**PARLIAMENT OF VICTORIA**

# PARLIAMENTARY DEBATES (HANSARD)

## LEGISLATIVE COUNCIL

## FIFTY-EIGHTH PARLIAMENT

## FIRST SESSION

**Friday, 8 June 2018**

**(Extract from book 8)**

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

**By authority of the Victorian Government Printer**

## The Governor

The Honourable LINDA DESSAU, AC

## The Lieutenant-Governor

The Honourable KEN LAY, AO, APM

## The ministry

(from 16 October 2017)

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

## Legislative Council committees

**Privileges Committee** — Mr Dalidakis, Mr Mulino, Mr O'Sullivan, Mr Purcell, Mr Rich-Phillips, Ms Springle, Ms Symes and Ms Wooldridge.

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

## Legislative Council standing committees

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

**Standing Committee on the Environment and Planning** — Ms Bath, #Mr Bourman, Mr Dalla-Riva, Mr Davis, #Ms Dunn, Mr Elasmar, Mr Melhem, Mr Mulino, #Mr Purcell, #Mr Ramsay, #Dr Ratnam, #Ms Symes, Ms Truong and Mr Young.

**Standing Committee on Legal and Social Issues** — #Ms Crozier, #Mr Elasmar, Ms Fitzherbert, Mr Morris, Ms Patten, Mrs Peulich, #Dr Ratnam, #Mr Rich-Phillips, Ms Shing, Mr Somyurek, Ms Springle and Ms Symes.

# participating members

## Legislative Council select committees

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

**Fire Services Bill Select Committee** — Ms Lovell, Mr Melhem, Mr Mulino, Mr O'Sullivan, Mr Rich Phillips, Ms Shing and Mr Young.

## Joint committees

**Accountability and Oversight Committee** — (*Council*): Mr O'Sullivan, Mr Purcell and Ms Symes. (*Assembly*): Mr Angus, Mr Gidley, Mr Noonan and Ms Thomson.

**Dispute Resolution Committee** — (*Council*): Mr Bourman, Mr Dalidakis, Ms Dunn, Mr Jennings and Ms Wooldridge. (*Assembly*): Ms Allan, Mr Clark, Ms Hutchins, Mr Merlino, Mr M. O'Brien, Mr Pakula 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 Bath, Ms Patten and Mr Somyurek. (*Assembly*): Ms Asher, Ms Blandthorn, Mr Dixon 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*): Dr Carling-Jenkins and Mr Finn. (*Assembly*): Ms Britnell, Ms Couzens, Mr Edbrooke, Ms Edwards and Ms McLeish.

**House Committee** — (*Council*): The President (*ex officio*), Mr Eideh, 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 Gepp 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* — Acting Clerk of the Legislative Assembly: Ms Bridget Noonan

*Council* — Acting Clerk of the Parliaments and Clerk of the Legislative Council: Mr A. Young

*Parliamentary Services* — Secretary: Mr P. Lochert

**MEMBERS OF THE LEGISLATIVE COUNCIL**

**FIFTY-EIGHTH PARLIAMENT — FIRST SESSION**

**President:**
The Hon. B. N. ATKINSON

**Deputy President:**
Mr K. EIDEH

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

**Leader of the Government:**
The Hon. G. JENNINGS

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

**Leader of the Opposition:**
The Hon. M. WOOLDRIDGE

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

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

**Leader of the Greens:**
Dr S. RATNAM

| Member | Region | Party | Member | Region | Party |
|---|---|---|---|---|---|
| Atkinson, Mr Bruce Norman | Eastern Metropolitan | LP | Mikakos, Ms Jenny | Northern Metropolitan | ALP |
| Barber, Mr Gregory John[1] | 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[8] | Eastern Victoria | Nats |
| Carling-Jenkins, Dr Rachel[3] | Western Metropolitan | AC | 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[9] | Northern Victoria | Nats |
| Dalla-Riva, Mr Richard Alex Gordon | Eastern Metropolitan | LP | Patten, Ms Fiona[10] | Northern Metropolitan | RV |
| Davis, Mr David McLean | Southern Metropolitan | LP | Pennicuik, Ms Susan Margaret | Southern Metropolitan | Greens |
| Drum, Mr Damian Kevin[4] | 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 | Ratnam, Dr Samantha Shantini[11] | Northern Metropolitan | Greens |
| Fitzherbert, Ms Margaret | Southern Metropolitan | LP | Rich-Phillips, Mr Gordon Kenneth | South Eastern Metropolitan | LP |
| Gepp, Mr Mark[5] | Northern Victoria | ALP | Shing, Ms Harriet | Eastern Victoria | ALP |
| Hartland, Ms Colleen Mildred[7] | Western Metropolitan | Greens | Somyurek, Mr Adem | South Eastern Metropolitan | ALP |
| Herbert, Mr Steven Ralph[6] | 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 | Truong, Ms Huong[12] | Western Metropolitan | Greens |
| Melhem, Mr Cesar | Western Metropolitan | ALP | Wooldridge, Ms Mary Louise Newling | Eastern Metropolitan | LP |
| | | | Young, Mr Daniel | Northern Victoria | SFFP |

[1] Resigned 28 September 2017
[2] Appointed 15 April 2015
[3] DLP until 26 June 2017
[4] Resigned 27 May 2016
[5] Appointed 7 June 2017
[6] Resigned 6 April 2017
[7] Resigned 9 February 2018
[8] Resigned 25 February 2015
[9] Appointed 12 October 2016
[10] ASP until 16 January 2018
[11] Appointed 18 October 2017
[12] Appointed 21 February 2018

**PARTY ABBREVIATIONS**

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

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# Friday, 8 June 2018

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

*Honourable members interjecting.*

**The PRESIDENT** — Thank you.

*Honourable members interjecting.*

## SUSPENSION OF MEMBER

**The PRESIDENT** (09:35) — Ms Pulford, 15 minutes. Not a great start.

**Ms Pulford withdrew from chamber.**

## ADVANCING THE TREATY PROCESS WITH ABORIGINAL VICTORIANS BILL 2018

*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.**

**Mr Leane** interjected.

**The PRESIDENT** (09:36) — Thanks, Mr Leane — 15 minutes.

**Mr Leane withdrew from chamber.**

**Mr JENNINGS** (Special Minister of State) (09:37) — I want to draw to the attention of the house amendments that were made in the Assembly. The amendments and new clauses were added to this bill in the Assembly following its introduction. The amendments enhance the original intent of the bill by making clear some of the underlying assumptions made in the drafting of the bill. The amendments do the following: one, add and replicate the definition of traditional owners from existing legislation by replacing text in clause 1 and inserting text in clause 3:

> Clause 1, line 5 omit "Aboriginal Victorians" and insert "traditional owners and Aboriginal Victorians,".
>
> Clause 3, page 5, after line 27 insert—
>
> "***traditional owner***, in relation to an area in Victoria, has the same meaning as in **Aboriginal Heritage Act 2006**;".

Two, specify that only traditional owners will be on the Aboriginal Representative Body in keeping with the consultation process thus far by inserting clause 9, after line 21:

> "( ) All elected members (however described) other than employees of the Aboriginal Representative Body must be traditional owners.".

Three, reflect the broad and non-inclusive definition of treaty from the preamble in the bill by inserting in clause 29, after line 8:

> "( ) The Aboriginal Representative Body and the State must ensure that the treaty negotiation framework provides for the negotiation of a treaty or treaties that—
>
> (a) recognise historic wrongs; and
>
> (b) address ongoing injustices; and
>
> (c) help heal wounds of the past; and
>
> (d) support reconciliation; and
>
> (e) bring pride to Victorians; and
>
> (f) have positive impacts for Victoria; and
>
> (g) promote the fundamental human rights of Aboriginal peoples, including the right to self-determination; and
>
> (h) acknowledge the importance of culture to Aboriginal identity, and
>
> (i) enhance the laws of Victoria.".

Four, include principles of the *United Nations Declaration on the Rights of Indigenous Peoples*, UNDRIP, in the preamble, specifically:

> … after "stages of the journey." insert "In doing so, the State recognises the importance of the treaty process proceeding in a manner that is consistent with the principles articulated in the United Nations Declaration on the Rights of Indigenous Peoples, including free, prior and informed consent. By continuing to consult and cooperate in good faith, the State will endeavour to take each step forward on the pathway toward treaty together with traditional owners and Aboriginal Victorians.".

Five, state that the treaty authority be independent of ministerial control by adding to the text to clause 27, after line 22:

> "( ) In the performance of its function the Treaty Authority is not subject to the direction or control of the Minister.".

Six, specifying that the Victorian treaty advancement commissioner shall be an Aboriginal Victorian by adding a new clause to follow clause 3:

**"AA Appointment of Victorian Treaty Advancement Commissioner**

The Minister must not recommend a person for appointment as Victorian Treaty Advancement Commissioner unless the person is an Aboriginal Victorian.".

*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 Advancing the Treaty Process with Aboriginal Victorians Bill 2018.

In my opinion, the Advancing the Treaty Process with Aboriginal Victorians Bill 2018 (the Bill), as introduced to the Legislative Council, is compatible with human rights as set out in the Charter. I base my opinion on the reasons outlined in this statement.

**Overview of the bill**

The Bill provides the foundation for future treaty negotiations to take place between Aboriginal Victorians and the State. It enshrines the relationship between an Aboriginal Representative Body (yet to be established) and the State as working in partnership to establish elements that are necessary to support future treaty negotiations. These elements include a Treaty Authority, which will oversee and facilitate negotiations; a treaty negotiation framework, which will set out the parameters in which negotiations will be conducted; and a self-determination fund, which will help ensure Aboriginal Victorians can enter into negotiations on an equal footing with the State.

The Bill promotes the human rights of Aboriginal Victorians in several ways. In particular, the Bill's preamble and guiding principles promote the human rights of Aboriginal Victorians, including equality before the law, freedom of expression, taking part in public life and cultural rights.

**Human rights issues**

The proposed Bill engages human rights provided for in the Charter, as follows:

**Equality before the law (s.8)**

Section 8(3) of the Charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination. Discrimination in relation to a person means discrimination within the meaning of the Equal Opportunity Act 2010 on the basis of an attribute protected by that act. This includes discrimination on the basis of race. Section 8 of that act provides that direct discrimination occurs if a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute.

The Bill promotes Aboriginal Victorians' right to equality by enshrining a partnership approach between the Aboriginal Representative Body and the State. The parties must work together to establish elements necessary to support future treaty negotiations, including those set out under clause 26 (Treaty Authority), clause 29 (treaty negotiation framework) and clause 34 (self-determination fund).

Clause 22 of the Bill also promotes equality through enshrining the principle of fairness and equality as part of the treaty process, and specifically providing under clause 22(2) that the Aboriginal Representative Body and the State must make decisions that promote equality for Aboriginal Victorians.

The Aboriginal Representative Body will be made up of Aboriginal Victorians. This is reasonable and justified given the Bill's role in a process which has overall purposes of advancing reconciliation and Aboriginal self-determination. The role of the Aboriginal Representative Body in working with the State is considered a special measure that does not constitute discrimination in accordance with section 8(4) of the Charter.

**Freedom of expression (s.15)**

Section 15 of the Charter provides for every person's freedom of expression, including that every person has the right to hold an opinion without interference and the right to freedom of expression through seeking, receiving and imparting information and ideas of all kinds.

The Bill enhances Aboriginal Victorians' right to freedom of expression by enshrining a partnership approach. Under this approach, Aboriginal Victorians will have an equal voice to the State in establishing elements to support future treaty negotiations, through the Aboriginal Representative Body.

**Taking part in public life (s.18)**

Section 18(1) of the Charter provides that every person in Victoria has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs. Under section 18(2)(b) of the Charter every eligible person has the right, and is to have the opportunity, without discrimination, to have access, on general terms of equality, to the Victorian public service and public office.

Clause 23 of the Bill promotes the right of Aboriginal Victorians to take part in public life, through enshrining the principle of partnership and good faith. The Bill's requirements for the Aboriginal Representative Body and the State to work together also promotes this right.

**Cultural rights (s.19)**

Section 19(2) of the Charter confirms the distinct cultural rights of Aboriginal persons including their right to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

The Bill promotes the cultural rights of Aboriginal Victorians. Through progress of the treaty process, which the Bill provides the foundations for, it is anticipated that Aboriginal and non-Aboriginal Victorians will benefit from the promotion, recognition and appreciation of Victorian Aboriginal cultures. The Bill also specifically acknowledges Aboriginal Victorians' long-standing spiritual, cultural, material and economic connections to the lands now known as Victoria.

Hon. Philip Dalidakis, MP

*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) (09:40) — I move:

That the bill be now read a second time.

## Incorporated speech as follows:

In doing so I acknowledge the traditional owners and custodians of the land on which this Parliament stands. The government pays our respects to their elders — past and present; elders from all Victorian Aboriginal peoples, and elders and other Aboriginal people who join us here today. I wish to acknowledge the many Victorian Aboriginal nations who have lived for thousands of generations on this land before and since the establishment of the state of Victoria; who continue to be a special, vital and celebrated part of Victoria's present and future.

We stand here to address unfinished business and to progress reconciliation with Victoria's first peoples. I acknowledge that Victorian traditional owners maintain that their sovereignty has never been ceded, and throughout the history of this state, have repeatedly called for treaty. For too long these calls for treaty have gone unheard.

In early 2016, this government made a commitment to listen to Aboriginal Victorians about what self-determination means to them. Aboriginal Victorians called loud and clear for treaty as a necessary means for realising self-determination. In response, the Victorian government agreed to work together with Aboriginal Victorians to create a pathway towards treaty. Quite simply, treaty is the right thing to do.

It is with sombre pride that I introduce to this Parliament the first piece of legislation in our nation's history to address treaty making with Aboriginal people — the Advancing the Treaty Process with Aboriginal Victorians Bill 2018.

This bill marks the start of a new relationship between Aboriginal Victorians and government, one defined by partnership and self-determination, and a critical step towards reconciliation.

This new relationship with Aboriginal Victorians requires new ways of doing things. That's why we have worked in close partnership with members of the Aboriginal treaty working group to develop this bill. I wish to express unreservedly my thanks and gratitude to the working group not only for their work on this landmark bill, but also for leading government and supporting Aboriginal communities through the earliest stages of the treaty process.

It is the firm belief of this government that at all stages of the treaty process, we must be guided by Aboriginal self-determination, as recognised in the *United Nations Declaration on the Rights of Indigenous Peoples*. Consistent with the principle of self-determination, this bill provides the foundation on which we will build a strong and modern treaty process in partnership with Aboriginal Victorians.

It does this by enshrining the relationship between the future Aboriginal Representative Body and the state as equal partners in advancing the treaty process together.

**Aboriginal Representative Body**

The Aboriginal Representative Body will be the voice of Aboriginal Victorians in establishing the treaty process and will represent the diversity of the Victorian Aboriginal community. The body will work as the state's equal partner in establishing the elements necessary to support future treaty negotiations.

For nearly two years now, Aboriginal Victorians, led by the Aboriginal treaty working group, have been coming together to design their Aboriginal Representative Body. The newly appointed Victorian treaty advancement commissioner, Ms Jill Gallagher AO, with continued guidance from the working group, will now take carriage of this work. The commissioner will lead and work with the Victorian Aboriginal community to establish its Aboriginal Representative Body in the near future.

On the recommendation of the Victorian treaty advancement commissioner, the responsible minister must make a declaration in the *Victoria Government Gazette* recognising an entity as the Aboriginal Representative Body.

The bill sets the expectation that the Aboriginal Representative Body will be established and a declaration made by July 2019. Should this time line not be met, the bill requires the responsible minister to table a plan in Parliament within three months that outlines how government will support Aboriginal Victorians to establish the Aboriginal Representative Body.

**Guiding principles**

The Advancing the Treaty Process with Aboriginal Victorians Bill 2018 also enshrines guiding principles for the treaty process. These principles crystallise the Victorian government's commitment to creating a new relationship with Aboriginal Victorians through treaty, and set the tone for how the treaty process will proceed.

These principles are more than aspirational and will be used to govern the relationship between the state and the Aboriginal Representative Body, and will apply as well to future participants in the treaty process.

These principles are: self-determination and empowerment; fairness and equality; partnership and good faith; mutual benefit and sustainability; and, transparency and accountability.

These guiding principles were chosen and developed in partnership with members of the Aboriginal treaty working group. They draw on the *United Nations Declaration on the Rights of Indigenous Peoples*, the Victorian charter of human rights, as well as common principles of good governance.

**Elements to support future treaty negotiations**

The bill requires the Aboriginal Representative Body and state to work together to establish three elements: a treaty authority, a treaty negotiation framework, and a self-determination fund.

*Treaty authority*

The first element — a treaty authority — will act as the independent 'umpire' of the treaty negotiation process.

International best practice examples, including Canada and New Zealand, show the need and value of an independent body such as a treaty authority.

Under the bill, a treaty authority will oversee and facilitate treaty negotiations, to ensure fair, effective and efficient dealings between parties.

At a minimum, a treaty authority will be responsible for administering the agreed treaty negotiation framework once in place, managing disputes between parties, and undertaking research to support and inform treaty negotiations.

In line with self-determination, it is appropriate that the specific role and functions of the treaty authority is determined by agreement between the Aboriginal Representative Body and the state.

*Treaty negotiation framework*

The second element the Aboriginal Representative Body and state must establish is a treaty negotiation framework.

The treaty negotiation framework will set out the processes for negotiating, formalising, enforcing and reporting on treaty or treaties, and for resolving any disputes along the way. It will also specify the threshold requirements a party must meet in order to enter into treaty negotiations.

While details are to be agreed between the Aboriginal Representative Body and the state, at a minimum the treaty negotiation framework will specify which matters will be unable to be addressed by a treaty or treaties. This could include those matters that are outside the jurisdictional powers of the state of Victoria. In doing so, the treaty negotiation framework will define the scope of a treaty.

The bill is inclusive and does not preclude the participation of clans and family groups in the treaty process. Similarly, it does not preclude the possibility of statewide or geographic specific treaties.

We have a lot of exciting work ahead of us to identify and agree matters including what will be included in a treaty or treaties and who treaties will be negotiated with. Treaties with First Peoples in New Zealand, Canada and the United States deal with matters including acknowledgement and apologies for past wrongs, recognition of Aboriginal sovereignty and self-government, rights to access and/or manage land and resources, health, education and economic development, and rights to enjoy and protect language, culture and heritage.

These matters may be instructive for what a treaty or treaties between Aboriginal Victorians and the state of Victoria may cover. However, the treaty or treaties ultimately negotiated must address the unique aspirations of Aboriginal Victorians, acknowledging the limitations of what the state is legally able to do.

*Self-determination fund*

The third element to support future treaty negotiations specified under the bill is a self-determination fund.

If we are serious about Aboriginal Victorians being our equal partners in the treaty process — which this government is — they must be equipped with adequate resources to act as such.

The purpose of a self-determination fund is to support Aboriginal Victorians to participate in the treaty process on an equal footing with the state, and to provide an independent resource base that supports Aboriginal Victorians to freely pursue self-determination and be empowered to build capacity, wealth and prosperity.

The self-determination fund responds to growing local and international evidence that better social and economic outcomes are achieved when Aboriginal people are able to exercise their right to self-determination. It also acknowledges that Aboriginal Victorians hold the knowledge and expertise to make the best decisions for themselves, their families and their communities.

Once the fund is established, the Aboriginal Representative Body will be responsible for managing and administering the fund consistent with its purposes. The self-determination fund will be critical to enabling Aboriginal Victorians to realise self-determination and creating a level playing field in the treaty process.

**Dispute resolution**

The bill requires the Aboriginal Representative Body and the state to enter into an agreement that sets out a process for resolving disputes that may arise when working together to establish the elements to support future treaty negotiations.

This process agreed to must be culturally appropriate and time bound.

This dispute resolution provision recognises that working together in this new way will not always be easy, but we are committed to working through our differences to reach our ultimate goal of achieving a treaty or treaties.

**Reporting**

Finally, the bill commits the responsible minister and Aboriginal Representative Body to report to Parliament annually on progress towards treaty. This reporting mechanism will provide transparency and accountability to Aboriginal Victorians, indeed all Victorians, on the state's and Aboriginal Representative Body's commitment and efforts to progress treaty.

Closing remarks

Aboriginal Victorians have told us that treaty is a critical component of self-determination and reconciliation. How we get there — the pathway we choose to take together towards treaty — is just as important as achieving a treaty or treaties.

We are still at the very beginning of that pathway to treaty. This bill sets out this government's genuine commitment to advancing the treaty process in partnership with Aboriginal Victorians, and doing so in a way that supports self-determination and reconciliation.

I commend the bill to the house.

**Debate adjourned for Ms CROZIER (Southern Metropolitan) on motion of Mr Ondarchie.**

**Debate adjourned until Friday, 15 June.**

# EDUCATION LEGISLATION AMENDMENT (VICTORIAN INSTITUTE OF TEACHING, TAFE AND OTHER MATTERS) BILL 2018

*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 Education Legislation Amendment (Victorian Institute of Teaching, TAFE and Other Matters) Bill 2018.

In my opinion, the Education Legislation Amendment (Victorian Institute of Teaching, TAFE and Other Matters) Bill 2018 (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 *Working with Children Act 2005* (WWCA) assists in protecting children from sexual or physical harm by ensuring that people who work with, or care for, children are subject to a screening process, known as a Working with Children Check (WWCC). Teachers who are registered by the Victorian Institute of Teaching (the VIT) are exempt from this screening process because the VIT undertakes a similar, but not identical, screening process under Part 2.6 of the *Education and Training Reform Act 2006* (the Act).

The amendments in the Bill will improve the alignment between the VIT teacher registration scheme with the Working with Children scheme (WWC scheme), by requiring the VIT to treat charges and convictions for serious offences in the same way as the Working with Children Check Unit (WWCC Unit). In addition, the changes will allow the VIT to assess the risk of harm to the child, including sexual or physical abuse, using similar considerations as the WWCC Unit. As a result, the Bill will protect and promote the rights of children by reducing the risk of children being exposed to harm.

The amendments in the Bill will also improve information sharing arrangements between the VIT, other regulators, and the people they regulate. These changes will protect children from harm by reducing the 'notification gap'. The notification gap exists because registered teachers are exempted from obtaining a WWCC meaning neither the WWCC Unit nor the VIT know when and where registered teachers undertake child related work outside a school or early childhood service. This means that if the VIT suspends or cancels a teacher's registration they are unable to notify these organisations. Since the teacher is also exempt from the screening process under the WWCA the WWCC Unit may not know of these organisations either. The most effective way to close the 'notification gap' is to improve the sharing of information between teachers, the VIT, the WWCC Unit and other organisations so that children are not left vulnerable and exposed to potentially dangerous people.

**Human rights issues**

Protection of families and children (section 17(2))

Section 17(1) of the Charter recognises that families are the fundamental group unit of society and are entitled to be protected by society and by the state. Section 17(2) of the Charter provides that every child has the right, without discrimination, to such protection as is in their best interests and is needed by them by reason of being a child. The Bill amends the Education and Training Reform Act 2006 (the Act) to align the VIT teacher registration scheme with the WWC scheme.

The alignment means the category of the most serious offences that the VIT considers will capture a wider range of criminal offences (not only sexual offences). This will ensure the continuing protection of children and families since convictions for such offences, and charges laid on a person relating to the most serious of these offences, will be appropriately taken into account by the VIT when it assesses a person's suitability for registration as a teacher in Victoria.

In addition, clause 46 of the Bill will require the VIT, when performing its regulatory functions under the Act, to consider the safety and wellbeing of children at all times, taking into account community expectations. This is a new function for the VIT and is intended to ensure that the VIT takes into account the safety and wellbeing of children in its registration and disciplinary decision making.

In my opinion the Bill promotes the rights under section 17 of the Charter by improving the protections afforded to children, including by prohibiting individuals who are assessed by the VIT as posing an unjustifiable risk to the safety of children from being permitted to teach them in Victoria's schools or early childhood services. The changes to the Working with Children Scheme to improve information sharing between teachers, the VIT, the WWCC Unit and other organisations also improve the protections afforded to children.

Right to privacy and reputation (section 13(1))

Section 13(a) and (b) of the Charter provide, amongst other things, that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with and to not have his or her reputation unlawfully attacked. The amendments concerning teacher registration and information sharing between the VIT, the Suitability Panel and the WWCC Unit will engage a teacher's rights to privacy and reputation.

Clause 18 of the Bill will require the VIT to share information received from a registered teacher or an applicant for registration under Part 2.6 of the Act with the WWCC Unit. In addition, clause 64 amends the confidentiality provision under the WWCA to enable the WWCC Unit to share information with the VIT for the purposes of the VIT carrying out its functions. Clauses 66 and 67 amend the Children, Youth and Families Act 2005 to require the Suitability Panel

to share particular information about a person it regulates with the VIT, in the same way that it shares information with the WWCC Unit.

In my opinion, the VIT needs access to information about relevant criminal and disciplinary history to ensure that the people who want to teach children and engage in other child related work have their past conduct comprehensively assessed by the regulator. Where the VIT grants a teacher registration, this suggests that the person does not pose an unjustifiable risk to the safety of children.

It is my opinion that enabling relevant personal information to be shared with, and between, government regulators to ensure that suitable adults work with children, and that children are protected from harm, is a reasonable limitation on the right to privacy. Any potential interference with a person's privacy or reputation that arises from the gathering, assessment and sharing of personal information will neither be unlawful nor (in respect of the privacy right) arbitrary and will be limited to the lawful disclosure and use of particular and relevant information for specific regulatory purposes. The amendments are reasonable (and not arbitrary) and they are necessary for the effective operation of the WWC scheme and the VIT registration scheme to protect children from unjustifiable risk of harm.

Right to a fair hearing (section 24(1)), right to be presumed innocent (section 25(1)), and right not to be tried or punished more than once (section 26(1))

Clauses 6, 7, 8, 9, 10, 12 and 19 of the Bill require that the VIT refuse registration (including renewal of registration) or permission to teach, or suspend an existing registration under Part 2.6 of the Act, if the teacher is charged with, or convicted of, a Category A offence, or is issued with an interim negative notice or a negative notice under the WWCA. Clause 22 of the Bill also requires that VIT to cancel or refuse to grant any existing registration under Part 2.6 if the person has been convicted or found guilty of a Category A offence or given a negative notice under the WWCA. Clause 31 provides that the VIT's decisions to refuse to grant registration under Part 2.6 because of a conviction for a Category A offence or a negative notice under the WWCA are not reviewable by the Victorian Civil and Administrative Tribunal (VCAT).

These amendments are relevant to the rights to a fair hearing and due process under the Charter for a person charged with a criminal offence. The regulatory action required of the VIT as a result of a charge or conviction of a Category A offence does not affect the person's criminal process rights under sections 25 and 26 of the Charter. The criminal charge will be heard and determined by an independent and impartial court or tribunal in the normal way. The VIT's obligation to refuse, suspend, or cancel a registration due to a Category A offence charge or conviction must accord with the procedural fairness requirements in the Act (as amended) — this upholds the person's right to a fair hearing under section 24 of the Charter.

Clauses 7, 9 and 12 of the Bill provide that if a person is charged with, convicted of or found guilty of a Category B offence, there is a rebuttable presumption against that person being registered under Part 2.6 of the Act unless the VIT forms the view that they do not pose an unjustifiable risk to children. Before a decision is made by the VIT, the person will be afforded procedural fairness and has the right to make submissions to the VIT about why their registration should be granted or remain in force. If the VIT decides to cancel or refuse registration, this decision is reviewable by the VCAT.

In addition, clauses 7 and 9 of the Bill provides that if a person is found to have engaged in Category C conduct (which includes a 'non-conviction charge' as defined in clause 4), the VIT may refuse or revoke registration under Part 2.6 if it forms the view that the conduct concerned makes the person not suitable to teach and it is not in the public interest for the registration to be granted or continue. Before a decision is made, the person will be afforded procedural fairness allowing them to make submissions on why their registration should remain in effect or why registration should be approved. If a decision is made to cancel or refuse registration, this decision is also reviewable by the VCAT.

The provisions that regulate Category A offences and Category B offences do not limit the rights set out in section 24 of the Charter (fair hearing), section 25(1) (presumption of innocence) or section 26 (right not to be tried or punished more than once), as they do not compel criminal proceedings or impose penalties for a criminal offence. The purpose of preventing a person from being registered as a teacher of children is to not penalise that person, but to assist in protecting children from sexual or physical harm in situations where the criminal history of a person poses an unjustifiable risk to the safety of children. The person's right to a fair criminal trial is not infringed as they can still have the charge heard by a court, and if acquitted of the offence they may apply for registration as a teacher (which the VIT may grant in its general discretion). The limitation of the right to seek VCAT review in respect of the VIT's refusal to register a person who has been convicted of a Category A offence only affects an adult who has committed a most serious offence where a child is involved. Given the protective purpose of this legislative scheme it is my opinion that the limitation of the hearing right is reasonable. A person can still seek judicial review if the VIT makes a jurisdictional error concerning either the person's identity or the particular categorisation of the offence with which they have been charged or convicted.

In respect Category C conduct, there is a legislative presumption in favour of the person being granted, or retaining, a registration under Part 2.6 of the Act. Registration is able to be granted unless the VIT is satisfied that the person's conduct makes them unsuitable to teach and registration would be contrary to the public interest. A person who is refused registration on account of their non-conviction charge (or any other Category C conduct) has the right to seek review of the VIT's decision through VCAT, therefore protecting their rights under section 24, 25(1) and 26 of the Charter.

The Bill limits the consideration of non-conviction charges to only the most serious offences, which is a reasonable limitation on the presumption of innocence. It is my opinion that the inclusion of non-conviction charges as a kind of Category C conduct enhance the protective purposes of the Act, the consideration of which requires the VIT to consider the safety and wellbeing of children when discharging its regulatory functions. The measures are clearly protective rather than punitive, which is compatible with the Charter.

Property rights (section 20)

Section 20 of the Charter provides that a person must not be deprived of his or her property other than in accordance with

law. Property extends to formal rights in relation to property such as licences and, in this case, teacher registrations. Registration as a teacher requires a person to meet, and maintain, certain legal requirements as a condition of the registration. The property inherent in a registration or permit to teach children originates from the government. A teacher cannot transfer or sell their registration and therefore do not "own" the registration. It is up to the government to set out reasonable conditions to be satisfied for a person to be granted and maintain the registration. All teacher registration actions taken by the VIT must be in accordance with the Act.

In my opinion the Bill does not restrict or limit the right not to be deprived of property other than in accordance with the law.

The Hon. Gayle Tierney, MP
Minister for Training and Skills

*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) (09:43) — I move:

That the bill be now read a second time.

**Incorporated speech as follows:**

The protection, safety and wellbeing of our children and young people is of paramount importance to this Government and to the people of Victoria.

In its final report on Working with Children Checks (handed down in June 2015) the McClellan Royal Commission into Institutional Responses to Child Sexual Abuse emphasised the need for consistent minimum standards for screening people working with children, and to achieve such consistency, called for a national model for Working with Children Checks.

I would like to quote from the Executive Summary of the Report of the McClellan Royal Commission:

> *"Valuing children and their rights is the foundation of all child safe institutions. Improving child safe approaches in institutions will reduce the risk of sexual abuse. The best interests of children must be the primary consideration."*

The Victorian Government remains committed to addressing the issues raised by the McClellan Royal Commission.

A key purpose of this Bill is to better align the Victorian Institute of Teaching (VIT) registration scheme with the Working with Children Check scheme to ensure the continued safety and wellbeing of children. The amendments in Part 2 of the Bill, and related amendments in Part 5, achieve this outcome.

Victoria's Working with Children Check scheme commenced in 2006, three years after the VIT began regulating Victoria's teachers. The VIT assesses a person's suitability to teach using a test that includes the assessment of a person's safety to work with children, in addition to considering the qualifications and characteristics related to the role of a teacher. Both the Working with Children Check and the VIT registration schemes rely on national criminal history checking and other disciplinary information to ensure that persons working with children are subject to a rigorous screening and risk assessment process. This ensures that those persons assessed as posing a risk to children are prevented from working with them.

With registered teachers already being regulated by the VIT when the Working with Children Check scheme commenced, the Working with Children Act 2005 provided that registered teachers would be exempt from a Working with Children Check for all child-related work, including non-teaching work. The exemption applies to both paid and volunteer activities, such as with sporting and recreational clubs, youth groups and tutoring organisations.

The McClellan Royal Commission's final report on Working with Children Checks provided an opportunity for the Victorian Government to consider the VIT registration scheme and the Working with Children Check scheme, with the objective of ensuring that the two schemes are as closely aligned as possible in relation to the screening of a person's suitability to work with children.

At the same time, the Victorian Government considered the Working with Children Check teacher exemption, to ensure that the operation of the exemption did not compromise the safety of children.

I will firstly address the Working with Children Check teacher exemption and will then turn to the better alignment of the VIT and Working with Children Check schemes.

Currently, it is an offence under the Working with Children Act 2005 for a registered teacher to not notify the Working with Children Check Unit if their registration has been suspended or cancelled by the VIT. Whilst it is also an offence for a teacher who has had their registration suspended or cancelled to continue working in these circumstances, without obtaining a Working with Children Check, there is a risk that such a person may continue to engage in child-related work outside of a school or early childhood service.

Such an undesirable circumstance could occur because registered teachers are currently not required to notify either the VIT or the Department of Justice and Regulation of the details of the organisations they engage in child-related work outside of their school or early childhood service. Therefore, neither the VIT nor the Department of Justice and Regulation is able to notify the other organisations employing or engaging the teacher. This has been identified as a "notification gap" — as the other organisations employing or engaging the teacher will not know if that teacher's registration has been cancelled or suspended and that the teacher is no longer exempt from obtaining a Working with Children Check.

This Bill seeks to close this "notification gap" by requiring registered teachers to advise the Department of Justice and Regulation of the details of any organisations (other than schools or early childhood services) where they are engaged in child-related work. The Department of Justice and Regulation will maintain a record of registered teachers who are engaging in child-related work outside a school or early

childhood service — for example, volunteer work at a cultural or sporting organisation.

To encourage compliance, new penalties will be introduced if a registered teacher fails to notify the VIT or the Department of Justice and Regulation (as the case requires) of changes regarding the employer or organisation for whom they work with children, or other changes that they are required to notify — such as changes to their name or correspondence address.

As the VIT already notifies the Department of Justice and Regulation of a cancellation or suspension of a teacher's registration, this Bill will enable the Department of Justice and Regulation to then notify any organisations which the teacher is engaging in child-related work outside of the school or early childhood service.

If the teacher whose registration has been suspended or cancelled wishes to continue to engage in child-related work at these other organisations, they will be required to apply for a Working with Children Check. The Department of Justice and Regulation will then conduct an assessment on this application to ensure that the person does not pose an unjustifiable risk to the safety of children. Suspension or cancellation of registration may occur for reasons other than the teacher's suitability to work with children, so there may be cases where a teacher whose registration has been cancelled will be granted a Working with Children Check. However, any registered teacher who is given a negative notice under the Working with Children Act 2005 will automatically have their VIT registration cancelled.

The closing of the "notification gap" that is sought to be achieved by this Bill makes it reasonable and feasible to retain the current teacher exemption, and avoids the duplication of criminal history checking and the administrative and cost burden that would be imposed on teachers if they were required by law to obtain both a VIT registration and a Working with Children Check.

Information sharing arrangements between the VIT and the Department of Justice and Regulation are already in place and will be enhanced by this Bill, providing improved safeguards designed to ensure that a registered teacher who is not suitable to work with children will be prevented from doing so in any organisation.

This Bill will better align the VIT registration and Working with Children Check schemes by ensuring that serious offences and disciplinary findings are dealt with in a similar way under both schemes, to the greatest extent possible.

The Working with Children Act 2005 categorises offences and disciplinary findings based on the seriousness of the offending or behaviour:

Category A covers the most serious offences and results in an automatic negative notice; and

Category B covers serious offences resulting in a negative notice, unless the person does not pose an unjustifiable risk to children; and

Category C covers less serious offences and some disciplinary findings that do not preclude the issuing of a Working with Children Check, unless it poses an unjustifiable risk to the safety of children.

To improve consistency between the schemes, the Bill will enable the VIT to treat serious criminal charges and offences committed by teachers, or applicants for teacher registration, in the same way as under the Working with Children Act 2005. On this basis,

a Category A offence will result in the VIT automatically refusing or cancelling registration;

a Category B offence will result in the VIT refusing or cancelling registration unless the VIT is satisfied that the person does not pose an unjustifiable risk to children; and

Category C conduct may result in the VIT refusing to grant registration, if the VIT is satisfied that this conduct makes the person unsuitable to be a teacher and it would not be in the public interest to register them.

To further strengthen the alignment between the schemes, the *Children, Youth and Families Act 2005* will be amended so that the Suitability Panel will be required to notify the VIT in the same way that it currently notifies the Department of Justice and Regulation of out-of-home-carer disqualification decisions. The VIT can take these Suitability Panel findings and determinations into account when considering a person's suitability for registration as a teacher.

In addition to the changes to align the Working with Children and VIT registration schemes, the Bill will amend the VIT's statutory functions. The Bill will require the VIT to consider the safety and wellbeing of children taking into account community expectations, when performing its regulatory functions. The amendment has been prompted by a recent review commissioned by the Government into the governance and decision-making of the VIT, following a series of decisions to not sanction or deregister a teacher whose conduct involving a child clearly fell below community expectations. Requiring such consideration when the VIT is determining a person's suitability to teach is especially important where allegations or findings have been made that their conduct involving a child is improper or unlawful (including criminal).

I return to the Preface of the Report of the McClellan Royal Commission, which stated:

*"The sexual abuse of children has occurred in almost every type of institution where children reside or attend for educational, recreational, sporting, religious or cultural activities …. It is the responsibility of our entire community to acknowledge that children are vulnerable to abuse. We must each resolve that we will do what we can to protect them."*

The recent amendments to the Working with Children scheme, the introduction of the Reportable Conduct Scheme and the Child Safe Standards and information sharing reforms flowing from the Family Violence Royal Commission, demonstrates the Government's commitment to improving regulatory oversight — through better screening and information sharing — with the objective of protecting children from harm. The reforms in this Bill represent another step on the path to improving our systems and increasing cooperation between regulatory authorities to ensure that our children are protected from harm.

**Allowing a TAFE institute to take over an adult education institution**

Part 3 of the Bill amends the *Education and Training Reform Act 2006* to enable a TAFE institute to take over an adult education institution and assume its functions and powers. To ensure that the TAFE can continue the adult education institution's operations, the Bill provides for the TAFE institute to be the successor in law to the rights, obligations and assets of the adult education institution.

The merger must be requested by the adult education institution and TAFE institute and the Minister for Training and Skills must recommend that the Governor in Council complete the merger by making an Order to that effect.

There are currently two adult education institutions operating in Victoria — the Centre for Adult Education (the CAE) and Australian Multicultural Education Services (AMES).

The CAE currently operates as part of the Box Hill Group which includes the Box Hill institute. The Board of the Box Hill institute also serves as the board of the CAE. Similarly, the CAE and Box Hill Institute share common management. For all practical purposes, they operate as one entity, and they have requested to legally formalise and consolidate this arrangement. The amendments in this Bill will enable this formal merger to occur.

Doing so will reduce the regulatory burden on the Box Hill Group. While the Box Hill institute and the CAE continue to operate as separate legal entities, they continue to be subject to unnecessary regulatory burdens such as duplicative reporting. These burdens will be reduced after an Order to merge the Box Hill Institute and the CAE is made, which is this Government's intention. This will enable the governing board to manage the Box Hill Institute's operations more efficiently and effectively.

The Bill, however, specifically excludes AMES from the framework that enables a TAFE institute to take over an adult education institution. AMES is specifically excluded because it has special functions under the Act to provide services to recently arrived migrants, refugees and humanitarian entrants.

