PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-EIGHTH PARLIAMENT

FIRST SESSION

Thursday, 22 February 2018

(Extract from book 2)

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

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

Legislative Council standing committees

Standing Committee on the Economy and Infrastructure — Mr Bourman, Ms Dunn, Mr Eideh, Mr 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 Purcell, #Mr Ramsay, Ms Shing, #Ms Symes and Mr Young.

Standing Committee on Legal and Social Issues — #Ms Crozier, #Mr Elasmar, Ms Fitzherbert, Mr Morris, Mr Mulino, Ms Patten, Mrs Peulich, #Dr Ratnam, #Mr Rich-Phillips, 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

CONTENTS

THURSDAY, 22 FEBRUARY 2018

Thursday, 22 February 2018

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

NEW MEMBER

Ms Truong

The PRESIDENT announced the choosing of Ms Huong Truong as member for the electoral region of Western Metropolitan in place of Ms Colleen Hartland, resigned.

Ms Truong introduced and oath of allegiance affirmed.

The PRESIDENT (09:36) — Now I would ask you to sign the members roll. It is also my pleasure to give you a 'bible'. These are the standing orders of the Parliament in our house. We have quite a number of sessional orders as well, just to confuse you, but certainly these are the basis of the rules for how we conduct our sessions of Parliament. Welcome as a new member of the Legislative Council. Congratulations.

Ms TRUONG (Western Metropolitan) (09:37) — Thank you.

Honourable members applauded.

DISTINGUISHED VISITORS

The PRESIDENT (09:38) — I advise the house that there is a former member of the house in the gallery. It is Ms Colleen Hartland.

HEALTH AND CHILD WELLBEING LEGISLATION AMENDMENT BILL 2017

Clerk's amendments

The PRESIDENT (09:38) — I might first bring to the notice of the Parliament a matter that has been raised with me. It is in respect of the Health and Child Wellbeing Legislation Amendment Bill 2017. Under joint standing order 6(1), I have received a report from the Acting Clerk of the Parliaments informing the house that he has made corrections in the Health and Child Wellbeing Legislation Amendment Bill 2017. The report is as follows:

> Under joint standing order 6(1), I have made corrections in the Health and Child Wellbeing Legislation Amendment Bill 2017, listed as follows:
>
> New clause 23 of the bill, as inserted by the Council's amendment agreed to by the Assembly, inserts new section 149A into the Public Health and Wellbeing Act 2008. I have inserted the quotation mark at the start of new section 149A and the quotation mark and second full stop at the end of subsection (3) of new section 149A. The grammatical marks inserted are required as the new section 149A is to be inserted into the principal act.

That was advised to me by the Acting Clerk of the Parliaments, Mr Young, on 21 February.

MELBOURNE METRO RAIL AUTHORITY

Tunnel and stations public-private partnership

Ms PULFORD (Minister for Agriculture), by leave, presented project summary February 2018.

Laid on table.

DISTINGUISHED VISITORS

The PRESIDENT (09:41) — I take this opportunity to recognise a former senator for Tasmania, Christine Milne. Welcome to the Parliament.

STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

Infrastructure projects

Mr FINN (Western Metropolitan) presented fourth report, included appendices, extracts of proceedings and minority report, together with transcripts of evidence.

Laid on table.

Ordered that report be published.

Mr FINN (Western Metropolitan) (09:42) — I move:

> That the Council take note of the report.

In this particular report we have gone to great lengths to look at a number of issues. First of all I would like to pay tribute to those members of the committee who worked so very hard in putting this together: the deputy chair, Mark Gepp, who might have another engagement that he has raced off to; Mr Jeff Bourman; Ms Colleen Hartland, who has left us — sometimes in this report you could understand why people would want to leave; I thought about it a couple of times myself — Craig Ondarchie, a member for Northern Metropolitan Region; Khalil Eideh — he showed up occasionally; Shaun Leane from Eastern Metropolitan Region; and Luke O'Sullivan. I would also like to thank the committee staff: Lilian Topic, secretary; Kieran Crowe, research assistant; Michelle Kurrle, research assistant;

Kirra Vanzetti, chamber and committee officer; and Prue Purdey, administrative officer. They did a great job.

In this report we looked at a number of health projects across the state, and the current situation has been reported for each. It is a good read, Minister. You should have a look at it.

Mr Jennings — There's no big reveal in this submission?

Mr FINN — No, you are going to have to read it yourself. We also looked at the disruption caused in the CBD and surrounds by the metro rail project, and there were a number of issues identified. In fact some recommendations were made as to how they could be avoided in the future. One issue in particular recurred, and that was questionable consultation. This was raised by business in the CBD and those concerned about the removal of trees on St Kilda Road. I have to say that on that particular issue there was a considerable anger expressed. I think it is fair to say that Mr Davis, Ms Crozier and Ms Fitzherbert have represented the views of people who are angry about this rather well.

There has also been, we found, a lack of proper consultation — it is a significant issue — on the West Gate tunnel project. It is difficult to report on the West Gate tunnel project. We would like to report much more fulsomely, but we do not have the answers that we would like. The contract of course was signed mid-report, so we had to review the whole thing at that point in time.

Numerous questions need to be answered about the process surrounding the development and contractual arrangements of the West Gate tunnel. Given the outrageous nature of some aspects of the agreement, it may lead some to believe Transurban has crossed the line and can no longer be viewed as a good corporate citizen. The government's role in this project is equally questionable. As I say, there are a good number of questions that need answers. Those questions were asked often both of government and of Transurban during the course of this inquiry. I have to say that the answers were insufficient at best. They were in fact in some ways going out of their way to avoid answering these questions.

I believe that given the amount of money we are talking about here, keeping in mind that we have gone from a $5.5 billion project to now a $6.7 billion project without any clear explanation as to why that is occurring, there are clearly a number of questions that need to be answered for us to produce the report that we would like to. We will be investigating this in the future in our final report. I think it will be our final report. I would not put money on it, but I hope it is our final report in this particular Parliament. We hope to report back before too long on exactly what we have discovered, and we hope to get somewhere near the truth as to what has occurred between the government and Transurban on this particular project.

Mr LEANE (Eastern Metropolitan) (09:47) — I would also like to speak on this report briefly and thank the committee members, the executive and the chair for the efficient and thorough way we deal with our reports. The reason that three of the committee members put in a minority report is that when you read the non-government MPs' majority report, you would think everything is bad. It is bad to grade separate rail and roads. It is really bad to build new hospitals. It is awful. New schools are terrible. It is terrible to have new education facilities. Everything is bad.

Mr Finn interjected.

Mr LEANE — Please use that quote if you want, because people who actually use the new infrastructure, whose kids go to the new schools and whose family members use health care and the new hospitals think it is fantastic. They absolutely love it.

I love this committee. I could speak about infrastructure forever and also the great job that this government has done in investing in and actually building so much new important infrastructure that the state has been crying out for for so long. It reinforces for me, when I sit on committees like this and we have discussions around this new fantastic infrastructure, that the Andrews government will certainly go down as one of the greatest governments this great state has ever seen. People will see the legacy of the new hospitals, of the grade separations, of the Melbourne Metro tunnel and of the new schools. I think 150 school renovations this year will be finished. This is a fantastic topic for our committee to look at, and I look forward to continuing on this committee and looking at the new, great infrastructure this government has delivered.

Mr ONDARCHIE (Northern Metropolitan) (09:49) — I also wish to rise to speak to the fourth report into the Transurban-led government infrastructure project. I have to say that as the Economy and Infrastructure Committee went through its investigations leading up to this report there were some things that became obvious to us, and one is that this government is short on policy and great on following corporate direction.

When it comes to the West Gate tunnel, not only could the government not answer the questions but Transurban had difficulty answering the questions simply because they had not had a dress rehearsal; the government and Transurban had not sat together and worked out, 'Exactly what are we going to say here?'.

I have to say when it comes to this West Gate tunnel something just does not add up here. When it comes to Transurban breaking their equity return threshold of 17.5 per cent — and they poorly tried to demonstrate they have never done it — something just does not add up here. It seems to me that when members of the government sit around the cabinet table, agenda item 1 is 'What does Transurban want us to do?', because they are led purely by their need to demonstrate they are doing something and they are just short of ideas. The amount of funding that Transurban will contribute to the cost of construction of the West Gate tunnel project is an interesting point of discussion. I am hopeful that through the stewardship of Mr Finn and the leadership of the committee we will find out more about that as we progress our investigations.

We want to know how much Victorians are going to be stung by this government for years and years and years to pay for this project through their tolling. We also want to know how much it is estimated Transurban will stick into their kick — that's a bit different to what Mr Donnellan says — as a result of the profits they will take from Victorian road users. There is a lot more to investigate. I commend this report to the house. I thank Lilian Topic and her team for their patience with us and Mr Finn and the wider committee for their work.

Motion agreed to.

PAPERS

Laid on table by Clerk:

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

Boroondara Planning Scheme — Amendment C280.

Brimbank Planning Scheme — Amendment C148.

Brimbank, Hobsons Bay, Maribyrnong, Melbourne, Port of Melbourne and Wyndham Planning Schemes — Amendment GC65.

East Gippsland Planning Scheme — Amendment C105.

Frankston Planning Scheme — Amendment C118.

Frankston and Kingston Planning Schemes — Amendment GC71.

Greater Dandenong and Casey Planning Schemes — Amendment GC78.

Moorabool Planning Scheme — Amendment C89.

Moorabool, Surf Coast and Yarra Planning Schemes — Amendment GC79.

Surf Coast Planning Scheme — Amendment C85.

Subordinate Legislation Act 1994 —

Documents under section 15 in respect of Statutory Rule No. 10.

Legislative instrument and related documents under section 16B in respect of the Gaming Regulation Act 2003 — Determination of Gaming Machine Entitlement Allocation and Transfer Rules, dated 20 December 2017.

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 Tuesday, 6 March, at 12.00 p.m.

Motion agreed to.

MINISTERS STATEMENTS

Victorian Youth Week

Ms MIKAKOS (Minister for Youth Affairs) (09:53) — I rise to update the house on the progress the Andrews Labor government is making in preparation for the first Victorian Youth Week. The inaugural Victorian Youth Week will celebrate and recognise the important role young people play in the community. We are providing more than $200 000 to local community organisations, schools and councils to run activities for young people in metropolitan and regional areas.

Young people will be celebrated and recognised with more than 100 activities taking place between 13 and 22 April, with opportunities for young people from right across the state to get involved. Some of the fantastic events being organised include Giving Everyone a Fair Go, which invites young people to facilitate a wheelchair basketball workshop with years 5 and 6 students in Knox; a Youth Week skate comp organised by Frankston City Council, which is an

opportunity for riders and skaters to showcase their skills and abilities; Gippsland Youth In Action, with Federation Training planning an event which aims to connect young people in Morwell to youth services available in the Gippsland area by having students from Federation Training demonstrating various parts of their learning and allowing youth of Gippsland to participate and see what is available to them; and Creative Celebrations, where Golden Plains Shire Council are providing a platform for local young people to learn new skills, connect with others and celebrate being young through artistic workshops, the creation of unique artworks and community art displays.

We are filling the gap after the Turnbull government scrapped funding for National Youth Week and forced other states and territories to go it alone. Alongside our *Youth Policy: Building Stronger Youth Engagement in Victoria* we remain committed to continuing our support for young people and youth agencies in Victoria. We are implementing a range of programs that support vulnerable young people to strengthen their health and wellbeing and engage with their community, as well as programs in education, training and employment. This includes providing activities which recognise young people and the talents that they bring to their communities. I look forward to seeing the activities and events from successful grant recipients taking shape as we celebrate young Victorians in April.

Australian supplier payment code

Mr DALIDAKIS (Minister for Small Business) (09:55) — I rise to update the house in relation to the Andrews Labor government's Australian supplier payment code. Last April we introduced a fair payment code, then in the following months we worked with the Business Council of Australia to run the fair payment code right across Australia from 1 July, and we are responsible for running it here in Victoria.

I rise to update and advise the house that Lion, one of Australia's leading food and beverage manufacturers, has now been able to implement 30-day payment times for all of their suppliers through the adoption of the Australian supplier payment code. Lion, whose brands include Furphy, Little Creatures and White Rabbit, wrote to me last year to advise that they would sign up to the code to ensure that all of their national suppliers would be paid within this time frame. I would like to congratulate Lion on the company's efficiency in implementing the new payment process and overhauling their system within six months, despite the code offering an 18-month lead-in time. Lion joins companies and commercial enterprises, including Mars Australia, the Geelong Chamber of Commerce, Ventura bus company, Xero, Westpac, Telstra, Lendlease, National Australia Bank, Commonwealth Bank of Australia, Australia Post and the ASX, who have all committed to ensuring that payment times and conditions for small businesses are up to scratch.

Since the Labor government launched their supplier payment code last year, 76 commercial enterprises have joined. Under the code, these businesses have committed to paying their small business suppliers within 30 days of receiving a tax invoice and not altering the settlement period without a valid reason. This government understands the wideranging impact for Victorian small businesses that lengthy and unfair payment terms create. Unfair payment terms are no longer to be considered part of the cost of a large business doing business, nor should they be considered an extension of a large business's cash flow.

So it is with great pleasure that I update the house about the introduction of the fair payment code. Lengthy and unfair payment terms reduce the growth and consistency of cash flow in small businesses and ultimately block the creation of new jobs. This is about making things fair.

The government is the biggest employer in town. We are also getting on with the job of ensuring our own payment terms are up to scratch.

Footscray learning precinct

Ms MIKAKOS (Minister for Early Childhood Education) (09:57) — In my capacity as Minister for Early Childhood Education, I rise to inform the house of how the Andrews Labor government is building the Education State in Victoria and delivering high-quality early learning facilities for families and children across the state.

Last week I was proud to join with my colleagues Marsha Thomson, the member for Footscray in the Assembly, and Wade Noonan, the member for Williamstown in the Assembly, to announce that the future Footscray learning precinct will feature a new integrated children's centre co-located with Footscray City Primary School. This project will see the current Hyde Street Kindergarten upgraded to a one-stop-shop centre for local families, where they will be able to access kindergarten, long day care, maternal and child health services and other services, all under a single roof. This centre is part of the government's $10 million plan to build early childhood facilities at government primary schools.

This project has involved extensive work with Maribyrnong City Council, the principal of Footscray City Primary School, the local community and other key partners to ensure that this is a project with real vision. Once complete the entire project will make Footscray the home of a preschool to postgraduate education learning precinct.

This is a great Labor legacy for the west, driven by two wonderful Labor leaders in local members Marsha Thomson and Wade Noonan, and I congratulate them for their advocacy for this project over a considerable period of time. We are a government that has invested $76.4 million in building, expanding and improving kindergarten facilities across our state, and we are a government that is building the Education State in Victoria, with a particular focus on the early years.

MEMBERS STATEMENTS

Shepparton infrastructure funding

Ms LOVELL (Northern Victoria) (09:59) — I rise to speak today on the Andrews Labor government's complete contempt for country Victoria. The Premier has once again been caught red-handed ripping off rural and regional Victoria. This was confirmed last week when under questioning in a Public Accounts and Estimates Committee hearing the Secretary of the Department of Treasury and Finance, David Martine, admitted that the last budget acquittal of the port of Melbourne lease proceeds was wrong. He confirmed that the Premier has actually dudded regional Victoria to the tune of $723 million. Daniel Andrews not only owes country Victoria $723 million but he owes country Victoria a massive apology.

In my home town of Shepparton there are a number of projects that could have been funded from that $723 million. Of course we still need $70 million to improve our rail services and to get to eight services a day. We need $210 million for the second stage of our hospital. We need money for our bypass. We need a $30 million investment in our basketball stadium. There is a whole range of projects. The education plan needs to be funded. Daniel Andrews should now produce that $723 million and fund projects in my electorate.

Lunar New Year

Ms SHING (Eastern Victoria) (10:01) — I rise to wish everyone a very prosperous and happy Lunar New Year. Gong hei fat choy to everybody celebrating the Year of the Earth Dog. The year 2018 is a time when wisdom, common sense and an outward-looking perspective should prevail, if we have reference to Chinese astrology and all of the wisdom that it brings. I hope that everyone across the community is enjoying wearing red, buying new things and cleaning the house. I know that for many people it is a time for family to come together, to enjoy good food, to catch up with people you have not seen for a long period of time and to cast your mind forward to a prosperous and healthy year ahead. Many best wishes to everyone celebrating Tet, celebrating the Lunar New Year and getting engaged in all things related to Earth dogs.

Victorian Youth Week

Ms SHING — It was absolutely wonderful to be able to congratulate eight Gippsland organisations on being recipients of activity grants to prepare for Victorian Youth Week in April. Our inaugural Victorian Youth Week will enable these organisations — 3mFM radio, South Gippsland Bass Coast Local Learning and Employment Network, Wonthaggi Secondary College, Baw Baw Shire Council, Cann River Community Centre, Federation Training, Salvo Care Eastern and Sale College Guthridge campus — to run a series of events that will engage our youth in smoke, alcohol and drug free environments, enabling them to come together and to celebrate all of the very best things that youth culture across Gippsland brings.

Poland Holocaust legislation

Ms SPRINGLE (South Eastern Metropolitan) (10:03) — In March 1968 — 50 years ago this month — between 10 000 and 20 000 Polish Jews left their homes and their country in the midst of an anti-Semitic campaign led by Polish Communist authorities. Commemoration of this event has always been a traumatic and solemn affair, but this year it is also surrounded by anxiety grounded in the present and the future. Controversial legislation has recently been passed in Poland that criminalises the act of suggesting that Poland was in any way complicit in the murder of Jews during World War II.

As the daughter of a Polish family that sought refuge in Australia after the Second World War, this issue resonates profoundly with me. I have spoken before in this place of the scars of that war and what it left on my family and of the intergenerational trauma we have experienced. Family violence, alcoholism, mental illness and addiction are the very real repercussions that countless survivors all over the world continue to confront to this day.

We are not alone. So often we speak of learning from the past to build a more compassionate, socially

inclusive, cohesive future where all people are safe and connected and where our communities are the source of strength, not exclusion and cruelty. Where racism and anti-Semitism exist in any form anywhere it is our responsibility as human beings to call them out and resist their spread. I stand with those around the world commemorating the March events and expressing grave concern about the new Holocaust legislation in Poland. As always, but particularly during these commemorations, I and the Victorian Greens stand in solidarity with our Victorian Jewish communities.

Warrnambool region employment

Mr PURCELL (Western Victoria) (10:04) — I am delighted to rise today to celebrate a huge increase in jobs in the Warrnambool region over the past five years. According to employment data, jobs in the Warrnambool region increased by over 3300; that is a 25 per cent increase. As an advocate of local jobs this gives me great pleasure. As much of my term is covered by this, this adds to the importance of it.

Projects such as the Salt Creek wind farm, the new Moyne Health Services plus upgrades to the Warrnambool Base Hospital promise more healthcare and construction jobs. Strong business confidence and agricultural strength are proving a boon for retailers, along with low unemployment rates. Local leaders say there are plenty of opportunities for skilled workers in the region, and I would back them up. With construction and the ability to attract and retain industry in our region, many of the energy, agricultural and infrastructure projects will lead to even more opportunity in the beautiful south-west.

African-Australian community

Mrs PEULICH (South Eastern Metropolitan) (10:05) — I would like to take this opportunity to condemn the government's handling of the challenges faced by our African communities, which has been causing significant consequences for African communities as well as the general community in this state.

I am disappointed that 18 months ago the government refused to fund a strategy which was developed by the African communities and that I called on the minister to fund back in September 2016. They failed to assemble the multi-agency task force that I called on the government to assemble, also many months ago, as a response to some of the challenges faced by that community. They failed to involve African community leaders and families to better understand the challenges and how to respond to them. They botched the composition of the African community task force. They failed to develop an effective African strategy with short-term goals and funding commitments but succeeded in establishing a Labor Friends of African Communities group here in Parliament in November last year, no doubt with some considerable government resources to make it happen.

Labor always puts politics and self-interest ahead of the needs and interests of Victorians, including our African communities and especially our South Sudanese. The Andrews Labor government responds by making allegations of racism and with finger-pointing, and this should be seen for what it is: a pathetic and dangerous attempt to divert attention and scrutiny from its own failings.

Victorian Comprehensive Cancer Centre

Ms WOOLDRIDGE (Eastern Metropolitan) (10:07) — I rise today to inform the house about the disgraceful actions of Daniel Andrews in cutting 32 beds from the Victorian Comprehensive Cancer Centre. This is off the back of the 42 beds he cut from Peter Mac Private in 2015, leading to 74 less cancer beds than would have been otherwise available for Victorians with cancer to access this world-class treatment.

Daniel Andrews is clearly trying to duck, weave and deflect in any way he can, but the fact is there were always going to be 160 inpatient beds at the Victorian Comprehensive Cancer Centre. Repeated questioning of officials and the minister has confirmed that the 32-bed shell space on the eighth floor of the Royal Melbourne Hospital was part of those 160 beds. Subsequently the minister has announced that that shell space will be used instead for a stroke unit. There is no doubt we need additional stroke facilities for people with that condition, but we should not be doing that at the expense of cancer beds. These are cancer beds that were described as having growth capacity for needs in the future, and what is very clear now is that Daniel Andrews has cut these 32 future beds out of the system. They are not available to cancer patients, and his actions should absolutely be condemned.

The PRESIDENT — The government have actually used up all their statements for the week, but Ms Patten has allowed Mr Dalidakis to use hers.

Poland Holocaust legislation

Mr DALIDAKIS (Minister for Trade and Investment) (10:09) — I thank Ms Patten for her generosity. Can I also rise to speak in relation to

Poland's move in relation to the Holocaust. Just a week after International Holocaust Remembrance Day last month I must say I was utterly appalled to learn that Poland's president, Andrzej Duda, had approved an incredibly dangerous new law that will see anyone who accuses Poland of having taken part in the atrocities of the Holocaust criminalised. In what began as a pursuit to criminalise the use of the term 'Polish death camps', the legislation that Duda landed on has dangerous and vast implications. Essentially under this new law to suggest that Poland was complicit in crimes committed during the Holocaust is punishable by up to three years imprisonment. It is disgraceful, and it is harmful policy.

While there is no question that Nazi Germany was responsible for the establishment and operation of death camps across Nazi-occupied Europe, especially Poland, to say that the red carpet was not laid out to what would eventually occur is an understatement. I acknowledge the efforts of the brave men and women of the Polish Resistance, which has often been described as one of the largest Resistance organisations during the war, but it was a Resistance because the government of the day ceded control to the Nazis and worked with them hand in glove.

I share the sentiments of others within the Jewish community that this law will restrict free speech, whether it be a researcher who is investigating for further truths or a Holocaust survivor who may be restricted from giving evidence that incriminates Polish citizens in war crimes. There is no place for legislation such as this either in Poland or across Europe or indeed in Australia. History is history. Truth is truth. Poland may be determined to stifle it, but it cannot silence it. We who are free will continue to speak out. It is a disgraceful move by the government of Poland, and I absolutely accuse them of gross negligence of human rights in the memory of those who lost their lives.

St Kilda Road

Mr DAVIS (Southern Metropolitan) (10:11) — I want to raise two matters today, one of which is further to Ms Crozier's and my discussion yesterday. It is about the large public meeting at the Domain interchange yesterday, which was well attended by not only me, Ms Crozier and Ms Fitzherbert but also Senator Hinch, former Governor Alex Chernov and indeed many, many other residents of the area, including Barry Jones, who has very strong views. They passed a resolution which I am going to put on the record today:

> We, the residents of Melbourne, demand that the government stop its plan to damage St Kilda Road and that they make alternative plans such as an alternative route via Kings Way and linking it into South Yarra station or deep tunnelling the entire length or stop work, refocus and replan, in meaningful consultation with the people of Melbourne.
>
> Voted on and approved unanimously by the attendees at the public protest at the Domain interchange on 21 February 2018.

I say it is time Daniel Andrews and his minister listened to the local community.

Fishermans Bend

Mr DAVIS — I also note today that the Minister for Planning has taken a series of bizarre steps at Fishermans Bend, causing uncertainty, delay and unpredictability for developers. Of course the first thing that Daniel Andrews did on coming to government was to strip the railway station from Fishermans Bend, a station-stripping step —

The PRESIDENT — Thank you, Mr Davis.

Corrections Victoria

Mr O'DONOHUE (Eastern Victoria) (10:12) — Last week at the Public Accounts and Estimates Committee hearings it was revealed that the costs ordered against Corrections Victoria for failure to present prisoners to court had ballooned from $113 000 in the 2015 calendar year to $214 363.50 in 2016–17, more evidence of the chaos and dysfunction in the corrections system under Daniel Andrews. Repeatedly and in an ongoing way Corrections Victoria, under Minister Tierney, are unable to actually present prisoners to court. The question Minister Tierney must answer is: how many victims of crime have had their matters delayed because of the sheer incompetence of the corrections system and her portfolio in being able to present prisoners to court?

Belle Brockhoff and Lydia Lassila

Mr O'DONOHUE — On a separate matter, I would like to congratulate all those who participated for Australia in the PyeongChang Winter Olympics. I would particularly like to acknowledge Belle Brockhoff, who is a constituent. She competed at the 2014 Winter Olympics and has competed at PyeongChang after overcoming significant adversity with serious injury. Indeed she competed without an anterior cruciate ligament. I know all those who know her from the peninsula community are very proud of her, and I congratulate her on what she has achieved.

Similarly I would like to acknowledge Lydia Lassila, who competed in her fifth Winter Olympics. She won gold at Vancouver and bronze at Sochi in a remarkable

career overcoming adversity through sheer determination to succeed. Both women are great examples of what can be achieved when you persevere, succeed and work hard.

Sturt Street, Ballarat

Mr MORRIS (Western Victoria) (10:14) — I was pleased to be able to attend the Ballarat City Council meeting last night where the council considered Daniel Andrews's plans to destroy Sturt Street by closing six intersections and putting a bike path up the centre median of our magnificent heritage boulevard. I was very pleased to hear many representations from the community about the fact that there has been no genuine consultation about this plan and this plan must be scrapped. I was also pleased to hear that councillors accept that this plan must not proceed and that further consultation with community is absolutely needed. I would like to take this opportunity to congratulate all of the members of the community who came to the council meeting and made representations to the council and indeed those councillors who have listened to the community and understand the genuine concerns about the impact this disastrous plan would have on our magnificent city.

Cr Belinda Coates

Mr MORRIS — I want to draw the house's attention to a shocking incident that has occurred in Ballarat, and that is the criticism by Greens councillor Belinda Coates of hardworking councillor Amy Johnson for not attending a meeting of the active transport working group. Cr Johnson, at the time of this meeting, was in labour with her first child. For the Greens councillor to criticise a fellow councillor for not attending a meeting whilst in labour is an absolute disgrace. Cr Coates owes Cr Johnson an apology, which she should make immediately.

BAIL AMENDMENT (STAGE TWO) BILL 2017

Second reading

Debate resumed from 8 February; motion of Ms MIKAKOS (Minister for Families and Children).

Mr RICH-PHILLIPS (South Eastern Metropolitan) (10:16) — I am pleased to make some remarks this morning on the Bail Amendment (Stage Two) Bill 2017. It is an unusual title for a bill but it reflects the fact that we have seen reforms to bail provisions come forward in two tranches over the course of the last 12 months. These changes are on the back of the review of bail which was undertaken by former Justice Paul Coghlan following the events in Bourke Street at the beginning of last year.

It is interesting to reflect on the context of the events in Bourke Street last year and the way in which they have been described. In reference to this legislation and indeed in reference to the Coghlan bail review which was undertaken it talks about a tragedy which occurred in Bourke Street in 2017. In reality that needs to be put into context. The events in Bourke Street were not a tragedy in the sense of a tragic event. It was the slaughter of six people — the murder of six people — and it was allegedly done by somebody who was on bail at the time. While the language has been dressed up around tragic events and tragedies in Bourke Street, it was a circumstance which, with the alleged offender, could have been avoided. This prompted a substantial outcry in the community at the time the events occurred. That forced the Premier to make statements about his government suddenly being interested in reforming bail. This was in the context of a Premier and a government which had in fact watered down bail in this state prior to that, and I will come to that shortly.

We had the outrage in the community about the events in Bourke Street and the Premier's commitment to pursuing bail reforms as a priority, and since then we have seen things largely stall. We had the Bail Amendment (Stage One) Bill 2017 last year, which is not proposed to come into effect until the first of July of this year, and then we had the second tranche of legislation which has now reached this house after a slow start earlier this year.

This bill is the second bill that has arisen from the Coghlan review, and it picks up a number of the recommendations from the Coghlan review. I will go through those elements shortly. But it is very much the coalition's view that the government has not pursued the type of wholesale reform of bail that the Victorian community expects. What we have not seen here is a clean rewrite of the Bail Act 1977, which is interesting in the context that the Bail Act is an act that dates from 1977. It is one of the few statutes that surrounds the criminal law and the justice system that has not been subject to a wholesale rewrite in the last decade. Most of the statutes around our courts and the justice system have been the subject of clean rewrites, and the Bail Act is one of the few exceptions.

The shadow Attorney-General in the other place, Mr Pesutto, has said that a future coalition government would undertake a clean rewrite and update of the Bail Act. It is interesting that, despite the commitment given

by the Premier to reform bail on the back of Bourke Street and on the back of other perhaps less serious but more recent incidents that we have seen, that wholesale rewrite and update of the Bail Act has not been and is not being undertaken. So what we have in this bill today, which is stage two of the package the government has brought forward, are a number of piecemeal reforms which individually we believe have merit, though some of the detail I will look to explore when the bill reaches committee later this day.

The key provisions of the bill include clause 5, which requires bail decision-makers to consider surrounding circumstances, including offence seriousness, criminal history and whether the accused was on bail or parole at the time of making a bail decision. Clause 4 defines a vulnerable adult as a person aged 18 years or more who has a cognitive, physical or mental health impairment that causes them to have difficulty understanding their rights or making and communicating a decision. That definition is a critical one that I will seek to explore with the minister at some length when the bill gets into committee, because that definition of vulnerable adult is important through a number of these provisions and the way in which these amendments are proposed to work. In terms of the application of that definition, particularly as it applies to the capacity for police to remand people, it is one where there is going to need to be a lot of clarity provided to the officers using it as to how that provision is applied, so that is something for which we will be seeking some extensive understanding from the minister as to what is required and intended with respect to that provision.

Clause 7 of the bill replaces the existing tests for bail with new unacceptable risk, show compelling reasons and show exceptional circumstances tests. These go to the criteria which will be required for bail to be granted in the cases of someone accused of schedule 1 or schedule 2 offences. Again, the circumstances and the criteria which are set down in those tests are broad, and one of the questions there relates to the weighting of the criteria, which are set down in each of the sets of circumstances, and how those criteria are assessed relative to one another in reaching a decision whether to grant bail or not. If I was to give an example, I would refer in this case to clause 5, because the principle is the same. Clause 5 talks about surrounding circumstances and refers to things such as:

> the nature and seriousness of the alleged offending, including whether it is a serious example of the offence;
>
> the strength of the prosecution case;
>
> the accused's criminal history;
>
> the extent to which the accused has complied with the conditions of any earlier grant of bail;
>
> whether, at the time of the alleged offending, the accused—
>
> > was on bail for another offence; or
> >
> > was subject to a summons to answer to a charge for another offence; or
> >
> > was at large awaiting trial for another offence; or
> >
> > was released under a parole order; or
> >
> > was subject to a community correction order …

et cetera; whether they were subject to a family violence intervention order or a domestic violence order; and the person's personal circumstances, associations, home environment, background et cetera.

What is not clear from that is what weighting and priority should be accorded to those circumstances, because obviously a decision-maker in respect of a bail matter could reach a very different decision on a particular case depending on the weighting and the priority that are given to those individual circumstances. And that also follows through in the tests which are established in clause 7. We will be seeking for the minister to make clear to the house how the government intends those relative factors to be considered at the various decision-making trigger-point scenarios as they arise.

Clause 14 allows police to remand a person in custody for up to 48 hours until the court is available, except for children, Aboriginal persons and vulnerable adults. This provision does trigger the question of how those exemptions will be applied and the judgements that the responsible Victoria Police officer, who is either a sergeant or the officer in charge of the station, is required to consider in exercising those exemptions. The bill is drafted in such a way that it is the opinion of the officer that applies when determining whether the exemptions come into force, so obviously critical to that is how the officer should form an opinion with respect to those circumstances. That is another area where we will be seeking for the minister to be able to provide considerable input as to the application.

Clause 18 allows for courts to grant or refuse bail for accused persons appearing on summons on application by the prosecution or on their own motion. Clause 20 provides that only a court may grant bail to a person accused of a schedule 2 offence, other than lower level schedule 2 offences, who is already on two or more bail undertakings. I note again that with the exemptions it does not again apply to children, Aboriginal persons or vulnerable adults.

One of the more interesting clauses in the bill is not directly related to bail, and that is clause 29, which creates a presumption of cumulation in relation to any period of detention imposed for escape from or property damage in a youth justice facility. This is a very interesting provision because this house in particular is aware of the way in which the government and Ms Mikakos have lost control of the youth justice system in Victoria. I know Ms Crozier is very, very aware of what has been occurring with Ms Mikakos. We see the performance in this house, where she is increasingly losing her grip on the portfolio. The stress is showing, and we are seeing her increasing inability to manage the portfolio in this house, let alone manage the portfolio in the community. The fact that we are now seeing this change being imposed by virtue of clause 29 in providing for the presumption of cumulation is reflecting the fact that the government has a serious problem in youth detention and knows it has a serious problem in youth detention and that we cannot have confidence that Minister Mikakos is in a position to address those problems. That is an unusual provision in the suite of other changes which are being implemented by virtue of the Bail Amendment (Stage Two) Bill.

As I said at the outset, these changes have been a long time coming. The period from the event in Bourke Street which triggered the Premier needing to make a public statement at the beginning of last year, when he had previously been opposed to reforms and the tightening of bail, and in fact had loosened the bail provisions in this state, to the Coghlan review and now to seeing legislation in the house is an extended period of time for something that was put forward as a priority and for which the amendments themselves are relatively discrete and straightforward in what they seek to do. What we have seen with the Bail Amendment (Stage One) Act 2017 is a default commencement date of 1 July this year, and what we are seeing with the bill the Parliament is currently dealing with is a default commencement date of 1 October this year. This side of the house believes that these reforms have taken long enough to get to Parliament, given the Premier's commitment made last year, and the commencement of their implementation should be brought forward. We will be proposing amendments when this bill gets to committee, and I would ask that they be circulated at this point in time.

Opposition amendments circulated by Mr Rich-Phillips (South-Eastern Metropolitan) pursuant to standing orders.

Mr RICH-PHILLIPS — The intent of these amendments is to align the commencement dates of the stage one act and the stage two bill to provide that, with the exception of early proclamation, they will come into effect on 30 March. We believe that enough time has elapsed, that enough water has gone under the bridge and that these changes need to be in place. The government has failed to do that with the drafting of the stage one act and this stage two bill, and we believe it is appropriate that the implementation of these provisions be brought forward to 30 March. Accordingly, I will seek by an instruction to the committee at the conclusion of the second-reading debate to provide for an expansion of the scope of the bill to allow amendments to the stage one act to bring forward the default commencement to 30 March and also to amend the commencement date of this bill to 30 March so that both those stage one and stage two packages will come into effect no later than 30 March rather than 1 July and 1 October, as is currently proposed by this government. As I said, this has taken too long.

These changes are relatively straightforward and relatively mechanical in what they do. On the whole the coalition believes they are positive moves. We also believe they do not go far enough. We have been very clear in our view of where the bail framework in this state should head. As I said before, the shadow Attorney-General in the other place, Mr Pesutto, has indicated that a coalition government would undertake a clean rewrite of the Bail Act, which is something we have not seen and I am surprised we have not seen, given the other wholesale rewrite of statutes around the justice portfolio that has taken place in the last decade. We are still using the Bail Act, the principal act, which is 40 years old. Mr Pesutto has made a commitment that we would undertake a rewrite of the Bail Act.

We have also set down some very clear principles around the application of bail. The first is with respect to serious violence offences, which are of increasing concern to the community. I spoke earlier this week on the issue of the Justice Legislation Amendment (Victims) Bill 2017. There is a concern in the community about increasing offences of violence against the person. The home invasions, the carjackings that we hear about and the trashing of community facilities like we saw in Tarneit recently are matters of concern to the community, and they are of even greater concern to the community when the community learns the perpetrators or alleged perpetrators of those crimes are people who are on bail, were not remanded for other offences, were released on bail and have gone on to commit subsequent offences.

One of the first principles that a coalition government would implement with respect to bail is that in a case of an allegation of a violent offence the presumption is one of remand, not of bail. It would only be in

exceptional circumstances where a person accused of a violent offence would be the recipient of bail, rather than a default position of a presumption of bail unless circumstances dictate remand. That would be a substantial change in the policy settings for bail in this state — the presumption that if you commit or you are accused of committing a serious offence, you would be subject to remand.

The second policy position that we have articulated relates to the government's earlier watering down of the Bail Act. The previous coalition government created the offence of breaching bail. Prior to those changes by the coalition government in the last term of Parliament, it actually was not an offence to breach bail. If a person breached their bail, they could be brought back before the court in respect of the breach of their bail and be directed to correct the breach or be remanded as a consequence of the breach, but they actually had not committed an offence of breaching bail. That offence was introduced by the coalition government, and bizarrely this government then subsequently watered it down. It repealed the provision that made it an offence for a young person, a juvenile, to breach bail.

What are we seeing in the community? We are seeing time and time again these violent offences being committed by youth offenders, people who, thanks to the changes implemented by the Andrews government, are no longer subject to the breach of bail offence, which simply laughs in the face of the community's concern. At a time when the concern is about violent offences, typically committed by youth offenders, the fact that this government would water down bail with respect to youth offenders, to make it so it is no longer an offence for them to breach bail, is absolutely bizarre, and it is something that the coalition government would reinstate as a priority.

The other element of our commitment to bail is to end the revolving door of bail breaches. Under coalition policy, if an offender or alleged offender is on bail and breaches bail, they will not get bail again. If you breach bail, under coalition policy you will be remanded and you will not have the opportunity to get bail again. If you have got a history of breaching bail, you will not be granted bail in the future. That is consistent with community expectations. The community is sick of the revolving door of the bail system. It is sick of seeing the serious violent offences that are occurring week in, week out across Melbourne and the stories of the perpetrators being on bail, having been released on bail in respect of earlier offences. We will put an end to that. Where there are breaches of bail, that is it; there will be no more opportunities for a person to be granted bail.

We believe the amendments in this bill are on the whole a step in the right direction. They have taken too long to get here, and we propose an amendment that their implementation be brought forward. We also do not believe they go far enough. The government has taken too long since the Bourke Street murders to bring forward these changes. They need to occur earlier than the government proposes. There needs to be more wholesale change to the Bail Act, which a coalition government would implement. We believe that these changes do move in the right direction, even if they do not go far enough. I look forward to the minister in the committee stage being able to address some of the clarifications that are required for this bill and for its passage through the house today.

Mr MULINO (Eastern Victoria) (10:38) — This is a very important bill that is the second piece of legislation in response to the Coghlan review. This bill contains a number of important elements that build on the Bail Amendment (Stage One) Act 2017 and that further strengthen bail provisions in this state. The bill that we are talking about today will amend the Bail Act 1977 to do five principal things as well as making a number of technical amendments in relation to other legislation.

The bill will amend the Bail Act in order to, firstly, reformulate and clarify how the tests for bail should be applied. I will speak about that in a little bit more detail in a moment. Secondly, it will introduce a police remand system. This police remand system will enable police to remand an adult accused until a court is available. Thirdly, the bill will require a person accused of certain serious offences, other than someone in certain categories of accused, who is already on two undertakings of bail for indictable offences to be brought before a court in relation to any bail decision. The exceptions are children, Aboriginal people and vulnerable adults. I will speak a little bit more about how these categories will be defined. Fourthly, the bill will provide an express power for a court to bail or remand a person appearing on summons. Fifthly, it will make minor and technical amendments to the Bail Act.

These five key elements of the bill relate directly to recommendations arising from the Coghlan review. The first of those issues that I flagged — reformulating and clarifying the tests — relates to recommendations 2, 3 and 5. The introduction of a police remand system relates to recommendation 15. The third element that I spoke about — requiring a person who is accused of certain serious offences and who is already on two undertakings of bail to be brought before a court for any bail decision — relates to recommendation 29D. The fourth element relates to recommendation 33, and the

fifth element that I referred to relates to a number of other technical amendments contained in this bill.

Firstly, if I can just talk briefly about the tests for granting bail. There are currently three tests that are applied in determining whether a person should be released on bail. One is the unacceptable risk test, which applies to all accused persons, and then there are an additional two tests. These are collectively known as the reverse onus tests and apply only to people accused of certain serious offences. These two additional tests are the exceptional circumstances test and the show cause test. The latter will be the show compelling reason test after the commencement of the first bail amendment act — the Bail Amendment (Stage One) Act 2017.

Mr Coghlan in his report found that there was uncertainty in relation to how these tests combined to work in practice. This bill will clarify these tests and the application of these tests by setting out when each of the unacceptable risk, show compelling reason and show exceptional circumstances tests will apply. Secondly, it will reword the unacceptable risk test to emphasise the importance of the court considering an accused person's potential risk to community safety. This is obviously something which is of heightened concern to the community. Thirdly, it will introduce a non-exhaustive list of factors relevant to each of those tests. Each of the tests will have a list of factors which can be taken into account, but as I mentioned, it will be a non-exhaustive list so other factors will be able to be taken into account as the court sees fit.

The second element that I spoke about is the police remand system. The bill will give senior police officers the power to remand an accused without the accused being able to make a further application to a bail justice. Instead the accused will remain on remand until a court is available to hear his or her bail application. Under the new police remand system where police refuse bail an accused will be required to be brought before a court as soon as practicable. If police consider it would be impracticable to bring the accused before a court before the expiration of 48 hours, then the accused will be able to seek bail from a bail justice. The time limit of 48 hours is a balance. It ensures that accused people cannot be detained for an unnecessarily long period of time without further oversight.

The Coghlan review highlighted that it is appropriate to treat certain groups of people differently within the bail system, and the provisions in this bill reflect that. On the basis of that consideration and recommendation by Coghlan and the fact that the government has accepted that, the police remand system will not apply to children, to Aboriginal persons, to vulnerable adults or to persons arrested on infringement warrants issued under the Infringements Act 2006. Accused persons in these defined categories will still be able to apply for bail from a bail justice upon being refused bail by police. As Mr Rich-Phillips indicated, it will be a matter for police to determine whether an accused person is a vulnerable adult. In making this assessment police will be able to have regard to information stored on the law enforcement assistance program and also information accessible through an after-hours mental health portal currently being rolled out statewide — an important initiative as part of this government's attempts to strengthen the justice system.

In determining whether an accused is an Aboriginal person, importantly, in my opinion, the police officer must have regard to the answer given when the accused person is asked whether he or she is Aboriginal. They must have regard to that answer. But I am sure that we will talk about other aspects of the way in which that test will be applied in practice in the committee stage.

