Hansard

LEGISLATIVE COUNCIL

60th Parliament

Thursday 12 September 2024

By authority of the Victorian Government Printer

Members of the Legislative Council

60th Parliament

President

Shaun Leane

Deputy President

Wendy Lovell

Leader of the Government in the Legislative Council

Jaclyn Symes

Deputy Leader of the Government in the Legislative Council

Lizzie Blandthorn

Leader of the Opposition in the Legislative Council

Georgie Crozier

Deputy Leader of the Opposition in the Legislative Council

Evan Mulholland (from 31 August 2023)
Matthew Bach (to 31 August 2023)

Member	Region	Party	Member	Region	Party
Bach, Matthew[1]	North-Eastern Metropolitan	Lib	Luu, Trung	Western Metropolitan	Lib
Batchelor, Ryan	Southern Metropolitan	ALP	Mansfield, Sarah	Western Victoria	Greens
Bath, Melina	Eastern Victoria	Nat	McArthur, Bev	Western Victoria	Lib
Berger, John	Southern Metropolitan	ALP	McCracken, Joe	Western Victoria	Lib
Blandthorn, Lizzie	Western Metropolitan	ALP	McGowan, Nick	North-Eastern Metropolitan	Lib
Bourman, Jeff	Eastern Victoria	SFFP	McIntosh, Tom	Eastern Victoria	ALP
Broad, Gaelle	Northern Victoria	Nat	Mulholland, Evan	Northern Metropolitan	Lib
Copsey, Katherine	Southern Metropolitan	Greens	Payne, Rachel	South-Eastern Metropolitan	LCV
Crozier, Georgie	Southern Metropolitan	Lib	Puglielli, Aiv	North-Eastern Metropolitan	Greens
Davis, David	Southern Metropolitan	Lib	Purcell, Georgie	Northern Victoria	AJP
Deeming, Moira[2]	Western Metropolitan	IndLib	Ratnam, Samantha[5]	Northern Metropolitan	Greens
Erdogan, Enver	Northern Metropolitan	ALP	Shing, Harriet	Eastern Victoria	ALP
Ermacora, Jacinta	Western Victoria	ALP	Somyurek, Adem	Northern Metropolitan	DLP
Ettershank, David	Western Metropolitan	LCV	Stitt, Ingrid	Western Metropolitan	ALP
Galea, Michael	South-Eastern Metropolitan	ALP	Symes, Jaclyn	Northern Victoria	ALP
Gray-Barberio, Anasina[3]	Northern Metropolitan	Greens	Tarlamis, Lee	South-Eastern Metropolitan	ALP
Heath, Renee	Eastern Victoria	Lib	Terpstra, Sonja	North-Eastern Metropolitan	ALP
Hermans, Ann-Marie	South-Eastern Metropolitan	Lib	Tierney, Gayle	Western Victoria	ALP
Leane, Shaun	North-Eastern Metropolitan	ALP	Tyrrell, Rikkie-Lee	Northern Victoria	PHON
Limbrick, David[4]	South-Eastern Metropolitan	LP	Watt, Sheena	Northern Metropolitan	ALP
Lovell, Wendy	Northern Victoria	Lib	Welch, Richard[6]	North-Eastern Metropolitan	Lib

[1] Resigned 7 December 2023
[2] Lib until 27 March 2023
[3] Appointed 14 November 2024
[4] LDP until 26 July 2023
[5] Resigned 8 November 2024
[6] Appointed 7 February 2024

Party abbreviations

AJP – Animal Justice Party; ALP – Australian Labor Party; DLP – Democratic Labour Party;
Greens – Australian Greens; IndLib – Independent Liberal; LCV – Legalise Cannabis Victoria;
LDP – Liberal Democratic Party; Lib – Liberal Party of Australia; LP – Libertarian Party;
Nat – National Party of Australia; PHON – Pauline Hanson's One Nation; SFFP – Shooters, Fishers and Farmers Party

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Thursday 12 September 2024

The PRESIDENT (Shaun Leane) took the chair at 9:32 am, read the prayer and made an acknowledgement of country.

Petitions

Inverloch surf beach

Melina BATH (Eastern Victoria) presented a petition bearing 2575 signatures:

> The Petition of certain citizens of the State of Victoria draws to the attention of the Legislative Council the impact of coastal erosion on the Inverloch Surf Life Saving Club, main beach, dunes and public and private assets. The Inverloch community is deeply concerned that its much-loved sporting and social club is at immediate risk of being washed away.
>
> **The petitioners therefore request that the Legislative Council, call on the Government as a matter of urgency and undertake immediate planning and engineering works to protect main beach and SAVE the Inverloch Surf Life Saving Club.**

Melina BATH: As this is a petition qualifying for debate under standing order 11.03(10), I give notice that I intend to move 'That the petition be taken into consideration' on Wednesday of next sitting week.