**Annual meetings for TAFE Institutes and adult education institutions**

Amendments in Part 4 of this Bill remove the requirement for TAFEs and adult education institutions to hold an annual meeting. These meetings were intended to serve a similar function to an annual general meeting of a corporation and provide a forum for TAFEs and adult education institutions to disclose their financial statements and reports of operations in a manner that allows for community engagement.

TAFE institutes have collectively advised that such meetings are not well attended and they present unnecessary costs and logistical difficulties to the institutes. It is common for public meetings to not have a single member of the public attend.

The removal of the requirement to hold an annual meeting will not reduce the public accountability of the TAFEs and adult education institutions. There are other existing mechanisms that achieve the purpose of these meetings that are provided for under the Financial Management Act 1994, Ministerial Directions and Annual Reports. Nonetheless, the amendments will not preclude TAFE institutes from continuing to hold annual meetings if they choose to do so.

**Complaint handling function for the Victorian Registration and Qualifications Authority**

In addition, amendments in Part 4 of the Bill will expand the function of the Victorian Registration and Qualifications Authority to investigate complaints from the public about the compliance of a provider that is registered or approved by the VRQA with the requirements of their registration or approval. This includes a registered school, a registered training organisation and other approved providers of education and training. The amendments also confirm the Authority's complaint handling function in respect of the conduct of its authorised officers who undertake compliance and enforcement activities for the Authority.

**Other amendments to the Education and Training Reform Act and other Acts**

The Bill also includes other minor and technical amendments to the *Education and Training Reform Act 2006* to exempt the publication of Ministerial Orders that contain personal information about a child; to shift the power to remove an acting member of the VIT Council from the Chairperson to the Minister; to update the complicity offences in Part 5.8 of that Act for consistency with the *Crimes Act 1958*, and to repeal redundant provisions from the *Education and Training Reform Act 2006* and the *Public Administration Act 2004* about the corporate boards of TAFE institutes and adult education institutions.

**Amendments to the University Acts**

Part 6 of the Bill will amend provisions in all eight of Victoria's University Acts relating to the duration and end dates of University Council appointments.

Currently all University Council members' terms must expire on 31 December. This causes unnecessary difficulties for universities, with appointments required to be made outside of the academic year. The Bill will remove this requirement and allow the University Council and the Government to determine the end date for their respective Council member appointees, not exceeding a period of more than 3 years.

The Bill will also amend all the University Acts to allow the University Council and the Government flexibility in filling vacancies as they arise without the existing restriction that such vacancies are filled by appointees for the duration of the resigning member's term.

I commend the Bill to the house.

**Debate adjourned for Mrs PEULICH (South Eastern Metropolitan) on motion of Mr Ondarchie.**

**Debate adjourned until Friday, 15 June.**

# JUSTICE LEGISLATION AMENDMENT (TERRORISM) BILL 2018

*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.**

**Mr JENNINGS** (Special Minister of State) (09:44) — I draw to the attention of the house that the bill passed the Assembly with amendments which fix numbering errors in the commencement provisions and flowcharts.

*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 Justice Legislation Amendment (Terrorism) Bill 2018.

In my opinion, the Justice Legislation Amendment (Terrorism) Bill 2018, 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 Justice Legislation Amendment (Terrorism) Bill 2018 (the **Bill**) implements a number of the recommendations of the Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers (**Expert Panel**). In its first report the Expert Panel made recommendations to amend Victoria's laws with "the ultimate objective of making our community safer by maximising the ability of our law enforcement and other agencies to prevent and respond to the changing and dynamic nature of terrorism and violent extremism". The Expert Panel was mindful that excessive and repressive measures could be counter-productive, undermining unity and social cohesion, and accordingly it was careful to ensure that its recommendations were measured and proportionate, and included appropriate safeguards and limitations.

As recommended by the Expert Panel, the Bill amends the *Terrorism (Community Protection) Act 2003* (the **Act**) and other key Acts to:

- provide new powers and obligations for police relating to the detention of persons for the prevention of terrorist acts under a police detention decision (**PDD**);
- amend the provisions for granting a preventative detention order (**PDO**) and authorising the use of special police powers;
- allow for questioning and gathering of identification material of detainees who are subject to a PDO or detained under a PDD;
- extend the PDO scheme to children aged 14 and 15;
- provide stronger protection for counter-terrorism intelligence;
- amend certain aspects of Victoria's bail and parole schemes in relation to relevant offenders; and
- extend and expand the special police powers to protect persons attending events from a terrorist act; and prevent or reduce the impact of a terrorist act; and
- amend section 462A of the *Crimes Act 1958* to provide an instructive example of the ability of an officer to use force in certain circumstances.

**Amendment of the Terrorism (Community Protection) Act 2003**

The Expert Panel considered that significant changes should be made to Victoria's preventative detention laws that are contained in the Act. It was persuaded that this stronger approach is necessary and appropriate having regard to factors including:

- the unquestionably grave nature of the threat to community safety posed by terrorism and violent extremism, outlined by the Panel in its report;
- the need for police to be able to respond quickly and effectively to threats that may emerge with little or no warning, and about which they may know very little;
- the fact that a person in detention may be key to police progressing their investigation;
- the complex nature of terrorism-related investigations and the need for police to collect and analyse large amounts of data and information to substantiate charges; and
- the time required for police to prepare a PDO application.

The Expert Panel also noted the importance of national uniformity, to avoid the risk of creating "safe havens" for terrorist activities and to maximise the operational effectiveness of law enforcement authorities working across state borders. National uniformity is of particular significance in relation to the threshold criteria for activating powers to detain and question a person, the minimum age beyond which detention will not be permitted, the maximum period of detention, and the protection of criminal intelligence. The Bill carries out our commitment to strengthen pre-charge detention laws by allowing investigative detention, which is provided for in New South Wales legislation, and to work towards national uniformity in preventative detention powers.

In light of these considerations the Expert Panel recommended that Victoria's preventative detention scheme be amended to:

- empower an authorised police officer to take a person into custody for a maximum interim period of detention

of 4 days without the requirement to first obtain an order from the Supreme Court;

empower police to question a person detained under that scheme; and

include an appropriate mechanism for the protection of sensitive criminal intelligence.

The Bill implements these recommendations.

**Preventative Police Detention**

Clause 9 of the Bill inserts a new Part 2AA into the Act to create a new scheme for preventative police detention of adults and children 14 years and older. New section 13AC empowers an authorised police officer to make a PDD in relation to a person, which authorises any police officer to take the person into custody for a period not exceeding the maximum police detention period of 4 days for adults (and 36 hours for children). New section 13AD requires a child to be detained at a youth justice facility unless it is reasonably necessary for the child to be detained in another place. Police detention decisions may be made by authorised police officers appointed by the Chief Commissioner of Police.

The purpose of preventative police detention is set out in new section 13AA. The Bill authorises detention to prevent a terrorist act that is capable of being carried out, and could occur, within the next 14 days, or to preserve evidence of or relating to a recent terrorist act. Detention will be authorised under new section 13AC when there are reasonable grounds to suspect: that the person either will engage in a terrorist attack, or; possesses or controls something that is connected with a terrorist act, or; has done something to prepare or plan a terrorist act. The decision to detain a person must substantially assist in preventing a terrorist act occurring, and detention must be reasonably necessary for this purpose. Detention will also be authorised under section 13AC where the authorised police officer is satisfied that a terrorist attack has occurred within the last 28 days, it is necessary to detain the person to preserve evidence of, or relating to, the terrorist attack and detention is reasonably necessary for that purpose.

*Right to liberty and security of the person (s 21)*

Section 21(1) of the Charter protects a person's right to liberty and security. This general protection of a person's right to liberty is supplemented by sub-sections that give specific content to the liberty right. In particular,

section 21(2) provides that a person must not be subject to arbitrary arrest or detention;

section 21(3) requires that a person must not be deprived of liberty except on grounds, and in accordance with procedures, established by law;

section 21(4) requires that a person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention; and

section 21(7) requires that any person deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of his or her detention.

The new preventative police detention scheme engages the right to liberty protected in section 21 by giving police new powers of detention. In my opinion, new Part 2AA limits the liberty rights protected in section 21 only to the extent necessary, and those limits are reasonable and demonstrably justified. Detention of a person under Part 2AA can only occur in circumstances where police consider it to be reasonably necessary to prevent a terrorist act occurring or to preserve evidence of a terrorist attack. This limit on the right to liberty in section 21 is proportionate to the grave threat posed to community safety by terrorism and violent extremism.

In my opinion new Part 2AA does not unreasonably limit the rights to liberty in sections 21(1) and 21(2) of the Charter. There are a number of features of the new Part 2AA that lead me this conclusion.

The first is that the Bill sets out identifiable criteria for the exercise of the powers of detention in Division 1 of new Part 2AA. There is therefore a rational connection between the detention and the purpose to be achieved.

The new Part 2AA establishes *maximum* periods of preventative police detention for adults and children. The period of preventative detention will be no longer than the period necessary to achieve the purpose of preventative police detention. The new section 13AZZG(2) requires a person in preventative police detention to be released prior to the expiry of the four days if the police officer detaining the person or the nominated senior police officer is satisfied that the grounds on which the police detention decision were made have ceased to exist. This is an important safeguard and protection of a person's right not to be subject to arbitrary detention.

The Expert Panel determined that the maximum period of detention for adults should be 4 days, in light of the matters referred to in the First Report, including the gravity of the threat of terrorism and the benefits of having consistent laws between states to ensure efficiency of law enforcement responses to cross-border terrorist activity. The maximum detention period of adults of 4 days is accordingly adopted in line with the New South Wales model.

In respect of the maximum period of time that a child can be detained in preventative police detention, the Bill sets the maximum time as 36 hours. This is a significantly shorter maximum time than that provided for adults detained under the new scheme. Clause 11(2) of the Bill requires that an application for a PDO in respect of a child be made as soon as practicable but no later than 36 hours after the child is taken into custody. This requirement emphasises the need to bring a child before a court as soon as possible and ensures that 36 hours is the outer limit for which a child may remain in custody under preventative police detention. The maximum length of detention of a child under Part 2AA is reasonable and demonstrably justified having regard to the reasons identified above in respect to detention of adults.

The Bill recognises the particular vulnerability of children and contains important safeguards to protect children who are detained in preventative police detention, which I discuss below in relation to section 17(2) of the Charter.

There is an extensive oversight framework in the Bill to ensure that detention does not become arbitrary.

When a person is detained in preventative police detention, the Chief Commissioner of Police will have legal custody of

that person and will nominate a senior police officer to perform an oversight role in relation to the detention. The nominated senior police officer will be responsible for periodic reviews of the detention that will be undertaken when a person is taken into custody and at least every 12 hours after that time.

The Bill also establishes an active role for the Public Interest Monitor (**PIM**) in respect of a person detained in preventative police detention. The PIM has a role in overseeing a PDD from the outset, and continuing during detention, as, under new section 4G, an authorised police officer is required to notify the PIM of the making of a police detention decision as soon as practicable after the decision is made.

At any time during detention, a person may contact either the Ombudsman or the Independent Broad-based Anti-corruption Commission (**IBAC**). In addition, police must advise the Victorian Inspectorate of a police detention decision.

These are important safeguards that ensure that there is proportionality between preventative police detention and the need to protect community safety from threats posed by terrorism and violent extremism.

A deprivation of liberty under the new Part 2AA would not limit the right in section 21(3) because it will take place on grounds and in accordance with procedures established by law. The circumstances in which someone may be detained are clearly set out in new Part 2AA and involve a police officer being satisfied that reasonable grounds exist for the detention. New section 13AC of the Bill requires preventative police detention to be reasonably necessary to achieve a purpose set out in the Bill. Further, new section 13AZZG(2) provides that detention must end if police are satisfied that the grounds for detaining the person have ceased to exist.

The right protected in section 21(4) will also not be limited. After a police detention decision is made, new section 13AK requires a written summary of the grounds on which the police detention decision was made to be given to the person being detained as soon as practicable. This summary is in addition to the requirement in new section 13AI of the Bill for the person taken into custody to be informed they are being taken into custody for the purposes of detention under new Part 2AA.

Some of the liberty rights are not engaged by the Bill. The rights in sections 21(5) and (6) are not engaged because they are rights of a person arrested or detained on a criminal charge. A person detained under the new preventative police detention scheme will not have been arrested or charged at the time of this detention.

Although strictly speaking section 21(5) may not be engaged, in the case of children the right is nonetheless protected in the Bill by clause 11, which will insert a new section 13C(1A) into the Act. The amendment requires a police officer to make an application for a preventative detention order for a child in detention under Part 2AA as soon as practicable, but no later than 36 hours, after the child is taken into custody.

The right to challenge the lawfulness of detention, in section 21(7) of the Charter, is not limited by the Bill. The Bill does not preclude a person who is subject to preventative police detention from bringing legal proceedings in respect of the lawfulness of this form of detention. Section 13AZV ensures that a person detained under Part 2AA will be able to contact a lawyer to obtain advice and seek a remedy about the PDD. While the Bill makes provision for police to monitor contact between a person in detention and their lawyer, any monitoring is carefully circumscribed in new section 13AZY and does not prevent access to a lawyer. If the provisions in the Bill on monitoring contact between a detainee and his or her lawyer limit the right in section 21(7), in my opinion the limitation is reasonable and demonstrably justified for the reasons I discuss in relation to new section 13AZY.

Under new section 13AZY, monitoring contact between a detainee and his or her lawyer will not automatically occur under the Bill. It must be authorised by the senior police officer who has been nominated to oversee the detention, and that officer needs to be satisfied that it is reasonably necessary. The effect of this limitation on monitoring of contact between a detainee and his or her lawyer is that monitoring of communications between them is an exception to the usual position that such contact will not be monitored. If a person is not allowed to contact his or her own lawyer because of the risk involved in them doing so, the police must provide reasonable assistance to assist the person in detention to choose another lawyer.

*Right to humane treatment when deprived of liberty (s 22)*

Section 22(1) provides that all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. In my view, the Bill does not limit the right in section 22(1) of the Charter.

New section 13AY of the Bill promotes this right by requiring a person taken into custody or detained to be treated with humanity and with respect for human dignity and not to be subjected to cruel, inhuman or degrading treatment by anyone exercising authority or implementing or enforcing the police detention decision. The Bill establishes a new criminal offence to treat a person in this way. In addition, police officers are public authorities under the Charter and have a duty under section 38(1) of the Charter to act compatibly with human rights, including the right to humane treatment when deprived of liberty and protection from cruel, inhuman or degrading treatment.

The Bill contains other mechanisms that protect the right in section 22(1) of the Charter, including the requirement for 12 hourly periodic reviews by a senior police officer that are set out in new section 13AZZN. The nominated senior police officer also has an obligation to notify the Ombudsman and the IBAC that a person has been taken into custody for preventative police detention. Further notifications must be made for a child taken into custody.

The Bill provides further protections for a person's right in section 22(1) of the Charter in respect of questioning during preventative police detention.

*Protection of privacy and correspondence from unlawful or arbitrary interference (s 13(a))*

As noted above, new Part 2AA restricts the contact that a person in detention may have with another person, including their lawyer. While a person is in detention, new section 13AZX provides that communications with another person may only take place if they can be 'effectively monitored" by a police officer. Communications with a person's lawyer may also be monitored under section 13AZY

but only if the nominated senior police officer is satisfied that it is reasonably necessary.

In my view, new sections 13AZX and 13ZY do not involve an unlawful or arbitrary interference with privacy. However, if they do, any limitation on the right in section 13(a) is reasonable and demonstrably justified. There is no unlawful interference because the restrictions on communication between a person in detention and other persons is clearly set out in the Bill. In my view, new sections 13AZX and 13AZY are reasonable and proportionate. The purpose of these provisions is to prevent a terrorist act and to preserve evidence of a terrorist act. Monitoring communications in certain circumstances ensures that contact between a person detained and his or her family members and other persons does not interfere with gathering information about a terrorist act, lead to the destruction of evidence, allow for another person to abscond or cause serious harm to others.

*Right to a fair hearing (s 24)*

A person charged with a criminal offence or a party to civil proceedings has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The restrictions on confidential communication between a detainee and other people, including his or her lawyer, most likely engage the fair hearing right. Although a person detained under preventative police detention is not charged with a criminal offence, the person may later be charged or become the subject of an application for a PDO under Pt 2A of the Act. In my view, the fair hearing right is therefore engaged.

The confidentiality of communications between a person and their legal representative is an essential aspect of the right to fair hearing. The restrictions on confidential communication between a detainee and other people including his or her lawyer limit the fair hearing right in section 24(1).

In my opinion, the limitation is reasonable and demonstrably justified. As I have already noted, the purpose of these provisions is to prevent a terrorist act and to preserve evidence of a terrorist act. Monitoring communications ensures that contact between a person detained and his or her family members and other persons does not interfere with gathering information about a terrorist act, lead to the destruction of evidence, allow for another person to abscond or cause serious harm to a person. The Bill prohibits the use of information obtained from monitoring contact between a detainee and his or her lawyer in any proceeding in a court or tribunal. In addition, it prohibits the derivative use of any information that may be obtained during monitoring. The restriction imposed by the Bill is in my opinion proportionate.

*Right against self-incrimination (s 25(2)(k))*

A person has a right not to be compelled to testify against himself or herself. By providing for monitoring of contact between a detainee, the right against self-incrimination may be affected. The Bill prohibits the use of information obtained from monitoring contact between a detainee and his or her lawyer in any proceeding in a court or tribunal. In addition, it prohibits the derivative use of any information that may be obtained during monitoring. These are important protections against the right to self-incrimination being unjustifiably undermined.

*Rights in criminal proceedings (s 25(1))*

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

New section 13AO(4) creates an offence that contains a 'reasonable excuse' exception, which may be seen to place an evidential burden on the accused. New section 13AO requires a person to provide their name and address to a police officer carrying out a PDD under new section 13AH. If the person refuses to provide the information, or provides information that is false in a material particular, the person commits an offence under the Act unless they have a reasonable excuse.

By creating a 'reasonable excuse' exception, new section 13AO(4) may be viewed as placing an evidential burden on the accused, in that it requires the accused to raise evidence of a reasonable excuse. However, in doing so, this offence does not transfer the legal burden of proof. Once the accused has pointed to evidence of a reasonable excuse, which will ordinarily be peculiarly within their knowledge, the burden shifts back to the prosecution to prove the essential elements of the offence. I do not consider that an evidential onus of this kind limits the right to be presumed innocent, and courts in other jurisdictions have taken this approach.

***Restrictions on disclosure of information relating to detention***

Division 11 of New Part 2AA makes it an offence for detainees (new section 13AZZP), lawyers (new section 13AZZQ), parents or guardians of detainees (new sections 13AZZR and 13AZZS), interpreters (new section 13AZZU), recipients of protected information (new section 13AZZV) and people who monitor contact between a detainee and lawyer (new section 13AZZW) from disclosing certain information to another person except for in circumstances permitted by the Bill.

A person cannot disclose the following information:

> the fact that a police detention decision has been made in relation to the detainee;
>
> the fact that the detainee is being detained pursuant to new Part 2AA;
>
> the fact that contact has been prohibited under new Part 2AA;
>
> any information that the detainee gives to the person in the course of contact with the detainee;
>
> in the case of a recipient of protected information, any of the information listed immediately above disclosed to them by any person.

*Freedom of expression (s 15)*

Section 15 of the Charter provides that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, in a medium chosen by the person. By prohibiting the disclosure of certain information, and creating offences if disclosure occurs, Division 11 of new Part 2AA engages section 15.

Section 15(3) creates an internal limitation to the freedom of expression. Subsection (3) notes that special duties and

responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary for the protection of national security, public order, public health or public morality (s 15(3)(b)).

The prohibitions on disclosure of information in the preventative police detention scheme are created to ensure the efficacy of the preventative police detention scheme in responding to and preventing terrorist activity. The purpose of the scheme is significant to the protection of the community and can be reasonably seen to address each of the public interest concerns listed under section 15(3)(b). I note that, even in such extraordinary circumstances as those envisaged by the Bill, provision is nonetheless made for disclosure of information to ensure the detainee's ability to access legal advice and representation, and to ensure the detainee's welfare in having parents and guardians notified of detention under the scheme.

**Children in preventative police detention**

The new Part 2AA applies to children from the age of 14 years. The minimum age for a child to be detained in preventative police detention is justified on the basis of evidence, accepted by the Expert Panel in its second report, of the involvement of children as young as 14 years in the planning, preparation and carrying out of a terrorist act. The reality is that minors, even children as young as 14, can present as a terrorist threat.

*Protection of children in their best interests (s 17(2))*

Section 17(2) of the Charter gives a child a right to protection in his or her best interests.

There are a number of modifications in Part 2AA to take into account the special and vulnerable position of children. These modifications include appropriate safeguards to protect children. Under the Bill, the maximum period of detention for children is much shorter than for adults. Children may be detained for up to 36 hours, as opposed to 4 days for adults. As noted above, under new section 13AD, children will be detained in a youth justice facility unless the authorised police officer is satisfied that it is reasonably necessary for the child to be detained elsewhere. The Bill requires, with limited exceptions, a parent, guardian or independent person to be present during questioning of a child, and allowed to communicate with a child before any questioning takes place. An independent person will be present if a parent or guardian is unavailable (new section 13AZG(2)(a)). Further, a police officer must request Victoria Legal Aid to arrange for a lawyer to be present during questioning where the child or their parent or guardian has not made arrangements for a lawyer (new section 13AZG(3)). If the child refuses legal advice or representation, the lawyer must remain present for questioning as a further independent person. Any questioning of a child must be recorded by audio-visual means (new section 13AZK(2)).

The Commission for Children and Young People (**CCYP**) has an important oversight role for children in the Bill. New section 13AZZM requires the nominated senior police officer to give written notice to the CCYP, when a child is taken into custody under the new Part 2AA. In addition, the Ombudsman and the IBAC must be notified that a child has been taken into custody under the new Part 2AA.

The Bill provides the CCYP with an active monitoring role, in addition to the monitoring role of the PIM. New Part 1B explains that the functions of the CCYP are to monitor and promote the rights of a child detained under Part 2AA or under a PDO, provide advice to the Attorney-General or the Chief Commissioner about the treatment of a child, and other functions as prescribed (new section 4O). The CCYP must be given access to a child that is in detention (new section 4P), must be given access to documents and information relating to a child's treatment while detained under Part 2AA or a PDO (new section 4Q) and the Chief Commissioner and the Secretary to the Department of Justice and Regulation are required to ensure the CCYP is provided with assistance for the reasonable exercise of the CCYP's functions and powers (new section 4R).

It is possible that a child under 14 years of age will be detained in error. If this were to occur, the Bill requires a child under 14 years of age mistakenly detained to be released without delay (new section 13AG).

In my opinion, the Bill does not limit a child's right to be protected in his or her best interests.

*Child's right to be segregated from adults (s 23(1))*

The Bill requires children to be separated from adults in detention. For this reason, the right in section 23(1) is not limited and I consider the Bill is compatible with it.

**Questioning during preventative police detention**

The new Part 2AA provides for questioning during preventative police detention. The questioning provisions are contained in Division 6 of the new Part. Under new section 13AZC police may question a person during the period of preventative police detention in relation to:

> a terrorist act in relation to which the police detention decision was made; or
>
> any other terrorist act that occurred within 28 days before the police detention decision was made, or that there are reasonable grounds to suspect could occur within 14 days after the day on which the police detention decision was made.

*Right to liberty and security of the person (s 21)*

In my view, section 21 of the Charter is not engaged by the questioning provisions in new Part 2AA of the Bill. While the Bill will permit questioning during preventative police detention, it does not permit a person to be detained solely for the purpose of questioning. A person may only be detained under Part 2AA for the purpose of preventing a terrorist act that may occur, or preserving evidence of a terrorist act that has occurred, and if the other criteria in section 13AC exist.

It may, however, be argued that the power to question a person in preventative police detention in the Bill involves a further limit on the detained person's rights to liberty under section 21 of the Charter. If questioning during detention is a further limit on the liberty right, I consider it to be a justified limitation. Preventing and investigating terrorism is clearly a very important purpose, and being able to question a person in detention will assist police to achieve that purpose. The Bill contains important protections for a detainee's rights during questioning. New section 13AZC(2) ensures that the right to silence is retained by the detainee. The Bill also contains

important additional safeguards on questioning in new sections 13AZC(3)–(5), which I consider reasonable under section 22 of the Charter.

*Right to humane treatment when deprived of liberty (s 22)*

The Bill provides safeguards for questioning a person during preventative police detention in section 13AZC. The detainee must have a rest from questioning for a continuous period of 8 hours in any 24 hours of detention, as well as other reasonable breaks during questioning. Questioning is to be deferred to allow for an interpreter to attend, and to enable contact with a lawyer or consular official. Questioning will be recorded by video recording if it is practicable to do so, or if not, an audio recording may be made (new section 13AZK(3)). In my opinion, these safeguards, as well as the general obligation of police as public authorities under the Charter, mean that questioning will be compatible with the right in section 22(1) of the Charter.

**Taking and using identification material**

New section 13AZZD of the Bill allows police to take "identification material" from most detainees, including without consent and with reasonable force, for a purpose set out in the Bill. Identification material is defined in clause 4 of the Bill and includes samples taken from the person's body, as well as photographs of the person.

The Bill does not allow identification material (other than hand prints, finger prints, foot prints or toe prints) to be taken from a child, unless the Children's Court orders that it may be taken. A similar prohibition applies to taking identification material from a person who is incapable of managing his or her affairs. In that case, identification material may only be taken if the Magistrates' Court orders that it may be taken.

*Protection of privacy and correspondence from unlawful or arbitrary interference (s13(a))*

The taking of a sample, as well as the retention of records of sampling obtained, engages the right to privacy in section 13(a) of the Charter.

In my opinion, the provisions of the Bill permitting forensic samples to be taken are compatible with section 13(a) of the Charter because they do not involve an unlawful or arbitrary interference with privacy.

The Bill permits identification material to be taken from a detainee, but in clearly outlined circumstances. Identification material can only be taken if the person consents or if the police believe on reasonable grounds that it is necessary to take the sample to confirm the person's identity, or to document an illness or injury suffered by them during detention. The use to which identification material may be put is limited by new section 13AZZE. The material must be destroyed at the end of a holding period of 12 months, if there are no ongoing proceedings in respect of the preventative police detention decision or the person's treatment in detention. In my opinion, for these reasons the provisions concerning identification material are proportionate to the purposes for which the material can be taken and do not involve an arbitrary interference with privacy.

*Protection of children in their best interests (s 17(2))*

New section 13AZZD permits identification material to be taken from a child, and may engage a child's right to protection in his or her best interests under section 17(2) of the Charter.

In my opinion, because the Magistrates' Court or the Children's Court must authorise identification material to be taken, the power to take identification material from a child in s 13AZZD is compatible with section 17(2).

Further, the circumstances in which identification material may be taken from a child is compatible with section 17(2). New section 13AZZD(6) requires that a child's parent or guardian or appropriate person, acceptable to the child and capable of representing the child's interests, is present when identification material is taken.

**Amendments to PDO framework**

The Bill amends the existing Part 2A of the Act to strengthen the PDO framework, in line with the recommendations of the Expert Panel. The principal amendments to Part 2A made by the Bill are:

removing the prohibition on questioning a person detained under a PDO, currently in section 13ZK of the Act; and

lowering the age of a child who can be subject to a PDO from 16 years to 14 years.

***Removal of prohibition on questioning a person detained under a PDO***

The Act currently provides for detention under a PDO. These orders are made by the Supreme Court of Victoria. The amendments in the Bill remove the current prohibition on questioning during detention under a PDO, but give power to the Supreme Court to prohibit or place limitations on questioning as a condition of a PDO.

*Right to liberty and security of the person (s 21)*

I have already stated my view that the power to question a person detained in preventative detention does not engage the right to liberty in section 21 of the Charter. The Supreme Court may only make a PDO if satisfied of the criteria in section 13E(1)(a) or (b), for the purpose of preventing a terrorist act occurring or preserving evidence of a terrorist act that has occurred.

I note, however, that permitting questioning may be considered to be a further limit on the detained person's rights to liberty under section 21 of the Charter and that if it is, it is a justified limit. The same considerations and conclusions apply to questioning under a preventative detention order. In my view, if the removal of the prohibition on questioning is regarded as a further limit on the right to liberty, the limitation is justified for the same reasons as I identify above in relation to preventative police detention.

*Humane treatment when deprived of liberty (s 22)*

Permitting a person to be questioned while detained on a PDO could interfere with the right in section 22(1) of the Charter.

The Bill contains a range of protections for a person being questioned while detained under a PDO. The duration of the questioning must be reasonable, with at least 8 hours of continuous rest in any 24 hour period, and additional

reasonable breaks from questioning. Questioning is to be deferred to allow for an interpreter to attend, and to enable contact with a lawyer or consular office. Questioning must be recorded in accordance with Subdivision 3 of Division 5A. The Supreme Court may limit or prohibit questioning as a condition of the order if it is satisfied that in all the circumstances it is appropriate to do so.

In my opinion, these safeguards, as well as the obligation of police officers under section 38(1) of the Charter to act compatibly with human rights, will ensure that the amendments in the Bill to permit questioning are compatible with section 22(1) of the Charter.

***Lowering the minimum age from 16 to 14***

Amending the PDO framework to lower the minimum age from 16 to 14 was recommended by the Expert Panel based on evidence of the involvement of children as young as 14 years in the planning, preparation and carrying out of terrorist acts.

*Protection of children in their best interests (s 17(2))*

There are already provisions in Part 2A of the Act to take into account the special and vulnerable position of children. Section 13WA provides for a child subject to a PDO to be detained in a youth justice facility rather than a prison, section 13ZBA requires that a child not be detained together with adults, and there are special contact rules for children under section 13ZH.

The Bill will include further safeguards to protect children detained under a PDO:

a requirement to notify the Commission for Children and Young People of any PDO made in relation to a child, in new section 13F(11);

the addition of the Commission for Children and Young People to the persons who may make representations to the nominated senior police officer in relation to the carrying out of the PDO, in new section 13P(7)(ba);

an entitlement to contact the Commission for Children and Young People, under new section 13ZFA, supplemented by new sections 13X(2)(ga) and 13ZC(2)(c); and

a prohibition on questioning a child unless a parent or guardian or independent person is present and has been allowed to communicate with the child before questioning commences, under new section 13ZNF; and

the requirement for a police officer to request Victoria Legal Aid to arrange for a lawyer to be present during questioning where the child or their parent or guardian has not made arrangements for a lawyer (new section 13ZNF(3)). Where the child refuses the legal assistance of the lawyer arranged by Victoria Legal Aid, that lawyer will be a further independent person present during questioning.

In my opinion, the Bill does not limit a child's right to be protected in his or her best interests.

*Child's right to be segregated from adults (s 23(1))*

The Act already requires children subject to a PDO to be detained separately from adults. The amendment to lower the minimum age to 14 therefore does not limit the right in s 23(1) of the Charter.

**Special police powers**

***Extension of existing special police powers to Protective Services Officers***

Division 3 of Part 2 of the Bill amends Part 3A of the Act to expand the use of existing special police powers to Protective Services Officers (**PSOs**), without supervision by a police officer. Currently, PSOs are able to use special police powers only under the direction and control of a member of the police force following the issuing of an authorisation or interim authorisation by the Chief Commissioner or Governor in Council.

Clause 51 of the Bill includes PSOs in section 21K of the Act so that a PSO may exercise special police powers. The extension of special police powers means that in certain circumstances in which there is a risk of terrorist related acts, and subject to certain criteria, PSOs are able to request proof of a person's identity (and detain the person for as long as is necessary for the purpose of doing so); search a person or a vehicle without a warrant; move a vehicle; enter and search premises; place a cordon around a target area; seize and detain things; and use reasonable force for the purpose of exercising these powers. Schedule 1 of the Act clarifies that a person may only be strip searched in limited circumstances. This is where the person is suspected of being the target of the authorisation, and the strip search is necessary to the search, and the seriousness and urgency of the circumstances require the strip search to be carried out (item 4 of Schedule 1).

These special police powers, made available to PSOs by this Bill, raise a number of Charter rights; in particular, the rights to privacy, freedom of movement, liberty, and property. As discussed in the Statement of Compatibility for the *Terrorism (Community Protection) Amendment Bill 2015*, I consider the special powers to be compatible with each of these rights. In my view, the extension of these existing powers to PSOs does not give rise to any additional Charter issues. PSOs are already entrusted to protect places of significance, public office holders (including the Premier), and to maintain the safety of the Victorian community more generally. It is appropriate that PSOs are further entrusted with special police powers to supplement the role of police officers where authorisation for special police powers has been given pursuant to the strict requirements contained in Division 2, Part 3A of the Act.

The circumstances in which the Chief Commissioner or Governor in Council may issue an authorisation or interim authorisation for the exercise of special police powers are strictly confined and subject to stringent requirements. Specifically:

Section 21D of the Act, as amended by Division 3 of Part 2 of the Bill, provides that the Chief Commissioner may, with the written approval of the Premier (or without such approval if the Premier or a Minister with delegated power is not reasonably able to be contacted), issue an interim authorisation (for 48 hours) in circumstances where the Commissioner is satisfied on

reasonable grounds that a terrorist act is occurring or about to occur and that special police powers will substantially assist in preventing or reducing the harm of that act. The Commissioner may then apply for an order from the Supreme Court authorising the powers for up to 14 days. Section 21E provides for an interim authorisation or authorisation on similar terms in circumstances where the Commissioner is satisfied that the powers will substantially assist in the investigation of, or recovery from, a terrorist act.

Section 21B of the Act provides that the Chief Commissioner may, with the written approval of the Premier, apply to the Supreme Court for an order authorising the exercise of the powers only if the Commissioner is satisfied that: an event is taking place that will attract a large number of people or certain prominent people; might be the subject of a terrorist act (on reasonable grounds); and an authorisation is necessary to assist in protecting persons attending the event from a terrorist act. The application must set out the grounds relied on and specify the particular powers sought. The Supreme Court may then only grant the order if satisfied on reasonable grounds that it is necessary to ensure the safety of persons attending the event. The authorisation is valid for no longer than 24 hours after the conclusion of the event.

Section 21F provides that the Governor in Council may issue an authorisation to protect essential services from a terrorist act. This can only be done on the recommendation of the relevant Minister (who must be satisfied of certain things), made with the approval of the Premier and in accordance with the advice of the Chief Commissioner.

In my view, in circumstances where PSOs form a class of person with similar responsibilities and training to that of police officers, and given the extraordinary nature of the events that would precipitate the issuing of an interim authorisation, or authorisation, the extension of special powers to PSOs is appropriate and does not raise any additional Charter issues.

***Additional special police powers***

In addition to the powers listed above, the Bill introduces new powers which may be used by a police officer or a PSO. Specifically:

New section 21SA provides that where premises are within an area covered by an authorisation, and a police officer or a PSO believes on reasonable grounds that the use of the premises is necessary for the purposes of the authorisation, the officer may evacuate the premises, exclude any person from the premises, remove any person who does not comply with a direction to evacuate or who attempts to enter the premises after being removed, direct any person to remain in the premises and disconnect or shut off utilities or other services to the premises.

The officer must ensure that as little damage is done to the premises as reasonably possible. Where only a part of the building or vehicle is within the target area, an officer is able to exercise the powers listed in respect of any part of the building or vehicle.

New section 21SB provides that where a thing is within a target area and a police officer or PSO reasonably believes that the use of the thing is necessary for the purposes of the authorisation, the officer may take control of the thing, operate the thing in a specified manner, take possession of the thing without warrant and make use of the thing.

The officer must ensure that as little damage is done to the thing as reasonably possible.

New section 21SC requires the Minister to provide compensation for any loss or damage caused by an officer, or a person assisting an officer, in exercising the powers introduced by new sections 21SA and 21SB.

New sections 21SA and 21SB are introduced on the basis of the clear practical benefit of extending existing special powers to allow police officers and PSOs to take control of premises and things for operational reasons related to the purposes of the authorisation as outlined above and in sections 21B, 21D, 21E and 21F of the Act. The ability of officers entrusted with special powers under an authorisation to employ premises and things to their advantage, and to direct people in and out of premises or around the utilisation of things, is crucial to the purposes of the authorisation, and allows police officers and PSOs to reasonably consolidate their ability to respond effectively to a terrorist act or threat. In the absence of this power, the ability of officers to respond effectively may be significantly undermined. For example, currently, police rely on the consent of an owner or occupier of a property for use of relevant premises. In circumstances where consent is refused (for example, to enter and evacuate a neighbouring property), operational objectives may be hindered. The Expert Panel recommended inclusion of the powers in new sections 21SA and 21SB to ensure that police and PSOs are able to operate efficiently with the use of every reasonably available resource.

*Right to privacy (s 13(a))*

Section 13(a) of the Charter provides that a person has the right not have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The very nature of the provisions under new sections 21SA and 21SB is to allow interference with a person's home, premises or possessions and allows such interference without the consent of the person. The right to privacy under the Charter, however, is only limited where an interference is unlawful or arbitrary.

Any interference with privacy will not be unlawful as police officers and PSOs will be exercising powers pursuant to the Act following the issuing of an authorisation or interim authorisation. Nor will any interference be arbitrary. An officer may only employ powers under sections 21SA and 21SB in circumstances where it is necessary for the purposes of the authorisation or interim authorisation. Further, I note that authorisations and interim authorisations are given in very limited, extraordinary circumstances as outlined above. In my view, the powers prescribed under sections 21SA and 21SB are appropriately and sufficiently constrained and subject to proper process. In these circumstances, it is my view that the additional powers contained in new sections 21SA and 21SB do not limit section 13 of the Charter.

*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. As discussed above, to the extent that the powers under new sections 21SA and 21SB allow a police officer or PSO to deprive a person of their property, these powers are conferred by legislation and are enunciated in a clear and precise manner. Police officers and PSOs may only deprive a person of their property where there is a reasonable belief that the use of the thing is necessary to the purposes of the authorisation or interim authorisation.

In my view, as the ability of police and PSOs to seize and use property is defined and limited by law, and within the bounds of the purposes of a particular authorisation or interim authorisation, the right is not limited by the additional special police powers.

*Rights to freedom of movement (s 12) and liberty (s 21)*

The additional police powers in new section 21SA allow a police officer or PSO to remove a person from the premises, to direct any person to remain in the premises or to operate machinery or equipment at the premises. Under new section 21SB, an officer may direct an owner of a thing to operate the thing in a specified manner. An officer is permitted to use reasonable force to enforce these powers.

Section 12 of the Charter provides that every person in Victoria has the right to move freely within Victoria. The powers of officers to direct and restrict movement of persons in the circumstances outlined above may limit a person's rights under section 12 of the Charter. However, in my view any such limitation is reasonably justified under section 7(2) of the Charter and therefore compatible. The seriousness and urgency of the objective of mitigating and preventing the risk of terrorist acts, and the existence of the embedded safeguards, judicial oversight and constrained authorisation processes as outlined above, mean that the powers under sections 21SA and 21SB are proportionate. This is particularly so when it is considered that police powers are to be used in extremely constrained circumstances and limited by the purposes of the authorisation or interim authorisation that enlivens them, and the time period for which the authorisation or interim authorisation is given.

For the same reasons, to the extent that the restrictions on movement (in particular, a requirement to stay on a premises) may amount to detention in some circumstances may also be relevant to section 21 of the Charter, which provides that all persons have the right to liberty and security of the person (including the right to not be arbitrarily detained), in my view, any such detention will not be arbitrary and therefore compatible with the Charter.

**Protection of counter-terrorism intelligence**

The Bill amends Part 5 of the Act to create a new scheme for the protection of counter-terrorism intelligence. Currently Part 5 of the Act provides for the protection of counter-terrorism intelligence by allowing a court to:

> Excuse a person from disclosing counter-terrorism information in legal proceedings in certain circumstances (s 23); and
>
> Inspect a document for the purpose of making a determination in relation to disclosure of the information (s 24).