The proposal for police remand is similar to that proposed by Mr Coghlan in recommendation 29D of his second report. Mr Coghlan recommended that police remand be available overnight. The government has determined that it is appropriate to allow police to exercise this power for up to 48 hours. Forty-eight hours is considered to be a period that is not an unreasonable length of time in the context in which we are considering strengthening the justice system. When the dedicated bail and remand court is in operation it is unlikely the police will need to remand an accused for any longer than 48 hours due to the increased availability of the court. It is proposed that the scheme of police remand contained in this bill be applied to persons who have been escalated into schedule 1 by virtue of multiple low-level offences — offences against the Bail Act — and lower level indictable offences. This is a significant element of this bill and a reflection of a key recommendation arising from the Coghlan report.

Another element of this bill is bail for an accused person on two undertakings of bail. Under the current bill a person who is already on two undertakings of bail with respect to indictable offences must be brought before a court for bail in relation to any further offending comprised of a relevant schedule 2 offence. A relevant schedule 2 offence is defined as including all offences in schedule 2 other than those relating to low-level offences, being indictable offences of lesser seriousness by operation of item 1 in schedule 2 and the Bail Act 1977 offences.

Another element in this bill is to clarify the court's power to grant or refuse bail to an accused person appearing on summons. This relates to recommendation 33 of the Coghlan report. The bill implements recommendation 33 by inserting a new section into the Bail Act which clarifies that courts can grant or refuse bail to an accused who appears on summons. The new provision provides the courts may, on application by the prosecution or on own motion, remand or grant bail to an accused who is appearing on summons. Mr Coghlan was of the opinion that courts are currently bailing and remanding persons in these circumstances but that it is not clear whether there is in fact a legal basis to do so. Importantly, in line with his recommendation, this amendment clarifies the legal basis upon which the courts will do so. The current bill also includes a number of technical amendments that relate to the Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017.

The context in which we are operating is that the community wants to see the bail system strengthened in the context of wanting to see the justice system as a whole strengthened. This government has undertaken a whole raft of initiatives that I will not go through, but it includes more police and strengthening the number of particular provisions, offences and sentences. It also includes a raft of reforms in relation to bail. In fact this is, as has been mentioned, the second tranche of reforms in relation to the Bail Act. This is a very complicated area of reform, and it is critical that we get it right.

There were a number of recommendations coming out of the Coghlan report, and the Parliament has already passed the Bail Amendment (Stage One) Act 2017, which includes a whole raft of reforms. We are not rushing this. Mr Rich-Phillips said that this should have been brought forward earlier, that the whole thing should have been reformed from the ground up and that we should have started with a blank sheet of paper. It is easy to make those kind of statements, and again we can go back to previous governments and say, 'This hasn't been reformed from the ground up in previous administrations'. What we are seeing here is a very significant set of reforms. We want to do this properly. It is always easy when a piece of legislation comes in to say, 'Oh, this should have been introduced earlier. It's too slow'. What is important in this kind of legislation is to get it right. That is the critical thing. We have been open about the fact that we have been working with stakeholders, we have been making sure the legislation is right and we have been doing this in a timely manner but not rushing it. We have before us a second tranche of reforms that build on the first tranche of reforms already passed by this Parliament.

Finally, let me say we will not be accepting Mr Rich-Phillips's amendments. We do not think that changing the commencement date in the manner proposed is realistic. Again, it is easy to come in here and say that things should happen faster or that bills should have been introduced earlier or to come in here and put a commencement date in a simple amendment trying to, almost as a stunt or as a kind of political gesture, say that things should be commencing far earlier. What you do not want in areas like this — and the community certainly does not want — is for things to be rushed or legislation to be put in place that is going to have unintended consequences. You need to get things right. We believe that this is an important step and a critically important second tranche of reforms that respond in a meaningful way to the Coghlan report and that it will benefit the justice system and community safety.

Ms PENNICUIK (Southern Metropolitan) (10:53) — I am very pleased to rise to speak to the Bail Amendment (Stage Two) Bill 2017. The Parliament dealt with the Bail Amendment (Stage One) Bill 2017 earlier this year, and the provisions of that bill have not come into operation. In fact they are just languishing in a long list at the end of the Bail Act 1977, waiting for 1 July. I say that because the government has engaged in something that I think is a less than perfect process with regard to these bail amendments. Of course we know that the whole process was set in train after the tragic events in Bourke Street and the government asked for advice on the Bail Act. That was conducted by the Honourable Paul Coghlan, QC, who released two stages of advice: a stage one advice, which was very specific to provisions of the act, and a stage two advice, which was a bit broader but also spoke about specific provisions.

I said during my contribution on the stage one bail bill that I recommended that people actually read the stage one advice if they wanted to understand how the bail system works. It was very well written and set out in very plain English how the bail system works and also the recommendations that Mr Coghlan was putting forward to improve the bail system. I would like to make the same comments about the stage two advice. Again, it is written in plain English for those not familiar with legislation, how legislation works and how the courts work to implement legislation. It is a very well written report for people not only in this Parliament but in the broader community to understand.

As I mentioned, the actual changes to the Bail Act that were passed under the Bail Amendment (Stage One) Bill have not yet come into play. They are due to come into play on 1 July. I find it disappointing because, and

Mr Rich-Phillips pointed this out, one of the key recommendations of the Coghlan review was a complete rewrite of the Bail Act and that has not occurred. Instead we have had stage one amendments, some of which the Greens opposed. We also proposed amendments to the Bail Amendment (Stage One) Bill, some of which now appear in this bill. That was because at the time under the stage one report the Honourable Paul Coghlan recommended that certain provisions that were in the Bail Amendment (Stage One) Bill be enacted at the same time as other provisions which were not in the Bail Amendment (Stage One) Bill but are in this bill. For all intents and purposes it does not really matter because the actual act that is in force at the moment and that the courts are working with is the Bail Act 1977. The amendments made last year have not come into play.

I asked the government why they were not putting it all together in a rewrite of the act or at least putting in place all of the Honourable Paul Coghlan's recommended changes to the Bail Act at the same time. It was driven by the government being able to make an announcement that they had made changes to the Bail Act when in fact they had made changes to the Bail Act but those changes were actually not going to come into play. They still have not come into play as we stand here now; they are not due to come into play until 1 July. While I say that, the latest the provisions in this stage two bill could come in is 1 October — they could be proclaimed earlier. I am advised by the government that they are intending to enact all of the provisions by late May this year. That is the situation we are actually facing. We are still dealing with the original Bail Act 1977. I think this is a terrible process that has been followed. We are making as a Parliament very important changes to the Bail Act and very significant changes to the Bail Act, but the process has been less than impressive.

The other thing to say is that the Honourable Paul Coghlan in his stage one and stage two advice recommended a range of changes. Some of those are in these two bills — the stage one bill and the stage two bill — regarding tightening up of the bail system with regard to serious offenders and serious offences. We have introduced the schedule one offences and the schedule two offences. Under the Bail Amendment (Stage One) Bill the 'show cause' test was renamed to the 'show compelling reason' test against the advice of the Honourable Paul Coghlan, who recommended that it be changed to 'show good reason'. That was because there is also another test — the exceptional circumstances test. Under the changes passed by the Parliament in the Bail Amendment (Stage One) Bill we now have compelling reason and exceptional circumstances tests which are fairly similar in the bar they impose. What the Honourable Paul Coghlan was saying was that people do not understand what 'show cause' means — this is a very technical, jargonistic term — whereas 'show good reason' is very plain English, and that is all he was recommending. He was not recommending altering the bar; he was recommending saying it in plain English.

The Greens put forward an amendment proposing that the changes around unacceptable risk, which will be the first test applied to all people applying for bail, as well as the exceptional circumstances be included in the first bill, but they were not successful. Those changes appear in this bill but they should have been in the first bill. But, as I say, it does not matter because the provisions in the first bill have not been enacted in any case. In a practical sense they will come into play at the same time.

What has not been done is the recommendation by the Honourable Paul Coghlan that in order to properly reform the bail system we need to work at both ends. While these two bills look at the area of serious offences and serious offenders and how bail will apply in that regard, it does not do anything with regard to the other recommendations put forward by the Honourable Paul Coghlan to remove a number of minor offences, including minor indictable offences, from the bail system. As he said in his review, reforms arising from these changes are likely to increase the number of prisoners on remand, and he was concerned about that. That is why he recommended that at the same time that the serious offences end is tightened up there be changes at the other end with regard to minor offences so we do not have more and more people on remand who are not a potential health and safety risk to the community.

In his overview of the second advice to the government, he claimed that more and more prisoners are being held on remand. He said that:

> If prisoners are not produced, then their cases are often put off. Costs may be directly incurred and the need to return to court on multiple occasions can be inefficient and costly … It has been well understood for many years that much is to be gained in the criminal justice system by early resolution.

He said that a:

> … large number of warrants are issued in the Magistrates Court each year (about 60 000 in 2016). These warrants are for the arrest of accused who do not answer bail and for those who do not answer summons when the court is unable to deal with the matter or takes the view that it is inappropriate …

He said that it is likely that the majority of these cases are offenders at the 'lower end of seriousness' and that

their offending would not in fact result in a custodial sentence once the matter goes to court. He said:

> I recommend that a new process be developed for dealing with these less serious offences. The successful operation of this process will depend on amending the law to allow some indictable offences to be dealt with in the absence of the accused. That is not possible now because an indictable offence can only be dealt with by a magistrate in the presence of the accused and with their consent.

As he noted:

> … a large number of warrants are also issued for accused who fail to answer a summons. A reasonably high percentage of these are for indictable offences at the lower end of the range. Such offences could properly be dealt with in the absence of the accused.

He said the changes he recommended:

> … should reduce the number of people on bail and therefore less warrants may issue as a result of failure to answer bail. Allowing some indictable offences to be dealt with in the absence of the accused should also reduce the number of warrants for cases in which a summons was issued.

He went on to say:

> If less warrants are issued, then less court time and police time will be taken to deal with those warrants, and less custodial places will be required. That should have some positive effect on the numbers in police cells.

He said he had also:

> … looked at the operation of the court integrated services program (CISP). Even a moderate increase of about 200–300 extra CISP places would take significant pressure away from the remand system.

He made further recommendations with regard to CISP. He went on to say:

> The trial of the night court has been limited because of the available resources, including the lack of prosecutors or legal aid lawyers. There is a strong argument to say that a bail & remand court should ordinarily sit from about 9.00 a.m. to 10.00 p.m. …

and he made recommendations about how that could be done. He said that:

> The court could deal with many bail applications during these hours (and also finalise some matters) particularly with an increased use of audiovisual links.

I actually raised the issue of the night court in the recent financial hearings held by the Public Accounts and Estimates Committee, and I was advised that the night court trial has been running from 4.00 p.m. to 9.00 p.m. but that it is still not fully operational.

Justice Coghlan also said that in terms of introducing the changes that are introduced by the stage one bill and the stage two bill they should not be introduced without these other changes, removing the minor offences from the bail system and having fully operational bail and remand courts. He said that would only leave the period from 10.00 p.m. to 9.00 a.m. when there was not a court available and that of course we still do have bail justices available. I am concerned that in some way this bill is not making full use of bail justices, in particular clause 14, with the proposed new police remand section, which I will return to in the moment.

He said he received submissions:

> … from the Office of Public Prosecutions (Victoria) and the commonwealth Director of Public Prosecutions about appeals to the Supreme Court … The first relates to staying a decision of magistrates or judges to grant bail, and the second relates to the test to be applied.

He said that consultation on these issues would be further required, particularly in relation to the appeals test, and he made recommendations on the information that should be provided to any bail decision-maker.

The last thing he said in his overview was that the Bail Act needs to be rewritten. This was outside his terms of reference, but it does. As I said, what we have here is a pile of amendments that were passed earlier in the Parliament but have not come into play, and another pile of amendments that in some ways amend the current act and in some ways amend the amendments that have not come into play. It may be possible for the government, the Office of the Chief Parliamentary Counsel and the departmental advisers to get their heads around all of these, but I have to say I found it very difficult to follow and make sense of what was going on with amendments to the act and amendments to the amendments that have not even come into play yet.

That brings me to the amendments put forward by Mr Rich-Phillips. The Greens will not be supporting the amendments, and in fact we would be suggesting that the government come back with a stage three bill that implements the other recommendations made by the Honourable Paul Coghlan, which are to unplug the bottlenecks at the minor end of the system. That would then provide a more balanced approach to bail in this state.

Those who deal with these issues on a day-to-day basis, including, for example, the Law Institute of Victoria, say we need to remember that bail reform should proceed from an understanding and appreciation of an ever-increasing adult prison and youth detention population as well as an increasing proportion of incarcerated people being remandees — that is, people

who have not been convicted of any crime. We need to bear that in mind. More and more people who are incarcerated in police cells, in youth justice centres, in the Metropolitan Remand Centre and now in the new Ravenhall Correctional Centre are in fact remandees. They make up a higher proportion of people incarcerated than has been the case before. This is not a good thing. Cracking down on those accused of serious offences is a good thing, and nobody has any argument with that, but it is not a good thing to have more and more people who are alleged to have committed serious offences and who are not a risk to the community on remand. We need to be doing what the Honourable Paul Coghlan recommended by starting to reform that part of the system.

In addition to the costs that it imposes on the community, remand also has significant negative social consequences for those who are on remand, including loss of employment and housing and loss of contact with their wider support network and family and friends. These are widely recognised as protective factors in countering the risks of recidivism.

Finally, there is also the exposure to a high-risk, unstable and volatile prison population that increases the risk of recidivism. What I think people mean by that is that when you are a person on remand, you have been charged with an offence but you have not been convicted of an offence. If in fact you are not guilty of that offence, it is difficult if you have to spend a long time on remand. If your matter comes to court and you do not actually receive a custodial sentence — that is, you receive a fine or a community correction order — that is also very difficult. These are some of the many reasons that we need to make sure that people who are held on remand are people who are actually a risk to the community. I think we should be reducing the percentage of the prison population that are remandees, not increasing it, which is what these two measures will do.

There is a financial and social impact on the community of continually increasing the prison population and the number of unsentenced prisoners in incarceration. A reform that reduces the availability of bail will not make the community any safer, nor will it be a long-term solution to real or perceived problems with the bail system. That is the context in which I see the bail bills that have come before us. As I have said, no-one has any argument with tightening up the serious end of the scale. The government has not taken the opportunity to implement all of the reforms recommended by the Honourable Paul Coghlan, QC.

I turn to some of the provisions that the bill introduces. I note that clause 7 reinforces the general entitlement to bail unless there are risks to the community, and those are set out in terms of the unacceptable risk test, the show compelling reason test and the exceptional circumstances test, which I have already mentioned. The bill adds a new section 3AAA, which refers to surrounding circumstances to the Bail Act and includes a list of more detailed factors that bail decision-makers should consider in applying the unacceptable risk test, the exceptional circumstances test and the show compelling reason test.

The bill introduces a new section 3AAAA, which provides a definition of a vulnerable adult. Mr Rich-Phillips raised this issue, and this issue has been raised with the Greens by a number of stakeholders who deal with these issues all the time and deal with vulnerable adults. Concerns have been raised, so I will join with Mr Rich-Phillips in questioning the minister about that new section when we get to the committee stage of this bill.

Can I say, just to reinforce my point, that the Bail Act does need to be rewritten. When we get to the stage where we have sections called 3AAA and 3AAAA, it is getting very unwieldy in terms of the numbering of the sections. That is just another flag as to why this particular act should be rewritten. The opportunity to do that should have been taken by the government.

As I mentioned before, the bill rewords and essentially reorders the unacceptable risk test to emphasise the importance of the consideration of the potential risk that an accused may pose to community safety. That is similar to the amendments that I moved to the stage one bill, so we are supportive of that. The bill requires that a person who is already on two undertakings of bail with respect to indictable offences must be brought before a court for bail in relation to any further offending comprised of a relevant schedule 2 offence. That will exclude children, Aboriginal persons and vulnerable adults. That is reasonably in line with what the Honourable Paul Coghlan says. It sounds tough, but it is riddled with problems, which I will turn to in a little while.

The bill provides police with the power under clause 14 to remand an accused who is classified in schedule 1 by way of multiple low-level offences. That means they have not actually committed a schedule 1 offence — they have not actually committed a serious offence, as defined under schedule 1 — but that they are classified in schedule 1 because they are alleged to have committed a number of minor low-level offences. I think this is very problematic because there is not only

that; this clause does not allow the accused to be able to make further application to a bail justice until a court is available to hear his or her bail application. Under this new police remand system an accused will be required to be brought before a court as soon as practicable or, if impracticable, to a bail justice within 48 hours.

I have a lot of concerns about this clause. In fact I do not support this clause. In his second-reading speech the Attorney-General said that this is a similar recommendation to recommendation 29(d) of the Honourable Paul Coghlan in his second advice to government. In fact recommendation 29(d) says:

> (d) That once the bail & remand court is fully operational —

it is not —

> (i) senior police members be able to remand adult accused (except for vulnerable adults) overnight …

not for 48 hours. Coghlan is very specific about police remand only applying under these conditions as a means of clarifying police power to hold an accused. Further, he does not mention anything about police remand applying for accused escalated to schedule 1 by virtue of multiple low-level offences. In fact the initial stages of his second advice are all about how minor offences, including some indictable offences, should be reassessed so that the police and courts do not have to deal with them. This means they can spend more time on serious issues such as determining bail for those accused of serious offences. The only similarities between the police remand system in this bill and the one proposed by Coghlan is the name 'police remand'.

The Greens and those who deal with these issues on a daily basis have serious concerns about this system for many other reasons. The government has not outlined why their vision of police remand is necessary to make better bail decisions or protect the public. In fact it appears to further complicate the Bail Act and will further clog the courts. The government is proposing a 48-hour remand system, and Mr Mulino mentioned that that is a government decision; it is not following the recommendation of the Honourable Paul Coghlan. It is proposing a 48-hour remand system that it acknowledges will be obsolete once the proper bail and remand court is operational, in which case the next sitting date or overnight, as Coghlan advises, will be appropriate. This seems an excessive power given that it does not seem to resolve an existing problem. At the moment, an accused should be brought before a court or a bail justice as soon as is practicable.

The government proposes protections for vulnerable persons, who will likely be a very high proportion of those charged under this system — that is, people with lots of minor offences are likely to be in fact vulnerable people. It does not seem particularly logical that the same decision-maker who has denied bail and held a prisoner on remand must also assess whether a person is exempt from this remand under the vulnerable person exemption. I do not believe it is appropriate that a bail decision-maker be determining an exemption to their own decision, in terms of the police. I see this as a conflict. Also, a vulnerable person is less likely to question or raise a complaint about being held on remand, and for this reason there must be some type of independent, trained third party such as a bail justice to determine vulnerability.

The other mystifying part of this is clause 14(7) where, if the person who is on police remand after 48 hours has not been able to be brought before the court, they can be brought before a bail justice. My question is: why not bring them before the bail justice straightaway or as soon as is practicable? Why wait 48 hours and then say the person can be brought before a bail justice? It really is a very concerning clause to add to this bill, and completely unnecessary.

Other problems associated with this police remand clause are that the government is reliant on the police law enforcement assistance program (LEAP) system and also the after-hours mental health portal, which is currently being rolled out as an adequate reference to determine vulnerability. The government relies on a system that is known to be flawed and another that is not yet online. Many reviews and inquiries have been in agreement that vulnerable people need special provisions within the justice system and particularly when being detained or potentially being detained. Failure to provide these protections can have catastrophic consequences on the lives of these persons.

The LEAP system was described in one submission to the Coghlan review as totally inadequate and as failing the duty of care to vulnerable persons and was identified in recommendation 34 of Coghlan's second advice as in need of review. Coghlan's notes on the many limitations of the LEAP system, in his second advice, included the fact that it seemed largely up to the individual police officers to note issues such as specific mental health issues, prescription medication issues, acquired brain injuries, substance abuse problems or co-morbidity issues in the system and therefore flag these to decision-makers.

This system must be fixed and well tested before it can be relied on to protect the vulnerable. If the police get it right in identifying the vulnerable person and that person is not remanded, that is good. The problem occurs when the police get it wrong and the vulnerable person is remanded for 48 hours. That is where the problem lies. The problems with the system, which are well-known and acknowledged, add to the problems with this particular clause.

On page 63 of his second advice, the Honourable Paul Coghlan said:

> It is clearly problematic that bail decision-makers may not have up-to-date information on previous bail matters when deciding whether to grant or refuse bail. This is particularly so given the concerns I have described about accused on multiple bails.

He says:

> Currently, bail decisions made by police, bail justices or courts must still be faxed to the Central Data Entry Bureau (CDEB) by police and manually inputted onto LEAP. For example, in relation to grants of bail by courts, the prosecutor must fill out a form and fax it to CDEB, where a data entry operator then inputs the information onto LEAP. A prosecutor may have 30 or 40 forms to fill out after a day in court, and each bail undertaking may have multiple conditions. Accordingly, these processes can result in delays in relevant information appearing on LEAP, and increase the chance of data entry errors.

Clause 14 is a very problematic clause and an unnecessary clause.

Another clause that causes me some concerns is clause 20, which requires that a person who is already on two undertakings of bail with respect to indictable offences must be brought before a court for bail in relation to any further offending comprised of a relevant schedule 2 offence, excluding children, Aboriginal persons and vulnerable adults. This clause is analogous to recommendation 15 of the Honourable Paul Coghlan's first advice, and notwithstanding the concerns around vulnerable persons which I have been talking about, could be supported by the Greens because it does what these bail reforms should do: it identifies the serious and repeat offenders for more stringent bail hearings.

However, I do have concerns with this clause as it ignores the other vital aspect of bail reform identified by the Honourable Paul Coghlan in his recommendation 16, which was supported by the government — that is, to enact his recommendation the government must first release pressure on the courts and police by finding alternative methods of dealing with lower level offenders, as discussed at length in his second advice. The government has therefore reneged on its support for recommendation 16 to first find methods of dealing with low-level offenders. In fact I think I will just read those recommendations into the record:

> Recommendation 15
>
> That any accused who is already on two undertakings of bail with respect to indictable offences should not be able to be granted bail by a police officer or bail justice in relation to a further indictable offence, but must be brought before a court for the question of bail or remand to be determined.
>
> Recommendation 16
>
> That implementation of recommendation 15 be deferred pending reforms relating to after-hours remand courts and alternative methods of dealing with lower level offenders …

That is pretty clear. That is not what the government is doing here, and we are going to end up with more and more people accused of lower level offences who are not a risk to the community being remanded in custody.

If you actually look at the Honourable Paul Coghlan's second advice in its entirety you can glean the logical order that he recommends for bail reform. Firstly, fix the system so that minor offences are not clogging up the justice system; secondly, provide more and diverse Courts Integrated Services Program staff training for bail decision-makers and Victoria Legal Aid to help reduce repeat offenders and contact with the courts altogether; and thirdly, properly establish a quick bail and remand court so an accused can receive a bail hearing in a timely manner. Sadly the Bail Amendment (Stage One) Bill and the Bail Amendment (Stage Two) Bill do not achieve this, and it is really very important that this be achieved.

The Honourable Paul Coghlan, like the police, Victoria Legal Aid, the Victorian Law Reform Commission and just about everyone who works in the system, knows that from a practical point of view putting more and more people on remand for minor offences will actually lead to a more fractured system and could lead either to the release of people on bail due to the incapacity to hold accused people in court cells, police cells or the remand centre, or to delays that lead to people on remand being released under appeal.

There are some problematic clauses in this bill, as I have outlined, and there is the bigger problem that nowhere in either of these bills presented by the government with regard to changes to the bail system is there anything regarding the reform of bail for those accused of minor offences so that those people who are not a risk to the community are not remanded in custody and can therefore continue in employment, continue to live at home and still be required to appear

at court to have their matter heard. The Honourable Paul Coghlan recommends that in some cases where they do not appear at court the Magistrates Court should discontinue issuing the large number of warrants that it does — taking up the court's time and taking up the time of police for minor offences — and simply just hear those matters without the accused being there. Then those can be followed up after the appropriate sentence has been imposed. As I mentioned before, in many of those minor offence cases the accused will not receive a custodial sentence, and it is unjust to have people incarcerated when the final sentence for the matter will not be a custodial sentence and they are not posing a risk to the community.

While we do support changes to the bail system with regard to serious offences, they have to be balanced by changes to the bail system for the minor offences, and that is not occurring under either of these bills. I really urge the government — before we get to the commencement dates for these bills, which I am happy to support as they are — to bring in some changes to deal with that lower level offending as recommended by the Honourable Paul Coghlan and to make the bail system fairer and more workable for the courts, for the police, for the duty lawyers and everybody else, including the offenders and victims of crime. That is the way we will achieve more improved public safety and reduce recidivism by offenders and alleged offenders. We do need to come to a situation where we have a lower percentage of people — not more, not a growing percentage of people but a reducing percentage of people — who are incarcerated who are actually only accused of a crime and not convicted of a crime.

Ms CROZIER (Southern Metropolitan) (11:32) — I am pleased to be able to rise and speak this morning on this important bill, the Bail Amendment (Stage Two) Bill 2017. As has been highlighted by Mr Rich-Phillips, this is the second tranche of some bail reforms that the government is undertaking in relation to some serious issues that this state is facing. As we know, there have been enormous amounts of concern from the community and others around the increasing crime that has occurred in this state over recent times. It is no surprise that people are concerned when the Andrews government has taken a fairly soft approach to the issues at hand.

It was a couple of weeks ago that many people from the Parliament attended the Bourke Street memorial for that horrendous carnage that occurred during that Friday lunchtime just over 12 months ago when innocent Victorians and others — men, women and children — were mowed down in that dreadful event. I was reflecting on that, and I want to take note because there were so many people involved, as we know — not only the first responders that were there but Victorians who stood by and provided assistance and great care to those who were affected on that day. I refer to a previous article in one of the papers where it notes the heroic efforts of Lou the cabbie. Henry Dow, I think, was the gentleman who had posted a comment on his Facebook page that the article refers to. The article says:

> Lou had held Henry's shaking hands and told him to be strong for a woman who was badly hurt.
>
> 'Administering first aid with me, under that skinny little tree, is a man named Lou: he is everything great and courageous you have seen, heard or read, rolled into one authentically humble bloke', Henry wrote.

I think that just demonstrates the nature of what occurred on that day when other Victorians came to give aid.

Of course we are talking about this bill because of the Coghlan review. The explanatory memorandum of the bill states that:

> Following the Bourke Street tragedy on 20 January 2017, the Government asked former Supreme Court Judge and Director of Public Prosecutions, the Hon. Paul Coghlan, QC, to urgently review Victoria's bail system. Mr Coghlan provided his advice on legislative reform in his first report on 3 April 2017 and on other relevant matters in a second report on 1 May 2017.

Now, that is some months ago, and those recommendations, which a lot of this bill highlights and speaks to, have been well-known. That is why Mr Rich-Phillips proposes moving his amendment to bring forward the commencement date — not 1 July, as the government proposes, but 30 March 2018 — because these are urgent reforms that need to be undertaken. I note that Mr Mulino in his contribution said, 'Well, we don't want to rush this'. Well, you have not been rushing it, clearly. You have been stagnating for years. Since your election in 2014 we have seen what has occurred. We have seen the rolling back of juvenile bail — the reforms that were undertaken in the coalition term — and from there we have had youth crime out of control and repeat offenders on a cycle that is doing them no good at all. They are being held on remand for extraordinary periods of time. The rolling back of that bail reform has sent the wrong message to some of these young offenders who do have to understand the consequences of their crimes. Some of them, sadly, are extremely serious.

The other occurrence we have seen in Victoria is the changing nature of criminal offences in the last few years. Of course I am referring to the carjackings and the home invasions that have literally been occurring

across our suburbs and communities, not just in isolated areas but in large parts of Melbourne and in outer areas in regional Victoria as well. I note that the government has got no intention of addressing those issues in terms of the mess that youth justice is in, as we have seen, with over 30 riots. We have had a mass escape — the greatest escape from our youth justice facilities in this state. I hear the minister over there groaning about this, but these are the facts, and I think she is the one held responsible —

Ms Mikakos — You keep changing the number of riots every week. You just make it up. Every week it is a different number.

Ms CROZIER — Over 30 riots, Ms Mikakos. We have seen Parkville trashed and the government not being able to provide proper advice.

Ms Mikakos interjected.

The ACTING PRESIDENT (**Mr Ramsay**) — Ms Mikakos, through the Chair, thank you.

Ms CROZIER — Ms Mikakos knows she has failed the system. She has failed those who are in the system. These young people deserve to have some rehabilitation and support, yet they are still running amok and they are still causing incidents within youth justice facilities and assaulting staff. They are not being addressed properly, and we have got this ongoing crisis in youth justice that she is still determined to deny. But nevertheless, I think it is evident for all Victorians to see — and they do see it. They know what is going on. It is happening within their communities constantly, and I think that is why the government has been on the back foot for the last three years, and Mr Andrews, the Premier, I am sure is most displeased with the way this has been handled by the minister.

So that is why we have been very firm in terms of the announcements that we have made — and made quite some time ago, I might add — in terms of having a plan to fix the bail system, because again we see this government is too slow to act. The plan is around the introduction of presumption of remand for those charged with violent offences. That is the community expectation. They do not expect people of, quite frankly, any age, if they are committing violent attacks — and we have seen young offenders with machetes or guns smashing their way through legitimate businesses — not being held to account. What message is that sending? What it is doing is giving the victims no voice and no assurance that this government cares for them or that it is serious about reform.

The second principle that the Liberals and The Nationals have announced, as I have referred to, in terms of bail reform is to introduce the 'One strike and you're out' policy for anyone breaching bail. Again, we believe that if you are given a chance, if the community does give you that chance, you are expected to abide by the rules. The community is sick and tired of the breaching of bail that has occurred where serious crimes are repeated or conducted again. The third principle will be the reinstatement of the offence of breaching bail by young offenders or juvenile offenders, which was repealed by this government in 2016.

This bail amendment bill, as I said, has taken on a number of issues. It does talk about exceptional circumstances, but it also says — and I want to just mention a couple of clauses in the remaining time that I have — that only a court may grant bail to a person who is accused of a relevant schedule 2 offence who is already on two or more bail undertakings, but this does not apply to children, Aboriginal persons or vulnerable adults. I note the explanatory memorandum does talk about vulnerable adults, I think, with cognitive impairment, and clause 4 inserts a new definition of the term to mean a person who is:

> … 18 years of age or more and has a cognitive, physical or mental health impairment that causes the person to have difficulty in—
>
> (a) understanding their rights; or
>
> (b) making a decision; or
>
> (c) communicating a decision.

It is self-explanatory in relation to why that definition is in the bill. People with those impairments of course need to have some consideration, and I do not think anybody is disputing that fact. I am concerned, though, I have to say, that a certain subsection of our community has been highlighted. I do not want this to be in any way inflammatory at all — the government has accused us of being racists and xenophobes and they have made ridiculous remarks about race baiting; it is just ridiculous — but what this bill does do and what I am concerned about is it highlights people on the basis of their race. Where will this go? Is the next stage going to be that their ethnicity is brought into question? We are all Victorians who need to abide by the law; it does not matter who you are. As I said, certain considerations need to be taken into account if you have got an impairment to your judgement, but to be singled out and have some exemption based on that is a concern of mine. I think that needs to be monitored very carefully, and I am hoping the government will do that because of how they have explained that in this bill.

I do note that the bill also speaks about a number of other areas in relation to family violence orders that need to be taken into consideration when empowering police to make those decisions. Those orders need to be adhered to and looked at. It comes into new section 3AAA(f), which says:

> whether there is in force—
>
> (i) a family violence intervention order made against the accused; or
>
> (ii) a family violence safety notice issued against the accused; or
>
> (iii) a recognised DVO made against the accused …

Earlier in that new section, in relation to surrounding circumstances, the bill says:

> … decision maker must take into account all the circumstances that are relevant to the matter including …

not only those issues that I have just highlighted but others that are listed there, including the accused's criminal history; the nature and seriousness of the alleged offending, including whether it is a serious example of the offence; the circumstance of the accused at the time of the offence; whether they have complied previously with bail — there is a whole range of other things that I will not list here. The bill also goes on and explains how that could be then undertaken through a number of flowcharts, which is pretty self-evident.

As I am coming to the end of my contribution, I just want to reiterate again that the government has been slow to bring on these necessary reforms, particularly after the horrendous circumstances that occurred just a little over 12 months ago. That review was finished mid-last year. The government has had months to do this. It is a priority of the community that they have confidence in our justice system, and especially in our bail system. We have seen the unbelievable amount of serious crime that has occurred across the state in recent years, particularly these serious offences that have quite terrified many parts of the community, and that is why in order to deal with those issues we need to get these reforms in place. I would urge the government to reconsider their opposition to Mr Rich-Phillips's amendments and to support them to get these reforms and this legislation in place by 30 March of this year to make the community safer.

Mr MELHEM (Western Metropolitan) (11:46) — I also rise to speak on the Bail Amendment (Stage Two) Bill 2017. As previous speakers have touched on, the bill strengthens the Bail Act 1977 by clarifying and strengthening the bail decision-making process with an emphasis on community safety. It is of course in response to a recent event. Amendments were introduced by the Bail Amendment (Stage One) Act 2017, and this bill will be a supplementary bill to the previous amendment bill that was introduced last year.

To summarise the bill, the bill will reformulate and clarify how the test of bail should be applied, and that relates to recommendations 2, 3 and 5 of the Coghlan review. It introduces a police remand system to enable police to remand an adult accused until a court is available. That is another issue we had in recent times in relation to the bail justice system about whether a person could be retained in police custody until such a time as a court, a judge or a magistrate is available to hear the matter and their bail application. This will introduce some flexibility so that the police can actually hold the person for an appropriate time, and normally it is a matter of the next day.

The bill also requires a person accused of certain serious offences — other than a child, Aboriginal person or vulnerable adult — who is already on two undertakings of bail for indictable offences to be brought before a court in relation to any bail decision. That relates to recommendation 15 of the Coghlan review. The bill also provides an express power for a court to bail or remand a person appearing on summons, which relates to recommendation 33. The bill also makes other minor and technical amendments to the current Bail Act.

I will briefly touch on the Coghlan review. The first report was provided to the government on 3 April 2017 and focused on the practical measures of reform. I have talked about the first tranche of legislation, which was introduced in 2017. This is the supplementary bill to further implement the review's recommendations. My understanding is that further work will be done in this space in the not-too-distant future. There will be further changes happening, and a lot of them will be administrative changes.

The report included a recommendation which changed the test for granting bail to express the test more clearly and emphasise the importance of assessing an accused person's risk to the community. There has been a lot of debate in recent times about how much attention and emphasis a magistrate or bail justice gives to community risk, because at the end of the day whatever we do with our law enforcement and judicial system — and this includes us as legislators — we always have to be mindful of community risk. The bill is making sure that we do not put the community at risk particularly when we could have offenders who are likely to be granted bail but are at a high risk of offending again. Therefore now we have given an emphasis that a bail

justice or magistrate has to take that into consideration. In my view the main consideration should be whether or not granting bail to someone could put the community at risk. I think that is a very welcome change, and I am looking forward to this bill passing and becoming law.

Would this legislation have prevented the tragedy of Bourke Street? The answer to that is that no-one can guarantee that that will not occur again. Will this legislation minimise or be likely to assist in minimising the likelihood of that occurring? I think it will. But no-one obviously can give a guarantee that it will not happen again. We are learning from the tragedy of Bourke Street, and that is why these amendments are being put in place. There has also been a lot of fear in the community in relation to repeat offenders, so the new amendments will give comfort and give more tools to Victoria Police and the judicial system to apply a much more rigid system to minimise the risk of repeat offences, whether it is home invasion or any offence, because this will apply to all offences. The legislation does not apply to a specific offence; it applies to all offences, which is a very welcome change.

The bill also clarifies the powers of Victoria Police and, as I said, the powers of bail justices and the courts to grant bail. These recommendations are now going to become law. There have been some questions about whether the current role of bail justices will continue as a result of this legislation. The answer to that, from my reading of the legislation, is that there will not be any changes. There will be an ongoing role for bail justices under this legislation, which to me is good news, because I think they do a very good job and give their own time to provide a service to the community. I want to commend them on the work they do. I know there is a particular section of the community — political parties — that has criticised bail justices in the last 12 to 18 months, which I think is unjustified. They should be commended on the work they do.

The bill also makes changes to police remand. The reform in this bill will give senior police officers the power to remand an accused without the accused being able to make further application for bail to a bail justice. Instead the accused will remain on remand until a court is available to hear his or her bail application. Again that responds to some events we have had in the last 12 to 18 months when persons were given bail by a bail justice and the police were not happy with that decision but did not have the ability to keep those persons in custody. A senior police officer will be able to make the call — overnight, after hours or at whatever time — to keep that person in custody until a court or a judge is available to hear his or her matter. I think that is a very welcome change to the current legislation to give that flexibility to the police to actually be able to remand an accused person until a judge is available to hear the matter.

There are obviously restrictions on how long a person can be remanded in custody. An accused will be required to be brought before a court as soon as practicable. If the police consider that it will be impracticable to bring the accused before a court before the expiration of 48 hours, then the accused will be able to seek bail from a bail justice. The time limit of 48 hours ensures that an accused person is not detained for an unnecessarily long time before a bail decision is finalised. I think that is very important. Normally that 48 hours would cover something that happened on a Friday night. By Monday morning it should be possible to get a person before a magistrate to determine whether the person should be given bail or not. Obviously we need to be very careful not to have it open-ended where someone could be remanded in custody for an indefinite period of time. We are not in a police state. The purpose of that 48 hours is to give enough flexibility for Victoria Police members to do their job and basically make a judgement. When they believe that an accused could present some risk to the community, they will be able to remand that person for a maximum of 48 hours. That will be sufficient time to bring that person before a court.

As I mentioned earlier, the bill, combined with the stage one bill, implements all the recommendations of Mr Coghlan in his first report as well as recommendation 33 in the second report. The remaining recommendations in the second report are longer term recommendations that Mr Coghlan envisages will be subject to further consultation before implementation. As I said earlier also, these amendments will apply to all offenders, adults and children, so there will not be any distinction.

There has been some debate in relation to whether the operative date should be 1 July 2018 versus 30 March 2018, which I think is in the amendments foreshadowed by the opposition. My understanding is that the people in charge of our justice system would require a bit of time to be able to put all these things into effect. The time frame, to my understanding, is around three months. Therefore bringing the operative date forward to 30 March might not be practicable for our law enforcement people who need to be able to get themselves ready to implement the changes. My understanding is that the advice given to the Attorney-General is that three months is the period required for law enforcement agencies and people in the justice system to be able to implement successfully

the new bill and recommendations in the Coghlan report. That will give the authorities a bit of time to implement the changes without any duress.

Just to conclude, this is a very important bill that gives effect to the Coghlan report and responds to community concerns which have been raised with us in the last year or two, particularly about recent events, whether they are home invasions or the Bourke Street tragedy. They are very important changes to our bail law and they should give comfort to our citizens that the system now is designed to look after them and will look after them.

I urge the opposition, the Greens party and the crossbenchers to endorse the amendments in the bill as presented and vote against the amendments that will be moved by the opposition, one of which is to bring the operative date forward to 30 March. As I said, it is not practical. I think we need three months, and 1 July should give enough time to our authorities to make sure that they are able to implement the changes. With those comments, I conclude my remarks and commend the bill to the house.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Victorian training guarantee

Ms BATH (Eastern Victoria) (12:00) — My question is to the Minister for Training and Skills. Now that the Public Accounts and Estimates Committee transcripts from last week are online, can you confirm the evidence from departmental officials that up to half a billion dollars that was for student training as part of the Victorian training guarantee was slashed from the budget by the Andrews Labor government and some of it was returned to consolidated funds?

Ms TIERNEY (Minister for Training and Skills) (12:01) — I thank the member for her question because this is a question about the type of training system we have in this state. This state has a training system that is demand driven, and that is the absolute focus of this government. We are not going to have a situation which was the case under the previous government where people were training for training's sake — absolutely meaningless training that did not lead to any jobs. We will not allow that to happen. We will never allow that to happen. We will not have a situation where we have training for training's sake. We want a training system that aligns to the industry needs, and we make no apologies for that. We are proud of our reforms. We are proud of what we are doing in the skills and training environment.

The PRESIDENT — I must indicate that I do have concern that that answer was to a large extent a debate in answer and that there was no attempt to discuss the actual question that was put in regard to the allocation of funds, which I think for all members of the house is an important issue. I am obviously going to order that there be a written response, but I think that that is a matter that ought to have been addressed as part of the answer on this occasion.

Supplementary question

Ms BATH (Eastern Victoria) (12:03) — Minister, former minister Steve Herbert committed $1.2 billion each and every year to the Victorian training guarantee for student training. If you claim there have been no cuts, can you advise the house what the total value of funds expended specifically for the Victorian training guarantee was in 2017?

Ms TIERNEY (Minister for Training and Skills) (12:03) — I thank the member for her question. We have provided a record investment in skills and training in this state. Over $750 million has been invested in this state in our training and education system. We have done that on the advice of what people told us — people who were complaining about what the former government did in relation to skills and training. We have set aside moneys for subsidies in courses to be funded. We have set aside money for funds that deal with thin markets for regional TAFEs. We have set aside money for specialist skills equipment. We have set aside money for assets — for asset redevelopment and new capital investment. We have set aside a $40 million fund called WTIF, which is about workplace innovation and training in the workplace.

The PRESIDENT — Thank you, Minister.

Small business assets

Mr DAVIS (Southern Metropolitan) (12:04) — My question is for the Minister for Small Business. Small family taxi businesses were built up over generations by hardworking families through the purchase of taxi licences. These licences were ruled as assets by the High Court but were stripped from these same hardworking families by the Andrews Labor government on 9 October last year. Has this stripping of assets set an unfortunate precedent for the many other small businesses throughout Victoria that property can be taken without proper compensation?

Ms Pulford — On a point of order, President, I think the matter to which Mr Davis refers is a matter for the responsibility of the Minister for Public Transport,

and I would offer to take that question for Minister Allan for Mr Davis.

Mr DAVIS — On the point of order, President, clearly a government decision may have broader implications, and my question seeks to ask the Minister for Small Business whether this has broader implications for other small businesses in Victoria.

The PRESIDENT — Order! In respect of the question that has been asked by Mr Davis I am of the view that the question does not specifically go to the compensation packages to people who were involved in the taxi industry. He has taken that as an example of an area where, he suggests, the taxi licence holders were in fact small businesses, that they have suffered under a government decision — I am not being political in terms of the government decision; it is a government, generic, decision — and that they were not compensated to the extent that Mr Davis would assert they should have been. His question is actually about whether or not other small businesses might suffer a similar situation in the event of changes in government policy that would impact upon their viability. So he has made a separation from the actual taxi fund issue.

Mr DALIDAKIS (Minister for Small Business) (12:07) — I thank the member for their question. I do not deal in hypotheticals, and I am not in a position to answer that.

Supplementary question

Mr DAVIS (Southern Metropolitan) (12:08) — What an extraordinary answer from the Minister for Small Business, who should be interested in the position and the future of all small businesses throughout this state. I therefore ask: Minister, have you received representations from taxi small businesses or taxi small business associations regarding the need for adequate compensation for their stripped assets, and if so, what was your response?