Papers

Papers

Tabled by Clerk:

Advancing the Treaty Process with Aboriginal Victorians Act 2018 – under section 43 of the Act –

Advancing the Victorian Treaty Process – Report, 2023–24.

First Peoples' Assembly of Victoria – Report, 2023–24.

Statutory Rules under the following Acts of Parliament –

Fences Act 1968 – No. 84.

Human Source Management Act 2023 – No. 85.

Water Act 1989 – No. 86.

Subordinate Legislation Act 1994 – Documents under section 15 in respect to Statutory Rule No. 84.

Committees

Legal and Social Issues Committee

Inquiry into the Rental and Housing Affordability Crisis in Victoria

The Clerk: I have received the following paper for presentation to the house pursuant to standing orders: government response to the Legal and Social Issues Committee's inquiry into the rental and housing affordability crisis in Victoria.

Petitions

Point Lonsdale

Response

The Clerk: I have received the following paper for presentation to the house pursuant to standing orders: Minister for Local Government's response to the petition titled 'Unite Point Lonsdale into one local government area'.

Business of the house

Notices

Notices of motion given.

Evan Mulholland having given notice:

Gaelle Broad: On a point of order, President, earlier you said that motions were to be done without assistance, and there seems to be a lot of unnecessary assistance from those people sitting opposite.

Michael Galea: On the point of order, President, if members opposite are determined to turn a notice of motion into a political stunt, they should expect interjections.

The PRESIDENT: That is not a point of order. Mrs Broad's was a point of order, which I uphold. If people can assist the house, as a rule, motions should be read out without people making noise.

Further notices given.

Adjournment

Gayle TIERNEY (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (09:49): I move:

That the Council, at its rising, adjourn until Tuesday 15 October 2024.

Motion agreed to.

Motions

Middle East conflict

Aiv PUGLIELLI (North-Eastern Metropolitan) (09:50): I move, by leave:

That this house:

(1) notes that since the Legislative Council's resolution on 17 October 2023 concerning Israel and Gaza, which stated that this house 'stands with Israel', the following have occurred:

(a) UNICEF's global spokesperson has called Gaza 'the most dangerous place in the world to be a child';

(b) it is estimated that one Palestinian child is killed or wounded every 10 minutes;

(c) there are now over 50,000 children suffering from severe malnutrition in Gaza;

(d) more than 14,000 children have died due to the attacks on Gaza by the extremist Netanyahu regime, with thousands more reported missing; and

(2) calls on the Victorian government to end their relationship with the Israeli defence ministry and with Israeli arms manufacturers.

Leave refused.

Members statements

Surf Coast Aquatic and Health Centre

Gayle TIERNEY (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (09:51): I was pleased to join Minister Ros Spence at the funding announcement for stage 2 of the highly anticipated Surf Coast Aquatic and Health Centre at Wurdi Baierr Stadium in Torquay last Thursday. This is a project that will deliver significant benefits to our community's health and wellbeing. This investment to produce a state-of-the-art facility demonstrates the Allan Labor government's commitment to developing regional infrastructure and supporting growing communities. The centre will feature a 25-metre heated indoor pool, a multipurpose room, a warm pool, a spa, a sauna, gym facilities, allied health suites and a cafe, creating a vibrant hub for fitness, rehabilitation and social connection. Importantly, the Surf Coast Aquatic and Health Centre is not just

a place for exercise but a community space that will support health and wellbeing, offering something for all ages and abilities. It will host a range of programs designed to foster social inclusion, making it a vital asset for this growing region.

This project was made possible through a significant investment from the Victorian and federal government, with strong support from the Surf Coast shire and community partners. This is a world-class facility, and it will be a fantastic example of what can be achieved when all different levels of government and community work together. I congratulate the Surf Coast Shire Council, the project team and all stakeholders involved in bringing this vital facility to light, which will serve the community for generations to come. The Allan Labor government is delivering in the Surf Coast region.

Melbourne Moon Festival

Richard WELCH (North-Eastern Metropolitan) (09:52): Last weekend, along with my colleagues Nicole Werner and Trung Luu, I participated in in the Melbourne Moon Festival, organised by the Melbourne Taiwanese Chamber of Commerce and Whitehorse council. I want to thank those groups particularly for putting together such a really well organised event that captured the essence of the moon festival, a celebration of family, unity and tradition. It was great to connect with local Chinese businesses and residents and immerse in their culture through traditional foods and performances. Events like this play a wonderful role in bringing our community together, fostering cultural understanding and highlighting the diversity that makes Box Hill so unique. Thank you to everyone involved in making that event a success.