The court may make a determination to excuse the disclosure of counter-terrorism intelligence in the circumstances outlined in section 23(1) of the Act:

> Where the disclosure would prejudice the prevention, investigation or prosecution of a terrorist act or suspected terrorist act; and
>
> The public interest in preserving secrecy or confidentiality outweighs the public interest in disclosure.

Currently, the Act does not allow the court to take action in applications made under the Act in relation to PDOs and PCOs where the respondent has not been provided with evidence related to that application. A key concern raised in relation to the current protection framework for counter-terrorism intelligence is that the framework discourages law enforcement agencies from producing pertinent information before the court as there is a reasonable concern that sensitive information will be shared and compromise law enforcement operations and practice. This concern was brought to the attention of the Expert Panel particularly in the context of applications for a PDO. As I have already noted, the Expert Panel recommended that the Act be amended to include a more appropriate regime for the use of sensitive criminal intelligence.

Amending Part 5 of the Bill fortifies the counter-terrorism intelligence framework and creates robust protections for sensitive information while providing for fairness in procedures before the court.

A new definition of 'counter-terrorism intelligence' is inserted into section 3 of the Act with the term defined as:

> any information, document or other thing relating to a terrorist act or suspected terrorist act in Victoria or elsewhere, the disclosure of which could reasonably be expected to —
>
> > prejudice a criminal investigation, including by revealing intelligence-gathering methodologies, investigative techniques or technologies, or covert practices; or
> >
> > enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement;
> >
> > endanger a person's life or physical safety; or
> >
> > prejudice national security.

Division 1 of Part 5 allows the Supreme Court to excuse a person from an obligation to disclose counter-terrorism intelligence in any legal proceeding. The Court can excuse a person from disclosing counter-terrorism intelligence if satisfied that the public interest in preserving secrecy or confidentiality outweighs the public interest in disclosure of the intelligence.

Division 2 of Part 5 applies to the protection of counter-terrorism intelligence in 'substantive applications' made under the Act which includes an application for a PDO.

It provides that an authorised police officer may make an application for a counter-terrorism intelligence protection order (**protection application**) in relation to any information, document or other thing related to a substantive application that the officer believes on reasonable grounds is counter-terrorism intelligence.

Division 3 of amending Part 5 sets out the procedural requirements for protection applications, and for applications relating to PDOs and PCOs involving protected counter-terrorism intelligence. Division 3 also deals with the appointment of special counsel to represent respondents in protection applications or for any part of an application made under the Act where protected counter-terrorism intelligence is at issue. Division 3 only applies to an application issued under the Act and not to other proceedings

*The right to a fair hearing (s 24) and the right to liberty and security of the person (s 21)*

The right to a fair hearing in section 24 of the Charter includes a requirement that a party must be given a reasonable opportunity to present their case in conditions that do not place them at a disadvantage vis-à-vis their opponent. This principle is often referred to as 'equality of arms'. Statutory provisions permitting a court to have regard to material not disclosed to a party to a proceeding necessarily engage the right to a fair hearing (s 24).

Section 21 of the Charter provides that every person has the right to liberty and security of the person. Where a person who is party to a proceeding is unable to view information pertinent to the case against them, and where the purpose of the proceedings is to grant or refuse an order for the person's detention, the lack of provision of that information engages section 21 of the Charter.

New section 27 sets out the process for determining a protection application and makes clear that the Supreme Court can and must have regard to any prejudice or unfairness to the subject of the substantive application (**the subject**) in assessing whether to make the protection order. The Court must be satisfied that the reasons for maintaining the confidentiality of the counter-terrorism intelligence outweigh any prejudice or unfairness to the subject (new section 27(1)). Additionally, I note that section 135 of the *Evidence Act 2008* allows the Court to have regard to any unfair prejudice to the subject in determining subsequently to admit the evidence. Further, what weight (if any) is placed on the evidence will be a matter for the Court, and may depend upon the extent to which the subject has been able to challenge any undisclosed material. Finally, the Court also retains its inherent jurisdiction to stay the proceeding as an abuse of process if it concludes that the hearing cannot be conducted fairly.

New section 32 provides for the appointment of a special counsel to represent the subject in protection applications. The Court may appoint a barrister who has the appropriate skills to represent the subject in a protection application as special counsel. New section 33 sets out the role of special counsel. The special counsel is to receive a summary of the grounds on which the protection application is sought and is able to communicate with the subject in relation to this information. After special counsel has sought instructions from the subject, special counsel will be provided with a copy of the intelligence which the applicant seeks to protect. Special counsel cannot communicate with the subject after receiving this information (new sections 33(1)(c) and (2)(c)).

It is the role of special counsel to advocate in the best interests of the subject. This role is distinct from that of the PIM as the PIM represents the public interest, which may be different from the best interests of the subject. The role of special counsel is created to further protect the rights to a fair hearing of the subject and to assist the Court in making its determination in relation to the protection application.

I note new section 33(4) protects the subject's rights to private communication with special counsel and makes clear that legal professional privilege applies to communications with special counsel. Further, I note that the monitoring provisions do not apply to Part 5, which deals with the special counsel scheme, and accordingly a subject's interactions with special counsel will not be monitored, even where the subject's legal representative is involved and the interaction would otherwise have been monitored. These provisions strengthen the ability of special counsel to obtain instructions and advocate on behalf of the subject.

In circumstances where the subject is a party to a proceeding and denied the ability to have regard to the information which forms the subject of the protection application, the denial of such information to the subject is justified by the significance of the nature of the information. The definition of 'counter-terrorism information', outlined above, substantially reflects the purpose of new Part 5. In my view, the various public interest purposes outlined in the definition are sufficiently important to justify any limitation on rights to a fair hearing or right to liberty. Amended Part 5 includes significant protections for the subject including the availability of special counsel, the ability to communicate with special counsel, the requirement for the Court to consider prejudice or unfairness to the subject and the discretionary nature of the power to grant a protection application. Where the subject's rights to a fair hearing are limited, and where the limitation of these rights also results in a loss of liberty for the subject, I consider the limitation of rights to be justified under section 7(2) of the Charter having regard to the important public interest purposes underpinning the need to protect counter-terrorism intelligence and the lack of availability of any less restrictive method of protecting the information.

**Amendment of Bail Act 1977**

Part 3 of the Bill provides a detailed framework for bail decision makers when dealing with an accused who may pose a terrorism risk if released into the community, as recommended by the Expert Panel. Part 3 of the Bill makes amendments to sections of the *Bail Act 1977* (**Bail Act**) introduced or amended by the *Bail Amendment (Stage 2) Act 2018* (Stage 2 Act) which is due to come into effect on 1 July 2018. For completeness, I refer to the Statement of Compatibility for the Stage 2 Act and note that the Stage 2 Act is compatible with the Charter.

The purpose of the amendments made by the Bill is to ensure that a bail application by person known to pose a terrorist threat receives greater scrutiny and to ensure that those people who pose an unacceptable risk to our community are not granted bail.

***Extension of 'exceptional circumstances' and 'compelling reason' tests***

New section 4AA of the Bail Act extends the 'exceptional circumstances' test for bail so that rather than only applying

to persons accused of Schedule 1 offences, it now applies to those accused of Schedule 2 offences in certain circumstances. Section 4A of the Stage 2 Act is amended and provides that a bail decision maker must refuse bail unless satisfied that exceptional circumstances exist that justify the grant of bail. The circumstances in which this will apply to persons accused of Schedule 2 offences include when:

The person has a terrorism record;

The court considering whether to grant bail determines under new section 8AA that there is a risk that the person will commit a terrorism or foreign incursion offence;

The offence is alleged to have been committed while the accused was on bail, subject to a summons to answer charges, awaiting trial, subject to a community correction order, otherwise serving a sentence, or on parole, in respect of any Schedule 1 or 2 offence (new section 4AA(2)(c) does not make a substantive change to bail decision making but clarifies processes);

The offence is an offence of conspiracy to commit, incitement to commit or attempting to commit an offence in the circumstances set out in new section 4AA(2)(c), outlined immediately above. Once again new section 4AA(2)(c) does not make a substantive change to bail decision making but clarifies processes.

Defined under new section 3AAB, a person has a terrorism record if they have been convicted of a terrorism or foreign incursion offence or have been the subject of a terrorism related order. A terrorism related order is defined in clause 80 of the Bill as particular orders issued under Part 5.3 of the Criminal Code of the Commonwealth (**Criminal Code**), a PDO or PCO within the meaning of Part 2A of the Act, or an order made under a preventative detention law of another State or Territory which corresponds to Part 2A of the Act.

A new definition of a 'terrorism or foreign incursion offence' is included in the Corrections Act and means an offence against section 4B of the Act, an offence against a provision of another State or a Territory that corresponds to section 4B of the Act, an offence against a provision of Subdivision A of Division 72 of Chapter 4 of the Criminal Code of the Commonwealth, an offence against a provision of Part 5.3 or Part 5.5 of the Criminal Code of the Commonwealth or an offence against a provision of the *Crimes (Foreign Incursions and Recruitment) Act 1978* as in force before its repeal.

Terrorism and foreign incursion offences are already classified as exceptional circumstances offences. The extension of the exceptional circumstances test in the circumstances outlined above acknowledges that an accused may pose a terrorism risk to the community despite being charged with an offence that is not a terrorism or foreign incursion offence. The expansion of the application of the exceptional circumstances test to Schedule 2 offences in the circumstances outlined also takes into account whether the accused was alleged to have committed the offence while subject to a correctional order or police summons, thereby indicating a lack of regard for directions issued by law enforcement agencies and correctional agencies. These amendments work to extend the presumption against bail to an accused alleged to have committed less serious offences where there is evidence of a terror related risk.

Where the exceptional circumstances test does not apply to persons accused of a Schedule 2 offence, the 'compelling reason' test will apply. Clause 87 amends new section 4C of the Stage 2 Bill, and provides that a bail decision maker must refuse bail unless satisfied that a compelling reason exists that justifies the grant of bail. The compelling reason test will also apply to persons accused of offences other than Schedule 1 or 2 offences if the person has a terrorism record or if a court determines under new section 8AA that there is a risk that the person will commit a terrorism or foreign incursion offence. The process for determination under new section 8AA is described below under the 'preliminary determination of terrorism risk' section.

The application of the compelling reason test in these circumstances will extend the presumption against bail for an accused with a terrorism record or an accused determined to be a terrorism risk under new section 8AA. This reflects that an accused may be charged with a relatively minor offence, however still pose a risk of committing a terrorism offence if released into the community.

If a decision-maker determines whether there are exceptional circumstances or a compelling reason to grant bail (referred to as 'step 1' in the two step test), they must then consider whether the accused poses an 'unacceptable risk' (referred to as 'step 2' in the two step test). The unacceptable risk test is set out in new section 4E of the Stage 2 Bill and provides that a bail decision maker must refuse bail for an accused if satisfied that there is a risk that the accused would do one or more of the following things if released on bail and that the risk is an unacceptable risk:

Endanger the safety or welfare of any person; or

Commit an offence while on bail; or

Interfere with a witness or otherwise obstruct the course of justice in any matter; or

Fail to surrender to custody in accordance with the conditions of bail.

When determining whether there is an unacceptable risk, the bail decision maker must consider the surrounding circumstances and whether there are conditions which may be imposed to mitigate the risk. 'Surrounding circumstances' is defined by new section 3AAA of the Stage 2 Bill. The current Bill amends new section 3AAA so that a bail decision maker must also have regard to whether the accused has exhibited behaviour that would suggest support for terrorist acts or organisations, an association with a person or group that has expressed such support, an association with a person or group that is directly or indirectly related to a terrorist act, or if the accused is associated with a terrorist organisation (clause 81(1)). The bail decision maker must not take into account such information unless satisfied that the accused knew that the person or group expressed such support, engaged in terrorist activity or was a terrorist organisation.

Sections 13, 13A and new section 13AA set out the circumstances in which only a court may grant bail. Section 13 of the Bail Act provides that only a court may grant bail for an application related to a Schedule 1 offence. Sections 13(4) and (5) provide exceptions where a bail application relating to a Schedule 1 offence may be granted by a bail decision maker other than a court. Section 13 is also amended to provide that only a court can grant bail to an

accused alleged to have committed certain Commonwealth terrorism offences.

New section 13AA further provides that only a court may grant bail to an accused who has a terrorism record, regardless of the nature of the offence alleged to have been committed by the accused. Section 13A of the Bail Act provides that only a court may grant bail for a person accused of certain Schedule 2 offences where the accused is already on 2 or more undertakings of bail in relation to other indictable offences. Section 13A does not apply to a child, vulnerable adult or an Aboriginal person.

The Bill amends the Bail Act at sections 10(5) and 10A(5) and inserts new sections 10A(5AA) and 10A(5AAB) to prohibit a police officer, bail justice, sheriff or authorised person from granting bail to an accused if the prosecutor has terrorism risk information in relation to the accused and asserts that this shows that there is a risk that the accused will commit a terrorism or foreign incursion offence if released on bail. The bail decision maker is required to refuse to consider the application and the informant is required to bring the matter before a court as soon as practicable.

The intended impact of these amendments is to ensure that those who may pose a terrorism risk, or who are alleged to have committed a serious offence, or both, are brought before a court for bail determination to ensure stringent, consistent scrutiny and to ensure that any terrorism risk information is properly considered. The limitation placed on the ability of a bail decision maker, other than a court, to determine bail in more serious cases is appropriate and is an extension of the acknowledgement in section 13 of the Bail Act that those accused of serious crimes warrant greater examination in relation to any bail application.

By extending the application of the exceptional circumstances and compelling reason test, and the categories of persons with respect to whom bail applications must be determined by courts, the Bill may limit the rights in section 21 and 25 of the Charter. This is because these provisions ultimately decrease the likelihood of release on bail, or at least impose a more stringent process for the determination of applications.

*Right to liberty and security of the person (s 21)*

As outlined above, section 21 of the Charter provides that every person has the right to liberty and security of the person. Relevantly, section 21(6) provides that a person awaiting trial must not be automatically detained in custody. The amendments to the Bail Act which extend the presumption against bail in certain circumstances, and require bail to be determined by a court, may limit this right. However, in my view any limitation of this right is justified on the grounds of community safety, and therefore compatible with the Charter.

To the extent that the extension of the exceptional circumstances and compelling reason tests, and the requirement that certain bail applications be determined by a court, may limit the right to liberty, I refer to the considerations above which justify any limitation occasioned by these provisions on the right to be presumed innocent. In my view, these considerations also provide justification for any limitation on the right to liberty. Further, I note that the amendments do not give rise to 'automatic' detention for people who fall into one of the classes created by the current amendments. Accused persons retain the ability to present evidence and potentially satisfy the exceptional circumstances or compelling reason tests for bail. For those persons who pose a higher risk on release, there is a higher bar for release. This is entirely appropriate and proportionate given the seriousness of the matters dealt with and the direct risk posed to the Australian community.

With respect to the provisions of the Bill which require certain bail applications to be determined by a court, I note that this may mean that an accused may be detained for a longer period of time until their matter can be brought before a court. Where a bail justice is prohibited from granting bail because only a court may grant bail, the informant is required to bring an accused before a court as soon as practicable (new section 10B). In my view, this is a proportionate approach as the circumstances in which this requirement apply are clear and appropriately confined in light of the risk to community safety. It is appropriate and reasonable that a bail decision be made by a judicial officer in the applicable circumstances. This is in keeping with current practice where serious offenders, for example offenders convicted of murder or large scale drug trafficking, are to have bail decisions made by a court.

The right to liberty is an important right which should not be interfered with except when absolutely necessary. The amendments to the Bail Act provide a proportionate response to a terrorism threat posed by an individual by creating a detailed process for bail decision makers to apply on a case by case basis. There is no less restrictive process for bail decision making as the process seeks to only refuse bail to people who pose an unacceptable risk and, in those circumstances, there is no option to allow such a person into the community. Accordingly, it is my view that the limitations placed on the right to liberty under section 21 of the Charter are justified under section 7(2).

*Rights in criminal proceedings (s 25)*

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.

In Victoria the usual rule is that a person accused of an offence who is held in custody should be granted bail. The Bail Act contains a number exceptions to this rule, in the case of certain serious crimes where the court must be satisfied that exceptional circumstances exist which justify the grant of bail. The provisions of the Bill that extend the application of the exceptional circumstances and compelling reason tests in the circumstances outlined above engage the right to be presumed innocent as they place an accused in a reverse onus position for a grant of bail. This will mean that it will be harder for an accused person to be granted bail.

The purpose of these provisions, as set out above, is to recognise that some categories of accused present a higher level of risk of the community. In these circumstances, the decision about whether or not that accused person is to be granted bail should be subject to greater scrutiny in light of those concerns to public safety, and the rights of the community to safety and security. The limitation on an accused person's rights are justified under section 7(2) of the Charter as it is reasonable and proportionate to the risk of harm posed by people accused of particular offences and with particular histories of relevance.

The requirement for an accused to show compelling reasons or exceptional circumstances is not a new requirement. The expansion of the application of the exceptional circumstances test is predicated on a range of identified risk factors with many of those identified being elements of the accused's criminal history separate to the current offence. It is clear that the amendments are designed to require bail decision makers to take a more rigorous approach to decision making; however, the offences and profiles of persons that attract the new amendments are sufficiently serious to justify any limitation on rights under section 25(1) of the Charter. In this regard, I note in particular that no person's rights to be released on bail are extinguished automatically and, further, their rights to appeal a decision to refuse bail are retained. Each person is able to make their case for compelling reasons, or exceptional circumstances, as the case may be. Further, bail decision making for terrorism related offenders does not only examine the circumstances around the current offence, but looks at the accused's profile as a whole and makes a determination with all available information at hand.

Accordingly, I am of the view that any limitation of section 25(1) is proportionate given the seriousness of the potential behaviour under consideration, the rights of an accused to make their case and the case by case basis on which a decision must be made. For completeness, I refer to the Statement of Compatibility for the Bail Amendment Bill 2015 which introduced the application of the exceptional circumstances test to those charged with state terrorism offences and found that the amendments were compatible with the Charter.

***Preliminary determination of terrorism risk***

New section 8AA provides that where a prosecutor states that there is 'terrorism risk information' in relation to an accused, and the prosecutor alleges that there is a risk that an accused will commit a terrorism or foreign incursion offence, the court must determine whether there is such a risk, before determining whether to grant bail. In making this assessment, the court must have regard to any terrorism-risk information provided to the court.

New section 3AAC defines 'terrorism risk information' to mean an assessment made by a specified entity (for example, Victoria Police or the Australian Federal Police) that there is a risk that the person will commit a terrorism or foreign incursion offence, and the information relied on in making that assessment. Information relied on by an entity when making an assessment may include expressions of support for terrorist activity, a terrorist organisation or provision of resources to a terrorist organisation. It may also include information evidencing the person's association with:

> another person or group that has expressed similar support;
>
> another person or group that is directly or indirectly engaged in, preparing for, planning, assisting in or fostering the doing of a terrorist act; or
>
> a terrorist organisation.

A court cannot have regard to such an association unless the court is satisfied under new section 8AA(4) that the accused knew that the person or group had expressed such support, engaged in terrorist activity or was a terrorist organisation.

If, based on this information, the court determines that there is a risk that the person will commit a terrorism or foreign incursion offence, then under new section 4AA(2)(b) or 4AA(4)(b), the Step 1 exceptional circumstances test will apply.

*Freedom of expression (s 15), freedom of thought, conscience, religion and belief (s 14) and freedom of association (s 16)*

Requiring decision makers to have regard to the expressions and associations outlined above may engage the Charter rights to freedom of expression; freedom of thought, conscience, religion and belief; and peaceful assembly and freedom of association.

Section 15 of the Charter provides that every person has the right to freedom of expression including the freedom to seek, receive and impart information and ideas of all kinds. To the extent that support for a terrorist organisation may be formulated as a religious expression, section 14 of the Charter (freedom of religion) may also be engaged.

However, in my view the Bill does not limit the rights in either section 14 or 15 of the Charter. The amendments do not prohibit expressions of support for terrorism, but merely points to such expressions as a relevant consideration to take into account when assessing risk for the purposes of a bail decision. Further, to the extent that it could be said to limit section 15, the limitation would fall within the internal qualification in section 15(3) that allows for lawful restrictions that are reasonably necessary for the protection of national security or public order. This internal qualification on the right recognises that special duties and responsibilities are attached to the right to freedom of expression. Similarly, any limit on the right to freedom of religion is justified on the basis that it is necessary to protect the community by ensuring that bail decisions are made based on all relevant risk aspects.

Section 16 of the Charter provides that every person has the right to peaceful assembly and that every person has the right to freedom of association with others, including the right to form and join trade unions. The Bill provides that a bail decision maker is required to take into account certain associations the accused has with other people as outlined by section 3AAA of the Bail Act. In my view, this does not limit the right to freedom of association as, rather than prohibiting the associations, it merely renders such associations relevant to assessing the risk posed by the accused for the purposes of determining a bail application. To the extent that it could be said to limit the right, I consider the limitation to be justified under section 7(2) of the Charter by the same reasoning outlined above.

**Amendment of the Crimes Act 1958**

Clause 131 of the Bill amends section 462A of the *Crimes Act* to insert an example at the foot of that section to illustrate the operation of section 462A of the *Crimes Act*. However, the amendment in the Bill does not alter the law concerning the lawfulness of lethal force.

The amendment illustrates the operation of section 462A of the Crimes Act by making clear that the objective of preventing the commission of an offence involving death or really serious injury is capable of supplying a reasonable basis for the use of lethal force. The amendment does not however state that in every case it will do so. The police officer or protective services officer must still hold the subjective belief

that the use of force was necessary and that belief must be based on reasonable grounds.

Section 9 of the Charter protects the right to life. It provides that every person has the right to life and has the right not to be arbitrarily deprived of life. The use of lethal force that amounts to an arbitrary deprivation of life may limit a person's right to life.

Because the amendment does not alter the law concerning the lawfulness of lethal force, in my opinion, the right to life is not limited by clause 131 of the Bill.

**Amendment of Corrections Act 1986**

***Presumption against parole (adult offenders)***

The Bill amends the *Corrections Act 1986* (**Corrections Act**) to expand the presumption against parole for an offender who may pose a terrorism threat. Currently, the Serious Violent Offender or Sexual Offender Parole division (SVOSO division) of the Adult Parole Board (**the Board**) makes parole determinations in relation to a person who has been convicted of a terrorism or foreign incursion offence (section 74AAB of the Corrections Act). The Bill amends parole determination processes by recognising that a person may pose a terrorism risk regardless of whether they have been convicted of terrorism offences.

The Bill provides for an instrument called 'terrorism risk information', which is an assessment made by a specified entity (such as a law enforcement, intelligence or other government agency or department) that there is a risk that a person will commit a terrorism or foreign incursion offence, and the information relied upon in making that assessment. Similar provisions are included in the Bail Act. The risk information may include information regarding a person having expressed support for a terrorist organisation, for doing a terrorist act or for providing resources to a terrorist organisation. It may also include information regarding the person having, or having had, an association with a terrorist organisation or another person or group that has engaged in the above, or directly or indirectly engaged in the preparation, planning, assisting or fostering of a terrorist act.

The Bill gives the Secretary discretion to provide the Board with terrorism risk information in respect of a prisoner, which the Board must have regard to when determining to release that prisoner on parole (with certain exceptions, discussed below). The Bill then provides that the Board must determine whether or not it is satisfied that there is a risk that the prisoner will commit a terrorism or foreign incursion offence. If the Board is satisfied there is such a risk, it must either refuse to grant parole or refer the decision to the SVOSO division along with a recommendation that parole should be granted. Such a referral can only be made if there are compelling reasons to justify releasing the prisoner on parole, or in the case of a prisoner who has been convicted of a terrorism or foreign incursion offence, there are exceptional circumstances that justify releasing the prisoner on parole. The SVOSO division must then consider the recommendation, and be satisfied of the same 'compelling reasons' or 'exceptional circumstances' tests, which ever are applicable. The Bill also amends the framework for cancelling parole in a similar manner.

These amendments are relevant to the rights to freedom of movement (s 12), privacy (s 13), liberty (s 21), expression (s 15) and freedom of association (s 16).

*Rights to freedom of movement (s 12), privacy (s 13) and liberty (s 21)*

A prisoner serving a sentence of imprisonment is subject to a number of restrictions on human rights by way of their imprisonment, and being subject to being managed in prison pursuant to the Corrections Act, most notably their rights to freedom of movement, privacy and liberty. Being subject to a grant of parole, depending on the conditions, generally grants a prisoner greater liberty and reduces the extent of limits on their human rights resulting from their sentence.

In effect, these amendments expand the existing two tier presumption against parole for prisoners who pose a terrorist threat (but do not have a terrorist record), which may, depending on a person's circumstances, make it less likely such prisoners will be granted parole, or more likely that their existing parole will be cancelled.

However, in my view, these amendments do not introduce any new limits on human rights. This is because parole is a privilege, and a person sentenced to prison does not have a right or entitlement to parole, nor to the continuation of a particular scheme for release on parole for the duration of the prisoner's sentence. Further, any refusal to grant parole, or decision to cancel parole, cannot be regarded as constituting new limits on a prisoner human rights, as those rights are already limited by way of the sentence of imprisonment. The provisions of this Bill do not set aside, vary or nullify the original sentence of the court, in that they do not alter the head sentences of imprisonment imposed by the court or increase the maximum limitation caused by the court's sentence.

*Rights to freedom of expression (s 15) and association (s 16)*

The Bill broadens the concept of 'terrorist risk' to include associating with terrorists or expressing support for terrorist offenders, organisations or, potentially, terrorist ideas. This means that a prisoner's associations and expressions of support may potentially form the grounds of an assessment that they pose a terrorist risk, and as a consequence, are presumed to be denied parole without 'compelling reasons' or 'exceptional circumstances' to justify parole, whichever is applicable. This may have a chilling effect on an offender's rights to freedom of expression and association, making a person less likely to associate with certain others or express certain ideas for fear that it will impact on their grant of parole or lead to a cancellation of an existing grant of parole.

In my view, any such limitations will be reasonably justified. The criteria of 'terrorist risk' is appropriately confined to expressions of support for terrorist acts or organisations (rather than support for mere persons, ideas or beliefs) or associations with persons who have expressed such support, engaged directly or indirectly in a terrorist act, or associated with a terrorist organisation (rather than a mere person of concern). Further, the Bill includes a safeguard to prevent inadvertent associations from being a relevant consideration, by requiring the Board to be satisfied that the prisoner in question knew that they were associating with a person or organisation who posed a 'terrorist risk'. If the Board is not satisfied that the person had the requisite knowledge, the Board is precluded from having regard to that information

about such associations when assessing risk or determining whether to grant or cancel parole. Finally, even if a person is found to have such associations and requisite knowledge, the Board must still determine that the person is at risk of committing a terrorism or foreign incursion offence for the presumption to apply. This ensures that offenders who may have incidental associations with terrorist offenders or groups (such as a family member of a terrorist offender with no involvement in their offending) will not be captured by the presumption. Accordingly, I am satisfied that any limits on these rights are reasonably justified in this context.

**Amendment of the Children, Youth and Families Act 2005**

***Presumption against parole (children)***

The Bill makes similar amendments as above to the *Children, Youth and Families Act 2005* regarding the granting of parole to children and young persons. The Bill allows for the Secretary to provide the Youth Parole Board (**YPB**) with terrorism risk information relating to a person in a youth residential centre or youth justice centre, which will preclude the YPB from determining to release that person on parole until the YPB has determined whether or not there is a risk the person will commit a terrorism or foreign incursion offence. Where a person has a terrorism record or the YPB has determined that there is a risk the person will commit a terrorism or foreign incursion offence, the presumption against parole in new section 458(1AAC) will apply. The Bill requires that the YPB must not release such a person on parole unless the granting of parole is justified by exceptional circumstances (in the case of a person convicted of a terrorism or foreign incursion offence) or compelling reasons (in any other case). New sections 460A, 460B and 460C create similar obligations for the YPB in relation to cancelling parole.

These amendments raise similar issues as discussed above in relation to adult offenders, and the above discussion and justification applies equally. However, as these amendments have the potential to affect children, the Charter right to protection of children (s 17) is also engaged.

*Protection of children and families (s 17) and the rights of children in the criminal process (s 23(3))*

Section 17(2) of the Charter 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. Children are taken to have lesser culpability for their actions on the basis of their different psychological and physical development, and also on the basis of their emotional and educational needs. There is, in other words, a requirement that children be treated differently than adults in recognition of their different status and lesser culpability when in conflict with the law. Although, unlike the Adult Parole Board, the scheme does not utilise a two-tier test for the Youth Parole Board (meaning the presumption is potentially less difficult to be overcome by a child offender), I accept that the scheme's use of the same test for children and adults may not recognise the special status of children and the lesser culpability of children as outlined above.

Further, section 23(3) of the Charter provides that a child who has been convicted of an offence must be treated in a way that is appropriate for his or her age. Appropriate treatment includes preserving opportunities where appropriate to facilitate a child's rehabilitation, avoid unnecessary stigma, strengthen their relationship with their family, and minimise disruptions to their education, training or employment — all of which may be furthered by granting a child parole. It follows that expanding presumptions against parole, and cancellations of parole, for child offenders may limit these rights.

In my view, any such limits are reasonably justified. I note the Expert Panel's comments in relation to children, particularly that children are a particular target for radicalisation. While a child may have a lesser status or culpability at law, they may still pose the same level of risk to the community as an adult offender and the same potential to commit terrorist acts that cause serious and catastrophic harm. In order to ensure the community is adequately protected from the threat of terrorism, it is necessary and appropriate that a presumption against parole for those that pose a terrorist risk apply equally to children, and that children be deterred and prevented from becoming a terrorist risk to the same extent as adults. Further, by moving to proactively address the terrorist threat that may be posed by children, the government is also enhancing the rights of other children and families in the community to protection.

I also note that there are many protections built into the sentencing system to ensure sentences for children or young offenders take into account their age and prospect for rehabilitation, and that the management of detainees allows for such rehabilitation.

Accordingly, I am satisfied that these amendments are compatible with the rights to protection of children in sections 17 and 23 of the Charter.

***Information-sharing***

To facilitate the preparation and provision of 'terrorism risk information' in the above amendments to parole, the Bill also makes amendments to the Corrections Act and the *Children, Youth and Families Act 2005* to existing information sharing provisions, to permit such information to be shared between various agencies in relation to adult and child offenders. For example, the Bill permits information sharing in relation to youth offenders between the YPB, the Department of Health and Human Services, the Department of Justice and Regulation and 'risk assessment entities'. Further, the Bill allows a parole decision maker to have access to all relevant information when making a parole decision in relation to a person who may pose a terrorism risk, to introduce the application of the exceptional circumstances and compelling reasons test to parole decisions and to create a detailed framework for decision makers to consider in relation to a decision to cancel a parole order.

While such amendments are relevant to the rights to privacy of offenders, I am satisfied that these provisions are appropriately circumscribed so as not to authorise any arbitrary interferences with privacy. Without appropriate information sharing between agencies about persons who pose a terrorist risk, the ultimate aims of this Bill cannot be achieved. It is generally accepted that it is a legitimate aim to share information in order to prevent the risk of harm to the community or to ensure that concerns regarding unlawful behaviour are communicated to appropriate authorities. In my view, these provisions strike an appropriate balance with furthering the aims of community protection and preserving the rights of offenders to privacy, through prescribing the class of persons who may share information, and the purposes for which the information may be shared. Existing safeguards

against misuse will still apply, including penalties for any unauthorised use or disclosure of information. For these reasons, I consider that these provisions will not limit the right to privacy.

The Hon. Gayle Tierney, MP
Minister for Training and Skills

*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) (09:45) — I move:

That the bill be now read a second time.

## Incorporated speech as follows:

Violent acts of terror pose a threat to communities around the world. In recent times, there have been a number of violent incidents in Australia, including in Victoria, which have been motivated by extreme views and undermine the cohesive fabric of our community. These recent, horrifying incidents have triggered consideration across all jurisdictions of whether existing counter-terrorism legislation and practice adequately guard against the evolving threat of terrorism and violent extremism.

Following the siege and hostage incident in Brighton in June 2017, the government appointed an Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers to examine the operation and effectiveness of Victoria's legislation and the powers and procedures of Victorian and Commonwealth agencies to prevent, monitor, investigate and respond to terrorism. The Expert Panel was led by former Chief Commissioner of Victoria Police, Ken Lay AO APM, and former Justice of the Court of Appeal, the Honourable David Harper AM QC.

The Expert Panel commenced its review on 26 June 2017 and publicly released reports on 21 September 2017 and 20 November 2017. Report 1 focused on reforms to police powers to deal with terrorism and assessed the tools required to counter the risk posed by violent extremists. Report 2 had a broader remit and considered reforms necessary to enhance the ability of relevant agencies and institutions to prevent, investigate, monitor and respond to terrorist acts.

The Bill represents an overhaul of Victoria's terrorism framework, including amendments to the *Terrorism (Community Protection) Act 2003*, the *Bail Act 1977*, the *Corrections Act 1986*, the *Children Youth and Families Act 2005*, the *Crimes Act 1958*, the *Criminal Procedure Act 2009* and the *Sentencing Act 1991*. The Bill will give effect to all legislative recommendations from Report 1 of the Expert Panel, and recommendations 18 to 21 and 24 from Report 2.

The wide-ranging reforms in this Bill will support the safety of Victorians by ensuring that Victoria Police and other justice agencies are equipped with the tools they need to address the threat of violent extremism, and keep our community safe.

I now turn to the substance of the Bill.

**Amendments to the Terrorism (Community Protection) Act 2003**

Part 2 of the Bill amends the *Terrorism (Community Protection) Act 2003* ('the Act') to expand Victoria's preventative detention framework and improve the operation of special police powers to prevent or reduce the impact of a terrorist act. The Bill also makes changes to ensure that there is appropriate oversight of the exercise of powers under the Act and to facilitate reporting to the Victorian Parliament. These reforms implement recommendations 2 and 13 to 15 of the Expert Panel's Report 1, and recommendations 18 to 21 and 24 of Report 2.

***Preventative detention (Recommendation 2, Report 1 and Recommendations 18 to 21 and 24, Report 2)***

Victoria's existing preventative detention framework allows for the detention of a person for up to 14 days by order of the Supreme Court to prevent a terrorist act from occurring or to prevent the destruction of evidence of a terrorist act that has already occurred. These laws were introduced to address a perceived gap in counter-terrorism capabilities, where authorities have information about a terrorist act that is not sufficient to form the belief required to arrest a person under ordinary powers.

The Expert Panel highlighted a number of flaws in the existing preventative detention laws and recommended significant changes to the current scheme, persuaded that a stronger approach is necessary and appropriate in the context of the threat posed by terrorism and violent extremism.

As a first step, the Bill amends the threshold test for preventative detention in relation to a terrorist act that has not yet occurred from one that must be 'imminent' to one that is capable of being carried out, and could occur, within the next 14 days. This amendment is consistent with recent Commonwealth and New South Wales legislative changes. Preventative detention may also be used to preserve evidence of, or relating to, a recent terrorist act.

The Bill strengthens pre-charge preventative detention laws in terrorism scenarios, providing for a two-stage preventative detention framework, which applies both to adults and children aged 14 years or above. First, an authorised police officer may make a 'police detention decision', authorising a person to be taken into custody and detained without a court order or warrant for up to four days for an adult or, in the case of a child, 36 hours. This amendment recognises existing difficulties with the preventative detention legislation highlighted by the Expert Panel. These include the need for police to be able to respond quickly and effectively to threats that may emerge with little or no warning and the complex nature of terrorism related investigations. Second, consistent with the existing legislation, an authorised police officer may also apply to the Supreme Court for a preventative detention order to detain a person — adult or child aged 14 years or over — for up to 14 days (inclusive of any period of police preventative detention).

In recognition of the extraordinary nature of preventive detention, the Bill provides for other important safeguards to ensure that police preventative detention strikes the right balance between protecting the community from terrorist threats and acts, and promoting rights of persons detained pursuant to the Act. These include:

periodic review of decisions by a senior police officer, including an immediate review upon taking a person into custody and thereafter at a minimum of 12 hourly intervals;

the involvement of the Public Interest Monitor;

notification of decisions to the Ombudsman, the Independent Broad-Based Anti-Corruption Commission, and in the case of a child, the Commission for Children and Young People and the Department of Justice and Regulation;

information requirements, including a person's entitlement to contact a legal representative;

requirements to thoroughly document police detention decisions;

oversight of the exercise of these powers by police by the Victorian Inspectorate.

The Bill also provides for strict requirements in relation to when a person must be released from police preventative detention, namely, when the reasons for detention no longer exist, when they are taken into custody or arrested under normal powers, or when a preventative detention order is made. That is, the person may not be simply held for the maximum period.

Finally, the Bill removes the prohibition on questioning a person detained under a preventative detention order and allows for questioning during both police and court-ordered preventative detention. The questioning framework in the Bill is consistent with questioning that is conducted under the *Crimes Act* and the *Crimes Act 1914* (Cth), and ensures that people are appropriately cautioned prior to questioning commencing, protects a person's right to silence and requires a person be permitted to contact a legal representative and have a lawyer present during questioning, have access to an interpreter, and in the case of a child, are only questioned in the presence of a lawyer and a parent, guardian or independent third person. Questioning must be audio-visually or, if not practicable, audio recorded, and a copy of any recording must be given to the person. The Bill also provides for reasonable breaks in questioning, with additional breaks for children and the ability of the Supreme Court to place additional conditions on questioning under a preventative detention order.

Overall, the new preventative detention framework in the Bill addresses shortcomings in the existing scheme identified by the Expert Panel, better equipping Victoria Police to take necessary and appropriate action to prevent, or preserve evidence of, a terrorist act.

***Special police powers*** **(Recommendations 13 to 15, Report 1)**

Part 3A of the Act enables the Chief Commissioner of Police to apply to the Supreme Court to authorise the exercise of special police powers to protect persons attending events from a terrorist act or to prevent, or reduce the impact of, a terrorist act. The Expert Panel considered the existing provisions and noted that improvements could be made to ensure an appropriate balance is struck between safeguards and efficiencies.

Under the Act, the Chief Commissioner (or a Deputy) can make an interim authorisation of special police powers to prevent, investigate or recover from terrorist acts, with the approval of the Premier. Consistent with Recommendation 13, the Bill enables the Chief Commissioner (or a Deputy) to make an interim authorisation without the Premier's approval if the Premier is not reasonably able to be contacted. The Chief Commissioner is required to advise the Premier as soon as possible and the Premier is entitled to revoke or alter that authorisation at any time within the duration of the authorisation. The Bill also extends the period for an interim authorisation from 24 hours to 48 hours.

Current special police powers enable police to search persons or vehicles, enter and search premises, seize any thing, cordon target areas, request a person's identity and move vehicles. The Bill extends the application of special police powers to protective service officers. It is intended that these new powers be accompanied by training to ensure that powers are appropriately exercised. Further, in recognition of practical problems encountered by NSW Police during the Lindt Café siege, the Bill creates an express power to take control of an affected area and make directions as to the use of that area during an authorisation, to respond to a terrorist risk or to an act that has occurred. The Bill specifies a number of powers that may be exercised, including the power to order evacuation of premises, or to shut off essential services.

Consistent with the amendments to the 'threshold' test for preventative detention, the Bill replaces the threshold for terrorist acts that are yet to occur with the Commonwealth's formulation that the terrorist act 'is capable of being carried out, and could occur, within the next 14 days' (Recommendation 15, Report 1).

***Protecting counter-terrorism intelligence*** **(Recommendation 16, Report 1)**

The Act currently does not permit the court to receive and act on counter-terrorism intelligence material in applications under the Act where that evidence is withheld from the respondent and their legal representative. Orders can only be made on evidence that is disclosed to the respondent.

The Expert Panel highlighted that this poses a significant barrier to making applications under the Act because of concerns that the information would become public or fall into the wrong hands. The Expert Panel recommended creating a mechanism to allow counter-terrorism intelligence to be used in court applications under the Act, while protecting it against disclosure.