Ms Pulford — On a further point of order, President, this question now is very directly related to the compensation arrangements that have been put in place for taxi licence holders and is the responsibility of the Minister for Public Transport.

Mr DAVIS — On the point of order, President, it is either a fact that the minister has received representations or it is not. I obviously cannot answer that. If he has not received representations, he can simply answer no. If he has, he can answer how he has responded as a minister. He may have referred them elsewhere, he may have done whatever. But if he has received a piece of correspondence in his capacity as Minister for Small Business, it is clearly his responsibility.

The PRESIDENT — Order! This question puts me in a difficult position given my interpretation of the substantive question and the fact that that interpretation was not challenged. Whilst the issue of whether or not the minister received representations from taxi owners, licence owners or indeed associations representing them and whether or not those representations were made to the minister and the outcome of any such representations is a valid question, given my interpretation of the substantive question the supplementary question is not apposite to the substantive question because it now goes directly to the matter of the taxi licences compensation rather than to whether or not other small businesses might well be in difficulty in terms of inadequate compensation as a result of the viability of their businesses being affected by government decisions. Mr Davis, I will give you a chance to rework it.

Mr DAVIS — Arguably it was apposite to the answer that the minister gave, where he tried to dismiss any broader responsibility. But let me try to reframe this in such a way. I ask the minister whether he has received any representations from small business associations about the loss of asset value without compensation.

The PRESIDENT — Any small business associations?

Mr DAVIS — Yes, regarding the loss of asset value from government decisions, and if so, what was the outcome of those?

The PRESIDENT — For me that is apposite.

Mr Dalidakis — On a point of order, President, I struggle to find how that is apposite, given the first substantive part of —

Honourable members interjecting.

Mr Dalidakis — I have a right, President, to put this point that —

An honourable member — Is it a point of order?

Mr Dalidakis — Yes, it is a point of order. The substantive question dealt with the dealing of assets undertaken by the High Court, not by this government, and so it cannot be apposite to the question to ask me a question about how the government deals with asset classes when he dealt with a different jurisdiction and a different tier of the democracy that we live in.

Honourable members interjecting.

The PRESIDENT (12:12) — Order! Mr Ondarchie, 15 minutes, thank you.

Mr Ondarchie withdrew from chamber.

Mr DAVIS — On the point of order, President, I clearly did not deal with the High Court itself in that sense. I dealt with the government's decision with respect to taxis and whether that had a broader implication for small businesses. That was my point, and then I asked a subsequent question.

The PRESIDENT — Order! Mr Rich-Phillips has given me the courtesy of providing me with a copy of the question that Mr Davis posed. I would believe from what I heard that the written question that I have been supplied with and what Mr Davis said were one and the same. In that sense Mr Davis's only reference to the High Court was to the effect that the High Court had ruled that licences were assets. To that extent I think that that is not talking about different jurisdictions having different responsibilities in this matter. I think his question was posed appropriately to the government, and the reference to the High Court was simply about the fact that they were assets. Therefore the question was in order and the reworked supplementary question was also in order.

Mr DALIDAKIS (Minister for Small Business) (12:14) — I thank the member for the question, and the answer is yes.

Ordered that answer be considered next day on motion of Mr DAVIS (Southern Metropolitan).

Poultry industry

Mr RAMSAY (Western Victoria) (12:14) — My question is to the Minister for Agriculture. Currently there is a review and community consultation process underway to assess current and future poultry industry standards and guidelines, which is due to conclude on Saturday. Minister, why did you state to the Western Australian Minister for Agriculture and Food that Victoria's position was to transition to furnished cages over 10 years before the community consultation period had even expired?

Ms PULFORD (Minister for Agriculture) (12:15) — I thank Mr Ramsay for this question. This is a subject of great interest to many people in the Victorian community. I know all members of Parliament have received many, many emails throughout recent weeks while the public consultation period has been underway for what is a national process that the Victorian government is committed to and involved in. I have not had a discussion on the subject with the Western Australian Minister for Agriculture and Food. I have read media reports that say that I did, and that was the first I knew of that rumour. But I can certainly assure Mr Ramsay that it never happened.

Supplementary question

Mr RAMSAY (Western Victoria) (12:16) — I thank the minister for her answer. It appears that the Western Australian agriculture minister has a different view, but nevertheless my supplementary question is: is it not the case, Minister, that you are pushing for the removal of all caged poultry by setting up an office of animal welfare that will be dominated by animal activists and not those committed to sound and scientific animal welfare practices?

Ms PULFORD (Minister for Agriculture) (12:16) — No. The Victorian government does not have a position on this matter. We have undertaken a scientific review that will in time inform the development of a Victorian position, but I can absolutely assure Mr Ramsay that we do not have a position. It was wonderful actually to see this week industry making representations to members of Parliament about their perspective on this issue. I saw some national media from industry as well this week. It was an invitation of sorts for people who are concerned about animal welfare in the poultry industry to really familiarise themselves with industry standards, which I think was a helpful contribution by industry to the debate. I thank my colleague Bronwyn Halfpenny in the Assembly for organising the visit of industry representatives to help members familiarise themselves with these issues.

Animal Welfare Victoria will be staffed by the existing people who are working in the public sector on these issues. It is a new public sector group, and there will be no new positions.

Sheep and goat electronic identification

Mr O'SULLIVAN (Northern Victoria) (12:18) — My question is to the Minister for Agriculture. Minister, from 31 March electronically tagged sheep must be scanned at saleyards when moving from property to property. The *Weekly Times* reported last week that the government was refusing to answer questions about whether saleyards would be ready to begin scanning sheep and goats by the upcoming 31 March deadline. Minister, what contingency plans has the department put in place for saleyards or producers who are unable to meet the 31 March deadline?

Ms PULFORD (Minister for Agriculture) (12:18) — I thank Mr O'Sullivan for his interest in this very important reform — one that would have been nice to have seen the former government actually make a move on and implement, but they did not. It has been our great pleasure to support the industry through a very significant change. I can report to the house — in fact I did report to the house yesterday — that applications for equipment in saleyards have now been received by all saleyards and that equipment has been installed in most saleyards. The latest news on this is that installation at Ouyen has been completed and testing is now underway. The Ballarat saleyard has commenced electronic scanning. There are three saleyards that are still to install hard equipment. Two of them are quite small in number, and the other is certainly well prepared for this reform.

I know the National Party would have liked this reform to never go ahead for reasons I will never understand. They have also consistently called for this reform to be delayed. But this is an important reform, not least of all because of the $20 million a year biosecurity funding cut that Mr Walsh and Mr O'Sullivan delivered to the farmers of Victoria. That is why this is important. But it is also important for farmers to have access — and in fact for everyone in the supply chain to have access — to the wealth of information that will be available in future.

In terms of recording property-to-property transfers, this will become mandatory on 31 March, as Mr O'Sullivan indicated. A letter is about to be distributed and will go out to over 30 000 property identification code holders outlining their requirements commencing on 31 March, and my department is providing information to assist property owners who may need assistance to understand the requirements.

It has been some time now since we announced this reform; this is not something that has been rushed. This is a reform that has been supported with a $17 million funding package, and it would be really nice actually if Mr O'Sullivan and Mr Walsh got with the program, because pretty much everybody else has. This is a big reform, and it was a big decision. Everybody was very right to be intensely interested in the design of the transition package and the design of the time lines. We had a great consultation period, with lots and lots of people having their say and having their input into this reform. We made some changes right back at the beginning based on that consultation to the time lines, and so far so good. Everybody is doing a terrific job of getting ready for mandatory electronic identification (EID) in sheep and goats. It is interesting to note that it was a Labor government that introduced it in cattle as well.

Supplementary question

Mr O'SULLIVAN (Northern Victoria) (12:21) — Minister, further to the contingency plans, how is the department's conducting of information sessions for producers at Kyneton in April going to help them meet their obligations set by you for a 31 March commencement?

Ms PULFORD (Minister for Agriculture) (12:21) — There have been information sessions occurring right across regional Victoria in more locations than I could recall off the top of my head, but all of this information is available on the EID transition part of the Agriculture Victoria website — many, many locations. There has been significant attendance at all of them. In fact for a time not long after the reform was announced we kept finding the rooms that had been booked were too small because people would turn up in numbers far greater than those that had been expected or had indicated they were coming.

So there have been and will continue to be information sessions, and we certainly will not stop providing information to farmers on any date. We will provide information to farmers to support them through this change until everyone is absolutely comfortable with it, because it is a big reform and there will still be questions in April and there will probably still be questions in May and there will be questions in June. Right through the year we will be supporting our farmers.

Ministerial code of conduct

Ms WOOLDRIDGE (Eastern Metropolitan) (12:23) — My question is to the Leader of the Government. The ministerial code of conduct states that ministers are required to act in accordance with the law and must ensure they act with integrity. Minister, did the Minister for Sport, Minister Eren, breach the ministerial code of conduct in his altercation with a member for South Eastern Metropolitan Region, Mr Somyurek, last night?

Mr JENNINGS (Special Minister of State) (12:23) — I thank Ms Wooldridge for her question. Can I first of all, in the spirit of openness and generosity, say that in fact the couching of her question in this chamber is far more appropriate than the questions that were tendered in the other chamber earlier in question time today, so I appreciate that the tone and the engagement of this question is far

preferable in the way of parliamentary protocols and understandings in the chamber. I think that is a good thing.

Even within that, though, there are some untested assertions in the question. The President and the Speaker, as I understand it, have agreed that the Parliament will investigate matters to ascertain what is the actual situation of something that is subject to commentary across the Parliament and in the media but in fact, to my knowledge, is bound by only speculation about what happened rather than a firsthand account by any party who was apparently involved in matters in the dining room last night. I have no firsthand information of it, and in fact I have not heard any firsthand report from any individual in relation to this matter.

What I do know is there are a lot of allegations that have been bandied about, a lot of speculative commentary and a lot of speculative matters inserted in what otherwise would be questions. Now, Ms Wooldridge did not in any shape or form go anywhere near the assertions that were made and the imputations made in the other place, so she has done a better job. But in fact even within her question there was an imputation or an allegation that I do not know she has in any shape or form been able to substantiate.

Supplementary question

Ms WOOLDRIDGE (Eastern Metropolitan) (12:25) — I thank the Leader of the Government for that response, but certainly not answer, to a very straightforward question in relation to what is clearly the responsibility of the Premier and the government — the ministerial code of conduct. Minister, the Minister for Sport did confirm in the other place that an altercation took place last night, and as you have said, the Presiding Officers have confirmed a formal investigation will take place. Similar to the standard that has been established for other ministers and Labor MPs that have been under investigation, will you or the Premier seek that the Minister for Sport stand down from his duties pending the result of this investigation?

Mr JENNINGS (Special Minister of State) (12:26) — President, you know that in fact in my substantive answer to the first question I indicated that I am aware that you and the Speaker have authorised an investigation into these matters. Within the supplementary question Ms Wooldridge said that my colleague in the other chamber said that there was an altercation. People that are behind me say that in fact he indicated there may have been an incident. They may or may not be different things.

Honourable members interjecting.

Mr JENNINGS — In this chamber people may describe —

Ms Wooldridge — On a point of order, President, whether you call it an incident or an altercation, the question relates to whether he will ask the minister to stand down, consistent with what has happened with other members when they have been under investigation. That is the question, and I ask you to bring the Leader of the Government back to the question rather than trying to have a cute response in terms of the semantics of a word.

The PRESIDENT — Can I indicate that the Speaker and I have asked our staff to examine or investigate what I would describe as a heated exchange between two members. That terminology is different to the terminology that various members have used, but it is certainly the terminology that I assert in terms of the investigation. That is on the record.

Mr JENNINGS — Thank you, President. On the basis of your knowledge base in relation to this, you used the phrase ‘heated exchange’. Let me use that in this chamber. Many, many heated exchanges take place in this chamber each and every day, and even by interjection the opposition are likely to have a heated exchange with me before the end of question time.

Ministerial code of conduct

Ms WOOLDRIDGE (Eastern Metropolitan) (12:29) — My further question is also to the Leader of the Government. Prior to the last election Labor promised to, and I quote, ‘restore respect and integrity to the Victorian Parliament’. Minister, how is last night’s altercation, incident or heated exchange, which is now being investigated, involving the Minister for Sport consistent with that promise?

Ms Shing interjected.

Mr JENNINGS (Special Minister of State) (12:29) — I thank Ms Wooldridge for her question, and I thank Ms Shing for her interjection behind my back. The confidence the community may have is in fact that, on occasions when allegations have been made directly and specifically to members of the government, to the public service or to the Parliament, for better or for worse, they have been investigated. In fact as challenging as they may be, there have been a series of investigations that have been undertaken to check the veracity of any assertion or allegation that has been made and consequences have been borne as a result of those investigations.

I am never happy that this Parliament is brought into disrepute by the behaviour of any member of the Parliament. I have to say that MPs fall short of my expectations virtually each and every day. In fact I probably fail the test that I apply to others sometimes myself. Does that mean that in fact if I say something that is inappropriate in this chamber I should be reflecting upon my ability to stand in the chamber? Well, I will probably make that assessment as ruthlessly as anybody else.

What I am saying at this moment is that we are happy for this matter to be appropriately investigated. We are happy for it to fall where the evidence may lie, and the consequences should be assessed in light of what that investigation shows.

Supplementary question

Ms WOOLDRIDGE (Eastern Metropolitan) (12:31) — As I said, Labor promised to restore respect and integrity to the Victorian Parliament. In contrast what we have seen is an aggressive confrontation by Minister Dalidakis at a community stakeholder event, the chauffeuring of dogs in ministerial cars, racism remarks by the Minister for Families and Children, the Minister for Health abusing the Deputy Premier via SMS during parliamentary debates, the Minister for Roads and Road Safety using vulgar language targeting a regional mayor and now the Minister for Sport's altercation in this Parliament. Will you now admit, Minister, that your ministers are actually a bunch of scandal-ridden, abusive misfits that are not fit to govern this state?

Ms Mikakos — On a point of order, President, in relation to Ms Wooldridge's supplementary question, she did make reference to me in that context, and I take exception to that because, as you have previously made the point in relation to that specific matter, that matter was in fact discharged last sitting week. I remind the Leader of the Opposition in this house —

The PRESIDENT — No, you are not reminding anybody else.

Ms Mikakos — that members of her own team —

The PRESIDENT — Order! Ms Mikakos, you are raising a point of order with me; you are not reminding anybody else of anything. If you need to remind someone, remind me if it is pertinent to a point of order.

Ms Mikakos — Further to the point of order, President, it is really the height of hypocrisy to have the member come in here —

The PRESIDENT — Order! Thank you, Minister. That is debating; that is not a point of order.

Mr JENNINGS (Special Minister of State) (12:33) — In fact I am certain that after my —

Honourable members interjecting.

The PRESIDENT — Order! Thank you.

Honourable members interjecting.

The PRESIDENT (12:34) — Thank you. Mr Dalidakis, 15 minutes; Mr Finn, 15 minutes.

Mr Finn withdrew from chamber.

Mr Dalidakis interjected.

The PRESIDENT — Mr Dalidakis, return to your seat, please, because they are seeking a withdrawal.

Mr Dalidakis — So withdrawn.

The PRESIDENT — Thank you.

Mr Dalidakis interjected.

The PRESIDENT — Mr Dalidakis, return, please.

Mr Dalidakis — I have not reflected on individuals.

The PRESIDENT — Mr Dalidakis, it might not have been individuals, but it was totally unparliamentary. In the context of you having been excused from the house for 15 minutes, to then take that action is a reflection on the Chair — a very serious reflection on the Chair — and I think in that 15 minutes, which is now extended to half an hour, you will have time to consider the reflection on the Chair. Mr Dalidakis, can I please have a withdrawal of the remark made on the way out.

Mr Dalidakis — I will withdraw.

The PRESIDENT — Thank you, Mr Dalidakis.

Mr Dalidakis withdrew from chamber.

Ms Mikakos — On a point of order, President —

The PRESIDENT — I have got Mr Jennings in the middle of an answer.

Ms Mikakos — I understand that, but I do think it is important that Ms Wooldridge does withdraw her remark in relation to me, given that this matter has been dealt with. I do take exception to it because the matter has not —

The PRESIDENT — Ms Mikakos, on this occasion I will not seek a withdrawal. I do understand your concern about it, and the matter has been discharged — you are absolutely right — but that does not prevent a member from referring to it in other circumstances. Indeed some other members have continued it beyond, when we resolved that matter on the day, in social media. We cannot have it both ways. I regret that on this occasion it was not a specific thing that I would seek a withdrawal on, but I do again suggest that members need to be very careful about the accusations and allegations that they make.

Now that I am on my feet, in terms of this can I just indicate that it is a pretty rough form of justice to be reflecting on the behaviour of the Minister for Sport when I do not know without investigation whether he was the instigator of that matter. On that sort of measurement it means that somebody could come in and attack any one of us and the victim could become the one who is pilloried. We need to have proper process. The Speaker and I have put in place proper process. I think it is best left at that.

Mr JENNINGS — When I stood to my feet I was going to say that I am certain that my colleagues at that time, Minister Mikakos and Minister Dalidakis, would ask Ms Wooldridge to withdraw. In fact I believe —

Ms Wooldridge — They were both facts.

Mr JENNINGS — Rubbish. It is not fact. You know it is not fact. Read the *Hansard* — unless you change it. You alleged that my colleague made racist comments. She did not. She called out racism. That is not a racist comment. That is what you did, and you should withdraw. Minister Dalidakis should have got you to withdraw. If you did not withdraw, you should have been kicked out as punishment for slandering others.

Ms Wooldridge — On a point of order, President, the minister has actually misrepresented my question. I am not going to seek a withdrawal, because we will just go backwards and forwards all day, but he has misrepresented the words in my questions. He needs to listen to the language more carefully. I ask you instead to ask him —

Mr JENNINGS — I listened to the language and the intent and the effect. I am aware of all of it.

Ms Wooldridge — No, it was very clear. President, I ask you to ask the minister to actually come back to answering the question rather than accusing me of saying something that in fact I did not.

Mr O'Donohue — On a separate point of order, President, I put it to you that the Leader of the Government has reflected on the Chair by saying that the question should have been withdrawn when that was the subject of a ruling immediately before the answer was provided. So the minister has directly reflected on your ruling following the point of order from Minister Mikakos.

The PRESIDENT — Frankly I am not concerned about that on this occasion. There may be some semblance of truth in that in respect of the way Mr Jennings spoke, but these were serious matters that were raised, and whether or not some of those matters have been substantiated is an issue. Mr Jennings might well take issue with that. I am not concerned about any reflection on the Chair in his remarks. Ms Wooldridge's point was not a point of order but a suggestion.

Waste management

Ms SPRINGLE (South Eastern Metropolitan) (12:40) — My question is for the minister representing the Minister for Energy, Environment and Climate Change. The Metropolitan Waste and Resource Recovery Group presentation on waste to energy that was made to the industry during November 2017 included projections of a 63 per cent population increase between 2015 and 2042. By extension there will also be a 63 per cent increase in the production of waste. I remind this chamber of the waste hierarchy enshrined in Victorian law and in international best practice, and with the full support of a range of government and environmental agencies, which establishes the vital importance of reduction and re-use as the highest priorities in waste management and reduction. There is an enormous pool of funding accrued via the landfill levy. Why isn't the government fully utilising this funding to meet zero waste targets?

Mr JENNINGS (Special Minister of State) (12:41) — Ms Springle, we have actually discussed this on a number of occasions, and in fact I answered a substantive question from Mr Purcell the other day about the decisions our government has made to take action to try to increase resource recovery and to make allocations in the Sustainability Fund — a fund that, as Ms Dunn may actually remind the Parliament, was pretty much kickstarted in the days that I was Minister for Environment and Climate Change. I actually know the value of this policy. I actually know the value of creating the wherewithal to support industry development.

Unfortunately there are a variety of reasons why that investment may not have flowed in the way we aspired

for it to do in the beginning on the basis of a variety of outcomes. In terms of the international commodity market and international trade, it has been one of those areas where in recent times we have had some adverse effects of the Chinese decisions in relation to imports. The nature of industry support I actually outlined in my answer to Mr Purcell the other day. My colleague the minister for the environment is making a determined effort through budget allocations of over $400 million in the forward estimates — $34 million in this budget, as I remember it — to enable that industry support and that industry development and is establishing a committee to be able to work through these issues.

Beyond the way in which I have described those issues to you, if any augmentation of my answer would come from the minister herself, you and I will be pleased and the community may feel as if we are supported in our endeavours to actually get better results.

Supplementary question

Ms SPRINGLE (South Eastern Metropolitan) (12:43) — I thank the minister for his answer. Does the government agree with the projections that population will increase by 63 per cent in that time frame along with the production of waste?

Mr JENNINGS (Special Minister of State) (12:43) — Just remind me of the time frame.

Ms Springle — From 2015 to 2042. It is about three decades.

Mr JENNINGS — I am unable to confirm at this moment whether I believe that number is true or not. I am going to take some advice on that question.

Fishermans Bend

Dr RATNAM (Northern Metropolitan) (12:44) — My question is to the minister representing the Minister for Planning. I refer to reports today relating to the minister's decision to apply stronger height controls on a number of developments in Fishermans Bend. While we welcome these stronger controls and the minster's intervention to address the rampant speculative development and poor development outcomes facilitated by the former planning minister, we wonder why the minister did not act earlier to save the confusion and costs over the last three years.

My question is: can the minister provide details, including funding details, of the how the Fishermans Bend vision and framework will be implemented to guarantee 80 per cent of transport movement will be by public transport and active transport, including a full tram network; open space for all residents within 200 metres of their homes; and well-integrated and accessible community infrastructure?

The PRESIDENT — Normally I would refer that matter to Mr Dalidakis. He has been excused from the house for half an hour. I would seek that the Leader of the Government provide a response. Of course it does involve a minister in another place at any rate.

Mr JENNINGS (Special Minister of State) (12:45) — I thank Dr Ratnam for her question. The government had actually hoped today that there would be a lot of scrutiny across the Parliament in relation to planning matters in Fishermans Bend. Probably there have been some distractions and the public may not have brought to bear the scrutiny about those important issues that they may otherwise have had.

From the government's perspective many, many errors were made and inappropriate decisions were made in relation to the lack of planning controls and the lack of rigour around the approval processes for rampant development at Fishermans Bend, which the government is taking some actions to remedy. Part of that problem is not only the nature of those developments, it is the lack of infrastructure that was associated with it, the public amenity actually put into the precinct plan and the way in which all of the services and transport needs of that community may be addressed in future.

The government is taking action — very provocative action actually, and unusual action — to try to remedy that situation. We understand that. We have already made significant investments in relation to planning and bringing the community and various stakeholders together to actually talk about the way in which the precinct should be developed into the future.

We know it is incumbent upon us to roll out infrastructure programs. Regarding the details, I will wait for my colleagues to augment my answer. You are intent on an important public policy outcome for our community. The government is taking action to remedy it. We agree with the intent of your question — that we have to make sure that there is appropriate investment in infrastructure development to provide for sustainable development within that important precinct.

Supplementary question

Dr RATNAM (Northern Metropolitan) (12:47) — I thank the minister for his answer. My further question is: can I ask the minister, in light of the affordable housing crisis in Victoria and the intervention announced today, will this intervention in Fishermans

Bend lead to 30 per cent of new homes in the development being set aside for affordable housing, as hoped for?

Mr JENNINGS (Special Minister of State) (12:47) — I thank Dr Ratnam. In terms of the way in which we seek as a government to try and embed social housing outcomes in our community, you will actually know that this is an area where probably there is a bit of a contested space in the Parliament about the best way for that to occur. I will encourage my colleagues, both the Minister for Planning and the Minister for Housing, Disability and Ageing, to work collaboratively with the relevant stakeholders, either through planning controls in terms of the acquisition and the investment in public housing or through the way in which we can partner with the private sector in relation to these matters. There are a whole mix of policy outcomes that should be designed to make sure that we increase the stock of social housing in our state. Let us agree on the objective. We have got a lot of work to do to reconcile our view about how that might be achieved, but I know that my colleagues are working assiduously on those matters.

Duck hunting season

Mr YOUNG (Northern Victoria) (12:48) — My question today is for the Minister for Agriculture. Minister, on 7 February this year you tabled an exemption certificate in relation to the requirement to produce a regulatory impact statement (RIS) for regulation changes under the Wildlife (Game) Regulations 2012, these regulations being on the retrieval and retention of game birds. The changes affecting retrieval practices of game birds are unworkable, are impracticable and appear to have been written without knowledge of hunting practices. Many hunters have stated that it will destroy the traditional practices of duck hunting. Minister, why was it determined that a regulatory impact statement was not required to accompany these regulation changes?

Ms PULFORD (Minister for Agriculture) (12:49) — I thank Mr Young for his question. I reject the assertions that he makes about the impact of the new regulations. I would also confirm for Mr Young, who seems to be labouring under the misapprehension that the government is in the business of still developing the regulations, that that is not the case. The regulations have been set for 2018. The government has no plans to make further changes, contrary to a statement Mr Young put out yesterday. There is a trigger for the preparation of a regulatory impact statement that typically relates to a financial imposition on organisations that would be impacted, and these regulations were well below the trigger for an RIS.

Supplementary question

Mr YOUNG (Northern Victoria) (12:50) — I thank the minister for her answer. Minister, the reason for exemption under the Subordinate Regulation Act 1994, section 8(1)(a), is that the proposed statutory rule would not impose a significant economic or social burden on a sector of the public. Minister, given the fact that this regulation will severely impact a longstanding generational tradition of significant cultural importance, how can the government justify that this has no social burden?

Ms PULFORD (Minister for Agriculture) (12:50) — Because over a 12-week season it is 3 hours.

QUESTIONS ON NOTICE

Answers

Mr JENNINGS (Special Minister of State) (12:50) — There are 18 written responses to questions on notice: 11 782–3, 12 386, 12 397, 12 400, 12 407, 12 414–19, 12 512–17.

QUESTIONS WITHOUT NOTICE

Written responses

The PRESIDENT (12:50) — Can I indicate that on today's questions I require written responses to Ms Bath's question to Ms Tierney, both the substantive and supplementary questions, within one day; Mr Davis's substantive question to Mr Dalidakis is one day; and Ms Springle's question to Mr Jennings, the supplementary question, is two days.

Ms Wooldridge — On a point of order, President, in terms of responses to questions, I received a written response today to a question without notice to Ms Tierney that I asked yesterday. The questions were very specific about whether the Australian government's jobs outlook was used; you can see the details of the question. I would put to you that these questions have not been answered, and I would like you to consider the reinstatement of that written response.

The PRESIDENT — I will consider that. I will not make an immediate decision; I do not have it in front of me.

CONSTITUENCY QUESTIONS

Northern Victoria Region

Mr O'SULLIVAN (Northern Victoria) (12:52) — My constituency question is to the Minister for Agriculture. Minister, late in December 2017 the Cheshunt and Whitfield communities south of Wangaratta were devastated by a storm that was of hurricane proportions. Trees were uprooted, houses lost roofs, sheds were simply destroyed and kilometres of fencing was ruined. During flood events damage from Mother Nature takes a toll on family businesses. I seek clarification as to whether the minister is prepared to offer funding to replace both current and retrospective fencing, as is the case during flood events. I note the government's willingness to compensate Melbourne residents for up to $180 for power outages. I seek your clarification as to whether fencing grants will be offered.

Eastern Metropolitan Region

Mr LEANE (Eastern Metropolitan) (12:52) — My question is directed to Martin Foley in his role as Minister for Housing, Disability and Ageing. I understand that each year Victorian Disability Awards are awarded to fantastic individuals and groups that work in advocating for people with disability. There are a number of individuals and groups in Eastern Metropolitan Region that I would like to see nominated for these awards, so my question is: when will nominations open for the Victorian Disability Awards?

Western Victoria Region

Mr PURCELL (Western Victoria) (12:53) — My constituency question is for the Minister for Sport. Recently AFL Western District announced they would be capping numbers in junior football in the Hampden league and the Warrnambool district league. The numbers are to be capped at 26 per team with 16 on the field at any one time, and this has been done without any consultation. It may be a solution to the problem in metropolitan Melbourne, but it is certainly not the answer in country Victoria. These changes remove any flexibility for clubs that have developed a family culture, and what it will probably mean is that many children will just give up playing sport. The 11 Hampden league clubs have rejected it, and the move appears to be very short-sighted. Therefore my question is: will the minister intervene in the situation and allow all children to be involved in their local sporting club by removing this inappropriate cap?

Southern Metropolitan Region

Ms FITZHERBERT (Southern Metropolitan) (12:54) — My question is to the Minister for Education in the other place. I have been approached by parents from Port Melbourne Primary School who are very worried about asbestos in one of the local classrooms. I have previously raised this matter. There have been two audits at Port Melbourne Primary School of asbestos, the second at the parents' insistence. They were assured after that that all had been removed. However, some grade 1 classes have signs up indicating that there is asbestos. I understand it is in the window linings. This is a portable building. The school is due to lose a portable, but the plan is not to lose the one with asbestos but another newer one that does not have asbestos. This building is near the sporting fields, and parents are worried that a ball might break some glass and create some dangerous conditions for the children. I ask the minister to ensure that the asbestos goes as soon as possible, either by its removal or by removing the building.

Eastern Metropolitan Region

Ms DUNN (Eastern Metropolitan) (12:55) — My constituency question is for the Minister for Planning. It is in relation to planning scheme amendment C149 submitted by the City of Knox, and that planning scheme amendment was submitted late last year. My question is: when will the minister be signing off on that planning scheme amendment, because it contains some very, very important planning instruments regarding the Knox central structure planning area?

Eastern Victoria Region

Ms BATH (Eastern Victoria) (12:56) — My question is to the Minister for Energy, Environment and Climate Change, the Honourable Lily D'Ambrosio. The government last year claimed it had modelling to show that power prices would rise by just 4 per cent, or 85 cents per week, following the closure of Hazelwood. Since the start of 2018 Darren McInnes of Thornton's Bakery in Leongatha has seen his electricity bill rise by $800 per month, a 57 per cent increase. Mr McInnes employs nine staff, and just to meet the increase in the power bill Thornton's Bakery would have to make and sell an extra 400 pies each and every month or cut back on costs like staff wages. Other than telling them to shop around, what is the government doing to ensure that soaring energy costs do not force many businesses like Thornton's to sack staff or go out of business?

Eastern Victoria Region

Mr MULINO (Eastern Victoria) (12:57) — My constituency question is to the Minister for Education in the other place. It relates to Pakenham north-east primary school. There have been a couple of primary schools opened in the area over the past couple of years — Bridgewood Primary School and John Henry Primary School. I am just asking, in relation to Pakenham north-east primary school, if the minister could provide a detailed set of milestones for the construction and the administrative processes that need to be completed before the school can be opened and an indication as to whether the government is on track for the opening of that school.

Northern Victoria Region

Ms LOVELL (Northern Victoria) (12:57) — My question is for the Minister for Roads and Road Safety. In March 2017 I asked the minister whether he would reduce the speed limit of the Murray Valley Highway through the Strathmerton township from 80 kilometres per hour to 60 kilometres per hour to improve safety for the Strathmerton community. The minister's response stated VicRoads was investigating options and monitoring the section of road in question. Recently a Strathmerton resident informed me she believes VicRoads has not undertaken any monitoring and the speed limit remains at 80 kilometres per hour. She stated that the area is actually more dangerous now because schoolchildren are arriving at the school situated on the highway at least 10 minutes prior to the morning 40-kilometre-per-hour speed zone being implemented. This situation, together with cars and pedestrians attempting to cross the highway in the absence of any traffic lights or crossings, means that the chances of a serious collision occurring are extremely high.

Will the minister listen to the pleas of the residents and immediately reduce the speed limit of the Murray Valley Highway within the Strathmerton township to 60 kilometres per hour during general non-school times and improve safety for the community?

Southern Metropolitan Region

Ms PENNICUIK (Southern Metropolitan) (12:58) — My constituency question is for the Minister for Roads and Road Safety. It concerns a new light sequence at the left turn from Alexandra Avenue into Swan Street at the pedestrian crossing, heading west. My constituent travels along Linlithgow Avenue, turns right into Alexandra Avenue and heads straight towards Punt Road a few times a week, and she stated to me that the number of people that are running the new left red arrow into Swan Street is absolutely insane. My constituent agrees it should be there but is concerned that nobody notices it. My constituent went on to say that she has also been a pedestrian at that crossing and has experienced it from a pedestrian point of view and that people are not noticing the red light and are putting pedestrians at risk. She thinks people do not do that deliberately. The question is: will the minister have a look at this crossing and make sure that it is reassessed for safety?

Eastern Victoria Region

Mr O'DONOHUE (Eastern Victoria) (12:59) — I also raise a constituency question for the Minister for Roads and Road Safety, and the question I pose is: will he commit to undertaking a review of the speed limit on Wellington Road from just after Berwick Road in Narre Warren East, past Cardinia Reservoir to Clematis? I have been contacted by a constituent who lives off that section of road who advises that the road is very dangerous. She often turns left into her driveway as people tailgate her, abuse her, toot and flash their lights. The other sections of Wellington Road are all 80-kilometre-per-hour zones. Given the traffic volumes, the proximity of wildlife and the danger posed, the constituent is seeking that the speed limit be reduced to 80 kilometres per hour. So the question I would ask is: will the minister undertake an investigation about the appropriate speed limit along that section of Wellington Road?

Sitting suspended 1.01 p.m. until 2.04 p.m.

BAIL AMENDMENT (STAGE TWO) BILL 2017

Second reading

Debate resumed.

Mr MORRIS (Western Victoria) (14:04) — I rise to make my contribution to the Bail Amendment (Stage Two) Bill 2017. It is a pity that we are debating this bill now and not some time in the immediate past. The bail system in the state of Victoria is in disarray. There is an urgent need for significant reform, and it is exceedingly disappointing — beyond disappointing; it is entirely unacceptable — that this government have been dragging their feet with regard to this very important reform.

What this bill seeks to do is, following the incredibly important Coghlan review, further amend the Bail Act 1977 to implement the remaining recommendations of

the Coghlan report. The Coghlan report was obviously a comprehensive review that made significant recommendations with regard to changes that should occur in our bail system. I think the changes required in the bail system are symbolic of or represent some of the broader, more significant challenges that Victorians are facing as a result of the crime tsunami that the community is experiencing at this point.

Ms Dunn interjected.

Mr MORRIS — I am bringing it back, Ms Dunn: the crime tsunami. It is not just a wave; it is a tsunami. That is what the community are experiencing at the moment.

Just overnight there were five police officers injured in an incident in Ballarat East. Two of these officers had to be hospitalised as a result of this incident. This event comes directly after the revelation that the Andrews government have cut the number of police officers in Ballarat. We have seen only a cut since they were elected: 9.95 full-time equivalents, so 10 police officers, on the front line have been cut in Ballarat by the Andrews government. That is despite the skyrocketing crime rates, the home invasions, the carjackings and the police car rammings that have been occurring in Ballarat. For the Andrews government to slash the number of frontline police protecting our community is nothing short of a disgrace. I am certainly calling on the Andrews government and the Ballarat community is calling on the Andrews government to restore the number of police officers on the beat protecting our community to ensure that if there are crooks out there who want to commit these crimes, they are caught and dealt with appropriately by the justice system.

The Bail Amendment (Stage Two) Bill 2017 in clause 5 requires bail decision-makers to consider surrounding circumstances, including offence seriousness, criminal history and whether the accused was on bail or parole. This is something that there is much discussion about in the community because time and time again I hear from my constituents that they feel there are offenders who are either given bail or released on parole when in their view it is inappropriate. This is something that we need to address, because if our community is losing faith in our justice system, then our society as a whole is poorer for it.

What we need to do is to ensure that our bail system does reflect community expectation, because at the end of the day — I can only speak for those on this side of the house — we believe that the victim should be at the centre of the justice system rather than the criminal. I know that there has been commentary from the victim of crimes commissioner saying that it appears that everybody in the criminal justice system gets representation except for the victim. The perpetrators get representation, the magistrates and lawyers are well prepared and the like. However, it is the victims whose voices are not heard. At the end of the day they are the ones who have suffered through at times heinous actions by criminals. They should be respected by our justice system rather than ignored. That is unfortunately where we are at the moment. In Daniel Andrews's Victoria victims of crime are ignored and criminals are treated with love and care, as Ms Tierney has told us. We need to refocus where we are. Indeed the reforms to our bail system are well overdue.

Clause 4 of the bill defines a 'vulnerable adult' as a person aged 18 years or more who has a cognitive, physical or mental health impairment that causes them to have difficulty understanding their rights or making and communicating a decision. Clause 7 replaces the existing tests for bail with the new 'unacceptable risk', 'show compelling reason' and 'exceptional circumstances' tests. These require an accused to show a compelling reason in schedule 2 offences or exceptional circumstances in schedule 1 offences before the unacceptable risk test applies.

Clause 14 allows police to remand a person in custody for up to 48 hours until a court is available, except for children, Aboriginal persons and vulnerable adults. This is incredibly important, because I often hear from police about our hardworking men and women of Victoria Police who do an exceptional job keeping our community safe. The job they do is not an easy one, particularly in Daniel Andrews's crime-ridden Victoria. I want to put on the record my thanks for all the hard work that our police men and women do. But the revolving door of criminals who are just cycling through our bail system is entirely unacceptable. Police are catching crooks and putting them before the courts and these crooks are being released on bail only for this cycle to be repeated time and time again, and this is entirely unacceptable.

I have heard members of the government say, 'Have a look at this. Have a look at the number of arrests that are being made. This is an indication of how tough on crime we are'. What they fail to expand upon is that these are the same people being arrested time and time again and then being released into the community to commit further crimes, be arrested again, be put before the courts, be bailed again, and so the cycle continues. This is unacceptable. This is an entirely unacceptable circumstance that we find ourselves in. Recently in Ballarat there were a number of young offenders who

were certainly well-known to police and who had been through this cyclic system and they were put before a court and remanded. I was speaking to a police officer about this and he said, 'We were averaging about two aggravated burglaries a day in Ballarat'. That dropped to about two a week as a result of half a dozen young offenders being remanded rather than bailed.

We need to make sure we get the balance right between the rights of the victims and the appropriate treatment of accused people, but I can tell you that we on this side of the house certainly believe that that balance has gone far too far to the side of the accused offender and far too far away from the rights of the victim. In a justice system if the victim is continually revictimised by that system itself, we have got something seriously wrong. And unfortunately that is what we are seeing in our state at the moment.

Clause 18 allows courts to grant or refuse bail for accused persons appearing on summons on application by the prosecution or on their own motion. Clause 20 provides that only a court may grant bail to a person accused of a schedule 2 offence other than a lower level schedule 2 offence who is already on two or more bail undertakings. This does not apply to children, Aboriginal persons or vulnerable adults. Clause 29 creates a presumption of cumulation in relation to any period of detention imposed for escape from or property damage in a youth justice facility.

I note that this bill is unfortunately significantly weaker than what we on this other house would propose. The importance of having a presumption against bail when the police make that recommendation is an incredibly important one, because it is, as I said, the revolving door of our courts and the justice system that makes the job of our hardworking police much tougher. If someone is accused of an offence and the police say they are an unacceptable risk to the community, that person should not be given bail. We should be showing through legislation, through acts of Parliament, that we have faith in Victoria Police to keep our community safe and to make the right recommendations, because at the end of the day they are the ones on the front line. They are the ones that are seeing and understanding the impacts these criminals are having on their victims, and therefore they are the ones that courts should be listening to with regard to who it is that should be bailed and who it is that should not, because the current system is entirely unacceptable.

I note that Mr Rich-Phillips has some proposed amendments to the bill. They are very well considered and appropriate amendments. The community are calling upon us to ensure that they are kept safe. By bringing forward the date on which this bill is enacted, it would certainly help to bring some comfort to the community so that they know that the changes, which in my view perhaps do not go far enough — but there are some changes — are enacted in a time frame that would help to achieve the outcome that the people who should not be getting bail presently will not be getting bail into the future. If we can bring that date forward, then I certainly believe that is something that will help reinstate some, not all, confidence in the community.

I think that the confidence that the community has in our justice system can only be restored on or around 24 November this year when there is the opportunity for the Victorian people to have their say on who is going to lead our great state into the future. I am of the strong view and I think the majority of Victorians are of the strong view that that person needs to be Matthew Guy. We have obviously proposed a significant agenda of reform with regard to bail and other areas of law and order. We do need to make sure that we make Victoria safe again, because at this point the community do not have faith in what is happening. They do not have faith in the provisions of bail in our state. There are people who should not be bailed who are being released on an all too regular basis. I do hope that the house will support Mr Rich-Phillips's amendments because they would go some way to restoring some of that faith.

I do note that the government truly have been dragging their feet with regard to enacting the important work that was done in the Coghlan review. This is something that we in the Liberal and National parties have certainly been calling out, saying that it is entirely unacceptable. The government should be doing this as a priority, but they have chosen to prioritise other things like euthanasia and the types of things that we have had debates conducted on in this place in preference to these important changes to our justice system. Despite the fact that the euthanasia legislation is not going to be enacted for a significant time period into the future — it was not time sensitive — it was rammed through this Parliament late last year, unfortunately.

I am coming to the remaining seconds of my contribution. I do look forward to hearing further contributions from other members. I certainly do implore and encourage members of the house to support Mr Rich-Phillips's amendments once we get to the committee stage of the bill.

Mr ONDARCHIE (Northern Metropolitan) (14:19) — The Bail Amendment (Stage Two) Bill 2017 is the legislation before us that I rise to speak on today. Victorians will be incredulous that here we are some 14 months after the Bourke Street tragedy and we are

just seeing this bill now, with an effective date of 1 July 2018. Surely this government is either foolish or thinks the Victorian public are foolish for falling for this trick. They said they needed to get on with things; they said they would react quickly. Now, 14 months later, with an effective date of 1 July this year, this bill will amend the Bail Act 1977, following the Coghlan review.

Mr Morris has gone at length through the clauses of the bill and taken us to the changes, and he has done that very well. He has reflected on his own electorate, particularly around the Ballarat area, and has spoken about how crime is out of control. For the efficiency of the house I have elected not to go through each clause of the bill, because Mr Morris has done that. But I do say that there are some things that surprise me here. It surprises me that there have been two tranches of legislation to try to correct the Bail Act. We can think back to the horrendous day of 20 January 2017, when the Bourke Street Mall tragedy occurred. It remains fresh in our minds and the name 'Gargasoulas' has almost become a swear word in this country because of how horrific that day was.

What it does show is that this government is not about getting on with things. Mr Rich-Phillips has circulated some amendments that would bring forward the start date to 30 March this year. It seems like it is the Matthew Guy Liberal-Nationals coalition that are actually trying to get on with the job here. The government are dithering. Everything they turn to has turned bad and they are not getting on with the job. Mr Rich-Phillips and our other speakers have gone through the elements of the bill, but you have to ask: what has the government been doing for 14 months? What is going on?

We know that crime is on the rise. We know that people are unsafe and feel unsafe out in their communities. There are crimes against the person, there are carjackings, there are home invasions and there are brawls. We saw a brawl here last night, so that is how close it is to us here. That is a brawl that is happening in the Labor Party.

Mr Ramsay interjected.

