legislation, as will its investigatory function. The bill grants the commission the power to issue certificates and gives it the capacity to offer opinions and advice. The bill talks about staff, it talks about delegation, it talks about reporting and interestingly enough it also talks about ministerial direction.

The bill talks about the appointment of the small business commissioner and the terms and conditions of that appointment. It talks about an acting commissioner. It talks about the function and powers of the commissioner, the validity of acts and decisions, and the opportunity for alternative dispute resolution functions.

It also amends other acts as well, this comprehensive bill that has made small business say, 'Is that it?'. It amends the Transport (Compliance and Miscellaneous) Act 1983. It changes the definition of small business commissioner and talks about unresolved disputes that may be referred to the small business commissioner or to the tribunal. It talks about the function of the small business commissioner under the Transport (Compliance and Miscellaneous) Act 1983. It talks about mediation or other alternative dispute resolutions by the small business commissioner, and it also talks about, under the Transport (Compliance and Miscellaneous) Act 1983, the small business commissioner's capacity to issue certificates.

It makes amendments to the Victorian Civil and Administrative Tribunal Act 1998, specifically in relation to intervention. It also makes amendments to the Liquor Control Reform Act 1998, and it talks about packaged liquor licences. It also makes an amendment to the specification of certain licences as small business licences.

Additionally, there are amendments to the Retail Leases Act 2003 in regard to definition, making sure that there is a copy of the lease to be provided at the negotiation stage. It talks about a minimum five-year term. It talks about alterations to premises to enable a new fit-out or alterations. It talks about an agreement, about rent based on turnover, and it generally talks about rent reviews as well. The amendments to the Retail Leases

Act 2003 as part of this bill talk about rent reviews based on current market rent, the confidentiality of information supplied to a valuer, the relocation of the tenant's business and the confidentiality of turnover information, and in the amendments to the Retail Leases Act 2003 there is a new heading to division 2 of part 10 that has been substituted.

The bill goes on to talk about the functions of the small business commissioner. It does refer the opportunity for the referral of tenancy disputes for alternative dispute resolution, and it also says that retail tenancy disputes must first be referred for alternative dispute resolution before other things. They are the amendments to the Retail Leases Act 2003 that come through as part of this legislation.

There are amendments to the Owner Drivers and Forestry Contractors Act 2005 buried in this Small Business Commission Bill 2016. It talks about the purpose of that act, the definitions, the notice of termination and the referral of disputes for alternative dispute resolution. It also stipulates in the amendments to the Owner Drivers and Forestry Contractors Act 2005 that disputes must be referred for alternative dispute resolution before proceeding to the tribunal. In part 6 of that act it is proposed that the heading be amended, and it also talks about the functions of the small business commissioner under that act.

But, wait — there is more! Under the Small Business Commission Bill 2016 there are amendments to the Farm Debt Mediation Act 2011, which also include changes to the definition of mediator. They include a clause that states farmers may be able to request mediation. It also says that a creditor may agree or refuse mediation. There is a reference to referral of mediation by the department. In addition to that there is an application by a farmer available for the issue of prohibition certificates. It refers to the actual issue of prohibition certificates, and there is an opportunity under this amendment to the Farm Debt Mediation Act 2011 for an application by a creditor for the issue of an exemption certificate. The issue of an exemption certificate is referred to under this amendment, and the part 3 heading has been amended accordingly.

There is a new heading to division 1 of part 3 that has been substituted, which talks about, as you would expect, the functions of the small business commissioner, the functions of mediators, the referral of farm debt disputes for mediation, the conduct of mediation, the mediation session fee — the cost — to do this, the costs of mediation and the manner in which notices are issued. There is a repeal of the Small Business Commissioner Act 2003, and there are some transitional provisions relating to the establishment of the Small Business Commission.

Whilst that sounds a lot, the feedback from the marketplace of small business is: all of that means what to us? In fact they ask that question legitimately, because some of the feedback that we have got — that the state coalition has got from industry, from small business and from their associations — is that they received little if any consultation and the bill was finalised at a time when there was no definitive head of the organisation. In fact there was an acting small business commissioner at the time.

There were some concerns in light of the fact that the minister's office and the department have both confirmed that there is no intention to increase funding of the commission, and we will talk about today's state budget in relation to small business certainly today as well as at other times. There are concerns about the capacity of the commission to actually handle the increased workload that has been foreshadowed by this bill. In the absence of that funding, the proposed changes may mean that the Small Business Commission will become more of an advisory service, and it may have to turn away people who are involved in disputes. Formalising that role of the Small Business Commission to an advisory service to the government in relation to small business will put an additional strain on the very limited resources of the Small Business Commission, and depending on the demands put on it by this government it could in fact render it less able to achieve its original purpose. There have been some concerns expressed that the change from commissioner to commission will have an impact on budgeting and the political framework, and the impartiality of the office may also be negatively affected.

In today's budget there certainly has been no indication by the minister or the department that there are any plans to increase the budget. If there are no plans to increase the budget, and in fact we have not seen that today, we just wonder if these changes to the Small Business Commission will in fact mean the organisation will have the capacity to do what it was originally intended to do. If you do not allow an increase in resources to the Small Business Commission, how can you expect to add an additional workload and get the results that small business needs?

This is a snow job. It is 886 days since they came to office; they lever this bill into this house, and it means nothing. It does not have the financial backup, it does not have the strength of conviction by the minister, and small business rightly are saying, 'Is this it?'.

Indeed if you make changes like this without appropriate consultation and without any plans to achieve the outcomes as intended, it sounds to me more like a plan to destroy small business's capacity to operate effectively than anything else. If this change was genuine and if they were serious about helping small business and about increasing the responsibility of the Small Business Commission, then where is the money? It is not in today's budget. In fact there has been no significant increase for the Small Business Commission, so you would excuse small business if they stood by today and said, 'This is just lip-service from this government. All talk and no action'.

There has been a suggestion that changes are just a way for the government to suggest they are actually doing something, but with no money and no industry consultation one can only suspect that the motivation for this is just smoke and mirrors so the government can be seen to be doing something for small business. But what the government fails to understand is that our wonderful men and women that run small businesses across this state are not foolish — they can see a sham a mile away — and have been conned. This government came to power on a platform of supporting small business, and 886 days on they have done nothing to help small business. All they have done is introduce this legislation that changes it from commissioner to commission, and they are calling that a change.

Clause 10 of the bill provides that the commission may charge fees; however, it does not talk about what fees are to be charged. I wonder if that then limits the commissioner's capacity to run their office. One of the additional challenges that I think exists in this current space is the staff selection for and oversight of the commission's office. The staff are employed by the department under the Public Administration Act 2004 or seconded from the department rather than being employed, so they are paid and managed by people other than the commissioner. I wonder how that gives the commissioner capacity to run their office. As a result of that, they are not really the commissioner's staff; they are really the department's staff, one suspects under ministerial direction. That really goes to the issue of independence. A member of staff ultimately works for whoever is paying their wages. Follow the money, and the money leads to the department and then to the minister's office.

There is going to be little positive effect on small business out of this. I just wonder if those who spent time signing off on this bit of legislation ever stopped to ask themselves the question, 'What are we actually doing here for small business?'. One would suspect that if they really had allocated time to follow up the talk that they care about small business, then they would see that there is nothing in this bill that actually works for small business. If there was something that could actually help small business — our largest employer, our biggest risk-takers in this state when it comes to jobs — then I would wholeheartedly support this bill, but I cannot because, as a man who has run small business and been involved in growing small business, the industry feedback that I and the state coalition have had has confirmed our view that the bill does nothing for small business. It will do a number of things that will make the small business commissioner very busy — there is no doubt about that.

We are not going to oppose this bill, but this was really a missed opportunity — an opportunity that has been lost to all Victorians and indeed this Parliament to do something real for small business and to actually get behind the lifeblood of the Victorian economy and say, 'We're going to support you. We're going to give you some meaningful changes in the act that will help you to grow, help you to take risks and help you to employ people' — but there is nothing in this.

The bill does make some amendments that will arguably address a range of disputes involving many organisations. It is going to allow the commission to make comment on legislation that might affect small business — if it is to undertake it in consultation with the department secretary, of course, and also if consultation is asked for by the minister. Can you ever imagine this minister asking someone for advice? The other aspect that is also included in the legislation — it could be called added to it — is the commission's capacity to work collaboratively with small business commissions in other jurisdictions. That gives the small business commissioner, now commission, a really important role to share with other commissions across Australia what they are doing — learn from them, grow with them and find opportunities to support small business. But I have to say that you would forgive me if I was a bit dubious about this. This minister has not got a great track record of working collaboratively with other states.

We all recall him famously standing on the steps of the Sydney town hall telling all Victorians, and indeed the New South Wales government, that he was about to steal a major conference from them and bring it to Victoria. It never arrived. Despite the offer of $1 million on the table, it never arrived. StartCon was lauded by this minister on the steps of the Sydney town hall. He said it was coming to Melbourne when in fact it was held at Randwick — the unknown Melbourne suburb of Randwick — because this minister rarely takes advice. He forms his own opinion and tells us he

is supporting business and opportunity, yet we do not see it.

The Victorian small business commissioner has been helping businesses in Victoria resolve disputes for 14 years, since 2003. They have been the place to go for assistance and guidance on business disputes. Apart from the specific legislative functions they have, they have also been able to provide to business confidential, low-cost, quick and effective mediation of small business disputes under the guidance of an independent mediator. The Office of the Victorian Small Business Commissioner was a statutory office that was established by the Victorian government under then Minister Marsha Thomson in 2003. It was designed to enhance a competitive and fair operating environment for small and medium businesses in Victoria.

The current small business commissioner is Judy O'Connell. The staff at the Victorian small business commissioner have been dedicated to promoting a competitive and fair operating environment for small and medium businesses and provide a range of assistance. They have promoted informed decision-making. They have mediated business-to-business, business-to-government, retail tenancy, owner-driver and forestry contractors, and farm debt disputes. Since 30 June 2014 the Victorian small business commissioner has also been responsible for resolving certain disputes between taxidrivers and operators which cannot be resolved by the Taxi Services Commission. They have gone about investigating complaints about unfair market practices, and they have worked hard at minimising disputes between small and large businesses. The capacity of the Victorian small business commissioner is not in dispute today.

There are five main areas that the commission has been able to help small businesses with, including general business issues such as business-to-business disputes, disputes between small businesses and governments and disputes around franchising. They have been able to mediate and work to resolve challenges and disputes between retail tenants and their landlords. They have been able to work effectively and in a positive manner to help mediate to try to find a resolution with owner-drivers and forestry contractors. They have also worked hard, I have to say, with farmers and farm creditors, as I outlined before, and with taxidrivers and operators as well.

When we have gone through these elements of the bill, we have taken the opportunity, unlike the government, to talk to the industry about what this does, and the feedback we have had says, 'Is that all the bill does?'. These are small business people who put their lives on the line, their mortgages on the line, their families on the line and they work and work — —

Mr Dalidakis — You're talking a lot for apparently a bill that doesn't do very much.

Mr ONDARCHIE — Interestingly enough, I will pick up the minister's interjection there. He said that I am talking about a bill that does not do very much, and I have got to say that he is absolutely right there. This is a bill that does not do a lot, and this minister, who purports to support small business in this state — as the government call him, 'the greatest self-promoter they have ever met' — stands here and interjects and says, 'You are talking about a bill that does not do very much'. He is absolutely right, because it is not just me who says it; the industry are saying it. The industry are saying, 'Is this all it does?'. They were looking forward to some real benefits from this bill, but they did not get them because this is another example of the spin, spin, spin from this government.

This is a minister who stands up and says, 'I support small business as the small business minister', but does absolutely nothing for it. I have to say to the minister, and I guess he will get his chance to respond to me in the committee stage of this debate, that he needs to answer the first fundamental question, and that is: why has it taken him 886 days to do something for small business in this state? If it was so important to him, if he was so earnest about this, if he was so enthusiastic and supportive of small business, why did this bill get introduced into the lower house on 8 November 2016 and only arrive here today?

The reason is that it is not a priority. They like to talk, but they hate to do the walk, and Victorian small businesses and families — who mortgage their homes, pay the staff before they pay themselves, worry about the rising energy costs for their business, worry about the cost of supply and transport to their business — are the ones who sleep less at night. This minister goes to bed and says, 'Well, I have done something for small business'. Well, no, he has not. This bill does zero for small business. One piece of feedback that we got was that the only effect of this bill will be that the commission will have to now redo all its letterheads, redo its signage and redo its communications, because it is taking two letters away from its name, going from 'commissioner' back to 'commission'. Minister, if that is your value-add to Victorian small businesses, you should be ashamed of yourself.