Watoto Children's Choir

Richard WELCH (North-Eastern Metropolitan) (09:53): I would also like to thank Norman Katende from the Uganda the Pearl of Africa Victoria Association and Jason Wood MP for their role in securing visas for the Watoto Children's Choir. The choir is made up of orphaned and vulnerable children from Uganda who share their powerful stories of hope and resilience through music and dance. I had the privilege of watching them perform, and their energy and spirit were truly inspiring. The choir not only entertained but raised awareness of the challenges faced by these young performers in their homeland. Thank you to everyone involved in making this impactful visit and their tour possible, and the best of luck to them on the rest of their tour.

Victoria Police

Jeff BOURMAN (Eastern Victoria) (09:54): Yesterday saw scenes of violent antisocial behaviour from people pretending to be peace activists outside the Land Forces expo. I say 'pretending' because the violence perpetrated by these – I will quote Police Association Victoria's Wayne Gatt – 'dirty, filthy, disgusting animals' is not the work of anyone seeking peace. I should also take issue with the use of the word 'animals' because I expect animals would behave better. I also note that the attacks on the police force should disgust anyone who cares about animal welfare. Twenty-seven police officers were hurt during these so-called peaceful protests and had faeces, rocks and acid thrown at them, not to mention good old physical violence from these so-called peace protesters. One of the ironies is that the protest was also supposed to be encompassing climate change, yet they set plastic bins alight for that protest. All this is happening with the backdrop of protracted wage negotiations that do not seem to be making any progress. What Victoria Police officers and other state officers have had to endure during these protests is part of the job that they are paid to do and is a perfect example of why Victoria Police officers should be paid better than they are. This is a great time for the force to end their negotiations favourably and honourably and give the officers a decent rise.

Glenroy Residents Association for Malayalees

Enver ERDOGAN (Northern Metropolitan – Minister for Corrections, Minister for Youth Justice, Minister for Victim Support) (09:55): Last weekend I had the pleasure of celebrating Onam with the Glenroy Residents Association for Malayalees (GRAM), along with the member for Broadmeadows

in the other place. Onam is the biggest event in the calendar for many Keralites. From the moment I stepped into the room I was struck by the vibrancy and the joy that filled the place from young and old alike. The dance performances were a true highlight, showcasing the incredible talent and dedication of everyone involved. In the lead-up to the event I am told that the community met almost every evening for over two months to perfect their choreography, and it showed. When four-year-old Rani took the stage her synchronised dancing and her team spirit were absolutely stunning. She lit up the room with joy, making the event even more special for everyone. It was heartwarming to see every part of the community – men, women and children – come together to organise this beautiful celebration.

GRAM is a small community organisation, but they do incredibly important work. They connect community and help nurture familial bonds that can sometimes feel distant in a new country for many Victorians. In my conversations with attendees, many highlighted how their friends in GRAM have become like a second family here in Australia. GRAM's success is driven by the dedication of countless volunteers who are determined to pass on their culture, language and folklore to the new generation in Australia. I want to thank them all for their hard work and helping us build a state that is more vibrant and welcoming for all. I particularly want to give a shout-out to president Reji Cherian and his team – vice-president Rahul, secretary Harish and treasurer Dennis – for their leadership and commitment to representing their community and achieving the best outcomes for young people.

Teej celebrations

Evan MULHOLLAND (Northern Metropolitan) (09:57): Happy Teej. It was wonderful to attend the Teej festival celebration organised by the Australian Nepalese Multicultural Centre with my colleague Trung Luu; Usman Ghani, the Liberal candidate for Calwell; Jason McClintock, the Liberal candidate for McEwen; and even Dr Ratnam. This vibrant festival celebrates women in Nepal and neighbouring countries. Congratulations to president Gandhi Bhattarai, secretary Tilak Pokharel and all the volunteers, especially the women.

Reverend Fr Antawan Mikhail

Evan MULHOLLAND (Northern Metropolitan) (09:57): It is my pleasure to congratulate Reverend Fr Antawan Mikhail on his monumental milestone of 40 years in the priesthood as the parish priest at St Abdisho Assyrian Church of the East cathedral in Coolaroo and St George's Assyrian church in Reservoir. Fr Antawan is a beacon of hope and guidance, embodying the true essence of compassion and spiritual leadership. Thank you for your remarkable service and for being a pillar of faith not just for the Assyrian communities but for all communities. Congratulations, Fr Antawan, on this extraordinary achievement.

Fr Anthony Girolami

Evan MULHOLLAND (Northern Metropolitan) (09:58): It was also wonderful to attend the 40th sacerdotal anniversary mass of Fr Anthony Girolami, who has been the parish priest at St Francis of Assisi parish in Mill Park from 2009 and was also parish priest at St John's church in Heidelberg when I went to primary school there. His faithfulness, dedication, faith and unwavering commitment to pastoral care and serving the community has made his ministry so impactful. Congratulations to Fr Anthony.