Mr ONDARCHIE — If they cannot control their own people, how are they going to try and control the criminal element in Victoria? I will pick up Mr Ramsay's interjection. He talked about the duel of the butterknives. I am not quite sure what weaponry was used in the shenanigans that occurred in the Labor Party here last night, but if they cannot control themselves, how can they control Victoria?

As I talk to coppers on the beat, they are more and more frustrated about two things. One is government intervention in the operations of Victoria Police, and the second is the lack of resources, both physical and personnel. They will get up on their side and say, 'We're putting 3000 more police on', but we know that when those police finally come online they will not have even caught up to the numbers of 2014. They have been asleep at the wheel.

What is happening out in the suburbs is that often when crimes are committed the police want to hop into the van and head out, but often they do not have enough people to head out in the van. What is interesting is that the police know that they have not got enough resources, but what the police tell me, when I catch up with them regularly, is that the crooks know that they have not got enough resources as well. So crime is occurring across our state because the crooks have a good handle on the under-resourcing of Victoria Police by this government.

I fail to understand a government that do all this talking. I have to note that when there is a crisis in Victoria the first person that goes missing is not a crook; it is the Premier. Even last night in the Parliament we had some shenanigans between members of the Labor Party.

Mr O'Sullivan interjected.

Mr ONDARCHIE — There is going to be an inquiry. They might go as far as the High Court to stop an inquiry, as they have form on this. What happens? There is a crisis in the government, and the first thing Daniel Andrews does is get on a plane. He is heading off, I understand, this afternoon to the United States. He has done a runner, he has legged it, to avoid the issues that are happening in this state.

Mr Rich-Phillips — Is Dalidakis going with him?

Mr ONDARCHIE — I will pick up Mr Rich-Phillips's interjection about whether the Minister for Small Business and trade, innovation and downright rudeness in this Parliament is going with him. I do not know if that is the case. I know he did not go with the Premier on the trade mission to India. I do not know if he is going on this mission to the United States, but I suspect, as is the will of the Premier, he is taking the member for Footscray, Marsha Thomson, with him. Apparently she has an office at 121 Exhibition Street, she has a car park and she has everything that goes with it. When the Premier needs to go and do some, as he calls it, important work internationally, he takes Marsha Thomson with him and not the minister himself.

Mr Ramsay interjected.

Mr ONDARCHIE — I have to say — a good interjection, Mr Ramsay — that if you were in Mr Andrews's position you probably would not take Mr Dalidakis with you, because you could not feed him.

The issue is that the government have talked and talked and talked about doing things to save Victorians and make them feel safe, but they have done very little action. As I hear colleagues say about things in this place, the standards that you walk past are the standards you accept. It appears, though, that Mr Andrews in his dodging and weaving today, before he jumps on a plane and runs away again, has avoided the conflict that occurred in this very building last night. If he accepts that standard, that is the standard Victorians are going to come to expect, as they have already, from the Victorian Labor Party and this government.

But they have a choice in November this year to make Victoria safe again, to make Victoria prosperous again and to take control back for our ordinary citizens so they can feel safe on our streets, so our women and our elderly people can feel safe to go out at night in a safer Victoria, and they do not feel that right now. I commend Mr Rich-Phillips on his amendment to bring forward the date, because this state opposition, unlike the government, want to get on with things. A Matthew Guy-led government commencing on 25 November 2018 will make Victoria safe again.

Mr RAMSAY (Western Victoria) (14:26) — I rise to speak on the Bail Amendment (Stage Two) Bill 2017. I too want to make some observations of some of the crime-related issues in my electorate of Western Victoria Region. In doing so I want to reflect on the disappointment that we on this side of the house have had over the three and a half years of lack of will by the Andrews government to strengthen our justice system and particularly our bail laws.

In fact the *Geelong Advertiser* only yesterday reported on its front page that a group of youths and one in particular attacked a young man in the streets of Geelong, knocking him out cold and unconscious. He was arrested, he appeared before the court and he got a fine. He got a $2000 fine for seriously injuring a young man, who was left prone and unconscious on the pavement in the streets of Geelong — a punishment which is quite unusual, I might say. The judiciary and the justice system, I felt — as I am sure the parents of that young boy that was lying prone and unconscious would have felt — did not serve him well at all. With a smack on the wrist and a $2000 fine, I suspect they think there is no justice at all. That is one small example of how in the judiciary system, in relation to punishment that is being applied through the bail system as well as through jail sentences, is not being seen as a deterrent.

In fact the number of repeat offenders has increased considerably. It has been said in this place that we have this Bail Act 1977 that has been jigged around with for years. It is a 40-year-old piece of legislation that has been tinkered with by this government. Finally they are addressing some of the really significant problems in relation to bail and the way that bail is distributed to offenders through the judiciary system, but this is not nearly hard enough or punishing enough compared to what the coalition policies are in relation to bail reform.

The provisions in the bill, importantly, require bail decision-makers to consider surrounding circumstances, which include offence seriousness, criminal history and whether the accused was on bail or parole, which is in clause 5. Clause 4 defines a vulnerable adult as a person aged 18 years or more who has a cognitive, physical or mental health impairment that causes them to have difficulty understanding their rights or making and communicating a decision. Clause 7 replaces the existing tests for bail with a new unacceptable risk test, a show compelling reasons test and a show exceptional circumstance test. These require an accused to show compelling reasons, as part of schedule 2 offences, or exceptional circumstances, as part of schedule 1 offences, before the unacceptable risk test applies.

Clause 14 allows police to remand a person in custody for up to 48 hours until a court is available, except for children, Aboriginal persons and vulnerable adults. Clause 18 allows courts to grant or refuse bail for accused persons appearing on summons on application by the prosecution or on their own motion. Clause 20 provides that only a court may grant bail to a person accused of a schedule 2 offence who is already on two or more bail undertakings. This does not apply to children, Aboriginal persons or vulnerable adults. Clause 29 creates a presumption of culmination in relation to any period of detention imposed for escape from or damage to a youth justice facility.

I must congratulate our shadow Attorney-General, John Pesutto in the Assembly, who has taken the lead in seeking bail reform. We have been out there over the last year announcing many justice-related policies, particularly in respect of bail reform. Our opposition leader in the Assembly, Matthew Guy, has on many occasions said that under a coalition if you do the crime you will do the time. That is what the community

expects, and that is what the coalition will deliver once it wins the next state election this November.

Disappointingly the bill is weaker than our proposed bail changes, although we do admit it is likely to make some small incremental improvements to the current legislation. As I said, this is very old and ageing legislation that has been tinkered with over time. The bill does create exceptions for children, Aboriginal persons and vulnerable adults while making the role of bail justices more specialised so they can focus on complex cases involving these cohorts, which in effect may become contentious.

Although the proposed reforms are weaker than the coalition's proposals, they are generally an improvement over what we have now. Certainly I think what happened in Bourke Street last year indicated very clearly that there needed to be significant change in bail. Disappointingly the government has only come halfway to the party in this piece of legislation. We should not forget that this bill has taken 13 months after the Bourke Street tragedy to come to this chamber for the upper house debate, which is far too long, particularly for those families who were impacted by that horror period. I am sure they were seeking a much quicker response from the Andrews government in tightening up the bail justice reforms. I am sure that finally, hopefully with support for the amendments that Mr Gordon Rich-Phillips has foreshadowed, we will see at least greater protection from those who may want to engage in activities like we saw in Bourke Street.

Can I just say, coming from Western Victoria Region and from the Bellarine area, that it is very disappointing that we have a Minister for Police as the local member for Bellarine in the Assembly presiding over an electorate that has seen a 22 per cent increase in crime over the three and half years of the Andrews government regime. You would think that for a Minister for Police the staffing and police resources in her own electorate would be appropriate to provide community safety and the appropriate law and order, but sadly are not. We know Geelong police say they need more frontline officers, and of course, as we know, they are slowly being drilled out through the academy into those more high-risk areas. Certainly Geelong has been understaffed and under-resourced for many, many years. You would like to think that having a minister who is a local member in the electorate she would address that issue, but sadly that is not the case.

We also see the member for Geelong in the Assembly, Christine Couzens, has a very high crime rate in her electorate, particularly in Geelong West where the traders have spoken to and contacted me saying they are extremely concerned about the number of robberies and break-ins that many of those shops have had, particularly over the last year. The priority for those traders was for the government to invest in some CCTV that would be highly visible to allow police to track down those who had perpetrated the crimes.

Christine Couzens's response was that they will provide an educational pamphlet that will provide advice to shopkeepers about how they can lock their shops and how they might need to provide a bit more lighting within their shops to make it look as if someone is actually there. They will get advice about the different security services that might be available in the Geelong region. I could go on, but I will not. Obviously 'Hide the cash register' et cetera. This is very, very useful advice I am sure from Christine Couzens to these traders, and I am sure the traders were very appreciative of the advice that she gave to them, but unfortunately she did not commit to anything they wanted. What they actually wanted was CCTV. What they wanted was better placement of street lighting. What they wanted was more police patrols in the area. But unfortunately the member for Geelong could not help, did not want to help and even more disturbingly seemed to be ignorant of the fact that, one, there was a problem in her own backyard, and two, she was not engaging or consulting with particularly the Geelong West traders in respect to their concerns and their needs.

I suspect that is across the board. In fact in Drysdale in the seat of Bellarine, which I have mentioned is the Minister for Police's electorate, they also wanted CCTV and again the government denied their application through the City of Greater Geelong for CCTV in High Street. This was after numerous shop rammings, break-ins and thefts, not to mention all the home invasions and carjackings and everything else that seem to be happening on an ongoing basis around the Geelong region and the Geelong Ring Road.

I appreciate that now when you drive on the highways, particularly in Western Victoria Region, you have to be acutely aware of the wire rope barriers because they are actually impinging on the road corridors so you cannot move the car an inch without potentially running into these wire barriers. But if anyone does dare actually look over the side of the curb, they will see a number of cars just littered along the Geelong Ring Road. That is all thanks to the current government's policy in respect to the carjackings, car thefts and even people jacking. We have had on a number of occasions cars being stolen with the occupants still in them. In fact we had a baby in a car in Norlane when someone at a stoplight jumped in the car, pulled the driver out and sped off,

not realising in fact there was a baby in the back of the car. Thankfully common sense prevailed and the car was found with the baby intact, still quite safe in the car. Nevertheless, it just goes to show how brazen some of these offenders are in respect of the crime that they are engaged in.

We do not oppose this bill. Mr Gordon Rich-Phillips has flagged that we do have amendments to bring the commencement date back so our legislation will be enacted more quickly and provide greater safety for those victims. Hopefully this will also create a greater deterrent for those who are thinking about engaging in criminal activity. But it is all a little bit too late for many, given this piece of legislation was really motivated by the appalling tragedy in Bourke Street. We are now having this debate 13 months later, and it will be another month before the legislation will come into effect if in fact Mr Rich-Phillips's amendment is supported. I sincerely hope that this chamber will support our amendment, because it will give greater safety to communities right across Victoria. As Mr Ondarchie rightly said, let us get on with it, let us put it to a vote and let us make Victoria safe again.

Ms FITZHERBERT (Southern Metropolitan) (14:40) — It has taken a very long time for this bill to reach this Parliament and particularly to reach the upper house. We have seen very recently the one-year anniversary of the dreadful events in Bourke Street which took place around 13 months ago. Of course Bourke Street was not the first occasion that the failings of our current bail system have been drawn into sharp relief. There have been many, many occasions on which we have seen these failings writ large.

Bail is an issue that worries the community. It is something people talk about. It is something that people have a lack of faith in at the moment, and that is obvious when you speak to people in the community, when you read the paper and when you get out and about. There is a lack of faith and belief in the bail system and that the rights of individuals are being protected. Bail has always been a difficult issue. It is about balancing the very serious issue of taking away the liberty of an individual against the risk of their reoffending or absconding or possibly interfering with witnesses. It is not something that should be given lightly. On the other hand we have seen an increase in a range of very serious crimes in our community. Bail is something that comes up time and time again, and its correct application is critical.

I note that clause 5 of the bill requires bail decision-makers to consider surrounding circumstances, including the seriousness of the offence, criminal history and whether the accused was on bail or parole.

The Police Association Victoria, in the wake of the tragic events in Bourke Street last year, undertook a survey of their officers in relation to bail, and they made some very relevant findings that I would like to share with the chamber today. They surveyed 860 officers — again, as I say, this was in response to the government seeking to review bail laws — and what they found was very concerning. Wayne Gatt, who heads up the police association, reported that police are, in his words:

> … deeply frustrated and disillusioned by what they see as a lack of consideration given to evidence presented by them when they are opposing bail.

As a consequence the association made a series of recommendations to, as they put it, 'help swing the balance back in favour of community safety and victims'. A lot of that goes to this issue of the interpretation of what might be considered exceptional circumstances and what is an unacceptable risk, which are tests that are applied when considering the granting of bail. To go back to comments from Mr Gatt, he is reported as saying:

> More than 80 per cent of police say the current tests are far too subjective, leading to decisions that, at times, seem contradictory and inexplicable. The law guiding magistrates on these matters must be far more specific. While it is true that no two set of circumstances are ever the same, and that the facts of each case should be considered, the final decision must always be one that's weighted in favour of community safety.

That is something that we on this side of the house support completely, and again harking back to what I said earlier about perceptions in the community, there is a view that community safety has been running a poor second when issues of bail have been under consideration. Wayne Gatt went on to say:

> Currently, there are some very serious offences that require an accused to show cause as to why they should be released on bail. Despite that supposedly heavy onus, our members see many accused who fall into this category being granted bail. That is causing our members a great deal of frustration, knowing that those walking free will go on to reoffend and put others at risk. It is happening far too regularly.

I think what Mr Gatt says expresses the frustrations of many in the community. He explained:

> We believe crimes that require an accused person to show cause that they should receive bail should be extended to include serious offending such as carjacking, home invasions, driving in a pursuit or evading interception by police.

Several of these of course — carjacking, home invasions — are things that were relatively unheard-of in Victoria only a couple of years ago. Now they are regularly reported in the suburbs, and normal, everyday people are suddenly considering them as something that might happen in their community rather than something they read about happening somewhere far away. It is not just Bourke Street that has led people to focus on the failings of our bail laws. We all know many of the names of people who have suffered horrendously, some of whom have lost their lives, because of bail failings.

I was interested to read recently that the person who was charged over the Bourke Street incident is reported to have been in St Kilda and engaged in activities within the area before he went on to offend in Bourke Street in such a dramatic and appalling fashion. I already knew this because a constituent had raised it with me. She had told me that she was aware that the accused was in and around the Gatwick, which was a mecca for crime in St Kilda, and she was horrified to think that such a dangerous person had been in her neighbourhood, particularly when she realised the crimes that he went on to commit.

We do know that breaches of bail conditions and court orders comprise about 10 per cent of all sentences. The Sentencing Advisory Council issued a report last September that delved into this in some detail, and it found that this kind of secondary offence has more than doubled in recent times. In the five years to 30 June 2016 there were more than 100 000 secondary offences committed and 70 per cent of these were bail related. They included such things as not attending court when required.

I want to pay credit to the work that has been done by the member for Hawthorn in the Assembly in relation to this area. He has been a vociferous advocate for the rights of victims to be heard and for community safety, and he has been very clear in his view that these reforms should go much further — that there should in fact be a full review of the Bail Act 1977 rather than continuing to tinker with it.

In conclusion, I want to say that I strongly support an amendment to bring forward the effects of these changes. I do not believe that they go far enough, but they do represent an improvement, and I think it makes a great deal of sense to see them apply as soon as possible.

Mr FINN (Western Metropolitan) (14:47) — I rise to speak on this bill today, the Bail Amendment (Stage Two) Bill 2017, and I support the bill. As has been said by Ms Fitzherbert, it probably does not go far enough. But it is a start, I suppose.

I have to at the very beginning commend the Leader of the Opposition in the other place, Mr Guy, for the work that he has been doing in bringing pressure to bear on the government on this particular issue. He has been a very, very up-front, loud and vocal supporter of bail changes in this state — the sorts of changes that will actually bring justice to our legal system, and that is long overdue. As I have said, unfortunately far too many times in this place over recent years, we have a legal system in the state but we do not have a justice system. I think that the comments and the policies that Mr Guy has put forward will change that to an extraordinarily large degree. I commend him for the work that he has done. Also, as Ms Fitzherbert said, the member for Hawthorn in the Assembly is doing a brilliant job, I have to say, in promoting the sorts of policy changes that we desperately need in this state.

I do not understand why it has taken the government so long to bring this legislation forward. This has been needed for a very, very long time. We have seen on far too many occasions people on bail committing crimes, and we know that if we had had this legislation sooner we could have actually seen them locked up. They would not have been on the street to commit those crimes, and that is something that clearly does affect the community.

I feel very sorry for our police officers. As members of the house would be aware, I am a very, very strong supporter of Victoria Police, and particularly the men and women on the front line, because they are without doubt outstanding individuals who put themselves on the line, day in and day out, to protect us. That is something that is highly commendable. They need and deserve the support from our governments that they do not always get. I think this legislation, whilst it will satisfy some of that need, does not go all the way.

I have spoken to police on a number of occasions who are heartily sick of working their tail off to lock up offenders, only to see those offenders walk out — quite often, I might say — to commit further crime. We have seen that particularly with the youth gang problem that we have in the western suburbs. A lot of these gang members — young thugs, basically — have been arrested by the police for their particularly violent activity, they have been locked up and they have been released almost immediately. It has not happened once, it has not happened twice, it has not happened three times — it happens quite often, and it has happened to individual thugs on a regular basis. I commend once again Mr Guy for bringing forward policies which have

made it very clear that if anybody is arrested whilst they are on bail they will go to jail — one chance, that is it. That is something that I suggest the government might like to take up between now and when it is thrown out in November of this year.

I feel particularly sorry for the police because they go to very great lengths to protect us, and to have them in so many cases see their good work undone in the courts, I know, is devastating to many of them and very, very frustrating. In particular I cannot understand how anybody who has either assaulted a police officer or has been involved in assaulting a police officer is allowed bail. That should not be on the table. We have had a case again today where a couple of female police officers were assaulted, and one of the individuals involved has walked out on bail. I do not understand that. How can that happen? Why can't the judiciary support our police in the way that they should be supported? I think if the judiciary cannot do that, if the judiciary will not do that, then the Parliament should. It seems absolutely outrageous that it would be any other way. Our police need and deserve the support that in certain instances they are not getting. That is something that, to my way of thinking, just slaps justice in the face, and it must be a kick in the guts to every police officer across the state when they see something like that happening.

It is something that I find intolerable. I do not believe that any reasonable or decent society should be tolerating that sort of behaviour by the judiciary, and I would suggest that we really need to have a situation where, if anybody is brought before the courts for involvement in assaulting police, they go to jail. Whether they are found guilty, or even beforehand when they are just charged, they should be held on remand. They should not be given any form of bail at all. Anybody on a charge of assaulting a police officer or being involved in assaulting a police officer should be off the street. Apart from affording justice to the officers involved, it sends a very clear message that we as a society and we as a community will not tolerate that sort of behaviour. As I said, I cannot understand how anybody could disagree with that position.

I welcome this bill. I think the amendment moved to bring the commencement date forward is an eminently reasonable and sensible one. I do not understand why the government has taken the view that it should be so far away when this legislation is clearly needed and has been needed for quite some time. I am hoping that when we get the opportunity to debate them, the amendments will be passed as well. I wish the amended legislation a speedy passage, and I urge all members of the house to support it.

Ms BATH (Eastern Victoria) (14:56) — I rise today to make a contribution on the Bail Amendment (Stage Two) Bill 2017, and in doing so I acknowledge that the impetus for this bill was a very tragic circumstance back in January last year, the Bourke Street tragedy. I know all of us here and across Victoria were horrified to turn on our televisions or check our phones and see the events that unfolded before our eyes and the totally unacceptable loss of lives and injury to people as well.

I note that such dire circumstances brought out the worst in the alleged perpetrator, Mr Gargasoulas, but also the best in people in that people rushed out of their offices and workplaces to help others in that time of need. Our emergency services and our police force also rallied under extremely difficult circumstances, and I only have praise for and acknowledgement of their work.

As a result of this tragedy the government knew that it had to act, and it employed the Honourable Paul Coghlan, QC, to review, under terms of reference, the Bail Act 1977 and to come up with some suggestions and recommendations about how to change and improve it, given this person escaped from bail and caused such carnage back in January. Mr Coghlan's second and final report came out in May 2017, so I feel that the government has been dragging its heels on putting the first tranche of this bill through and also the second, which we see here today in February 2018. I endorse our amendments, circulated by Mr Rich-Phillips, to speed up the commencement date of this bill. I sincerely request that people vote in favour of our amendments to make sure that the necessary changes come into effect as soon as possible.

I turn now to some of the main provisions in the bill. It repeals section 4 of the Bail Act 1977. In doing so, in clause 5 it requires that bail decision-makers consider the surrounding circumstances, including serious offences, criminal history and whether the accused was on bail or parole. Clause 4 defines a vulnerable adult as a person aged 18 or over who has a cognitive, physical or mental impairment that causes them to have difficulty understanding their rights or that makes communication difficult.

Clause 7, which is of particular interest, looks at replacing the existing tests with a new unacceptable risk test, a show compelling reasons test and a show exceptional circumstances test. These require the accused to show compelling reasons or exceptional circumstances before an unacceptable risk is applied. Clause 14 allows police to remand a person in custody for up to 24 hours until a court is available, except for

children, Aboriginal persons or vulnerable adults, as stated in clause 4.

Clause 18 allows courts to grant or refuse bail for accused persons appearing on summons on application by the prosecution or on their own motion. Clause 20 provides that only a court may grant bail to a person accused of a schedule 2 offence, as outlined in Mr Coghlan's report, other than lower level schedule 2 offences, who are already on two or more bail undertakings. This does not apply to children, Aboriginals or vulnerable adults. Lastly, clause 29 creates a presumption of accumulation in relation to any period of detention imposed for escape from or property damage in a youth justice facility.

You begin to understand these things on a personal level when you have friends who have had relatives go in and out of the justice system and who have had to deal with magistrates and bail requirements. I have a friend who has been looking after a nephew, and it is often the way where someone has to put up their hand and support and care for these people, and she has done so most admirably. My friend's nephew had to appear in a Magistrates Court in 2016 — and, by the way, it has all gone through, so this is not a current case — and was charged with multiple indictable offences.

Adopting the current unacceptable risk test, the prosecutor demonstrated to the magistrate that the accused would likely reoffend again and again due to his high dependency on that horrendous drug ice, as his tendency therefore to commit a crime was quite likely due to his drug addiction. The prosecutor listed all previous charges that had been committed whilst on bail previously and said that the accused would be a risk to the community if he was released on bail. Taking into account all of these things and weighing up the unacceptable risk, the magistrate released this person on bail under special conditions. My friend has made it very clear to me, and I agree, that in order for there to be bail there needs to be sincere accountability of the accused.

It worked very well in this case where, with an assurity of $2000, living in the country and being supported by his family, he had to attend regular briefings at the police station. He had to go to AA and undertake those sorts of operations and connections, and he actually stayed out of the system for a long, long time. Unfortunately with this sort of addiction it often does take hold again, but it just went to show my friend how important it is to make these people accountable. He, I hope, will be able to be rehabilitated at some stage.

Another one of my constituents — and it is a very annoying, disappointing and, in a sense, tragic circumstance for her — came home from work to find that her house had been burgled and that very precious items like her grandmother's engagement ring, which she was going to use, letters, medals and other things that were of very little worth but of hugely emotional importance to this person had been stolen. This person found out that the perpetrator of this burglary had 87 previous convictions. Although this person does not know whether the person was out on bail at the time, it is known that they keep committing offences. This reoffending and granting of bail is certainly something that needs to be stopped, and this bill goes some way towards that.

Finally, I think the community has an expectation that they will be protected and that people who are continually able to be released on bail must be held accountable. That is something I hear when I am at markets and the like — 'If you can fix the justice system and if you can fix these people who are just released all the time, then this is a key point for us'. I am very pleased to see that the Liberals and The Nationals are coming out with very strong policies in relation to this. Indeed our own policy is much stronger than this bill before us today. However, this bill does go some way towards rectifying and protecting people — innocent people such as those people who were in the Bourke Street Mall in January 2017. With those few words, I am interested to see some of the points that need to be dealt with in the committee stage.

Ms TIERNEY (Minister for Training and Skills) (15:06) — Thank you for the opportunity to respond to a number of points that members of the house have made in the second reading. This bill, together with the stage one reforms, includes the most comprehensive changes to the Bail Act 1977 since it was first passed in 1977, so I do not believe what Mr Rich-Phillips said about this bill not really changing much.

This bill combined with the Bail Amendment (Stage One) Act 2017 will implement all of Mr Coghlan's legislative recommendations from his first report as well as recommendation 33 from the second report. That is 21 recommendations in total and one in part. The remaining recommendations in the second report are longer term recommendations that Mr Coghlan envisaged would be subject to further consultation before implementation, and the government is working with stakeholders on key implementation issues.

Then there was the issue that Ms Pennicuik raised in respect to police remand and why the government has settled on 48 hours instead of the 24 hours

recommended by Mr Coghlan. As part of Mr Coghlan's recommendation in relation to setting up a seven-day bail and remand court to enable bail matters to be processed through the courts more quickly he recommended that police be able to remand accused persons overnight, which would enable them to be brought to the bail and remand court the next day.

The fact of the matter is that the government is continuing to work with stakeholders to establish a seven-day bail and remand court. The government considers it is preferable that the police remand power be made available as soon as possible rather than awaiting the establishment of the bail and remand court. The power will be exercisable for up to 48 hours rather than overnight to reflect the current availability of the courts to hear bail matters. The night court at the Melbourne Magistrates Court has been in operation since 4 February 2017. It operates between 5.00 p.m. and 9.00 p.m. every night. There is also a weekend court which operates in Melbourne on Saturday.

Earlier this year the government announced a $5.5 million boost in funding for the night court at the Magistrates Court. This will fund Victoria Police prosecutors and protective services officers, prisoner management and escort, police custody officers, custodial health services, Victoria Legal Aid, duty lawyers and community corrections services assessments. Once the dedicated bail and remand court is in operation it is unlikely that police will need to remand an accused for the full 48 hours due to the increased availability of the court.

Mr Rich-Phillips and Ms Pennicuik also raised the question of how a vulnerable adult is to be identified and how police will be assisted in making this decision. The bill defines a vulnerable adult as an adult who has a cognitive, physical or mental impairment that causes them to have difficulty in understanding their rights or making or communicating decisions. The police officer who is responsible for deciding whether or not to grant bail is also responsible for determining whether an accused person is a vulnerable adult. Police officers routinely deal with persons with cognitive and mental health impairments and necessarily have the training and experience to do so. Police will receive further training to assist them in making this determination. Where the accused is a person known to police, police will also be able to access the law enforcement assistance program database, which will have information on any such impediments.

The Department of Health and Human Services is also in the process of rolling out an after-hours mental health information portal which police will be able to access to determine if an accused person has a known mental condition. The bill provides that the police officer's opinion, based on the information available at the time, is determinative of an accused person's status as vulnerable or otherwise.

Once bail is refused and a determination is made that the accused is not a vulnerable adult, police will have the authority to hold that person in custody for up to 48 hours or until the court is available. A person refused bail by police will have their bail determined by a court as soon as practicable within days. This determination would make the decision as to whether they are vulnerable or not meaningless, and any review of that decision would have no utility for the accused person.

Mr Rich-Phillips, Ms Pennicuik and some other members of the house have also raised a concern about delay. The changes in the bill and the Bail Amendment (Stage One) Act 2017 are complex, so it is essential to allow sufficient time for all the affected agencies to implement the changes. Since the introduction of the first bill we have been working with stakeholders to commence the changes as soon as possible. The government has now indicated that a number of provisions in the Bail Amendment (Stage One) Act will commence on 21 May 2018. We have determined this date taking into account the views of relevant stakeholders. Assuming this bill passes, it is the intention of the government for this bill to commence with the remaining provisions of the Bail Amendment (Stage One) Act on 1 July 2018.

In particular it is crucial that various bail decision-makers — police, bail justices and the courts — be permitted to become familiar with the changes. It would be counterproductive to rush these changes in without allowing proper time for courts and Victoria Police to implement the changes and ensure their bail decision-makers can apply the new tests. Police officers are called upon to make bail decisions on the spot and often in difficult circumstances. They will need to be confident in applying the new act from the first day of commencement. As well as changing the bail decision-making process, the act will have an effect on Victoria Police processes for keeping accused people in custody and the requirements upon them to bring the accused to court. It is important that new processes are put in place well before the commencement.

There were also questions asked in relation to relative weight, and relative weight is meant to be given to factors listed in clauses 5 and 7. Clauses 5 and 7 rewrite the tests for bail as recommended by Mr Coghlan. Clause 5 requires a non-exhaustive list of circumstances

that a bail decision-maker must take into account in making a decision where those circumstances are relevant. The bill does not specify that one factor is more important than another. The relative weight to give each factor will be a matter for the bail decision-makers in the circumstances. For example, if the accused has a significant criminal history, the consideration of the accused's criminal history will be more significant than it would otherwise have been.

In respect to clause 7, it restates the unacceptable risk test by listing four risks which if deemed to be unacceptable risks require the refusal of bail by the decision-maker. If any one of these risks is an unacceptable risk, then bail must be refused. It is irrelevant whether any of the three other categories of risk exist. It is not necessary for the bill to give more importance to one risk over another. These provisions must also be read along with the 'Guiding principles' that were inserted into the Bail Act 1977 by amendments in the Bail Amendment (Stage One) Act 2017. These amendments require that the entirety of the Bail Act is to be interpreted as having regard to the guiding principles, the first of which is:

> (a) maximising the safety of the community and persons affected by crime to the greatest extent possible …

There were also some questions in relation to recommendations 15 and 16 along the lines of, 'Why is the government implementing recommendation 15 when it supported recommendation 16, which recommended deferral of recommendation 15?'. Mr Coghlan's recommendation 15 was that a person alleged to have offended whilst already on two undertakings of bail must be brought to court to have further bail granted. Mr Coghlan noted that a person in these circumstances is necessarily a higher risk of offending. He also noted significant community concerns about persons on multiple sets of bail. Mr Coghlan's rationale for deferring the implementation of recommendation 15 was that it had the potential to impact on the resources of agencies involved in the bail system, including the Magistrates Court and Victoria Police. Since the initial release of the report the government has been able to assess the resourcing impacts that may be caused by the implementation of recommendation 15, and now the government is confident that recommendation 15 can be implemented without significant adverse impacts on the bail system. Accordingly, given the importance of this reform in ensuring that there are consequences for those who reoffend whilst on bail, it is proposed its implementation not be deferred.

There was also a question asked as to why we are not reinstating the offence of breach of bail for children. The Coghlan review, as I said, made 37 recommendations in total. The restoration of the offence for children breaching bail was not one of them. We are making it much harder for people alleged to have committed serious offences, regardless of age, to get bail. The presumptions against bail will apply to children. We are amending the Bail Act to provide that a person alleged to have committed serious indictable offences whilst on bail, summons or parole, under sentence or at large will not be granted bail unless they can prove there are exceptional circumstances. Our changes to the Bail Act in 2016 in relation to this offence were due to concerns that it was causing children to be needlessly held on remand for minor breaches of bail. This made no change to the ability of Victoria Police to arrest any child found to be breaching bail conditions and bring them before the courts. This has been happening, and the Children's Court has been revoking bail where appropriate.

Ms Pennicuik has also asked: why has the government not implemented all of the Coghlan recommendations? Essentially this bill has combined the Bail Amendment (Stage One) Act provisions and will implement all of Mr Coghlan's legislative recommendations from the first report as well as recommendation 33 in the second report, as I stated at the commencement of my contribution. The remaining recommendations in the second report are longer term recommendations that Mr Coghlan envisaged would be subject to further consultation before implementation. As I have said, the government is working very hard with key stakeholders on the implementation.

There was also a comment about clause 29 of the bill, which introduces a new presumption of cumulation provision into the Children, Youth and Families Act 2005. The Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017 introduced a presumption that sentences for escape from or damage to a youth justice facility will be served cumulatively rather than concurrently. The presumption of cumulation only applied in relation to a young offender who received a period of detention imposed when that offender was a child. This bill will clarify that the presumption of cumulation applies to young offenders who receive a period of detention either as a child or as an adult.

I hope my contribution and my summing up provides some assistance to members and will provide assistance in terms of the deliberations of the committee of the whole.

Motion agreed to.

Read second time.

The ACTING PRESIDENT (**Ms Dunn**) — I have considered the amendments circulated by Mr Rich-Phillips, and in my view amendments 2 and 3 are not within the scope of the bill; therefore an instruction motion pursuant to standing order 15.07 is required. I remind the house that an instruction to committee is a procedural debate.

Instruction to committee

Mr RICH-PHILLIPS (South Eastern Metropolitan) (15:21) — By leave, I move:

> That it be an instruction to the committee that they have the power to consider an amendment and new clause to amend the commencement provisions of the Bail Amendment (Stage One) Act 2017.

This is a simple instruction motion. As indicated in the second-reading contribution, it is the coalition's intention that an earlier default commencement date be put in place for the bill that the house is currently considering and that the default be brought forward to 31 March, and likewise it is the view of the coalition that the stage one bill, which is now an act, should also be brought forward to align to 31 March. It is for the purposes of bringing forward the stage one act commencement that I propose this instruction to the committee now.

Ms PENNICUIK (Southern Metropolitan) (15:22) — In accordance with our long-established practice the Greens will not oppose the instruction motion. I have brought quite a number of these to the chamber myself. It does not actually indicate whether or not our party or a member will support the actual amendment; it is just supporting the right of the person to put the amendment.

Ms TIERNEY (Minister for Training and Skills) (15:22) — Not wishing in any way to create precedent on this matter, we do have some other views, and on this occasion we will not stand in the way of this matter being pursued.

Motion agreed to.

Committed.

Committee

Clause 1

Ms PENNICUIK — Minister, you mentioned in your summing up, briefly, the reasons why the government has not undertaken a complete rewrite of the Bail Act 1977, which was recommended by the Honourable Paul Coghlan, QC. In fact the whole of chapter 7 of his second advice is devoted to this. Without going through everything that is written there, in his first advice he recommended that:

> … the Bail Act as a whole should be overhauled and rewritten to improve its internal consistency and to add to comprehension.

Given that vast changes have happened to the purpose of bail, Mr Coghlan was saying that originally the Bail Act anticipated granting bail for accused people awaiting trial, but now there are so many changes that the Bail Act is not internally consistent or easy to follow in comparison to, for example, the rewrite of the New South Wales act. Given that he said elsewhere, particularly in his first advice, that bail decision-makers and those in the system find the particular references to the Magistrates Court Act 1989, the Criminal Procedure Act 2009, the Bail Act et cetera are very difficult to follow, why did the government not take this opportunity, with all these significant changes, to rewrite the act?

Ms TIERNEY — Of course, given the issues that have been in the community in relation to this which have given rise to these amendments, the government wanted to make the changes sooner. A complete rewrite is going to take a significant amount of time and will slow down the changes that the government's timing agenda is about. As I said, it is an enormous task to actually rewrite the whole thing. It was seen to be more appropriate, more efficient and more timely to go about the changes in these stages.

Ms PENNICUIK — Minister, I thank you for your answer. I do take issue with it because in fact we have taken quite a long time with the Bail Amendment (Stage One) Bill 2017 and the Bail Amendment (Stage Two) Bill 2017. As I mentioned in my contribution, these bills are adding different tranches of amendments to the existing act and are still having the act refer to other acts. Paul Coghlan, QC, said it is getting very confusing for people to follow. I pointed out that we now have clauses called 3AAAA, and whenever you get to a stage where an act has clauses numbered in that regard it is a signpost that the act needs to be overhauled. I would also say that in his chapter he gives a lot of hints as to what could be done.

I suppose this is more a response to your answer. I cannot see in the time that has elapsed why we could not have in fact rewritten the whole act to make it easier to follow, because one of the problems is it is difficult for decision-makers to follow all the convoluted bits and pieces and paths and referrals in the act as it stands, which have only been exacerbated by these changes to the existing provisions. I also say that we are just looking at the moment at a complete rewrite of the Audit Act 1994, and if that was possible, this would have been possible too. Will the government consider actually rewriting the act so that it is easier for all concerned to follow the procedures?

Ms TIERNEY — Look, I have nothing further to add to what I said on the previous occasion other than to say that if there is a requirement down the track for further work then obviously that will be considered by the government.

Mr RICH-PHILLIPS — Minister, I would like to follow up the points made by Ms Pennicuik. The bill we have got before the house today is around 32 pages. The current Bail Act 1977 is only 64 pages. So basically you have got a bill that is already half the size of the Bail Act, but you are asking us to believe that the Bail Act itself is so complicated that we could not do a clean rewrite. Instead we have an amendment bill that is half the size of the act it is amending. So how can we credibly believe when you have got a 30-page amendment bill that we could not have actually had a fresh rewrite of the 60-page Bail Act and started from a point of view where everyone was clear about the way the bail framework is supposed to work?

Ms TIERNEY — Again, I have no further comment to add to what I have already indicated before.

Mr RICH-PHILLIPS — Does the government intend to do a full, clean rewrite of the Bail Act?

Ms TIERNEY — Again, I have nothing further to add to what I have already stated.

Mr RICH-PHILLIPS — Does the government have any further amendments to the Bail Act in the pipeline?

Ms TIERNEY — There will be further amendments to the Bail Act in response to the expert panel on counterterrorism, and if and when the government makes changes to any offences, this may require corresponding changes to the Bail Act.

Mr RICH-PHILLIPS — Thank you, Minister. Are you effectively indicating, Minister, that it is the government's intention to continue to make piecemeal changes to the Bail Act as circumstances require without undertaking at any point the wholesale rewrite that the Coghlan review has recommended?

Ms TIERNEY — I thank the member for his question. Yes, there are amendments that will come before the house. As with anything, the government will review what that means in terms of the flow of the act, and it will consider what it will do into the future, but I cannot make a further commitment beyond that at this point in time, Mr Rich-Phillips.

Ms PENNICUIK — Minister, I move now to the urgent need to add amendments that deal with removing minor offences from the bail and remand system, which I talked about quite at length in my contribution. If I could refer you to the second advice document from the Honourable Paul Coghlan, QC, where he says, and I will not read everything but just a couple of pertinent sentences:

> It has become apparent during this review that a significant number of accused persons are on bail or remanded in custody for minor, non-violent offending. Commonly, this occurs where a person has failed to appear in court (whether on bail or summons), a warrant is issued …

He goes on to say:

> Bail is rarely an appropriate process in cases involving minor, non-violent offending. People charged with such offences normally pose a negligible risk to the safety of the community, and the appropriate sentence for such offending is usually a fine or a lower sanction such as an adjourned undertaking …

So in fact they never receive a custodial sentence but they spend time in custody. He also says:

> The use of bail in cases of minor offending causes broader problems for the criminal justice system. It can lead to accused persons who pose a low risk to the community being remanded in custody for offences for which they would be unlikely to receive a sentence involving imprisonment. This creates pressure on the remand system, which requires places to be available for people charged with more serious offences and those who pose a greater risk to the community.

It is really important to note too that in terms of warrants issued for failure to appear at the Magistrates Court, in 2010–11 the number of warrants was 29 134. In the last reportable year, 2015–16, there were 62 316 warrants for failure to appear. It is taking up a lot of court time and police time, and these are for minor offences. Also, the number of matters that are dealt with without accused being present has dropped from 4193 in 2010–11 to 1468 now. So you can see how the system is being clogged up.

Mr Coghlan was very, very strong on his points that while tightening up the bail system for serious offences and serious offenders is needed, which everyone agrees with, the balance for that is to remove minor offences from the bail and remand system. It also of course enables people who are only charged with minor offences for which they will not receive a custodial sentence to keep working. If they are in remand for two or three months, they lose their job. At the end they may come out, having been acquitted — actually found not guilty of the offence — or they may receive just a fine or a community correction order, for example. Mr Coghlan is very strong that we need to not have people remanded in custody who are not a threat to the community but that we do need to have them remanded if they are a threat to the community. These two bills have failed to bring about that balance. Is the government working on those very important amendments to the bail system?

Ms TIERNEY — I thank Ms Pennicuik for her question. The recommendations in relation to notice to appear obviously, as you know, are complex and the government is consulting with stakeholders to determine the appropriateness of these changes within the Victorian context.

Ms PENNICUIK — Thank you, Minister. You will have noticed that the Honourable Paul Coghlan goes to a lot of that in his report and points to the fact that Victoria Legal Aid, the Victorian Law Reform Commission, Victoria Police and other stakeholders are also concerned about these issues, so it is not as if they are not well known in the community already.

Mr RICH-PHILLIPS — I would like to go back to the issue that the minister raised in her follow-up comments in relation to the issue of the offence of breaching bail and the fact that the government had removed that offence from the Bail Act in earlier amendments, I think in 2015 or thereabouts. The minister said the government was not reinstating that on the basis that it was not recommended by the Coghlan review, but in fact, Minister, in this suite of changes the government does not faithfully reflect all of the Coghlan review. There are areas where the government has departed from the Coghlan review; obviously the rewrite of the Bail Act is but one example of that. So putting aside the Coghlan review and recognising the community's concern around youth offenders on bail, what is the rationale for not reflecting the community's concern and reinstating the offence of breaching bail for youth offenders?

Ms TIERNEY — Our changes to the Bail Act in 2016 in relation to this offence were due to concerns that it was causing children to be needlessly held on remand for minor breaches of bail. This made no change to the ability of Victoria Police to arrest any child found to be breaching bail conditions and bring them before the court. Children who contravene their bail conditions can still suffer consequences. These consequences include a revocation of bail, and police are still bringing children before the courts and they are being remanded. We believe that any change is unnecessary.

Mr RICH-PHILLIPS — Thank you, Minister. I take it that that is the government's point. I think it completely misses the point to say that where a child breaches bail they can be remanded or brought before the court again to be rebailed, as the case may be. The whole point of an offence of breaching bail is to provide a sanction, not to simply revoke bail, to make it very clear that the community looks unfavourably on people breaching bail. It is not simply the case that bail is revoked; there is actually a penalty above and beyond the revocation of the bail. But I accept that the government's view on this is not in line with the community's and is much below community expectations.

Clause agreed to.

Clause 2

Mr RICH-PHILLIPS — I move:

1. Clause 2, line 16, omit "1 October 2018" and insert "30 March 2018".

As indicated in the second-reading speech, it is the coalition's view that the community has waited long enough for the implementation of these bail reforms. It is 14 months on from when the Premier made a commitment to reforming the bail system. This is a half-hearted effort to do that. It does not go as far as the Coghlan review recommended; it certainly does not go as far as the community expects. The bill as currently drafted provides a default commencement for this bill of 1 October 2018. We believe it should be implemented much earlier than that, and that is why I am proposing this amendment to insert a default commencement date of 30 March 2018.

I foreshadow that later in committee there will be a parallel amendment in respect of the existing Bail Amendment (Stage One) Act, which is dealt with separately, following the instruction to the committee.

I would like to follow up with some questions on some of the matters the minister raised in her concluding comments, if I may, Acting President.

The ACTING PRESIDENT (**Mr Elasmar**) — Yes, go ahead.