There are some exceptions that have been identified where the commission will not be able to act, and that

includes where there is a dispute with VCAT, the Victorian Auditor-General's Office (VAGO) or similar organisations like that. What this bill does do is ignore the fact that these organisations enter into commercial contracts with a range of providers, including cleaners, security staff, caterers, couriers — you name them — and the like. I do think, and the coalition certainly thinks, that it shows complete ignorance on the part of the minister to introduce a bill that alienates those service providers, those small business people, from negotiation with organisations like VCAT and the Auditor-General's office. But I have to say — —

Mr Dalidakis — You're clearly an idiot. If you don't understand why VAGO's not included, you are clearly an idiot.

The ACTING PRESIDENT (**Mr Ramsay**) — Order! Mr Dalidakis, that is unparliamentary. I ask you to withdraw the remark, please?

Mr Dalidakis — Withdrawn.

Mr ONDARCHIE — You will note, Acting President, I have not called him an idiot, because if I did, you would ask me to withdraw it, and I could not withdraw it because I would mislead the house, so I have not called him an idiot.

The feedback that we have received on this bill, as I have said, is basically that it does very little. A piece of feedback that we did get indicated that this really is Labor's emergency room. It is another quick move to demonstrate they are doing something for small business, but all they have done here is remove two letters from the sign out the front of the commission's office — and the minister thinks he has done it all for small business. In reality, changing the word from 'commissioner' to 'commission' does nothing for the hardworking small business people of Victoria. This is really the creation, perhaps, of another Dalidakis ideas room. The minister is not capable of doing his job, so he needs to form a process where someone can tell him what to do.

One of the really important aspects of this bill, and of course one of the most important aspects of this whole process, is the importance of the independence of the Small Business Commission. This body has to be independent; it has to not only look independent but it must be independent. If we look at the functioning of the organisation that is proposed with this bit of legislation — the way it is structured, the way it is going to be funded, the directions that are going to be given to it — I am not really sure it is independent in any way or by any stretch of the imagination. When you have the secretary and the department holding the purse strings I wonder if it makes it impossible for true independence to be achieved.

But we have seen that in today's budget. As Tom Cruise said in that movie, show us the money. The money has not come forward for the Small Business Commission, and this is an embarrassment for the minister. I am tipping he is not happy with the state budget. I am tipping he did not get the things he wanted. In fact I suspect there are things in the state budget he did not want, and I do not know how he is going to stand up and defend this as a state budget. He may use words like 'a true, fair and responsible budget' by way of camouflaging what he is really feeling. But, Minister, I have looked at the budget — and I know you have — and you should be severely disappointed in what your colleagues have done to you and for business in this state.

Staff employed in the organisation of the Small Business Commission are really employed by the department under the Public Administration Act 2004. The commissioner is required to request additional staff or extra funding through the department, and the department is clearly at the direction or the behest of the minister. So it does put into question if the commission and the commissioner will be truly independent. It is something the government could have addressed more comprehensively in this bill, but they have not. It seems that the commissioner will need to go, Oliver-like, to the minister and say, 'Please, sir, can I have some more?', because the minister will control what happens. For example, when there is a need to employ a new commissioner, is it really the minister that directly or indirectly appoints the commissioner? Is it really the minister that makes sure that he gets the person he wants in there so they will give him less grief?

I should take a moment to congratulate Judy O'Connell on her role as the new commissioner. Certainly the Matthew Guy coalition wishes Ms O'Connell well. We will of course work very closely with her and her team to make sure that she is able to do the job as well as possible according to the legislation that she has been given to work with. When it comes to deciding, though, in the end a short list of people for that position is created and then the minister gets to decide who is appointed. Of course, as I was alluding to, the minister could appoint somebody that they believe they could completely control — someone who is less likely to give them any trouble or hassles. We say that because we see the way this government have made appointments already. The end result of the way this legislation is laid out is it may not be — and I am not

casting any aspersions on Ms O'Connell — that the best person for the job will get the job; it may be the best person who will give the minister no grief or in fact will just do what the minister wants them to do. The opportunity they could have taken through this bill has been missed.

Another concern about this bill is that there was virtually no consultation. The feedback from industry far and wide is that they had not been contacted by anybody in relation to this bill before the shadow minister for small and medium enterprises, Neale Burgess, talked to them. It does smack of a situation, I guess, where the government tried to shuffle this one in under the radar. It was brought in with no consultation and at a time when there was in fact no formal commissioner. The minister and this government are building a reputation for always being up to something shady. Whether it be members living outside their electorates and claiming rorts, whether it be using staff to campaign for them, whether it be transporting dogs in ministerial vehicles or whether it be disenfranchising over 60 000 Country Fire Authority volunteers in this state, who give their heart and soul for their communities, this government are always up to something shady. The government have not done themselves any favours by not consulting on this at a time when there was no commissioner in place. So it seems that 886 days on from this government coming to office this bill has arrived in this place with little if any scrutiny at all.

The bill also adds a number of duties and obligations to the role of small business commissioner and their office, but with no extra funding. The feedback we are getting widely is that the commission is already in a situation where they are full to the brim; they have got enough workload to fully satisfy the hours available. So what I am hearing, and what we are hearing as a coalition, is, 'Minister, you've dumped all this extra workload onto us, including telling you what you need to do, but you've given us no funding, you've given us no extra people and we've got to just wear it'. Even, I suspect, they know that you are not walking the talk. There is not enough money for them to do their jobs, and there is nothing coming in the budget today. That then leads us to the conclusion that this Small Business Commission may in fact just be the minister's advisory service. Waiting times could well be extended, and there could be a focus on results rather than fair and equitable dispute resolution. That is a worry that we as a coalition that is supporting small business have. The minister may be more interested in churning disputes through than ensuring that fair, responsible and equitable dispute resolution occurs.

By way of comparison, let us look at VCAT. You will see that it operates in a similar way, with an increasing number of lawyers being present and not getting its job done as well as it might have been hoped. But they are churning them through at VCAT, and I do not want the Small Business Commission to turn into that sort of forum — just an advisory service to the minister. But doing that, added to their very important role of mediation and dispute resolution as I have touched on already in my contribution today, does in fact pose a real risk that the original intention of the Small Business Commission will be lost.

When you read through this legislation — and we will get a chance to examine it more in the committee stage of debate — it seems more like a plan to disempower the organisation than to empower it. We would have hoped, and I suspect small business would have hoped, that that was not the way the government was going to go. What it should be doing is giving the organisation more power to operate and giving it effective resourcing — financial and human — to be able to do what it needs to do, but in fact that is not what it says here.

The state budget today is a bit of a statement about that. The state budget, in not allocating more funds to the Small Business Commission, says, 'You'll have to do more with less'. I just wonder if that was really the intent when it was originally set up in 2003. But this really does provide another example of the form of this Labor government: 'Put in place legislation so that people working in there will do exactly what we tell them to do — nothing more, nothing less. And if they get in the way, we'll get rid of them'. We have seen that with the Country Fire Authority board, we have seen that with the Metropolitan Fire Brigade and we have seen that with other aspects of government operation: 'Do it our way or we'll get rid of you'.

It is hardly a starting line for an independent organisation, as the Small Business Commission should be. It is understandable that small business and industry are already sceptical about this government's intentions. Small business is the backbone of our economy. There are over 540 000 small businesses in Victoria, and 97 per cent of them employ less than 20 people.

Mr Dalidakis — Can you at least get your stats right? It is 556 000 and 97.5 per cent. Don't be a doofus. Get it right. If you are going to attack, get the stats right.

Mr ONDARCHIE — You will pardon me, Acting President, while the greatest self-promoter in the

Victorian government seeks to interject. He will get his turn.

Mr Dalidakis — Just get the stats right.

Mr ONDARCHIE — While he is interjecting about getting things right, let us pick that up.

Mr Dalidakis — Don't look like an ignoramus.

Mr ONDARCHIE — Let us pick that up. Let us pick up the minister's interjection about wanting to get things right.

Mr Dalidakis interjected.

The ACTING PRESIDENT (**Mr Ramsay**) — Order! Mr Dalidakis, that is enough. I was going to compliment you on your restraint during Mr Ondarchie's contribution, but sadly I will not be able to do that now.

Mr Dalidakis — My apologies, Acting President.

The ACTING PRESIDENT (**Mr Ramsay**) — Order! Mr Ondarchie, to continue.

Mr ONDARCHIE — Thank you, Acting President. I do forgive the imbecilic rants coming across the chamber. Almost half of the non-public roles in this state come from small business, 30 per cent of them in the regions. Really the health of our economy relies on a healthy small business sector to ensure growth, to ensure sustainability, to ensure resilience and to ensure productivity. If the minister will not put small business at the heart of his portfolio, as the most important part of his portfolio and as the focus of what he needs to do, and if his only act in 886 days of this government is to change the wording on the sign out the front of the Small Business Commission and do nothing for small business, then he should give it away, because all we are seeing in this state, where economic health is reliant on small business, is that this minister has not delivered anything for small business apart from no care and increased public holidays.

We will not oppose this bill. I am going to seek more information in the committee stage of this bill, but I hardly think that small businesses are standing here today jumping up and down with glee and saying, 'Wow, this bill is going to do so much to help us' — small businesses that operate on skinny margins, stay back late to fill out forms and worry about cash flow and ensuring they can pay their staff and suppliers in a timely fashion. We will talk more about that in the committee stage. I just do not think they are going to be jumping up and down and celebrating today as a result of this bit of legislation that fundamentally does nothing for them.

I should take the time to pay tribute to the former commissioner, Geoff Browne, who I and many others thought was a fantastic commissioner. He worked incredibly hard. A fantastic person, he held strong beliefs about supporting business not only in metropolitan Melbourne but across our regions as well, with things like the small business bus, the Small Business Festival Victoria and getting the bus out to regional Victoria to help small businesses with an advisory service, a supportive service and a mentoring service. Geoff led that stuff, and it is important that he be recognised for that. What is interesting here is that the government have not been out flogging media releases and smashing this around the place, talking about the great things they are doing for small business, because this bill does not do anything for them.

Clause 3 of the bill refers to some of the disputes where the Small Business Commission can intervene. That could mean between a small business and another business, a public entity, a public service body, a local municipality, a not-for-profit organisation, a school, a registered training organisation, a TAFE or even a university. You have to commend the commission for the work it has done with very limited resources. They are achieving something like a 96 per cent settlement rate, which is excellent. I do not have to hand the exact number of mediations that have taken place, but that was a fantastic initiative that was introduced by the former coalition government to support small business. I note that the Parliamentary Secretary for Small Business at the time was the member for Morwell, Russell Northe, who is doing an inordinate amount of work in his own electorate right now to support small business. It could be fair to say to Russell, 'We know it's hard work because this bit of legislation is actually not doing anything for small business'.

I have had extensive experience in small business — and large business, I have to say, as well — through my career and I always note that we do not look to government to solve all our problems. We do not look to government to help us with recruitment and finding customers, keeping those customers and delivering good service to those customers. But small business does look to the government — to either help or get out of the way, and this bill does neither. It just provides a new advisory service for the minister, a new opportunity for the minister to find ideas that he does not have and a new opportunity for the minister to stand up and say, 'I've done something more'. In fact it will be the Small Business Commission with less money and not enough resources. It is disappointing.

It is no wonder if people who are a courier driver, a taxidriver, a truck driver or a small business person that is dealing with business or that is dealing with government are shaking their head today and saying about this very, very thick bill that amends a number of acts, 'Is that it?'. My response to those small business people — who will remain frustrated because this government is not helping, it is not walking the talk — is that there is little positive support for small business in this whole thing, despite Labor's 2014 election policies that said that there was a platform to support small business. Those people will be disappointed today.

The minister may say, 'Oh, well, I haven't been small business minister for the whole time. There were other ones. It wasn't my fault. It was before me; it wasn't me'. I have to say that when this bill was introduced to the Legislative Assembly on 8 November 2016, Minister, you were the minister. It provided you with an opportunity to do something for small business. You will change the sign; you will change the letterhead; you will create a body that will answer to you, directly or indirectly, and probably do just what you say. But I think the real reason for all this is to have an organisation that will give you as little grief as possible — and that does not help small business at all.

I wish this bill passage through the house. I look forward to examining it in more detail in the committee stage. I am looking forward to the minister's response, hopefully without the unintelligible, imbecilic interjections that I have had from him today.