The Bill creates a single process for the protection of counter-terrorism intelligence in substantive applications under the Act. The framework will allow an applicant for a substantive order under the Act (for example, a preventative detention order) to apply to the Supreme Court for a counter-terrorism intelligence protection application. If a counter-terrorism protection order is made, it will allow the applicant to rely on this protected information in a substantive application without being required to disclose the information to the respondent or their legal representative.

Recognising that closed material proceedings have been the subject of significant litigation in both Australia and overseas, the Bill provides for a comprehensive process which seeks to balance the competing interests and rights that arise in these

situations. In deciding whether to make a protection order, the Bill provides that the Supreme Court must consider the public interest in the protection of this information against the public interest in ensuring that a person subject to proceedings is provided with the evidence that forms the basis of the case against them. A closed court hearing is the 'default' position with attendance at any hearing limited to certain specified persons. In these applications, the Bill makes clear that the Supreme Court retains certain important discretions, such as an ability to stay proceedings as an abuse of process.

The Bill also provides for an important additional safeguard, namely the appointment of a special counsel to represent the respondent's interests, if required in the circumstances. As the respondent and their legal representative are excluded from the relevant hearing or part thereof, this is an important procedural safeguard that promotes the protection of principles of open justice and a person's right to a fair hearing.

***Oversight and reporting on the use of counter-terrorism powers***

The Bill creates an oversight role for the Victorian Inspectorate with respect to the use of police powers under the Act, consistent with recommendations 5 and 13 of the 2014 Victorian Review of Counter-Terrorism Legislation.

The Victorian Inspectorate's oversight encompasses covert search warrant powers, special police powers and the new police preventative detention power established by the Bill. This includes a requirement that each police detention decision and the execution of covert search warrants are reported to the Inspectorate. The Victorian Inspectorate will be required to monitor compliance with the Act by inspecting the records of Victoria Police. The Bill provides that the Victorian Inspectorate is required to report the results of each inspection to Parliament every six months.

The Bill also streamlines the annual reporting mechanisms in the Act. The existing annual reporting obligations in the Act are different for each power. The Bill requires the Chief Commissioner to submit a report to the Attorney-General annually with respect to powers under the Act. The Attorney-General will be required to table the report before Parliament.

**Amendment to the Crimes Act 1958 (Recommendation 1, Report 1)**

In the context of the Lindt Café Siege in Sydney and the State Coroner of New South Wales considering use of force powers in his Inquest into the deaths arising from the siege, the Expert Panel considered practical options to remove any barriers to Victoria Police employing appropriate force when responding to terrorist acts.

As a result, the Expert Panel recommended that the power in section 462A of the *Crimes Act* to use force be clarified in order to 'put beyond doubt that it applies to pre-emptive action, including lethal force, employed in response to a life-threatening act where it may be the last opportunity to safely and effectively intervene'.

Section 462A of the *Crimes Act* is concerned with the use of force by any person when it is necessary to prevent an indictable offence. The Bill inserts an example to this provision, describing a situation where a police officer or protective services officer uses lethal force. The use of a statutory example allows a clear explanation of the effect of the existing law — which the Expert Panel agreed was adequate and well understood — as it applies in practice to police in the field.

The amendment will provide greater clarity for law enforcement in response to terrorism scenarios, so that police are confident to act at critical moments to use lethal force in order to prevent death or really serious injury.

**Amendments to the Bail Act 1977 (Recommendations 9 to 11, Report 1)**

Former Judge of the Supreme Court, the Hon Paul Coghlan QC, was appointed to review Victoria's bail system in 2017. The *Bail Amendment (Stage One) Act 2017*, passed by Parliament on 22 June 2017, implemented a number of the recommendations in Mr Coghlan's first Report. This included creating schedules of offences where the presumption in favour of bail is reversed, requiring the accused to show 'exceptional circumstances' for certain offences (Schedule 1) and 'compelling reasons' for certain offences (Schedule 2). The *Bail Amendment (Stage Two) Act 2018* was passed by Parliament on 22 February 2018. The Stage Two Act implements further recommendations from the Coghlan Bail Review, including reformulating and clarifying how the tests for bail should be applied.

Part 3 of the Bill builds upon these reforms, by making further amendments to the *Bail Act 1977* to create presumptions against bail for people who pose a terrorism risk and require such persons to be brought before a court for bail. These changes parallel changes to parole introduced elsewhere in this Bill.

***Presumption against bail***

The Bill amends the Bail Act to provide for a presumption against the granting of bail for a person who poses a terrorism risk.

When a person is charged with an offence in Schedule 1 of the Bail Act, the court will need to be satisfied that exceptional circumstances exist in order to grant bail. Schedule 1 includes the offences of facilitating terrorist acts by providing documents or information (against section 4B of the *Terrorism (Community Protection) Act 2003*), and obstructing police using special police powers (against 21W of that Act). This approach is consistent with the *Commonwealth Crimes Act 1914*, which provides a presumption against bail for a person accused of a Commonwealth terrorism offence (section 15AA).

However, not every accused who is suspected of having links to terrorism will be charged with a specific terrorist offence. Ordinarily, a person charged with an indictable offence not listed in either Schedule 1 or 2 of the Bail Act would have a prima facie entitlement to bail. This Bill amends the Bail Act so that an accused who has not been charged with a terrorism offence but may pose a terrorism risk, will still be subject to a presumption against bail:

> If a person is accused of a Schedule 2 offence and has a terrorism record or is a risk of committing a terrorism offence, the court can only grant bail if the accused person is able to show exceptional circumstances why bail should be granted.
>
> If a person is accused of an offence that is in neither Schedule 1 nor 2, but the person has a terrorism record

or is a risk of committing a terrorism offence, the court can only grant bail if the accused person is able to show compelling reasons why bail should be granted.

These changes reverse the presumption in favour of bail to ensure that it will be harder for any accused with links to terrorism to get bail — whatever charge the accused is facing.

***Restricting bail decision-making to a court***

The Bail Act currently limits bail decisions for persons charged with treason and murder to the Supreme Court, or to a Magistrate committing a person for trial. The Bail Stage One Act restricts bail decisions about persons charged with Schedule 1 offences to magistrates and judges. The Bail Stage Two Act inserts new section 13A, which restricts bail decisions to a court for Schedule 1 offences and persons accused of certain Schedule 2 offences who are already on 2 or more undertakings of bail in relation to other indictable offences.

This Bill introduces further situations where bail decisions can only be made by a court. First, the Bill provides only a court can grant bail to a person with a terrorism record (see new section 13AA). Second, by operation of other amendments including the insertion of new section 8AA, only a court will be able to assess terrorism risk information to determine whether a person poses a risk of committing a terrorism or foreign incursion offence. Third, the Bill will provide that only a court may grant bail to persons accused of Commonwealth terrorism offences. This will mean that persons accused of Victorian or Commonwealth terrorism offences, and persons accused of non-terrorism offences who are terrorism-related offenders, will only be able to get bail from a court.

**Amendments to Corrections Act 1986 and Children, Youth and Families Act 2005 (Recommendations 3 to 8, Report 1)**

***Adult parole***

Victoria currently has the strongest parole laws in the country. The Bill further strengthens our adult parole system and will make it even harder for prisoners who pose a terrorism risk to get parole, or to remain on parole. The community expects that prisoners with terrorism connections will only be released on parole where it accords with community safety, and the Bill ensures this is the case.

Specifically, the Bill amends the *Corrections Act 1986* to introduce new presumptions against the grant of parole, and in favour of the cancellation of parole, for prisoners who pose a terrorism risk. The approach in the Bill draws on models from other Australian jurisdictions with strict parole laws, including New South Wales and South Australia.

The presumption against granting parole will apply to any prisoner sentenced with a non-parole period, who has been convicted of a terrorism or foreign incursion offence, has been subject to a terrorism-related order, is charged with a terrorism or foreign incursion offence, or has been determined by the Adult Parole Board to pose a terrorism risk. The Adult Parole Board will determine a prisoner's risk based on relevant information, including intelligence. This may include the prisoner's support for terrorist activity or intentional associations with persons connected to terrorism.

If such prisoners are released into the community on parole, new presumptions in favour of parole cancellation apply if their terrorism risk increases or if they are charged with, or convicted of, a sexual offence, violent offence or terrorism or foreign incursion offence while on parole. A presumption also applies to any other prisoner on parole if they pose a terrorism risk for the first time while on parole.

These reforms build on existing presumptions in relation to prisoners with convictions for terrorism or foreign incursion offences that were introduced by the Victorian Government in the *Corrections Legislation Further Amendment Act 2017*. Under the reforms, the relevant prisoners can only be granted parole, or remain on parole, if there are exceptional circumstances (for a prisoner who has been convicted of a terrorism or foreign incursion offence) or compelling reasons (for other prisoners) that justify it.

The Serious Violent Offender or Sexual Offender Parole division (SVOSO division) of the Adult Parole Board will be responsible for deciding whether to grant parole to such prisoners under a two-tier decision-making process. The SVOSO division is overseen by the Chairperson of the Board. The additional scrutiny that this provides aims to ensure that prisoners are only ever released where it accords with the safety and protection of the community. This brings terrorism risk into the parole process that was enacted in 2014 as recommended by the Callinan Review. Decisions relating to the cancellation of parole will continue to be made by any division of the Board to ensure that the Board can respond and deal with cancellations in a timely manner.

***Youth parole***

The Bill strengthens the youth parole system by amending the *Children, Youth and Families Act 2005* to create a presumption against parole, and in favour of the cancellation of parole, for young people who pose a terrorism risk.

The Youth Parole Board must not release on parole a young person convicted of a terrorism or foreign incursion offence unless there are exceptional circumstances. In the case of a young person subject to a terrorism-related order (present or past) such as preventative detention, or where the Youth Parole Board considers that they present a terrorism risk, the Board must be satisfied there are compelling reasons to justify granting parole. The Youth Parole Board will determine a young person's terrorism risk based on relevant information from a range of sources. This could include a young person's support for terrorism or their association with people who they know have terrorism links.

The Bill also introduces a presumption that a young person's parole will be cancelled where a young parolee is convicted of terrorism or becomes subject to a terrorism-related order, or where the Youth Parole Board receives new information about their terrorism risk. This also applies to young parolees charged with certain terrorism offences where they have a history that involves terrorism risk. Those convicted of terrorism offences will need to show exceptional circumstances to continue their parole, while the rest will need to show compelling reasons.

***Information sharing***

The *Corrections Act 1986* currently authorises relevant persons (for example, Department of Justice and Regulation or Victoria Police employees) to share personal or confidential information about prisoners and offenders in

various circumstances. The Bill clarifies the ability of relevant persons to share information for counter-terrorism purposes. Information will be able to be shared where it is reasonably necessary to administer the Act and other terrorism-related legislation, or to reduce the risk of a person committing a terrorism or foreign incursion offence. The Bill also authorises information sharing with members of the Joint Counter Terrorism Teams (including Commonwealth intelligence agencies and other police forces around Australia), and other relevant persons and bodies.

The Bill also amends the *Children, Youth and Families Act 2005* to provide a clear legal basis for the sharing of terrorism risk information about young people involved in the youth justice system. This information will be able to be shared with the Department, the Youth Parole Board and members of the Joint Counter Terrorism Teams and used to inform decisions about bail, parole, and custodial and community-based court orders.

These reforms will provide greater confidence for relevant persons to share information to respond to terrorism risks.

**Amendment of *Criminal Procedure Act 2009* and *Sentencing Act 1991***

The Bill amends the definition of Category A Serious Youth Offences in both the Criminal Procedure Act 2009 and Sentencing Act 1991 to add terrorism offences under the Terrorism (Community Protection) Act 2003 to the existing definition, which currently includes terrorism offences and foreign incursion offences under the Criminal Code Act 1995 (Cth). This amendment ensures that young people charged with Victorian terrorism offences are dealt with as a terrorism risk.

**Conclusion**

The Victorian Government recognises the need for counter-terrorism legislation to be effective and agile, while remaining proportionate and measured. These principles were at the heart of the Expert Panel review. The range of powers included in the Bill will provide essential tools for law enforcement agencies to respond to the threat of terrorist acts. The amendments are a necessary response to the evolving threat of terrorism and by clarifying the operation of certain powers and provisions will give law enforcement the confidence to take swift and decisive action and keep the community safe.

The government acknowledges concerns about the impact of counter-terrorism laws on rights under the Victorian Charter of Human Rights and Responsibilities Act 2006. The Bill seeks to balance the rights of all Victorians, while acknowledging that the unique nature and gravity of terrorism threats at times demand extraordinary measures and an ability for law enforcement to respond rapidly and effectively. The consequences of terrorist acts, and the difficulty in predicting when they will be carried out, place police under great pressure to intervene with less knowledge than would be available in the circumstances of day-to-day law enforcement. The Bill strikes a balance between empowering police to undertake their functions for the benefit of the community without unreasonably limiting rights.

I commend the Bill to the house.

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

**Debate adjourned until Friday, 15 June.**

## PETITIONS

**Following petition presented to house:**

### Port Phillip Specialist School

To the Legislative Council of Victoria:

This petition of residents in the state of Victoria draws the attention of the Legislative Council to the Port Phillip Specialist School's need for an upgrade to their kitchen teaching space, noting that the school has raised $150 000 towards this project, which has capital costs of $300 000.

The petitioners request that the Andrews government match the school's fundraising and provide the additional $150 000 needed to complete the project.

**By Ms FITZHERBERT (Southern Metropolitan) (378 signatures).**

**Laid on table.**

## PAPERS

**Laid on table by Clerk:**

Education and Care Services National Law Act 2010 — Education and Care Services National Amendment Regulations 2018 pursuant to section 303 of the Act.

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

Kingston Planning Scheme — Amendment C152.

Moorabool Planning Scheme — Amendment C78.

Subordinate Legislation Act 1994 — Documents under section 15 in respect of Statutory Rule No. 59.

## NOTICES OF MOTION

**Notice of motion given.**

## BUSINESS OF THE HOUSE

### Adjournment

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

That the Council, at its rising, adjourn until 12.00 p.m. on Tuesday, 19 June 2018.

Who would accuse me of not being a generous person?

**The PRESIDENT** — Not I.

**Motion agreed to.**

## APPROPRIATION (PARLIAMENT 2018–2019) BILL 2018

*Second reading*

**Debate resumed from 10 May; motion of Mr DALIDAKIS (Minister for Trade and Investment).**

**Mr RICH-PHILLIPS** (South Eastern Metropolitan) (09:49) — I am pleased to rise this morning to make some remarks on the Appropriation (Parliament 2018–2019) Bill 2018. This bill before the house this morning is the bill which provides parliamentary authority for the departments which make up the Parliament. As members know, this bill is separated from the general appropriation bill and has been so since the early 1990s. Later in my contribution I will come back to the reason for that structural separation of the bill and the bigger issues around governance of the Parliament and the independence of the Parliament from the government.

To turn to the specifics of the bill this morning, the bill largely follows the structure of the general appropriation bill in respect of providing through its structure for the issue of certain sums from the Consolidated Fund — in the instance of this year it is a total of $154 293 000 — and provides the usual structure around allowing for that issue of funds to be varied in accordance with determinations from the Fair Work Commission in accordance with variations for salaries and related costs, which is a standard mechanism which exists in the general appropriation bill to provide for accommodating decisions in the industrial environment which may arise through the course of —

**Mrs Peulich** interjected.

**The PRESIDENT** — Order! Mrs Peulich, if there is a conversation outside, I am not sure that it is very productive, and I am having difficulty hearing Mr Rich-Phillips.

**Mr RICH-PHILLIPS** — Thank you, President. I was saying the issue-of-money clause provides for that structure, which allows for industrial determinations to be accommodated within the appropriation as variations may be required through the course of the financial year. It is effectively a special appropriation which allows for those variations to be accommodated.

The bill then goes on to run through the formal appropriation, the Consolidated Fund, and then provides for the application of those funds as appropriated to the different departments of the Parliament by way of schedule, which is again consistent with how the general appropriation bill manages the appropriation for the general government sector on a department-by-department basis.

In respect of the Parliament we now have some six individual departments which receive appropriation under this bill. The first is the Department of the Legislative Council, which this year is to receive an appropriation of $4.6 million in output funding with no allocation this year for ATNAB funding, which is additions to the net asset base, and it is not unusual for the Department of the Legislative Council not to have asset funding. In respect of the Department of the Legislative Assembly we see an allocation of $4.98 million, again for output, and no allocation for asset. For the parliamentary committees, which are considered as a separate line item — and this is funding for the joint investigatory committees — the allocation is $7.45 million, which is a modest increase on the $7.26 million that was allocated in the 2017–18 financial year.

For the Department of Parliamentary Services the allocation output funding, under section 29 of the Financial Management Act 1994, is $110.35 million, up from $104.6 million in the last financial year. In relation to asset funding — net additions to the asset base — there is an appropriation of $1.92 million, which is a decrease from $6 million in the previous financial year, reflecting a change in the allocation of funding for capital projects. Obviously one of the big capital projects that the Department of Parliamentary Services has been undertaking has been the construction of the new accommodation wing in the rear of the parliamentary precinct.

Another element picked up within the parliamentary appropriation bill is funding for what is termed the Department of Auditor-General, which is the Victorian Auditor-General's Office. As an officer of the Parliament a separate appropriation is provided for the Auditor-General by way of an allocation through the parliamentary appropriation bill. This year we have seen an allocation of a little over $17 million in output funding, up from $16.5 million, and $4.6 million allocated by way of funding for the audit office. A new addition to the appropriation bill this year is the Department of Parliamentary Budget Office. It is new in the sense that the office is now established. The newly established Parliamentary Budget Office has an allocation of $3.3 million in output funding and, not surprisingly, no asset funding.

The amounts allocated by way of the appropriation of course do not reflect the total amount which is allocated

in respect of the individual departments of the Parliament. For a better picture of the actual funds which are available to those departments I would draw the house's attention to budget paper 3, the 'Service delivery' budget paper, and the chapter in relation to Parliament. It sets out with better description the actual funds which are available, because the funds which are appropriated through the appropriation bill are only a component of the total resources which are made available to the Parliament and indeed made available to other departments.

The headline number in the appropriation bill, because of the way the Financial Management Act 1994 is structured, never entirely reflects the resources which are available to each department and quite often does not even approximate the resources which are available to departments given the fairly complex way in which departments are funded in Victoria. While we do have the annual appropriation line, which is voted on through the budget, and then the breakdown of that between output funding and asset funding in addition to the asset base, there are also provisions under the Financial Management Act which allow for various departments to retain their own-source revenue as part of their financial resources. There is the capacity for the Treasurer to permit the application of previous years unexpended appropriations to the new financial year, which adds to the capacity available to an agency.

Then there are special appropriations, and in the case of the Parliament the main special appropriation which flows to Parliament is the special appropriation which is created under the Parliamentary Salaries and Superannuation Act 1968, which provides for the salaries and entitlements for members of Parliament. While this particular bill before the house today is often viewed as the one that pays MP salaries, in fact it is not. This bill provides the appropriation for the running of Parliament, it provides the appropriation for the salaries of parliamentary officers and the parliamentary staff here at Parliament House and it provides for the salaries of electorate officers in the electorate offices throughout the state, but this appropriation bill in fact does not pay the salaries of members of Parliament — that is paid through a special appropriation. That highlights that the headline number in the appropriation bill does not reflect the actual resources which come to the Parliament.

For a better explanation of that, I would draw members' attention to a table which is contained in the service delivery volume of the budget papers — table 2.24, 'Parliamentary authority for resources'. It shows the annual appropriation, which is what this bill deals with; the split between provision of outputs and assets; receipts credited to appropriations, which is revenue made available to a department, and in this instance that is approximately $26 million, which I would assume would be revenue paid to the Auditor-General for audits undertaken by the Victorian Auditor-General's Office and then appropriated to the Department of Auditor-General; carryover of previous years appropriations, $5.9 million; and the special appropriations. In the case of the Parliament no trust funds are applied, but for the 2018–19 financial year total parliamentary authority stands at $237.4 million, which is a substantial difference from the $154 million set out in the appropriation bill by virtue of those other elements that I have spoken about. And obviously that special appropriation line is largely related to salaries of members of Parliament, the level of which is a matter of public record through the parliamentary salaries and superannuation legislation.

To understand where the Parliament expends its funds it is necessary to look at the other expenditure in, again, budget paper 3. It sets out the output costs for the individual departments, which in this year's budget total $229 million. In the case of the Department of the Legislative Council the total output cost for the budget year is $19.8 million. It is good to see that the additional funding which was provided in last year's budget in respect of Legislative Council committees has been continued in this year's budget. This is a matter which has been of concern to the Legislative Council for a number of years.

The Legislative Council, I think two years ago, proposed an amendment to the parliamentary appropriation bill, which was an unusual thing to do. This suggested amendment, given it was an appropriation bill, was to provide additional resources to the Legislative Council in recognition of the work that the Legislative Council select committees had been undertaking. When that suggested amendment was transmitted to the other place the Treasurer agreed to provide those funds to the Legislative Council on the basis not of an amendment to the appropriation bill but of an exchange of letters between the Treasurer and the two presiding officers, so those funds were made available for the 2016–17 financial year. Last year we saw funds provided in the appropriation for the Department of the Legislative Council, but again we did not have the ongoing funding. That was a matter which was raised in committee last year, with the Council again considering the prospect of an amendment to the appropriation bill to lock in that funding for the Council committees.

Again we had last year an undertaking from the Leader of the Government on behalf of the Treasurer that that

funding for the Legislative Council select and standing committees would be provided and would be reflected in the forward estimates for the parliamentary appropriation. We have now seen that in this year's budget, which is a positive step. In regard to that matter this year we do not need to contemplate an amendment to the appropriation bill to lock in that funding. I think it is a positive step that the role of the Legislative Council standing and select committees has been recognised and the resourcing need for those committees has been recognised by the government in the structuring of the parliamentary appropriation bill. Clearly they will continue to have a role to play with the Council, and having certainty around that funding is an important step.

I would just like to run through some of the output measures which are listed for the Parliament. As I indicated, the Parliament is divided now into some six individual departments, the Legislative Council being the first one, with a $19.8 million output cost. A number of performance measures are recorded in the service delivery chapter in the output statement for the Legislative Council. Many of those performance measures are useful in the sense of assessing or measuring the performance of the Department of the Legislative Council. They consider things such as the frequency with which procedural references are updated and the quality of the parliamentary process — that is, the way in which the chamber manages the legislative process, manages the dispatch of legislation, the consideration of amendments in committee, the interaction between the houses in relation to messages and amendments and ensuring that the activities of the Council in a legislative sense are validly conducted in accordance with our standing orders, our sessional orders and of course the Victorian constitution.

We have seen in the last 12 months the Clerk of the Council become the Acting Clerk of the Parliaments with responsibility for the interaction between the Parliament and the Governor's office for the final stage of the legislative process. So it is all the more important that the functions and activities of the Legislative Council are carried out with, basically, a perfect level of accuracy in respect of the Parliament's obligations under the constitution and its processes and proceedings so that we can be assured of the integrity of the legislation which results from our parliamentary activities.

Likewise, the output group reports on member satisfaction with the accuracy, clarity and timeliness of advice. I was intrigued to compare our measures with measures in the Legislative Assembly. The last actual outcome for the Department of the Legislative Council was reported in the 2016–17 financial year, and no doubt in the annual report of the department this year we will see an actual outcome as opposed to an expected outcome. Legislative Council member satisfaction was assessed at 82 per cent for 2016–17, and in the Legislative Assembly it was assessed at 96 per cent, which I found an intriguing comparison.

In thinking about it and reflecting on the complexity of the advice which is required in the Legislative Council and the dynamic nature of the advice which is required in the Legislative Council — which is a very, as you would appreciate, President, dynamic environment where a number of things occur, a number of practices are tested and a number of firsts have been established in the case of this Parliament — I think the members of this chamber can be very pleased with the level of advice, the clarity of advice and the timeliness of advice they receive from the clerks, the table office staff and the support staff behind them, because the environment in here is very different to the other place. The other place is, in its processes, far more predictable than the Council, far more predictable —

**Ms Pennicuik** interjected.

**Mr RICH-PHILLIPS** — Ms Pennicuik says I am being diplomatic, but for members of this place the other place is predictable. Its processes are predictable, its passage of legislation on the guillotine is predictable and its lack of scrutiny of legislation through consideration in detail processes and the like, through the activities of standing committees and select committees — the lack of those things — is very predictable.

As a member of the Council I can only speculate that the nature of advice that is sought by members from the clerks and table staff in the Assembly would be far less complex and involved than the advice that is required day-to-day in the Council, where it is a dynamic environment, precedents have been tested, a range of new concepts and issues have been explored and continue to be explored and the resources required from the Clerk and his staff are very significant. Looking at precedents in the commonwealth Parliament and elsewhere in Australia does put a big demand on the resources of the Council, and I think we have been very well served by our parliamentary staff who provide that advice accurately and on a timely basis in a very complex environment. I am intrigued by the relative assessments on those output measures between the two chambers, because we have been extraordinarily well served in a very complex environment.

Moving to the Department of the Legislative Assembly, we see that its total output funding is $38.6 million. It has a similar number of performance measures. Some of them are intriguing. For example, one of the measures listed for the Department of the Legislative Assembly is 'Teacher satisfaction with tours of Parliament for school groups'. I am somewhat perplexed that the Legislative Assembly regards that as one of its core measures — that teacher satisfaction is one of the eight performance measures which are listed for the Department of the Legislative Assembly as the key ways in which it assesses its success.

The Department of Parliamentary Services is of course the major cost centre for the Parliament, being the department which is responsible for the provision of electorate officers, being the staff, and offices, being the physical infrastructure, and the output cost of the department this year is $116.6 million, which reflects the size and the relative complexity of the tasks it undertakes. Again, looking at the list of performance measures one cannot help but wonder if they are the most reflective of the responsibilities of that department. For example, one of the performance measures listed is to 'Provide MPs with an approved standard electorate office', with a target of 95 per cent. The provision of an office is a basic task of the department, and for that to be a performance measure in the sense of a numerical target rather than an assessment of quality or satisfaction is a bit surprising. It does raise the question of how relevant some of those targets are with respect to that department.

The next department considered in the appropriation bill is the Department of Parliamentary Investigatory Committees, which is the funding provided for joint committees as distinct from the select and standing committees which are attached to the Legislative Council. The output cost for 2018–19 is $7.5 million, and it is interesting to see that the expected output of the department of committees this year is substantially lower. This is attributed to the election environment where the Parliament will be effectively, from a committee perspective, not operating from September through to the end of the year. There is not likely to be much committee work until the new Parliament next year.

The next department we have is the Parliamentary Budget Office (PBO). This is a new initiative over the last couple of years. The Parliamentary Budget Office was established by way of legislation in 2017, and funding of $3.3 million has been provided in this year's budget. It remains to be seen what function the Parliamentary Budget Office has. To date we have seen that after an extended delay a head has been appointed to the Parliamentary Budget Office. Whether that PBO goes on to play an important role in the operation of the Parliament, an important role in the provision of services to members, remains to be seen. To date I have not had a sense that there is a lot of engagement with that office or a lot of use for that office. It will be a matter of time as to when we determine whether the $3.3 million allocated to the PBO is a good use of resources, or whether those funds would be better allocated elsewhere in the Parliament or indeed better allocated elsewhere in the public sector.

There are a lot of challenges for the PBO, for the way in which the office has been constructed under its legislation, the function it is supposed to have and whether members will have confidence in that structure. This is not a reflection on the officer that has been appointed, but rather on the way that the office has been constituted. It remains to be seen whether members choose to engage with that or whether they continue to get advice on budgetary matters and advice on policy costings externally from people who may be more expert in individual policy areas, or indeed more expert in the costing of policy areas. So a big question mark remains over whether the PBO will be an effective resource for the Parliament or as I said, whether those funds could be better directed elsewhere. A big question mark hangs over that office and its long-term future.

The other element that is picked up under the parliamentary appropriation is the Auditor-General's office. As an independent officer of the Parliament, it is picked up in the parliamentary appropriation bill, but of course it operates quite independently of the Parliament, though it has some — I hesitate to say oversight, but certainly interaction with — the Public Accounts and Estimates Committee. This year we have seen the output cost for the Auditor-General at $27.3 million, and it is good to reflect on the type of performance measures that the Auditor-General has in the output group for the audit office because some of them are quite meaningful.

For example, the first is a quantitative measure, which is the average cost of audit opinions issued on performance statements, and that cost is $5100. We have the average cost of audit opinions issued on the financial statements of agencies, which is $51 000. We have quality assessments which relate to external and peer review of material that is prepared by the audit office looking for variations from professional and regulatory standards. So the audit office performance measures are quite meaningful in assessing the performance of the audit office, and I think that is something that perhaps other departments of the

Parliament and other departments of government more generally could learn from in ensuring that the performance measures listed are meaningful.

Now I would like to touch on the structure of this bill, because one of the issues we do tend to discuss each year at this time is the fact that we do have an appropriation of Parliament bill, which ostensibly exists to provide independence for the Parliament from the government. This is something which has been in place since the early 1990s or thereabouts, when the first appropriation of Parliament bill was introduced to create the impression that Parliament was master of its own resources, that there was a bill to appropriate funds for the operation of government and there was a separate bill to appropriate funds for the operation of Parliament, and that the Parliament would determine its own path, its own resources by way of this parliamentary appropriation bill.

The reality is that that is a fiction. The independence of Parliament through the parliamentary appropriation bill is a fiction because the requirements of our constitution and the requirements of the Financial Management Act 1994 mean that inevitably the appropriation of Parliament bill is a government bill. It is a bill that is prepared in the Treasury, it is a bill that is approved by the cabinet, it is a bill that is introduced by the Treasurer and it is a bill that can only be introduced after an appropriation message from the Governor, which of course is only issued on the instruction of the government. The independence —

**Ms Pulford** interjected.

**The PRESIDENT** — Order! The member is actually referring to the Parliament's ability to determine its own financial position, as distinct from the process that we all know does exist with the rest of the budget. So it is actually a substantive point that is being made, and the member ought to have —

**Ms Pulford** interjected.

**The PRESIDENT** — I am serious about this one. On that basis the member deserves to be heard in silence.

**Mr RICH-PHILLIPS** — Thank you, President. The point I was making is that the parliamentary appropriation bill can only be introduced to Parliament with an appropriation message from the Governor, which is only issued at the instruction or request of the government. It is a bill which is prepared in Treasury, it has cabinet approval and it is introduced by the Treasurer, so the notion that the bill is independent of government is a fiction.

It is very much a bill which only reflects the views of the government in its introduction and its passage through the house, and of course the fact that it is the appropriation bill and cannot be amended here and can only be amended in the other place — in other words, the house where the government has, by definition, the numbers — means that it is inexorably a bill that reflects the wishes of the government. That is reinforced by what we saw two years ago, when the Council moved a suggested amendment with respect to Council committee funding. That was not supported by the government in the other place in that form, and an exchange of letters was put in place to facilitate Council committee funding. But nonetheless the bill in its final form, when it was passed as an act, reflected the way the government wanted it to be structured.

That raises the question of how the Parliament gets genuine independence from the government and what form that should take. In the last 12 months there has been work undertaken by the Parliament. Some of that work has been undertaken through the parliamentary library, which included the production of a very interesting paper on the independence of Parliament which looked at the way in which funds for parliaments are appropriated in other jurisdictions and contemplated some of those models and some of those options for providing genuine independence of Parliament.

One of the challenges of an alternative model is ensuring appropriate governance. As I outlined with this year's budget, we have $154-odd million appropriated through the parliamentary appropriation bill and we have total parliamentary resources for Parliament of $230-odd million, so it is a very substantial amount of money that is provided for the running of Parliament. What we do not currently have is an appropriate oversight mechanism for that, because there is not a capacity to get up in this place and ask questions of a minister about that expenditure, ask questions of a minister about how the expenditure is being managed or ask questions of a minister about the administration of those funds more generally or the assets that are under the control of the Parliament or other extremities of the Parliament. So the ordinary accountability mechanisms we have for funds appropriated under the general appropriation bill — for example, through ministers in this house — are not available on that same day-to-day basis in respect of the parliamentary appropriation bill.

One of the key areas that would need to be considered in establishing or providing an alternative model for the appropriation of funds to the Parliament, and one of the models that is canvassed in the parliamentary library's paper on the independence of Parliament, is the

establishment of a parliamentary corporate body to oversee Parliament. In my view one of the key things that would be required if such a model was to be contemplated, and I think it is a matter that the government in the next Parliament is going to have to contemplate, is what type of oversight you provide to a parliamentary corporate body if that is the model that is chosen, because there does need to be that day-to-day accountability that we bring for funds appropriated to the government under the general appropriation — the accountability that will take place in this chamber, the accountability that will take place in the other chamber — which does not currently exist for the parliamentary appropriation.

In looking at independence, in my view that cannot be done in isolation. It must be looked at in terms of governance as well. What is the governance structure that sits over those parliamentary funds, whether it is a board or a similar structure, and how is that held to account on a day-to-day basis in the Parliament? Because it is a considerable sum of funds that is vested in the Parliament. We have seen obviously big asset projects undertaken such as the construction of the new building at the back of the parliamentary precinct for accommodation, but there is also the oversight of 128 electorate offices and the staffing of those offices, which runs into the many hundreds of people. It is a big enterprise, it is a complex enterprise and it is an enterprise that should be transparent in its use of the $230-odd million that the total parliamentary authority accounts for.

We recognise the challenges of the independence of funding for Parliament and the need for a genuinely independent structure, which does not exist to date, but in looking at how we could provide a genuinely independent structure we also need to give priority consideration to what is the governance structure that would sit on top of that independent structure. The governance structure for the Department of Parliamentary Services is probably the highest priority given it is the largest expenditure area, more so than the individual chamber departments which tend to have fairly direct oversight from their respective presiding officers. But the administration, the back-of-house activities, undertaken by Parliamentary Services is an area where governance would need to be considered very carefully before any model of further independence was created.

Indeed in saying that I acknowledge that the current model is not optimal because it does not provide the oversight that is required. While it is technically a government bill — signed off by the cabinet, signed off by the government — there is actually then no government oversight once those funds are in the hands of the Parliament. So in many respects it sits as almost a vacuum: the government ticks off on the funding and then it is in third-party hands. If we are to go down the path of full independence and genuine independence from government, we do actually need to put those governance structures in place so we do not have that gap with respect to Parliament.

The coalition obviously is not going to oppose the appropriation for Parliament bill. We do welcome the fact that Legislative Council funding for committees has been clarified in this year's budget. But I do note that while there is interest around the Parliament with moving to more independent structures, much work needs to be done around the governance of those structures before we could contemplate moving to further independence of the appropriation structure.

**Ms SYMES** (Northern Victoria) (10:30) — I rise to make a few remarks on the Appropriation (Parliament 2018–2019) Bill 2018. I note that we have heard a lengthy contribution from Mr Rich-Phillips, and I also note that there seems to be a lot of interest in this bill this morning, which is pleasant for all of us. This bill has seven clauses in it. It is obviously a bill that facilitates the appropriation of funds from the Consolidated Fund for the Parliament of Victoria. It will fund the work of the Legislative Council, the Assembly and the Department of Parliamentary Services (DPS), as well as the Auditor-General and the Parliamentary Budget Officer.

I would just like to take the opportunity to thank all of those who contribute to the Parliament of Victoria: the DPS staff, the clerks here, Hansard and all of the attendants. They certainly make elements of coming to Parliament pleasurable, and you need that considering the actions that we are subjected to today. I commend the bill to the house.

**Motion agreed to.**

**Read second time.**

**Committed.**

*Committee*

**Clause 1**

**Mr RICH-PHILLIPS** — Putting questions to the minister now actually goes to the point I was making at the end of my speech around the governance and the accountability structures for this expenditure. I am not necessarily sure that Mr Jennings is going to be able to answer, off the top of his head, the questions I have for

him, but it highlights that this is actually the only mechanism that is available for oversight of this expenditure.

The question I want to put to Mr Jennings — or put with respect to the bill if there was another mechanism that was not Mr Jennings — is: in relation to the additional funding that has been provided with respect to security in the parliamentary precinct, particularly the additional costs that have been incurred in respect of the new facility out the back, is the minister able to outline what those additional costs are that are associated with the new development out the back and the provision of security for that? Again, I appreciate that there is difficulty for the minister in answering that, but this is the only mechanism available.

**Mr JENNINGS** — I might actually seek some supplementary advice. Maybe I should ask the President to come in. In fact maybe if I speak loudly, the President may be interested in this subject and he might be in a position to be able to assist us in answering that question. Certainly the Department of Parliamentary Services, who work with the Presiding Officers, may be able to assist us in relation to answering that question off the cuff. The longer and the more loudly I speak maybe the bigger effect I might have; I do not know really.

**Mr RICH-PHILLIPS** — I appreciate the difficulty the minister has with this question, and it very much goes to the point I was making before about the independence of the parliamentary appropriation process and the fact that it is a farce — a fiction. But because it is a government bill, once the funds are appropriated to the Parliament the oversight is not by the government and there is not a mechanism that provides the oversight in this chamber. With the exception of the annual Public Accounts and Estimates Committee (PAEC) proceedings with the Presiding Officers and the consideration of the parliamentary appropriation bill, there is not a mechanism available which deals with questions around the governance of the $230 million-odd that is appropriated to Parliament. Pending further information, maybe the minister is in a position to take that particular question on notice around those specific additional resources for security, if indeed that information is available to the government from the Parliament. I wonder in a general sense whether the minister would like to offer a view on an appropriate accountability or governance mechanism which would ensure there is ongoing visibility of the consideration of the funds that are appropriated to the Parliament.

**Mr JENNINGS** — In your response to my perhaps very inadequate comments that I have made up until this point in time, drawing attention to the responsibilities of the Presiding Officers and Parliamentary Services in relation to the expenditure and the acquittal in terms of the management of the funds that are derived through this appropriation, you yourself have acknowledged that there is an accountability through the Public Accounts and Estimates Committee for the Presiding Officers to respond to questions such as the one that you have put to me. It is an opportunity always as a default setting for the Parliament to have clarity or a degree of accountability in terms of the functioning of Parliamentary Services and those obligations that fall to the Presiding Officers.

I understand the point that Mr Rich-Phillips is making, given that this is a bill brought by government to appropriate certain moneys to the Parliament. After that the expenditure is basically in the Parliament's hands, and then there is potential tension or a blind spot in relation to the acquittal of that through the minister at this table taking responsibility for this. I accept in theory the concern that Mr Rich-Phillips's question is raising. If we were to discuss the practicalities of that, the politics of that and the appropriateness of any remedy, I would think once the appropriation has been made in an ideal system — in fact, once the budget has been brought to the Parliament by the government — it would only be appropriate for it to be acquitted by the Parliament itself. You would not want the circumstances where that reporting relationship would change and where the potential for ministerial intervention in the running of the Parliament would occur.

One of the virtues of this inadequate system at the moment is that it does not lead to the overly intrusive nature of ministerial direction in the activities of Parliament. As a minister who is responsible for a number of statutory agencies and the independence of statutory agencies — in this case, the primacy of the role of Parliament — I would be reluctant in my ministerial responsibilities to interfere with the independent budget allocation of those statutory agencies for which I am responsible. There is a crossover point, and you actually have to make a judgement call on balance about where that accountability lies. At the moment the default setting is that the Presiding Officers would be accountable to the Parliament through the Public Accounts and Estimates Committee. I represent the Treasurer in relation to this piece of legislation because it is the government in a simple sense providing money to the Parliament for them subsequently to acquit.