Mr RICH-PHILLIPS — With respect to the government's intention, the minister indicated a date of I think 21 May to give effect to the changes to the Bail Act and that the government was taking into account views of relevant stakeholders. Can the minister outline who those relevant stakeholders were or are, please?

Ms TIERNEY — In response to Mr Rich-Phillips's question, the key stakeholders — this is an indicative list, not an exhaustive list — are obviously the courts, Victoria Police, Victoria Legal Aid and the Office of Public Prosecutions.

Mr RICH-PHILLIPS — Thank you, Minister. Were any victims advocacy groups consulted in the government's decision on when to implement these reforms?

I seek your guidance, Acting President. The question to the minister related to which victims of crime groups were consulted. It was a very simple question. I am concerned at the inordinate amount of time that the minister or her advisers are requiring to be able to get an answer to what was a very simple question.

The ACTING PRESIDENT (**Mr Elasmar**) — Thank you, Mr Rich-Phillips. My understanding is that the minister is doing her best with answers and that is why she is taking time to get the right answers.

Ms TIERNEY — I am advised that victim advocacy groups were not consulted with as a matter of course. The government consults with those agencies that are required to implement and operate under the legislation when determining the commencement date. The Attorney-General has discussed bail reforms with the Victims of Crime Consultative Committee and the victims of crime commissioner more generally.

Mr Ondarchie — Chair, I would have thought this is one of the most important pieces of legislation to go through this house this year around bail, and I am surprised that there are not more members here. I draw your attention to the state of the house.

Quorum formed.

Mr RICH-PHILLIPS — Minister, thank you for getting that information. I appreciate you getting that from your advisers. I thought the advisers may have had it to hand even if, understandably, the minister did not have it to hand. Minister, with respect to the victims of crime commissioner, Mr Davies, obviously this was an office that was established by the government as a statutory office last year or thereabouts. The victims of crime commissioner website states:

> The victims of crime commissioner (VOCC) aims to improve services and systems within government departments, victims service providers and the justice system to meet the needs of victims of crime.

This obviously goes very directly to the way the justice system works. Why didn't the Attorney-General or the government consult with the victims of crime commissioner, Mr Davies, about the implementation of this legislation when his brief as commissioner goes to the heart of, as it says, systems and services within government departments and the justice system?

Ms TIERNEY — I responded to this point just recently where I said the Attorney-General had discussed bail reforms with the Victims of Crime Consultative Committee and the victims of crime commissioner more generally.

Mr RICH-PHILLIPS — But that, Minister, was not in relation to the implementation date; is that correct?

Ms TIERNEY — It was in relation to the bill generally.

Mr RICH-PHILLIPS — That is nice, Minister, but I am keen to understand whether it was specifically in relation to the commencement date and the default commencement date, which of course is currently October. So can you clarify whether Mr Davies, as the representative of victims of crime within the government — the person who the government set up to consult on government programs and systems within departments — was actually consulted about when these changes would take effect?

Ms TIERNEY — I am advised that he was not spoken with in regard to the actual operative date.

Mr RICH-PHILLIPS — Thank you, Minister, for that clarification. In summing up, the minister provided a statement to the house, presumably from the Attorney-General, with respect to a number of matters in the bill which also related to the government's decision to give effect to this legislation from 21 May. One of the statements the minister read was that police will need to be confident of applying the provisions from day one. I assume the minister means in respect of the capacity for police to remand people for up to 48 hours. Can the minister clarify the provision she was referring to?

Ms TIERNEY — Obviously in terms of the operative date it is expected that officers will need to be aware of and trained in the changes.

Mr RICH-PHILLIPS — Thanks, Minister. That goes to my second point: the statement that you made at the conclusion of the second-reading debate, where you also said that police will receive further training to help them make the assessment. That was specifically in relation to the application of the definition of 'vulnerable adult'. Given the two statements that the police will need to be confident of applying the provisions from day one, which the government said would be 21 May, can you confirm that all police who can use those provisions, which are sergeants and above and officers who are in charge of stations, will receive training on those provisions before 21 May?

Ms TIERNEY — We have been advised by Victoria Police that training will be underway, and it is the absolute intention that training will be conducted.

Mr RICH-PHILLIPS — Thank you, Minister. Minister, I would like to clarify that, because your rationale in your summing up for not supporting the coalition's amendment was that police will need to be confident of applying the provisions from day one. You also said that police will receive further training to help. Is it the case that the police will have the training completed to apply this by day one, which was the rationale for not having the earlier commencement date, or in fact will police still be under training after the government's proposed commencement date?

Ms TIERNEY — I am advised that Victoria Police has indicated to the government that it will provide training to officers in order to prepare them for the commencement of the relevant provisions, as is the case with all bills. It is the government's expectation that this will be completed before the commencement of the relevant provisions, Mr Rich-Phillips.

Mr RICH-PHILLIPS — Thank you, Minister. Is it the advice from Victoria Police that the training will be completed by 21 May?

Ms TIERNEY — Yes.

Mr RICH-PHILLIPS — Minister, can you outline what is the nature and extent of the training that is going to be provided to police officers of the rank of sergeant and above to implement these provisions?

Ms TIERNEY — Obviously I do not have that level of detail.

Mr RICH-PHILLIPS — Minister, police being prepared was the government's rationale for not supporting our amendments to bring forward the commencement of this bill to 30 March. If you are able to provide the committee with some understanding of the extent of the training that is required to take place before the bill comes into action and into function — whether it is one-pager that is going to be circulated to relevant police officers, whether it is a training course that they will need to attend or whether it will be training within individual stations — that would help the committee to understand the legitimacy of the government's rationale.

Ms TIERNEY — The government is satisfied with the advice received from Victoria Police on this matter.

Mr RICH-PHILLIPS — Minister, can you share that advice with the committee, please?

Ms TIERNEY — Victoria Police will be prepared in relation to the operation date being effective as of the date outlined.

Ms PENNICUIK — The Greens will not support the amendment put forward by Mr Rich-Phillips. While I understand the opposition wants the provisions of the bill to come in, there is nothing in the current commencement clause to prevent them coming in sooner than the latest date, which is 1 October 2018. They could certainly come in earlier.

Ms TIERNEY — Obviously the government does not support this amendment. If this were accepted, assuming the bill passes today, it would give relevant agencies just under a month to commence the act. The changes in this bill are complex, so it is essential that sufficient time be allowed for affected agencies to implement the changes. In particular it is crucial that the various bail decision-makers, as I said in my concluding remarks prior to the committee stage — the police, bail justices and the courts — be permitted to become familiar with the changes.

Assuming this bill passes, it is the intention of the government for this bill to commence with the remaining provisions of the stage one act on 1 July 2018. We have already indicated that a number of provisions in the first bill will commence on 21 May 2018. We have determined this date taking into account the views of relevant stakeholders. Mr Coghlan found that the current act is complex and cumbersome. Many of his recommended changes are aimed at making the act more clear, simple and transparent so that the task of applying the act to bail decisions is more straightforward for these decision-makers. It would be

counterproductive, we believe, to rush these changes in without allowing the proper time for the courts and Victoria Police to implement the changes and ensure their bail decision-makers can apply the new tests.

Police officers are called upon to make bail decisions on the spot, as I said in my previous contribution, often in difficult circumstances, and they will need to be confident in applying the new act from the day of commencement. Sufficient time must also be allowed for bail justices to be trained in the amended Bail Act. Unlike police officers and magistrates, volunteer bail justices cannot undertake training as part of their usual employment. Instead they must give up their own free time to undertake training programs online, so they cannot be expected to become experts on the new act overnight.

As well as changing the bail decision-making processes the bill will have an effect on Victoria Police processes for keeping accused people in custody and the requirement to bring the accused to court. It is important that the new processes are put in place well before the commencement.

The default commencement for this bill is approximately 12 months after introduction, which is standard for bills introduced into Parliament. However, it is not unusual for bills that introduce significant reforms to have longer default commencement periods to allow time for implementation. For example, the Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 was introduced into Parliament on 16 April 2013 but had a default commencement date of 1 September 2014; it was not fully commenced until that date. The Sentencing Amendment (Community Correction Reform) Act 2011 was introduced on 14 September 2011 with a default commencement date of 30 June 2013. That act was not, however, fully commenced until 30 September 2013 as the default commencement date was amended by another act. We will not be supporting this amendment.

Ms PENNICUIK — Given what the minister has just said about the dependence of the two bills on each other, the question does arise as to why the commencement date of this bill is not the same as the commencement date of the stage one bill so that all the provisions come into play at the same time.

Mr Ondarchie — On a point of order, Acting President, I am reminded of rulings in the 57th Parliament by, I think, Deputy President Viney, or it may even have been yourself, about the inordinate amount of time that ministers spend at the advisers box. Of the last 10 minutes of this committee hearing, over 5½ minutes have been at the advisers box. My understanding of the committee stage is that the ministers go to the advisers box simply to confirm information they would already have in preparation for the committee stage. I wonder if you could give guidance —

Honourable members interjecting.

Mr Ondarchie — You were not here; you were not here either. I wonder if the Acting President could give some guidance to the minister and ask her to spend perhaps a little less time, for the efficiency of the house, at the advisers box.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! There is no such rule in the standing orders about time limits for the minister. But I would advise the minister to be aware of the length of time she spends with the advisers. I understand that it is an important issue and she wants to get the right answers.

Ms TIERNEY — In relation to the question that was put by Ms Pennicuik, as I said, the default commencement dates are usually 12 months after introduction. They must allow time for the bill to pass through Parliament obviously. However, it is also common practice to commence bills earlier if agencies are ready to do so. The government has indicated it will commence some provisions from stage one on 21 May. The remaining provisions from stage one and all of stage two will commence on 1 July 2018.

Committee divided on amendment:

Ayes, 18

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

Noes, 19

Dalidakis, Mr
Dunn, Ms
Eideh, Mr
Elasmar, Mr
Gepp, Mr
Jennings, Mr
Leane, Mr
Mikakos, Ms
Mulino, Mr (*Teller*)
Pennicuik, Ms
Pulford, Ms
Purcell, Mr
Ratnam, Dr (*Teller*)
Shing, Ms
Somyurek, Mr
Springle, Ms
Symes, Ms
Tierney, Ms
Truong, Ms

Pairs

Davis, Mr	Melhem, Mr

Amendment negatived.

Clause agreed to; clause 3 agreed to.

Clause 4

Ms CROZIER — I am just getting some clarification about the vulnerable adult component in clause 4, where it says in proposed section 3AAAA:

> (1) For the purposes of this Act, a person is a **vulnerable adult** if the person is 18 years of age or more and has a cognitive, physical or mental health impairment that causes the person to have difficulty in—
>
> (a) understanding their rights; or
>
> (b) making a decision; or
>
> (c) communicating a decision.
>
> (2) A bail decision maker may consider a person to be a vulnerable adult even if the bail decision maker cannot identify the particular impairment referred to in subsection (1).".

I am just getting some clarification that the bail decision-maker will be making that decision about that person — the vulnerability of that adult. Is that correct, as outlined in proposed section 3AAAA(1) and (2)?

Ms TIERNEY — Yes.

Clause agreed to.

Clause 5

Ms CROZIER — I go back to that point about vulnerability that I was just speaking about for the purpose of clarification, which is very clearly laid out, as I said. Clause 5 inserts new section 3AAA(h):

> any special vulnerability of the accused, including being a child or an Aboriginal person …

I want to understand why an Aboriginal person is deemed to be vulnerable. I understand that you have just clarified the vulnerability components for me. What are the distinctions that an Aboriginal person has to meet the criteria of being vulnerable?

Ms TIERNEY — I thank the member for her question. I am advised that in terms of clause 4 compared to clause 5, clause 4 has a specific definition that is relevant to other parts of the bill — for example, whether you actually get to see a bail justice. In respect of clause 5 it is a general vulnerability. As you know, it is generally accepted that Aboriginal people have a vulnerability in relation to the justice system, and there are concerns about over-representation and the effect that incarceration has.

Ms CROZIER — Thank you, Minister, and I appreciate that it is well understood that there is over-representation of Aboriginal Indigenous people in our corrections system, but I am just wondering why we have got this separate distinction for this group of people. Will it be opened up potentially for other groups of people that might have higher numbers within our corrections system in the future?

Ms TIERNEY — The government does not have any intention of expanding any further groupings. I think it is well understood that Indigenous people in this country do have over-representation, but there is a particular impact that sees a large number of Indigenous people in our justice system. There are also difficulties with regard to incarceration, which are fully outlined, for example, in the Royal Commission into Aboriginal Deaths in Custody.

Ms CROZIER — Thank you, Minister, for your response. As I said, I think we all understand the over-representation, but from my understanding particularly in youth justice there are increasing numbers of other ethnic groups. You have clarified that that will not be expanded to other ethnic groups that have perhaps got large population numbers in those areas that might flow through to the adult corrections system also. Nevertheless, thank you for that clarification.

If I could go on to the next part of new section 3AAA(h), it says another vulnerability is 'being in ill health'. It states:

> any special vulnerability of the accused, including being a child or an Aboriginal person …

which we have just clarified. The next part is 'being in ill health', and I am just wondering what the threshold of being ill is. How will that be managed?

Mr Ondarchie — Acting President, once again, following the government's words about how important this bail amendment bill is to the legislative process and the safety of Victorians, I am really confused by the lack of support from the government for this bill in this house, so I draw your attention to the state of the house.

Quorum formed.

Ms TIERNEY — Of course the matter that you raise is a matter for the decision-maker as to what the required threshold is based on the evidence before

them. So, for example, a medical certificate is only one factor that the decision-maker is taking into account. Poor health alone could be insufficient for bail.

Ms Crozier — Sorry?

Ms TIERNEY — Poor health alone would be insufficient to get bail.

Ms CROZIER — Thank you for that answer, Minister. On that same clause, talking about cognitive impairment, just to clarify, if someone is affected by a drug or alcohol, that would be a decision of the bail decision-maker, I presume, as a reason not to grant bail.

Ms TIERNEY — In terms of cognitive ability, that obviously is a decision for the decision-maker, but you asked a question about drugs and alcohol and that, as I understand it, would not necessarily prevent. Of course the decision-maker may defer a decision as well.

Ms CROZIER — Thank you, Minister. If I could just seek some clarification, if there was somebody experiencing extreme cognitive impairment due to their alcohol or drug intake, are you saying that the decision-maker would defer their decision because of that scenario?

Ms TIERNEY — In terms of cognitive impairment, it is not cognitive impairment as a result of using alcohol or drugs. Cognitive impairment that is used in this bill is in relation to a cognitive impairment that is considered a disability as such, not alcohol and drugs.

Ms Crozier — Okay. An acquired brain injury or something like that.

Ms TIERNEY — Yes, an acquired brain injury or some other form of incapacity.

Mr RICH-PHILLIPS — Minister, one of the issues that came up in the second-reading debate which you talked about in your summing up was how the criteria that are set down under new section 3AAA, the 'surrounding circumstances', are weighed against each other. You answered in the context of the unacceptable risk test, which is contained further into the bill at proposed new section 4E in clause 7. The one thing about the unacceptable risk test is that it requires the decision-maker to consider circumstances and determine whether the risk is an unacceptable risk, which is straightforward, but it is then qualified at new subsection (3), which says that in assessing whether the risk is an unacceptable risk the decision-maker must take into account the surrounding circumstances, which then gets us back to looking at these circumstances which are set down in 3AAA. The consideration of whether something is an unacceptable risk is qualified by the circumstances in new subsection (3)(a), so it does engage the question of — to use an example — how new section 3AAA(h), which is the vulnerability that you have just been discussing with Ms Crozier, is assessed against 3AAA(c), which is the accused's criminal history. How do you weigh the vulnerability of the accused versus their criminal history, for example?

Ms TIERNEY — What I said earlier was that the bill does not specify that one factor is more important than the other. The relative weight to give to each factor will be a matter for the bail decision-maker in the circumstances. I gave the example that I am going to give again, which is that if the accused has a significant criminal history, the consideration of the accused's criminal history will be more significant than it would otherwise have been. These provisions must be read along with the guiding principles that were inserted into the act in the Bail Amendment (Stage One) Bill 2017, and again these amendments require that the entirety of the Bail Act is to be interpreted as having regard to its guiding principles, the first of which is 'maximising the safety of the community and persons affected by crime to the greatest extent possible'.

Mr RICH-PHILLIPS — Thank you, Minister. That example you give of the significant criminal history being a significant factor in the consideration of whether a person is granted bail is a good one. It would be the expectation that that would be a significant consideration in the decision of the person granting or refusing bail. What is not clear from the bill, though, is why that would be a significant consideration versus the other factors. You have given the example that if someone had a considerable criminal history, it would weigh against them significantly, but it is not clear from the bill why that is the case and why that would be weighted ahead of the accused's personal circumstances, their special vulnerability et cetera. So while you have given the indication that the relevant factors would be applied, it is actually not clear from the legislation why that would be the case and why a decision-maker could not depart from the example you gave and instead give undue weight to the accused's personal circumstances ahead of their criminal record.

Ms TIERNEY — I am advised that it is a matter for the decision-maker, which is based on the evidence before the decision-maker. If there was significant evidence in relation to prior convictions, then one would assume that more weight would be given.

Mr RICH-PHILLIPS — Thank you, Minister. Yes, if there is evidence of significant prior convictions, but I guess the question is: how would that be weighed, for example, against evidence of significant special vulnerability? Two factors, both significant. How would a decision-maker weigh which one takes precedence in deciding whether to remand or bail a person? I guess the question in essence goes to the factors which mitigate towards remand — in other words, towards protecting the community — being given greater weight than those which consider the special circumstances of the accused.

Ms TIERNEY — Again it is having regard to the guiding principles, the first of which is 'maximising the safety of the community and persons affected by crime to the greatest extent possible'.

Clause agreed to.

Clause 6

Mr RICH-PHILLIPS — Minister, clause 6 is the one which inserts flowcharts into the Bail Act, which I think is a very positive step in terms of outlining how part of the bail system is expected to work. I just seek clarification. The description that will be inserted into the act is that:

> A flow chart in this section illustrates the key features of the decision making process to which it relates. It is intended only as a guide to the reader.

What I am seeking to understand is 'only as a guide to the reader'. Would a decision-maker who follows the flowchart be making a decision which takes into account all the relevant factors laid down in the act, or would a decision-maker who follows the flowchart to make a decision be at risk of making a decision which does not consider all relevant factors?

Ms TIERNEY — Everything in the flowchart, I am advised, is reflected in the bill. The text of the bill reflects the relevant law. The flowchart is only intended to guide the decision-making process.

Mr RICH-PHILLIPS — Thank you, Minister. Is there a prospect of a decision-maker who follows the flowchart making an invalid decision because factors in the test were not taken into account? If a decision-maker relies purely on the flowchart, could they be at risk of making an invalid decision? Can we have confidence that the flowcharts, which are included as a guide, are sufficiently complete that reliance upon them would result in a decision in accordance with the act?

Ms TIERNEY — You need to read the bill in conjunction with the flowchart.

Clause agreed to.

Clause 7

Mr RICH-PHILLIPS — Minister, in clause 7 I am interested in proposed section 4 to be substituted in the Bail Act to replace the longer existing section 4 in the act. The first paragraph states:

> **4 Entitlement to bail**
>
> A person accused of an offence, and being held in custody in relation to that offence, is entitled to be granted bail unless the bail decision maker is required to refuse bail by this Act.

That provision basically states that a person is entitled to bail unless they are not entitled to bail. My question is a policy question: why is the default towards the granting of bail rather than discretion? There are a number of acts, for example, where an officer may not issue a licence if certain things are not met, and if the criteria are met, there is discretion that the officer may issue a licence. This actually mitigates towards an entitlement to bail. Given the community's concern about bail, particularly as has been expressed over the last 14 months, why do we still have an essential section, proposed section 4, which is geared towards an entitlement to rather than a possibility of bail.

Ms TIERNEY — I thank the member for his question. The bill does preserve the current presumption for bail, but of course what this bill is about is a whole range of changes to the bail conditions.

Mr RICH-PHILLIPS — Thank you, Minister. Yes, it does preserve the existing presumption. The question really is a policy question: given the community's expectations, why has the government maintained a presumption of bail rather than a presumption against bail?

Ms TIERNEY — Going to the heart of the point that Mr Rich-Phillips is making, we have decided that the bill needs to preserve the current presumption of bail because it is consistent with the presumption of innocence. But we are reversing the presumption for a significant number of offences as part of the reforms before the house this afternoon.

Clause agreed to; clauses 8 to 13 agreed to.

Clause 14

Mr RICH-PHILLIPS — Minister, clause 14 proposes to insert section 10AA into the act in relation to police remand. Subsection (2) provides:

> This section does not apply to an arrested person who is—
>
> (a) a child; or
>
> (b) a vulnerable adult; or
>
> (c) an Aboriginal person; or
>
> (d) a person arrested on an infringement warrant …

Subsection (3) then goes on to set out how the police officer is to determine whether the person is any of those things, in particular a vulnerable adult or an Aboriginal person, and provides:

> … the police officer is of the opinion that the person is such a person …

How is a police officer to determine or form an opinion that a person is an Aboriginal person?

Ms TIERNEY — In the first instance you would ask the person.

Mr RICH-PHILLIPS — So, Minister, that takes me to my second question, which relates to paragraph (b), which states:

> a police officer, in considering whether an arrested person is an Aboriginal person, must have regard to any statement made by the arrested person …

Does that oblige the arresting police officer to accept a statement that a person is an Aboriginal person for the purposes of subsection (3)(a)?

Ms TIERNEY — No. If there are other factors that need to be taken account of then they need to be taken into account.

Mr RICH-PHILLIPS — Minister, can you give an example of those other types of factors? If a person is arrested and they are asked if they are or they state that they are an Aboriginal person, on what basis would the arresting police officer accept that statement or reject that statement?

Ms TIERNEY — Other considerations, other pieces of information, that would be factored in would be previous interactions with the person and/or information, for example, that the police officer would be able to access on a database such as the law enforcement assistance program (LEAP) that would indicate to the contrary.

Mr RICH-PHILLIPS — Thank you, Minister. In the absence of contrary information on LEAP by virtue of the fact there has been no previous engagement with police, will the police officer have to accept the statement made by the arrested person that they are Aboriginal?

Ms TIERNEY — No. The legislation says that they must give regard to it.

Mr RICH-PHILLIPS — Yes, it does, Minister. What I am trying to understand is where they may disregard that statement. If someone has made the claim they are Aboriginal and there is no history of previous engagement with Victoria Police that can be used to dispute that or contradict that, given obviously this is important for the operation of the police remand provisions, can an accused person or an arrested person simply by stating they are Aboriginal avoid police remand as a consequence?

Ms TIERNEY — I am advised that police already make an assessment in relation to Aboriginality, because the police manual requires the Victorian Aboriginal Legal Service to be called in if an Aboriginal person is arrested. Police also receive cultural awareness training. Essentially it is a judgement that they will make with the information that is before them.

Ms PENNICUIK — Minister, just on that particular issue, as I mentioned earlier, I think the problem is not necessarily when the police person gets it correct, it is when they get it incorrect that the problem occurs and the person is held in custody for 48 hours. You mentioned the inquiry into Aboriginal deaths in custody et cetera. You mentioned the requirement to call in the Victorian Aboriginal Legal Service. Would that have to happen if anybody stated they were an Aboriginal person?

Ms TIERNEY — I am advised that in the police manual police are required to still ring the Victorian Aboriginal Legal Service.

Ms PENNICUIK — Thank you, Minister. That is good, because you have got an independent person assisting the Aboriginal person under this particular provision. If I could go to the other provisions in terms of the police officer in charge, who in most cases will be a sergeant, but not in all cases. In some regional police stations it may not be a sergeant who is in charge of the police station. In terms of identifying a child, perhaps it is easier, but with a vulnerable adult, which is defined in new section 3AAAA, will there be a requirement for the police to bring in an independent

person to assist with the assessment as to whether someone is a vulnerable adult, or is that completely up to the police officer?

Ms TIERNEY — It will be the police officer that will make that determination based on the information that is before them at the time.

Ms PENNICUIK — Thank you, Minister, for your answer. As I mentioned in my contribution just earlier, the problem occurs when a mistake is made in the assessment of the person. I presume there is nothing precluding a police officer from calling in an independent person to assist with establishing whether someone is a vulnerable adult. Of course a vulnerable adult may not be able to fully advocate for themselves because they are a vulnerable adult, ipso facto, really. The government has relied on the law enforcement assistance program (LEAP) database and the forthcoming mental health assessment — I have forgotten what it is called exactly — online information site. Is the government able to assure us that these things are fully operational? Have the very widely known and very longstanding problems with the LEAP database been fixed?

Ms TIERNEY — In relation to Victoria Police, they are in the process of undertaking the reviews of the LEAP database, as recommended by Mr Coghlan. In terms of the question, I think you were asking in relation to people that may be cognitively impaired and potentially a police officer making a wrong decision; is that right, in terms of that assessment?

Ms Pennicuik — Yes.

Ms TIERNEY — As I said, the assessment will be based on the evidence and the circumstances before the police officer, but essentially if a wrong decision is made or a wrong assessment is made, then that person will be before the courts within the prescribed time and it will be ascertained there one way or the other.

Ms PENNICUIK — Thank you, Minister, for your answer. It is a difficult area with significant repercussions for vulnerable people who are caught up in the justice system. I do not necessarily want to labour this point any further. You have said that the police are in the process of fixing it. It is not fixed yet. Perhaps it will be in three months. I was scrambling around to try to find the name of the other online information regarding mental health assessments, and I cannot remember the name of it, but that is also I understand coming online soon.

I just want to point out one other reason why this act needs to be rewritten. At the moment section 10(1) of the Bail Act, which is referred to in this particular amending clause, says:

> Where a person is arrested and it is not practicable to bring him before a court forthwith after he is taken into custody a police officer of or above the rank of sergeant …
>
> (a) shall inquire into the case; and
>
> (b) … if it is not practicable to bring the person … before a court within 24 hours …

We now have this police remand clause. I just wanted to go to the second-reading speech where it reads:

> The proposal for police remand is similar to that proposed by Mr Coghlan in recommendation 29(d) of his second report. Mr Coghlan recommended that police remand be available overnight.

This clause does not bear a lot of resemblance to that recommendation. Recommendation 29 has four parts, (a), (b), (c) and (d):

> (a) That a new bail & remand court be established at the Magistrates Court, (replacing the current night court and weekend court) sitting in two courts, in two shifts from 9.00 a.m. to 10.00 p.m., seven days per week, covering the whole state.
>
> (b) That if the bail & remand court is established, funding be made available for prosecutors, legal aid lawyers, corrections and court-based bail support assessments during those hours.
>
> (c) That all headquarter police stations be equipped with audiovisual links as soon as possible to enable bail hearings to be conducted with an accused in custody by the bail & remand court.

Importantly:

> (d) That once the bail & remand court is fully operational:
>
> (i) senior police members be able to remand adult accused (except for vulnerable adults) overnight, and
>
> (ii) bail justices be retained for interim accommodation orders and out-of-hours bail applications for children and vulnerable adults.

My questions really are: why has the government departed so far from the recommendation, and how far down the road are we with the establishment of the bail and remand court, as recommended by Mr Coghlan?

Mr Ondarchie — Acting President, once again my disappointment remains at the government's support for this legislation before us. It is very important. I draw your attention to the state of the house.

Quorum formed.

Ms TIERNEY — I mentioned this in the summing up, and I acknowledge that Mr Coghlan recommended setting up a seven-day bail and remand court to enable bail matters to be processed through the courts more quickly. As part of this proposal he recommended that police be able to remand accused persons overnight, which would enable them to be brought to the bail and remand court the next day. As I said earlier, the government is working with stakeholders to establish a seven-day bail and remand court. The government considers it preferable that police remand power be available as soon as possible, rather than waiting for the establishment of the bail and remand court,
Ms Pennicuik.

Ms PENNICUIK — I think, Minister, that the salient point regarding police remand is that police be able to hold people on remand overnight. That was the recommendation, not all that dissimilar from the current arrangements already in the Bail Act.

My other questions regarding this clause go to the necessity of it, given that there are already provisions to hold someone overnight. Also this particular provision has almost contradictory subprovisions in that subsection (5) states that:

> The police officer must not remand the person in custody under subsection (4)(b) —

which provides that they should be remanded in custody to appear within 48 hours —

> if … it is not practicable for the person to be brought before a court within … 48 hours (including … by audio visual link).

The next subsection says:

> In the circumstances mentioned in subsection (5) —

which I just read —

> the person must be brought before a bail justice as soon as practicable.

It begs the question as to why a person is not brought before a bail justice as soon as practicable anyway, without all the former clauses and subclauses.

Ms TIERNEY — I am advised that police do not currently have the power to remand people; they can really only hold them until a bail justice arrives. The point of these provisions is to give police new powers to remand and to limit the use of bail justices to specific cases.

Ms PENNICUIK — That may be the intended effect of this clause but it may not be the practical effect of it because proposed section 10AA(7) says:

> If a person remanded in custody under subsection (4)(b) is not brought before a court within 48 hours after being so remanded, the person must be brought before a bail justice as soon as practicable after the expiry of that period of 48 hours.

What we might actually have is a situation where a person is held for 48 hours and still ends up before a bail justice. I am not sure what the purpose of this clause is and why, as Coghlan has recommended, bail justices still continue to be used.

Ms TIERNEY — The government does not have anything further to add on this matter.

Ms PENNICUIK — There may be a policy decision that the government has made, but that is not my question. The question is about the practical effect of this clause. You have said to me it is to limit the use of bail justices, and I am saying that under proposed subsection (7) and proposed subsection (6) the person may very well end up before a bail justice.

Ms TIERNEY — And that might be the case, but the provision is about the majority of cases being dealt with by police at an earlier stage. If that cannot be done for whatever reason, then this is like a default clause in terms of bail justices.

Ms PENNICUIK — Thank you, Minister. I do not necessarily agree. You are saying it is about giving the police the power to remand the person before they are brought before a court and hold them for 48 hours. I think what you think this is doing is making sure the person comes before a court and not a bail justice, and what I am saying is they may well come before a bail justice under proposed subsection (6) and proposed subsection (7). So I am questioning the necessity for this particular provision and why under clause 14 these schedule 1 offenders, which can include people who have committed a number of minor offences and not in fact a schedule 1 offence, cannot be brought before a bail justice in the first place, as recommended by Coghlan, and still be remanded in a remand centre.

Committee divided on clause:

Ayes, 32

Atkinson, Mr	Mikakos, Ms
Bath, Ms	Morris, Mr (*Teller*)
Bourman, Mr	Mulino, Mr
Carling-Jenkins, Dr	O'Donohue, Mr
Crozier, Ms	Ondarchie, Mr
Dalidakis, Mr	O'Sullivan, Mr
Dalla-Riva, Mr	Peulich, Mrs (*Teller*)
Eideh, Mr	Pulford, Ms
Elasmar, Mr	Purcell, Mr
Finn, Mr	Ramsay, Mr
Fitzherbert, Ms	Rich-Phillips, Mr
Gepp, Mr	Shing, Ms

Jennings, Mr	Symes, Ms
Leane, Mr	Tierney, Ms
Lovell, Ms	Wooldridge, Ms
Melhem, Mr	Young, Mr

Noes, 5

Dunn, Ms	Springle, Ms (*Teller*)
Pennicuik, Ms	Truong, Ms (*Teller*)
Ratnam, Dr	

Clause agreed to.

Clauses 15 to 19 agreed to.

Clause 20

Ms PENNICUIK — I just wanted to refer again to clause 20 with regard to an accused on two or more undertakings of bail. I refer the committee to the recommendations made by the Honourable Paul Coghlan, QC, who said that with regard to his recommendations 15 and 16, which refer to this particular provision, they should be read together. His recommendation 15 is:

> That any accused who is already on two undertakings of bail with respect to indictable offences should not be able to be granted bail by a police officer or bail justice in relation to a further indictable offence, but must be brought before a court for the question of bail or remand to be determined.

Recommendation 16 is:

> That implementation of recommendation 15 be deferred pending reforms relating to after-hours remand courts and alternative methods of dealing with lower level offenders (which will be discussed in my second advice).

I draw the committee's attention to the summing-up by the minister, where she read out only half of recommendation 16. She did not read out the second part:

> … and alternative methods of dealing with lower level offenders (which will be discussed in my second advice).

I would like to draw the committee's attention to the government's support of both of these recommendations. In fact it specifically commented:

> The government notes that Mr Coghlan has recommended (at recommendation 16) that implementation be deferred pending reforms relating to after-hours remand courts and alternative methods for dealing with lower level offenders.

Despite this, neither this bill nor the stage one bill deals with the recommendations he made quite strongly that in order to make sure we do not have increasing numbers of people incarcerated who are not convicted of offences and increasing numbers of people who are alleged offenders for minor offences being incarcerated they be taken out of the bail system. This bill is not doing that.

Those figures that I read out before from Mr Coghlan with regard to the increasing number of arrest warrants and the number of people being incarcerated show that the percentage of people who are incarcerated is growing and the percentage of people who are remandees is growing, and that is going to occur more under this bill and the previous bill. So he was very strongly recommending that this particular recommendation be only implemented in concert with his other recommendations to take the minor offences out of the bail system. My question is: why is the government not going with its own response to the recommendations of the Honourable Paul Coghlan, QC?

Ms TIERNEY — Mr Coghlan's recommendation 15 was that a person alleged to have offended whilst already on two undertakings of bail must be brought to court to have further bail granted. He also noted that a person in these circumstances is necessarily at a higher risk of reoffending. He also noted significant community concerns about persons on multiple sets of bail. Mr Coghlan's rationale for deferring the implementation of recommendation 15 was that it had the potential to impact on the resources of agencies involved in the bail system including the Magistrates Court and Victoria Police.

Since the initial release of the report the government has been able to assess the resourcing impacts that may be caused by the implementation of recommendation 15, and the government is confident that recommendation 15 can be implemented without significant adverse impacts on the bail system. Accordingly, given the importance of this reform in ensuring that there are consequences for those who reoffend whilst on bail, it is proposed that its implementation not be deferred.

Ms PENNICUIK — So the answer is that you have decided to not follow the advice, even though you rely on the advice in defence of other provisions of the bill. My question is — and it has been a bit harder to follow what the practical implications of this would be: given that an accused may be accused of a relevant schedule offence and arrested, and it may be established that they already have two or more undertakings of bail in relation to other indictable offences, which may include very minor offences, how long can that person be held and where can they be held?

Ms TIERNEY — I am advised that the person would be held in police custody until they could be

taken before a court, and there is a requirement on police to take them before a court as soon as practicable.

Ms PENNICUIK — That, I suppose, reinforces the non-necessity for the previous clause 14, because that could also have been written in exactly the same way as this one. I have no further questions on this clause.

Clause agreed to; clauses 21 to 24 agreed to.

Clause 25

Ms PENNICUIK — Clause 25 seems to introduce a new subsection after section 346(2) of the Children, Youth and Families Act such that:

> (3) Subsection (2) does not apply if bail may only be granted to a child by a court. In such a case the child must be brought before the court as soon as practicable and—
>
> (a) no later than the next working day after being taken into custody; or
>
> (b) if the proper venue of the court is in a prescribed region of the state, within 2 working days after being taken into custody.

My question is, firstly, what is a 'prescribed region of the state'?

The ACTING PRESIDENT (**Mr Elasmar**) — For the benefit of *Hansard*, Ms Tierney will be relieved for a 10-minute break and Ms Mikakos will be taking her place.

Ms MIKAKOS — I thank Ms Pennicuik for her question. Just to be clear, firstly, on what the subclause does, subclause (2) inserts a new subsection (3) into section 346 of the Children, Youth and Families Act 2005 to specify that where bail may only be granted to a child by court:

> … the child must be brought before the Children's Court as soon as practicable and —
>
> (a) no later than the next working day after being taken into custody; or
>
> (b) if the proper venue of the court is in a prescribed region of the state, within 2 working days after being taken into custody.".

The intention of this change is to avoid the situation where a child must be brought before a bail justice by virtue of section 346(2)(d) of the Children, Youth and Families Act but the bail justice cannot make a decision about the bailing or remanding of the child because the bail justice is prohibited from making such a decision under other legislative provisions, such as section 13 of the Bail Act 1977. It also provides a different time limit to that in section 346(2)(c) within which a child must be brought before the Children's Court in such circumstances as the Children's Court may not be sitting at any convenient venue at the relevant time. The member's specific question did relate to the prescribed regions of the state, and I am advised that that is regional Victoria. It is designed to capture areas outside of metropolitan Melbourne, as is currently the case, and these locations will be prescribed in the regulations.

Ms PENNICUIK — Thank you, Minister. Currently, as you have pointed out, section 346(2)(d) of the Children, Youth and Families Act says that if the court is not sitting at any convenient venue, the child should be brought before a bail justice. Does this new provision rule that out?

Ms MIKAKOS — I thank Ms Pennicuik for her question. I think it is important to be very clear on what this clause is seeking to do. It is not seeking to restrict in any way a young person's ability to access bail through a bail justice; rather it is providing clarity in relation to where those young people will be held if they are remanded in custody. Rather than being remanded in a police cell, they would be required to be remanded in a youth justice facility. So this is providing clarity around those arrangements rather than taking away a person's ability to access bail through a bail justice.

Ms PENNICUIK — Thank you, Minister. That is somewhat reassuring, but it is not necessarily clear from trying to see how the new provisions fit with the existing provisions. Can I draw your attention to clause 25(2), where it says:

> "(3) Subsection (2) does not apply if bail may only be granted to a child by a court …

Could you tell me in what circumstances that would be?

Ms MIKAKOS — I thank the member for her question. I am advised that the only circumstances in which a child cannot see a bail justice is when the young person is alleged to have committed a specified schedule 1 offence under the Bail Act. These are obviously the most serious offences, such as murder, and in that case the child must be brought before a court.

Ms PENNICUIK — Thank you, Minister. Does that include a schedule 1 offence that is a schedule 1 offence by virtue of a number of minor offences getting the person into schedule 1?

Ms MIKAKOS — Can you be clearer, Ms Pennicuik?

Ms PENNICUIK — Does that mean a person can be treated as though they are alleged to have committed a schedule 1 offence if they have committed a number of non-schedule 1 offences that then become a schedule 1 offence?

Ms MIKAKOS — I am advised the answer is no. It needs to be a schedule 1 offence.

Ms PENNICUIK — Thank you. The provision to be inserted after section 346(2) of the Children, Youth and Families Act 2005 states in part:

> if the proper venue of the Court is in a prescribed region of the State, within 2 working days after being taken into custody.

Is that a new provision? Previously, as I understand it, a child could not be held for longer than overnight.

Ms MIKAKOS — I thank Ms Pennicuik for her question. We were just looking up the actual regulation so I can read that to her in terms of explaining how the period of time remains unchanged. Section 23(2) of the Children, Youth and Families Regulations 2017 states:

> … a child may by order of a Court or bail justice be placed in a police gaol if the period of remand is not more than 2 working days.

The regulations do specify two working days and, as the member is aware, this particular new subsection also refers to within two working days, so it remains unchanged.

Ms PENNICUIK — Thank you. I would just like to clarify where the children are being held, because you just then mentioned under the regulations a police jail. Earlier you said it would be a youth justice centre, but section 347(1) of the act and new subsection (1A) mention a remand centre. You opened by telling me that this was to clarify that children could only be held in a youth justice centre, but I do not think that is very clear either from what you read from the regulations or what is actually written in the act and in the amendments in the bill.

Ms MIKAKOS — Our youth justice centres are actually gazetted as both youth justice custodial facilities and remand centres.

Ms PENNICUIK — Thank you, Minister, but you mentioned a police jail.

Ms MIKAKOS — I want to draw Ms Pennicuik's attention also to subclause (3) of this particular clause that does insert a subsection that makes some references to a child being placed in a remand centre 'except as otherwise provided by the regulations'. If you read the clause in its entirety, in essence what these provisions are saying is that where a young person is in a regional area and therefore there is that distance from our youth remand centres they would be placed in a police cell potentially for a maximum of two working days and then they would be transferred to a youth remand centre. That is the current arrangement, and that is what is spelt out here in this clause as well in terms of providing that further clarity.

Clause agreed to.

Clause 26

Ms PENNICUIK — I would just like some clarification — I was just trying to look it up actually — with regard to determining a charge summarily under section 168 of the Criminal Procedure Act 2009 because of the operation of section 168A of that act. If you could just clarify the purpose of clause 26(1).

Ms MIKAKOS — Thank you for your question, Ms Pennicuik. Subclause (1) substitutes section 356(9) of the Children, Youth and Families Act 2005 with a new provision that will require the Children's Court to hear and determine a serious youth offence summarily that has been returned to it by a higher court. Under the amendment, the Children's Court cannot return such a case to a higher court. This is consistent with the requirement for adult cases in section 168(3) of the Criminal Procedure Act 2009.

Clause agreed to; clauses 27 to 28 agreed to.

Clause 29

Ms PENNICUIK — Minister, I am just wondering why — and you may not be the minister for this one — the change under clause 29 to section 33(1A) of the Sentencing Act 1991 substitutes 'young offender' for 'child'?

Ms MIKAKOS — I thank the member for her question. Clause 29 amends section 33(1A) of the Sentencing Act 1991, as inserted by the Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017. Section 33(1A) applies a presumption of cumulation in relation to any period of detention imposed for escape from or property damage to a youth justice facility. The presumption of cumulation in section 33(1A) may only apply in relation to a young offender who received a period of detention imposed when that offender was a child. Clause 29 amends section 33(1A) to clarify that the presumption of cumulation applies to young offenders who were

sentenced to a period of detention either as a child or as an adult.

Committee divided on clause:

Ayes, 32

Atkinson, Mr	Mikakos, Ms
Bath, Ms	Morris, Mr
Bourman, Mr	Mulino, Mr
Carling-Jenkins, Dr	O'Donohue, Mr
Crozier, Ms	Ondarchie, Mr
Dalidakis, Mr	O'Sullivan, Mr
Dalla-Riva, Mr	Peulich, Mrs
Eideh, Mr	Pulford, Ms
Elasmar, Mr	Purcell, Mr (*Teller*)
Finn, Mr	Ramsay, Mr
Fitzherbert, Ms	Rich-Phillips, Mr
Gepp, Mr (*Teller*)	Shing, Ms
Jennings, Mr	Symes, Ms
Leane, Mr	Tierney, Ms
Lovell, Ms	Wooldridge, Ms
Melhem, Mr	Young, Mr

Noes, 5

Dunn, Ms (*Teller*)	Springle, Ms
Pennicuik, Ms	Truong, Ms
Ratnam, Dr (*Teller*)	

Clause agreed to.

New part heading and new clause

Mr RICH-PHILLIPS — I move:

2. Page 31, after line 17 insert the following heading—

"**Part 5— Amendment of Bail Amendment (Stage One) Act 2017**".

NEW CLAUSE

3. Insert the following New Clause to follow clause 29 and the heading proposed by amendment number 2—

'**A Commencement**

In section 2(2) of the **Bail Amendment (Stage One) Act 2017**, for "1 July 2018" **substitute** "30 March 2018".'.

These amendments give effect to the coalition's intention to bring forward the commencement date of the Bail Amendment (Stage One) Act 2017 to 30 March 2018. This is the first tranche of bail reform, which has already been passed by this Parliament but is yet to be brought into effect. As outlined in the second-reading debate and indeed earlier in the committee stage, it is our proposition that this should be given effect on 30 March.