Ms PATTEN (Northern Metropolitan) — I was actually quite pleased with this bill. I did not mind it much really. It seemed to be doing some good things. Early in my term of being elected I met with Geoff Browne. I was not aware of a lot of the work that the Victorian small business commissioner was already doing. This bill expands on that, and I am more optimistic, I think, than my friend Mr Ondarchie on where this will take us and how this will help the 556 000 small businesses in Victoria, that make up 97.6 per cent of all Victoria's businesses.

I too have operated a small business over the years. I have rarely gone to government for help with a small business. I have taken the wins as my own and the losses as my own as well. But I do think that in this increasingly complicated world we are living in and with the changing nature of business a small business commission can assist businesses, certainly in the building up of a business. I looked at the website to see what services the small business commissioner offers businesses when they are new and upcoming and also when they find themselves in trouble with not only other business but government organisations. Someone indicated to me on social media that they had an issue with Google. I have had an issue with Google in the past. I can tell members that it is very difficult to speak to someone at Google. The person that I was communicating with on social media was very pleased with the assistance that the small business commissioner had been able to offer in resolving a dispute with whatever Google Mate is. He was quite satisfied with that.

Where I find this bill interesting is that it is also expanding the ability of the commission to work with other states, because let us face it, most small businesses in Victoria do not trade just in Victoria. We have far more transportable industry now. The technology has enabled us to seek customers and clients not only within Victoria but around every jurisdiction in Australia and internationally. We require the commission to enable that to happen more easily and for the commissioner to be able to speak to other jurisdictions in a more satisfactory way. I was very pleased with that.

I actually keep the government's election plan on my desk to just occasionally check back and see if something was in the book. This certainly was. In the book the government talked about the fact that with legislation we would get a small business impact statement. I would love it if in summing up the minister could possibly clarify that those impact statements will be made not just at the behest of the minister but as a matter of course — that is, that under the legislation relating to small business we will be provided with what one hopes is frank and fearless feedback from the Small Business Commission.

I certainly welcome the ability of small businesses to use the mediation and dispute services of the new commission when it comes to other government organisations, such as Victoria Police, the health services commissioner or a whole range of those organisations. I too have had to go through VCAT from a business position. I would welcome the opportunity to avoid VCAT at any cost, and I hope that this commission will enable more small businesses to do that in the future. I really do welcome this. I think it encourages the fair treatment of our small businesses, and I hope that it encourages us through our working through legislation to consider small business very carefully when introducing new legislation, including considering how it will impact on small business. I look forward to the Small Business Commission providing us with that information.

I was also encouraged that this bill gives the commission some investigatory powers. I think it is a very positive element of this bill. As an aside, I note with some disappointment that the human rights commissioner still does not have those investigatory powers. Prior to being elected here I was looking at a specific issue where small businesses were being discriminated against by banks and other businesses, but there was no recourse for those small businesses. They could not go to the small business commissioner and they could not go to the human rights commissioner. I do not think that this bill will right that wrong, but I do make a note that I would like to see the human rights commissioner also have investigatory powers similar to those of the small business commissioner.

We are going to need small business more and more. The type of industries we have and the types of jobs we will be doing in the future will be changing, and small business will be absolutely crucial to that. As I said at the beginning, I am actually quite pleased with this bill. I wish Judy O'Connell great success as the commissioner of this new commission. I look forward to receiving further feedback from small business on the success or otherwise of the commission, and I commend the bill to the house.

Mr BARBER (Northern Metropolitan) — The Greens will be supporting this bill. The commissioner's office was established in 2003. By all accounts and feedback that we have been getting, it has been a great success. In fact the model has been adopted interstate and at the commonwealth level. The commission is staffed by departmental employees and contractors. This is not proposed to change, so the bill will not have any impact on staff, as we are advised, except that the commission will now have the power to engage consultants, contractors or agents.

The office provides support and guidance to small business, but its core functions have been mediating business-to-business disputes, which in many cases are disputes over retail leases and late payments. Some types of disputes must be taken to the Victorian small business commissioner before litigation, but other disputes may be taken there. Late payments of course are a big problem for small businesses because of the impact they have on cash flow. People will be constantly trying to improve their own working capital by paying late at the same time as getting their bills paid as quickly as possible. In fact some years ago I remember this was actually quite a problem where the Victorian government itself had become a notorious late payer, and at that time I remember a bit of a scandal and new policies being introduced by the Victorian government whereby they would get out of that game entirely.

The bill effectively repeals and re-establishes the Small Business Commission rather than amending the current act. There are some changes to the powers and duties of the commission, which include working with similar bodies in other jurisdictions; dispute resolution functions will be available to businesses in dispute with educational institutions, not-for-profits and industry and professional associations — more government agencies will be able to access this form of dispute resolution; and the commission will provide confidential advice to the minister on legislation and regulation.

The second half of the bill is mostly about amending other acts to say 'commission' instead of 'commissioner', and there are some minor changes in relation to the appointment of a commissioner. Certainly in the debate in the lower house the Liberals indicated they had a number of problems with the bill. However, despite spending quite a bit of time on the bill, I have not heard that they are actually bringing forward any amendments to it. So I will say no more. We wish the bill a speedy passage.

Mr ELASMAR (Northern Metropolitan) — I am pleased to contribute to the debate on the Small Business Commission Bill 2016. Essentially this bill establishes the Small Business Commission, which will effectively replace the Office of the Victorian Small Business Commissioner.

By way of background to this bill, the Bracks Labor government created the small business commissioner position in 2003. At that time it was considered a great step forward because for the first time small businesses had a low-cost dispute resolution process and an advisory body that could assist them to resolve issues that impeded their capacity to grow or to even stay afloat. Since that time small businesses have flourished and now make up nearly 97 per cent of all businesses in this state, contributing about one-third of our state's output in goods and services. Numerically there are more than 540 000 small businesses in Victoria.

The small business commissioner will lead the commission under the new act. Importantly the bill allows for the commission to provide comment on legislation that might impact on small businesses. It also clarifies that the Small Business Commission can work in collaboration and cooperation with similar agencies in other jurisdictions. This bill improves access to dispute resolution services. It broadens the current base of operations and incorporates latitude for the commission to mediate disputes with educational

institutions — for example, TAFEs and universities — and professional and trade organisations. It also extends to certain special bodies as defined in the Public Administration Act 2004, such as Victoria Police.

For obvious reasons some agencies, particularly those that have an oversight role in the public sector such as the Independent Broad-based Anti-corruption Commission and the Victorian Ombudsman, will remain outside the jurisdiction of the commission.

In the last financial year the commissioner received some 1900 formal requests for assistance. I believe approximately a third of those resolved were at no cost to those parties. This is a critically important function as most small businesses cannot afford the expensive legal costs often associated with complex legal disputes. So the dispute resolution services offered by the commission will be extremely important; they may determine whether a business survives or not.

This new Small Business Commission is a great initiative by the Andrews Labor government. It will widen and increase the capacity to assist small business, and that is a good thing. In my own electorate I have seen businesses flourish and diminish. I am delighted that we in the Labor government are not merrily giving lip-service to small businesses in Victoria. We are actively providing practical assistance and resources. It is important to note that we have also established the Small Business Ministerial Council and the Multicultural Business Ministerial Council, which allow businesses to voice their concerns and pitch new ideas directly to the responsible minister.

I am glad to see the responsible minister, the Honourable Philip Dalidakis, in the chamber. I have witnessed how important small business is to his heart and how committed he is to small businesses. Whether it is at public functions or in one-on-one meetings, the importance for the minister is to put a small or a big smile on a trader's face, and traders have agreed with me that the minister is doing a great job in Victoria.

Victoria remains just one of two states with a AAA rating. Let us keep it that way by supporting small business to the fullest extent. I commend the bill to the house.

Mr MORRIS (Western Victoria) — I rise to make my contribution on the Small Business Commission Bill 2016. I note that we have the minister for making small businesses smaller in the chamber with us today. This particular bill talks about small business; however, all it is going to do in effect is make it more difficult for small businesses to operate.

I note that today is budget day. The Labor government has handed down its budget today, and I note that in the budget a commitment has been made to relocate some government jobs to Ballarat. There is no clarity around which jobs they are. I also note that small businesses should be supported by government, and it was indeed the former Liberal government that was going to be supporting small business in Ballarat by relocating VicRoads to the civic hall site, bringing some 600 jobs and a significant amount of economic activity benefit through that move. I note the commitment that has been made by the Labor government today has no detail around what government jobs might be relocated to Ballarat. There is no clarity around whether or not there are going to be the flow-on economic benefits that the relocation of VicRoads would have had for Ballarat.

When this government is looking at supporting small business, it should actually do so rather than making it harder to do business, as this particular bill will impact on small businesses across the width and breadth of Victoria. The VicRoads relocation to Ballarat was important. It was important because it was not just about the 600 jobs that were going to be relocated to the civic hall site; it was also about the flow-on professional services that would have been required to support those jobs. Ballarat is a great place. It is a growing city, but it does lack some of the job diversity that would make it an even better place to live. That is what the VicRoads relocation would have done.

If one were to seek praise, it would be through the Labor government copying the Liberal policy of relocating 600 government jobs to Ballarat, which is of benefit in terms of jobs to Ballarat but is a watered-down approach compared to what the coalition would have done had we been re-elected. I will make my contribution to this bill brief, but I will reiterate what I said before insofar as bills that look at small business should make it easier for small business to operate in Victoria rather than making it more difficult. It is unfortunate that this government has not seen fit to do so through the work it is doing.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Mr ONDARCHIE (Northern Metropolitan) — With the indulgence of the house, and provided the minister finds this acceptable, I will take all my questions through clause 1 and not elongate the process any more than it needs to be, if that is okay. We could have a dispute about some questions really being about clause 12 or clause 4, but we can do it all through clause 1 if the minister finds that acceptable.

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I am happy to agree to Mr Ondarchie's request. I will take note of all of his questions and aim to respond to them as fully and faithfully as I can.

Mr ONDARCHIE (Northern Metropolitan) — Minister, during the second-reading debate you took umbrage with me about the amount of small businesses in this state when I said there were over 540 000. Would you seek to clarify that for me, please?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — In fact there are in excess of 556 000 small businesses across the state of Victoria at present.

Mr ONDARCHIE (Northern Metropolitan) — Minister, the reason I was asking that question up-front is because that number of over 540 000 small businesses that you were quick to correct me on and took umbrage to during the second-reading debate comes directly out of your second-reading speech. Which is the right number, Minister: the number that you were so energetic about checking with me and making sure I got right or the one in your own second-reading speech?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — As the member would be aware, given he went to great, monotonous lengths to point this out, the original piece of legislation was introduced into the Parliament late last year, and the statistics I have provided to this chamber are the most up-to-date statistics. I am happy to update the member so that his contribution in *Hansard* is accurate for time immemorial.

Mr ONDARCHIE (Northern Metropolitan) — Thanks, Minister. I appreciate that you want to make sure the record is accurate, but in fact your second-reading speech was made only in the last sitting week. So has there been significant change between your second-reading speech, in which you said 540 000, and that growth in just a couple of weeks? Is that right?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I can see that Mr Ondarchie is focused on the big issues, and I apologise to anybody who has to have the displeasure of watching this either in the chamber or indeed online.

As Mr Ondarchie would be well aware, that second-reading speech was indeed prepared at the time that the bill was introduced into the lower house. I have provided the statistics to Mr Ondarchie. I did in fact take the opportunity to give him the advice that the statistics he was quoting from originally were the old statistics. It is not a surprise that this member chooses to undertake questions in this way, because he is one of the laziest members of Parliament that I have come across, in that he would rely on statistics by another MP, even by me in a speech that was prepared for last year, rather than doing his own work. Given that I have now given him the statistics and confirmed a third time that in fact there are 556 000 small businesses in Victoria and we had the highest net growth of small businesses of any jurisdiction in Australia over the last 12 months, I am very happy to continue on clause 1 — now that I have been able to resolve this issue for Mr Ondarchie.

Mr ONDARCHIE (Northern Metropolitan) — Thank you, Minister, for your response. I take on board your advice that I should not rely on your own statistics, so thank you for that.

Still on clause 1: Minister, could you explain what the practical differences and the benefits are for small and medium businesses between the already established commissioner and her role and the commission?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — In answer to Mr Ondarchie I can certainly advise the committee that the first practical difference of course is in providing for a Small Business Commission as a corporation sole. We are broadening access to dispute resolution by amending the definition of 'dispute' to include certain special bodies, educational institutions and trade and professional associations. We are creating a new function for the commission to provide comment on proposed legislation, and of course we are creating a new function to allow the commission to work collaboratively with other commissioners in other jurisdictions.