**Mr RICH-PHILLIPS** — Thank you, Minister — I agree with your summation. That raises my question again as to the point of whether there needs to be or should be an additional or alternative parliamentary-based governance structure that certainly does not make it the responsibility of government, because we are seeking independence. There has been a considerable body of work undertaken by the Parliament in recent years looking at how to enhance the independence of parliamentary funding from government. I am not suggesting that it be put back more tightly under government, but rather I am asking whether there needs to be an additional or alternative parliamentary-based governance structure that puts more visibility in the chamber on those parliamentary funding administrative activities so they can be accounted for in the same way that general appropriations in the hands of ministers are accounted for through question time — similar ongoing accountability which currently does not exist for the parliamentary appropriations.

**Mr JENNINGS** — In many ways I have accepted that logic in relation to the piece of legislation that is on the notice paper in the other place in relation to the responsibilities of a remuneration tribunal and the increased transparency that may be associated with the terms and conditions of employment and engagement of members of Parliament. The expenditure that is associated with their work and their engagement with the electorate should be more transparent and accountable and determined independently, with some rigour around the decision-making process that is associated with those series of financial transactions to reduce it to the mechanism by which the remuneration tribunal would be setting standards and a process by which accountability would be laid out. There would be an obligation for Parliamentary Services to act in accordance with those guidelines and that structure which would be, in my view, an enhancement of the current arrangements in terms of an independent and rigorous process in relation to that.

Beyond that, if I was to come to the committee and suggest that it was the government's intention to create a structure of that internal governance within the Parliament, you would see that as a very provocative act, I would think, so there is a degree of entrapment in the question. It is a reasonable concern. Regarding the form by which Parliament may consider this matter, I have not exercised my mind to how that could occur. But, for instance, just straight off the top of my head, PAEC may be a place where such a conversation could take place, and it could actually be a reference and a consideration that they may exercise their mind to over time. But I think that at the minute it would be a bit adventurous to volunteer a solution to the question that you have raised without actually setting a whole range of cats running in all sorts of directions in relation to what the consequences of that might be.

**Mr RICH-PHILLIPS** — I can assure the minister that no entrapment was intended. I think he is quite right that such a development would need to be led from Parliament rather than from government for that to be effective and to be broadly supported.

I am just wondering, Minister, in respect of the initial starting point with this committee stage on seeking that information around those additional security-related costs, whether you are able to get that information or give an undertaking to seek that information, and then we can progress.

**Mr JENNINGS** — Certainly I will attempt to obtain that information. In the first instance I would seek that from the Presiding Officers, within their determination of the appropriateness of sharing that information. So I undertake to use my best endeavours to obtain it from them and to share it with the Parliament, although I cannot actually attest to when that can be. It will be dependent upon their view on the subject and their willingness to enable me to furnish that. In fact they may take the decision to furnish it to the Parliament themselves on the basis of the question being asked of them, and I am assuming that such a question was not asked of them in PAEC.

**Ms PENNICUIK** — Minister, I would like to take this opportunity to thank the staff of the Parliament that the parliamentary appropriation bill funds, including the clerks and their staff, the IT unit upon whom we all rely weekly and daily, the staff of the library, the staff of Hansard, the security staff, the parliamentary attendants, our electorate officers, the Department of Parliamentary Services including accounts and training, and the properties division.

I have spoken on these bills many times. One thing that does come to light if you look back over the past is that there is an increase in the budget for the parliamentary appropriation this year to $154 million from $144 million in the last financial year — $10 million more. I am a member of the Public Accounts and Estimates Committee, and if you look at the budget pressures on the Parliament as a whole that the Speaker, the President and the clerks presented to the committee, these include increased electorate office rentals at a rate higher than the funding increase. There was a graph presented to us by the Presiding Officers and the clerks at the committee hearing, and particularly in the last three to four years the rental on properties has shown a

steep increase, and that has an effect if leases expire et cetera on where MPs and their staff can be located.

The Presiding Officers and clerks also pointed out an increased information and communication technology cost driven by growing data usage, which I am sure we are all aware of and are responsible for to some degree; a continued increase in cybersecurity costs; more frequent security patching, which has to be compressed into non-sitting weeks; and vendor patch volumes increasing.

The Presiding Officers also mentioned that there is increasing web streaming of the Parliament, which is a good thing, and increased numbers of weekly attacks on the parliamentary website, which I think members who have not necessarily gone to the detail of what was presented by the Presiding Officers and the clerks in PAEC would be interested in. There are large numbers of hacking attempts on the Parliament, and interestingly around 39 per cent of them are coming from the United States; around 20 per cent of them are coming from Japan, which seems strange; around 9 per cent are coming internally from Australia; and the rest are made up of different countries.

Given these increasing pressures and the relatively flatlining budget over the last few years, and following on from the points made by Mr Rich-Phillips regarding the independence of Parliament to determine its own budget, my question is: in terms of these increasing costs which the Presiding Officers draw to our attention every year in the Public Accounts and Estimates Committee hearings, what is the criteria that the Treasurer and the department use to keep up and make sure that these budget pressures are accounted for in the parliamentary appropriation budget?

**Mr JENNINGS** — I hope not every question that I take in the committee has as lengthy a preamble as that one. Why did we not have a second-reading debate if you wanted to make these points?

**Ms Pennicuik** — Why indeed?

**Mr JENNINGS** — I have got no idea why — apart from punishing me. Apart from punishing me, I do not know why we are doing this. It is only clear to me that that is why we are doing it — to keep me here all day.

**Ms Pennicuik** — No.

**Mr JENNINGS** — That is what it seems like to me, and I appreciate it greatly. It is the outstanding maturity of what happens in this place!

In terms of your question, Ms Pennicuik, going back off Mr Rich-Phillips's question, there is a combination of internal accounting practices that take place within Parliamentary Services in the way in which their bids are presented by the Presiding Officers to the budget process. So already there are some of the factors that you have identified being accounted for in the bids that they make on behalf of the Parliament in terms of their awareness of those cost pressures.

There would then be consideration that takes place between Parliamentary Services and the Department of Treasury and Finance (DTF) in relation to the validity of those estimates. In all aspects of public administration there is a balancing act between the increase to resources that are available to all agencies on the basis of, if not productivity savings, a refinement of cost structures to make them as efficient as possible whilst allowing for other cost pressures, that you have put on the public record just now. Within this appropriation DTF would have played their role in advising government in relation to what they believed was an appropriate balance of those real cost pressures, the sustainability, the reforms and the efficiencies that are going to be undertaken within Parliament.

There are, as you would see, some structural changes in relation to the internal allocation within the budget. This appropriation resolves some of the matters that have been raised time and time again in this committee and across the Parliament, even in the chamber, over a number of years about the structural make-up of the division of funding between the Legislative Council and the Legislative Assembly. There is a recognition in this appropriation that that structure should be on a more sustainable basis for this chamber. The model that would apply across Treasury would not be a model that has ever been applied to the detriment of Parliament. It would be consistent with the frame of the model that is actually applied across the public sector.

**Ms PENNICUIK** — Thank you, Minister. I suppose I expected that answer, but I do draw your attention again to what I mentioned, particularly in terms of increased communication and communication technology costs driven by MPs and staff — the usage of data. As I laid out, the Presiding Officers raised at the Public Accounts and Estimates Committee budget estimates hearings the continued increases in cybersecurity risks and therefore costs, and they have to keep up with security patching et cetera. This all has to be done in non-sitting weeks. That has raised those pressures on the budget. In contrast to, I suppose, the Presiding Officers and clerks, it is not necessarily raising pressures on other areas of funding; for example, there has been increased funding to the

Legislative Council, which is good. If you have a look at the committee allocations, they are a lot more even than they have been in the past, but I still think the committee staff et cetera are under a lot of pressure.

The point that I am getting to is that in regard to these IT-type issues and pressures that were identified by the Presiding Officers, funding is not necessarily keeping up with the pressures. Can you as the minister tell me why this would be presented as a problem that is not being kept up with enough? Because if the IT structure that we all rely on is struggling, that is an issue. So I wonder whether you have any further information on that in terms of keeping the funding for that particular area up enough to keep up with the threats that it faces?

**Mr JENNINGS** — If it is a cybersecurity question, there has been money allocated in the budget to support our cybersecurity capacity. That applies across the public sector. Access to advice and technical support would be provided to the Parliament through that funding. So if that is the question, there is additional enhanced capacity — internal public sector capability — for cybersecurity.

As for the issue that you talked about in relation to whether the base foundation of our IT offering is actually keeping up with the needs of MPs, I think it is a combination of what advice and recommendations come through officers of the Parliament in terms of knowledge and capability building and then investment strategies that may be associated with Parliament. That has been a priority of course in the last couple of budgets. It goes back to the question Mr Rich-Phillips asked me. It has been a priority in terms of the rebuilding of security. You are talking about a different aspect of security. They are all interconnected. In fact probably cybersecurity may be the bigger risk. So if you are arguing that that should be a commensurate priority, we are not arguing about that. I would be quite supportive of Parliament recognising that and costing what the appropriate approach is and what the best way of building that capability should be in the future.

**Ms PENNICUIK** — I am drawing attention to these two aspects. I am not really going to the rental rise because I think that is probably just something that may keep occurring. But in terms of the IT as a whole, in many ways some of the pressures which have already been identified by Presiding Officers may not be predictable in terms of the next financial year, and the appropriation budget for the Parliament is pretty tightly allocated. So to finalise this line of questioning: in terms of unforeseen events that cannot be funded from the parliamentary appropriation, in terms of increased cybersecurity issues and changes in the IT world that require more resources, the provision of data et cetera, how would that be accommodated?

**Mr JENNINGS** — How the government responds to any emergency, and this is an emergency that you are talking about, in an imminent emergency, whether we take efforts to avert it or whether we respond to the impact of an emergency, there is a capacity within the budget. Whether it be the type of emergency that you described in your examples, which could apply not only here but across the public sector, whether it be natural disasters or other issues that occur, there is an ability to secure additional funding during the course of the year — subject to budget capacity, and there is significant budget capacity — to be able to address that in the running. That would apply to Parliament just as it would apply to any of our agencies or institutions if they were subjected to some emergency that required support.

**Mr MORRIS** — I too would just like to place on the record my thanks to all of the staff in this place who do the great work that they do, whether it be the clerks, the attendants or those who assist us in the table office during committees. I note that the committee work that has been undertaken in this Parliament has been significant. There certainly have been a large number of references that have been given to committees as well as self-references that committees have undertaken. The number of submissions that the committees have received with regard to those references has been quite significant.

There has obviously been some select committee work with regard to the port of Melbourne and to the Country Fire Authority issue which has certainly been very significant. I do note that there are still ongoing challenges with regard to the funding, particularly of the upper house standing committees that do very, very important work. The Economy and Infrastructure Committee has had an important rolling reference with regard to all of the infrastructure projects that are occurring across the state, as well as other references with regard to ridesharing and the like.

We have also had, on the Legal and Social Issues Committee, some very significant references with regard to euthanasia and also with regard to public housing. That was a significant report, just recently released, which really did go into some of the detail about how significant the public housing waiting list is at the moment. There are 82 000 people presently on the public housing waiting list, something that was not known publicly prior to the committee's investigation of that topic, which goes to show why it is so important that the committees are appropriately resourced to do

the important work that they do, because exposing these types of issues and ensuring the community understands and the government understands the challenges that have been faced in such sectors as public housing is incredibly important.

There is of course all the other work that goes on here. Being a former teacher, I would like to acknowledge the work that the education officers do around the Parliament. We often have children in the gallery viewing what is happening.

**The ACTING PRESIDENT** (**Mr Elasmar**) — Order! Mr Morris, I know you missed your chance in the second-reading debate, but we are in the committee stage, and while you are allowed to give a briefing —

**Mr Ondarchie** interjected.

**The ACTING PRESIDENT** (**Mr Elasmar**) — I am speaking, Mr Ondarchie. We are in the committee stage now and I allow a bit of leeway, but please get to the point. There are no children in the gallery. Can you get to the point and ask a question?

**Mr Ondarchie** — On a point of order, Acting President, in relation to your immediate ruling, I remind the chamber that the standing orders are very clear about the committee stage of the bill. Members do not have to ask a question of the minister at all but are entitled to make a statement, which is what Mr Morris is doing. I ask, with your grace, that he is allowed to continue with his statement.

**The ACTING PRESIDENT** (**Mr Elasmar**) — Thank you, Mr Ondarchie. I have already ruled on this.

**Mr MORRIS** — Thank you, Acting President. I do note both your ruling and also Mr Ondarchie's point of order. I was obviously thanking the staff for the work that they do in this place and acknowledging that there are always going to be limitations in terms of finances. But it is important that those funds are spent, particularly with regard to the Parliament, appropriately, which goes to the point that unfortunately what we have seen of late is the Legislative Council having to spend money to defend the right of this Parliament to be able to refer things to the Ombudsman. That is a scenario that quite clearly the court has ruled upon. The government cannot run and hide when they have been found, by the report that has been tabled by the Ombudsman, to have done the wrong thing.

It is unfortunate that in excess of $1 million has been wasted by the government — significant funds from this Parliament as well as from government expenditure — trying to fight a reference from the Ombudsman to have them investigated. I note that the Privileges Committee are now going to be investigating that matter, and I certainly wish them very well in that endeavour, because it is incredibly important that it is appropriately investigated and that anything that has been untoward is brought to account to ensure that Victorians can have confidence in this Parliament.

One of the issues that Ms Pennicuik raised was with regard to cyber attacks, and that is of significant concern. I note that is something that the Presiding Officers spent significant time updating the Public Accounts and Estimates Committee on during their deliberations just recently. It is pleasing to see that the Parliament is appropriately defending those cyber attacks, which seem to be coming very thick and fast. Nearly 14 000 cyber attacks in a month on the Parliament is concerning, but it is pleasing to see that the Parliament has taken appropriate steps to ensure that that does not continue. I will leave my comments there. I did not ask a question per se, but I just wanted to get some points on the record.

**Mrs PEULICH** — I am sorry that I am having to make these general comments as part of clause 1, which obviously I have the right to do, because I would have liked to have taken part in the second-reading debate. In particular I want to comment on some of the concerns that I have in relation to the ability of this house, as a house of review, to effectively function and deliver on its purposes.

Before doing so I would like to thank all of the staff: from the kitchen to the attendants to the committee staff. They do a very good job in supporting members of Parliament and the functioning of this place, and often at unforeseen or unplanned times they are put to the test. It is most unfortunate that at this time a government that has committed to family-friendly hours, for example, would be driving through very, very serious legislation that the entire state takes a keen interest in and running those debates right through the night, when people find it hard to function but you need to be on the ball in terms of all of the arguments that are being espoused and the processes and so on, as was the case with the euthanasia bill.

I think it would be interesting to see how much of the parliamentary budget is gobbled up on these types of unforeseen events. Obviously the salaries and the taxis and the overnight accommodation need to be paid, because it is much too dangerous for staff to be driving home at all hours of the night. Unfortunately not all members of Parliament have the same opportunities. Some of us may have had very little sleep indeed, but

we are not entitled to any of the benefits, such as residential allowances. We have been averse to claiming any of those, especially when we are not entitled to them. We have to drive home in a state that is often compared to being intoxicated, which is the case when you do not have enough sleep. Sleep deficit is a very serious matter. In terms of the hours of the house, I would urge all sides of Parliament to be very serious about what we expect people to do when we run sittings through the night. In terms of sittings on Fridays, obviously the government is keen to institute these as regular occurrences, so we will obviously all need to rise to the occasion.

I guess the biggest disappointment is when you see presiding officers — and obviously our President is excluded — rorting the very allowances which they are designated to protect and the system that they are required to administer and provide oversight of. The former Speaker and Deputy Speaker rorted their residential allowances. For me it is unfathomable that a person would risk their reputation for a paltry $30 000 or $40 000 a year. I just cannot understand that, and I have been a member of Parliament both in the lower house and the upper house for 22 years in October.

**An honourable member** — Seems like longer.

**Mrs PEULICH** — To the Labor Party it may seem like an eternity, and I intend to haunt you for the rest of my life. You can rest assured of that. Whether I am here or not, I will haunt you. I will hold you to account, and I will make sure that Victorians who you trounce over with your policies and processes have a voice. I look forward to even at the age of 90 continuing to fulfil that role.

But can I say that for those 22 years that I have been a member of Parliament I have lived 28.9 kilometres away from this place. I have been 100 metres short of being eligible for an overnight stay allowance. Never, ever has it dawned on me, one, that I would claim something that I am not under the rules entitled to and, two, when I did eventually relocate to another residence, that I would relocate to a residence simply because it entitled me to make a claim. I just cannot understand the mentality of people who think, just because it is not their money and just because they have the ability to, they can take advantage of it, because this money is money belonging to Victorians.

In addition to Mr Languiller and Mr Nardella in the Assembly — Mr Nardella lives in my electorate most of the time in the Assembly electorate of Mordialloc, and in actual fact even his alibi was not right — I guess the rorts take us to a new low. I have got a summary here, if anyone wants one, of the 2014 state election ALP rorts and benefits. While there are the rorts we know — the rorting of the electorate office budgets, which was essentially a fraud committed on Victorians — there is a lot more that has not come out because the participation of lower house MPs has been precluded from investigation.

I think it is shameful that the power of this chamber, the power of the house of review, has been thwarted and stymied by the government and in particular by the Attorney-General, and we do not know whether he has recused himself from decision-making conflicts of interest that exist both in cabinet and indeed in his department. How could he participate in authorising expenditure in excess of $1 million to thwart the powers of the upper house to investigate rorts with which unfortunately he himself was also involved? That is unacceptable.

It is unacceptable that this Premier has turned a blind eye to this and has taken no action except for a belated repayment, and I do not know what has happened to that money, but I would certainly like to find out. Previous Labor ministers have resigned for much less. I remember a teddy bear or some sort of levy not being paid on a TV. Ministers of good character on both sides have taken responsibility by resigning from their posts for very, very small transgressions. This is a mammoth transgression, and it implicates the Premier because he has turned a blind eye to it. What he authorised as the Leader of the Opposition is what he is turning a blind eye to as the Premier, and it is unacceptable. It is $387 842, and that excludes a number —

**The ACTING PRESIDENT** (**Mr Elasmar**) — Order! Mrs Peulich, I know, again, this is not —

**Mrs PEULICH** — I have got a question.

**The ACTING PRESIDENT** (**Mr Elasmar**) — What is your question?

**Mrs PEULICH** — The question is: when this money was repaid, where did it go?

**The ACTING PRESIDENT** (**Mr Elasmar**) — Order! I do not know if the minister would like to answer that, but the bill is about funding, not where money has gone, Mrs Peulich.

**Mrs PEULICH** — It is pertinent to the current budget because indeed, if it did not go back into the budget, it means that this budget may have been a leaner one. It could have allowed for less expenditure —

**The ACTING PRESIDENT** (**Mr Elasmar**) — Thank you, Mrs Peulich, but it says clearly it is about funds for the Parliament, but it is up to the minister.

**Mr JENNINGS** — This is not a cash flow document in relation to the situation of Parliamentary Services. Parliamentary Services will be able to account over time for the money going into the account of the Parliament of Victoria.

**Mrs PEULICH** — In addition to that, of course the rorts have opened the doors to enormous benefits to be reaped by the government and government members. Could the minister outline which one of the following positions are paid for out of the parliamentary budget? Question: is the chair of the Scrutiny and Acts and Regulations Committee paid out of this budget? That is over the four years an additional $65 216 being paid. Is that paid out of Parliament?

**Mr JENNINGS** — Are you seeking an explanation of the list of people who may be employed by the Parliament in accordance with the appropriation budget and going through line by line, asking questions about members of Parliament, employees or indeed allowance structures that may be associated with various forms of responsibilities within the Parliament? If you are asking for a line-by-line account for that, I urge you, because you will not be given any comfort by me in relation to individual questions, to check what is clearly available on the Parliamentary Services website, and your access to the Members Guide will outline every single answer that you may wish to ask me.

**Mrs PEULICH** — So are you not prepared to confirm the fact that the chair of the Scrutiny of Acts and Regulations Committee, which the government has control over, is actually paid $65 216 and that that is actually paid out of the Parliament of Victoria budget — as is the Speaker's additional salary — above that of a backbencher of $409 060 over the four-year time? The Deputy Speaker receives $130 424 in additional allowances, joint select committee chairs $29 644 and joint investigatory committee chairs $59 284. That is a lot of money coming out of the parliamentary budget as a result of the rorts. I just want the minister to confirm that that money has come out of this budget.

**The ACTING PRESIDENT** (Mr Elasmar) — Order! I heard you clearly, Mrs Peulich. You know very well, Mrs Peulich, that is not a question to ask in the committee. The minister volunteered to answer one of the questions before, but we have to move on. It is your call, Mrs Peulich.

**Mrs PEULICH** — Thank you, Acting President. I just wanted to establish that the forms of this house have been gutted by this government. For example, if we have a look at the way that questions on notice are handled, in my 21 years of parliamentary service I have never seen that before, yet this government committed to improving parliamentary integrity. If we have a look at the processes, in particular the defrauding of electorate office budgets and allowances, this government has had an appalling record. If we have a look at the manner in which this government has thwarted the function of the house of review and the openness and transparency that one would expect from such a house of review, this government's record is appalling. I just wanted to use the opportunity of clause 1, the purposes, to say this government's three-and-a-half year history in relation to the administration of the Parliament has been woeful.

**Ms PENNICUIK** — Minister, there is an appropriation provided for the Parliamentary Budget Officer (PBO) in the appropriation bill. I wonder if you are able to update us as to the progress of that office.

**Mr JENNINGS** — Ms Pennicuik, it is not surprising that you have asked me that question, because my clear anticipation is that of all the parties in Parliament, your party is the one that is going to be the most keen to use the services of the Parliamentary Budget Officer in the first instance; that would be my inbuilt assumption.

**Ms Pennicuik** — We called for the establishment of one.

**Mr JENNINGS** — Yes, and we delivered. The office has been established, as I am certain you know. Anthony Close has been appointed to head the office and has demonstrated, in terms of my meetings with him, the professional acumen that he seeks to bring to the role and the learnings from other jurisdictions to build a capability within his office and particularly connections at the level of information flow in and out of agencies, in particular Treasury and Finance, in relation to in-built costing structures and knowing what the cost structures of the current budget settings may be, apprising himself of the form and the method — going back to your question before about the method that may be applied in terms of our costing models — and establishing the templates for the interaction between his office and the government agencies to verify not only the accuracy of policies that may be put to the Parliamentary Budget Office during the course of the remainder of the year and beyond but also the confidence level by knowing what effect these programs might have in terms of augmenting the

existing effort and then the cost structures of any proposals that may come through from political parties. As I indicated to you, perhaps cheekily, in my initial comments, my anticipation is that the Greens may actually want to have a lot of policies costed. My guess is that the Liberal Party may not want to have a lot of policies costed. We will see what actually transpires during the course of the year.

**Mrs Peulich** — And who is actually going to be making that appointment?

**Mr JENNINGS** — It has been made.

**Ms PENNICUIK** — Not to mention crossbenchers who may also wish to avail themselves of the services of the Parliamentary Budget Office. I hear your answer, Minister — that the PBO has been working with the agencies and Treasury, establishing the templates, which I would have expected. I suppose the question is: when would you anticipate that the PBO may be open for business, if I could put it that way?

**Mr Jennings** — Open for business?

**Ms PENNICUIK** — Yes — able to commence costing policies should they be put to the office.

**Mr JENNINGS** — That must be fairly imminent. I have not had a briefing from Mr Close recently. Through interjection Mrs Peulich asked who appointed Mr Close.

**Mrs Peulich** — No, who was on the panel?

**Mr JENNINGS** — The panel was established under the auspice of the Public Accounts and Estimates Committee. They undertook the entire process themselves, independent of my engagement in that process. The first time I made —

*Honourable members interjecting.*

**Mr JENNINGS** — I think it is very important for Mrs Peulich to actually avail herself of the processes of the Parliament, the way in which it was undertaken; I think it would be worthwhile. For all the issues of conflict within the Parliament — and there are many — and for all the theatre that gets played out at PAEC in relation to the budget estimates process, I am certain that there is a highly cooperative cross-party collaboration in relation to it. I think it would be wise for those in the chamber or in the Parliament to actually check with the members who represent them on the Public Accounts and Estimates Committee — not necessarily to go through the detail of day-to-day determinations of the Public Accounts and Estimates Committee on important matters that relate to the wellbeing of the Parliament, which includes statutory office-holders, and the processes which are embarked upon — to see whether there is a high degree of collaboration and whether it is a cooperative and harmonious process. And I reckon there is.

**Ms Pennicuik** interjected.

**Mr JENNINGS** — Ms Pennicuik is actually saying there is, and I reckon if you were to talk to the members of the Liberal Party that represent your concerns in relation to this matter, I think you would find that on this matter they would say that they are pretty happy about how the process works too.

**Ms PENNICUIK** — Minister, there was a bit of a tangential movement there.

**Mr Jennings** — Your question was about when?

**Ms PENNICUIK** — Yes, we did not get to that.

**Mr JENNINGS** — I will contact Mr Close, and I will ask him to clarify that rather than me trying to answer it.

**Mr FINN** — The government has clearly taken a policy of extra sitting days and also late-night sittings, which must impact the budget in terms of staff costs and in terms of the electricity supply, given the electricity prices are through the roof in this state as a result of the government's policies. What impact are these extra hours and extra days that the house is sitting having on the budget of the Parliament for this year?

**Mr JENNINGS** — To answer Mr Finn's question, during the course of my 20 years here there has actually been quite a variation in the number of all-night sittings and late-night sittings, and in fact we are not at the high-water mark by any stretch of the imagination in relation to late-night sittings. We are not. We are definitely not. In fact we are at the very low water mark in the number of late-night sittings that have occurred across my parliamentary career. Mr Finn, I would actually encourage you to think about that. You may not have been a huge participant in late-night sittings necessarily, although you probably did more than your fair share. What I can say to you is that there are nowhere near as many late-night sittings as there have been for most of the parliaments during my career, so I would suggest that the ongoing increase of the budget capacity that has been appropriated in this bill has not been adjusted due to adverse expectations of the number of late-night sittings beyond what has been the norm over many, many years.

**Mr FINN** — I would be interested in having a look at the figures, because I doubt that very much. But anyway, I will not argue with the minister just at the minute. On another matter — and I speak now as a local member representing Western Metropolitan Region — one of our members representing the west has an electorate office which has been locked and chained, I understand, for some months now. I understand the staff of Mr Eideh are on — I believe — leave with pay whilst certain inquiries are undertaken. I am not sure what exactly the situation is with regard to constituents who wish to see Mr Eideh. I do not know whether there is a hidden electorate office somewhere or —

**Mrs Peulich** — He should be working here.

**Mr FINN** — Maybe he is working here, Mrs Peulich; I do not know. But clearly if Mr Eideh is representing the people of the west to the standard that we would expect, that must be having some impact, given his electorate office is locked and chained and his staff are not working for him. There may well be other staff involved; I do not know. What I am really keen to know is that if Mr Eideh is in fact fulfilling his obligations as a member of Parliament and actually doing his job, what impact are the added costs of providing support for him in terms of an office and in terms of staff having on the parliamentary budget?

**Mr JENNINGS** — As you would understand, for similar reasons that I did not contemplate going through the individual circumstances that Mrs Peulich was inviting me to discuss in relation to positions or payments that occur within the auspices and responsibilities of the Department of Parliamentary Services, I am not going to do that in this case either. The matters that Mr Finn referred to are the management responsibility of the Department of Parliamentary Services, and I am not going to make a comment on any matter relating to the relationship between Parliamentary Services and individual MPs or make any judgement calls about the ways in which any MPs acquit their civic responsibility.

**Mr FINN** — I did not ask the minister to make a value judgement on anybody or any thing. All I asked was what sort of impact the added cost that clearly is involved in Mr Eideh's contribution or otherwise to this Parliament is having on the budget. I heard Mr Jennings say to Mrs Peulich that the information she was after was available on the Parliamentary Services website, and he basically said, 'Go and look it up in your Funk & Wagnalls'. What I am asking is not available to anyone, and I think it is only fair and reasonable that the people in the western suburbs are told what extra cost and what extra expense is involved in Mr Eideh upholding his responsibilities as an elected member of this house.

**The ACTING PRESIDENT (Mr Elasmar)** — I believe that the minister has already answered that question.

**Mr Finn** — I don't think he did.

**The ACTING PRESIDENT** (**Mr Elasmar**) — Excuse me. Order! I will leave it to the minister. He does not want to add anything. Any further questions, Mr Finn?

**Mr FINN** — Yes, there is another question. We have a situation here where there are five members in each region of the state. We have a situation in Western Metropolitan Region where effectively, from what I can understand — and certainly the minister is in no position, or is not prepared, to deny it — Western Metropolitan Region is only being represented by four members. There are only four offices that are open, only four offices that are staffed, to provide the services that the rest of the state have five members to do. That, to my way of thinking, is grossly unfair to the people of the west. It is discriminatory to the west. I recognise, and I am sure we all recognise, that the Labor Party could not give a stuff about the western suburbs of Melbourne. They demonstrate that on a daily basis. What is going on here is quite disgraceful, and what I am asking the minister to do is to provide a guarantee that under this bill — with this budget that we are talking about — the people of the western suburbs will have their full quota of representation in this Parliament before November. They are entitled to it and they deserve it.

**The ACTING PRESIDENT** (**Mr Elasmar**) — Order! Thank you, Mr Finn. I allowed extra time for you, but it had nothing to do with the bill. The rule says clearly that we are debating clause 1. Any further questions?

**Mrs PEULICH** — I do believe that waste and mismanagement in the previous year may impact on the nature and shape of the budget of this year, so personally I think it is highly relevant, as well as achieving the objectives that the budget is intended to achieve, so I beg to differ. I would also like to ask one question. Given that we are looking at waste and mismanagement, and the total cumulative cost of the rorts to the budget, as well as the cost of investigation of the budget, which impacts on the Parliamentary Services staff: is the minister able to inform the house what is the total cost of manpower for the Parliamentary Services staff undertaking various

investigations associated with the defrauding of electorate office budgets by the red shirt rorts — as well as of the parliamentary Presiding Officers? If you could provide that information, that would be very useful.

**The ACTING PRESIDENT** (**Mr Elasmar**) — Again, we are just going around the block. Minister, it is up to you.

**Mr JENNINGS** — At one level I can actually understand. Going back to the very first concept that Mr Rich-Phillips raised with me about an hour ago in relation to who is accountable and through what process the internal allocation of parliamentary resources occurs once the appropriation has been made, how can the Parliament know how those individual dollars are spent and how can the Parliament come to a view about whether it is getting value for money or about other legitimate concerns that you may raise — if there are legitimate concerns?

*Honourable members interjecting.*

**The ACTING PRESIDENT** (**Mr Elasmar**) — Order! Members! Mr Leane, thank you. The minister has the call.

**Mr JENNINGS** — Thank you, Acting President. I was trying to get to the heart of the legitimate concerns that may be raised about how you can know how money is spent — how do you know how Parliamentary Services acquits its responsibilities once the appropriation has been made.

**Mr Finn** — You're hoping that we won't find out, aren't you?

**Mr JENNINGS** — No. Regarding the questions that are being asked of me today, I do not know what happened at the Presiding Officers' appearance before the Public Accounts and Estimates Committee; I do not know what happened. I do not know whether these questions were asked of the Presiding Officers, but that was the time and place at which these answers could have best been provided to the Parliament. If these are the questions that you are interested in, it is the Presiding Officers and Parliamentary Services who have responsibility to the Parliament to account for that, and the Public Accounts and Estimates Committee is the place through which it could have occurred.

**Clause agreed to; clauses 2 to 7 agreed to; schedule 1 agreed to.**

**Reported to house without amendment.**

**Report adopted.**

*Third reading*

**Motion agreed to.**

**Read third time.**

## MARINE AND COASTAL BILL 2017

**Committed.**

*Committee*

**Clause 1**

**Mr JENNINGS** — I move:

1. Clause 1, page 2, line 8, after "for" insert "ecologically sustainable".

2. Clause 1, page 2, line 19, after "issue-based" insert "and integrated".

3. Clause 1, page 3, line 8, omit "Victoria." and insert "Victoria; and".

4. Clause 1, page 3, after line 8 insert—

   "( ) to provide for effective community engagement and education in planning and management.".

These amendments have been circulated. They introduce within the purposes clause a reference to ecological sustainability and subsequent variations that specify that these have additional requirements to provide for effective community engagement in education, planning and management. They are being added to the purposes clause, and they are consistent with some of the expectations that Ms Dunn has actually placed in her amendments, and the government is happy to move these in this form.

**Mr DAVIS** — My question on the purposes is: given the stated purpose, Minister, of the legislation is to establish an integrated and coordinated, whole-of-government approach around policy, planning, management, decision-making and reporting with respect to marine and coastal environments, how does this policy enable those ends, and what incentives and duties are placed on other ministers and departments to support the objectives and principles of this bill?

**Mr JENNINGS** — As Mr Davis would be aware, because he has gone through the legislation and he has made his contribution in the second-reading debate, one of the virtues of this piece of legislation is to put together in one cogent place all the responsibilities that may fall within the responsibility of the minister who is responsible for this act and other relevant acts within a consolidated framework. In the definitions clause you

will actually find a list of other pre-existing acts that are going to be affected by this piece of legislation in terms of making sure that the processes that are embedded within this bill and its subsequent act and its framework are given effect and recognition within the range of other statutes that are listed in that definition.

In terms of acquitting the responsibilities of this minister, who will be acting in accordance with the advice that comes to her about those responsibilities, it is then equally incumbent upon other ministers who are impacted by this to take account of the intersection with their acts and their responsibilities. This is an opportunity to get a greater alignment within the portfolio of environment and climate change in terms of all the relevant acts that actually fall within that portfolio and in terms of other acts where ministers would need to be mindful of their statutory obligations and of their agencies' statutory interlocking connections with this piece of legislation. You can see, through that list of acts that are listed as applicable acts in the definitions clause, the range of other aspects of government responsibility that will be cognisant of this framework.

**Mr DAVIS** — Specifically, how does it actually ensure that this occurs? I understand the possibilities — opportunities, I think, was the minister's word. How does it actually ensure that this happens?

**Mr JENNINGS** — The way that it works in practice is driven by, as you would know, Mr Davis, the statutory functions that all ministers, all departments, have to be mindful of in acquitting their obligations to the people of Victoria. Whether it be community safety or whether it be environmental protection or whether it be delivering health and education services, all of those portfolios actually have statutory obligations that are embedded within their relevant acts. So whenever anybody takes action, develops programs, develops proposals or makes changes to the way in which the work is undertaken within the frame of an act, they have to be mindful of what their statutory obligations are, not only within that act but in how it relates to other aspects of public administration that they cannot fall foul of or act in flagrant disregard of. That is a big challenge of public policy generally across not only Victoria but the country and around the world. It is making sure that people who work within or want to use those laws to either effect change or deliver better services or better planning decisions are mindful of not only what their law says but what other laws say, and they have to harmonise with them.

The organising principle of this act is to say that if anything actually occurs along the coast and in the marine environment just off the coast, for anybody who wants to do anything — plan anything that makes a lasting change, build something, explore something, make any change to the natural environment, take account of climate change or rising sea levels — or anybody who is concerned about any of those examples that I have just given, there will be a central coordinating place in Victorian law that will actually say what you need to be mindful of. It will tell you how you need to adopt that practice or take account of that responsibility when you engage with the coast. It provides clarity. It is a very large complex space, but it is a place-based approach to the integration of all those statutory requirements.

**Mr DAVIS** — I thank the minister for his response on that, and I understand the points he has made. In his earlier response he pointed to the definitions clause and the list of acts that are captured — 'applicable acts' as they are described in that definitions clause. I wonder if he might explain how this bill will interact with the Environment Effects Act 1978, which is not on that list of applicable acts.

**Mr JENNINGS** — Anything that falls within the scope of the Environment Effects Act — anything that occurs within the scope of that act — will apply in the areas that are described here or beyond, so in fact it does not limit the Environment Effects Act. But beyond that, I will have a conversation about that.

I stand by what I have actually shared with the committee so far. The Environment Effects Act stands alone and anything within the scope of what requires an environment effects statement (EES) will take precedence in relation to matters affecting that act. In relation to how it intersects with this new act, there will be marine consents that are required where appropriate in relation to when they are relevant to an EES.

**Mr DAVIS** — In a similar way the minister might explain why the Major Transport Projects Facilitation Act 2009 is also not included in the list of applicable acts. Is there a reason why that act was excluded, or may he want to explain the interaction with that act?

**Mr JENNINGS** — There is a big range in the scope and the use of those two acts that Mr Davis has referred to. The Environment Effects Act is a broad-ranging act that has enduring responsibility over environmental values and assessments of potential impacts on developments or the effects of what is a feature in the landscape. The Major Transport Projects Facilitation Act 2009 has a very narrow application that applies to specific projects that may come within it and is very, very rarely used. But if there is anything that is

incumbent upon an EES process or a consent process that affects, again, the very narrow application of the Major Transport Projects Facilitation Act, it would be similarly subject to EES and consent provisions when it is instigated under the act. If you find my answer confusing, let me actually say to you: the EES act is in operation each and every single day across Victoria — all day, every day — applying to the consequences of environmental impacts. The Major Transport Projects Facilitation Act only comes into effect if there is a project that has been identified to be developed within the scope of that act, and that happens very, very rarely, if ever.

**Mr DAVIS** — It is being done increasingly, I might add.

**Business interrupted pursuant to sessional orders.**

## QUESTIONS WITHOUT NOTICE

### Jakarta trade office security

**Mr ONDARCHIE** (Northern Metropolitan) (12:00) — My question is for the Minister for Trade and Investment. Minister, at the Public Accounts and Estimates Committee (PAEC) last week you advised the committee that you have delayed the commitment made in 2015 by then Minister Somyurek to open a Victorian trade office in Turkey. Your rationale for this, having read the Department of Foreign Affairs and Trade's (DFAT's) Turkey Smartraveller warning to the committee, was that you had determined that it was an unsafe environment to place staff. However, DFAT's current Smartraveller advice for Indonesia issues similar word-for-word warnings for Jakarta, a view that has been held for some time, along with DFAT issuing warnings advising that in Jakarta there is a high threat of terrorist attack. You have previously said, and I quote:

> … I will not put the safety and security of people employed by Victoria to do work on behalf of the Victorian government in harm's way.

Given this DFAT advice, the same as for Turkey, what then is your plan for the safety and security of people employed by Victoria to do work on behalf of the Victorian government at the Victorian office in Jakarta?

**Mr DALIDAKIS** (Minister for Trade and Investment) (12:01) — I thank the member for the question. This question was asked and answered at PAEC.

**The PRESIDENT** — Order! Minister, you would be aware that it is my view that referring to other forums where a question might have been answered is not satisfactory. In fact if a question is posed in this place, then the answer ought to be provided to this place, not by a reference to some other external area. So, Minister, could I invite you to reconsider that answer.

**Mr DALIDAKIS** — Thank you, President. Given that the preamble of the member's question referred to PAEC, I will refer the member back to the testimony I provided to PAEC from a question that was asked by a coalition member.

**Mr Ondarchie** — On a point of order, President, in light of your ruling, there are a couple of things: the PAEC testimonies are not available at this stage, as the PAEC hearings have not finished; and, secondly, my question was about the office in Jakarta, not in relation to the office in Turkey, which he dealt with at PAEC. It is about the safety and security of the people at Jakarta.

**The PRESIDENT** — Presumably the minister is not going to support my view, and therefore I will be requesting a written answer, very clearly. But can I indicate that one of the reasons why I do not like to have ministers referring to some other forum or source of information is that I am absolutely not aware of what might have transpired in those other places. For instance, on PAEC, I was not in the room. I do not know whether the question posed now goes to a different matter to what the minister answered on in PAEC and whether or not that answer in PAEC would satisfy, in any event, the question that has been posed today. As Chair I am in an impossible position to make that determination, and it is one of the reasons I am of the view that ministers ought to provide an answer to this house to a question that is posed in this house without referring to some other source when I cannot possibly have any opportunity to determine the merits of the answer and whether or not a question is satisfied by that other source or that other forum where it might have been canvassed as an issue. I think in that sense it is not providing the courtesy of an apposite answer to the house.