Ms PENNICUIK — The Greens will not be supporting these amendments for the same reasons given for not supporting the first amendment.

Ms TIERNEY — The government does not support these amendments. The government has now indicated that a number of provisions in the first bail amendment act will commence on 21 May 2018. We have determined this by taking into account the views of relevant stakeholders. The Department of Justice and Regulation have been consulting with stakeholders in order to commence the stage one act as soon as possible. The government intends to commence most but not all of the amendments contained in the stage one act on 21 May 2018. The remaining amendments in the act, along with the amendments contained in the stage two bill will, subject to its passage through Parliament, commence on 1 July 2018.

The amendments to commence on 21 May 2018 will include the change from 'show cause' to 'show compelling reason'; the creation of schedules 1 and 2 in the Bail Act, which will increase the number of offences subject to a reverse onus test; provisions to ensure that people who are alleged to have committed certain offences while on bail, summons or parole, under sentence or at large, will face more onerous tests before bail is granted again; a requirement that bail decision-makers impose conditions if they will reduce the likelihood of an accused released on bail endangering any person; and a requirement that bail decision-makers consider the risk of family violence when making bail decisions and inquire as to whether there is a family violence intervention order or safety notice currently in force against the accused.

The only substantive amendment in the stage one act that will not commence on 21 May 2018 is that found in section 11 of the act, which will restrict bail decisions about persons charged with schedule 1 offences, which essentially require an accused person to show to judges and magistrates exceptional circumstances as to why bail ought to be granted. Given the interaction between this change and the amendments contained in the stage two bill that will restrict other categories of bail decisions to the courts, it is proposed that this amendment not commence until the stage two bill commences. On that basis the government does not support the amendments moved by Mr Rich-Phillips.

New part heading and new clause negatived; clause 30 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

AUDIT AMENDMENT BILL 2017

Introduction and first reading

Received from Assembly.

Read first time on motion of Ms MIKAKOS (Minister for Families and Children); by leave, ordered to be read second time forthwith.

Statement of compatibility

Ms MIKAKOS (Minister for Families and Children) 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 Audit Amendment Bill 2017.

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

Overview of the bill

The bill improves the Audit Act to ensure that the Auditor-General can effectively audit the expenditure of public funds and performance of public sector activities, while setting out clear, effective rights and obligations for audited entities.

The bill achieves this by restructuring and modernising the Audit Act to make it more accessible, effective and efficient for the Victorian Auditor-General's Office (VAGO) and audited entities, and addressing concerns about the Audit Act raised by the Auditor-General, VAGO and other stakeholders.

Most relevantly, the bill:

- strengthens and modernises the Auditor-General's information gathering powers, including providing the Auditor-General with the power to enter and inspect premises for the purposes of an audit, subject to appropriate safeguards;
- facilitates more effective information sharing between the Auditor-General and other integrity bodies, Auditors-General from other jurisdictions, and other relevant stakeholders;
- clarifies reporting requirements and giving the Auditor-General greater discretion to share reports; and
- clarifies the Auditor-General's 'follow the dollar' powers, which enable the Auditor-General to audit the use of public funds given to an associated entity or other non-government entity by a public body.

Human rights issues

The proposed bill engages the following human rights provided for in the charter.

Right to privacy and reputation

Section 13 of the charter states that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and the right not to have their reputation unlawfully attacked.

The right to privacy protects a person from government interference or excessive unsolicited intervention by other individuals. However, this right can be subject to reasonable limitation under section 7(2) of the charter. In particular, interference with privacy will not be arbitrary if it is reasonable in the circumstances and in accordance with the charter.

The bill engages the right to privacy to the extent that:

- information subject to an audit or assurance review may contain personal information; and
- premises connected to an audit or assurance review may also be residential.

The bill engages the right to freedom from unlawful attack on reputation in relation to the Auditor-General's reporting and information-sharing powers and obligations, to the extent that the information reported or shared contains personal information.

As will be explained below, any limitations of this right arising from the bill are necessary to achieve the aims of the bill, and are reasonable and demonstrably justifiable.

Power to require information, documents and attendances

The bill modernises and strengthens the Auditor-General's power to call for information, documents and attendances for purposes relevant to the performance of their functions under the Audit Act.

The power to compel information may only be used for the purposes of carrying out the functions of the Auditor-General. This includes performance audits and assurance reviews of public bodies, which may involve associated entities and other non-government entities, financial audits of public bodies and the examination of bodies that receive public funds.

The right to privacy is engaged to the extent that information or documents a person is required to provide to the Auditor-General may contain personal information. However, I consider that the limitation is lawful and not arbitrary as it will have a clear and precise legislative basis, and it serves the public interest by facilitating efficient and convenient access to information necessary for the performance of the Auditor-General's functions. Furthermore, it is reasonable and justifiable on the basis that there are safeguards to protect against arbitrary interference. These include:

- a person may be legally represented in relation to an attendance in accordance with an information gathering notice; and

oversight by the Victorian Inspectorate (the Auditor-General is required to provide a written report to the Victorian Inspectorate within three days of serving the information gathering notice).

This interference is also not arbitrary, in that all formal requests for information, documents and attendances need to comply with the specified requirements, including notice and service requirements, in the Audit Act.

Power to enter and inspect premises for the purposes of an audit

New section 43 of the bill empowers the Auditor-General to verify documentation through on-site inspection and observation of premises of public bodies and associated entities whose premises are used solely or predominantly to provide public services or that contain state property, for the purposes of an audit.

The ability of the Auditor-General and authorised persons to effectively perform their statutory functions depends on their ability to access and inspect premises that are subject to an audit. In particular, to comply with Australian auditing standards, the Auditor-General may need to verify documentation through on-site inspection and observation, and may not be able to rely on documentary evidence alone.

The right to privacy is engaged to the extent that the Auditor-General may need to access premises during an audit that are also used for residential purposes (e.g. non-government organisations that own or occupy premises for the provision of residential care services).

The statutory power to enter and inspect is itself limited in scope, which reduces the likelihood and extent of the interference with a person's privacy. This power is only exercisable as a last resort, where the Auditor-General is not able to access the information by consent or the relevant information cannot be obtained through the Auditor-General's power to require information or attendance. The power cannot be used for assurance reviews, VAGO's annual planning and annual reporting functions, or the Auditor-General's functions and powers under other acts.

The bill also establishes safeguards designed to ensure that any interference is not unreasonable or arbitrary.

Notice requirements attached to this power enable persons residing in the premises to be aware of and have time to object to the Auditor-General's access and inspection of the premises.

The Auditor-General and authorised officers are required to observe procedural fairness obligations when exercising their power of entry and inspection. For example, the Auditor-General or authorised person must provide proof of their identity if requested by the owner or occupier of the premises, and must only conduct inspections at reasonable times and after reasonable written notice.

The Auditor-General, an authorised person or a VAGO officer is required to take reasonable steps to protect the privacy of any person temporarily or permanently residing at the premises.

The Auditor-General must also provide a written report to the Victorian Inspectorate within three business days after an entry notice is served, which enables oversight of the Auditor-General's exercise of this power and its interference with the right to privacy.

In my opinion, any limitation of the right to privacy arising from this amendment in the limited circumstances specified is reasonable in light of the purpose of conducting efficient and effective performance audits.

Reporting

New section 65(2), inserted by clause 9 of the bill, enables the Auditor-General to include comments or opinions about a person named in a report and who is an officer or an employee in a public body or an associated entity. This section reflects the current discretion in the Audit Act. The discretion engages the right to privacy and reputation, as it could enable the publication of sensitive and adverse information about a person, exposing them to public disparagement and potential harm to their livelihood or career.

Given the gravity of this potential interference, it is intended to only be used in the most serious of cases, where it is in the public interest to call out a particular person's conduct.

I consider that the limitation is lawful and not arbitrary as it will be prescribed by law. The Auditor-General may only include in a report adverse comments or opinions about a person if it is relevant to the subject matter of the report and it is in the public interest to do so (new section 64). This test limits what may be said about a person in a public report, and places a high onus on the Auditor-General to prove the necessity of including the information and the person's name in the report.

The bill safeguards against unreasonable interference by requiring the Auditor-General to consult with any public body, associated entity or other non-government entity on proposed reports that relate to the body or entity under new section 58. If the Auditor-General intends to include adverse comments or opinions about an individual named in the report, the public body or associated entity must give the person a reasonable opportunity to respond to the adverse material (new section 65(2)). This enables any information published to be corrected for accuracy and relevance, which may reduce the impact or interference on the person's privacy and reputation.

In limited cases where the Auditor-General includes a comment or opinion in a report that may be adverse to a named person because it is relevant and its inclusion is in the public interest, the safeguard under new section 65 promotes procedural fairness by providing the person an opportunity to defend or contribute to any statements made about them, and seek appropriate advice to manage any consequences of the publication. I consider that this balances the public interest and the right to privacy and reputation, while ensuring that any interference is limited, appropriate and reasonable.

Information sharing

New sections 68 and 69, inserted by clause 9 of the bill, enable the Auditor-General to provide or disclose information to a specified person or body, and collaborate with Auditors-General from other Australian jurisdictions respectively. Currently, the Auditor-General can only share information with a limited range of persons or bodies and only under specific circumstances.

Enabling the Auditor-General to share information engages with the right to privacy and reputation, as it may capture personal information acquired in the course of the Auditor-General's functions or duties, and may increase the risk of reputational damage by increasing the number of persons who can access that information.

However, I consider that this limitation is:

not arbitrary, as it will be prescribed by law; and

justified by the purpose of the amendment, which is to facilitate information sharing with other Auditors-General if the Auditor-General considers that it is in the public interest to do so.

The bill provides a safeguard on information sharing, to reduce the risk of interference with the right to privacy and reputation. New section 69(4)(b) prohibits the Auditor-General from sharing information of a business, commercial or financial nature which, if disclosed, would be likely to unreasonably expose a person, public body or associated entity to any material disadvantage. The Auditor-General may only provide or disclose information to other Auditors-General where it is in the public interest to do so, and if the information has not already been published, it must not be disclosed or published by the recipient unless required for the performance of their functions or duties. In addition, the Auditor-General must report on sharing of information under new section 69 in the relevant audit or assurance review report, or in the next annual report. I consider that this adequately constrains the amount and type of information shared, which ensures that any limitation of the right is not arbitrary and the information published appropriately.

Audio or visual recording of attendances

The bill modernises the current requirement for attendances to be audio or video recorded. The recordings must be provided to the Victorian Inspectorate for review.

This engages the right to privacy and reputation insofar as a person's likeness and/or voice is captured in the recording. I consider this limitation to be justified to ensure that a person is afforded procedural fairness and their right to a fair trial is upheld. Further, the Auditor-General or a VAGO officer is obliged to deliver to the person, destroy or delete the recording when it ceases to be reasonably necessary for the purpose for which it was produced. This reduces the risk that the information contained in the recording could be disclosed for an unauthorised purpose.

Right to freedom of expression

Section 15(2) of the charter provides that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds. Section 15 also provides that lawful restrictions may be reasonably necessary to respect personal rights and reputations.

The bill provides for a number of offences that limit to an extent a person's right to freedom of expression by imposing confidentiality obligations on persons who may be performing certain functions in relation to an audit or review or may otherwise be handling information subject to an audit or review:

New section 71 prohibits and imposes penalties upon persons making improper use of, or providing or disclosing any information acquired by the person by reason of, or in the course of, their performance of their functions under the Audit Act.

New section 72 creates an offence for a person to make unauthorised disclosures or provide confidential information outside the permitted use under the Audit Act.

In my opinion, these limitations are necessary to safeguard the confidentiality of information collected by the Auditor-General, which may contain personal information or may cause a person reputational damage. This also promotes the right to privacy and reputation under section 14 of the charter, as well as protecting the integrity of audit and review information. I consider that these offences appropriately balance the need to protect a person's right privacy and reputation, with the limitation to a person's freedom of expression in the manner authorised by section 15(3)(a) of the charter.

Presumption of innocence

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

Reverse onus provisions

The bill provides for a number of offences that place an evidential onus the accused person to offer evidence of their innocence. The bill modernises these existing offences to align them with the revised scope of the Auditor-Generals' information gathering powers.

New section 52 provides that a person who is duly served with an information gathering notice must not, without reasonable excuse, refuse or fail to comply with the notice.

New section 53 provides that a person who is duly served with an entry notice must not, without reasonable excuse, refuse or fail to comply with the notice.

New section 54(1) provides that a person who is duly served with an information gathering notice must not, without reasonable excuse, refuse or fail to take an oath or make an affirmation when required to do so.

New section 54(2) provides a person who is duly served with an information gathering notice must not, without reasonable excuse, refuse or fail to answer a question that the person is required to answer by the Auditor-General or an authorised person.

These offences engage the right to be presumed innocent, as a person will not be guilty of an offence if they can provide a reasonable excuse. This exception does not limit the right to be presumed innocent because it is an evidential onus only. If the accused can identify or provide evidence of a reasonable excuse for contravening the section, the prosecution has the burden of proving the absence of a reasonable excuse.

Furthermore, these offences are not arbitrary, as they are necessary to ensure and encourage compliance with the Auditor-General's information gathering powers.

In my opinion, these provisions are unlikely to limit a person's presumption of innocence.

Reporting

The bill promotes the right to be presumed innocent by entrenching prohibitions on the publication of certain kinds of information in the Auditor-General's report. New section 65(1), inserted by clause 9, prohibits the Auditor-General from including in a report under the Audit Act or any other act:

> any information that the Auditor-General considers would prejudice any criminal proceedings or criminal investigation, or any IBAC or Victorian Inspectorate investigations (subsection (1)(a));
>
> a finding or opinion that a person is guilty of or has committed, is committing or is about to commit an offence (subsection (1)(b)); or
>
> a recommendation that a person be, or an opinion that a specified person should be, prosecuted for an offence (subsection (1)(c)).

These prohibitions also promote the right to privacy and reputation, insofar as they prevent personal information in relation to criminal proceedings or investigations, or the potential commission of an offence.

Right to freedom of movement

Section 12 of the charter establishes a right of freedom of movement according to which every person lawfully within Victoria has the right to move freely within Victoria.

New section 30 of the bill, authorises the Auditor-General or an authorised person to compel a person to attend at a specified time and place to give evidence or answer questions before the Auditor-General or authorised person. This power to compel attendance limits the right to freedom of movement, insofar as it restricts an individual's freedom of movement in Victoria. However, I consider this limitation is reasonable and justifiable as it is necessary for the Auditor-General or authorised person to have access to all relevant information to properly carry out their functions under the Audit Act.

Additionally, this limitation is relatively minor in nature, given that a person's movement will only be restricted for a limited amount of time. Furthermore, the Auditor-General is required to report to the Victorian Inspectorate on the issue of a notice requiring a person to attend, and this provision is subject to the Inspectorate's complaint and own-motion investigation jurisdiction.

Right to recognition and equality before the law, and right to protection of children

Section 8 of the charter provides that every person is equal before the law and has the right to equal and effective protection against discrimination. 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.

The bill promotes sections 8 and 17(2) of the charter by providing specific protections and safeguards for vulnerable persons (including children, the elderly and persons with a cognitive impairment or a disability) and requiring the Auditor-General to develop protocols for interacting with vulnerable persons. These safeguards recognise that the Auditor-General and VAGO officers may interact with vulnerable persons in the course of performing their functions, and certain adjustments will need to be made to ensure the fair and proper performance of their functions and powers.

Right to a fair hearing

Section 24(1) of the charter provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This right encompasses the procedural fairness of a decision (*Knight v. Wise* [2014] VSC 76).

The bill entrenches a number of procedural fairness obligations. For example, new section 34 enables persons to be legally represented in relation to an attendance or an information gathering notice. Moreover, the requirement for attendances to be audio or video recorded in new section 37(1) ensures that accurate records of attendances are kept for use in future proceedings.

Conclusion

I consider that the bill is compatible with the charter because, to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

Gavin Jennings, MLC
Special Minister of State

Second reading

Ms MIKAKOS (Minister for Families and Children) (18:17) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Auditor-General is a key part of the integrity and accountability system in Victoria. The Auditor-General's role is to ensure that public funds are expended efficiently, effectively and in accordance with the law. In recent times, the Auditor-General's role has expanded to include performance audits to assess results and outcomes of public sector activities.

The Auditor-General's legislation has been amended many times since it was introduced in 1994. This has resulted in an Audit Act that is outdated, difficult to navigate and operationally challenging.

The bill is a significant rewrite of the Audit Act and is part of the government's suite of integrity and accountability reforms. The bill addresses concerns about the Audit Act by:

> modernising and restructuring the Audit Act to make it more accessible, effective and efficient;
>
> clarifying and modernising the functions and powers of the Auditor-General and VAGO to ensure appropriate oversight of the public sector and publicly funded services;
>
> improving the consistency of the Auditor-General's jurisdiction with other integrity bodies; and

making it clear when disclosing confidential information is and is not authorised.

This bill gives effect to the seven principles guiding the government's integrity and accountability reforms, as follows:

Accountability: the bill promotes and improves public sector accountability for the use of public funds to achieve government policy objectives.

Independence: the bill preserves the independence of the Auditor-General as an officer of Parliament, which facilitates robust and thorough audits and reviews that are free from government influence.

Effectiveness: the bill ensures that the Auditor-General has effective and clear powers that are proportionate to the Audit Act's objectives within the integrity and accountability system.

Transparency: the bill provides clear and accessible guidance on how the Auditor-General and VAGO are to perform their powers and functions to audit the use of public funds.

Collaboration: the bill will facilitate more effective information sharing between the Auditor-General and the other integrity bodies, Auditors-General from other jurisdictions, and other relevant stakeholders.

Cohesion: the bill complements the broader reforms to Victoria's integrity and accountability system, ensuring that the Auditor-General can collaborate with other integrity bodies in the performance of his or her functions.

Fairness: the bill includes a number of safeguards to protect the rights of persons who may be compelled to give information or an attendance under the Audit Act, or who may reside at audited premises, to ensure that people are treated fairly and equally.

In addition, the bill acquits the government's commitment to the former Auditor-General to rewrite the Audit Act, and will make a significant contribution to enhancing public confidence and understanding of how public bodies are audited.

I now turn to the bill.

Clarifying the Auditor-General's jurisdiction

An effective Auditor-General requires a comprehensive and clear mandate to examine all public sector bodies, including private sector bodies performing public functions. The bill includes a new definition of 'public body' which makes the Auditor-General's mandate clearer, but without changing its scope.

Modernising and strengthening the Auditor-General's functions

New power to conduct assurance reviews of public bodies

Australian auditing standards provide for two types of assurance engagements:

'reasonable assurance engagements', commonly known as 'audits', for which the Audit Act currently provides in relation to public bodies; and

'limited assurance engagements', commonly known as 'reviews'.

Audit conclusions represent a high (but not absolute) level of assurance, whereas review conclusions reflect a greater level of acceptable risk. Because of this, reviews are more limited in scope than audits, and therefore provide a more targeted, flexible, speedy and economical basis for review.

The bill provides the Auditor-General discretion to conduct assurance reviews of a public body's financial statements or performance. This discretion does not replace or detract from the Auditor-General's existing audit functions.

It is intended that assurance reviews are to be used for more targeted, smaller scale, time-sensitive or lower risk engagements. This discretion would enable the Auditor-General to, for example, efficiently review specific operational matters, or follow up on compliance with previous audit recommendations or referrals from other integrity bodies.

Given that assurance reviews are more streamlined, public bodies will not be consulted prior to an assurance review. However, the bill provides a number of safeguards, including:

requiring the Auditor-General to perform assurance reviews in accordance with Australian auditing standards and report to the Public Accounts and Estimates Committee quarterly on any assurance reviews; and

prohibiting the Auditor-General from exercising the proposed power to enter and inspect premises for an assurance review.

Clarifying the Auditor-General's follow the dollar powers

In 2016, the government provided the Auditor-General with the power to 'follow the dollar'. This power enables the Auditor-General to effectively audit the use of public funds to deliver public services.

The bill simplifies and restates the 'follow the dollar' powers more transparently within the Audit Act's revised structure, while ensuring that existing safeguards continue to apply. For example, the Auditor-General is prevented from publishing information in an audit report that could unfairly damage the commercial interests of a provider.

To further enhance transparency, the bill requires the Auditor-General to include the reasons for conducting an audit or assurance review involving an associated entity in the relevant audit or assurance review report.

Information gathering powers and duties

Strengthening and clarifying the Auditor-General's power to require information or attendance

The Auditor-General's current powers to require a person to produce documents or to give evidence are not accompanied by clear procedural fairness requirements. The bill clarifies that the Auditor-General may only gather evidence that is relevant to the function he or she is performing. The bill requires certain requirements to be met before the Auditor-General, a Deputy Auditor-General or senior VAGO officer authorised by the Auditor-General may use coercive evidence-gathering powers. For example, the

Auditor-General or authorised person must issue a written notice to a person or body, and serve the notice at least five business days before using these powers. The Auditor-General will also be required to report to the Victorian Inspectorate when issuing an information gathering notice. The bill does not affect the ability of the Auditor-General or a VAGO officer to informally request information or documents by consent.

The bill also requires VAGO to destroy or return any audit documents that are no longer required for audit purposes. This will afford greater protection to confidential information and better align with similar provisions in other integrity legislation.

A clear statutory power to enter and inspect premises for the purposes of an audit

VAGO currently relies on consent to access premises. However, it has occasionally been refused access, undermining the Auditor-General's capacity to conduct efficient and effective financial and performance audits. To meet high evidentiary thresholds for audits under auditing standards, the Auditor-General sometimes needs to be able to directly observe, inspect and verify an entity's operations and processes.

The bill gives the Auditor-General the power to enter and inspect premises of public bodies for any audit. It also allows the Auditor-General to access the premises of associated entities whose premises are used wholly or predominantly to provide public services or that contain state property, during the performance audit of a public body.

The power is intended to be used as a last resort, where access is denied or the relevant information cannot be obtained through the Auditor-General's power to require information or attendance. The bill also provides safeguards to minimise any risks that may arise from the use of this power, including:

safeguards to protect the privacy of occupiers and to minimise disruption to the operations of the public body or associated entity and occupiers on the premises;

requiring the Auditor-General to develop and follow appropriate protocols for interacting with vulnerable persons on site; and

requiring the Auditor-General to report to the Victorian Inspectorate on the exercise of the power.

Clarifying that the Auditor-General may override confidentiality obligations under contract

The bill extends the Auditor-General's existing power to override confidentiality obligations to include obligations under contract, subject to appropriate safeguards. This reform aims to address situations where the public interest in enabling the Auditor-General to effectively perform his or her functions may take precedence over the public interest protected by confidentiality obligations.

To protect people from legal action, the bill provides that a person is not subject to any civil or disciplinary proceedings because the person provides the information to the Auditor-General in accordance with the Audit Act.

Information sharing and reporting

Currently, the Audit Act lacks a coherent and transparent information-sharing regime, which is essential for the Auditor-General to effectively and efficiently interact with other integrity bodies.

The bill responds to this concern by expanding the range of bodies and persons with whom the Auditor-General can share information to include ministers, public bodies, statutory office-holders, integrity bodies, law enforcement agencies, prosecutorial bodies and associated entities. Recipients will be restricted from disclosing information, except in appropriate circumstances, e.g. where a public servant needs to brief their minister on an audit report.

The Auditor-General will not be permitted to share information that is subject to cabinet confidentiality or where disclosure is prohibited by legislation.

The bill also facilitates better information sharing and collaboration with other Auditors-General, subject to appropriate limitations on this discretion. The bill strengthens the Auditor-General's ability to share proposed reports with a person or body with a special interest in the report, and to allow them to make submissions, and modernises other reporting requirements and discretions.

Audits of the Auditor-General and VAGO

The bill clarifies the financial and performance audit arrangements for VAGO. It will require annual financial audits of VAGO as is the current practice, and performance audits of VAGO at least once every four years, instead of once every three years as is currently the case. Less frequent performance audits will reduce the administrative burden on VAGO. PAEC will continue to appoint independent auditors to conduct these audits.

The bill will provide PAEC with greater flexibility to appoint VAGO's auditors, but will ensure that persons with potential conflicts of interest cannot be appointed.

Conclusion

The Auditor-General and VAGO play a key role in the Victorian integrity and accountability system. This bill makes it easier for public sector bodies and associated entities to comply with their obligations under the Audit Act and gives the Auditor-General and VAGO the tools they need to carry out their functions into the future. This will ensure that Victorians can continue to have confidence in the accountability of public administration in this state.

I commend the bill to the house.

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

Debate adjourned until Thursday, 1 March.

CHILDREN LEGISLATION AMENDMENT (INFORMATION SHARING) BILL 2017

Introduction and first reading

Received from Assembly.

Read first time on motion of Ms MIKAKOS (Minister for Families and Children); by leave, ordered to be read second time forthwith.

Statement of compatibility

Ms MIKAKOS (Minister for Families and Children) 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 Children Legislation Amendment (Information Sharing) Bill 2017 (the bill).

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

Overview

The bill amends the Child Wellbeing and Safety Act 2005 (the principal act) to establish an information-sharing scheme to enable prescribed entities to share confidential information in order to promote the wellbeing and safety of children. The bill also establishes a register of all children born or participating in specified services in Victoria to improve child wellbeing and safety outcomes for those children, and to monitor and support their participation in government-funded programs and services. Further, the bill makes a range of amendments to the Children, Youth and Families Act 2005, the Health Records Act 2001, the Privacy and Data Protection Act 2014, the Health Services Act 1988, the Education and Training Reform Act 2006 and the Freedom of Information Act 1982 to support the operation of the new information-sharing scheme.

In making these amendments, the bill seeks to address the issues raised in numerous recent independent reviews, which have recommended reform to Victoria's information-sharing arrangements to improve wellbeing and safety outcomes for children. These include reviews undertaken by the Victorian Auditor-General, the Coroners Court of Victoria, the Commission for Children and Young People and the Protecting Victoria's Vulnerable Children Inquiry, some of which relate to the deaths of children. A key theme of these reviews has been that, with the benefit of hindsight, the risk of harm to children could have been avoided or significantly reduced if relevant agencies and service providers had been empowered to take a proactive approach to information exchange and a more collaborative, integrated approach to service provision for children and families.

The bill addresses these issues and recommendations by establishing a scheme designed to improve the ability of relevant agencies and service providers to exchange certain information about a child or group of children, with a focus on early intervention. It does so by inserting a new part 6A into the principal act to provide for the sharing of confidential information between specified persons and bodies for the purpose of promoting the wellbeing or safety of children, in circumstances which include but extend beyond where a child is already at risk.

The bill also inserts a new part 7A into the principal act to establish a platform called Child Link, to enable systematic sharing between specified entities of limited factual information regarding a child's enrolment and participation in services, and to enable government to create longitudinal datasets to inform policy development and service design.

Human rights issues

In my opinion, the human rights under the charter that are relevant to the bill are:

the protection of families and children under section 17 of the charter;

the right to privacy as protected by section 13 of the charter;

the right to freedom of expression under section 15(2) of the charter; and

the presumption of innocence in relation to criminal offences under section 25(1) of the charter.

For the reasons outlined below, I am of the view that the bill is compatible with each of these human rights.

Importantly, by establishing a scheme with the overarching purpose of promoting the wellbeing and safety of children and facilitating early intervention in relation to potential risks, the bill promotes the right of children in section 17(2) of the charter to such protection as is in their best interests.

Protection of children

Section 17(2) of the charter provides that every child has the right to such protection as is in their best interests and is needed by them by reason of being a child. This provision acknowledges that children are vulnerable because of their age and are entitled to special protection.

The bill promotes the rights of children by having as its fundamental purpose the promotion of wellbeing and safety of children and by providing that confidential information may only be disclosed for that purpose. While the right of children to consent to their information being collected and disclosed and to be updated on its use is limited by the bill, such limitations reflect and recognise the particular vulnerabilities of children and that they may not always be willing or able to disclose information critical to their safety and wellbeing.

The principles in new section 41U and the associated guidelines under new section 41ZA (as discussed below under the heading of 'Privacy') provide guidance to information-sharing entities when collecting, using and disclosing confidential information to seek and take into account the views of the child wherever appropriate, safe and reasonable to do so; to preserve positive relationships between the child and people significant to the child; and to have regard to the child's identity, vulnerability and cultural rights. The bill enables the state to take appropriate measures to protect children from harm while supporting their agency and autonomy to the greatest extent possible. As such, to the extent that any rights under section 17(2) are limited, any such limitation is reasonable and necessary to give effect to the legitimate aim of promoting children's wellbeing.

Protection of families

Section 17(1) of the charter provides that families are the fundamental group unit of society and are entitled to be protected by society and the state. This section recognises that

the relationship between a parent and child is an integral part of family life and protects the rights of parents to exercise parental authority in relation to the care and upbringing of children. When taking measures to protect a child's wellbeing, the state is obliged to take into account the rights and duties of parents.

A number of principles set out in new section 41U (as discussed below under the heading of 'Privacy') promote the protection of families by guiding information-sharing entities when collecting, using and disclosing confidential information to seek and take into account the views of relevant family members where appropriate, safe and reasonable to do so; to preserve and promote positive relationships between the child and their family; and to promote and recognise the familial connections of Aboriginal and Torres Strait Islander children. The principles also note that the information-sharing entity should take all reasonable steps to plan for the safety of any family members who are believed to be at risk from family violence. Further, the bill may protect families by assisting parents to secure the safety and wellbeing of their children.

However, the bill also limits the right in section 17(1) by enabling confidential information about a child or family member to be shared without the consent or knowledge of their parents, as outlined above. The sharing of information about a child or family member in this way may undermine parental authority and could have ongoing impacts on the family unit and their engagement with services.

In my view, any limitation of the right in section 17(1) is justified in light of the important overarching objective of the new information-sharing provisions to promote the safety and wellbeing of children and the fact that obtaining the consent of a child's parent may often be impractical or inappropriate, particularly in the face of significant harms. Both the principles and guidelines will guide information-sharing entities to consider family relationships and the views of relevant family members when sharing confidential information, whilst prioritising the safety and wellbeing of the child.

Privacy

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

The bill permits and, in some cases, requires the disclosure of confidential information between specified entities for the purpose of promoting the wellbeing or safety of children. Several provisions of the bill therefore interfere with the right to privacy. However, for the reasons set out below, it is my view that these interferences are neither unlawful nor arbitrary and as such do not constitute a limit on the right to privacy.

Information sharing between prescribed entities

Clause 8 of the bill inserts a new part 6A into the principal act to provide for the sharing of confidential information between specified persons and bodies for the purpose of promoting the wellbeing or safety of children. The scheme will apply to a confined list of 'information-sharing entities' to be prescribed by regulation (new sections 41R and 46ZC) and may include, for example, nurses, psychologists and other medical practitioners, police officers, teachers, principals of a registered school, state-funded community service organisations, and education and care services. Some entities may be prescribed as 'restricted information-sharing entities', with more limited authorisation to share or obtain confidential information, which will be specifically set out in the regulations.

Specifically, within new part 6A of the principal act, section 41V provides that an information-sharing entity may, on its own initiative, disclose confidential information (other than excluded information) to another information-sharing entity if the disclosure is made for the purpose of promoting the wellbeing or safety of a child or group of children, and the disclosing entity reasonably believes that the disclosure may assist the receiving entity to make decisions, assessments or plans, initiate or conduct an investigation, or provide a service or manage a risk, in relation to a child or group of children. Further, new section 41W provides that an information-sharing entity may request another information-sharing entity to disclose confidential information (other than excluded information) for the same overarching purpose, and the responding entity must comply with that request if it reasonably believes that disclosure may achieve the same outcomes as those identified above with respect to new section 41V.

'Confidential information' is defined in clause 5 of the bill (amending section 3(1) of the principal act) to mean health information (within the meaning of the Health Records Act 2001), personal information (within the meaning of the Privacy and Data Protection Act 2014), sensitive information and unique identifiers (within the meaning of the Privacy and Data Protection Act 2014), and identifiers (within the meaning of the Health Records Act 2001).

'Excluded information' is defined in clause 8 of the bill (new section 41Q) to mean confidential information the collection, use or disclosure of which could be reasonably expected to endanger a person's life or result in physical injury; prejudice an investigation, inquest or fair trial; breach legal privilege; contravene a court order or provision of the principal act; or be contrary to the public interest.

New section 41U sets out the principles that information-sharing entities (and, where relevant, restricted information-sharing entities) should refer to for guidance when collecting, using or disclosing confidential information in accordance with new part 6A. These principles apply in addition to the overarching purpose of promoting the wellbeing or safety of children being met (in all cases) and the reasonable belief that the disclosure may assist other entities in their dealings with children. These principles include that entities should:

> give precedence to the wellbeing and safety of a child or children over the right to privacy;
>
> only share confidential information to the extent necessary to promote the wellbeing or safety of a child or group of children, consistent with the best interests of that child or children;
>
> work collaboratively with other entities in a manner that respects their functions and expertise;

seek and take into account the views of the child and relevant family members wherever appropriate, safe and reasonable to do so;

seek to preserve and promote positive relationships between the child, their family and other people significant to the child;

be respectful and have regard to a child's social, individual and cultural identity, their strengths and abilities and any vulnerability relevant to the child's wellbeing or safety;

take all reasonable steps to plan for the safety of all family members believed to be at risk of family violence;

promote the cultural safety and recognise the cultural rights and familial and community connections of children who are Aboriginal, Torres Strait Islander or both; and

seek to maintain constructive and respectful engagement with children and their families.

The application of these principles, which will be supported by detailed guidelines that the minister must make and publish after extensive and compulsory consultation, will ensure that information-sharing entities and restricted information-sharing entities only share confidential information to the extent that it is appropriate to do so in all the circumstances. New section 41ZA(2)(b) provides that the guidelines must address how the principles are to be applied in practice when collecting, using or disclosing confidential information and how an information-sharing entity or a restricted information-sharing entity may demonstrate its capacity to handle confidential information responsibly and appropriately. For example, in relation to the principle of taking all reasonable steps to plan for the safety of family members believed to be at risk of family violence, the guidelines will contain detailed guidance on using family violence risk management frameworks. In relation to the principle of seeking and taking into account the views of children and relevant family members, the factors that are relevant to when and whether consent should be obtained will be discussed throughout the guidelines. Information-sharing entities and restricted information-sharing entities must comply with the guidelines (new section 41ZA(5)). Although non-compliance alone is not an offence (new section 41ZK(5) and 41ZL(4)), it will be relevant to complaints made under the Privacy and Data Protection Act 2014, Health Records Act 2001 or Privacy Act 1988 of the commonwealth (Privacy Act), and may lead to a person or body ceasing to be prescribed as an information-sharing entity.

New section 41ZG extends the operation of the Privacy and Data Protection Act 2014 to any information-sharing entity that is not already covered by that act. The Information Privacy Principles (IPPs) in schedule 1 to that act will therefore apply so as to provide an appropriate level of further regulation and accountability. For example, under IPP 1.1, an entity must only collect personal information that is necessary for one or more of its functions or activities, and under IPP 2.1, an entity must not use or disclose personal information for a purpose other than the primary purpose for which it was collected (save for in specified and limited circumstances). This means that, generally, entities that receive confidential information under new part 6A will only be able to use that information for the purposes for which it was exchanged (except, pursuant to new section 41X, if otherwise required or permitted under another act or law).

However, the bill displaces certain IPPs in order to ensure that the objectives of new part 6A are not unduly compromised. Specifically, clause 30 provides that nothing in IPPs 1.4, 1.5, or 10.1 applies to the collection of personal or sensitive information by information-sharing entities. The effect of clause 30 is that when acting in accordance with new part 6A of the principal act, information-sharing entities need not collect personal information directly from the individual it relates to (IPP 1.4). It also means that where an information-sharing entity has collected personal information about an individual from someone else, where compliance would be contrary to the promotion of the wellbeing and safety of a relevant child, the entity need not take reasonable steps to ensure that the individual is aware of matters such as the identity of the entity that has collected the information, the fact that the individual can access the information, the purposes for which it has been collected, and to whom the entity will disclose the information (IPP 1.5). Further, the circumstances in which entities are empowered to collect sensitive information are not limited to those in which the individual has either consented; the collection is required under law; the collection is necessary to prevent or lessen a serious and imminent threat to the life or health of an individual; or the collection relates to the establishment, exercise or defence of legal claims (IPP 10.1). More broadly, division 4 of part 3 of the bill provides that nothing in any IPP applies to the collection, use or disclosure of personal or sensitive information under part 6A to the extent that it requires the consent of the relevant person. Additionally, division 3 of part 3 makes similar amendments as outlined above to the Health Records Act 2001, with respect to the corresponding health privacy principles contained in that act.

The consequential amendments to the Children, Youth and Families Act 2005 in division 1 of part 3 of the bill repeal a number of prohibitions on disclosure under that act. This includes provisions that prohibit protective interveners, including the Secretary to the Department of Health and Human Services, from disclosing any information or record arising from an investigation under part 4.6 of that act to anyone other than specified people or bodies, and provisions that prohibit a person who prepares, receives or otherwise has access to certain reports (such as protection reports and therapeutic treatment reports) from disclosing information contained in that report without consent. While the repeal of these provisions may permit such information to be shared more broadly than was previously authorised, any disclosure of personal information must still be made in accordance with the Privacy and Data Protection Act 2014 and the requirements under new part 6A (if sharing confidential information under that part). Further, the repeal of provisions that may impose conflicting obligations on information-sharing entities ensures greater clarity and consistency around information sharing, and persons who give information in confidence in the course of an investigation will continue to be protected by confidentiality provisions in part 4.6 of the Children, Youth and Families Act 2005.

The bill empowers information-sharing entities to share a range of confidential information about individuals in circumstances in which that information may not previously have been able to be shared, and the scheme represents a recalibration of rights to give precedence to the wellbeing and

safety of children over the right to privacy of those children and other persons. However, in my view, the circumstances in which confidential information may be shared are sufficiently precise, confined, and proportionate to the legislative purpose sought to be achieved. The information-sharing provisions outlined above are therefore neither unlawful nor arbitrary and as such, do not limit the right to privacy under the charter.

The bill aims to shift an entrenched, risk-averse culture around information sharing to promote an approach to information exchange that is proactive, collaborative and appropriately balanced. The threshold purpose of 'wellbeing or safety' enables prevention, early risk assessment and intervention before harm occurs or statutory intervention is required. The factors that contribute to 'wellbeing' form the basis of the principles that are set out in new section 41U for relevant entities to consider and, as outlined above, these principles (as well the factors relevant in determining 'wellbeing' in the context of the legislation) will be reflected and expanded in guidelines which must be made by the minister and which will bind relevant entities. Further, by carving out certain categories of 'excluded information' from the information-sharing provisions, the bill ensures that confidential information that could give rise to an unacceptable risk of harm cannot be shared.

The bill also contains a broad regulation-making power in new section 46ZC of the principal act, to provide further certainty as to the operation of the new information-sharing scheme. In addition to prescribing the confined list of entities which will be empowered to exchange confidential information under the bill, the regulations may prohibit or regulate the type of information that may be used, disclosed, handled, requested or received by an entity, further prescribe the purposes for which confidential information may be used or disclosed, and prescribe the information to be recorded by an entity for the purpose of its record-keeping requirements under new section 41ZC. Offence provisions relating to unauthorised use and disclosure of confidential information without consent (new sections 41ZK and 41ZL), and false claims to be or represent a prescribed information-sharing entity (new section 41ZM) provide further safeguards, as do the mandatory two and five-year independent review provisions in new sections 41ZN and 41ZO.

To the extent that the information-sharing provisions displace some of the otherwise applicable requirements contained in the Privacy and Data Protection Act 2014 and Health Records Act 2001, in my view, this is crucial in order to achieve the objectives of the bill. This approach is consistent with the approach taken in the Family Violence Protection Amendment (Information Sharing) Act 2017, which displaced IPPs 1.4, 1.5 and 1.10 in relation to persons of concern. A requirement that entities obtain consent from relevant individuals and make them aware of various matters relating to confidential information collected would seriously undermine the capacity of those entities to exchange information in the proactive, efficient and collaborative manner envisaged by the bill. Obtaining the consent of children raises complex issues; moreover, it may place a significant and inappropriate burden of responsibility on children for their own safety and wellbeing, which would be inconsistent with the best interests of those children. Further, requiring entities to obtain consent prior to sharing confidential information would create significant uncertainty about when confidential information can be shared and could encourage unnecessary risk aversion. However, this does not mean that children's agency and privacy is not important. It is. As such, in keeping with the principles, the guidelines will state that entities should have regard to the views of a child (and their relevant family members) where appropriate, safe and reasonable to do so. Further, the principle that an information-sharing entity should only override a person's right to privacy to the extent necessary to promote wellbeing or safety ensures a proportionate approach to information sharing.

I note that in *The Christian Institute & Ors v. The Lord Advocate* (Scotland) [2016] UKSC 51, the UK Supreme Court held an information-sharing scheme to be incompatible with the right to respect for private and family life under the European Convention on Human Rights. In comparison, the information-sharing scheme under this bill provides for detailed principles to be considered by information-sharing entities when sharing information. This essential aspect of the bill will be reflected and expanded in the mandatory ministerial guidelines, with which information-sharing entities must comply. The extension of obligations contained in privacy legislation (save for some limited exclusions) to information-sharing entities under this bill also ensures clarity and proportionality in the approach taken to information exchange. Therefore, in my view, these features are sufficiently different to distinguish the two schemes.

Information sharing with other persons

Within division 2 of part 6A of the principal act, new section 41Y provides that an information-sharing entity may disclose confidential information (other than excluded information) to a child, a person who has parental responsibility for the child or a person with whom the child is living, for the purposes of managing a risk to the child's safety. The person to whom the information is disclosed must only use or disclose it for the purpose of managing that risk.

The circumstances in which confidential information may be disclosed by an entity to a person other than another entity under these provisions are appropriately limited. Information may only be shared where there is a risk to a child's safety and it may only be shared for the purpose of managing that risk. 'Excluded information' cannot be shared. Further, many of the safeguards that apply to the sharing of confidential information between prescribed entities will also apply in this context. For example, in determining whether an entity should share information under new section 41Y, the entity will need to consider the principles set out section 41U and comply with the ministerial guidelines issued under new section 41ZA.

In my view, section 41Y is therefore sufficiently precise and proportionate so as not to limit the right to privacy under the charter.

Division 1 of part 3 of the bill makes consequential amendments to the Children, Youth and Families Act 2005 that enable the sharing of certain information to occur between particular bodies in the context of that act. Clause 17 inserts a provision that allows the Secretary to the Department of Health and Human Services and protective interveners to request, disclose and receive information from certain bodies or individuals if they believe on reasonable grounds that it is required for the performance of the duties or functions of the secretary or protective intervener under that act. This information may include personal information. The information may be received from, or disclosed to, the Secretary to the Department of Health and Human Services, another protective intervener, an information holder, a service agency, a person in charge of, or employed in, a registered

community service or another individual. Clause 18 substitutes section 193 to permit community-based child and family services, upon receiving a referral from a person who has a significant concern for the wellbeing of a child, to consult with certain services for the purpose of assessing a risk to a child or to determine which service is an appropriate body to provide assistance. In the course of such a consultation, the community-based child and family service may receive or disclose information about the child or family.