There are of course other roles that the small business commissioner will indeed be able to expand upon. The

most recent was — something which I know you are keen to follow, Deputy President — what we announced some weeks ago, and that is the voluntary fair payment code. Again we have become the first jurisdiction in Australia to introduce this voluntary fair payment code, that will see large businesses sign onto it, thus agreeing that they will pay small and medium enterprises within 30 days of receipt of an invoice for a satisfactorily provided good or service.

Deputy President, it will be no surprise to you that in fact every major small business policy announcement that has been made in the state of Victoria has been made under a Labor government. Mr Ondarchie in his earlier contribution referenced the fact that the Small Business Commission — well, preceded by the small business commissioner — was created in 2003 under the then Labor government of Premier Steve Bracks. Let me tell you, Deputy President, that the small business commissioner model has now been adopted by every state, including the federal government, as a result of seeing what was done here. Queensland of course does not have a small business commissioner; it has a small business champion. But that small business champion is still nonetheless modelled on the Victorian model. Let me also point out that Victoria was the first state in this country to provide small business mentoring services. That was created under another Labor Premier — Premier John Cain — back in 1986, and last year it celebrated its 30th anniversary.

Let me tell you also — and it will be no surprise to you, Deputy President — that we continue to lead the way in the creation of an environment that is supportive of small businesses right across the state. Of course in the budget that was just handed down today something that was obviously avoided by members of the opposition — not surprisingly, because they like to talk down business and opportunities in Victoria rather than talking them up — was the 25 per cent reduction in payroll tax for businesses in rural and regional Victoria. That means businesses in rural and regional Victoria will now pay the lowest amount of payroll tax of anywhere in this country.

We have also brought forward and accelerated the increase of the payroll tax threshold to $625 000 this year. That action by the government has been welcomed by VCCI — the Victorian Chamber of Commerce and Industry — because this budget presented today has once again reaffirmed the Labor Party, governed by Daniel Andrews, the Premier in the other place, as not only being small business friendly but actually putting runs on the board, putting rubber on the road, supporting businesses where it matters with policies that help them get their payments sooner and seeing them not treated as lines of credit or lengthy cash flows for obviously big business but supporting them in getting access to the money when they deserve it, when they need it and more importantly when they are owed it.

We are also reducing the cost of doing business. Can I also say, Deputy President — this will not be a surprise to you given all the other firsts that I have named in my contribution at this point — that we are also the very first jurisdiction, including the federal government, in the country to undertake a red tape reduction review in relation to the small business sector. I have been asked by the Treasurer to look after that for the small business sector. We are partway through that process and I will have more to say about that in coming months, but again I am very proud to say that when it comes to small business in Victoria the Labor Party continues to lead time and time again.

Mr ONDARCHIE (Northern Metropolitan) — Minister, thank you for your answer. I do refer you then to the new payment code you have talked about to support Victorian small businesses. I note that in some media commentary that you made — it is not dissimilar to my own experiences, that often small businesses become the bank and have to rely on timely payments by their customers to avoid some cash flow issues they have in their own businesses — you noted that when you were involved in a small business it sometimes took 90 to 120 days to be paid, and you have said that you are looking to improve that for small businesses.

Minister, given what you have just talked about in terms of your new payment code, and you are introducing that as one of your purported initiatives, what are the consequences if businesses do not pay within the 30 days?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I am happy to provide that information to Mr Ondarchie at another time, but I would direct him back to the legislation here. What I was doing when talking about the payment code was in fact providing a reference point to show that the Labor Party has a very proud history of a number of firsts in Australia at all levels of government and that this legislation before us in moving to a Small Business Commission is another first. That was the reference point.

Mr ONDARCHIE (Northern Metropolitan) — Deputy President, I dispute the minister's response. He introduced the Victorian payment code into the debate; I did not. This is a wide-ranging bill. It amends a number of acts. He used that in responses to point to

one of his initiatives and therefore introduced it into the debate, and I put to you that I should therefore be able to ask questions about that, given that he entered it into the debate.

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Again I thank Mr Ondarchie for his contribution, but again *Hansard* will reflect that I referenced the payment code in response to Mr Ondarchie's unfair assertion concerning the Liberal Party's history in relation to small businesses. Let me point out that Mr Ondarchie cannot have his cake and eat it too. He cannot claim in his contribution that this bill does nothing, which he did earlier, and then claim that it does everything. It either does nothing, from his point of view, or it does everything, from his point of view. It cannot do both. You cannot have your cake and eat it too with that line of argument.

The fact remains that this bill before us moves the small business commissioner to a Small Business Commission. That is what this bill does and that is what we are here to debate, and for as long as Mr Ondarchie wants to get up and ask about issues that are not relevant to this bill, I will get up and respond accordingly, which will mean that we will be here for a very, very long time.

Mr ONDARCHIE (Northern Metropolitan) — So be it, if we are going to be here for a very, very long time. I asked you, Minister, what the practical differences and benefits are for small businesses and many other businesses of the establishment of this commission. You chose as part of that answer to talk about the new payment code, so my question to you is this: should businesses not adhere to the new payment code that you have just enunciated in your response to my question, what happens if they do not pay on time?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Asked and answered, and it is not relevant. I will not be proceeding.

Mr ONDARCHIE (Northern Metropolitan) — Deputy President, I seek your ruling on this. This is a matter that the minister introduced into the debate in response to a question that I had asked him. I put to you that I have licence to ask more about that if that is his response to the question.

The DEPUTY PRESIDENT — Order! Mr Ondarchie, you cannot direct a minister to respond the way you want them to.

Mr ONDARCHIE (Northern Metropolitan) — I accept that, but he introduced it into the debate.

The DEPUTY PRESIDENT — Order! You cannot do that.

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I have nothing to add.

Mr ONDARCHIE (Northern Metropolitan) — Minister, in relation to the new payment code, which you wanted to talk about and now significantly are avoiding, and paying businesses within the 30 days: does your own department pay small business invoices on time — within the 30 days?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I am not answering these questions. They are not relevant to the bill at hand.

Mr ONDARCHIE (Northern Metropolitan) — It is interesting, Minister, that out of convenience you are happy to talk about something you want to promote, but when you are asked to substantiate it, you will not substantiate it. I guess that goes to the heart of the bill itself. This is a bill that purports to do something for small business but does not. When you are asked in this house of review to account for that, you fail to respond.

Minister, the department says that the state government of Victoria generally defines 'on-time payment' as 30 days from the date of receipt of a correctly rendered invoice. In the context of payment on time, when you say 'generally', does that mean that your department does pay on time or sometimes pays on time?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Again, the question has no relevance to the bill at hand.

Mr ONDARCHIE (Northern Metropolitan) — The record will now define the minister as always quick to talk about *Hansard* and how he wants *Hansard* to be an accurate reflection of the proceedings of this place. *Hansard* will now accurately show the fact that the minister is avoiding the very questions in relation to which he raised this issue on the benefit of this for small business. I think it just confirms the coalition's position that this is a bill that says a lot and does nothing. This is another example of that.

We have asked about the new payment code, which the minister introduced into this discussion. We have asked about payment on time. We in fact even asked him if his own department pays on time, and he is avoiding answering that question. He is absolutely avoiding it.

Minister, when it comes to other government departments — for example, WorkSafe — do they pay small businesses on time?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Again the question is not responsive to the legislation at hand.

Mr ONDARCHIE (Northern Metropolitan) — I remind the minister that it was he who introduced the whole payment code thing into the discussion today.

Minister, do you find it ironic in terms of supporting small business that you are enacting some strategies in Victoria to ensure that businesses are paid within 30 days and on time? I spoke to a small business operator who is a courier — a small-truck driver — and he was unfortunate in that he received an infringement notice for something that he claims he did in error on Victorian roads. He was asked by way of this infringement notice to pay a fine within 28 days. Minister, why is it that the government demands payment by this courier, this small business operator, within 28 days, but you in fact do not see your department confirming that they will pay him within 30 days?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I fail to see how the question has anything to do with clause 1 of this bill before us. Again in deference to the fact that we are here debating the Small Business Commission Bill 2016, I shall not be answering a question that is completely irrelevant to the legislation at hand.

Mr ONDARCHIE (Northern Metropolitan) — Well, there you go. This is what Victorians are seeing time and time again from this minister, a minister who is pretty quick to stand up and beat his chest and talk about all the things that he claims he is doing for small business in this state, but when he is held to account in this house of review he takes the fifth and says, 'I'm not answering the question. I'm not going to say anything about it'. This is another example — and small business have woken up to this — of this minister simply talking about things and claiming he is helping. He talked about payroll tax and thresholds. I suspect he is going to avoid talking about that further as well today, because this is a minister who, in the words of government members, is the greatest self-promoter they have ever met. He will not answer the questions, and the record of today will reflect that.

Minister, I will finish up with the payment term itself as part of this debate, just so you can relax and not have to avoid answering another question. Maybe by way of payment terms you could outline the terms Mr Nardella has for repaying his allowance.

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Rule that out of order, Deputy President.

The DEPUTY PRESIDENT — Order! The question has nothing to do with the bill, Mr Ondarchie, so I rule it out of order.

Mr ONDARCHIE (Northern Metropolitan) — Thank you, Deputy President. I was just hoping the minister would refuse to answer that one as well. Further on clause 1, Minister, how many staff does the small business commissioner have?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I would appreciate it if Mr Ondarchie could explain how this is relevant to the bill.

Mr ONDARCHIE (Northern Metropolitan) — Given the minister does not understand the bill himself, the bill itself talks about the increased capacity of the Small Business Commission. It talks about that in the document, and in fact it refers to it in the second-reading speech, which the minister might like to refer to. So my question is going to go to the capacity of the Small Business Commission to deliver this, and I start by asking: how many staff do they have?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I thank Mr Ondarchie for his magnificently insightful question. As has been briefed to the opposition, in fact to the shadow minister for small business in the other place, the small business commissioner's office have advised that they believe they can undertake the additional duties identified in this bill with their existing staff allotment, so however many staff they have or do not have is completely irrelevant.

Mr ONDARCHIE (Northern Metropolitan) — Minister, do you know how many staff the Small Business Commission have?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Again, that is completely irrelevant to the bill at hand.

Mr ONDARCHIE (Northern Metropolitan) — Let the record reflect that the minister has been asked a direct question about his own operations and he does not know. Put that in the same bucket as StartCon — 'I think it's going to happen. It may not happen. I don't really know'. This sums up exactly my second-reading speech to the house. This is a bill that purports to do something but it does nothing, and when you ask the minister the direct question — exactly how many

resources does the Small Business Commission have to undertake the capacity that is required in this bill — he does not even know what the raw answer is. He does not even know.

I will tell you, Minister, just so you know: there are 17 full-time equivalent staff at the small business commissioner's office. Is it not interesting that the opposition knows your operation better than you do? Then I ask you, Minister — —

Mr Dalidakis — Just like you knew the number of small businesses in Victoria.

Mr ONDARCHIE — It was in your second-reading speech.

Mr Dalidakis — You are a big windbag.

Mr ONDARCHIE — It was in your second-reading speech.

Mr Dalidakis — You do no work. You are lazy.

Mr ONDARCHIE — You do not know — —

Mr Dalidakis — You are a lazy windbag.

Mr ONDARCHIE — Full of wind and no delivery; that is the problem.

Mr Dalidakis — Do some work.

Mr ONDARCHIE — You cannot even tell me how many people are in the office. You cannot even tell me.

Mr Dalidakis — Three words: do some work.

The DEPUTY PRESIDENT — Order! Mr Ondarchie to continue.

Mr Dalidakis — Do some work. Don't be a lazy windbag.

Mr ONDARCHIE — You are happy with that, Chair, are you?

Mr Dalidakis — Which bit — the 'lazy' or the 'windbag'?

The DEPUTY PRESIDENT — Order! Please stop interjecting, if you do not mind. Mr Ondarchie, to continue.

Mr ONDARCHIE — Thank you, Deputy President. Anger is just a form of deferred guilt, I think. I ask the minister: in the 2017–18 budget today is there any extra funding in place for the commission?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — There is plenty of recurrent funding for the commission to implement this legislation.

Mr ONDARCHIE (Northern Metropolitan) — Is there any new money for the commission, Minister?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Asked and answered.

Mr ONDARCHIE (Northern Metropolitan) — Minister, are you able to confirm that the Small Business Commission gets additional funding from last year's budget for this year's budget?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Asked and answered.