Minister, are you prepared to provide an oral answer today in respect of this? Mr Ondarchie has put to me that he is actually asking about a different office to the one that you might have canvassed. I do not know if that is accurate or not.

**Mr DALIDAKIS** — President, the point you make is well made: you were not present at PAEC. However, the member who asked the question was in the room when I provided the answer. The member who asked the question —

*Honourable members interjecting.*

**Mr DALIDAKIS** — Once again they have asked a question and when I am attempting to now pay respect to you and the ruling that you made, President, all they want to do is inject themselves into the response. What I said very clearly was that we did not have an office open in Istanbul at the time the DFAT advice came through that the security risk was heightened and when the ambassador and his daughter were almost killed by a bomb that they were 200 metres away from that exploded in Ankara. I provided that information at PAEC. I provided information that Austrade had withdrawn personnel from Istanbul, which is the city that we had site selected for the office. I provided that information as well when Mr Ondarchie was in the room.

In relation to Jakarta, it is the very same city that was asked about by Mr Danny O'Brien on behalf of the coalition in questions at PAEC. My response then, which is my response today, was that, firstly, we already had an office in Jakarta at the time that security advice was changed, and secondly, it is different security advice in relation to Jakarta specifically to Istanbul and Ankara — different advice that we get from Austrade. That is the second thing. The third point that I will go to is that because we already have an established office in Jakarta my office, my department, has indeed done security reviews, and I refuse to go beyond saying that we have done security reviews for both our office and the home situations of our personnel, because it is not appropriate to put them at risk by detailing that security. We take the security of our people very seriously, whether they are locally engaged people or whether they are Victorians or indeed Australians working on behalf of the Victorian government abroad. We will not put anybody's health or safety at risk on the basis of being able to tick what was an election commitment in 2014, because circumstances have changed since then. For the opposition to try and come into this place and play politics with the health and safety of Victorians overseas is outrageous.

*Supplementary question*

**Mr ONDARCHIE** (Northern Metropolitan) (12:08) — My supplementary question to the minister, given his mendacious response, is: the Department of Foreign Affairs and Trade have issued warnings that Jakarta has a direct high threat of terrorist attack; it was an election commitment to open an office in Turkey, which you have failed to do because of DFAT advice, but given the DFAT advice for Jakarta can you explain the difference between the potential staff threats in Turkey and the threats to existing staff in Jakarta which have led to widely different decisions by you and your government?

**Mr DALIDAKIS** (Minister for Trade and Investment) (12:09) — What we see right now is an example of why those opposite are still unfit to govern in this state. What we have seen is the opposition looking to use some kind of decision, made on the basis of safety and security, not to proceed with an office to come into this place and try and claim that there is some kind of political conspiracy. The fact of the matter is the Victorian government will not put at risk the health and safety of Australians, Victorians or locally engaged staff. We will not do it for an election commitment. We will not do it to try and satisfy the opposition, who are trying to political pointscore. It is not appropriate.

People's lives, people's health and people's safety is of paramount importance. That will always be a guiding decision-making basis for me and for this government in what we do and how we do it. I can go on and wax lyrical, but if you want to come into this place and make those claims, it reflects on you, Mr Ondarchie, and it reflects on all of you as well.

## TAFE funding

**Ms TRUONG** (Western Metropolitan) (12:10) — My question today is for the Minister for Training and Skills. Last month's budget included funding to make 30 priority TAFE courses free. It also included $85 million for strengthening youth engagement, which involves funded organisations engaging more youth workers. Given that this budget will lead to the need to employ more youth workers and the significant benefits they may bring to the Victorian community, did the government consider including youth work courses in the free TAFE for priority courses initiative?

**Ms TIERNEY** (Minister for Training and Skills) (12:10) — I thank Ms Truong for her question. This is an issue that is being prosecuted by a number of organisations and a number of industries in this state. We have committed to —

*Honourable members interjecting.*

**The PRESIDENT** — Ms Tierney, without assistance.

**Ms TIERNEY** — Thank you, President. The government has made a commitment that it will consult with industry in relation to the further 10 courses. We announced 20 at the time of the budget and there will be a further 10. I have received correspondence from a

number of organisations wishing to be one of those 10 in terms of courses that they perceive to be incredibly important to be put on that list and the industries that they represent. We have developed a consultation plan that will be co-chaired by the Victorian skills commissioner and the deputy secretary of the higher education skills group in the department. We will be talking to a whole range of people in this area. What we want is an evidence base so that people do understand how and why the next 10 courses have been selected. There has been a template developed for people to have a look at, to fill in and to put their case to the group that will be undertaking those consultations.

I do appreciate the level of interest in this. It has been, as I have said, a very popular initiative that the government has placed in this budget. It is ever-increasingly important to connect vocational training and skills to jobs that exist already or those that are about to emerge. We are looking forward to that interaction that will happen with industry and the community generally in terms of what those next 10 courses might look like.

*Supplementary question*

**Ms TRUONG** (Western Metropolitan) (12:13) — I thank the minister for her response. Our communities in the west in particular are growing so very quickly, and I appreciate that the evidence base will be forthcoming. Will the minister advocate for the inclusion of the certificate IV and/or the diploma in youth work in the free TAFE priority courses initiative?

**Ms TIERNEY** (Minister for Training and Skills) (12:13) — Thank you, Ms Truong. In terms of the next 10, I have outlined what the consultation process will be, and it is important that it is evidence based. In terms of what you are asserting in terms of the need and the growth in your local community, obviously that would be one of the pivot points that would be placed in the business case that would be provided by the organisations that you are advocating for today. I look forward to seeing that evidence and how that continues to be advocated throughout the process.

## Foster carers

**Ms SPRINGLE** (South Eastern Metropolitan) (12:14) — My question is to the Minister for Families and Children. Victorian foster carers have reportedly been granted $500 per child for clothing, to be spent by the end of this month. While agencies' funding requests have been knocked back throughout the year, we now have the department throwing potentially millions of dollars at new clothes. These kinds of end-of-financial-year spending sprees are bad practice and they are not conducive to good decision-making or outcomes for kids in care. Minister, why are foster families being given restricted funding for clothes when the real need is for things like therapeutic care, travel to see families, bike helmets and school supplies?

**Ms MIKAKOS** (Minister for Families and Children) (12:15) — I think the member has failed to understand that we actually have provided funding for those types of matters that she has referred to in her question. We have provided a range of supports for foster carers since we have been in government, beginning from our first budget, where we increased carer allowances for the first time in a decade. And we have actually provided more flexible funding for out-of-pocket expenses, such as medical expenses, transport costs and child care, in successive budgets as well, including this year's budget. As part of a record $858 million for child and family services, we have provided a range of supports for our carers — our foster carers as well as our kinship carers and our permanent carers — to pay for these types of expenses.

There is a process which carers need to go through. With foster carers, they are managed and supported by community sector organisations, and they would be assisting them in the process. But to be suggesting that somehow carers are being denied throughout the year I think is a very gross exaggeration on the member's part. I am not suggesting that the process is always a perfect one. We have been looking at streamlining processes, particularly in response to the Ombudsman's report in relation to kinship carers. We have also introduced a new kinship care model to provide greater equity between how kinship carers have been treated in the past as compared to foster carers, and there is funding in this year's budget for that kinship care model.

We are providing a range of supports to our carers. We do very much value the work that our carers do, and I have had the opportunity to meet with so many of them around the state. We are continuing to look at how we can improve processes. One thing that we did do very early on — because I did find it very valuable to me as a minister to actually have these conversations directly with carers — is we established carers support groups, which actually enable our carers to meet together with representatives from my department in particular geographic regions so that they can share their stories and issues and the problems that they have had. They can also find out from the department about the reforms that we are putting in place, so that there is that two-way flow of communication. That work continues. I had the opportunity earlier this year to attend a forum

where we brought all the carer support groups from all around Victoria together for the first time so they had the opportunity to share and exchange information with each other, to share their experiences around these types of issues and to hear about the types of investments that we are making as a government.

I would certainly say to the member that of course there are always end-of-financial-year processes that departments follow in terms of ensuring that funding is acquitted and that funding is distributed to the various divisions as well as to community sector organisations. Of course that is the usual process that happens every financial year in relation to budgetary matters, but we have ensured as a government that our unsung heroes — our foster carers — do get more support.

*Supplementary question*

**Ms SPRINGLE** (South Eastern Metropolitan) (12:19) — I thank the minister for her answer. The question comes from reports that we are hearing from foster carers that they have had substantial amounts of reimbursement claims rejected by the department over the last financial year but are now being given this $500 to be spent specifically on clothing, regardless of whether the children that are in their care require clothing or not, and so I suppose I would say: can you give us some sort of outline or idea of what the criteria are for whether a reimbursement claim is actually rejected or accepted given the high proportion — it seems anecdotally — of reimbursement claims being knocked back by the department to put us in this position now?

**Ms MIKAKOS** (Minister for Families and Children) (12:20) — It is very easy for the member to come in here and make assertions about these matters. If she has got specific cases that she wants to share with me, then I am very happy to have my department look into them further. We do an enormous amount of work working with the peak bodies that represent our various carer groups, including the foster care association, to make sure that the needs of our carers can be addressed. If there are specifics that the member wishes to share with me, I am happy to provide her with more information, but there are very clear policies that are set out in relation to these matters that community sector organisations are well aware of, and that information is also shared with our carers. One thing that I have done as minister is have new manuals produced for both kinship carers and foster carers that actually set out this sort of information in a useful way so that they have access to the criteria and the policies and they know what they are entitled to, because we want to make sure they get the support that they are entitled to.

## Game Management Authority

**Mr YOUNG** (Northern Victoria) (12:21) — My question is for the Minister for Agriculture. Minister, the Primary Industries Legislation Amendment Bill 2017 currently sits in the Legislative Assembly awaiting passage after being amended by this house. In regard to amendments to the bill affecting the Game Management Authority (GMA), you indicated that additional resourcing and funding would be required by the GMA to perform its functions as amended. How much additional resourcing or funding would the GMA require to do so?

**Ms PULFORD** (Minister for Agriculture) (12:22) — I thank Mr Young for his question and his interest in the Primary Industries Legislation Amendment Bill, which sits on the notice paper in the Legislative Assembly. The government is still considering the consequences of Mr Young's amendments, including the financial imposition. The work that is currently underway to assist the Game Management Authority to get its house more in order in the period since we received the Pegasus report is ongoing. My main priority in this area at the moment — and the government's — is the implementation of the recommendations in Pegasus. As I indicated in the house at the time Mr Young introduced his amendments, doing so would not be without consequence. The Game Management Authority did not pass its first significant test very well, as I think all members would know and understand. We were able to provide additional support to assist the Game Management Authority to undertake its functions, particularly around the opening weekend and the management of the duck hunting season, which concludes shortly.

The additional resources that Mr Young is asking about is an interesting question, because there really is, I think, a range. It is certainly not something that could be done for no budgetary consequence. When Mr Young seeks that the Game Management Authority take on new functions, there would be staffing recruitment and staffing costs, there would be potentially promotional activities that come with a cost that would need to be considered and there would be a range of how much you could spend on those. The Game Management Authority is currently using its accumulated surpluses to implement the recommendations of the Pegasus report, which frankly are more pressing needs. The scale of any future appropriation in future budgets for additional funding for the Game Management Authority to undertake the tasks that Mr Young would like to see it perform will be a matter for government through future budget

deliberations. But specifically, there is not a specific dollar amount that I can give you, because it is really a question of scale depending on how active a promotion function government seeks for the GMA to have. But right now the GMA is focused on getting its basics done well and getting itself back in order.

*Supplementary question*

**Mr YOUNG** (Northern Victoria) (12:25) — I gather from that answer that the work is ongoing as a result of trying to understand the ramifications of those amendments, but that would suggest the government was somewhat caught unaware of those amendments. However, the government was made aware of these proposed changes when I introduced a private members bill on 2 June 2017. The government was then made aware of similar amendments prior to the primary industries legislation, and that legislation has now sat amended for four whole weeks in the Legislative Assembly. More than a year has passed, so why has the work not been done to quantify the minister's assertion that extra resourcing and funding would be needed by the GMA?

**Ms PULFORD** (Minister for Agriculture) (12:25) — As Mr Young knows, the government did not support those amendments. The government does not think that introducing those amendments at this time is a particularly good idea given the pressures that the Game Management Authority is currently under. The focus for the last year — really since the days after opening weekend in 2017 — has been elsewhere, and it has been on ensuring that the Game Management Authority is performing its current legislative responsibilities adequately rather than looking to substantially change its task. The GMA, frankly, needs to be able to walk before it can run.

## Regional Development Victoria

**Mr PURCELL** (Western Victoria) (12:26) — My question is to the Minister for Regional Development. As the minister knows very well, Mortlake is a small town 30 minutes north of Warrnambool and has a population of around 1400. Historically the largest employer in the town has been Clarke's Pies and more recently, on the same site, Midfield international meats, which employed some 60 staff, this being somewhere around about 4 per cent of the population. Midfield's lease expired in February this year, and the site has been unoccupied ever since. The site is export accredited and is a very modern facility. I understand from the owner, Mr Clarke, that Regional Development Victoria (RDV) are aware of the situation but have never made contact with him in regard to this property and finding a suitable tenant to create scores of much-needed jobs in Mortlake. So my question is: Minister, after four months of still no contact, what is Regional Development Victoria doing?

**Ms PULFORD** (Minister for Regional Development) (12:27) — I thank Mr Purcell for his question and his interest in the Clarke's site at Mortlake. I will take the opportunity while we are talking about Mortlake to commend the town and the community on a beautiful streetscape project. Mortlake is looking quite spectacular these days. If anyone is driving through, they should most definitely stop by and check out Mortlake and its flash new look.

Mr Purcell's question really goes to what government is doing around creating employment opportunities and work for people in the region and then specifically in relation to this site. Just for context, I indicate to the house that the unemployment rate in Warrnambool and the south-west at the moment is 3.5 per cent — it was 5.1 per cent when we came to government. There was a front page of the Warrnambool *Standard* just a little over two weeks ago saying that the region was looking for a thousand new people to fill the demand for employment. Without in any way wanting to make light of the challenge that some people in the region may be experiencing in finding work, it is also a very real challenge for businesses in the south-west to attract sufficient labour force to meet their needs. We are very, very conscious of that, and we work to create job opportunities in regional Victoria at every opportunity we can.

In relation to the former Clarke's site, what I would say at the outset is that it is not normal practice for Regional Development Victoria to assist commercial landlords to secure tenancies. That is a bit beyond the usual scope of what RDV does. In February this year Midfield Meats, as Mr Purcell indicated, ended its commercial leasing arrangements for the former Clarke's Pies site. In Mortlake they had been there about a decade. This was as a result of Midfield Meats consolidating all their boning processes at their expanded Warrnambool site. Staff availability in Mortlake could not, I am told, accommodate the extra capacity. I understand Mr Clarke's other business, Mortlake Employment Services, also provides some services to Midfield Meats for workers at the Mortlake site, and the workers who chose to continue working for Midfield have been accommodated at the Warrnambool facility, which is obviously not as close, but it is still only half an hour down the road.

But it is very much the business of our government to create jobs and to find pathways to employment for

people wherever we can, so what I can indicate to Mr Purcell and to the Mortlake community is that RDV is actively engaged at the moment with a potential new investor who is in the food sector. This is, as Mr Purcell said, a site that is well serviced and that is a valuable asset. This potential new investor in the food sector is being assisted by RDV to identify some sites, and they have looked at multiple potential sites, including the Clarke's site at Mortlake that has been recently vacated.

Without wanting to dive into the decision that that investor needs to make or into any commercial leasing arrangements that the owner of the site may wish to make with potential new investors, we can certainly remain hopeful of a good outcome there. Certainly we are aware of the vacant site and we are aware of the services connected to it, and as there are lots of people constantly interested in investing in the food industry in south-western Victoria we will continue to make them aware of this opportunity should they wish to avail themselves of it.

*Supplementary question*

**Mr PURCELL** (Western Victoria) (12:31) — I am sure the minister knows that you do not always believe everything you read in the papers, in particular about the thousands of jobs needing to be filled in western Victoria. Even though unemployment is relatively low in that part of the world, it is different from one place to another. I can tell you that away from the coast it is difficult to create employment. I understand that it is not Regional Development Victoria's job to actually become a real estate agent, but it is to create jobs and we have got this facility. So, Minister, I just ask: how many staff do Regional Development Victoria have in the Warrnambool office?

**Ms PULFORD** (Minister for Regional Development) (12:32) — I will need to take that question on notice. We have Regional Development Victoria staff right across regional Victoria, and in my observation of their work a lot of it is done in the car. As to the workplaces of Regional Development Victoria in terms of specific numbers of people located in the Warrnambool office, I will get back to Mr Purcell on that.

## Foster carers

**Mr MORRIS** (Western Victoria) (12:32) — My question is for the Minister for Families and Children. Minister, between 1 July 2017 and 30 April 2018 how many vulnerable children have been accommodated in hotel rooms or caravan parks throughout Victoria because there has been a lack of foster carers or other emergency accommodation to look after them?

**Ms MIKAKOS** (Minister for Families and Children) (12:33) — Thank you very much. There is a bit of deja vu happening here, because what we saw from the member the other day is that he could not actually ask the question properly, so he has had to come at it again. I guess we cannot really blame Mr Morris because it was clear that he was supplied with the question.

*Honourable members interjecting.*

**Ms MIKAKOS** — I am just trying to find a copy of the question that he asked. The point is that Mr Morris asked the question but could not actually articulate it properly, and he has had to come back and ask it again.

What I would say to the member is that sadly what we have seen over time — and I made this point to the member the other day — are situations where children have had to be removed in the middle of the night or in other circumstances at very short notice and that has required them to be placed in emergency placements. For this reason, there are circumstances where children have had to be placed in short-term emergency accommodation for short periods of time. Under our government we have funded a retainer model, whereby we have been trialling and evaluating the placement of children with foster carers who are placed on a retainer so that these emergency placements can be made. We are looking to now put this arrangement in place for the rest of the state as well. This contrasts with what occurred under the previous government. We had a 2014 Auditor-General's report that made specific reference to the placement of children in hotels and caravan parks.

**Mr Morris** — On a point of order, President, the question that I asked was very specific and related to a very specific time frame, that being between 1 July 2017 and 30 April 2018. It did not relate to any other time than that. I would ask you to the draw the minister back to answering the specific question that I asked.

**The PRESIDENT** — Minister, I do believe you were entering into debate, going back to a matter that you have canvassed on many occasions. I think the house is well aware of the Auditor-General's report and doubtless does not need to be reminded of it today when in fact this question was quite specific.

**Ms MIKAKOS** — Thank you very much, President, for your guidance. I was reminding members opposite that these have been longstanding challenges. When you have comments made by the

Auditor-General in their report it does highlight the issues that existed during the time of the previous government, when Mary Wooldridge was the minister — and the Auditor-General makes specific reference to children being placed in hotels and caravan parks.

Unlike those opposite, who had no plan to reduce this situation and actually had a five-year out-of-home care plan that was to grow residential care and that had no plan to place children to live with families, we have been taking action to support our carers and to actually provide for more emergency placements. That is why we had a situation where, as I have advised the member, during that period of time there were actually no such placements in hotels or caravans in Ballarat, which was the question that he raised the other day. We are working assiduously to reduce these numbers — something that did not occur under those opposite.

*Supplementary question*

**Mr MORRIS** (Western Victoria) (12:38) — Thank you, Minister, for that response. What has been the cost to accommodate these vulnerable children in each of the hotel rooms or caravan parks utilised since 1 July 2017?

**Ms MIKAKOS** (Minister for Families and Children) (12:38) — I thank Mr Morris again for his supplementary question, because that same Auditor-General's report and the follow-up one that occurred in 2016 did talk about the massive unfunded contingency placements that occurred during the previous government's time and that we did inherit.

**Mr Morris** — On a point of order, President —

**Ms MIKAKOS** — And the 2016 follow-up report from the Auditor-General did —

*Honourable members interjecting.*

**The PRESIDENT** — Order! Minister, I think he does want an answer. But he actually wants an answer; he does not want a filibuster because you could not find your briefing note.

**Mr Morris** — On a point of order, President, that goes to relevance, my question asked 'since 1 July 2017'. It did not refer to any time during the previous government, so I would ask you to draw the minister back to answering the question.

**The PRESIDENT** — You are quite right. Minister, I actually do not expect you to have this information to hand. The first part you might well have been able to provide, but you have not been able to locate it just now. I do not expect you to be able to answer this question without a written response later, because it is a matter of detail that I would not expect you to have. But I do not need debate. I need to have either the suggestion that you will get that information later or otherwise some other apposite response to Mr Morris's question.

**Ms MIKAKOS** — Thank you, President. From my briefing note I can refer you to the fact that the Victorian Auditor-General's Office (VAGO) report did refer to $24 million in 2012–13 of unfunded contingency placements. There were massive unfunded contingency placements, and the 2016 VAGO report made a favourable comment that we had significantly reduced these unfunded contingencies so there would be less need to place children in these types of arrangements. We are working to reduce these situations from occurring by providing more support to carers, as well as funding the biggest ever expansion of our child protection workforce. What we had from those opposite was just slashing the Victorian public service — that is all they did.

## Vocational education and training

**Mrs PEULICH** (South Eastern Metropolitan) (12:41) — My question is to Minister for Training and Skills. Minister, in 2014 there were 557 846 government-subsidised training enrolments in Victoria. The latest state budget expects that the training enrolments for this year will be 353 681 — a cut of 204 165 in student enrolments since the election of the Andrews Labor government. Minister, you have been spruiking your 30 000 additional enrolments funded in the budget; however, isn't this only replacing 14.7 per cent of enrolments already cut by the Andrews Labor government since coming to office?

**Ms TIERNEY** (Minister for Training and Skills) (12:41) — I thank the member for her question. The question is about declining enrolments in the vocational education and training sector. If it is not obviously apparent to the member, the fact is that the reduction in enrolments primarily has come in the private sector, and in fact TAFE has increased its market share significantly since this government has come to power and has implemented pro-TAFE policies.

The fact of the matter is that we still have a market-driven TAFE and vocational education sector, which means it is driven by what the market is requiring. That has meant that all Victorians are guaranteed access to training to upskill their existing qualifications in courses that are linked to real jobs,

which was not the case in terms of students that were enrolled under the previous government. This government is providing skills Victorians need for the jobs that this government is creating.

Our system is well funded to respond to the record job growth that we are experiencing across the state. We are reforming our training system, and we are investing $1.3 billion in Skills First in 2018–19 to support training in this state. This is something we are very proud of, and we will continue to ensure that there are strong training places and a properly funded TAFE system. There is $304 million for 30 000 additional training places.

This is something that those opposite failed to contemplate because they are not interested in working out ways that they can increase enrolments in this state. All they want to do is pander to private providers that do the wrong thing, that do not deliver quality and that do not deliver a whole range of things. We now have private providers in this system that know that quality, governance and financial viability are very important in gaining government-subsidised contracts, and we have a full complement of those in the state, whether they be private providers doing the right thing, Learn Locals or indeed TAFEs. Everyone is supportive of the government's policy in relation to free TAFE, and they are very supportive of the $304 million that is going towards creating over 30 000 additional places.

*Supplementary question*

**Mrs PEULICH** (South Eastern Metropolitan) (12:45) — Minister, I think you will find that 85.3 per cent of the training enrolment cuts made by the Andrews government have been left unfunded, but you did mention your 30 000 Skills First enrolments leading to jobs. Minister, given your rhetoric on securing employment following Skills First training, why does your own state budget actually project an outcome which shows a significant reduction in the number of students gaining qualifications that will lead to jobs and economic growth over the next year?

**Ms TIERNEY** (Minister for Training and Skills) (12:45) — Again, this question in terms of vocational education in this state absolutely demonstrates yet again how bereft those opposite are when it comes to good policy in relation to vocational training and education in this state that leads to jobs. As I said at the Public Accounts and Estimates Committee hearing and as I have said in this chamber in the past in terms of Skills First, Skills First came into operation on 1 January last year. It takes time for significant reform to roll out, and this has been accepted by all of those that are educators and education commentators in this state and nationally. We are now looked at as the premium state that understands and is delivering real training that leads to real jobs, and it is an absolute shame that those opposite continue to dig themselves into the biggest hole when it comes to training.

## TAFE funding

**Ms LOVELL** (Northern Victoria) (12:47) — My question is for the Minister for Training and Skills. In light of the $1.7 million that had to be repaid by GOTAFE, can you inform the house if any other TAFEs have had to repay money for incorrect practices over the past three years and how much of that has been repaid?

**Ms TIERNEY** (Minister for Training and Skills) (12:47) — I thank the member for her question. There have been a number of organisations that have been picked up through a range of investigations. I will not indicate whether they were done internally or externally.

**Mr Ramsay** interjected.

**Ms TIERNEY** — Mr Ramsay mentioned South West TAFE. In terms of that particular investigation, Mr Ramsay, that was a set of events that took place under your previous government, so I would not get too reckless about throwing different institutions' names around in this chamber.

The fact of the matter is that we are absolutely committed to ensuring that we have quality outcomes and good governance, and of course that means that from time to time, if people raise certain complaints with us, we will investigate, and that is why we have a continued quality blitz embedded in the department. They monitor enrolments, they check for spikes, they also check where there are dips in enrolment and they deep-dive into finding explanations as to what is going on. We do not wait for a complaint to come to us. We are actually monitoring on a daily basis, and there are quarterly reports. We are proud of that because not only are we investing in vocational education and training in this state but we are rebuilding it, and we are rebuilding it on the basis of quality. If you do not have quality training and vocational education, then no-one will come. We know that, so we want to ensure that we have got adequate facilities, good facilities and high-quality provision of vocational education and training in this state.

*Supplementary question*

**Ms LOVELL** (Northern Victoria) (12:49) — Minister, GOTAFE had to repay money for contractual non-compliance for training packages, enrolment of students into inappropriate courses and interstate enrolments. Have any quality issues of a similar nature to those identified at GOTAFE also been identified at any other TAFEs, and if so, which ones?

**Ms TIERNEY** (Minister for Training and Skills) (12:50) — As I said, we continue to monitor any complaint and any dip or increase in enrolments. We are proactive in the area of making sure that there is consistency and a transparent understanding of what is required. Of course what happened in terms of the TAFE institutes when the previous government had its dreadful policy in respect of vocational education and training was that there were bad practices that did enter into the sector. Unfortunately it was not just one particular part of the sector; it was a range of others. With rebuilding TAFE we are rebuilding capability, and part of that capability training is also about governance and ensuring that people understand their contractual obligations.

## Ramsay Centre

**Mr O'DONOHUE** (Eastern Victoria) (12:51) — My question is to the Minister for Training and Skills. Minister, in a disappointing move the Australian National University, while happy to accept funding from the despotic Islamic Republic of Iran, has rejected an offer from the Kim Beazley-supported Ramsay Centre to fund 40 students $25 000 scholarships to study the development of western civilisation. Minister, this significant funding and research opportunity is now being vigorously pursued by the New South Wales government. Minister, what discussions have you had with Victorian universities about securing this exciting opportunity for Victoria?

**Ms TIERNEY** (Minister for Training and Skills) (12:52) — I am aware of the offer, the bequest and the proposal for a significant research project. As the member would be well aware in terms of issues to do with research and bequests to universities, these are matters for universities; these are not matters for government.

*Supplementary question*

**Mr O'DONOHUE** (Eastern Victoria) (12:52) — Well, Minister, I note that under the general order you have responsibility for the Deakin University Act 2009 and other acts relevant to universities in Victoria, so you do actually have a direct responsibility. I ask by way of supplementary: Minister, will you now urgently meet with the Ramsay Centre to bring this important academic research and associated funding to Victoria?

**Ms TIERNEY** (Minister for Training and Skills) (12:53) — Oh, goodness me. It is correct that I have got responsibilities in relation to higher education, not just in terms of vocational skills and training but in terms of higher education, and my primary responsibility is in relation to properties over a certain amount and appointments — that by and large is the provenance of the Victorian Minister for Training and Skills in respect of higher education. Again I restate: in terms of university autonomy, their bequest and their research profile is their domain.

# QUESTIONS ON NOTICE

## Answers

**Mr JENNINGS** (Special Minister of State) (12:54) — I have three written responses to questions on notice: 12 661, 12 666 and 12 675.

# QUESTIONS WITHOUT NOTICE

## Written responses

**The PRESIDENT** (12:54) — In respect of today's questions I seek written responses to Mr Purcell's supplementary question to Ms Pulford in one day; Mr Morris's question to Ms Mikakos, the substantive and supplementary questions, one day; Mrs Peulich's question to Ms Tierney, the substantive and supplementary questions, one day; and Ms Lovell's question to Ms Tierney, the substantive and supplementary questions, one day.

**Sitting suspended 12.55 p.m. until 2.03 p.m.**

# CONSTITUENCY QUESTIONS

## Eastern Metropolitan Region

**Ms WOOLDRIDGE** (Eastern Metropolitan) (14:03) — My question is to the Minister for Emergency Services, and it relates to ground sinking on part of the new Eltham fire station grounds. Parts of the Brougham Street site have been fenced off for months, and there are reports that the new site, which was opened less than two years ago, has had to be partly closed. I believe heavy vehicles have been moved elsewhere. There are now fears that a large retaining wall at the back of the complex could collapse. It appears that remedial work to fix this problem has been

dragging on. I therefore ask the minister why the repairs at Brougham Street are taking so long to rectify the issue, what effect this issue having on the operational capacity of the new station and whether this is one of the reasons why the old station is being pressed into use again — because of these failures?

## Eastern Metropolitan Region

**Ms DUNN** (Eastern Metropolitan) (14:04) — My constituency question is for the Minister for Roads and Road Safety, and it is in relation to a commitment by the government about the Healesville freeway reservation and a redundant public acquisition overlay between Springvale and Boronia roads that that acquisition should be preserved as open space. Whitehorse City Council are concerned that the announcement appears to have been eroded by VicRoads, deeming a number of allotments covered by the public acquisition overlay as surplus. That land is proposed for sale as surplus, and council are rightly concerned about the impact in terms of the Healesville freeway reservation and the commitment to open space. So my question is: does the original commitment stand and will the land not be sold off as surplus by VicRoads?

## Eastern Victoria Region

**Mr O'DONOHUE** (Eastern Victoria) (14:05) — My constituency question is for the Minister for Health. Will the minister work with Eastern Health to ensure the new intensive care unit (ICU) at the Angliss Hospital is open before October this year? The redevelopment of the Angliss Hospital and the new ICU have been completed now for some months. Unfortunately, because the government has failed to employ the dedicated and highly trained staff required, Eastern Health has recently announced that the ICU will not be open until October this year, meaning it will not be open for the winter period, one of the highest peak periods of the year. This is a service that is needed. Together with John Schurink and Mary Wooldridge I met with some constituents onsite last week, and they are very concerned about this issue. So I ask the minister to work with Eastern Health to see the ICU at the Angliss opened as soon as possible.

## Eastern Victoria Region

**Ms BATH** (Eastern Victoria) (14:06) — My question is for the Minister for Mental Health, who announced in April 2017 that in the 2017–18 budget $9.7 million of capital spending would go to acquiring land in Gippsland, Hume and Barwon to build new residential drug rehab facilities, noting that this was specifically for asset acquisition, not recurrent funding. Tragically the Latrobe Valley has one of the highest rates of fatal drug overdoses in regional Victoria, but intervention and rehabilitation can turn lives around. Constituents, frustrated that there has been no action, no outcome and no property purchased in Gippsland, are feeling duped. Once again the Andrews Labor government has released media releases without outcomes. Minister, you are dragging your feet, much to the dismay of my constituents. When will the government purchase land for a new residential drug rehabilitation facility in Gippsland and where will it be located?

**Ms Shing** interjected.

**Ms BATH** — That is recurrent funding.

*Honourable members interjecting.*

**The ACTING PRESIDENT** (**Ms Dunn**) — Order! Members!

## South Eastern Metropolitan Region

**Mrs PEULICH** (South Eastern Metropolitan) (14:07) — My constituency question is for the attention of the Minister for Police. It has been brought to my attention by the Liberal candidate for Narre Warren North that concerns about crime in the City of Casey are absolutely, completely off the scale. There are over 40 000 members of the Casey Crime Page on Facebook. Labor promised to make the Narre Warren police station a 24-hour station. They have never honoured that; they have cut the hours there, which places enormous pressure on other police stations as well as Narre Warren. So my question to the minister is: when is she going to reinstate to Endeavour Hills, at the very least, the hours that the Labor government has cut, and better still, when are they actually going to honour the promise that Labor made a number of terms ago?

## Southern Metropolitan Region

**Mr DAVIS** (Southern Metropolitan) (14:08) — My constituency question today is for the attention of the Minister for Police, Ms Neville. It concerns her behaviour and the behaviour of the member for Oakleigh in the Assembly, Mr Dimopoulos, which has appeared to compromise police in Eaton Mall in Oakleigh in recent times, and there is a very revealing picture. What is important here is that the police, who do a magnificent job, are not compromised and are not leveraged into appearing in partisan positions. What I seek from the minister is an answer to the simple question: why did you breach the guidelines on this

matter, why have you acted in such a partisan way and what are you — and the member for Oakleigh, I might add, by implication — going to do to stop this partisan positioning of the police in contravention of good practice?

## Western Victoria Region

**Mr MORRIS** (Western Victoria) (14:09) — My constituency question is for the attention of the Minister for Energy, Environment and Climate Change. I have had a constituent raise an issue with me in relation to the installation of solar panels on his residence. These were completed to assist in minimising the rising costs of power, which we know are going through the roof, and also lessen the environmental impact of powering his home. Powercor informed my constituent upon completion of the installation that due to a limitation of local infrastructure he would be unable to sell the generated power back to the grid. This is quite clearly at odds with the government's stated objective with regard to the uptake of renewable energy, so the question I ask is: will the minister investigate this matter and ensure that my constituent in Warrenheip and others have adequate opportunity to sell their generated power back to the grid?

## Western Metropolitan Region

**Mr FINN** (Western Metropolitan) (14:10) — My constituency question is to the Minister for Roads and Road Safety. Concerns of local residents who will be affected by the Andrews government's deeply flawed West Gate tunnel project continue to grow. Some have put to me suggested changes to how the project will proceed that may mitigate the impact on communities in the inner-western suburbs. Given the less than satisfactory 'consultation process' — and I put that in inverted commas — by the government and Transurban prior to the signing of the contracts, is the minister now open to suggestions from locals that may well be a win-win for all involved?

## Western Victoria Region

**Mr RAMSAY** (Western Victoria) (14:11) — My constituency question is to the Minister for Planning. This week I have talked a lot about the government's plan, plan, plan but not much action, action, action. Last night I raised an issue around the community consultation process for the *Anglesea Futures: Land Use Plan* and called on the Minister for Planning to make that plan public through the Department of Environment, Land, Water and Planning (DELWP). I am making a similar request of him in relation to the Moolap structure plan at Moolap, where there are a number of key stakeholders awaiting DELWP's release of that plan. This is about six months late. It was due to be released at least six or seven months ago, and we are still waiting, waiting, waiting. The plan, plan, plan should be finished now. The community has had its opportunity to engage and we actually want to see some action on the Point Henry Alcoa site in Moolap, as we do obviously in Anglesea. The planning is over; we want the action. I call on the minister to get DELWP to release both plans.

# MARINE AND COASTAL BILL 2017

*Committee*

**Resumed.**

**Clause 1 further discussed.**

**Mr DAVIS** — I will have to remember exactly where I got to before we were interrupted by question time.

**The ACTING PRESIDENT** (**Mr Elasmar**) — We are still on clause 1.

**Mr DAVIS** — We are still on clause 1, but I was discussing with the minister examples with respect to a number of acts that are not in the list in clause 3, 'Definitions'. These include the Environment Effects Act 1978 and the Major Transport Projects Facilitation Act 2009. I am going to give the minister an example so that I can understand how this may well actually operate. The example is a current government project. As part of the government's attempt to rejig the Frankston line it is putting in an elevated rail on part of the line. There have obviously been planning scheme amendments made as part of that process, and the government is intending to put a stabling yard near Kananook station on some industrial land which it is compulsorily acquiring for that purpose. Obviously there is a point of difference between the government and the opposition as to how best to manage the stabling options and to manage the actual outcome. That is not the point of my question here. The point is that given the close proximity of the bay, the coastal area and a small creek — the Kananook Creek — to that proposed Kananook stabling yard, what processes in this bill would ensure that there is not going to be a negative impact on the coastal and marine environment which the bill purports to protect?

**Mr JENNINGS** — The current situation around the project that Mr Davis is talking about boils down to the fact that, if this piece of legislation passes, then the potential for the impact of this bill to be a protective mechanism will be enhanced. The reason for this is that

this bill requires consent to be provided by the minister for the environment in relation to appropriate use of Crown land within 5 kilometres of the high-water mark and 5 kilometres offshore in relation to the water.

In this case, if the parcel of land that Mr Davis refers to is Crown land, then the minister for the environment would have to issue a consent for the appropriate use of that land. Beyond that power, which does not currently exist in the coordinated fashion that is underpinned by this legislation, the second part is that the minister has a responsibility to develop a Port Phillip Bay management plan which would also add a framework around appropriate uses of any feature that occurs within that landscape and the configuration — 5 kilometres either side of the high-water mark.

**Mr DAVIS** — It is possible then, if you had a very strong environment minister, they might in the case of this Kananook stabling yard demand greater protections before it proceeded than is currently the case. Is that what you saying? I think I am paraphrasing you there, Minister.

**Mr JENNINGS** — No, you are paraphrasing quite mischievously. I talked about enhanced protections. I did not make any admissions that there were inadequate protections currently.

**Mr DAVIS** — But they would have to issue a consent, which is not currently the case. Is that correct?

**Mrs Peulich** interjected.

**Mr JENNINGS** — Mrs Peulich wants to know the reason why Mr Davis's construction was mischievous.

**Mrs Peulich** — No, why do you think it was mischievous?

**Mr JENNINGS** — Your interjection was, 'Why is it mischievous?'. It is because in fact at no stage did I say there were inadequate protections in place, which is what he said.

**Mr DAVIS** — Let me just say for the record that the minister has indicated that this would strengthen the protections requiring the issue of a consent within 5 kilometres of the high-water mark. In the case of Kananook, which I am using simply as an example here, that is close to the high-water mark and it is near a creek that is a very small and fragile zone. The point I want to take further here is that we now know there is contamination on the site at Kananook. Indeed we know that because the government in its budget is making a nearly $50 million allocation to deal with the contamination on the Kananook stabling site. So they are increasing the spending on that from $167 million up by nearly $50 million for the contamination. My point here is, to use this as a further example, how would the issue of specific contamination of that type impact on decision-making close to the coast and marine environment which this bill again purports to protect?

**Mr JENNINGS** — I am very used to being in a situation where the concerns that are being put to me in relation to the implementation of the law or a practice are actually simultaneously applauded and condemned, at the same moment, in the question. That is another example here, Mr Davis. In your proposition are you concerned that in fact there will be significant investment made within the budget to decontaminate a site in the environment that you described? I would think the logical conclusion is that it is a worthy endeavour to remove contaminants from the landscape and our waterways, and indeed that would be something that you would welcome rather than seem to question.

**Mr Davis** interjected.

**Mr JENNINGS** — I think it is very important for us to actually understand that where we can remove contaminants from the Victorian environment, that is a laudable project in itself. Beyond that, again, the responsibilities of the minister for the environment depend upon the land tenure in question, in terms of the consents that would be appropriate under this piece of legislation, so ultimately the additional protections as I have described would depend upon whether the tenure of the land is Crown land or another form of tenure that would not require the minister's consent in that process. But overall, in terms of its intersection with environmental effects or other processes of planning approvals, the minister would be issuing a consent.