These amendments reflect a more permissive approach to information sharing to enable service agencies and community services to better perform their functions and duties. Such amendments do not unreasonably limit the right to privacy because they restrict information sharing to specific categories of people in certain, prescribed circumstances.

Establishment of the Child Link scheme

Clause 10 of the bill inserts a new part 7A into the principal act to provide for the establishment of a Child Link register.

Under new sections 46B and 46Y, the secretary to the Department of Education and Training is required to establish and maintain the register in relation to each child who is born in Victoria; accesses, enrols in, registers with or otherwise engages with a relevant service (for example, a maternal and child health service, supported playgroup, and registered school); registers for homeschooling; or is the subject of a child protection order.

The particulars to be included on the register will be extracted and regularly updated (through an automated process) from a number of existing databases. To facilitate this, new section 46I authorises certain persons to collect confidential information and disclose it to the secretary to enable the secretary to establish and maintain the register. The secretary may amend an entry on the register to reflect the most accurate information available to the secretary, and may collect, use or disclose confidential information about a child or other person for the purposes of establishing and maintaining the register without the consent of that person.

The particulars that may be included in the register are set out in new section 46D and include the child's full name, date and place of birth, and sex; full names of each person who has or has had parental responsibility for, or day-to-day care of, the child; siblings' names; whether the child is Aboriginal, Torres Strait Islander, or both; information about any child protection orders made in relation to the child; and whether the child is a participant in the national disability insurance scheme. The register will also include specified information in relation to the relevant services that the child has accessed, enrolled in or been referred to. The specified information is set out in new section 46D(3) and includes the name and contact details of the service, the dates of the child's participation in the service, a description of the child's participation in the service, dates of registration and cancellation in relation to homeschooling and any other prescribed information that is considered necessary.

Only people designated as Child Link users may access the register and use confidential information contained in the register. A list of Child Link users is contained in new section 46K and includes specified persons employed or engaged to provide education or health and welfare services at a school or an approved education and care service; nurses employed or engaged in the provision of maternal and child health programs; persons employed or engaged by a council or the Victorian Aboriginal Health Service Co-operative Limited in relation to childhood services implementation or policy; and persons employed or engaged by the Secretary to the Department of Health and Human Services under part 3 of the Public Administration Act 2004. Also included as Child Link users are persons employed or otherwise engaged by the Secretary to the Department of Education and Training under part 3 of the Public Administration Act 2004 for one or more specified purposes (such as, to identify children who are not participating in services for which they may be eligible, or for systems administration purposes) and persons employed by the Commission for Children and Young People or the disability services commissioner. Each person (except for the relevant secretaries and commissioners) must have written authorisation from a relevant authority, usually the secretary, chief executive officer of the council or principal.

Under new section 46M, a Child Link user may only access the register and use confidential information in the register for the purposes specified in new schedule 6 in relation to that particular category of user. For example, in general terms, service providers may access and use confidential information in the register to provide care and services to children attending that service. Persons employed in relation to childhood services may use confidential information in the register to identify children who are not participating in services for which they may be eligible and to assist in the provision of education, care and services to those children.

A Child Link user may only disclose confidential information contained in the register to another person in the user's workplace for a purpose specified in new schedule 6 in relation to that Child Link user and in accordance with part 6A (if applicable). External disclosures of confidential information obtained from the register will be governed by the scheme in new part 6A, as all Child Link users (other than the secretary and systems administrators) will be information-sharing entities under new section 41R. Therefore, when sharing confidential information from the register with other information-sharing entities, Child Link users may only do so for the overarching purpose of promoting the wellbeing or safety of children and with the reasonable belief that the disclosure may assist other entities in their dealings with children. Further, the principles outlined in new section 41U and the ministerial guidelines will apply to external disclosures made by Child Link users.

Confidential information in the register may also be used or disclosed in specified, confined circumstances set out in new section 46V(3). This includes the use or disclosure of such information with the consent of the person to whom the information relates; if the information relates to a person who is incapable of giving consent, with the consent of the person's authorised representative (who, by definition, must not be a person of concern); to a court or tribunal in the course of legal proceedings; to enable the investigation or enforcement of a relevant law; or as required or authorised by or under any other act.

The bill contains a number of safeguards that limit the access to confidential information in the register. Under new section 46E, the secretary may for any reason determine that information about a child or a person with parental responsibility for, or day-to-day care of, the child is not to be recorded on the register. Under new section 46F, an entry in the register must not be accessed if the child has died; or once the child has turned 18 or is no longer attending school or if

homeschooling has ceased or been cancelled by the Victorian Registration and Qualifications Authority (whichever is later), except to access de-identified data for the purposes of developing, planning and review of policies and programs under section 46O.

There are also a number of limitations on who may access the register. As noted above, persons accessing the register (apart from relevant secretaries and commissioners) must first be authorised in writing. There are also limitations in new section 46K on the number of people in particular services who may be authorised at one time. If a person who has been authorised no longer requires access to the register, the person who gave the authorisation must revoke it. Further, a person who granted an authorisation to a person under new section 46K(1) must notify the secretary if they reasonably believe that the person authorised has ceased to be a registered teacher or to hold a current working with children assessment notice.

The secretary may place restrictions on access to the register in certain circumstances. Under new section 46N, if the secretary is satisfied that continued access would pose an unacceptable risk of harm to a person or would be otherwise inappropriate in all the circumstances, the secretary may remove access to a particular child's entry, or part of an entry, for all Child Link users, or may remove a particular Child Link user's access to the register or to an entry, or part of an entry, in the register. The secretary may also issue guidelines under new section 46S addressing matters such as the manner in which information is to be collected for the purposes of the register, the authorisation of Child Link users, the removal of access to the register or to an entry or part of an entry in the register, and systems security and integrity measures. The operation of new part 7A will be subject to a review within two years of commencement, which must include consideration of any adverse effects.

The bill also contains a number of offence provisions in new division 6 of part 7A. It will be an offence for an unauthorised person to access the register, for a person to access the register for an unauthorised purpose and for a person to use or disclose confidential information from the register other than in accordance with part 7A. However, a defence exists if the person used or disclosed the information in good faith and with reasonable care. The offences in division 5 of new part 6A will also apply to external disclosures made by Child Link users.

A further safeguard is provided by the application of privacy laws, as new section 46R provides that the Privacy and Data Protection Act 2014 applies to the handling of personal information or unique identifiers by Child Link users under part 7A. This privacy legislation imposes a range of requirements on relevant organisations in the way they collect, use and disclose personal information.

However, consistent with the approach towards information-sharing entities, the bill also displaces certain IPPs in order to ensure that the objectives of new part 7A are not unduly compromised. Clause 30, discussed above, provides that nothing in IPPs 1.4, 1.5, or 10.1 applies to the collection of personal or sensitive information by Child Link users (as well as information-sharing entities), and nothing in any IPP applies to the collection, use or disclosure of personal or sensitive information under part 7A to the extent that it requires the consent of the relevant person.

The Child Link register engages the right to privacy by enabling specified people to access limited factual confidential information about children and their engagement with services without consent. However, this interference with the right to privacy is appropriately circumscribed by the safeguards described above. Any such interference with this right is also proportionate to the legitimate aim of improving child wellbeing and safety outcomes. The register will improve child wellbeing and safety outcomes by linking confined, factual information across specified government-funded services to create an aggregate picture of potential and actual risk in relation to all children. Making this information more readily available to a range of service providers ensures that intervention and support by professionals is possible at an early stage.

Presumption of innocence

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

New section 41ZK makes it an offence for a person to use or disclose confidential information disclosed to the person under new part 6A except in accordance with that part, unless the person used or disclosed the confidential information in good faith and with reasonable care. Similarly, new section 46V makes it an offence for an authorised person to use or disclose a Child Link identifier or confidential information contained in the register other than in accordance with part 7A, unless the person did so in good faith and with reasonable care.

By creating a defence for confidential information used or disclosed in good faith and with reasonable care, new sections 41ZK and 46V may be viewed as placing an evidential burden on the accused. However, in doing so, these provisions do not transfer the legal burden of proof. The provisions provide a defence for an accused to escape liability where he or she has taken reasonable steps to ensure compliance, once the prosecution proves the essential elements of the offence. I do not consider that an evidential onus such as that contained in these provisions limits the right to be presumed innocent, and courts in other jurisdictions have taken this approach.

The bill also inserts new section 46ZB to impose accessorial criminal liability on officers of bodies corporate that commit certain offences. However, an officer of a body corporate may also rely on the defences in those provisions. As discussed above, because these defences require the accused to present or point to evidence that suggests that the unauthorised use or disclosure was done in good faith and with reasonable care, they impose an evidentiary burden on an accused.

In the case of officers of a body corporate, the offences will only apply to officers that have a specific role and possess significant authority and influence over the body corporate. Moreover, whether a person or an officer of a body corporate has acted in good faith and with reasonable care, notwithstanding the fact they have disclosed confidential information beyond what is authorised by the bill, is a matter

peculiarly within the knowledge of that person. Such persons are best placed to provide evidence as to whether they acted in good faith and exercised reasonable care.

The bill also contains other protections for individuals or entities that use or disclose confidential information under the scheme. In particular, new section 41ZB provides strong protections for individuals by providing protection from liability or professional consequences for good faith uses or disclosures of confidential information made with reasonable care.

For these reasons, in my opinion, new sections 41ZK, 46V and 46ZB do not limit the right to be presumed innocent.

Freedom of expression

Section 15(2) of the charter provides that a person has the right to freedom of expression, including the freedom to seek, receive and impart information and ideas. This right is, however, subject to internal qualifications set out in section 15, which provides for lawful restrictions reasonably necessary to respect the rights and reputation of other persons, or for the protection of national security, public order, public health or public morality.

The right to receive and impart information and ideas potentially includes the right not to impart such information and ideas. It is therefore relevant to new section 41W, which obliges information-sharing entities to share confidential information in specified circumstances. In my opinion, this potential restriction on freedom of expression fits within the internal qualifications set out in section 15, in that it is reasonably necessary to respect the rights of children under section 17(2). In particular, an entity is only required to make a disclosure if it is for the purpose of promoting the wellbeing and safety of a child or group of a children, and it reasonably believes that the disclosure may assist the requesting entity to carry out specified activities.

The right under section 15(2) of the charter has also been held to create a positive obligation on government to give access to government-held documents.

This right is also relevant to provisions of the bill which limit access to information under other acts, such as the Freedom of Information Act 1982 (the FOI act). Relevantly:

> new sections 41ZF and 46P of the principal act states that an information-sharing entity under part 6A, or the Secretary to the Department of Education and Training under part 7A, may refuse to provide access to confidential information under relevant privacy laws, such as HPP 6, IPP 6 or the Privacy Act, if this would increase a risk to the wellbeing or safety of a child or group of children;
>
> new section 33(2AC) of the FOI act requires that, in deciding whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of a person, an agency or minister must take into account whether the disclosure would increase the risk to the safety of a child or group of children; and
>
> new sections 27(2)(ac), 49P(3B) and 56(5B) of the FOI act provide that, in certain circumstances, agencies, ministers, the information commissioner or the Victorian Civil and Administrative Tribunal, in making decisions under that act, need not confirm or deny the existence of a document if doing so would increase the risk to the safety of a child or group of children.

In my opinion, these provisions appropriately circumscribe the rights of people to access information under the relevant acts, in circumstances where granting access, or confirming or denying the existence of a document, would increase the risk to the safety of a child or group of children. I am satisfied that this is an appropriate and justified circumstance in which a person's right to access information should be circumscribed. The provisions therefore fit within the internal qualifications set out in section 15, in that they are reasonably necessary to respect of the rights of children under section 17(2).

For these reasons, I am satisfied that the amendments to the principal act and the FOI act contained in the bill are compatible with the right in section 15 of the charter.

The Honourable Jenny Mikakos
Minister for Families and Children and
Minister for Early Childhood Education

Second reading

Ms MIKAKOS (Minister for Families and Children) (18:20) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

A key priority for the Victorian government is that children are kept safe from harm and have every opportunity to thrive — to reach their potential and to build happy, healthy, productive lives.

In April last year, this government launched Victoria's *Roadmap for Reform: Strong Families, Safe Children*, which recognises that for most children and young people, Victoria is a great place to grow up, but that for some children and families, more needs to be done earlier.

The roadmap is a once-in-a-generation chance to reorient the child protection and family service sector from crisis response to early intervention and prevention. It builds on Victoria's proud track record for delivering high-quality health, education and family services that promote lifelong wellbeing and learning.

It builds upon the recommendations of the Royal Commission into Family Violence, and calls for improved multi-agency collaboration and information sharing to address family violence and other risks that can affect the emotional, behavioural, social and educational development of children.

As you know, we have not stopped innovating since we launched the roadmap.

Since then, the Andrews government has made many important commitments, including our considerable investments in preventing and responding to family violence and the release of record funding for the *Early Childhood Reform Plan*, in addition to other initiatives.

These are important reforms, playing a key part in improving opportunities and outcomes for Victoria's children, and particularly vulnerable children.

But there is still a critical gap in our service system that the bill I bring before you today has been carefully designed to bridge.

The Children Legislation Amendment (Information Sharing) Bill 2017 proposes measures to enable critical new connections between services who work with children. It will enable them to share information confidently and for the right purposes, and in so doing, I believe we will take significant strides forward in two important respects:

> in the earlier identification of children at risk, so that we are better able to intervene early to prevent harm from eventuating in the lives of vulnerable children and families, and
>
> in building a culture of child and family-centred service collaboration and shared responsibility that is outcomes driven.

These are two of the key planks of the roadmap for reform.

The evidence base

The approach taken in this bill is grounded in Australian and international research, in the extensive evidence of what works and what doesn't from the front line of child service delivery in Victoria and other jurisdictions in Australia and internationally, and in the findings of numerous expert inquiries.

Firstly, we know that inequality in early childhood experiences and learning leads to inequality in ability, achievement, health and life success.

We know that students with a negative attitude to school, or who doubt their academic ability, are less likely to succeed at school and to give up more easily when they encounter setbacks. But attitudes can be improved by supporting a sense of belonging at school, self-confidence, purpose and perseverance.

Similarly, we know that when Aboriginal and Torres Strait Islander children are supported early to develop a strong cultural identity, their educational and developmental outcomes greatly improve. Interventions that build children's social and emotional skills and confidence in their abilities have significant long-term benefits for those children, and society more broadly.

There is also strong evidence supporting the effectiveness of many prevention and early intervention programs and approaches to minimising risk for, and increasing the success of intervention with vulnerable children and families.

Yet from our experience in this state, looking at the relevant data and considering the findings of many respected inquiries, we know that there is a gap in our service system that prevents us from effectively responding to these findings. We are still not putting in place strategies for prevention and early intervention, or identifying and addressing potential vulnerability early enough to prevent harm and maximise life chances for every child.

The Commission for Children and Young People's annual report for 2014–15 identified that out of 43 child death inquiries, 20 found inadequate sharing of information was a key contributor to tragic outcomes for these children and families. Because information was not shared, services were unable to communicate, coordinate and collaborate to identify risks early, and intervene appropriately.

Within the space of a decade, Victoria's 2012 Cummins inquiry, four Victorian Auditor-General's Office (VAGO) reviews, numerous Commission for Children and Young People and Coroners Court child death inquiries and the Royal Commission into Family Violence have all, separately, recommended government action to enable services to share information about children.

So, from the research we now know the early years of a child's life have a profound impact on their health, future learning and social development. We know that investing in quality programs and services to support the development and wellbeing of young children has a positive impact on child (and eventually adult) outcomes, particularly for vulnerable and disadvantaged children.

We also know that beyond the unacceptable personal and family tragedy of harm being inflicted on children, the costs of crisis intervention are significantly higher than the cost of early intervention and prevention programs. The Cummins *Report of the Protecting Victoria's Vulnerable Children Inquiry* in 2012 noted that:

> almost one in four children born in 2011 was likely to be reported to child protection at some time before reaching the age of 18;
>
> the percentage of children who will be the subject of a child protection (order) is directly correlated with the number of child protection reports;
>
> the total financial costs in 2009–10 of child abuse and neglect in Victoria was estimated then to be up to $1 billion;
>
> the largest component of these financial costs was expenditure on child protection, out-of-home care and intensive family support services;
>
> for the same period, abuse-associated loss of wellbeing and premature mortality — estimated at between 1384 and 6866 disability adjusted life years — was valued between $221 million and $1.1 billion.

So, given what we know about the benefits of early intervention and prevention, and the human and economic costs of failing to intervene early, what is stopping us?

We have consulted extensively on this question with the relevant stakeholders over recent years, and they have communicated very clearly to us that Victoria's current legislative framework for information sharing is complex, confusing and creates a culture of risk aversion in relation to information sharing, which significantly hinders service collaboration and early intervention.

The agencies that work with our children and families every day have become reticent and deterred when it comes to sharing information about a child. This arises for a combination of reasons:

> people are confused about when and what they can share under the law;
>
> they may fear punitive consequences if they get it wrong; and
>
> privacy appears to have taken on a higher cultural value than the wellbeing and safety of individual children.

As a result, one agency generally knows only a small part of the full picture of risk to a child's wellbeing or safety. Yet time and again, the Commission for Children and Young People and the Coroners Court have told us that preventable tragedies have occurred because we do not 'join the dots' of what is known by various services about a child and their family.

We are unable to develop a complete picture of a child, and therefore cannot offer more help and support to families earlier, in order to avoid these tragedies.

Identifying patterns of risk

We know that non-participation in key services can be an indicator of vulnerability or risk for children and families. We also know that every child service records details about the children they work with. Yet it is currently impossible for a child service professional to identify children who are not engaging in the services they are entitled to. This hinders the ability of practitioners to identify a pattern of risk as the information is not 'joined up' or able to be shared under the law.

The information is in siloed systems across government, but it is not accessible.

I would like to remind those listening today of a tragic case study of the death of a young baby to illustrate why this reform is so vitally important.

Case study of Baby D

The inquest by the Coroners Court of Victoria into the death of Baby D in 2015 found that, while many professionals were involved in the case — including the Royal Children's Hospital emergency department and unsettled babies clinic, Moreland City Council's maternal and child health service, and the family's general practitioner — each of these professionals only had a small amount of information about Baby D and her family and, due to inadequate information sharing, no single practitioner had the full picture.

In particular the inquest noted that in the eight-week period leading up to the fatal event, a number of health professionals were engaged with the family with the purpose of ensuring the health and safety of Baby D and supporting maternal wellbeing. However, as noted by Justice Gray:

> in approaching this task, they did not have the benefit of each other's observations and examinations, except to the extent that information was relayed via the parents. Each practitioner would almost certainly have benefited from information from the others about the bruising, mental health screens, diagnoses, treatment plans. As a result, at inquest there were many hypothetical questions about how assessments and responses may have been different with a more complete picture.

The coroner recommended that relevant government departments, including the Department of Education and Training and the Department of Health and Human Services, in collaboration with the Municipal Association of Victoria (MAV) and other stakeholders involved in delivering maternal and child health services, should examine the feasibility of creating a shared health record database. The purpose of this database would be to enable practitioners to inform themselves on changes to the health and development of a child they are monitoring or treating.

This case highlights information-sharing barriers across the service system in Victoria that hinder authorities from effectively identifying and protecting isolated children, or providing early intervention.

The Royal Commission into Institutional Responses to Child Sexual Abuse (McClellan royal commission) has also considered the need to improve information-sharing practices in the context of protecting children, and its recommendations are expected in the coming weeks.

This bill responds directly to the findings and recommendations of the Baby D death inquiry and the evidence heard at the McClellan royal commission. The bill will establish a child wellbeing and safety information-sharing scheme to enable a select group of prescribed services to share vital information to promote the wellbeing and safety of children.

In addition, an IT platform — Child Link — will be created to register all children at birth or on their first engagement with a service in Victoria. This system will then link basic information about each child's participation in key government services, and share this information with relevant, authorised children's service professionals who work with the child or their siblings.

The child information-sharing reforms will enable information sharing and support professional collaboration around the child and family. This, in turn, will make early intervention and prevention possible, and support better and more integrated service provision.

If such a system had been in place for Baby D, the services working with the family would have been able to identify one another on Child Link and have been permitted to contact these services to share information. This would have enabled them to form a more complete picture of the baby's and family's circumstances and to collaborate in responding to their needs, hopefully preventing a tragic outcome.

Importantly, the proposed reforms will benefit all children in Victoria, because they will foster a culture of shared responsibility for children's safety and wellbeing; of services and families working together throughout a child's life to help them thrive and fulfil their potential, thereby laying the foundations for a successful life.

The proposal

I introduce to Parliament today a bill that proposes a new approach to child information sharing supported by an IT 'system solution' that will boost our capacity for early intervention and prevention. It will elevate Victoria's already strong commitment to promoting child and family centred service collaboration and shared responsibility for the wellbeing and safety of our children to new levels.

The Children Legislation Amendment (Information Sharing) Bill 2017 proposes amendments to the Child Wellbeing and

Safety Act 2005 (CWS act) that will enable the establishment of a child wellbeing and safety information-sharing scheme in Victoria.

It seeks to streamline the information-sharing process for the promotion of children's wellbeing and safety by amending the CWS act to create:

a) a new part 6A to establish a child wellbeing and safety information-sharing scheme that will enable specified entities to share information in a timely and effective manner to promote the wellbeing and safety of children; and

b) a new part 7A to establish a register of children born or residing in Victoria to improve the wellbeing and safety outcomes for those children, and support their participation in government-funded programs and services.

Aspects of the proposed reforms are modelled on chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 introduced in New South Wales in 2009. Evaluation of these reforms undertaken in 2015 by the social policy research centre of the University of New South Wales, and feedback from government and non-government organisations in New South Wales, confirm that the NSW reforms have improved child information-sharing culture and practice across sectors and agencies.

The McClellan royal commission has been closely examining chapter 16A to inform their recommendations, which are expected in coming weeks.

However, we have listened closely to sector stakeholders who have asked us to tailor the model for the Victorian context. Key differences between the NSW legislation and the scheme proposed for Victoria include:

the NSW scheme is more permissive. In this bill, information can only be shared to 'promote' a child or children's wellbeing or safety, whereas in NSW, information can be shared if it 'relates' to the wellbeing or safety of a child;

Victoria has taken a more comprehensive approach to legislative safeguards;

NSW has no record-keeping requirements and its guidelines are administrative, not a ministerial requirement; and

NSW has no Child Link.

The child wellbeing and safety information-sharing scheme

The child wellbeing and safety information-sharing scheme will authorise a select group of prescribed services and practitioners to share information with each other for the purpose of promoting the wellbeing or safety of a child or group of children.

Who can share information?

Authorised services, including authorised frontline practitioners — to be known as 'information-sharing entities' — will be prescribed in regulation, allowing for the addition or removal of entities as necessary. The list of information-sharing entities will be limited to practitioners, services and agencies that have relevant information that will protect, promote and provide for children's wellbeing or safety. This includes universal services (such as maternal and child health, kindergarten and schools), targeted services (such as ChildFIRST and family violence specialist services), and protective services (such as child protection, Victoria Police and the courts).

The three-part test

The bill provides that a three-part test must be met before information can be shared between prescribed information-sharing entities.

First of all, an information-sharing entity is able to voluntarily disclose or request confidential information about any person for the purpose of promoting the wellbeing or safety of a child or a group of children.

Secondly, the entity providing the information must reasonably believe that disclosing the information may assist the receiving entity to undertake one of the following activities for a child or group of children:

make a decision, assessment or plan;

initiate or conduct an investigation;

provide a service; or

manage any risk.

Thirdly, the information must not be excluded information.

An information-sharing entity must comply with a request for information from another information-sharing entity if the three-part test is met.

However, if sharing information is likely to result in physical, emotional or psychological harm to a child or put them at risk of harm, the threshold of 'promoting' the wellbeing and safety of the child would not be met and the information could not be lawfully shared under the scheme. For example, if sharing information would put a child at risk in a family violence context, information could not be shared.

The threshold for sharing

The 'wellbeing or safety' threshold for information sharing is particularly important because it enables prevention, early risk assessment and intervention to occur before harm occurs and before crisis intervention is required.

What can be shared?

'Confidential information' about a child, group of children or any person may be shared without requiring their consent to the extent necessary to promote the wellbeing or safety of a child or group of children. Confidential information is broadly defined to include any health or personal information as set out in privacy laws, including sensitive information, such as religious background.

Taking account of the views of the child or family

This bill hinges on the first and overarching principle that a child's right to wellbeing and safety must take precedence over an individual's right to privacy. On this basis, consent is

not required to share information to promote the wellbeing or safety of a child or group of children.

Although consent to share information is not legally required, the importance of seeking and taking into account the views of the child and relevant family members wherever appropriate, safe and reasonable to do so is enshrined as a legislative principle.

Binding ministerial guidelines will provide practice guidance on approaching this task, and on advising children and parents when their information is shared, with whom and for what purpose.

Currently, information can be shared with child protection without consent where there is a significant concern for the wellbeing of a child. Information can also be shared without consent under existing privacy legislation including where there is a serious and imminent threat to an individual's life, health, safety or welfare (noting that once the family violence information-sharing legislation commences, it will remove the requirement for a serious threat to be 'imminent').

As mentioned previously, complex legislative arrangements have significantly contributed to the current risk-averse culture around information sharing. This legislative reform seeks to provide simplicity to remove the obstacles to sharing information between a select group of professionals working to support families.

Further, the model is broadly consistent with the family violence information-sharing scheme which does not require consent when sharing information to assess and manage family violence risk to a child. Similarly, both schemes will include legislative principles and ministerial guidelines that require practitioners to seek and take into account the views of the child and relevant family members where appropriate, safe and reasonable to do so.

Legislative principles

The bill incorporates a set of legislative principles that provide context around the overarching purpose of promoting the wellbeing and safety of children, and which will guide practitioners to share information appropriately under the scheme.

The proposed principles provide that when collecting, sharing or using confidential information under the scheme, information-sharing entities should:

a. give precedence to children's wellbeing and safety over the right to privacy;

b. share information only to the extent necessary to promote the wellbeing or safety of a child or group of children, consistent with their best interests;

c. work collaboratively and respect each other's functions and expertise;

d. seek and take into account the views of the child and relevant family members wherever appropriate, safe and reasonable to do so;

e. seek to preserve and promote positive relationships between the child, their family and other people significant to the child;

f. be respectful and have regard to a child's social, individual and cultural identity, their strengths and abilities and any vulnerability relevant to their wellbeing or safety;

g. take all reasonable steps to plan for the safety of family members believed to be at risk of family violence;

h. promote the cultural safety of Aboriginal and/or Torres Strait Islander children, and recognise their cultural rights and familial and community connections; and

i. seek to maintain constructive and respectful engagement with children and their families.

Interface with the family violence information-sharing scheme

Earlier this year, the Parliament passed the Family Violence Protection Amendment (Information Sharing) Act 2017 (FVIS act), which is yet to commence. That act provides a clear legislative basis for information to be shared between entities prescribed for the purpose of assessing and managing risks of family violence.

The child information-sharing reforms have been designed to complement the FVIS act, as both schemes recognise that the safety of children, including their right to be safe from family violence, must take precedence. Together, the two schemes will facilitate the early identification and management of risks to child wellbeing or safety in a wide range of contexts, enabling services to respond to the multiple, complex needs of children, women and families.

The family violence information-sharing reforms were developed in close consultation with stakeholders as a bespoke scheme for family violence risk assessment and management, and the child information-sharing scheme will work alongside this model. Specifically, when sharing information for the purpose of assessing and/or managing a risk to an adult victim survivor of family violence (and there is no child at risk), only the family violence information-sharing scheme can be used.

Where an information-sharing entity is sharing information to assess or manage a family violence risk to a child under either scheme, the ministerial guidelines will state that practitioners use the family violence risk assessment and risk management framework to ensure that best practice is followed when working with children, women and families experiencing family violence. The content of the ministerial guidelines for both schemes will be consistent for practitioners working with children experiencing family violence.

The professionals working with children and families who will be enabled to share information under this legislation will be provided with guides and tools, and appropriately trained at or prior to their inclusion in the scheme. This training will be tailored to their particular roles and responsibilities, of which I will say more in a moment. This will include training in the family violence risk assessment and risk management framework, which as noted above will be included in the ministerial guidelines for this act.

Consistent with the FVIS act, legislative principles for the child information-sharing reforms state that

information-sharing entities must take all reasonable steps to plan for the safety of family members believed to be at risk of family violence in recognition of the particular risks associated with information sharing in this context. Ministerial guidelines will provide detailed guidance on what these 'reasonable steps' should constitute, again reflecting the content of the family violence guidelines. The family violence-related guidance materials will be developed in close consultation with the family violence sector.

In summary, where a child is experiencing family violence, the same family violence best practice protocols and tools will be used under both schemes. Beyond this, the child information-sharing scheme allows information sharing for a broader purpose to promote the wellbeing of the child — for example, to support their re-engagement with a new school following relocation after a family violence incident.

Ministerial guidelines

The application of these principles will be supported by detailed, binding ministerial guidelines published after a minimum 28-day period of public consultation. These guidelines will be designed to guide the practice of information-sharing entities in requesting and disclosing information.

Compliance with the guidelines will be mandatory, and although non-compliance alone would not constitute an offence, complaints can be made in accordance with the Privacy and Data Protection Act 2014, Health Records Act 2001 or commonwealth Privacy Act 1988, and may lead to a person or body ceasing to be prescribed as an information-sharing entity.

In addition to the legislative principles and ministerial guidelines, which will guide practice, the bill contains a range of safeguards and protections intended to strike the right balance between encouraging a culture of information sharing to promote children's wellbeing or safety, and protecting the privacy and information of individuals.

Roles and responsibilities

This reform is designed to enable key professionals to share information so that they can perform their particular role and meet their duty of care to children and families more effectively, including through working better as a team with other key professionals. In this way we can support families early, to avoid the escalation of issues with wellbeing and safety.

An important part of the sustained implementation approach will be ensuring that key professionals across universal, secondary and tertiary services, and within organisations are clear about their roles.

These services will continue to play their respective roles in identifying early wellbeing and safety issues, assessing risks to children and their families and intervening to address and reduce the effect of those issues — to get children back on the path of safety, health and learning.

Professionals within a prescribed organisation may also have different roles, depending on their position and expertise. For example, through the provision of guidelines, tools and training, school teachers would be given clear guidance and base training on their role and obligations under the child information-sharing reforms. This will include their roles and responsibilities in identifying and responding to family violence risk. In addition, staff such as the principal, welfare officer, school nurse and leads in regional offices would have a deeper role and deeper level of training to allow them to act as the key points for assessment and information sharing between organisations. This will provide assurance that decisions to share information will promote wellbeing and safety.

In this way we can secure the benefits of mobilising the knowledge and efforts of the professionals who spend significant time working directly with children and families, while ensuring that there are more deeply trained and skilled people within those organisations to support rigorous and safe implementation of these important reforms.

Implementation will be carefully phased. It is intended to align the inclusion of particular workforces under the scheme to the schedule of the family violence information-sharing reforms, as much as possible. This will minimise the burden of change on organisations and maximise organisational readiness. It will also ensure that practitioners are clear about their roles and responsibilities under each of the new schemes.

Safeguards

The FVIS act and the child information-sharing bill share very similar safeguards to ensure appropriate and accountable information sharing.

As under the FVIS act, the bill includes a three-part test that explicitly states that an information-sharing entity cannot share information if it could reasonably be expected to amount to 'excluded information'.

Excluded information includes the collection, use or disclosure of information which could be reasonably expected to endanger a person's life or result in physical injury, contravene a court order, prejudice the investigation of a breach of the law or be contrary to the public interest. The bill will also allow further categories of excluded information to be prescribed by regulation.

Offence provisions and penalties will apply for unauthorised use or disclosure of confidential information, including intentional or reckless disclosure or unauthorised use, or impersonating an information-sharing entity.

Complaints about the disclosure of information by an information-sharing entity other than in accordance with the scheme may be made to the Victorian information commissioner and/or the health complaints commissioner, as appropriate.

A 'good faith' defence will apply in relation to these offences, except for the offence of intentional or reckless unauthorised use or disclosure of confidential information. Further, the offences will not apply to a use or disclosure made in accordance with other existing laws (such privacy laws) or if the use or disclosure of personal information was made with the relevant individual's consent.

The scheme will also be subject to an independent review after two and five years from commencement, which is consistent with the two and five-year review timetable of the family violence information-sharing scheme.

Child Link

The proposal to develop an IT platform, Child Link, responds directly to the recommendations of numerous inquiries and reviews. For example:

> the 2012 Cummins inquiry *Report of the Protecting Victoria's Vulnerable Children Inquiry* found that existing data systems and practices mean agencies may not identify all vulnerable children who could benefit from early intervention or statutory services. It recommended the development of new information systems, better data collection and greater sharing of relevant child information.
>
> the 2014 Commission for Children and Young People's ministerial inquiry regarding 'Child N' recommended that the Victorian government develop a system to ensure that all children are registered at birth or immigration to Victoria, and by identifying them across the service system, with a system alert being activated when services are not engaged at key stages. The subsequent coroners' inquiry effectively 'endorsed' this report.
>
> the 2015 VAGO review of *Education Transitions* recommended that reporting requirements be developed that would allow the linking of child-level data and facilitate an examination of how to improve information sharing to better support student transitions.
>
> the 2011 VAGO review of *Early Childhood Development Services: Access and Quality* observed significant limitations in the capacity to share information and track children at risk across early childhood services and school. Key recommendations included the development of a better understanding of service demand, particularly amongst vulnerable and disadvantaged children; and invest resources into information management systems spanning vulnerable children and families.

Yet despite these and other inquiries' recommendations, at the present time, no single practitioner or organisation holds an overview of a child's interactions with key childhood services.

The proposed Child Link register is an IT enabler that will draw key fields of information from pre-existing government information management systems and display the information in a web-based platform only accessible by a restricted group of authorised professionals.

Child Link will assist authorised children's service professionals to 'join the dots' to form an aggregate picture of the circumstances of children in their care by displaying:

> basic identifying information about a child, including a child's name, birth date and sex;
>
> key familial relationships, including carer and sibling information;
>
> enrolment and participation in key universal childhood services and programs, including maternal and child health services, supported playgroups, funded kindergarten programs and schools;
>
> any current or previous child protection orders made in relation to the child or a sibling, including 'out of home care'; and
>
> contact details for services with which the child has been or is engaged.

Child Link will register each child in Victoria at birth, or when the child comes into contact with a universal or targeted child service in Victoria.

Authorised Child Link users will only be able to view Child Link information for children engaged in their service (and their siblings) and only after the child has been registered or enrolled.

Child Link will not collect or contain any case notes, professional opinions or health records.

Child Link is not a case management system, nor a vehicle to transfer information from one professional to another. It displays in one place key fields of information recorded in existing childhood systems.

Who can access Child Link

The proposed new part 7A authorises a smaller subset of authorised information-sharing entities to access Child Link. Additional Child Link users will be able to be prescribed and removed by regulation.

Child Link user access will be restricted by role and purpose, with a cap on the number of delegates for some organisations (e.g. schools), ensuring that only senior and appropriately skilled and trained people with particular responsibilities within the service are authorised to access Child Link.

The purposes for accessing Child Link will be defined (in legislation) in relation to the role and responsibilities of the individual user and their service's functions.

Protections and oversight

Consistent with the safeguards for the child information-sharing scheme more broadly, the bill includes offences for unauthorised access to Child Link, accessing Child Link for unauthorised purposes, and unauthorised use or disclosure of information on Child Link. Further, complaints may be made to the Victorian information commissioner and health complaints commissioner for handling information not in accordance with new part 7A.

A comprehensive range of additional protections are provided for in legislation. For example, the Secretary to the Department of Education and Training will be able to remove access to entries on Child Link (either for particular Child Link users or for all users) where satisfied access would pose an unacceptable risk of harm to a person, and the requirement that the secretary be notified where a Child Link user has ceased to be a registered teacher or to hold a current working with children check assessment notice.

Implementation

As with the family violence information-sharing reforms, stakeholders have strongly emphasised the importance of effective implementation to the success of the child information-sharing reforms. They have also expressed the view that implementation must incorporate cultural change strategies to overcome risk aversion, build workforce capacity

around risk assessment and early intervention, promote and support integrated collaborative service provision, and mitigate any risks of inappropriate information sharing.

Importantly, stakeholders have been united on the need for a coordinated approach to implementation across related areas of reform, particularly in relation to the rollout of the family violence information-sharing reforms and the redeveloped family violence risk assessment and risk management framework. They argue it is critical to minimising uncertainty, reform fatigue and ensuring practitioners are clear about their legislative obligations under both schemes.

An implementation strategy has been developed that sets out an overview approach to implementation. This strategy is aligned with the implementation plan for family violence information-sharing reforms and the framework, including learnings to date.

Intended outcomes of the bill

In summary, the Children Legislation Amendment (Information Sharing) Bill 2017 will play a key part in achieving four very important outcomes that will significantly improve the wellbeing and safety of children in Victoria:

> it will work to prevent tragedies by enabling warning signs to be seen earlier, and services to share key information to form an aggregate picture of risk to a child;
>
> it will change the current entrenched culture and practice of professionals who work with children and families every day to enable them to focus on proactive and preventative support for children and families. It addresses current unacceptable limitations that make professionals feel powerless until a crisis occurs, leaving tertiary services like child protection to 'pick up the pieces';
>
> it will build an 'information bridge' between the trusted services that work with our children and families. This will significantly reduce the danger of children 'slipping through the gaps' between services, and mean that more children have the best possible support to build a strong foundation for their lives;
>
> it will allow the universal services in our children's lives — maternal child health, kindergartens, schools, medical services and hospitals — to be better equipped to identify and respond to early signs of risk and need, and to connect into those services that can provide more specialist help to families earlier, when they can do the most good.

These reforms will save lives and reduce vulnerability. They will give health, education and other frontline workers the clarity and tools they need to share vital information in order to intervene early to prevent harm and tragic outcomes for children.

These reforms are an important step towards ensuring the wellbeing and safety of all Victorian children.

I commend the bill to the house.

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

Debate adjourned until Thursday, 1 March.

MARINE AND COASTAL BILL 2017

Introduction and first reading

Received from Assembly.

Read first time on motion of Ms MIKAKOS (Minister for Families and Children); by leave, ordered to be read second time forthwith.

Statement of compatibility

Ms MIKAKOS (Minister for Families and Children) 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 Marine and Coastal Bill 2017.

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

Overview

The bill will provide for the coordinated and integrated planning and management of the marine and coastal environment of Victoria by repealing and partially re-enacting the Coastal Management Act 1995 (CM act). Of relevance to the analysis of human rights are the elements of the bill which:

> require the preparation of a statewide marine and coastal policy and strategy;
>
> will repeal the CM act, which will have the effect of removing the existing regional coastal boards and the Victorian Coastal Council (to be replaced by the Marine and Coastal Council); and
>
> will strengthen and streamline consent and regulation provisions for the use and development of marine and coastal Crown land.

Human rights issues

Human rights protected by the charter that are relevant to the bill

Section 13 — Privacy and reputation

A person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The touchstone for the right is a reasonable expectation of privacy.

Clause 77 of the bill enables an authorised officer to request a person's name and address if the authorised officer reasonably believes that the person has:

> contravened the requirement to obtain a consent to use or develop or undertake works marine and coastal Crown land; or

contravened or is contravening, a condition of consent given to that person to use or develop or undertake works on marine and coastal Crown land.

The purpose of this clause is to enable an authorised officer to identify a person that the authorised officer reasonably believes is using or developing marine and coastal Crown land without legal authority to do so. This power will help reduce the risk of inappropriate development occurring along Victoria's coastline.

Insofar as the provision requires the disclosure of personal information about which a person might have a reasonable expectation of privacy, I consider that any interference with privacy is lawful and not arbitrary as an authorised officer is required to come to a reasonable conclusion that the activity being undertaken has either not been consented to or is being undertaken in a manner not consistent with the conditions of a consent.

The bill contains safeguards with respect to the use of the power. Only authorised officers will have the power to request a person's name and address but only after the authorised officer has produced their identity card for inspection.

These impacts upon information privacy are appropriate and proportionate taking into account the requirement to obtain consent to use or develop or undertake works on marine and coastal Crown land and the importance the community places on protecting Victoria's marine and coastal environment from inappropriate development.

Clause 20 of the bill requires members of the Marine and Coastal Council to declare in a meeting of the council established under part 3 of the bill, any pecuniary interest in relation to a matter being considered or about to be considered by the council. Insofar as the provision requires the disclosure of personal information about which a person might have a reasonable expectation of privacy, I consider that any interference with privacy is lawful to require potential conflicts of interest are declared by members and are appropriately managed and ensure that any interests do not affect the provision of impartial advice relating to the use or development or undertaking of works on Crown land.

Section 18 — Taking part in public life

Section 18 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, directly or through freely chosen representatives. It further provides that every eligible person has the right, and is to have the opportunity, without discrimination, to have access, on general terms of equality, to public office.

The bill has the effect of replacing the Victorian Coastal Council appointed under section 7 of the CM act with the Marine and Coastal Council. The bill also abolishes the regional coastal boards established under section 11 of the CM act. These changes are provided for under the bill through the repeal of the CM act under clause 81 and the establishment of the Marine and Coastal Council under part 3.

The replacement of Victorian Coastal Council with the proposed Marine and Coastal Council and the abolition of the regional coastal boards may be perceived as limiting a person's right to participate in public life. However, the provisions of the bill do not prohibit former members of the Victorian Coastal Council or the regional coastal boards from applying for appointment to the Marine and Coastal Council.

The bill therefore, does not limit the opportunity for a person to participate in public life and the changes are necessary to establish a new governance framework for the marine and coastal environment in Victoria.

Clause 19 of the bill provides for circumstances in which a member of the council can resign or be removed. The clause, insofar as it enables the minister to remove a member of the council at any time, may engage and limit the right under section 18. However, the provisions are justified to facilitate good corporate governance.

Section 19(2) — Cultural rights

Section 19(2) of the charter provides for the rights for Aboriginal persons 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 persons through a mandatory requirement for decision-makers to consult with specified Aboriginal parties in the preparation of instruments prepared under the bill. The bill also provides for the establishment of regulations to prescribe exemptions for traditional owners who when acting in accordance with a natural resource agreement under the Traditional Owners Settlement Act 2010 will not be required to obtain a consent to use or develop or undertake works on marine and coastal Crown land.

Hon. Gavin Jennings, MLC
Special Minister of State

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Ms MIKAKOS (Minister for Families and Children).

Ms MIKAKOS (Minister for Families and Children) (18:22) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Victoria's marine and coastal environment is a special and unique place, with more than 2000 kilometres of coastline and more than 10 000 square kilometres of marine waters. It encompasses diverse ecosystems and provides significant benefits to the Victorian community and economy. It underpins industries such as tourism and the commercial and recreational fishing sectors, which provide jobs to thousands of Victorians, particularly in regional locations. The marine and coastal environment is also of value in its own right and has significant social and cultural value to Victorians.

There is no doubt that Victorians value the marine and coastal environment, with more than four out of five Victorians visiting the coast at least once a year. Traditional owners and the broader Aboriginal community have powerful and unique

spiritual and ancestral bonds to Victoria's marine and coastal environment.