Mr ONDARCHIE (Northern Metropolitan) — Minister, when they look at the 2017–18 budget and the line item associated with the Small Business Commission, will Victorians discover any increase in the number between 2016–17 and 2017–18?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Again, as I indicated, this question has been asked and answered in relation to the Small Business Commission Bill 2016 before us.

Mr ONDARCHIE (Northern Metropolitan) — There you go. It just keeps confirming exactly what I said in my second-reading speech — this is all show and no go. Minister, given you have avoided question after question — and if that was your intention for the committee stage of this bill, you might as well pack up and go home — can you confirm that the commission will be able to deliver with its existing resources and its existing budget everything you require out of this legislation? Can you guarantee that?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I can confirm to the chamber that the Small Business Commission will be able to undertake the activities required under the Small Business Commission Bill 2016 with its existing funding.

Mr ONDARCHIE (Northern Metropolitan) — Minister, have you had any discussion with the small business commissioner about the capacity to deliver all the extra duties that are required as a result of this legislation?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I can report to the chamber that in fact I have many discussions with the small

business commissioner, who was recently appointed and who will be an outstanding commissioner in her role. Judy O'Connell has a long professional history of serving the needs of the small business community, most recently of course in her role as Deputy Commissioner of Taxation at the Australian Taxation Office, where she looked after the small business sector as well. I can confirm to the house that the commissioner is indeed satisfied with the budget allocation in order to deliver the requirements in the Small Business Commission Bill 2016.

Mr ONDARCHIE (Northern Metropolitan) — Thank you, Minister. Is that a view that is shared amongst the entire workforce at the small business commissioner's office?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — What a ridiculous assertion. I am not going to answer that.

Mr Ondarchie interjected.

Mr DALIDAKIS — It is a ridiculous statement.

The DEPUTY PRESIDENT — Order! Have you any further questions, Mr Ondarchie?

Mr ONDARCHIE (Northern Metropolitan) — Yes. We will go all night with the greatest avoider in Parliament's history. Minister, it is a simple question. You said the commissioner was happy. Is that a view that is shared across your public servants, some of whom have come from your own department in the commission?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I take umbrage with that because the commissioner, Judy O'Connell, is who I have dealings with and she represents the Small Business Commission, and again I can only reiterate my earlier statements to this chamber, as I did most recently in the answer before last.

Mr ONDARCHIE (Northern Metropolitan) — The minister can dodge and weave all he likes, but we will be here for some time. Minister, in relation to the small business commissioner, Judy O'Connell, as I said in the second-reading debate — and I continue with that now — we wish her well in her role, and given her background we look forward to working with her to deliver good outcomes for Victorian small businesses. Minister, who made the decision regarding this appointment of Judy O'Connell?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Again, I am not going to venture into matters that have nothing to do with the Small Business Commission Bill 2016 before us. Ms O'Connell's appointment was an appointment that was made some time ago, and I point out that Mr Ondarchie has failed to ask one question in relation to Ms O'Connell's appointment during question time. This is not an opportunity to litigate other matters in terms of her appointment. This is an opportunity to deal with the Small Business Commission Bill 2016. We are examining clause 1, and so far Mr Ondarchie has failed to ask any questions in relation to the clauses.

Mr ONDARCHIE (Northern Metropolitan) — There you go. This is symptomatic of this government: it is stuck in reverse gear. You introduced the subject of Ms O'Connell into the discussion, Minister — I did not — just as you introduced the subject of a payment code into the discussion. So you start something and do not proceed with it, which pretty well sums up this whole government, does it not? You talk about something, you start it, you put out a press release, you beat yourself on the chest, and then when you are held to account in the people's house, you do not want to talk about it. We are seeing more and more of the same.

You can get as upset as you like with me, Minister, but it is not me who is upset with you. You should talk to some of your own colleagues. They are upset with you too. Minister, given you introduced the small business commissioner and her appointment into the discussion today — I did not in the committee stage; you did — can you outline the criteria around the selection process?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I appreciate the opportunity to respond. This is the greatest and biggest dummy spit in the history of the Legislative Council, and I think that members of the Legislative Assembly would take umbrage with him claiming that this was the people's house. I think that is generally said in relation to the Legislative Assembly, but never mind. Let us deal with the facts on the table. The facts on the table are that we are dealing with the Small Business Commission Bill 2016. The facts are that I referred to the fair payment code as an example of firsts that Labor governments have undertaken in Victoria. Labor governments in Victoria have delivered firsts time after time after time.

I referred to the appointment of Ms O'Connell in congratulating her and suggesting that she will be a fantastic contributor in terms of delivering on the Small Business Commission Bill 2016. It was in direct response to a question that Mr Ondarchie put in relation to the resources provided to her in order to undertake her roles and activities — roles and activities, by the

way, that Mr Ondarchie does not see fit to talk about. He does not wish to talk about the bill before us, because he will be found out as being one of the laziest members of Parliament who does not do any work. He rides on the coat-tails of others. Mr Ondarchie is full of bluff and bluster, but let the record reflect that not once in question time has he asked a question in relation to Ms O'Connell's appointment. I presume he is trying to smear her by trying to taint the process that saw her appointment. What I suggest to Mr Ondarchie is that he try to exhibit a modicum of professionalism by dealing with the legislation at hand.

Mr ONDARCHIE (Northern Metropolitan) — Is it not interesting: when the minister is held to account and when he is asked questions about things he introduces himself into this house, he gets up, he beats his chest, he talks about what he is doing, and then we ask him a question about that and he reverts to a personal attack. Anger is guilt deferred, nothing more.

Minister, I refer you with this line of questioning to your own second-reading speech, and I quote:

> The commission will be led and constituted by the small business commissioner, with a broader mission to assist small businesses. The commissioner will continue to be independently appointed for a term of five years by the Governor in Council and the commission will continue to submit an annual report to Parliament.

You spoke about this in your second-reading speech, and now when I ask you about that and hold you to account you run and hide. Minister, who appointed the small business commissioner?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — What I take umbrage with is the fact that we are here to debate the Small Business Commission — —

Mr Barber — Dial down the umbrage — we want to go home!

Mr DALIDAKIS — I will accept the interjection from Mr Barber. We are here to talk about the Small Business Commission Bill 2016, and that the appointment of Ms O'Connell to the role of commissioner for small business here in Victoria has absolutely nothing to do with the actual legislation before us. I encourage Mr Ondarchie to ask questions in question time if he has concerns about it.

Mr ONDARCHIE (Northern Metropolitan) — Thank you for your 'Don't ask me now, ask me at another time' response, but I suspect I will get exactly the same answers. You just run and hide. You introduced this exact subject into the debate today, and then when I ask you a question you say, 'I don't want to talk about it. I don't want to know. I don't want to say anything about it'. But this is this small business minister all over — he beats his chest and then when we ask him for detail he says, 'I don't want to talk about it'. Do you know why he says he does not want to talk about it? Because he does not know. I just asked him a question about how many people are in the Small Business Commission, and he did not know. I asked him about the payment code that he introduced into the debate — 'I don't want to talk about it', he said. He talked about the small business commissioner, Judy O'Connell. He introduced it into the debate and then says he does not want to talk about it. He does not want to talk about it for one of two reasons: either he does not know, which is probable, or he is that scant on detail, apart from his media headline, that he has got no clue what to do after that.

We have seen more and more of the same, and he can get as frustrated and as personal as he likes in this place. I am a big fella; I can take it. I have had better than you in my life; I can take it. But I tell you what: it is not me you should be worried about. It is your own government colleagues who have got a lot to say about you. When you turn to me and say, 'You're being unfair', it is because they are talking to me about you — so do not worry about me.

Minister, could you just confirm for the benefit of small business — so we can consult with them and particularly so our shadow minister for small and medium enterprises, Neale Burgess, can confirm with them and consult with them, because they have not been consulted by anybody else, and so that I can go back to them — that the bill has 'reformed and empowered the commissioner'? What are the new roles and powers the commission will have that it did not already have that will improve the lives of small businesses?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — It is like groundhog day because since the very beginning of the committee stage this is about the only question that Mr Ondarchie has asked. In fact this is about the only question that Mr Ondarchie has asked that is even slightly, remotely relevant to the bill.

What I did at the beginning of the committee stage was, in answer to a very similarly worded question from Mr Ondarchie, point out what the changes to this bill are. For the benefit of Mr Ondarchie, who seems to struggle with detail himself, what I will do is point out that the bill before us establishes the commission headed by the small business commissioner as a

corporation sole. It broadens access to dispute resolution services by amending the definition of 'dispute' to include certain special bodies, educational institutions and trade and professional associations. It creates a new function for the commission to provide comment on proposed legislation, and it also creates a new function to allow the commission to work collaboratively with other commissioners in other jurisdictions, including the Small Business Champion in Queensland, because they are so differently named. That is what I said earlier in a response to Mr Ondarchie.

Guess what? In the time intervening that actually has not changed. That is what this bill does. Given that Mr Ondarchie in his contribution earlier said that the coalition are not opposing this bill, I suggest that we get on and actually look at the bill if Mr Ondarchie has any concerns — instead of grandstanding and making claims that are wildly inaccurate, smearing officials and their appointment and undertaking any number of hatchet jobs, most likely at the behest of his party colleagues.

Mr ONDARCHIE (Northern Metropolitan) — Well, we have established that there is only one certainty in this bill, and the certainty is that when this minister's back is to the wall, he gets personal and aggressive. Nothing changes in this place. If there is anything that lacks less substance than this bill, it is the minister himself, and it is getting ridiculous. Minister, if you are not up for it, go and do something else.

Referring to the bill, how can the commission be considered independent of government, even be seen to be independent, if the secretary and the department are holding the purse strings? How can it be that if the small business commissioner needs more staff, they have to come cap in hand to the minister to get that money, yet you are saying they are independent? Could you explain for the benefit of small and medium businesses that that really will be the case?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — From that perspective, the funding arrangements do not change from the Small Business Commission as distinct from the previous set-up.

Mr ONDARCHIE (Northern Metropolitan) — Are you confirming then that in fact it is you who decides how much funding they get?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I know that Mr Ondarchie has not had the pleasure of being able to serve as part of an expenditure review subcommittee process, having not served as a minister in the last government's brief time — four long years for the rest of Victoria — but the fact remains that the Treasurer is responsible for handing down the budget. A subcommittee of cabinet is responsible for that process. As a minister, I have the opportunity to make budget bids, but it is my colleagues around the table who ultimately make decisions in relation to the fiscal position and policies adopted by the state. I am happy to provide what Mr Ondarchie should have probably learned in grade 5.

Mr ONDARCHIE (Northern Metropolitan) — More of the same: when you are desperate you become personal. It is so disappointing. You are right: let me confirm with you that I have not had the privilege of being a minister in this state, but that pales into insignificance compared to you being the minister and not doing your actual job. I would much rather you did your job as the minister rather than deciding to become personal in terms of your response.

Minister, could you outline to the house what level of consultation was undertaken with small businesses prior to this legislation being introduced to the lower house in November 2016?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — What I can advise the member is that this piece of legislation before us went to the 2014 election in November. It jars Mr Ondarchie and his colleagues that the people of Victoria on 30 November 2014 voted — after a pathetic and wasted period of time — the coalition from office, after four and a half long and wasted years of doing absolutely nothing, seeing the malaise grow, seeing the unemployment rate grow from 4.8 per cent to nearly 7 per cent. The fact remains that this was one of our policies at that election. The commitment to move to a Small Business Commission was a commitment at the 2014 election. If Mr Ondarchie wishes to ask what type of consultation occurred, he only has to look at the Victorian electorate to see the level of consultation that occurred. As a result, here we are. We are proceeding with our election commitment to have the commissioner moved into a Small Business Commission, and we are looking forward to this legislation passing.

Mr ONDARCHIE (Northern Metropolitan) — The minister is a man who purports to demand accuracy. In his second-reading speech he said 540 000 small businesses, and then he jumped up to correct the house that it is not 540 000 but more than that, even though his second-reading speech said that exact number. He is a man who demands accuracy, yet he referred to the

election of 30 November 2014. That election was held on 29 November 2014 — so there you go! He will spend more of his time beating his chest and talking about how good he is — in the words of government members, the greatest self-promoter they have ever met — yet he cannot be held to any detail.

Minister, I take it from your response — 'The electorate decided in November 2014, and that is the amount of consultation that we had' — that your specific answer about this legislation, which was introduced on 8 November 2016 and brought to this house 886 days after you were elected, is that you have consulted with nobody. Is that correct?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — The question was asked and answered. The fact of the matter remains that this was an election commitment. We are delivering on that election commitment. Mr Ondarchie can either accept that or we will continue to be here for some time.