**Mr DAVIS** — So in a similar way — further up the same corridor but also within the 5-kilometre band of the high-water mark and also on sensitive and fragile environments — a different process is operating with respect to the Edithvale and Bonbeach proposed level crossing removals. There is an environment effects statement (EES) operating there. As we have already established, the EES process is not in a sense captured by that list of acts that applies in this bill, but I am seeking to understand how those marine environments and coastal environments will be managed with respect to an EES. Will the EES act as the trump, the decision-maker, will it flow secondarily to the EES or will this be some kind of parallel process? How will that actually operate?

**Mr JENNINGS** — To simplify, and it goes back to an issue that you and I discussed prior to question time, effectively think of it in terms of the EES trumps it.

**Mr DAVIS** — So the minister would take into account the EES process. If the EES said, for example, not to proceed with a particular project, the minister would not proceed with any assessments under this or processes under this? If the EES said, 'Proceed; there are no issues here', the minister would issue consents on the basis of the information in the EES? I am just trying to understand that.

**Mr JENNINGS** — Yes, the minister, in terms of issuing a consent, would be mindful of and obliged to recognise the assessment of the EES and the terms by which there would be any preconditions for planning approval to be made, and the minister would have to act in cognisance of those before she could consent to that.

**Mr DAVIS** — So to move slightly further north and ground this operation in another concrete example rather than an entirely nebulous situation: the Elster Creek, or the Elsternwick canal, which you are very familiar with — you live near there, Minister, and it is in my electorate —

**Mr JENNINGS** — There is often commentary in this committee on where I live.

**Mr DAVIS** — Well, I am just saying, it is something that we are all familiar with close to the city. The canal is the end of a catchment of the Elster Creek. In earlier times there were swamps and so forth, back in Indigenous times, but now there is much construction, suburbs and so forth. But there is still a catchment, and the water still flows down. In the case of the bill — and as you are saying, the 5 kilometres — is a catchment that flows into that area and into the coastal and marine environment captured, as it were, in this process? Clearly what happens further up in the catchment impacts what goes into the marine and coastal section that is captured by this act.

**Mr JENNINGS** — That is absolutely true, and I take us back to the act that we were talking about earlier on, before lunch. In the list of acts that intersect with the implementation of this bill; the Water Act 1989, the Pollution of Waters by Oil and Noxious Substances Act 1986, and the Marine (Drug, Alcohol and Pollution Control) Act 1988 — that might be one of yours, Mr Davis — the Marine Safety Act 2010 and the Flora and Fauna Guarantee Act 1998 may apply in the circumstances you have described. The Fisheries Act 1995 may apply in the circumstances that you have outlined, and certainly the Catchment and Land Protection Act 1994. All of those acts actually account for water flows and actually what comes down those water flows from the catchment into the bay.

**Mr DAVIS** — If I was concerned, for example, under the Planning and Environment Act — paragraph (r) in the list of acts that apply — about construction in a particular area of that catchment of Elster Creek, that could be a factor. A construction project or projects, planning approvals or a structure plan, for example, in a particular area of the catchment of the Elster Creek could in effect have some effect or would be taken into account with respect to this act because it is further up the catchment and would impact in that sense.

**Mr JENNINGS** — Again it goes back to the cumulative way in which you and I built a picture of the coverage of this piece of legislation and how it intersects with other areas. Is the area within 5 kilometres actually Crown land and does it actually impact upon the use and the effect of the coastal and marine environment? They are the organising principles by which it would be tested to see whether they are relevant to be assessed or whether consents issued under this act ought to be incorporated within the Port Phillip Bay management plan.

**Mr RAMSAY** — I just want to ask the minister a couple of questions in relation to the purpose of the bill and refer him to clause 1(h), which is:

> to provide for the formation of regional and strategic partnerships to address regional and issue-based marine and coastal planning …

I have raised in the house my concerns currently about Parks Victoria in fact having some oversight of some infrastructure along the Great Ocean Road, in particular the Twelve Apostles visitor information centre and kiosk and likewise the Anglesea Family Caravan Park, where a tender process was conducted and was suspended and then the previous private operator's tender was rejected and then accepted for a two-year term rather than a 21-year normal tenancy agreement, which was strange behaviour by the government at the time.

Equally strange was the way they have seen fit to run the tender process for the Anglesea lighthouse, which again was under private tenancy. The government saw fit to suspend the tender process and then offer those private operators, again, another two-year lease, which is very much different to the norm of the 21-year lease. Basically it is a very short duration that does not give them any opportunity to invest or get a return on investment from the infrastructure they put in place.

The long and short of all this, Minister, is that the management of the Great Ocean Road and the infrastructure seem to be at odds with what was done historically and what the government's intention is for the future. So in respect to this bill, would you mind giving me some clarity, and hopefully some confidence, that in fact there is some sensible and rational strategy for private operators to be able to lease and tenant infrastructure along the Great Ocean Road within the confines of this bill?

**Mr JENNINGS** — It is not necessarily the simplest and most linear question to answer, but let us give it a go. I think the important building blocks of that story go back to my answers to Mr Davis's question about the cumulative effect that happens under this bill, which is bringing together in one place the intersection between other statutes and the decision-making processes and the wellbeing of the coast and the marine environment.

The coast is a very complicated place. It is very long. In fact at one stage I knew how long the Victorian coastline was. When you actually think of all the inlets and other variations, it is a very long coast. It will be a big surprise to people to know how many thousands of kilometres the Victorian coast is. What this is trying to do is ensure that, rather than having a split focus on the basis of how that environment should be managed day to day, the planning decisions, confidence and, as you say, community engagement should occur in a consistent framework — that rather than splitting the coastline by splitting it up into aspects of the coast, there is one continuous responsibility that actually goes along the coast.

That is a big, daunting responsibility, and it will only work if in fact it has some authority, clout and recognition of the values and the consistency by which the mechanisms within this bill and the decision-making frameworks that any agencies may have along the coast may make sure that they are consistent and regularly applied. That relates to the examples that you have given. What is the consistent approach to access to the coastal environment? What is the consistent approach to planning and other considerations? What is the consistent approach to recreational use and access for citizens? What other decisions by different aspects of the department may be appropriate in deciding the way in which the Crown Land (Reserves) Act 1978 may be made available in terms of committees of management and the standards they would apply across the coastline, the way in which those commercial arrangements might be entered into or the degree of built infrastructure that is appropriate along the precious coastline? All those things can be dealt with in a consistent fashion, and that is the intention of the bill.

**Mrs PEULICH** — In theory the bill sounds like what I have been calling for for a long time in some shape or form. The problem which has been faced by our waterways, inland and coastal — inland in particular is an area of enormous concern in our region, Minister — is the level of neglect that has occurred of inland waterways and the bay as well. But in particular it has been faced by the inland waterways as a result of the fragmentation of responsibilities between different agencies, water authorities, catchment management authorities, Parks Victoria, the level of interest taken by local government and so on. But the bottom line is funding. It was interesting in your answers — which I balked at, I must say, when you said it was a mischievous question — that you underscored reform of governance which would take us forward and strengthen our ability to plan and manage inland waterways and marine and coastal environments.

But there are so many problems with remediation and rehabilitation. That backlog of it is huge. The bottom line is not only the reform of the governance structures but also the funding that is needed and the action that is needed on many of these overdue issues. I am sure that you know about them because I have raised them over the 11 years that I have been here in the upper house. I raised the Hallam drain yesterday, coincidentally, on behalf of the Liberal candidate for the Assembly electorate of Narre Warren South. It is actually on the border between Narre Warren North and Narre Warren South, and both Liberal candidates have raised with me the level of neglect, the poor amenity and the loss of opportunity for addressing that. Going forward I think this governance structure could be a vehicle for achieving better outcomes, but there are a whole range of other areas where I think we need more. It is not just the reform of the governance structure, which sounds good; the interesting thing is how it will work and how it is going to be funded.

I am just going to work through my list, if I may. I will perhaps run through my list first of all and give you a bit of a signal to see how this new governance structure may assist in resolving some of these issues. There is the erosion of beaches along the sand belt and the state of Port Phillip Bay, but in particular the erosion of beaches. That has been raised by me. The previous member for Higinbotham Province in the upper house, Geoffrey Connard, many moons ago was passionate about the erosion of beaches, as is Murray Thompson, the member for Sandringham in the Assembly. The Liberal candidate for the Assembly electorate of Mordialloc, Geoff Gledhill, and the Liberal candidate

for the Assembly electorate of Carrum, Donna Bauer, as well as Michael Lamb, have raised these issues with me. Certainly the local council has been advocating for a long, long period of time for action to be taken.

In actual fact looking at one of the local paper reports and the Department of Environment, Land, Water and Planning's (DELWP) comment about the beaches requiring urgent attention, I note at the bottom the call by Tamsin Bearsley, who is a councillor at the City of Kingston, that a report should look at existing mitigation measures undertaken by council or DELWP — or hopefully this particular governance structure may actually place the responsibility firmly in one place — future measures and approximate costs, how foreshore erosion is managed in other areas, recent research on the cause of erosion of Kingston beaches and how to calculate current and future risks.

The number of visitors that we have to our sand belt beaches is huge, and they are a precious asset, which is the reason why there has been such outrage at the building of sky rail and the loss of amenity of what is a beautiful stretch of beach. So are you able to perhaps make comment on how beach erosion and the ongoing management of the bay would be enhanced by this, given that it is only a reform of the governance structure and no additional commitments to funding?

**Mr JENNINGS** — I am mindful of what is around the bay, and I think we have just gone around the south-east part of metropolitan Melbourne in relation to Liberal candidates now and hopefully in future from your perspective.

**Mrs Peulich** interjected.

**Mr JENNINGS** — I am just actually saying that was the round robin that we have just gone on.

**Mrs Peulich** — There is more.

**Mr JENNINGS** — Fair enough. You started off being gracious in relation to policy, and I am happy for us to focus on that.

**Mrs Peulich** — I've been calling for it for a long time.

**Mr JENNINGS** — I am happy about that, so let us actually just share that degree of happiness. Let us actually say that indeed the challenge of funding sand replacement along the bay has actually been a feature that governments have funded over many years.

**Mrs Peulich** — Renourishment.

**Mr JENNINGS** — Fair enough. Good on you. Beach renourishment. The reason why it is around the bay is, as the historical study of the patterns of wave movement through the bay shows, that unfortunately this literally really vicious cycle of sand being moved around the bay is by the very nature of its configuration and the wave title movement. That has been the feature of the bay over a very long period of time and will continue to be so. In fact there are some communities who see themselves as a particular victim of this, but unfortunately it is something that is shared by all communities eventually as sand moves around the bay. I do not think it would be helpful for either of us to start comparing the amount of money that has been spent by the current government compared to the last government.

**Mrs Peulich** — My question was about funding.

**Mr JENNINGS** — That is what I am just saying.

**Mrs Peulich** — Future funding to catch up with the backlog.

**Mr JENNINGS** — Mrs Peulich, if you are flagging that we are now in a competitive environment between the Liberal Party and the Labor Party in relation to how much money we allocate to environmental causes, waterways protection and beach renourishment, good — I am pleased to hear it — because in fact it has been pretty much one-way traffic for a long period of time. I look forward to your enthusiasm and I look forward to you using the Parliamentary Budget Office to test the costings of the proposals that you are obviously formulating with your colleagues, and I will congratulate you if they have a very healthy budgetary allocation attached to them.

**Mrs PEULICH** — Mr Jennings, you are a very clever man, but my question was —

**An honourable member** — No.

**Mrs PEULICH** — No, he is very clever. He is an intellectual gymnast, and he will come up and contort an argument in whichever shape or form is needed.

**Mr Jennings** — You're just trying to embarrass me.

**Mrs PEULICH** — No, I am not trying to embarrass you. I would not use the word 'mischievous', but it has dawned on me. I am welcoming a response to an ongoing problem, and I am not raising it just because candidates are raising it. The community are raising it; they want a response. These issues have existed there for a long time. You cannot wash your hands of that and say, 'It's a competitive environment, elections,

blah, blah'. You have been in government 14 out of the last 18 years, and these problems are substantial. They need funding. Yes, a new governance structure provides an opportunity to resolve some of the impasses that have occurred in the past, but they need commitments.

I have mentioned the beach renourishment, which is a big issue around beautiful parts of our coastline, but there are others — for example, the Kananook Creek. We actually did fund the dredging there, and we did fund the dredging of the Mordialloc Creek. Both of those issues have also been raised with me by local candidates and indeed residents, and in particular I have received a text message from someone who actually, believe it or not, says:

> Dredging the mouth of the Kananook Creek is a priority as boat-launching facilities are completely useless no matter what the tide is.

These are issues that are there. They are there every day. If you go to the Patterson River, the Patterson River is in a shocking state. It is used by many schoolchildren and many community organisations, but they need a pontoon bridge — there are a whole range of things that are needed that have not occurred. We have tried. We tried with the Patterson Lakes Quiet Lakes. We had an independent review. There were certain agreements and recommendations entered into, yet the Minister for Water has been obfuscating even over simple, affordable measures like reinstating a bore to the cost of $40 000 a year to ensure that there is some movement of stagnating water — water which is no longer tested and for which there are signs up in Carrum. The former member for Carrum, who is a candidate again, has raised this, as has Anthony —

**An honourable member** interjected.

**Mrs PEULICH** — The president of the Patterson Lakes (Quiet Lakes) Owners and Residents association, Anthony, has raised this and could have potentially completed four PhDs on it. There were agreements entered into, yet your government will not come to the party because you deem these lakes to be somehow there for the enjoyment of the elite, when in actual fact they were set up as a drainage measure for the construction of a new suburb, and therefore there are some ongoing responsibilities that the government should exercise, not least of which is a $40 000 annual expenditure on the reinstatement of a bore to ensure that there is some movement of water to prevent stagnation and to reduce the risk of water which suffers from algal blooms. These are small measures. The Eumemmerring Creek is another example, and I am glad that the catchment, to use a pun, for the legislation also includes those waterways which feed into those that are explicitly captured by the bill, because the Eumemmerring Creek goes all the way down to the coast through a series of drains and creeks, and it is being used basically as a dumping ground for waste.

I welcome the governance reforms, but what we need is action and what we need is funding on some of these issues which have been there for a very long period of time. We did, during our all-too-brief four years of government, make some substantial commitments and improvements: the independent review of the arrangements pertaining to the Patterson Lakes Quiet Lakes we put in place, the dredging of Mordialloc Creek we put in place and the dredging of Kananook Creek we put in place. And there is obviously so much more to be done. There is a lot of work.

Minister, I know you have a passion for the environment. It is a region that you and I and others share, yet there has been such a lack of progress in terms of the management of these valuable assets — our inland waterways as well as our coastline. I welcome the governance reforms, but what is needed is money and action. Are you able to comment on any of that? This is not a bidding war. You have had government for 14 years out of the last 18.

**The ACTING PRESIDENT (Mr Elasmar)** — Ms Dunn, I know you have some amendments. Minister, do you want to make any comments?

**Mr JENNINGS** — I was reluctant to start quantifying, because I was trying to recognise that Mrs Peulich and I share commitments to environmental values, which is a good thing. It is not always the case in this place that we actually share a values system so clearly. I am happy to be encouraging to her in relation to this. I do not want to have her downbeat in relation to the competitive environment. I was prospectively looking forward to that.

If we go back in time, I know that when I was the environment minister, leaving the portfolio in 2010–11, and when this government came back into office at the end of 2014 — 2014–15 — the size of the environment budget had been reduced by approximately 60 per cent. If you just look at the budget papers —

**Mrs Peulich** — We actually spent money on things that make a difference to those areas. It's not the size of the budget; it's how you apply it.

**Mr JENNINGS** — You are asking a question about the allocation of resources — putting your money where your mouth is in relation to environmental causes. I am saying to you that I welcome your enthusiasm to actually make this a priority as the alternative government in relation to this. I welcome your invitation for the government to respond to your concerns and your constituents' concerns in relation to those environmental values. You are quite right to actually say that. Within our government I will continue to be supportive of better environmental outcomes and greater resource allocation to environmental and marine outcomes.

**Mrs Peulich** — But we're going backwards.

**Mr JENNINGS** — We are not going backwards, because in fact since 2014 onwards and into this budget we have actually restored probably about two-thirds of the money that was taken out of the environmental portfolio during the life of your government.

**The ACTING PRESIDENT** (**Mr Elasmar**) — Ms Dunn, for your information, your amendments 1, 4, 9 and 10 to clause 1 are similar to those already moved by the government, so I ask you to formally move your amendments 2 and 3 to clause 1.

**Ms DUNN** — I move:

2. Clause 1, page 2, line 15, omit "and" (where first occurring).

3. Clause 1, page 2, line 16, after "Report" insert "and a marine spatial planning framework and marine spatial plans".

Although these amendments appear fairly limited in their application, they are in fact a test for inserting into the bill a definition of 'Marine spatial planning', which is:

> It is a guiding principle for the management of the marine and coastal environment that the focus of marine spatial planning will be to maintain or restore species diversity, habitat diversity and heterogeneity, the populations of key species and connectivity and to enhance ecological sustainability while seeking to balance ecological, social, economic and governance objectives.

**Mr JENNINGS** — The reason why I laugh, Acting President, is that I am not quite sure where I fit into the sequence of your engagement with Ms Dunn in relation to this. Not only did Ms Dunn move her amendments 2 and 3, she effectively foreshadowed something that will take place subsequently. You have really moved on to amendment 5, haven't you?

**Ms Dunn** — Yes. Just an explanation.

**Mr JENNINGS** — The reason why the government has chosen not to accept and support Ms Dunn's proposition, which is effectively amendment 5 because that is the one that makes the difference — amendments 2 and 3 do not make much of a difference in their own right — is the issue that we think that of all the backdrop that has taken place during the course of this committee we have been living and breathing those concepts. Within the concept of the bill, without perhaps narrowing it or predetermining it, the government's view is that these are worthy considerations being teased out in practice and the intersection of the issues that I have really been talking about for now a couple of hours. So I am not in a position to be able to support your amendments.

**The ACTING PRESIDENT** (**Mr Elasmar**) — Ms Dunn, I ask you to formally move your amendment 6 to clause 1, which is a test for your amendments 39, 41 and 42.

**Ms DUNN** — I move:

6. Clause 1, page 2, line 27, after "application" insert "and public consultation".

**Mr DAVIS** — I am just trying to get some clarity on the different amendments and what is a test for what. If you could perhaps clarify that, that would be helpful for me.

**The ACTING PRESIDENT** (**Mr Elasmar**) — Amendment 1 from Ms Dunn is the same amendment moved by Mr Jennings for the government. Minister Jennings moved his amendments 1, 2, 3 and 4 first of all, and Ms Dunn's amendments 1, 4, 9 and 10 will be tested by the government's amendments. Then Ms Dunn moved her amendments 2 and 3, which are a test for her amendment 5. Now she has moved her amendment 6, and then I will ask her to move her amendment 7, which will conclude clause 1. Then we will divide on the questions.

**Mr DAVIS** — Yes, that is what I am trying to get at — how we are going to do that, the sequence. Perhaps with your indulgence, Acting President, it would be helpful before we do each one to explain, given the interplay of the different amendments.

**The ACTING PRESIDENT** (**Mr Elasmar**) — Ms Dunn, can you move your amendment 7?

**Ms DUNN** — I move:

7. Clause 1, page 2, line 31, after "erosion" insert "and estuarine water quality and habitat condition".

**The ACTING PRESIDENT** (**Mr Elasmar**) — Mr Jennings's amendments 1, 2, 3 and 4 are the same as Ms Dunn's amendments 1, 4, 9 and 10.

**Committee divided on Mr Jennings's amendments:**

*Ayes, 24*

| | |
|---|---|
| Bourman, Mr | Patten, Ms |
| Carling-Jenkins, Dr | Pennicuik, Ms (*Teller*) |
| Dalidakis, Mr | Pulford, Ms |
| Dunn, Ms | Purcell, Mr |
| Eideh, Mr | Ratnam, Dr |
| Elasmar, Mr | Shing, Ms |
| Gepp, Mr | Somyurek, Mr (*Teller*) |
| Jennings, Mr | Springle, Ms |
| Leane, Mr | Symes, Ms |
| Melhem, Mr | Tierney, Ms |
| Mikakos, Ms | Truong, Ms |
| Mulino, Mr | Young, Mr |

*Noes, 16*

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

**Amendments agreed to.**

**The ACTING PRESIDENT** (**Mr Elasmar**) — Ms Dunn has moved her amendments 2 and 3 to clause 1, which are a test for her amendments 5 and 8.

**Committee divided on Ms Dunn's amendments 2 and 3:**

*Ayes, 5*

| | |
|---|---|
| Dunn, Ms | Springle, Ms (*Teller*) |
| Pennicuik, Ms | Truong, Ms |
| Ratnam, Dr (*Teller*) | |

*Noes, 35*

| | |
|---|---|
| Atkinson, Mr | Morris, Mr |
| Bath, Ms | Mulino, Mr |
| Bourman, Mr | O'Donohue, Mr |
| Carling-Jenkins, Dr (*Teller*) | Ondarchie, Mr |
| Crozier, Ms | O'Sullivan, Mr |
| Dalidakis, Mr | Patten, Ms |
| Dalla-Riva, Mr | Peulich, Mrs |
| Davis, Mr | Pulford, Ms |
| Eideh, Mr | Purcell, Mr |
| Elasmar, Mr | Ramsay, Mr |
| Finn, Mr | Rich-Phillips, Mr |
| Fitzherbert, Ms | Shing, Ms |
| Gepp, Mr | Somyurek, Mr |
| Jennings, Mr | Symes, Ms |
| Leane, Mr (*Teller*) | Tierney, Ms |
| Lovell, Ms | Wooldridge, Ms |
| Melhem, Mr | Young, Mr |
| Mikakos, Ms | |

**Amendments negatived.**

**The ACTING PRESIDENT** (**Mr Elasmar**) — Ms Dunn has moved her amendment 6, which is a test for amendments 39, 41 and 42 to clause 1.

**Committee divided on Ms Dunn's amendment 6:**

*Ayes, 5*

| | |
|---|---|
| Dunn, Ms | Springle, Ms |
| Pennicuik, Ms (*Teller*) | Truong, Ms (*Teller*) |
| Ratnam, Dr | |

*Noes, 35*

| | |
|---|---|
| Atkinson, Mr | Morris, Mr |
| Bath, Ms | Mulino, Mr |
| Bourman, Mr | O'Donohue, Mr |
| Carling-Jenkins, Dr | Ondarchie, Mr |
| Crozier, Ms | O'Sullivan, Mr |
| Dalidakis, Mr | Patten, Ms |
| Dalla-Riva, Mr | Peulich, Mrs |
| Davis, Mr | Pulford, Ms |
| Eideh, Mr | Purcell, Mr (*Teller*) |
| Elasmar, Mr | Ramsay, Mr |
| Finn, Mr | Rich-Phillips, Mr |
| Fitzherbert, Ms | Shing, Ms |
| Gepp, Mr | Somyurek, Mr |
| Jennings, Mr | Symes, Ms |
| Leane, Mr | Tierney, Ms (*Teller*) |
| Lovell, Ms | Wooldridge, Ms |
| Melhem, Mr | Young, Mr |
| Mikakos, Ms | |

**Amendment negatived.**

**Ms DUNN** — I have a question on clause 1. It is in relation to the Victorian Auditor-General's Office report *Protecting Victoria's Coastal Assets*. As part of that report the Auditor-General noted, in relation to oversight in the department:

> A lack of strong governance and oversight of public coastal land by the DELWP and its predecessors has led to:
>
> > fragmented and overly complex coastal management and planning arrangements;
> >
> > the skills and capacities of coastal managers not being well aligned with responsibilities and asset risks;
> >
> > a lack of clarity around roles and responsibilities for asset management and maintenance;
> >
> > a lack of clarity and transparency around coastal funding and expenditure.

So in the context of what the Auditor-General found in relation to this report I am wondering, Minister: can you advise on the bill and the structures entertained in this bill — which put a lot of responsibility on the department — and whether those particular governance and oversight issues identified by the Auditor-General will be addressed as part of the structures contemplated in the bill?

**Mr JENNINGS** — Ms Dunn, I know that you have been in the committee with us over its journey over the last couple of hours.

**Ms Dunn** interjected.

**Mr JENNINGS** — No, I am glad you are here, but I am going to rely on some things that I have actually shared with the committee earlier in relation to this. In an earlier question Mr Davis asked me, 'How does it actually work in terms of intersections with other acts?'. He asked me that question and we went through a number of examples as to how it goes with other acts and the responsibilities that the agencies who are statutorily required under those acts to perform in a certain way — whether that be planning approvals, environmental controls or consents that may be applied — and how it integrates with the planning scheme and with other environmental management issues. That is very much at the heart of this legislation. So the idea is that along the coastline and in the marine environment we will deal in a consistent fashion with the way those disciplines will be applied right along the coastline and provide frameworks for specific management of particular issues, whether they be for the entire coastline or whether they be the Port Phillip Bay management plan, as an example.

The other issue that relates to how that then intersects with the coast is that all of the departmental agencies will have a very clear organising principle of the connection between their responsibilities. I know your amendment 7 is about the specific issues that you want to insert in this bill. The reason why the government is not supportive of it is that — acknowledging the Auditor-General's recommendation and acknowledging what is at the heart of your concern — we do not want to inappropriately put concepts into this bill which would potentially confuse responsibility for the practices that should be undertaken to acquit certain outcomes.

So in this case the additional requirements that you are seeking to put within this act could potentially — I am reluctant to use the phrase 'muddy the waters' — confuse the line of responsibility for which part of the department deals with what issues and how we get streamlining and clarity about that responsibility. So the government and the department are mindful of the recommendations of the Auditor-General.

What this bill provides for is consistent with that, and we just think that your amendment, in this instance, is a little bit of an overreach in relation to the potential confusion and cross-pollination of responsibilities. So we are doing a balancing act between the intended policy and environmental outcomes you want and how much of it should be in this act and how much of it should be in the other acts that regulate the environment.

**Ms DUNN** — My amendment 7 to clause 1 ultimately seeks to insert the words 'and estuarine water quality and habitat condition'. It is a section of the bill that describes the coastal catchment management authorities and Melbourne Water being able to provide advice on matters relating to and affecting coastal erosion. This amendment in fact seeks to broaden that to include estuarine water quality and habitat, of course recognising the significance of those environments and how important that is in terms of coastal management.

**Mr DAVIS** — I indicate to the committee that the coalition in this case will not be supporting the amendment. As with a number of these amendments, I understand the intent that is behind them and I think the focus of the Greens is laudable. However, I do think that they are an overreach, and to that extent we will not support them.

**Mr JENNINGS** — I just want to put it on the public record, just in case there is any confusion: I pre-empted this issue. I talked through the relevant issues. The reason why the government is not supporting this is that what Ms Dunn is specifically seeking to put into this bill is covered under the Catchment and Land Protection Act 1994.

**Committee divided on Ms Dunn's amendment 7:**

*Ayes, 5*

| | |
|---|---|
| Dunn, Ms | Springle, Ms |
| Pennicuik, Ms | Truong, Ms (*Teller*) |
| Ratnam, Dr (*Teller*) | |

*Noes, 35*

| | |
|---|---|
| Atkinson, Mr | Morris, Mr |
| Bath, Ms | Mulino, Mr |
| Bourman, Mr | O'Donohue, Mr |
| Carling-Jenkins, Dr | Ondarchie, Mr |
| Crozier, Ms | O'Sullivan, Mr |
| Dalidakis, Mr (*Teller*) | Patten, Ms |
| Dalla-Riva, Mr | Peulich, Mrs |
| Davis, Mr | Pulford, Ms |
| Eideh, Mr | Purcell, Mr |
| Elasmar, Mr | Ramsay, Mr |
| Finn, Mr | Rich-Phillips, Mr |
| Fitzherbert, Ms | Shing, Ms |
| Gepp, Mr | Somyurek, Mr |
| Jennings, Mr | Symes, Ms |
| Leane, Mr | Tierney, Ms |
| Lovell, Ms | Wooldridge, Ms |
| Melhem, Mr | Young, Mr (*Teller*) |
| Mikakos, Ms | |

**Amendment negatived.**

**Amended clause agreed to; clauses 2 and 3 agreed to.**

**Clause 4**

**Mr DAVIS** — I will ask a question about clause 4, the heading of which is 'Meaning of marine and coastal Crown land'. I ask on that: what percentage of Victoria's coastline is Crown land and what proportion is private land? I think we know that most of it is Crown land, but I am just interested to know whether those figures have been done.

**Mr JENNINGS** — The best percentage that I can give you to the nearest whole number is 96 per cent Crown land or public land and 4 per cent private land.

**Mr DAVIS** — Thank you, Minister. I am interested in the 200 metres, which is a part of this bill, the 200 metres inland from the high-water mark and the status of land there — first of all the status of public land and then the status of private land 200 metres inland under this bill.

**Mr JENNINGS** — Is that a different question to your first question?

**Mr DAVIS** — Yes. The first one is around the actual percentage. Maybe a better way to phrase it is: how is the land impacted by the bill, the private land and the public land, 200 metres inland?

**Mr JENNINGS** — That is a very different question, and I am not sure I know what you mean by the question. I will help you if you can actually help me understand what you are looking for.

**Mr DAVIS** — Will anything change for public land 200 metres inland from the coastline or from the high-water mark and will anything change for land 200 metres inland that is private land?

**Mr JENNINGS** — Will anything change? Righto; given you have given me three goes I will see if we can work out anything.

A simple answer to your question is that there is no change from the current act.

**Clause agreed to.**

**Clause 5**

**Mr DAVIS** — My point on clause 5, again, which is headed 'Meaning of marine and coastal environment' and has a number of aspects to it, is the following: what is the expected impact on private landowners found within the defined limits of 5 kilometres inland of the high-water mark of the sea of a marine and coastal environment?

**Mr JENNINGS** — I am not sure whether in fact there has been a dip in my blood sugar levels or whatever. I did not understand the question.

**Mr DAVIS** — I will read it again slowly for you. What is the expected impact on private landowners found within the defined limits of 5 kilometres inland of the high-water mark of the sea of a marine and coastal environment? What is the expected impact on private landowners found within the defined 5 kilometre limit?

**Mr JENNINGS** — I do not think actually the question nails it, but I will do my best to actually interpret it and come back.

There is no change to the current act.

**Mr DAVIS** — What new environmental controls will be imposed on private landowners in a marine and coastal environment?

**Mr JENNINGS** — I am encouraged not to go beyond my cumulative answer and to actually reinforce that there is no change from the current act.

**Clause agreed to; clause 6 agreed to.**

**Clause 7**

**The ACTING PRESIDENT (Mr Melhem)** — I believe the minister has amendments.

**Mr Davis** interjected.

**Mr JENNINGS** — I can assist you, Mr Davis. Mr Davis is currently mumbling, Acting President, that he has a series of questions he wants to ask me, and I am sure you will provide him with that opportunity. In the meantime, I move:

5. Clause 7, line 31, omit "protection." and insert "protection; and".

6. Clause 7, after line 31 insert—

"( ) to build scientific understanding of the marine and coastal environment.".

These amendments include a new concept within the objectives of the act — to build scientific understanding of the marine and coastal environment.

**Mr DAVIS** — There is a series of objectives in clause 7. How are each of the stated objectives to be objectively measured against the outcomes they seek to realise? For example, what measures will be used to ascertain improved community, user group and industry stewardship and understanding of the marine and

coastal environment? How do you measure these things?

**Mr JENNINGS** — That is not a bad question, Mr Davis, because in fact you should be able to measure what you intend to do. Some of them do relate to things that can easily be objectively quantified, some of them less so. Just dropping through the hierarchy, the cumulative effect of the actions taken under the act, which depend upon the rigour by which it is actually designed, and the actions that flow from it will be measured by the objective listed in clause 7(a). The objective listed in paragraph (b) will be assisted by the cumulative efforts of the Marine and Coastal Council to provide advice on a consistent basis.

**Mr Davis** — The resilience measure, paragraph (b) — to promote the resilience — how do we measure that?

**Mr JENNINGS** — In fact the objective is to promote resilience; it is not necessarily the measurement of resilience. They are not necessarily the same thing, but you would assume that they would be because in fact there will be a number of environmental indicators in relation to water quality, the risks that may be associated with the vulnerability of ecosystems, the ability to deal with a change in circumstances, increased access, the measurement of climate change impacts on sea level and other indicators. There are a variety of environmental indicators that would be used to actually assess the quality of the marine and coastal ecosystems. They would be pre-existing scientific assessments that you would check to see whether something is more or less resilient or more or less at risk. But the objective is the act of promoting better outcomes.

Rather than go through them all I am indicating to you, for instance, with the objective listed in paragraph (d), 'to acknowledge traditional owner groups' knowledge, rights and aspirations for land and sea country', that objective could be read down in its simplest form to mean on every occasion acknowledging the traditional owners of the environment we are in and being respectful of their knowledge, but in practice what it will mean is a consultative and co-management situation as appropriate in relation to whoever is controlling Crown land along the coast in terms of using that knowledge in an applied sense, making it practical and having a series of actions that flow from that.

Similarly, promoting diversity of experiences relates to some of the examples that Mr Ramsay has referred to. Over time do we actually believe that we have a sustainable approach to the use of coastal areas and can we measure increased accessibility and correlate that with whether in fact the environmental standards that were identified in other objectives have been maintained while this increasing access and the appropriate pursuit of recreational and other interests along the coast occurs?

Within each of these there are a number of key performance indicators that will be established. Some of them relate to environmental standards and analysis, some of them relate to community engagement and some of them relate to a discipline and promotional activities.

**Ms DUNN** — Just to put on record the Greens' comments in relation to these amendments, of course we support them because they are a direct replica of amendments 11 and 12 proposed by me. It is important, the Greens think, to have among the objectives of the act 'to build on scientific understanding of marine and coastal environments'. I will not even begin to duplicate those reasons that the minister has outlined. I thank the government for proposing these amendments as part of the bill, and the Greens will be supporting them.

**Mr DAVIS** — In the case of the amendments to clause 7, which are amendments 5 and 6 on the government's list and the relevant numbers on the Greens' list, the coalition will not oppose those.

**Amendments agreed to; amended clause agreed to.**

**Clause 8**

**Ms DUNN** — I move:

13. Clause 8, line 14, after "environment" insert "and legislation applying to them".

The amendment is in relation to integrated coastal management industry sectors and users of marine and coastal environments.

**Mr DAVIS** — With respect to clause 8, 'Integrated coastal zone management', I should say first that the opposition will not support the amendment, but I do have a question for the minister. This section on integrated coastal zone management talks about the guiding principle for management and lists some points. I ask: what room is there for industry to contribute to the coordinated and integrated planning and management of the marine and coastal environments, especially if they are users of that space?

**Mr JENNINGS** — I will take some further advice in a second. With the way in which this bill is

structured and the way we have had a conversation up until now about the cumulative effect of the approach of management by the appropriate agencies within a consistent, coordinated framework, there will be opportunities afforded along the coastline for relevant, localised industry sectors that may impact through the planning considerations and the coastal management frameworks, whether they be all the way along the coast or whether they be in Port Phillip Bay, as an example, in relation to how you make sure that there is appropriate regard for the consideration of Victorian industry and economic activity to make sure that there is an appropriate balance between economic and community value and environmental values being protected. So that is the general philosophical position, and that will actually give life to consultative arrangements and committee arrangements of local Crown land managers and other agencies engaging with industry in their area of responsibility. That is the general holding. I will go back and see whether anybody augments what I have just said.

Everything that I have described has not been deemed eligible for correction. Within that, there are statewide, there are regional and there are local considerations. At the regional level there will be regional strategic partnerships formed to have a look at the regional plan, and in those partnerships we would expect a relevant industry sector to be invited to participate in those partnerships.

**Amendment negatived; clause agreed to.**

**Clause 9**

**The ACTING PRESIDENT** (**Mr Melhem**) — I ask Ms Dunn to move her amendment 14. Has that been tested? The consensus is that Ms Dunn can move her amendment.

**Ms DUNN** — I move:

14. Clause 9, page 14, lines 1 and 2, omit "working with natural processes where practical" and insert "maintaining ecological processes including water and nutrient flows, community structures and food webs, and ecosystem links".

The amendment is of course in relation to clause 9, which is 'Ecosystem-based management'. It seeks to give greater clarity in terms of the clause that defines natural processes, where practicable. What the amendment seeks to do is delete that wording and insert 'maintaining ecological processes including water and nutrient flows, community structures and food webs, and ecosystem links' just to provide greater definition of those ecological processes.

**Mr JENNINGS** — Ms Dunn, I just want you to know that when there was a conversation about whether your amendment had been tested or not and whether it should be able to be moved, I joined you in saying that it should be moved, it should be considered, but having said that, that is the limit of my goodwill at this minute, because ultimately in relation to this there is a variation between what you are seeking to do with some of your amendments and what the government is doing with the amendments we have accepted or what is in the structure of the bill. We think sometimes your amendments have gone a little bit too far in relation to changing the scope and the intersection with other acts. We believe that this is one of those examples, and that is the reason why we are not supporting you in this instance.

**Mr DAVIS** — I should say just for the record that the opposition will not support the Greens on this amendment of clause 9. The clause is entitled 'Ecosystem-based management'. I want to ask the minister a couple of brief questions here. The first one is: when referring to 'detrimental cumulative or incremental ecosystem impacts', what might these impacts be?

**Mr JENNINGS** — Off the top of my head I will give you some examples, then I will seek some additional advice in a minute for some more specific examples. In fact these concepts are linked in relation to matters that may not be in their own right. So adverse effects may occur within the environment over a period of time and because of either their compounding or their cumulative nature they may have an impact on the quality of the marine environment. Probably the most famous one of those in the nation is the Great Barrier Reef in relation to what might be the inappropriate load that comes from overuse or inappropriate regulation of water and industry. These have cumulatively led to a lack of viability of the reef and may ultimately get to a tipping point that leads to its demise. This is compounded by the cumulative effect of seawater temperature and other variations in the waterways that may lead to coral bleaching or other aspects that again may reach a tipping point where there is actually a loss of that ecosystem.

It is a similar thing, because in fact in the marine environment we are actually talking about here, while it is perhaps not as famous as the Great Barrier Reef, it is subject to very similar pressures, and unless we are very careful it may cumulatively reach a tipping point which means it is not viable. That is the theory.

The other issue is that, apart from the examples I have given to you, which are on the marine side, what is

occurring could be on the land side in relation to the effects of overdevelopment or it could be about giving unfettered access to environments that may be vulnerable. As you would be aware, along the coast from time to time, whether it be through erosion that may occur naturally or because of an environmental effect or event, some beaches have to be closed to prevent people from going down there because they may exacerbate that, particularly if we do not take precautions or preventative action to prevent that cumulative effect.

**Mr DAVIS** — It is interesting that the minister did come to overdevelopment, which does seem to me to fit the definition very closely of potentially 'detrimental cumulative or incremental ecosystem impacts'. Some of our sensitive coastal areas, and I am thinking of the Mornington Peninsula, the Bellarine Peninsula and many areas closer to Melbourne, are under real pressure from intense development. The government has, in its *Plan Melbourne: Refresh*, outlined an attempt to densify and intensify development along many of the corridors close to some of our coastal areas. For example, in the case of the Mornington Peninsula, VC110 — a planning scheme amendment that was brought forward as part of *Plan Melbourne: Refresh* — will as of right give a much greater ability to densify and build to greater height, leaving aside the aesthetic. The capacity is there under that amendment to heavily densify what are currently and have traditionally been much less densely developed areas of land. Will there be some attempt under this bill to look at that sort of overdevelopment, particularly in areas close to the marine and coastal environments, as outlined by the bill?

**Business interrupted pursuant to standing orders.**

**Sitting extended pursuant to standing orders.**

**Committee resumed.**

**Mr JENNINGS** — Mr Davis, earlier on in relation to clauses 4 and 5 you asked me what impact this has on private land, and my answer to you was that there was no change in relation to the current law in relation to those matters. I am going to stick with that in this answer.