Victoria is very fortunate that since the 1870s most of the state's coast has been reserved for public use. The commitment to retain one of Victoria's greatest natural assets in public ownership has been maintained to this day, with 96 per cent of our coastline currently in public ownership.

Since 1995 the Coastal Management Act 1995 (the 1995 act), Victoria's first legislation dedicated to statewide coastal management, has guided the protection, conservation and sustainable use and development of the coast and has provided a strong basis for coordinated strategic planning for, and management of, the Victorian coast.

However, over the last 20 years advances in our understanding of the marine and coastal environment have highlighted gaps and complexities in the current system that need to be addressed if we are to meet contemporary challenges, particularly those arising in the face of climate change, increasing population pressures and ageing coastal infrastructure. In addition, there has been a growing appreciation of the value and uniqueness of the marine environment lying beyond the coast, and of its importance to the state.

Labor is proud of its record in protecting and enhancing Victoria's marine and coastal environment. The Marine and Coastal Bill 2017 (the bill) will further this legacy by implementing the Andrews Labor government's 2014 election commitment in *Our Environment, Our Future* to establish a new marine and coastal act to better manage and protect the marine and coastal environment.

The bill, combined with a range of complementary non-legislative reforms, will implement this commitment and ensure that our diverse and unique marine and coastal environment remains a special place and continues to provide a wide range of benefits, now and into the future.

The bill establishes a new coordinating framework that harnesses and builds on the strengths of the 1995 act but provides for improved oversight, planning and management of Victoria's marine and coastal environment. In doing so, it will strengthen Victoria's coastal planning and management framework and help integrate the planning and management of the marine environment.

The bill introduces refinements and new aspects that have been informed by extensive community consultation, and reflects the knowledge, understanding and experience gained since 1995. The new system will therefore provide an effective and integrated framework to deal with present and future challenges facing decision-makers and the community.

To guide development of the bill, an expert advisory panel, chaired by Associate Professor Geoff Wescott, was established in late 2015 and a stakeholder reference group was also convened to inform the deliberations of the expert panel. In 2016 a public consultation paper was released that proposed legislative and non-legislative reform options to deliver the government's election commitment. There was an extensive consultation process to seek feedback on the proposed reforms from a diverse range of stakeholders across the state. There was broad support for the key proposals outlined in the consultation paper and the bill has been significantly shaped by the feedback provided by the community and stakeholders.

Establishing a stronger framework for marine and coastal planning and management

The bill provides a whole-of-government approach to planning and management of the marine and coastal environment while recognising the ongoing role of existing legislation that governs resource or land use, such as the Fisheries Act 1995 and the National Parks Act 1975.

The bill includes strong objectives and a set of guiding principles to provide direction to decision-makers. The bill also refines a range of existing tools and introduces several new tools to guide and integrate marine and coastal policy, planning and management at all levels across the state.

Eight specific clear objectives for the planning and management of the marine and coastal environment are introduced by the bill. These are:

to protect and enhance the marine and coastal environment;

to promote the resilience of marine and coastal ecosystems, communities and assets to climate change;

to respect natural processes in planning for and managing current and future risks to people and assets from coastal hazards and climate change;

to acknowledge traditional owners' knowledge, rights and aspirations for land and sea country;

to promote a diversity of experiences in the marine and coastal environment;

to promote the ecologically sustainable use and development of the marine and coastal environment and its resources in appropriate areas;

to improve community, user group and industry stewardship and understanding of the marine and coastal environment; and

to engage with specified Aboriginal parties, the community, user groups and industry in marine and coastal planning, management and protection.

The introduction of objectives focused on climate change and acknowledging traditional owners' connections to the marine and coastal environment are significant reforms, addressing two major gaps in the 1995 act.

The guiding principles in the bill include integrated coastal zone management, ecosystem-based management and ecologically sustainable development. These principles will help guide planning, management and decision-making in relation to the marine and coastal environment.

To improve the integration and coordination of planning and management efforts across Victoria's marine estate the scope of the bill, compared to the 1995 act, extends to include marine waters and the biodiversity in those waters.

Improving governance and institutional arrangements

The new framework introduced by the bill will build on the strengths of the existing advisory structures, simplify

governance and institutional arrangements and improve alignment between responsibilities, capacity and resources.

Establishing a new statewide advisory body with an increased marine focus

The bill will replace the current Victorian Coastal Council with a Marine and Coastal Council. The membership, representation, and skills base of the new council will be strengthened compared to the old council and will provide for a greater focus on addressing marine issues. The council will advise the minister and will guide, rather than draft, statewide policy and strategy.

Addressing the gap in advice on matters relating to coastal erosion

One of the longstanding key gaps in the current system is the absence of expertise and responsibility for providing advice on matters relating to coastal erosion. With increasing risk to coastal communities from the impacts of climate change, this gap was identified as a key focus of reform to be delivered through the bill. Recognising the links between coastal flooding and coastal erosion, the authorities responsible for providing advice on coastal flooding will now also be able to advise on matters relating to coastal erosion. In regional Victoria, coastal catchment management authorities (CMAs) will perform this role, while in the Port Phillip Bay and Western Port catchments, Melbourne Water will be the responsible authority.

Simplifying regional advisory arrangements

The three regional coastal boards (RCBs) have played an important role in coastal management over the past 20 years, including leading the development of three regional coastal plans. However, given the combination of a new statewide Marine and Coastal Council, a strengthened role for coastal CMAs, and a new partnership-based approach to solving regional issues, the relevant functions of the current RCBs are incorporated into the new system. Consequently, RCBs will be discontinued; this will help simplify the number of organisations involved in marine and coastal planning.

Providing for statewide, regional and local marine and coastal planning

Statewide marine and coastal planning

The 1995 act introduced Victoria's first long-term, strategic statewide document for coastal planning and management. The *Victorian Coastal Strategy* is a key strength of the current system which has maintained bipartisan support throughout its four iterations. The bill recognises this strength and builds upon it. It distinguishes between the long-term statewide policy and the more dynamic statewide strategy and will ensure a coordinated approach to resolving marine issues that cut across sectorial boundaries.

Both the policy and strategy will be developed and co-endorsed across government. They will guide marine and coastal planning and decision-making at the statewide, regional and local scale. The policy and strategy will also complement other reforms such as those delivered through *Protecting Victoria's Environment — Biodiversity 2037* and Victoria's climate change framework and adaptation plan.

A significant new aspect of the policy will be the inclusion of a marine spatial planning framework. This is the first step to establishing a holistic plan for Victoria's marine environment. The framework will formalise an agreed process to guide future planning and dispute resolution in Victoria's marine estate.

The strategy will outline the actions and responsible authorities to deliver policy outcomes on the ground. It will be accompanied by an implementation plan to ensure that the delivery of actions is prioritised and resourced. It will also give greater clarity on roles and responsibilities which was identified as a significant gap in the current system.

Regional marine and coastal planning

Integrated and coordinated planning and management at the regional scale will be delivered through a new and flexible regional partnership approach, by strengthening the role of coastal CMAs, and by providing for the development of environmental management plans.

Regional and strategic partnerships (RASPs) will support government departments and agencies, community organisations and industry to jointly address significant regional or issue-based planning that crosses jurisdictional boundaries. Examples of regional or issue-based planning that could be addressed through a RASP include planning for increasing coastal visitation and assessing coastal hazards to inform risk mitigation measures on the coast to protect communities, values and assets. By working in partnership with the community and traditional owners, the bill will enable us to tackle some of the most difficult challenges facing the marine and coastal environment.

Across Victoria CMAs are the key regional organisations charged with integration and coordination of natural resource management issues. The bill will improve planning and management of natural resources across catchments and adjoining coastal and marine areas by better aligning marine and coastal planning with existing natural resource management planning under the Catchment and Land Protection Act 1994 (the CALP act). In addition, to strengthen the consideration of threats to the marine and coastal environment originating in the catchments, coastal CMAs will be required to consider both the statewide marine and coastal policy and strategy when preparing a regional catchment strategy under the CALP act.

The bill further reflects the importance of a coordinated approach to addressing impacts on the marine environment by enabling the preparation of environmental management plans (EMPs). Public consultation on the proposed reforms indicated strong support for the mandatory preparation of an EMP for Port Phillip Bay, expanding on what is provided for under the current provisions of the state environment protection policy. Consultation also revealed support for the preparation of EMPs in other marine areas and embayments, where the need for an EMP is identified.

Local marine and coastal planning

To support land managers planning for areas of marine and coastal Crown land at a local scale, the bill provides for the preparation of coastal and marine management plans (CMMPs). The bill reduces overlap between these plans and other strategic planning documents covering the marine and coastal environment, such as management plans prepared under the National Parks Act and aims to reduce the total number of local plans by enabling them to cover multiple land managers.

Improving the protection of public values and streamlining use and development

The bill maintains the Crown land minister's right to have the final say regarding the use and development of marine and coastal Crown land. The default position remains that all use and development requires the consent of the minister. This position continues to be reflected in the Planning and Environment Act 1987.

To streamline the administration and process of applications, the bill will enable low-risk uses and developments to be exempt from the need for a consent and will enable the prescribing of a set of standard conditions to accompany a consent. To further reduce the regulatory burden, the bill will enable the minister to grant consent at the time of approving a CMMP.

To help protect marine and coastal Crown land, the bill includes strengthened offence and enforcement provisions relating to carrying out a use or development without a consent and for failure to comply with the conditions of a consent.

Improving our understanding of the marine and coastal environment

One of the significant gaps in Victoria's current marine and coastal management system is the absence of data on the condition of the marine and coastal environment. To overcome this gap, the bill establishes an obligation to prepare a report on the baseline condition of the marine and coastal environment. A state of the marine and coastal environment report will then periodically be produced to assess changes in the condition of the marine and coastal environment. The report will improve our knowledge of that environment, enabling its health and condition to be tracked over time, and will inform statewide, regional and local policy, planning and management.

Conclusion

The bill represents a major evolution in the legislation governing our precious marine and coastal environment. It provides for an integrated whole-of-government approach to marine and coastal planning and management at the statewide, regional and local scales. The bill will reposition Victoria once again as a leader in integrated coastal zone management.

I commend the bill to the house.

Debate adjourned for Mr DAVIS (Southern Metropolitan) on motion of Mr Ondarchie.

Debate adjourned until Thursday, 1 March.

PLANNING AND ENVIRONMENT AMENDMENT (DISTINCTIVE AREAS AND LANDSCAPES) BILL 2017

Introduction and first reading

Received from Assembly.

Read first time on motion of Ms MIKAKOS (Minister for Families and Children); by leave, ordered to be read second time forthwith.

Statement of compatibility

Ms MIKAKOS (Minister for Families and Children) 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 Planning and Environment Amendment (Distinctive Areas and Landscapes) Bill 2017.

In my opinion, the Planning and Environment Amendment (Distinctive Areas and Landscapes) Bill 2017, as introduced to the Legislative Council, is compatible with human rights as set out in the charter. I base my opinion on the reasons outlined in this statement.

Overview

The Planning and Environment Amendment (Distinctive Areas and Landscapes) Bill 2017 (the bill) will enable the declaration of distinctive areas and landscapes, and implement a stronger planning framework to protect areas that contain a concentration of unique features of state and/or national significance. This includes, for example, environmental, landscape, natural resource, cultural and heritage, and state significant infrastructure values that are under threat or pressure of continuing urban development. The bill, amongst other things, requires the development of a statement of planning policy for a declared area and amendment of a declared area planning scheme to incorporate the statement. Revocation of declarations and certain specified amendments to planning schemes will require ratification by Parliament.

The bill enables the declaration of distinctive areas and landscapes of significance to the people of Victoria. A declaration together with the associated statement of planning policy and planning scheme amendment to incorporate that statement will ensure that the unique features and special characteristics of a declared area are protected and conserved for future generations. More specifically, a declaration will enhance the conservation of environmental values including habitat, ecosystems and biological diversity, and recognise the connection and stewardship of traditional owners in relation to land in a declared area. The bill also ensures integrated decision-making by requiring that a statement of planning policy for a declared area include a long-term vision and framework plan.

Human rights issues

Freedom of movement

Section 12 of the charter provides for the right for every person to have the freedom to choose where to live, to enter and leave and move freely within Victoria. Clause 4 of the bill allows for the declaration of distinctive areas and landscapes and the establishment in statements of planning policy of protected settlement boundaries for townships designated for future growth. A protected settlement

boundary and associated framework plan will identify preferred locations for different land uses including areas for urban development and other land uses such as open space or commercial development.

To the extent that a protected settlement boundary could be perceived as limiting the freedom to 'choose where to live' any such limitation is reasonable and justified because this is consistent with Victoria's planning system that includes planning schemes for the control of land use and development. Planning schemes ensure the protection and conservation of land in Victoria in the present and the long-term interests of all Victorians. Planning schemes also contain planning policies, zones, overlays and other provisions that affect how land can be used and developed. Any such limitation, therefore, is considered to be proportionate since there is no other less restrictive means reasonably available to achieve the purpose that a protected settlement boundary seeks to achieve. The other aspects of the charter right including 'to move freely' and 'to enter and leave' are not limited on the basis that the bill itself does not restrict or prohibit access to areas that have been declared distinctive.

As a result, I am of the opinion that any limitation of the rights under section 12 of the charter is reasonable and justified in accordance with section 7(2) of the charter given the importance of the role of the Planning and Environment Act 1987 as the primary planning legislation that provides the legal framework for Victoria's planning system and ensures the protection and conservation of land in the interests of all Victorians.

Cultural rights

Section 19(2) of the charter provides than an Aboriginal person must not be denied the right, with other members of their community, 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 does not limit any of these cultural rights. The bill supports the protection of these rights by requiring consideration of state significant historic and cultural features in determining whether to declare an area as a distinctive area and landscape. Specifically, the declaration criteria proposed to be used by the minister when considering a declaration refer to the following cultural features:

> iconic places, precincts or landscapes of cultural heritage significance that are exemplars of Victoria's past;
>
> places or objects that have particularly strong relationships to important historical events that have significance for the broader Victorian community; and
>
> features (both tangible and intangible) that are associated with Aboriginal living tradition, sites of Aboriginal cultural sensitivity, and cultural traditions in the form of story or unique testimony.

Property rights

Section 20 of the charter provides that a person must not be deprived of their property other than in accordance with law. To the extent that 'deprivation' includes any substantial restriction on a person's control, use or enjoyment of their property, section 20 of the charter might be relevant to the provisions of the bill in clause 4 which provide for the declaration of an area as distinctive. Such a declaration will be supported through a statement of planning policy that will be incorporated into the relevant planning scheme which may ultimately impact on how a person may use or develop their land.

The circumstances and procedures by which a person's control, use or enjoyment of their property may be restricted are clearly set out in clause 4 of the bill. I am satisfied that, to the extent that this could be said to amount to an effective deprivation of property under the charter, such deprivation will occur both in accordance with law and for a legitimate purpose, namely the protection of distinctive areas and landscapes and prevention of inappropriate development that may be detrimental to environmental, landscape, cultural, heritage and amenity values.

As such, this clause will not amount to a limitation of the property rights referred to in section 20 of the charter.

Hon. Philip Dalidakis, MLC
Minister for Trade and Investment, Innovation and the Digital Economy, Small Business

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Ms MIKAKOS (Minister for Families and Children).

Ms MIKAKOS (Minister for Families and Children) (18:24) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Distinctive Areas and Landscapes Bill is a landmark in the management of the peri-urban areas around metropolitan Melbourne and Victoria's regional cities.

The bill provides for the protection of state significant valued assets located in the peri-urban region of Victoria's major regional cities. This will ensure greater certainty about the long-term sustainability of areas that contain distinctive values.

The bill is a landmark because it will protect the iconic and historic Macedon Ranges region. It will protect the natural beauty of the ranges and preserve cultural, environmental and rural values.

The bill enables the declaration of distinctive areas and landscape and the development of a tailored statement of planning policy for that area.

The bill protects the environmental values and character of the growing Macedon Ranges region. This is essential for a number of reasons.

First, the region's proximity to Melbourne and its popularity for tourists and new residents means that we must put in place stronger protections for the natural environment, state significant water catchments, agricultural land and heritage townscapes.

Second, the level of growth anticipated in the region presents a unique set of challenges that warrant stronger state-led planning policy.

Third, the bill provides protection for townships that contribute so much to regional Victoria's economy through tourism and associated industries. In particular, the bill will secure the sustainability of each township in the Macedon Ranges in the long term, taking into careful account the projected needs for employment and population growth.

The bill paves the way for other important, distinctive areas and landscapes across Victoria to have access to the highest level of planning protection. As an enabling tool, the bill means we can protect other state significant assets and areas of outstanding natural beauty in other areas of Victoria that are also under threat from development.

The bill strengthens existing planning controls and ensures that the significance of these distinctive areas is elevated in state policy.

It is instructive to remember the example of the urban growth boundary and the green wedges that were introduced 15 years ago. The UGB provides a permanent, long-term, strategic limit to Melbourne's outward expansion. The Distinctive Areas and Landscapes Bill will allow settlement boundaries to be applied to specified townships where a growing population threatens to encroach into valued natural and rural landscapes.

In effect, the bill brings the UGB mechanism to the Macedon Ranges to protect state significant assets from growth on all 'fronts'. This means we can ensure that peri-urban growth doesn't compromise the valuable landscape.

Settlement boundaries around townships will provide long-term certainty. The boundaries can be applied to direct development to preferred locations in high-value heritage townships.

It is important to note that the bill is not intended to lock down the Macedon Ranges region or other regions. Rather, the bill elevates the economic role of these areas by safeguarding their values and facilitating appropriate growth and investment opportunities.

Under this legislation, any future proposed amendment to long-term settlement boundaries must be ratified by Parliament. This is what occurs with the UGB and the green wedges. In addition, a statement of planning policy must be finalised within two years after a distinctive area and landscape is declared. This timeline provides certainty to communities.

The bill has been developed in collaboration with the Macedon Ranges Shire Council and the region's Registered Aboriginal Parties including the Wurundjeri, Dja Dja Wurrung, and Taungurung Elders who have strongly supported the protection of their cultural and heritage values in the Macedon Ranges region.

The bill, as proposed, will allow the government to better recognise those iconic, distinctive landscapes that communities value, creating a legacy for future generations of Victorians.

I commend the bill to the house.

Debate adjourned for Mr DAVIS (Southern Metropolitan) on motion of Mr Ondarchie.

Debate adjourned until Thursday, 1 March.

ADJOURNMENT

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

That the house do now adjourn.

Retail gift cards

Ms LOVELL (Northern Victoria) (18:24) — My adjournment matter is for the Minister for Consumer Affairs, Gaming and Liquor Regulation, and it relates to extending the validity of retail gift cards from 12 months to three years. The action I seek is for the minister to follow the lead of the New South Wales government and give an immediate commitment to a reform that ensures all retail gift cards and vouchers purchased in Victoria have a minimum three-year expiry date.

Retail gift cards and store vouchers are popular presents for everyone and the perfect gift for that person in our lives who has everything. The choice of where to buy a gift card is nearly endless, with them being available from nearly every retailer in the country. Latest figures show that Australians spend $2 billion a year on gift cards but between 10 per cent and 27 per cent of cards are never redeemed. That is a cost to the Australian consumer of at least $200 million per year.

The main reasons gift cards are not used are either they are lost or they expire before they are used. While nothing can be done to prevent cards being lost, it is time the Andrews Labor government instigated measures to extend the expiry date of gift cards in Victoria. Twelve months can pass very quickly, and many consumers find that their cards have expired before they have had the chance to redeem them. This has actually happened to me personally with a card from a major retailer, and I felt it was wrong that the company had taken the payment but would not honour the redemption of the card 14 months later.

The New South Wales Liberal government has taken a lead on this issue, and from 31 March this year every gift card or voucher will have a minimum three-year expiry date. These reforms will allow businesses to charge an administration fee at the time the card is purchased but will introduce a ban on any fee being charged upon redemption. The New South Wales reforms are a commonsense approach to a significant issue for consumers and will allow customers the luxury of additional time to redeem their gift cards. The New South Wales Liberal government's response is in stark contrast to that of the Andrews Labor government, with the minister ducking and weaving when pressed on the issue.

In an article in the *Sunday Age* on 28 January a spokeswoman for Minister Kairouz virtually passed the buck to the federal government. What a weak response from an ineffective minister. The issue is terribly important. Consumer protection falls within the state jurisdiction, and it is time the minister actually made a decision in the best interests of consumers and extended the expiry of all retail gift cards to a minimum of three years. The action I seek is for the minister to follow the lead of the New South Wales government and give an immediate commitment to a reform that ensures that all retail gift cards and vouchers purchased in Victoria have a minimum three-year expiry date.

Sex work legislation

Ms SPRINGLE (South Eastern Metropolitan) (18:28) — My adjournment matter is for the Minister for Consumer Affairs, Gaming and Liquor Regulation. No substantive review into the Sex Work Act 1994 has been undertaken since it came into effect more than two decades ago, and the Victorian government has reportedly informed the media and stakeholders that it has no plans to review the Sex Work Act at this time.

Meanwhile the evidence base regarding the impact of legislative models for sex work has developed substantially. A major series of publications by *The Lancet* found that decriminalisation of sex work is the optimal approach in terms of health outcomes for sex workers — it reduces mistreatment of sex workers and improves the protection of the human rights of those workers. A number of years ago Amnesty International published its policy advocating for the decriminalisation of sex work. This was based on rigorous international research and substantial consultation.

In New Zealand major law reform resulted in the decriminalisation of sex work under the Prostitution Reform Act 2003. The legislation was developed in conjunction with the New Zealand Prostitutes Collective, and a range of positive impacts have been measured through independent evaluation. Given that Victoria's Sex Work Act is now more than two decades old and has never been reviewed and in light of the growing body of evidence in Australia, New Zealand and internationally, it seems high time that this legislation was examined in depth.

The action I am seeking is a review of the operation of the Sex Work Act 1994 and other acts governing sex work, with a particular focus on outcomes for Victorian sex workers and the global evidence base in relation to the impact of existing legislative models, particularly decriminalisation.

Werribee police numbers

Mr FINN (Western Metropolitan) (18:30) — I wish to raise a matter for the attention of the Minister for Police, and it concerns a particularly vicious attack in Werribee last week by a gang of five youths who walked into a shop, helped themselves to the goods in that shop and went to walk out. On their way out they were stopped by a male staff member — a man who is semiretired perhaps and is not as young as he used to be — and he pointed out that they should in fact pay for those goods or indeed put them back. At that time he was attacked by this gang.

He ended up in hospital with a hairline fracture of the cheekbone and stitches inside his mouth. It was a particularly vicious attack, after which the youths ran away laughing. They thought it was a great joke. As you can imagine, the other staff in the shop were traumatised. The female staff in the shop were particularly traumatised, and I am told that one has actually quit since this particular incident. Nearby business operators and their staff are also afraid and very anxious as a result of this particular incident.

This happened right in the middle of Werribee. This was not on the outskirts of anywhere. This was in Station Street, Werribee. It is just unbelievable that we would have such an open attack in such a built-up commercial area — just extraordinary. What is even more extraordinary is that it took the police 4 hours to get there. The Werribee police station is less than a 2-minute drive away. I think it would be about 45 seconds if they had the lights and sirens on. It took them 4 hours to get there.

This emphasises yet again how understaffed and overworked the Werribee police are. We need more police in Werribee. These attacks are ongoing in the Werribee area. We need to have more police to deal with these violent attacks to protect innocent people such as this gentleman who ended up in hospital merely as a result of suggesting that these thugs put back the stolen property that they had taken. We need more police, and I ask the police minister to ensure that Werribee very, very soon has the appropriate number of police to deal with the crime wave that Werribee now faces.

North-east rail line

Ms SYMES (Northern Victoria) (18:33) — My adjournment matter this evening is for the Minister for Public Transport, and it relates to the $1.57 billion regional rail revival package of works and upgrades to every regional passenger line in Victoria. It took some

time, but the federal government finally came to the table. It was good news for the north-east line, with $100 million allocated to help deliver the reliability that the passengers of the north-east deserve. I welcomed the investment but questioned whether it would be enough to fix the problem-plagued federally owned track.

A steering committee involving experts from the Victorian and commonwealth governments, the Australian Rail Track Corporation (ARTC), Public Transport Victoria and V/Line was established to consider the works necessary to improve the north-east line's condition. I understand that the $100 million for various capital works along the line will improve passenger service, resilience, reliability and ride quality, but it is not enough to bring the track up to an acceptable standard. It will likely require ongoing money and ongoing maintenance.

The Victorian government has invested $2 million in designing new rolling stock for the north-east line to replace the classic fleet. For the new modern trains to run reliably and at an optimal steed on the north-east line we need at least a class 2 track. This is a standard that applies across the majority of the regional network in Victoria where VLocity trains run. The ARTC track on the New South Wales side of the border has had lots of investment, and it has been built and maintained to the high standard of a class 1 equivalent.

In order to deliver at least a class 2 track standard, additional money from the commonwealth is going to be required. Upgrading the line to at least a class 2 standard will enable our new trains to travel up to 130 kilometres per hour. The Minister for Public Transport has been working to secure this funding from Canberra, and I ask her to update the house on her meeting last week with the current commonwealth Minister for Infrastructure and Transport with regard to the commonwealth releasing this much-needed funding so that passengers along the north-east line can finally get the services they deserve.

Firearm permits

Mr RAMSAY (Western Victoria) (18:35) — My adjournment matter tonight is for the Minister for Police, the Honourable Lisa Neville. The action I seek is for her to intervene over the proposed fees associated with the firearms regulation review. A constituent of mine, Dr David Kelly of Winchelsea, has put in a lot of volunteer time and effort as a member of the Geelong Military Re-Enactment Group. I have been party to its activities down at Barwon Park — in fact I opened the weekend that the Geelong Military Re-Enactment Group have demonstrating their re-enactments of different wars. Dr Kelly has raised with me his concern about the proposals put forward in the firearms regulation review, which will have a direct, punitive and, he believes, unnecessary effect on their activities which, as I said, include performing for the public at important events. They also provide firing parties for Anzac Day services at Torquay, Winchelsea and Modewarre and for Australia Day at Rippleside Park, just to name a few.

What is being proposed by this review is an increase in the charge for a populous place permit — this comes through the Department of Justice and Regulation — from $0 to $400, which would essentially remove this particular activity from public events, which they provide at no cost to organisations like the RSL and Lions. They are a not-for-profit group of volunteers who pay an annual membership of about $45. There is also an additional cost being proposed in relation to licence fees for category D and E firearms, a proposal which they also believe is unfair and punitive on their organisation and will ultimately lead to the public who attend those events to observe historical re-enactments not being able to have that opportunity.

As I understand it, the Victoria Police licensing and regulation division is currently in discussions with the firearms regulations review. As I said, there are a number of proposals in relation to populous place permits and also additional costs for the firearms they use for their re-enactments. These are volunteer groups playing an important role in preserving the history of our wars by re-enacting some of those battles for the public and also providing an important service through some of our memorial activities. I ask the minister, given these proposals are coming through the Victoria Police licensing and regulation division, to ensure that in fact the costs associated with the additional permit fees can be waived for the volunteer organisations that play an important role in re-enacting our history with respect to war events.

Foster carers

Ms BATH (Eastern Victoria) (18:38) — My adjournment matter this evening is for the Minister for Families and Children, the Honourable Jenny Mikakos, and the matter I raise is in relation to foster care families in my electorate who are not being paid correctly or in some cases are not being paid for months for the care that they undertake every day to assist the most vulnerable children in our society to have a better life. The action I seek from the minister is that she conduct a comprehensive review of the Department of Health and Human Services (DHHS) caregiver

payment system — including but not limited to improving communications between DHHS and the service providers, tracking the lodgement of documentation, tracking the reimbursements made and improving documentation with any accompanying payments — and explain why this system seems to be failing these people on a monumental scale.

My constituents have informed me that they rightly undergo very rigorous and comprehensive training to become an accredited foster carer. They are professional in their outlook and they absolutely open their hearts and homes to these most vulnerable children. It is incomprehensible that a department that has thousands of staff and millions of dollars in budget can get wrong a simple operation of paying — or in truth not paying — the reimbursements of foster care families for their service.

We have had cases where families were paid with shopping vouchers in lieu of — in lieu of, not as well as — monetary payments. Recently a constituent had to wait months and months for reimbursement of payments dating back to May 2017. He feels that he has been underpaid but he has no accompanying documentation to check this payment, and he also feels that he is being blocked. I would like to read and quote from a letter, which I will hand to Hansard, that he has written about traversing between the service provider and himself:

> It is not about —

and he put his name in there —

> it's about all …

caregivers.

> It's not about how your system works because it isn't working for us at the moment and needs to be fixed so that it does. Carers need to know that the allowances and reimbursements will come on a regular predictable cycle just like your salary does.
>
> I know that you can't fix the system. This dysfunction needs to be brought to the notice of someone who can and the system needs to be fixed as a matter of … urgency.

He said:

> Please share my frustrations with someone in real authority who has the power and responsibility to deal with these dysfunctions, let me know when my carer allowance payment cycle will begin, and my other outstanding payments will be paid.
>
> Remember, this is not … about me, I don't want to jump any queue, I want all carers who are being used and abused to be valued and supported.

I raise this, Minister, not for you to come to me and say that I should have told you about this person. I raise this as one example of many foster carers who feel that they are not being appreciated, they are not being paid and the system needs an overhaul.

Neighbourhood houses

Mr LEANE (Eastern Metropolitan) (18:41) — My adjournment matter is directed to the Minister for Families and Children, Jenny Mikakos. It concerns —

Mr Ondarchie interjected.

Mr LEANE — I am not projecting my voice, as you can tell. It concerns neighbourhood houses — I think there are about 50 neighbourhood houses across the state — that supply occasional child care and do a great job of it. They have a number of programs. Some of the programs in Eastern Metropolitan Region which I have a concern about are the Avenue Neighbourhood House in Blackburn South, Mitcham Community House occasional care, which is obviously in Mitcham, and another one, the Park Orchards community house, which is obviously in Park Orchards. This occasional care program is there for the whole community and it is a great support. The concern I have is that I understand the federal government is removing supportive funding presently provided to the 50 neighbourhood houses so they can supply this great service. The action I seek from the minister is if she inform those neighbourhood houses and me about what this could mean for the communities that they support with this occasional care service.

Port Phillip Specialist School

Ms FITZHERBERT (Southern Metropolitan) (18:43) — My adjournment matter is for the Minister for Education in the other place, and it relates to the Port Phillip Specialist School. This school is very close to my electorate office, although I first went there some 20 years ago shortly after it opened on its current site in 1997. Last year the school had 126 students, predominantly from local families. The school population includes students with moderate to severe intellectual disabilities, and many students have other associated disabilities. The school is recognised as a leader in its field. It has minimal support from government and is located in an 1800s primary school building. It is not a purpose-built specialist school. Historically community involvement and projects have enabled refurbishment and disability access, and the school continues to rely heavily on community support and goodwill.

Back in 2016 the then acting principal, Juliet Cooper, noted that around 68 per cent of workers with intellectual disabilities who have paid employment work in food preparation and the service industry. The school has a large number of students who are involved in a range of food preparation programs for both life and work skill development, and there is a small domestic kitchen, which I have seen, which is used for this purpose. It is very small, and at the moment only a small number of staff and students are able to be in there at the same time. It is essentially a domestic kitchen, and as a consequence there are occupational health and safety risks if it is used for a larger group of people or for a commercial purpose. It does not allow for maximum inclusion of all the students who are interested or able to participate in this program.

The school has been working on a plan to develop its facilities into a larger space and one that can potentially be used with the local community involved as well. What they want to do is refurbish and modernise their existing space so it becomes a larger technical training kitchen facility. They have been fundraising for two years. They have raised $150 000, but they understand, having gone out to tender recently, that the total cost will be around $300 000, so they are quite a bit short. The school has applied for support from the Department of Education and Training by twice applying for funds from the Inclusive Schools Fund, but they have been unsuccessful on both occasions.

This is a great initiative, and it would make a huge difference to the work that this school does. As I said earlier, it would assist students in developing life skills, but it would also give some very, very useful work and vocational training and would involve the school to an even greater extent with the local community. The action I am seeking from the minister is support and funding to allow the completion of this commercial kitchen upgrade.

Belgrave–Monbulk bus service

Mr O'DONOHUE (Eastern Victoria) (18:46) — I raise a matter for the attention of the Minister for Public Transport. I have been contacted by some constituents who have children at Mater Christi College in Belgrave. There was a bus timetable change at the start of the school year which has meant that students from Mater Christi have to wait longer to catch the bus from Belgrave to Monbulk. Perhaps more importantly, the new bus timetable means that the later bus is already full with students from St Joseph's College in Ferntree Gully and Upwey Secondary College, which means that on any given day around 15 Mater Christi students are forced to stand on the bus as it travels along those winding roads that are in poor repair. It is hard to understand why this timetable change was made without any consultation with parents and the school community that is directly involved.

I would ask the Minister for Public Transport to review this timetable change for this service and re-establish the previous timetable that saw the bus leave Belgrave station at 3.14 p.m, rather than keep the new timetable which sees the bus leave at 3.40 p.m.

Duck hunting season

Mr O'SULLIVAN (Northern Victoria) (18:47) — My adjournment matter tonight is for the Minister for Agriculture, and the action I am seeking from the minister is that she withdraw the new regulations in relation to the 2018 duck season and consult properly with Field & Game Australia (FGA) and other stakeholders to make sure that these regulations are workable. What we have seen from the Minister for Agriculture is the introduction of a whole range of new regulations. Some of these regulations might be okay, but there are quite a few of them which are going to make things very difficult. Also a few of them are not in line with what the stakeholders were led to believe from previous conversations. For instance, one of the new regulations is a 9.00 a.m. start on the opening weekend. Field & Game believed this would be evaluated after one year, but they are now led to believe that it is a two-year trial. That is certainly news to them, and they are not happy about it. They see these new regulations as a severe overreach, and they think they are going to make things very difficult.

Another one of the regulations which is particularly creating problems is regulation 51A in relation to a downed game bird. The regulation says it must be recovered straightaway, which I find a bit peculiar because hunters, when they do shoot a bird, have every intention of picking up and are very adept at actually understanding where it is and picking it up. Another regulation is that the hunter is not allowed to shoot multiple birds at the same time. They have got two shots in the over and under; they are not allowed to shoot two shots out of that at two successive birds. We have a bag limit for a reason. If we are going to allow hunters to shoot birds and we have a bag limit, I do not think it really matters whether they are firing one shot or two shots at a time to undertake that process.

There are a whole range of other things that need to be re-evaluated. Field & Game Australia said in a statement:

> We are dismayed that the real-world experience of FGA and its members was not canvassed in the drafting and we

immediately sought modification so the regulations are practical, realistic and do not leave members open to criminal prosecutions.

There are a whole range of problems with these regulations that need to be addressed. I am asking the Minister for Agriculture to withdraw those regulations for the upcoming season, do the proper consultation with the industry and make sure any regulations are actually workable for hunters and everyone involved.

Responses

Ms MIKAKOS (Minister for Families and Children) (18:50) — I thank members. Tonight I received a number of adjournment matters, including from Ms Lovell directed to the Minister for Consumer Affairs, Gaming and Liquor Regulation and from Ms Springle, also directed to the Minister for Consumer Affairs, Gaming and Liquor Regulation. I did note the views that Ms Springle expressed in relation to the sex industry, which do seem to stand in contrast to those of the Greens party candidate for Richmond, Kathleen Mahltzahn, so I certainly look forward to her being able to explain that.

I received an adjournment matter from Mr Finn directed to the Minister for Police; from Ms Symes directed to the Minister for Public Transport; from Mr Ramsay directed to the Minister for Police; from Ms Fitzherbert directed to the Minister for Education; from Mr O'Donohue directed to the Minister for Public Transport; and from Mr O'Sullivan directed to the Minister for Agriculture. I will direct all of those adjournment matters to the relevant ministers for response.

This evening I also received an adjournment matter for myself from Ms Bath, and I propose to discharge that matter. Ms Bath in her adjournment matter referred to the issue of foster carers and foster care payments and made a number of assertions in relation to the caregivers payment system. I have expressed this view to the member before, and I certainly do encourage her to write to me with specific matters or come and discuss specific matters with me directly, because we are then able to look into these matters, respond to the member and assist her constituents in a far more constructive manner than the way that she has sought to raise this issue.

I am aware that, for example, in the past she has made particular assertions — and these have been reiterated by Ms Crozier as well — around the issue of shopping vouchers. Ms Bath reiterated those comments here this evening. I did in fact advise Ms Crozier in a response to her question that it is not Department of Health and Human Services policy to substitute overdue carer payments with vouchers; that client support funding is additional to carer payments to help cover costs for extraordinary expenses, which may include specific items or services; that a voucher may be provided as part of client support funding when this meets the needs of the carer; and that this has been a longstanding practice that occurred during the previous government for both child protection practitioners and community service organisations and it is often done in urgent situations. An example of this is when food staples are required for children. So it was very clearly spelt out in that response.

I went further in explaining to Ms Crozier that grocery vouchers are not offered in lieu of allowance payments but in order to provide immediate additional financial relief. So I am disappointed that the member has come in here and made the same claim again, because this has been debunked now a couple of times and this is now the third time that this assertion has been made. I would certainly encourage her to write to me about specific examples, but what I can say to the member and what I can say to any carers in her electorate is that our government absolutely values foster carers. We put in our first budget the first increase in carer payments in more than a decade. We have provided additional funding in successive budgets in relation to funding more home carers to provide care for vulnerable children and to ensure that children are diverted away from residential care.

What we saw under those opposite was nothing done for foster carers, nothing done for kinship carers and just the growth of residential care, so we have put in place significant reforms under the *Roadmap for Reform* to support our carers as well as training opportunities that they have not had access to before and many other supports. We do value our carers. We have put in place a number of reforms to streamline the carer payments system. We do value our foster carers.

In the way the member has gone about raising this matter she has effectively trashed not only the dedicated child protection workers in the department but also community sector organisations that work in her electorate and in so many communities to support vulnerable children.

Ms Crozier — On a point of order, President —

The PRESIDENT — A point of order is about process, not about arguing the toss.

Ms Crozier — President, I would then seek your guidance on the response by Ms Mikakos, who is

debating the issue that Ms Bath has raised in terms of this issue that has been raised on multiple occasions. It is in response to an adjournment matter about which it is quite legitimate to ask the minister, I would have thought, in this place, rather than the minister going on the attack and saying that the member has been trashing the name of the foster carer and the workers. That is not what the member was saying, and Ms Mikakos I think should —

Ms Mikakos — So you're now debating this matter; that's what you're doing.

Ms Crozier — No, I am asking for the President's guidance in relation to your answer.

The PRESIDENT — On the point of order, the minister is entitled to dispatch this matter in any way she sees fit in terms of responding to a question that is put in the adjournment debate. Because I do hear a contradiction in what the member put in support of her matter tonight and the minister suggesting that that was not accurate, then certainly, if there is a discrepancy in the views of the two members, the member, Ms Bath, has an opportunity to take other action within the processes of the Parliament, including a take-note motion or even a substantive motion, if she believes that the minister has not provided information that is in accord with what her understanding of it is. Then we would have a proper debate. The minister is certainly allowed to discharge the matter according to what she wants to say tonight.

Ms MIKAKOS — Thank you, President. Before Ms Crozier graced us with her presence, I was in fact quoting from a written response that I had provided to her. It is a written response to a question without notice asked on 29 November 2017. In fact I did put on record again, for the third time now, the fact that I was debunking claims that were made previously in relation to matters that Ms Bath has raised again. It is disappointing that these issues get trotted out when they are clearly not true, not correct, and Ms Bath seeks to score political points by raising these matters multiple times.

She can raise whatever anecdotes she would like to claim. But if she really wants to put them to the test, then perhaps she might give me names of foster carers and specific issues, and then I am very happy to seek my department's advice in relation to responding to specific matters. If she is not prepared to do that, then I think we can draw particular conclusions about the accuracy of the claims that she is making. If she is fair dinkum, then she will provide the details. Give me the names and give me the details, and we can get the advice.

The PRESIDENT — You do not need to repeat what you are suggesting. One of the things in the standing orders that does guide the adjournment debate is that the response should be as brief as possible.

Ms MIKAKOS — Thank you, President. In fact I had just about concluded the matter before other members sought to start a debate on this. But I am happy to move on.

The final matter that was raised with me this evening was from Mr Leane, and again I am very happy to discharge the matter. I thank him for raising this issue, because Mr Leane has raised a very important matter that relates to families and young children in his electorate. He has raised the issue of neighbourhood houses across Victoria losing federal funding from the national occasional care program — a program that I should point out we funded in our first budget. What happened was that the day before the previous government went into caretaker mode Ms Lovell signed up to an agreement. There was no funding attached to it, I discovered as the incoming minister. We discovered there was a gaping hole, a black hole, in relation to this matter. So we did in fact put the funding in our first budget and fixed this issue.

Ms Crozier interjected.

Ms MIKAKOS — What Ms Crozier may not understand is that the federal minister, Simon Birmingham, has actually cut the funding. There is no funding beyond the middle of this year. There is no funding for this program. What this means, as Mr Leane alluded to, is that in his electorate the Avenue Neighbourhood House in Blackburn South, Mitcham Community House occasional childcare in Mitcham and Park Orchards Community House and Learning Centre in Park Orchards stand to lose just under $16 000 each in national occasional childcare funding. What this may mean is that small centres like this, which are losing this federal funding, may not be able to continue to offer occasional child care for their communities, because what we saw when Ms Lovell cut the Take a Break program in 2011 — and Mr Leane remembers that issue very well, as do many others — was that many of the centres either closed their programs or put their fees up. This is potentially what is likely to happen again.

I can advise Mr Leane and also his centres that I wrote to Simon Birmingham about this matter in December, and I am incredibly disappointed that he has failed to

respond to me. This is going to have a significant impact in regional areas —

Ms Crozier interjected.

Ms MIKAKOS — Ms Crozier, just settle down. You might learn something here. What we risk facing across the state is more than 50 centres losing their national occasional care program funding. For regional areas in particular this will have a devastating impact, because in some regional communities they have no childcare options other than the national occasional care program. So if the Maldon Neighbourhood Centre in Bendigo West, for example, loses its occasional care program, there are no other services in Maldon, a township of 3500 people. If the Bass Valley Community Group in Bass, with a population of 4000, loses its occasional care program, it too has no other child care for that community. The Bandiana Neighbourhood House, south-east of Wodonga in the Assembly electorate of Benambra, is another neighbourhood house that has no other childcare options in its community. So I am very concerned about this, Mr Leane, and I thank you for raising this matter. If Ms Crozier shared my concerns, she would be raising this with her mates in Canberra, but of course what we are hearing is deafening silence from those opposite.

I do not have any further responses this evening. I thank members for all of their adjournment matters.

The PRESIDENT — I indicate that I will actually be looking at Mr Leane's request in respect of the neighbourhood houses and marrying that up with the response that was given tonight to ensure that the adjournment debate matter did actually maintain what we expect in terms of responses and was not simply an opportunity to make a speech on a matter that was not otherwise captured in the proceedings of the Parliament. I will be checking this item. The house stands adjourned.

House adjourned 7.05 p.m. until Tuesday, 6 March.