Mr ONDARCHIE (Northern Metropolitan) — The challenge for you, Minister, is not whether I accept it but whether the small business community of Victoria accepts it. They look to you for leadership. Quite frankly, you could answer them the same way you answered me, indeed by saying, 'I've got nothing to say'. They look to you, as the minister who stands up for them, to not just introduce public holidays that burden them but to actually stand up for them. But your answer is: 'I don't want to answer that question. I don't want to say'.

So do not be worried about what I think — worry about what the 540 000-plus small businesses in this state think of the job you are doing. We could survey that today, and it would not take us long to get the answer that we already know: you is doing a hopeless job. When you are asked questions in this house of review, when you are being held to account, you will not answer them. Let me ask you about consultation. Your electorate office is in a small business strip in Bentleigh. How many of those small businesses did you consult with personally before this legislation was introduced?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — In the process of putting the legislation together, many small business associations were indeed consulted in relation to the legislation before us, but the fact remains that this is still an election commitment that we took to the 14 November 2014 election. We are looking to implement that election commitment; that is what this legislation does. We are yet to, other than one question, which was then subsequently repeated after a period of time, actually deal with clause 1 of this bill effectively.

Mr ONDARCHIE (Northern Metropolitan) — Minister, we finally got somewhere, did we not? We finally got you to say that there had been some consultation with small business associations. Can you tell me which ones they were, please?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — It has no bearing on the legislation before us. All that needs to be said is that we undertook consultation. It is that simple.

Mr ONDARCHIE (Northern Metropolitan) — I have got to tell you, you better talk to the Premier, because he sure ought to ban fairytales. You better talk, because that is another fairytale from you. When you are held to account and asked, 'Which small business associations did you actually talk to?', you say, 'I am not going to tell you'. And you are not going to tell me because you did not; that is the problem. Even in your own electorate office, which is on a small strip of shops in Bentleigh, what do the small businesses alongside your office tell me? They do not ever see you. You do not even talk to them, and they are aghast at the fact you are the small business minister. You will probably respond by getting all personal and getting angry with me, but it should not be me you should be getting angry at; it is the small business people who are just so disenfranchised with you. It is unbelievable.

Minister, you talked, both in your second-reading speech and in some of the responses you have made this afternoon during the committee, about the fact that the commission will be able to work with other such commissions or commissioners in other jurisdictions. Minister, do you regard the Queensland Small Business Champion, albeit a slightly different organisation than the Small Business Commission, as a like-for-like organisation?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — It is the closest equivalent that Queensland has to commissioners in every other jurisdiction.

Mr ONDARCHIE (Northern Metropolitan) — Was that a yes? I already knew that. I did not ask for what I already knew. I just asked: do you regard them as a like-for-like organisation?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Asked and answered.

Mr ONDARCHIE (Northern Metropolitan) — We can play this dodge and weave game all night, I do not care; I have got plenty of Red Bull in my fridge downstairs. I am happy to go all night, but at some point the minister might do something amazing, something surprising, and actually stand up for small business in this state. We live and hope. Minister, you took me up on this during the second-reading debate: why can the commission not act — because it says it can deal with other government departments et cetera, councils, TAFEs, universities and other places — if the dispute is with VCAT or the Auditor-General's office or a similar organisation?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I am not sure whether Mr Ondarchie is trying to display his ignorance for the world or his lack of attention to detail. This question was raised by the shadow minister in the briefing that our department provided to him, so I can only assume that the shadow minister does not speak with his own colleagues on this issue. The fact of the matter is that VCAT is an independent court established to look after different matters and the Victorian Auditor-General's Office (VAGO) guards its independence as the Victorian Auditor-General and, as a result, because of that independence, there is no jurisdiction detailed in this bill for those two authorities.

Mr ONDARCHIE (Northern Metropolitan) — I will desist in referring to the minister's first attempt at just attacking people, because quite frankly it puts a shame on the whole office, to be honest with you. Minister, what was the strategy in finalising any consultation you did at the time when there was not a definitive head of the organisation?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Again this has no bearing on the legislation before us. The appointment of the commissioner and the bill turning the commissioner into a commission does not change the need for personnel at any such time. This deals with them moving from the commissioner to a commission, as I have already described.

Mr ONDARCHIE (Northern Metropolitan) — Minister, the commissioner has been tasked with additional responsibilities and additional obligations and duties, and as you have indicated, there is no additional funding to support the operation. Certainly nothing has come through in today's state budget, which quite frankly means that you have drawn the losing card at the cabinet table, because you got hardly anything in the state budget and probably less than you expected. Has the government factored in any potential delays or wait times or hold-ups for small businesses seeking resolutions because of the additional workload that has been placed upon the Small Business Commission?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — We expect the Small Business Commission to be able to function as the commissioner does now, with no drawdown on additional resourcing and no escalation in delivery times.

Mr ONDARCHIE (Northern Metropolitan) — Minister, will you guarantee to the chamber by way of this discussion that there will be no delays or adversely affected waiting times as a result?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I can again provide to the chamber that we do not believe — and it is an expectation — that it will impact at all on the Small Business Commission.

Mr ONDARCHIE (Northern Metropolitan) — Thank you, Minister. We will feed back to the small business community that you are expecting no delays as a result of what you are doing. Now that the Small Business Commission, subject to this bill being passed, will have the power to comment on legislation that may adversely affect small business, but only upon direction by the secretary of your department or yourself, how can Victorians be assured that the Victorian Small Business Commission will genuinely be standing up for the rights of small business, given they are subject to the approval of yourself or your department's secretary?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I will take that as a statement.

Mr ONDARCHIE (Northern Metropolitan) — Well, it was not — it was a question. The question was: given you or your departmental secretary will direct any comment on legislation, and should that legislation affect small business, how can Victorian small businesses be assured that the small business commissioner can operate freely and effectively?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Again, I simply need to draw the attention of Mr Ondarchie back to the fact that the commissioner is appointed by the Governor in Council; ergo the commissioner's independence in that role is safeguarded by the very nature of their appointment. I am not sure why, other than attempting to make some grandstanding statement that bears no relationship to the legislation before us, Mr Ondarchie wishes to just

eat up time rather than deal with the legislation before us.

Mr ONDARCHIE (Northern Metropolitan) — See, Minister: it was not that hard after all! I just asked you who appointed the small business commissioner, and you delayed, you dodged, you weaved, you said you were not going to talk about it, you said it was not relevant to the legislation — and you have just said that the small business commissioner is appointed by the Governor in Council. It was not that hard. Why do you make life hard for yourself like that? It was just a simple question. You put all that energy into dodging and weaving when you could have simply told me. You do make life hard for yourself; let us hope you do not make life hard for small businesses.

Minister, if a small business supplier is having a business-to-government dispute with VCAT or VAGO, will the commission be able to intervene to resolve that dispute?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Again, Mr Ondarchie has asked — and I have answered — why the Small Business Commission excludes VCAT and VAGO. You can see by the nature of that question that the Small Business Commission does not have the authority to ask them questions and enter into dispute resolution on matters pertaining to them as it would with other organisations.

Mr ONDARCHIE (Northern Metropolitan) — There you go: be careful if you are a small business supplier to VCAT or VAGO, because the minister himself will not support you, but then I dare say that goes for all small business across Victoria — all talk and no action. Minister, we did agree at the start of this conversation that you will take everything under clause 1. Minister, under clause 10(2) — and we agreed we will do it all through clause 1 — the bill states that the commissioner may charge fees; however, it does not state that the commissioner may choose what fees are to be charged. Given there is no extra funding for the office and they have pretty much got to do it with the existing resources, does that limit the ability of the commissioner to manage their own office, or could this be a new revenue stream for the commissioner's office?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Finally, the scare campaign comes to light — this is the big scare campaign. There is no expectation that fees and charges will change. There is no expectation of delays in undertaking the course of the commission's work. There is no expectation it will need increased resources to manage the workload. We believe that the existing small business commission staff will be able to meet the increased demands on them. We believe that they can do so within the existing funding envelope. We believe that the small business commissioner, Ms Judy O'Connell, will be a fine commissioner — we think she has an outstanding pedigree — and that we should move on to other parts of this legislation.

Mr ONDARCHIE (Northern Metropolitan) — Yes, I am sure you want to move on, Minister, but the reality is if you had just picked up the whole line of questioning earlier and just answered the questions, as you did with the Governor in Council announcement, we might have got through this a lot more quickly. Minister, it has been a challenge for small business to operate in Victoria, and in your second-reading speech and indeed in an answer to one of my questions some time ago in the committee stage you talked about your energetic, enthusiastic support for small business. Minister, given that and because you introduced the whole subject of your support for small business, are you able to outline what impact the level crossing removal project has had on small businesses in areas where the whole road has been closed?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — That has nothing to do with the legislation before us. As per other questions that have deviated wildly from clause 1 of the Small Business Commission Bill 2016, I shall not be going into that area. Mr Ondarchie can utilise question time for those matters.

Mr ONDARCHIE (Northern Metropolitan) — Not only does he want to be the minister; he wants to be the President as well and determine how questions are asked in this place.

Minister, is it not interesting that the Small Business Commission Bill 2016 has nothing to do with small business? We kind of knew that from the start. When you are asked questions in relation to your own portfolio, you either get angry about it or get personal about it, but you will not stand up for small business. When I ask you questions about it, you just do not want to talk about it. Minister, crime is a significant issue that has been affecting small business. Jewellery stores have been hit time — —

Mr Melhem — On a point of order, Deputy President, Mr Ondarchie has been going on for a while, and a lot of his questions have not been related to the bill. Unless he has questions relevant to the bill, he should not be allowed to continue debating these issues. That is why we have the second-reading debate — to

actually debate these matters. I ask you to ask him to go back to asking questions about specific clauses in the bill, rather than grandstanding, as he has been doing for the last half hour.

Mr ONDARCHIE — On the point of order, Deputy President, Johnny-come-lately, who has just walked into the chamber, would not know that at the start of this whole committee stage the minister and I agreed that all the questions would be related to clause 1.

Mr Melhem — Are you answering the point of order or are you waffling on?

Mr ONDARCHIE — No, I am answering your own question. You were not even here for it.

Mr Dalidakis interjected.

The DEPUTY PRESIDENT — Order! Mr Ondarchie has not finished yet.

Mr ONDARCHIE — Mr Melhem might rush in here trying to get up numbers, but I have to say to him — —

Ms Symes interjected.

Mr ONDARCHIE — Can I answer the point of order? Is that all right with you? We had an agreement at the start that we would take everything under clause 1. You have turned up late, so it is not a point of order at all. We had an agreement that we would do this.

The DEPUTY PRESIDENT — Order! I believe there is no point of order because we are dealing with the functions and powers of the commission. It is relevant, Mr Melhem. Anything further, Mr Ondarchie?

Mr ONDARCHIE — Thank you, Deputy President. We did agree at the start of this. I am happy to go through it clause by clause if that is what the minister now prefers, but we did agree that we would take all questions relating to the small business commissioner, the benefits for small business and the support for small business as it says in the bill.

If you want, Minister, I can take you straight to clause 5 — it talks about support for small businesses — but you said at the start you would take all questions under clause 1, and when you are under the pump, you want to change the rules. This is the government all over. When they are under the pump, they want to announce something different or they want to say something different. Law and order is out of control in this state, and they want to announce something different. People are being held up in carjackings. Jewellery shops are being robbed. Cigarette shops are being robbed. Petrol stations in my own electorate get hit, and they want to announce something different. This is the government all over. The minister agreed at the start of this conversation — at the start of this committee stage — he would take everything under clause 1. Now he is saying it has got nothing to do with that clause. Make up your mind, Minister. Surprise us and make up your mind.

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Mr Ondarchie may wish to suggest that I was happy to take everything under clause 1 — in relation to the legislation. When he talks wildly outside of the legislation, I will not take questions that do not pertain to the legislation at hand. If Mr Ondarchie wishes to move forward to clause 5, then let us vote on clauses 1 to 4; let us do that. In the meantime the legislation is before us. That is what we are debating. That is what the committee stage is here to probe, and when Mr Ondarchie moves wildly off the legislation, yes, I will bring us back to the legislation before the chamber.

Mr ONDARCHIE (Northern Metropolitan) — For the benefit of the minister, who is struggling at the anvil at the moment, let me refer him to subclause (c) of clause 1, which is:

> to establish the Small Business Commission to enhance a competitive and fair operating environment for small business in Victoria.