**Mr DAVIS** — So with respect to public land on which the government may seek to undertake developments — for example, Development Victoria or another government agency might lead some of those developments — will that intensification of development, that potential overdevelopment in some areas, be assessed and require ministerial approval?

**Mr JENNINGS** — The issue that you raise is more appropriate to be addressed under the rubric of the planning act —

**Mr Davis** — Which is one of the answers we discussed.

**Mr JENNINGS** — Yes, absolutely, but the planning act has its own default. When you talked before about which act trumps which act, in the issues that you have outlined there may be cause in certain circumstances for this bill to have an effect, but it will not be used as an instrument to override powers in relation to the planning act.

**Mr DAVIS** — So this clause in some senses — the 'detrimental cumulative incremental ecosystem impacts', with an overdevelopment scenario like that — may have no impact on what would happen, as currently exists?

**Mr JENNINGS** — No, that is not necessarily a direct conclusion you could draw from my comments. Earlier in my answers to the committee I indicated that where it is relevant there may be a requirement for the minister to form a view or have an obligation in relation to any consent provisions, which may add to an ability to either do an environmental assessment or actually proceed to planning approval or any other form of approvals. That could be within the framework of the relevant coastal plan that would be established, where in fact there may be a view but it would not change the legal standing of the environment effects statement, the Environment Effects Act or the planning act in relation to circumstances where those bills or those acts would have precedence. It may be a contributor to them but in fact it will not override them. It will actually complement them.

**Mr DAVIS** — I thank the minister for his answer. I think we are actually getting somewhere here. I think the truth of the matter is in fact it could in some circumstances enable a minister to say no and to stop a development on government land. Equally it could in some circumstances lead to a change of policy, which is what you are arguing here. Where there is a — I am using perhaps the wrong word — structure plan of some kind along a coastal area, that could have an effect on government land and perhaps also, via that kind of arrangement, on private land.

**Mr JENNINGS** — I think conceptually the way that you have described that is okay. I do not want you to use my agreement to that to lead to false conclusions about either the relative powers of acts or the approval process, but generally in the way that you responded to

my answers to you I am comfortable for you to use that shorthand in this instance in that way.

**Mr DAVIS** — Thank you for that, Minister. In that same clause, paragraph (c) says:

> building ecosystem resilience to climate change impacts where possible.

How do you build a marine and coastal ecosystem that is resilient to climate change in Victoria?

**Mr JENNINGS** — There are a number of actions that people can take that mitigate environmental damage or the effects of climate change. Those may involve the way in which preventative or restorative work is undertaken. In a short-term fashion the issue that you and Mrs Peulich were talking about, beach renourishment, is a short-term approach to ameliorate some of those impacts. If you extend the logic of what those short-term impacts are — because of the natural form of the tidal arrangements within Port Phillip Bay, for instance — you will always be chasing your tail. But there are some actions that you take along the coast that in fact may have a more lasting measure in relation to the quality and the resilience of the environment. The example that I gave some time ago was about taking preventative action should there be some form of landslip or erosion on the coast and trying to take some restorative action rather than allowing unfettered access. Similarly, access to a beach, for instance.

Again, in relation to the example I gave about the Great Barrier Reef, currently the federal government is thinking about ways in which it can address the cumulative pressures on the Great Barrier Reef. Most of the money that the commonwealth has allocated is to actually prevent discharge and other contaminants coming down waterways off the coast. So in fact a lot of land use decisions on waterways —

**Mr Davis** interjected.

**Mr JENNINGS** — Yes, but what I am indicating to you is that when pressures come into the ecosystem — and again we have not even talked about the potential for sea level change through climate change scenarios — you should take as much cumulative effort as you can to try to mitigate that risk. There are a myriad of policy and practical ways in which you can actually try to build that resilience.

**Amendment negatived.**

**Ms DUNN** — I move:

15. Clause 9, page 14, line 4, omit "possible." and insert "possible; and".

16. Clause 9, page 14, after line 4 insert—

> "( ) maintaining viable populations of all native marine and coastal species in functioning biological communities; and
>
> ( ) maintaining marine and coastal biological diversity, including the capacity for evolutionary change; and
>
> ( ) minimising the impacts of human use on marine and coastal ecosystems so that they do not degrade ecosystem function.".

These are in relation to this same clause around ecosystem-based management. They seek to add additional points around maintaining viable populations of all native marine and coastal species in functioning biological communities, maintaining marine and coastal biological diversity, including the capacity for evolutionary change, and minimising the impacts of human use on marine and coastal ecosystems so that they do not degrade ecosystem function.

**Mr JENNINGS** — For the reasons I gave before in relation to a number of Ms Dunn's other amendments, we will not be agreeing to these ones.

**Amendments negatived; clause agreed to; clause 10 agreed to.**

**Clause 11**

**Mr DAVIS** — Clause 11 relates to evidence-based decision-making, and my question there is: the bill talks about recognising that information will often be limited, but how do you ensure that, while evidence may be limited, it is accurate and appropriate?

**Ms Dunn** — I reckon it's called science. I'm just trying to be helpful.

**Mr JENNINGS** — Ms Dunn thought I was too slow to my feet. She uses the catch-all 'science'. In fact it is incumbent upon agencies that operate in terms of environmental protection and regulation that we actually have the appropriate scientific rigour, capability and analysis. In fact there are a number of members in the chamber currently who have asked questions recently about environmental standards and regulation and our ability to test the quality of the environment and to report on it accurately. That is a continuing challenge of agencies. It requires continuous investment in our people to be able to undertake that work and provide continuity of that work. The government is committed to that and has a track record of investing in that area. There may well always be arguments that could be quite rightly mounted in terms of enhancing that capability. This bill is consistent with

growing that capability over time and using it in a coordinated fashion.

**Clause agreed to; clauses 12 to 15 agreed to.**

**Clause 16**

**Ms DUNN** — I move:

20. Clause 16, page 17, line 3, omit "Act." and insert "Act;".

21. Clause 16, page 17, after line 3 insert—

"( ) to advise the Minister on any matter under this Act;

( ) to publicly report on advice given to the Minister and other relevant Ministers.".

These give particular reference to publicly reporting advice given to the minister and other ministers and are in relation to ensuring transparency around advice given to the minister and ensuring public access to that.

**Mr DAVIS** — The coalition will not support these amendments, but I do have a question for the minister on clause 16, if that is possible, on the functions of the council and how it is established. In removing the Victorian Coastal Council why have the functions of the to-be-established Marine and Coastal Council been scaled down to the extent that it now only provides advice to the minister? For example, the former council could undertake statewide strategic coastal planning and draft coastal strategies, including coordinating their implementation as well as having a more pragmatic role in the operation of the legislation.

**Mr JENNINGS** — I am just going to have a quick chat with my colleagues in relation to this matter. As I go over there I just want to respond to Ms Dunn's amendments. We are not going to be supporting her amendments in this instance because we believe, again, they go a step too far. It would mean that the council would be responsible for reporting to more than one minister, which has the potential to be either duplicative or confusing in terms of good governance in relation to the lines of accountability.

This governance model and the functions were recommended by the expert panel that considered these matters and boil down to the following difference in terms of the key functions: in the past the equivalent council would establish a plan and a guide for the government to adopt and it was not enforceable as government policy until it was adopted in the form that the government chose. It is very clear that the model has the ability, because of the way in which this bill is framed, to be more inclusive and considerate of all the obligations of the government. The council will provide the advice. The consolidation of that advice will be put into a whole-of-government frame that will be adopted by the minister.

At one level simultaneously Mr Davis actually may say it is an erosion of function and we actually may say it might be a streamlining of getting whole-of-government buy-in because in fact the advisory council — its consolation, its form and its consideration — is more whole of government than it has been before. It will form advice which the minister will be responsible in a whole-of-government frame to sign off on. We believe this model is something that will give gravity and weight to the strategic plans that have currently not had that gravity and weight of being adopted in the sequence that I have just outlined.

**Mr DAVIS** — I thank the minister for his point, and I understand the point he makes. I understand things can be looked at from the positive or the negative and how things can work well or how things can work poorly, and I think in a sense he is almost conceding that there are two ways to look at things. In a sense what I am doing by asking this question is marking out our concern and caution that some of the good functions of the existing body may be lost, and that is a genuine fear. The minister was talking about the past and environmental records. This body that exists now actually goes back to 1994 — I could be wrong by a year or so. It was a Kennett government initiative at the time, and it was a good step towards strengthening the management, examination and support of our coastline. On that proactive role that exists now, I just mark out our caution on that point.

**Amendments negatived; clause agreed to; clauses 17 to 22 agreed to.**

**Clause 23**

**Mr DAVIS** — On clause 23, 'Committees of the Council', my question here is: since the membership of a committee is not restricted to members of the council, as I read it, by what criteria will members be appointed to a committee?

**Mr JENNINGS** — There is a sequence. The council will determine that it needs a particular focus, and that may be place-based additional advice. It could be a regional focus — that they need some additional knowledge and consideration of matters on a regional basis — or it could be, for instance, in relation to them recognising that there is a particular need to deal with a scientific issue in terms of augmenting the standing capacity and knowledge of the council to look at a scientific matter. If they are of that mind, they can make

a recommendation for whatever purpose where they actually think that additional work needs to be undertaken. They can make that recommendation to the minister.

The minister would then, it is envisaged, accept that advice and assist in the implementation or the recruitment and appointment process that may be sometimes formal, sometimes informal, depending upon the needs of what the council determines. It may be paid or it may be voluntary depending upon the nature of the work and the direction of the consideration. Say, for instance, if there was a regional consideration of a matter that arises in a certain time frame that involves various relevant local people having a discussion about it, that would actually be something where the council might say, 'For the next few months we need a committee to be established to look at that regional effect'. That could be done on a relatively informal basis. The council would then, once the minister says, 'That sounds sensible', make a consultation forum that actually augments that knowledge.

Going to the other end of the spectrum, it could be that there need to be some additional scientists appointed for a certain time frame to come and assist the council with its knowledge about working through a particular reference or consideration it has, and it would be incumbent upon the minister to provide resources to be able to pay for that additional staffing capacity.

**Mr DAVIS** — So likely a purpose-driven set of criteria in terms of who it would be and qualifications. It might be local government; it might be whatever.

**Mr JENNINGS** — Yes, exactly.

**Clause agreed to.**

**Clause 24**

**Mr DAVIS** — Perhaps with the committee's indulgence, this question goes across the 24 to 29 division , 'Marine and Coastal Policy'. It says:

> The Minister must make a Marine and Coastal Policy …

The purposes are to outline the arrangements and to provide guidance. It must include spatial and other matters — coordinated planning and management of the marine environment. How does that fit with a coastal strategy? I am just trying to understand here how a marine and coastal policy differs from the responsibility to have a marine and coastal strategy?

**Mr JENNINGS** — I would encourage Mr Davis to cross-reference very quickly the shift from clauses 24 and 30. To answer his question, you can have a look at 'to outline the policies applying to the marine and coastal environment' and 'to provide guidance'. So it is a guidance framework for decision-makers about how to achieve certain outcomes. The coastal strategy is the actions that would be undertaken to acquit those outcomes — the time frames and the resources that should be allocated to it and who should be taking responsibility for each activity.

**Clause agreed to; clauses 25 to 29 agreed to.**

**Clause 30**

**Ms DUNN** — I move:

23. Clause 30, page 25, lines 6 and 7, omit "for the implementation of actions" and insert "and measurable indicators for the period of the Strategy".

This amendment simply seeks to insert in relation to the marine and coastal strategy implementation plan not only time frames as part of that plan but measurable indicators for the period of the strategy.

**Mr JENNINGS** — I am not in a position to be able to pre-empt the consideration of the Marine and Coastal Council, who are currently charged with the responsibility of advising on those matters. I am advised that this would be overly constraining in relation to their ability to acquit that responsibility and potentially prejudging the method by which they would engage on the outcome. That is how I am advised, and I am not in a position to be able to support the amendment.

**Amendment negatived; clause agreed to; clauses 31 to 36 agreed to.**

**Clause 37**

**Ms DUNN** — I move:

24. Clause 37, line 19, omit "environment." and insert "environment;".

25. Clause 37, after line 19 insert—

"( ) the trends in the condition of the marine and coastal environment;

( ) recommendations for improving the condition of the marine and coastal environment and mitigating threats.".

These amendments are in relation to the state of the marine and coastal environment report. They seek to include additional matters that should be included in the

state of the marine and coastal environment report, including the trends in the condition of the marine and coastal environment and recommendations for improving the condition of the marine and coastal environment and mitigating threats.

**Mr DAVIS** — The coalition will not be supporting these amendments.

**Mr JENNINGS** — The reason why I am not in a position to be able to support Ms Dunn's amendments, while we are in no dispute about the importance of the work, is that it is actually a matter of whether we potentially put the cart before the horse in relation to the recommendations and the action that could come in response to the environmental report. That is the reason why we are not agreeing to these amendments.

**Amendments negatived; clause agreed to; clauses 38 to 40 agreed to.**

**Clause 41**

**Mr DAVIS** — My question here relates to the guidelines. The secretary makes a series of guidelines, and my question is with regard to the coastal and marine management plans. What might the guidelines say about the preparation and context that would be required?

**Mr JENNINGS** — Sorry, can you just tease out what you mean? Is it the interactive nature between the secretary, the council and the minister that you are interested in?

**Mr DAVIS** — It is part of that, but it is also what the government is intending these guidelines to say about the preparation and content of the steps going forward — data collection is mentioned — the process and content of the plans.

**Mr JENNINGS** — Going back to a series of questions that you asked me before in relation to meeting the objectives of the act or some of the functions of the council, what you have asked me about now is the method by which they would go about the work — the nature of what would be an expectation about how much public consideration there should be, the length of consideration of what a process should outline in relation to establishing a plan, what types of information you might expect to be contained within the scientific rigour and the data sources that you may rely on. Again it goes back to the question you asked before about how you test certain things in terms of environmental effects or resilience. There are scientific measurements and standards that you would expect to be met and the peer review process that Ms Dunn talked about — how do we actually have confidence in the scientific rigour? And then the last guidelines that are listed here relate to what will be planning, structure and design environmental standards that relate to the infrastructure that may be along the coast. So they are all the things —

**Mr Davis** — Come to that last one.

**Mr JENNINGS** — I will go and talk to people about that, but that is my general understanding of the range of issues.

I have been encouraged to stick to that answer and to augment it by reinforcing the point that the real reason we want these guidelines to be in place and to be clearly identified is to provide some consistency across the implementation of the various functions that come through the council or various responsible agencies and considerations that should occur across the coastline.

**Mr DAVIS** — Thank you, Minister. I can see the logic behind the guidelines, and I can see how they can operate. I can also see some rigidities and issues that can be created. I particularly turn to subclause (2)(c) and the location and design of structures in the marine and coastal environment. Are we talking about guidelines for the placement of groynes? Are we talking about the guidelines for piers and jetties? Are we talking about the design of houses? It seems to me that these kinds of guidelines could go in a whole range of directions. We are talking about structures and marine and coastal environment and even up the catchment some distance. Guidelines from the secretary with respect to the location and design of structures — this could have potentially a very heavy regulatory overlay. It could be a force for some sensible policy, but it also could be a very heavy-handed instrument.

**Mr JENNINGS** — The examples that these guidelines would apply to are the ones that were at the beginning of your question, less so the ones at the end. So your concern, which is being implied if not specifically called out in relation to this, is how these guidelines may impact upon private citizens or businesses in relation to their —

**Mr Davis** interjected.

**Mr JENNINGS** — If it is actually environmental infrastructure or works that are undertaken for environmental protection in relation to acquitting land and the marine quality of that ecosystem or that environment, the more likely it is to be subjected to guidelines — the ones that relate to consistencies about jetties and other access points. As for the ones that come into your line of questioning, the further you go

either away from the coastline or away from the responsibility of the land manager into the private space and private infrastructure, the further it physically goes and its tenure goes from impact by these guidelines, it reduces.

**Mr DAVIS** — Thank you. That is sort of as I imagined it, but as I say, you could end up with this kind of framework providing a very heavy overlay of regulation, and I would hope that would not occur.

**Mr JENNINGS** — I share that view, and in fact the confidence I give you is in relation to my answers about other acts. To respond to the phrase that you put on the table before: what act trumps what? In relation to this, the planning act or the environmental effects act will trump this legislation. In a perfect world you would actually have a harmony of outcomes between public and private interest impacts, and the regulatory environment is actually trying to assist that harmonisation of the existing legislative instruments.

**Clause agreed to.**

**Clause 42**

**Ms DUNN** — I move:

26. Clause 42, after line 19 insert—

> "( ) The minister must establish a community reference group to provide advice to the regional and strategic partnership.".

This is in relation to the establishment of regional and strategic partnerships. It seeks to insert an additional point in the clause that the minister must establish a community reference group to provide advice to the regional and strategic partnership. It is around ensuring that input from community is part of the legislation and is given the regard that community input should have in relation to coastal management and the establishment of these regional and strategic partnerships.

**Mr DAVIS** — I understand the objectives that Ms Dunn has, and they are laudable, but on this occasion we cannot support the amendment. I might in the context of clause 42, which deals with regional and strategic partnerships, and also with respect to the following clauses up to clause 48, seek to understand the functioning of these bodies. Can the minister dissolve a RASP — a regional and strategic partnership — entered into by various parties if it is dysfunctional or unable to reach a consensus or outcome?

While the minister is thinking about that, there is a related question which flows from this. What could be the actions of the minister if submissions by a RASP are not in accordance with the government's marine and coastal policy as described earlier in the bill?

**Mr JENNINGS** — Clause 42(1), which is the introductory paragraph to this, indicates:

> The Minister, by instrument, may establish a regional and strategic partnership between 2 or more partner agencies.

If a minister can provide that with an instrument, there will be an instrument to be able to take it away, to answer your question.

**Mr Davis** — So in the old biblical sense, if the minister giveth, the minister can taketh away.

**Mr JENNINGS** — Maybe, rather than me reading all of these clauses and all of these notes I should have perhaps read the first line, because the first line gave the answer. But there was a subsequent question that you asked.

**Mr DAVIS** — The subsequent question was about actions of the RASPs with respect to divergence from government policy.

**Mr JENNINGS** — The divergence is in relation to whether they will be required to act within the various acts. They will be required to operate within the relevant coastal plan that they may be subjected to, and that would be the expectation.

**Mr DAVIS** — Has consideration been given to the production of guidelines either by the secretary or the minister to assist with the formation of a RASP?

**Mr JENNINGS** — Whilst it is not specifically mentioned in the clauses that relate to the partnerships, the guidelines in clause 41 do provide scope for them to apply in these situations. There will also be a transitional implementation arrangement that the secretary is obliged to introduce. In clause 46 the work of the regional partnerships sets out the obligations in relation to the products and their actions. Within clause 46 —

**Mr Davis** — Must ensure.

**Mr JENNINGS** — Yes.

**Amendment negatived; clause agreed to; clauses 43 to 45 agreed to.**

**Clause 46**

**The ACTING PRESIDENT** (**Mr Melhem**) — Ms Dunn, your amendment 27 has been tested by your amendments 2 and 3.

**Ms DUNN** — My amendments 28 and 29 to clause 46 refer to the community reference group in terms of making sure, in preparing a product under a regional and strategic partnership, that one of the parties the partnership must consult with is a community reference group.

**Mr JENNINGS** — Unfortunately the member's amendments have been tested.

**The ACTING PRESIDENT** (**Mr Elasmar**) — Ms Dunn, your amendments 28 and 29 have been tested.

**Clause agreed to; clauses 47 and 48 agreed to.**

**Clause 49**

**Mr DAVIS** — This is division 2, 'Environmental management plans', and clause 49, also headed 'Environmental management plans', so in a sense the question relates to clause 49 through to clause 55. Given that the minister is responsible for the preparation of an environmental management plan for Port Phillip Bay, why is this limited to just the bay area and not other parts of Victoria's coastline or embayments? Why is it just Port Phillip Bay? I am in no way diminishing the importance of that, but what is the reason that other areas are not considered?

**Mr JENNINGS** — As a starting point, I would say, because of the reason that is embedded in your question, the recognition of the significance of Port Phillip Bay has been called out, but the potential is there for other management plans to be established. That is my starting position, and I will go and talk to people about that. Just to reinforce the point I made when I left the table, the bill mandates a plan for Port Phillip Bay and it enables one for any other parts of the coast.

**Mr DAVIS** — So is it the government's intention to undertake such plans for other areas beyond the bay?

**Mr JENNINGS** — At this point in time the limit of my advice is that we actually understand that there will be ongoing desirability to identify other parts of the coast that would warrant one, but at this point in time the mandated focus will be on Port Phillip Bay and we will await advice in relation to the relative merits of establishing them in other locations.

**Mr DAVIS** — Finally, could these environmental management plans act as yet another layer of regulation — perhaps for good but also perhaps as yet another layer of regulation that could have ill effects too?

**Mr JENNINGS** — You know the answer to that question, Mr Davis. It is a rhetorical question.

**Mr DAVIS** — But I am interested to hear the minister say the answer. I have my own views about these things, but they are actually irrelevant in this context. You are the minister.

**Mr JENNINGS** — I know, Mr Davis, that your desire in this committee is to create exposure for me and the government in relation to the answers that I give you, and I am choosing not to.

**Mr DAVIS** — Let the record that the minister has refused to respond to that very reasonable point.

**Mr JENNINGS** — It was a very reasonable point.

**Clause agreed to.**

**Clause 50**

**Ms DUNN** — I move:

30. Clause 50, page 37, lines 28 and 29, omit "beneficial uses and to" and insert "marine and coastal biodiversity, manage ecologically sustainable uses and".

Clause 50 deals with the 'Scope of environmental management plans'. What the amendment seeks to do is extend the proposed actions to be undertaken to improve water quality. Rather than the bill reflecting, as it does now, protecting beneficial uses, it seeks to insert 'marine and coastal biodiversity, manage ecologically sustainable uses' and then goes back to the bill, where it talks about addressing threats relating to and affecting the area in respect of which the plan is prepared.

**Mr JENNINGS** — Ms Dunn, we are on a theme. In terms of your amendment, we think it is overly prescriptive and we think that we can take account of this work in accordance with what is already there. We are not heading in different directions in relation to our intent, we just think you are overengineering it a bit.

**Amendment negatived; clause agreed to.**

**Clause 51**

**Ms DUNN** — I move:

32. Clause 51, page 39, line 2, omit "party." and insert "party;".

33. Clause 51, page 39, after line 2 insert—

"( ) any other stakeholder and community interests.".

These are in relation to clarifying who the minister should consult with in relation to the preparation of an environmental management plan and seek to include any other stakeholder and community interests.

**Mr JENNINGS** — Ms Dunn, I believe, mostly, I am totally in accord with the people who run the show up here. I am just a mere instrument of the way in which this committee works. On this occasion I believe we have already argued this issue about the idea of a marine spatial planning framework, and we have voted against it on every occasion up until now. I believe that sets a precedent for this.

**The ACTING PRESIDENT** (**Mr Elasmar**) — Thank you, these amendments have been tested by your amendments 3 and 4, Ms Dunn. Anyway, I will put the question. The question is that the amendments be agreed to.

**Amendments negatived; clause agreed to; clauses 52 to 57 agreed to.**

**Clause 58**

**Ms DUNN** — I move:

34. Clause 58, line 15, omit "applies." and insert "applies; and".

35. Clause 58, after line 15 insert—

"( ) management zones specifying allowed and disallowed uses.".

These amendments are in relation to the scope of the coastal and marine management plan and seek to add to that management zones specifying allowed and disallowed uses.

**Amendments negatived.**

**Business interrupted pursuant to standing orders.**

**Sitting extended pursuant to standing orders.**

**Committee resumed.**

**Clause agreed to; clauses 59 to 85 agreed to.**

**Clause 86**

**Ms DUNN** — I move:

44. Clause 86, after line 2 insert—

'( ) After section 15(3) of the **Catchment and Land Protection Act 1994 insert**—

"(4) The board of each Authority must consist of at least two members with expertise in marine and coastal science or management.".'.

This amendment seeks to insert a new section into the Catchment and Land Protection Act. It seeks to describe the board of each authority — that it must contain at least two members with expertise in marine and coastal science and management. It is a critical part of managing our coastlines that people with expertise are part of the boards and in fact provide guidance for other members who may not have that level of expertise, particularly in marine and coastal science or management of those areas. The Greens think it is important that that is represented in the boards of authorities, and that is why this amendment is being proposed.

**Mr JENNINGS** — At one level it is a bit hard to argue against Ms Dunn's comments and her intention with this amendment, because we accept the logic for and the need to have capable, talented people on the council. The extraordinary thing about it is that she knows this amendment is out of scope. We are providing you with an opportunity to actually get within the scope for us to have this discussion, so I can tell you that we think you are being overly prescriptive and changing something outside the scope of what the bill provides for. We are not going to support you today on this one.

**Mr DAVIS** — Likewise.

**Amendment negatived; clause agreed to; clauses 87 to 100 agreed to.**

**Reported to house with amendments.**

**Report adopted.**

*Third reading*

**Motion agreed to.**

**Read third time.**

# ADJOURNMENT

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

That the house do now adjourn.

## Child sexual abuse

**Ms PATTEN** (Northern Metropolitan) (17:08) — My adjournment matter is for the Attorney-General. The action I am seeking relates to the mandatory reporting of child sexual abuse cases. I think it is quite apposite to the conversations we have been having this week about the redress scheme et cetera. Yesterday I received a letter from the Anglican Diocese of Melbourne. It appears that they are of the understanding that they do not need to report allegations of child sexual abuse to the police; they only need to deal with it in-house. Then if they think that it is serious, they will report it. The letter from the archbishop of the Anglican Diocese of Melbourne states:

> Under the complaints legislation …

which is not legislation; it is their own synod rules —

> complaints relating to clergy in the diocese, including former diocesan bishops, are dealt with by the Kooyoora office of professional standards under the process required by Melbourne diocesan legislation, the professional standards uniform act 2016 and its protocols.

It goes on to say that:

> Kooyoora Ltd is an independent company established by the dioceses of Melbourne and Bendigo, that has its own board …

It then goes on to state:

> The complaints protocol … adopted by the directors of Kooyoora Ltd requires the director of professional standards to notify the police in the case of serious indictable offences. This is a matter for the director to determine on the facts of each case, upon taking appropriate legal advice. This function is specifically reserved to the director …

I actually find it quite abhorrent that in 2018, having passed historic legislation in this place and having gone through a royal commission that looked into the appalling cover-ups that were undertaken by religious organisations, including the Anglican Church, they continue to feel that they do not need to report child sexual abuse when it comes before them. In fact their website states, 'Don't call the police, call us'.

The action that I am seeking is that Victoria's mandatory reporting laws be extended to include religious institutions, particularly given that these are the institutions that had so much child abuse occur within them. Already we have doctors, teachers and police officers under the mandatory reporting laws. I would like to see that they be extended to religious institutions to give them the same legislative requirements imposed on others.

## Calder Highway, Ravenswood

**Ms LOVELL** (Northern Victoria) (17:11) — My adjournment matter tonight is for the Minister for Roads and Road Safety and relates to road projects on the Calder Highway that are affecting residents in Ravenswood. That action that I seek from the minister is for the minister to ensure that no residents will be financially disadvantaged by decreased property valuations as a result of current roadworks on the Calder Highway at Ravenswood by guaranteeing the installation of an adequate sound barrier for trucks entering the recommissioned Jock Comini Memorial Rest Area and the construction of a sealed access road to residents located between the Calder Highway and Bickfords Road.

The roadworks project currently being undertaken by VicRoads on the Calder Highway at Ravenswood is made up of three phases. These are upgrading the Ravenswood interchange, recommissioning the Jock Comini Memorial Rest Area and providing new access to houses on the western side of the highway onto Bickfords Road. VicRoads split these into three separate projects, with Bendigo VicRoads responsible for the rest area project and Essendon VicRoads in charge of the interchange and residents' access. Residents are concerned about the devaluing of their properties because of these works, with each property facing a decrease of $100 000 in value as a result. Residents are concerned about the noise of the exhaust brakes of trucks leaving the highway and entering the rest area. Residents on the western side of the Calder Highway also want a sealed access road built after VicRoads installed wire barriers that cut off access to the Calder Highway.

VicRoads northern regional director Brian Westley informed the local media that a sound barrier would be installed to combat the noise of trucks entering the rest area. However, one of my constituents has been informed by Mr Westley that no such sound barrier will be installed. VicRoads plans to install an access road off Bickfords Road, but there is no guarantee that the road will be sealed or have proper drainage. VicRoads asked residents to obtain quotes for works to maintain property values. All quotes have been rejected by VicRoads, and VicRoads have offered residents a paltry $19 800 per property.

The minister needs to intervene as a matter of urgency. The action that I seek from the minister is for the minister to ensure that no residents will be financially disadvantaged by decreased property valuations as a result of current roadworks on the Calder Highway at Ravenswood by guaranteeing the installation of an adequate sound barrier for trucks entering the recommissioned Jock Comini Memorial Rest Area and the construction of a sealed access road to residents located between the Calder Highway and Bickfords Road.

## Gippsland public transport

**Ms BATH** (Eastern Victoria) (17:14) — My adjournment matter this evening is for the Minister for Public Transport, Minister Allan in the other place. The Andrews Labor government's poor public transport planning continues to create enormous headaches and frustration for Gippsland public transport users. Due to construction work on the Pakenham line during May and June, coaches are replacing rail services to Traralgon and on to Bairnsdale. With a punctuality rating of approximately 47 per cent on any given day, Gippsland commuters toss a coin on whether they will arrive at their destination on time or not.

Yesterday was an example of the 'or not' scenario, with absolute frustration for commuters using the Gippsland line replacement bus service. Travelling home on the afternoon service, passengers noticed fumes of burning rubber permeating through the bus. After communicating this with the driver, passengers were informed that the bus driver was aware of the problem and believed it was the clutch. He was attempting to coax the bus gingerly along to the town of Moe. Passengers had concerns about travelling through towns with traffic lights prior to Moe. Clearly the bus driver was not at fault for any mechanical failures or poor conditions; he was just trying to do his job and get his passengers safely to their destination. Approximately 7 kilometres short of Moe the bus lost power entirely and the bus driver had to pull over on the side of the Princes Highway. Passengers were told that another coach ahead of them would turn around and come back and collect them after approximately an hour's delay. When this bus arrived there were insufficient seats to accommodate all of the passengers on the first bus. As a result, 10 very sad and infuriated people had to remain on the side of the road and wait for another bus to arrive. It sounds like a farce and a debacle, and it was. People were inconvenienced to the nth degree.

We have had delays, breakdowns and more delays on the Gippsland line. The action I seek from the minister is to investigate this incident and to fix this debacle to ensure that passengers do not have to suffer the inconvenience of waiting on the side of the Princes Highway and can get to their destination within a reasonable time to meet their loved ones or meet their obligations at the other end.

## Gowanbrae municipality

**Mr FINN** (Western Metropolitan) (17:16) — My adjournment this evening is for the Minister for Local Government. As I mentioned earlier in the week, last weekend I was in Gowanbrae with the Liberal candidate for Sunbury, Cassandra Marr —

**Mr Morris** interjected.

**Mr FINN** — She is going to be an outstanding member for Sunbury, I can assure you, Mr Morris.

We were meeting a wide range of members of the community in that visit. One of the issues that was raised time and again was the dissatisfaction that many people who live in Gowanbrae have with the City of Moreland. They find themselves in a situation where they regard the City of Moreland as ignoring them — they believe that they are the forgotten corner of Moreland. Moreland, as we know, has its own share of problems without ignoring a large section of the municipality that includes Gowanbrae. I think it is important that local government take these issues on board. Obviously Moreland have not on this occasion; they are too busy trying to change the date of Australia Day, fly flags that we have not seen before or —

**Mr Morris** interjected.

**Mr FINN** — They will get rid of anything. They are too busy presenting their own radical agenda to actually concern themselves with the people of Gowanbrae, and I think that is a very unfortunate thing indeed. The request to me on many occasions was to see if I could begin a process whereby the people of Gowanbrae would be able to leave the City of Moreland and perhaps go to the City of Moonee Valley. I thought, 'If that's what the people of Gowanbrae want, then I'm certainly happy to assist them'. I can understand why they would want to leave Moreland, and I certainly would be very happy to help them in that process.

So what I am asking of the Minister for Local Government this evening is to begin a process of allowing the people of Gowanbrae to leave the City of Moreland. I am not exactly sure what that process involves, but I am sure those in her department and her office would be acutely aware of what it involves and would be in a position to begin that process. It is really important in terms of local government that people at

the grassroots level are listened to, that they regard local government as being close to them, and on this occasion certainly people in Gowanbrae do not have that feeling with regard to the City of Moreland at all. So I ask the minister to investigate how to begin that process and let us see if we can get some satisfaction for the people of Gowanbrae.

## Ballarat railway station car parking

**Mr MORRIS** (Western Victoria) (17:20) — My adjournment matter is for the attention of the Minister for Regional Development, and it relates to the railway station precinct in Ballarat and the lack of accessible disabled car parking within the precinct itself. I thought I might refer back to an answer to a constituency question that the minister gave in which she referred to the 'five designated disability access compliant spaces already available to the south of the station', and then added, 'Again, Mr Morris is poorly advised', which I thought was rather unkind.

I note that the minister was actually incorrect in her statement. There are only three disabled car parks to the south of the station; there are two to the north. The two to the north of the station are slated for removal by this government. I find it a little rich for the minister to say that I am poorly advised when it is she who is making misstatements and indeed is slashing the number of disabled car parks available at the railway station precinct. One of the most significant issues with the disabled car parking under Labor's plan for the railway station is that the car parks are going to be much, much further away from the station than they presently are. The station at the moment is not terribly disabled friendly, and under Labor's plan it is going to get much, much worse.

The action I seek of the minister is that the minister commit to retaining all of the five disabled car parks within close proximity to the station — the three to the south, which are presently there, and the two to the north, which under Labor's current plan will be slashed.

## Motor vehicle registration fees

**Ms SHING** (Eastern Victoria) (17:22) — My adjournment matter this evening is for the attention for the Minister for Roads and Road Safety in the other place, Minister Luke Donnellan. It relates to the uptake of short and medium-term registration payments as a part-payment option which has been introduced. Across Gippsland we know that around 32 000 people have taken up the offer to pay in three-monthly or six-monthly instalments.

The action I seek from the minister, however, is for him to activate further participation in this scheme through better outreach communication and information to drivers of cars, utes, motorcycles and certain heavy vehicles, and to not just provide them with access to reminders about when their registration is due but also make sure that there is paper-based information being provided as well as the work that can be undertaken at a regional level once the regional focus is returned to VicRoads through the development of the new office which was announced as part of this year's budget. Further to that, we should be able to get public information to assist people to understand how easy it is to do this so that we can get a greater uptake to relieve the cost of living for people through this opportunity to make registration payments in three or six-monthly instalments.

## Vocational education and training

**Ms CROZIER** (Southern Metropolitan) (17:23) — My adjournment matter this evening is to the minister at the table, Minister Tierney, and it is in relation to an issue we were talking about in question time today. I note that in her answer to a question that was asked of her about the importance of TAFE, the number of positions that have actually been cut and what is going to be available, the minister pointed and said, 'All those opposite do is pander to private providers', but in actual fact there are many private providers who are very concerned about the government's approach. Certainly I have had representation from people from neighbourhood houses and Learn Locals, who provide training to thousands of Victorians, including in the very important area of education support. The education support course takes six months and costs a participant in a funded course somewhere around $947.50, but they have continuity and face-to-face learning, which is very important to them. They feel that is of great value and they are very happy with that support that they get.

Minister, your free TAFE courses announcement means that many of these organisations that provide certificate III qualifications will now be at a disadvantage. They are very concerned that their ability to deliver these courses in this area will become non-viable. As I said, a number of them have raised concerns with me about their ability to actually do that. I am asking you — I appreciate that you may not have this answer at hand at the moment, so you might need to take it on notice, because it is a figure that I am after — of the 30 000 placements, how many will be available for education support courses?

**The PRESIDENT** — You cannot ask a question; you have got to ask for an action.

**Ms CROZIER** — Yes, my apologies, President. The action I seek is for the minister to provide me and those organisations that undertake this training with advice as to whether there will be provision within the 30 000 placements for education support and how many there will be.

## Responses

**Ms TIERNEY** (Minister for Training and Skills) (17:26) — There were seven adjournment matters this evening. The first was from Ms Patten to the Attorney-General seeking that Victorian mandatory reporting laws be extended to religious institutions. The second was from Ms Lovell to the Minister for Roads and Road Safety in relation to works on the Calder Highway and more specifically around the Ravenswood area — she is wanting assurances in terms of sound barriers and the value of property. Ms Bath raised a matter in relation to the rail works that are happening in her electorate and the provision of buses and in particular an incident that occurred in her electorate yesterday — she is seeking an investigation by the minister.

The fourth matter was from Mr Finn to the Minister for Local Government. He is seeking to create a process to allow people to leave the City of Moreland. The fifth was from Mr Morris to the Minister for Regional Development in respect to the provision of accessible disabled parking spaces at the Ballarat railway station, and the sixth was from Ms Shing to the Minister for Roads and Road Safety in relation to the uptake of car registration instalment payments, which have been successful. In particular she wants more information and reminders to be sent to people and that there be paper-based arrangements for those that do not have computers.

Ms Crozier raised a matter for me in relation to the 30 000 additional TAFE places that were mentioned in the budget and the associated $304 million. That money, as I have said repeatedly in this house, is available to those across the sector that are providing training to Victorians. As she should know, people make applications to the department and it goes through a process where financial viability, governance and a whole range of things are benchmarked and checked. That occurs after the end of the financial year. Organisations get their documentation together and then they start the process, so that will occur. There is no specific suballocation within that 30 000. It is a number that is there for all organisations to make application to.

In respect to Learn Locals, I again say to Ms Crozier and those opposite that if they have got specific examples of where organisations such as Learn Locals believe they are having difficulties, I invite them to provide that information to me and my office so that we can follow up and deal with any concerns. But as I have said time and time again, in terms of Learn Locals they are an important part of the delivery of training and education in this state. They provide an important conduit for disadvantaged people in particular and are a very important pathway into the TAFE system. So instead of being alarmists and wanting to sensationalise this situation, I would implore those opposite to actually be sensible about their approach to this issue of the delivery of vocational training in Victoria. We are at a very important time of joining skills and training to actual jobs. I have indeed been involved with Learn Locals on many occasions, Ms Crozier. I have participated in their awards night and I have also been to many Learn Locals.

Ms Crozier, in terms of your party's position on vocational education and training it is lacking, it is bereft, it is non-existent, and I think it is absolutely outrageous that you pretend to be the champion of Learn Locals.

**Mr Morris** — On a point of order, President, I wanted to raise two adjournment matters that have not been responded to within the required 30 days. One was on 1 May to the Minister for Regional Development and another on 8 May to the Minister for Health. I have emailed both those ministers and have yet to receive a response. Further to that I have also got three constituency questions that are past their date to be responded to: one was asked on 2 May 2017 to the Minister for Planning, one on 6 March 2018 to the Attorney-General and one on 8 March to the Minister for Health.

**Ms TIERNEY** — I have written responses to adjournment debate matters raised by Ms Fitzherbert on 8 May 2018, Ms Dunn on 9 May 2018 and Ms Springle on 9 May and 24 May 2018.

**The PRESIDENT** — In respect to Mr Morris's questions, I wonder, Minister, if you could arrange for staff to actually check those? Who were the ministers involved?

**Mr Morris** — For the adjournments it was the Minister for Regional Development and the Minister for Health; for the constituency questions, the Minister

for Planning, the Attorney-General and the Minister for Health.

**The PRESIDENT** — So those will be followed up? Thank you. On that basis, the house stands adjourned.

**House adjourned 5.32 p.m. until Tuesday, 19 June.**