And that is what I am talking about: a competitive and fair environment for small businesses in Victoria. It is inherent in clause 1. I think, with respect, I should be able to talk about that. I should be able to talk about a fair and competitive operating environment for small business in Victoria. Minister, we have seen crime out of control in this state, and it has not been a fair and competitive operating environment for our businesses, particularly some of our small businesses that are getting hit time and time and time again. They are struggling. What steps are you going to take as Minister for Small Business, Innovation and Trade to protect those small businesses?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I appreciate Mr Ondarchie's question and the opportunity for me to respond. The question, as generous as it may be, is not one that pertains to clause 1(c). It asks me specifically what I am going to do, and the legislation before us is about the Small Business Commission.

Mr ONDARCHIE (Northern Metropolitan) — But here is the thing. There was a raid on another Melbourne jewellery store, Holloway Diamonds in Brighton, on 18 April and a terrifying daylight robbery at Elsternwick's H&H Jewellery store on Glenhuntly Road on 4 April. South Yarra's jewellery store, Collections Fine Jewellery, was the victim of a daylight robbery on 25 March. A Canterbury jewellery store, Holloway Diamonds, was targeted on 25 March and was previously targeted on 13 January. There was a robbery at the Michael Hill jewellery store in Westfield Plenty Valley in my own electorate, not far from my own home, where shoppers were terrified, and a brazen robbery at IMP Jewellery in Toorak on 15 January, which was previously targeted on 25 October 2016.

Thieves stormed a cigarette shop in Melbourne's north — a Cignall tobacconist at Miller Street, Thornbury — in broad daylight. There was an early-morning cigarette heist at a Bellarine Highway business, Freechoice Tobacconist, which has been hit about three times in the last 18 months. Commercial cigarette burglaries of service stations, supermarkets and liquor stores in Mount Martha, Kew, Surrey Hills, Mitcham, Maribyrnong and beyond are occurring under this government's watch. Axe-wielding bandits have robbed petrol stations in Melbourne's south-east, such as a Eumemmerring service station, another on North Road, Murrumbeena — not far from your own office, Minister — and one on Belgrave-Hallam Road in Hallam. There was a robbery at a Yarraville service station on 27 March. Masked bandits used a chainsaw in a Clayton South petrol station armed robbery on 10 February. South Morang's Hunting, Fishing and Camping store — across the road from my own office — was robbed by a masked trio with guns and a sledgehammer on 24 January in 2017, and just yesterday the BP service station in Diamond Creek had an armed robbery.

So my question in relation to a competitive and fair operating environment for small businesses is: how can they possibly operate competitively, fairly and safely with this level of crime in Victoria? My question is: what are you doing to support them?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I would delight in spending a great deal of time talking about the additional 3135 police that the Victorian government are recruiting. Whilst I would like to talk about the police policies of the government — whilst I would like to do all of that — again let me draw, Deputy President, your attention back to the fact that we are at clause 1 of the bill. What the government chooses to do — or what I specifically, as Mr Ondarchie very pointedly asked, will do — bears no relation to clause 1 of the bill and the legislation before us, which is the Small Business Commission Bill 2016.

The bill before us deals with moving the Small Business Commissioner Act 2003 into the Small Business Commission Bill 2016. The bill before us looks to provide more functions to the small business commissioner in their role of looking after the competitive environment for the small business community in relation to their trading. What I would like to do is move forward with questions in relation to the legislation before us, and I would certainly welcome the good faith questioning of Mr Ondarchie to return to those questions and for me to then be able to directly answer them.

The DEPUTY PRESIDENT — Order! Mr Ondarchie, I will let you ask a question of the minister, but I would like you to be relevant to clause 1 —

Mr Ondarchie — Well, it is relevant to clause 1.

The DEPUTY PRESIDENT — and not to ask about crime anymore.

Mr Ondarchie — I will not ask about crime anymore.

The DEPUTY PRESIDENT — Thank you.

Mr ONDARCHIE (Northern Metropolitan) — I refer you to clause 1, the third subclause, about 'a competitive and fair operating environment for small business in Victoria'. Minister, I want to ask you about the increased costs of energy charges for small businesses, particularly relating to the pressure on small and medium businesses and manufacturing through the increase in gas and electricity charges through this state. There has been a significant increase in energy charges through Labor's 300 per cent increase in coal charges. It is hurting small business. In terms of a competitive and fair operating environment for small business in Victoria, what are you doing to reduce the energy impost on those businesses?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — For a moment there I thought I was going to get a question in relation to clause 1 of the bill. Unfortunately, at the end of that question Mr Ondarchie reverted to type and he asked me a question very specifically about what I am doing in relation to the matters that he raised. Whilst the matters that he raised are certainly important to small businesses in Victoria and I certainly do not discount

that fact, the fact remains that they are not relevant to clause 1 of the bill before us.

Mr ONDARCHIE (Northern Metropolitan) — Deputy President, I gave a commitment I would not talk about crime any longer, and I will not speak about energy any longer. Suffice to say that there has been ample opportunity so far this afternoon for the minister to genuinely demonstrate that he is supporting small business in this state and we are yet to get an answer about what he is doing.

Minister, Victoria now has more public holidays than any state in Australia, including New South Wales. It is hurting small business. In terms of clause 1 of the bill, which refers to 'a competitive and fair operating environment for small business', have you received any advice from the small business commissioner about the impact of public holidays on small business?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — The nature of discussions or correspondence or issues raised between the small business commissioner and myself bear no relation to the legislation before us. Deputy President, I know that I continue to make that comment, but unfortunately the level of questioning continues to be such that it leaves me little room to move as we attempt to debate the Small Business Commission Bill 2016.

Mr ONDARCHIE (Northern Metropolitan) — Minister, I remind you of the legislation before us. Disappointingly — it is my disappointment to have — you are avoiding comment on your exact legislation. The legislation talks about the capacity for the Small Business Commission to provide comment on legislation that may adversely affect small business, provided it is undertaken in consultation with the secretary and requested by the minister. Minister, will you ask the Small Business Commission to give you advice on public holidays?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Well, if the opportunity arises insofar as I believe that that advice is warranted, this bill affords me the right to do that.

Mr ONDARCHIE (Northern Metropolitan) — Minister, in relation to my previous question about the capacity for the commission to comment on legislation that may adversely affect small business provided it is undertaken in consultation with the secretary or the minister — in other words, 'Only tell me if I ask you' — will you ask the Small Business Commission for advice on energy pricing, gas and electricity, for small business?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I thank Mr Ondarchie for his advice and direction as to what I should and should not do in my role as the current Minister for Small Business, Innovation and Trade. However, again it bears no relation to the Small Business Commission Bill 2016 before us.

Mr ONDARCHIE (Northern Metropolitan) — Actually it does, Minister, and that is the sad part about this, that you are avoiding accountability here, because it says in your own legislation that the commission has the capacity — I will not go through it again — to comment if it is requested by you. It was a simple question: would you request them to give you advice on energy legislation as it affects small business?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Again, asked and answered.

Mr ONDARCHIE (Northern Metropolitan) — Minister, in the legislation, as I have outlined already, you have the capacity to request comment from the Small Business Commission about legislation. Would you seek advice from the Small Business Commission in relation to crime?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — That is a hypothetical and has nothing to do with the legislation before us. It has to do with the operation of the legislation, should Mr Ondarchie ever get past his questioning and we get to vote on it.

Mr ONDARCHIE (Northern Metropolitan) — So the committee stage can be pretty well summed up by 'The minister said nothing'. You talk about accountability and the minister is quick to point out details around statistics and figures and things like that. When he is asked a direct question, he just avoids it.

Minister, the government has indicated today — and this goes to the heart of the establishment of the Small Business Commission, so be under no doubt about how relevant this is — that it might do a review of the land titles office in terms of its capacity to operate as a government entity in Victoria. Will you give an assurance to the people of Victoria that the Small Business Commission will not go down the same path and be considered for privatisation?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I can happily take Mr Ondarchie's question. As the minister, I cannot say I have ever even contemplated or thought of the position of privatising the Small Business Commission. I am amused by — —

Mr Ondarchie — Thank you.

Mr DALIDAKIS — I have not finished, Mr Ondarchie. I am still talking. I have not even contemplated that. I do love the fact that when I came into this place members of the opposition suggested that I had in some respects a greater right-wing economic dogma than some of their own colleagues, but the privatisation of the Small Business Commission is something that even I have not contemplated.

Mr ONDARCHIE (Northern Metropolitan) — Finally, a straight answer. Minister, one of the challenges small businesses face, particularly employees in small business that you have talked about a lot in this place — and I have had some association with this indirectly — sadly is the level of bullying that happens in small businesses. Will you seek advice from the small business commissioner in relation to any bullying legislation and how it might affect small businesses and their employees?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Again, I thank Mr Ondarchie for his question. I will treat it in good faith. The fact remains that I have not contemplated the issue that Mr Ondarchie raises. The issue of bullying, whether it be in the workplace or indeed the home, the schoolyard or even simply walking down the street, is one that we as a society reject at each and every opportunity. I would have to look at the legislation or the issue at the time before further contemplating using the provision of the legislation as Mr Ondarchie asked.

Mr ONDARCHIE (Northern Metropolitan) — Thank you for sharing my view, Minister, about the impact of bullying in small business. Minister, this is not a terribly difficult question; it just relates to the bill. In your contribution you talked about the 2014 election commitments and you then spoke, as small business minister, about your purported support for small businesses and making sure that they grow and seek all the opportunities they can. It is a pretty simple question, Minister: why did it take so long for this bill to finally come to the house?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I thank the member for his question. As much as I wish that I had capacity to answer that as a minister in the government, in Parliament I am not responsible for the timing of bringing legislation forward. The legislation was introduced, as the member was aware, back in 2016, and for reasons beyond my control we had limited numbers of days leading up to the end of the parliamentary calendar in 2016, so it was not possible to bring it forward at that point. We had a legislative backlog as a result of the opposition siding together with their partners in crime, the Greens, in kicking out the Leader of the Government in this place for six long months — unfairly so — denying the people of South Eastern Metropolitan Region the opportunity for their elected representative to represent them in this place. As a result of Mr Jennings not having been here — by virtue of that unjust action — there was a range of legislation that needed priority when Mr Jennings re-entered this house.

Mr ONDARCHIE (Northern Metropolitan) — Minister, can I just confirm what you just said, that you did not have the capacity as Minister for Small Business, Innovation and Trade to bring forward the legislation any earlier?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — No, what I indicated to Mr Ondarchie was that, as he understands, there is a whip for the opposition, a whip for the government and the legislative committee and they decide the urgency of the legislation before this place. As I have indicated, there was a backlog of legislation as a result of Mr Jennings having been unceremoniously kicked out of this chamber for six months. On his return to this chamber, legislation that was of urgent need was prioritised. This bill is important to the small business community. I believe the increased functions are important, although it is worth noting what Mr Ondarchie said earlier when he argued that this bill does very little. However, having argued that the bill does very little, Mr Ondarchie now puts the counterargument that it is important and should not have been delayed for as long as he claims that it has been.

I am not sure that it is possible to be Arthur and Martha in the one speech in the Parliament at the same time, but Mr Ondarchie is attempting to do exactly that. On the one hand he portrays this legislation as basically do-nothing, vanilla-type legislation that adds no value and that sees no change, and on the other hand he says that we have been delinquent in our responsibilities to the small business community because it has taken a greater period of time to bring the legislation forward to debate in this place. Hypocrisy is thy name, Mr Ondarchie, and I do not know how you can reconcile those two competing points of view. No doubt you will try in just a moment, but if we get through the committee stage of this bill, then potentially we will be able to see the bill enacted, and once it is enacted we will be able to see how it actually works.

Mr ONDARCHIE (Northern Metropolitan) — Minister, talk about wanting to have a foot in each camp. There has been a lot of puffery from you about your support for small business yet this has taken 886 days to get here. And you claim that you are supporting small business. I have to say to you that in my second-reading speech I talked about what the marketplace is saying about the validity and the strength of this bill. A number of people said they just do not see what is in it for them, and you have not, despite many opportunities this afternoon, enunciated what you are going to do to support small business. It is disappointing. I know that you are probably pandering to other people on your side of politics, but first and foremost your responsibility is to the small business people of Victoria, and they are bitterly disappointed with the crime rate, energy prices, public holidays and this bill that ostensibly does not do a lot and does not come with any extra funding. I have no more questions.

Mr RAMSAY (Western Victoria) — My question to the minister is in relation to clauses 53 to 69, and they refer to the changes — and they are only word changes; I do appreciate that, Minister — in relation to the Farm Debt Mediation Act 2011 replacing the word 'commissioner' with the word 'commission'. That is basically just a follow-on from the act. I am actually going to ask a serious question in that it is my understanding that through the dairy crisis of last year and the year prior and the introduction of the Farm Debt Mediation Act 2011, the small business commissioner at the time had quite a significant role in mediating between farmers and banks. My understanding in relation to the budget allocation of the previous year is that that money was nearly fully expended. In fact it only allocated about $2 million, as I remember — I stand to be corrected. I am referring to this clause specifically to allow me to ask a question about the current budget allocation and whether you feel that there is a significant capacity in the budget to deal with the ongoing issues surrounding farmers and bankers in the role now of the commission, no longer the commissioner, in relation to farm debt mediation.

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I can advise Mr Ramsay that it is my intention that there be absolutely no change in the way those programs are delivered through the Small Business Commission. We believe, as does Mr Ramsay, in providing those mediation services, especially for farm debt, and within the dairy industry especially, and that they have access to those services. We do not expect there to be any change, and we expect resourcing to be sufficient to meet the demand. Absolutely.

Mr RAMSAY (Western Victoria) — I will not elongate this discussion, but the commission now has a broader range of responsibilities. What I understand from the previous conversation is that the budget allocation is the same as last year's, so I am not quite sure how that could be achieved. In fact there was a bigger call for farm debt mediation between farmers and bankers from the commission, yet the budget allocation is the same and you have also got the commission providing extra services over and above what was carried out in the previous year.

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — Again I acknowledge Mr Ramsay's concern about the adequate resourcing of the Small Business Commission should the legislation be passed and the commission be called thus. I can only tell you, Mr Ramsay, what I told your colleague Mr Ondarchie: that we believe that the small business commissioner currently has been resourced adequately to be able to include the new and additional responsibilities. I wish to assure Mr Ramsay that farm debt mediation is a very important part of the services provided by the current commissioner and hopefully the soon-to-be Small Business Commission.

Mr RAMSAY (Western Victoria) — Separate from that, is the commission in relation to reducing costs to small business — —

Mr Dalidakis — Which clause, Mr Ramsay?

Mr RAMSAY — I am now talking about clause 1, which I gather envelops the entire bill. In relation to the red tape reduction review, would the minister be so kind as to indicate when that might be completed and if in fact there are any significant key findings coming out of that review?

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I thank Mr Ramsay for his question. As Mr Ondarchie knows well, I refuse to take questions in relation to other matters of my portfolio responsibilities. The red tape reduction review was mentioned in relation to a number of firsts that Labor governments have a history of having undertaken in Victoria, including of course the Small Business Commission Bill 2016 — a first across all jurisdictions in Australia. So very specifically in relation to the question Mr Ramsay has asked, I would welcome that question come question time.

Clause agreed to; clauses 2 to 72 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

ADJOURNMENT

Mr DALIDAKIS (Minister for Small Business, Innovation and Trade) — I move:

That the house do now adjourn.

Melbourne Regional Landfill

Mr FINN (Western Metropolitan) — I wish to raise a matter this evening for the attention of the Minister for Planning. It concerns a significant issue in the western suburbs of Melbourne. It is an issue that I have raised before, and it is an issue that is now coming finally, it would seem, to a culmination, because the issue of the Cleanaway tip at Ravenhall is currently on the minister's desk. I wish to inform the minister, if he is not already aware, that the people of the western suburbs do not want this tip and do not, under any circumstances, want this tip expansion. They do not want the current tip, much less having the thing expanded to something that could be seen from the moon. This would be, if the government and the minister were to approve it, a massive assault on the western suburbs of Melbourne.

I know, and I have explained to this house before, the detrimental health effects on people living in Caroline Springs, Deer Park and the surrounds of the current tip. The expansion that we are talking about, I understand, would bring in some significant money for the government, and that is clearly what is driving this from the government's point of view, but the people in that area and my constituents in the western suburbs do not want it — they do not want the thing.

We are sick to death of being the dumping ground of Melbourne. The western suburbs should not be the dumping ground of Melbourne, and this government has to take a stand. Enough is enough. This proposed expansion of the tip would make the western suburbs, or a large proportion of the western suburbs, a stinking hole in the ground, a threat to health, certainly a threat to humanity, a threat to nearby housing and something that is just totally unacceptable to any reasonable person.

If the minister wishes to advise his colleague on what to do with the garbage, then there are a whole range of things that can be looked at, including high-temperature incineration of rubbish, which could quite possibly be used instead of this expansion. But certainly we do not want it. If I have not made it clear enough, we in the western suburbs do not want this tip to go ahead. So I ask the minister to hurry up, to make a decision and to make that decision very, very strongly against the expansion of this tip. The people of the western suburbs demand it, and we expect nothing less.

Public transport disability access

Ms DUNN (Eastern Metropolitan) — My adjournment matter is for the Minister for Public Transport. In launching new tram route 58 the Minister for Public Transport celebrated the provision of low-floor trams in the hospital precinct for people in wheelchairs or scooters. It was also lauded for interchanging with Flagstaff station. However, there are no platform stops at Flagstaff station, so wheelchair users who arrive by train cannot board the trams. In fact the only places that wheelchair users can board the trams are at the hospital, the casino, the Domain interchange and the end of the line at Glenferrie Road, Toorak. Should wheelchair or scooter users actually get on a tram at the hospital, they cannot get off the tram.

I note that across the tram network only 23 per cent of stops are compliant with the federal Disability Discrimination Act 1992, which means the target of 90 per cent set for the end of 2017 will be missed by a very wide margin. The action I seek is that the minister immediately ensure compliance with the Disability Discrimination Act by making sure all CBD stops on tram route 58 are converted to meet the expectations of commuters with a disability to be able to board the tram network at Flagstaff station.

Police numbers

Mr MORRIS (Western Victoria) — My adjournment matter this evening is for the attention of the Minister for Police, and it pertains to the number of police officers who have currently been allocated to the Ballarat police service area and indeed the reduction we have seen over the time that Daniel Andrews has been the Premier of this fine state.

Mr Finn — A very long time.

Mr MORRIS — It does feel like a very long time, Mr Finn — much longer than it has been.

I note that in the recent past two additional police stations have been opened, the Ballarat West and Ballarat North police stations, which the former Liberal government was very pleased to build and open so that there were at least the physical buildings required in Ballarat to ensure that the police had places to be. What

is unfortunate, however, is that in the time that Daniel Andrews has been the Premier of this fine state we have seen a net reduction in the number of frontline uniformed police officers in Ballarat. We have seen a reduction of nearly eight full-time equivalent police officers — 7.79 full-time equivalents — which represents a 5.82 per cent decrease in the number of police. One might say, 'Well, that is maybe because there has not been an increase in crime in Ballarat', but that guess would be wrong.

Since Daniel Andrews has been in power we have seen an 18.2 per cent rise in crime in Ballarat, and these are not just your standard shoplifting-type offences. In the suburbs of Alfredton and Ballarat North we have seen a 108 per cent increase in the number of aggravated burglaries. Aggravated burglary was something that was basically unheard of under the former Liberal government. When Daniel Andrews came to power he cut the number of police officers who were protecting the community of Ballarat, and as a result we are seeing the number of offences that are occurring skyrocketing. It is not just aggravated burglary rates that have increased; arson has gone up 34 per cent just in the last year. Dangerous and negligent acts endangering people have gone up nearly 50 per cent — 49.43 per cent to be exact. What we have seen in Ballarat have been skyrocketing crime rates and families that have been subjected to unthinkable crimes, and while all this is happening we are seeing Daniel Andrews cutting the number of police officers protecting the community.

The action I seek is that the minister ensure that Victoria Police are provided with the resources required to ensure that police numbers in Ballarat are not cut but indeed increased to combat the scourge of crime that is currently being inflicted upon the people of Ballarat.

Newton Reserve, St Kilda

Ms FITZHERBERT (Southern Metropolitan) — My adjournment matter tonight is for the Minister for Police, in the absence of a minister for crime prevention, and it concerns Newton Reserve in St Kilda. The previous coalition government had a dedicated crime prevention portfolio. This was about partnerships with local communities to respond to issues of crime and perceptions of crime. The portfolio was axed by Labor, although the opposition has maintained a community safety portfolio. When the coalition was in government the portfolio funded CCTV systems; public space upgrades using crime prevention through environmental design principles; graffiti removal; and small-scale security upgrades for community assets such as improved locks, lights and fencing for town halls et cetera. The portfolio also provided funding for a number of not-for-profit organisations such as Step Back Think, Neighbourhood Watch and Crime Stoppers.

Recently, after I spoke out about the need to close down the Gatwick Hotel in St Kilda, I was contacted by a resident who told me of his grave concerns about the Newton Reserve. He lives very close to it and is a long-term resident of St Kilda. He has lived in his current home for around 10 years and moved back to St Kilda from another part of Melbourne. St Kilda is where he grew up and he has a lot of love for the area, and because of that he is upset about the increasing effect of crime and drug use on his neighbourhood.

I have visited the Newton Reserve and have seen the effects of the problems that the resident described. It could be a great park, but its location and current landscaping give lots of scope for people to literally hide in the dark corners. People buy drugs nearby and then shoot up at the reserve. There are bins for needles, but these are often ignored. Prostitutes service their clients there, and residents endure a lot of night-time noise. There is a lot of shouting and screaming. Sometimes it sounds like people are being attacked or raped. Sometimes residents call the police, who almost never arrive promptly — for which residents do not blame the police, who they know are overworked and underresourced.

Despite all this, Newton Reserve is a much-loved local park that is used by many residents of all ages — including children, as it has an entrance to the children's adventure park. This particularly worries residents because, aside from their concerns about safety in the park, especially for young children, there is also the mess left behind from the activities that I have described. When residents go out the next day, on the ground in the park they see needles, used condoms and human excrement on a regular basis. One resident told me that he would love to kick a footy in the park he knew as a child with his own grandson, but the needles and so on make it impossible.

Residents have formed an action group and are looking at solutions, including additional lighting that will shine into some of the dark corners of the park at night, to deter some of this behaviour. Another suggestion is to install gates and lock the park at night. Minister, what support can the state government offer the community around the Newton Reserve so that they can make their park safer and cleaner for everyone?

Geelong–Melbourne rail service

Mr RAMSAY (Western Victoria) — My adjournment matter tonight is for the Minister for Planning, and the matter I wish to have the minister action is the allocation of funding for the planning and feasibility of a fast train service between Geelong and Melbourne. I do that on the basis that there is no allocation in this current budget for any sort of planning or feasibility work in relation to a fast train from Geelong to Southern Cross.

It has been clearly identified that the regional rail link is at near full capacity. The Wyndham Vale, Tarneit and Caroline Springs stations are now included in the service. The fact that the dedicated track from Warrnambool to Geelong to Melbourne to Southern Cross now goes through those three stations means that it is now nearly at full capacity.

There is a genuine need for those living in regional south-west Victoria and Geelong who are travelling to Melbourne to have a fast train service. This could be done using old track through Werribee and Altona North to provide a fast rail service to Southern Cross, in cooperation with Melbourne Metro rail.

The action I seek from the minister is that he provide funding to do a full planning feasibility study and business case to see if a fast train service of 30 minutes, at 200 kilometres an hour, between Geelong and Melbourne is achievable.

Responses

Ms PULFORD (Minister for Agriculture) — I have adjournment matters this evening raised by five members — interestingly, all five are to ministers whose portfolios start with the letter 'P'. Mr Finn and Mr Ramsay raised matters for the Minister for Planning, and I will seek responses from Minister Wynne. Mr Morris and Ms Fitzherbert raised matters for the Minister for Police, and I will seek a response from Minister Neville. Ms Dunn raised a matter for the Minister for Public Transport, and I will seek a response from Minister Allan.

I have a two-page list of written responses to the adjournment matters of various members.

RULINGS BY THE CHAIR

Questions on notice

The PRESIDENT — Order! Before we adjourn, I indicate that Ms Wooldridge wrote to me in respect of responses to various questions on notice to the Minister for Health and Minister for Ambulance Services in the other place. The questions are numbered as follows: 7705; 7707; 10 549, parts (4), (5) and (6); 10 183, parts (4) and (5); 10 185, parts (2), (3) and (4); 10 186, part (2); 10 187, part (1); 10 188; 10 189; 10 190; and 10 191.

As Ms Wooldridge requested, I have looked at those questions and the answers that were provided, and I determine that those questions should be reinstated.

On that basis, the house stands adjourned.

House adjourned 6.04 p.m. until Tuesday, 9 May.