Social media age limits

David LIMBRICK (South-Eastern Metropolitan) (09:58): For most of us, discovering the people in charge do not really know what they are doing is a harsh lesson reserved for later in life, but our kids are growing up faster than ever these days, because this is a harsh lesson they are learning right now. First we had governments in Victoria locking them out of their school, taping off their playgrounds and putting sand on their skateboard ramps, but now authoritarians from every major party want to ban their social media. The masterminds who believe they are going to control the internet are the same kinds of people who were convinced the COVIDSafe app would stop the

pandemic. When kids hear them talking about controlling Facebook and X it is a joke, because they actually prefer platforms like YouTube and Discord. We also know governments are just as inept at protecting our privacy as they are at controlling the internet, and we should be very wary of digital IDs. Authoritarians want to protect children from social media. The Libertarian Party believe we should protect children from authoritarians. We know prohibition does not work. We believe kids are not stupid, and we believe families are the best people to decide about their access to social media. My advice for kids and parents is to have a conversation about getting a virtual private network and, while you are at it, a conversation about the dangers of big government.

Mental health

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (10:00): I rise to acknowledge that today is R U OK? Day, a day where we are all reminded of the need to have frank and honest discussions about our own mental health and wellbeing as well as the mental health of those around us. Today we are asked not just to check in on our family, friends and colleagues but importantly to truly listen to them and to start meaningfully connecting with people in our lives who may be struggling. The theme of R U OK? Day this year is R U OK? Any Day, challenging us all to create a culture where we feel comfortable and safe enough to have those tough conversations any day of the year. As a government we have committed to rebuilding our mental health system from the ground up, but we know we still have so much more to do as a community to confront the stigma about talking about our mental health and address the fear of standing up and saying that we are not doing okay. So today and every day remember to reach out to the people in your life, to start that conversation and to not be afraid if somebody tells you they are not okay. You do not need to be an expert to reach out, just a good friend and a great listener.

Ballarat Hindu Temple and Cultural Centre

Joe McCRACKEN (Western Victoria) (10:01): I would like to acknowledge the Ballarat Hindu community, who over last weekend held their annual Ganesh Festival, which for those that might not be aware won a pretty significant award the previous year. I want to particularly acknowledge my good friend Pradush, who is the president of BHTCC – the Ballarat Hindu Temple and Cultural Centre. I want to acknowledge him and the entire committee for the great work that they do in supporting the Hindu community, particularly in Ballarat after a recent tragedy which has impacted a family. They were very, very awful circumstances, but I have seen the Hindu community and indeed the broader Indian community rally around this family and support them. The event was full of fun, laughter, life and great food. If you have not ever been to a Ganesh festival, I encourage you to go along. I want to put on the record too that I 100 per cent support BHTCC and their push for a temple to be built out at Ross Creek. It has been a long time coming, and I really do support the Hindu community and their right to worship, and worship in a way that suits them. I have long been working with them to help encourage the Golden Plains council to work with the BHTCC committee in order to get it working, and hopefully it will come to fruition sooner rather than later. Thank you to BHTCC and well done on your work.

Supermarket workforce

Aiv PUGLIELLI (North-Eastern Metropolitan) (10:02): I am not usually one to dwell on the good old days, but remember when we could go to the supermarket and buy our groceries from a real person at a check-out? Remember that? Well, it feels like those days are somewhat long gone. The supermarket giants Coles and Woolies are always looking to increase their mega profits, and one way they can do this is through dark stores, which are as ominous as they sound. They look like real supermarkets and some of them used to be real supermarkets, but now they are closed to the public and they are run like Amazon-style warehouses where staff are put under huge pressure and timed to pick and pack online orders, sometimes expected to pack over 200 items per hour. We have even heard that in one of these stores the names of the workers who fell behind were displayed on a board in red for all to see. We have heard of workers pouring sweat while trying to keep up, with only a brief break

on their shift. All of this sounds like a terrifying real-life episode of *Squid Game*, frankly. And I have not even mentioned the robots – the dishwasher-sized things going around picking out the produce. Look, they are quicker and they complain less than a human, I suppose. It is certainly working for these supermarkets too, given Coles has just reported a 30 per cent growth in grocery ecommerce sales and $1.1 billion in profit – but at what cost? Bring back the people, ditch the robots.

My Room Children's Cancer Charity

Lee TARLAMIS (South-Eastern Metropolitan) (10:04): Recently I was privileged to attend the My Room Children's Cancer Charity gala ball fundraiser. The theme 'Love, promise and hope' reflects the collective dream we all share, a future where every child can not only overcome cancer but thrive beyond it. We were lucky to be joined by Marcus, who graciously shared his personal journey with cancer. His story was deeply moving and inspirational, with a touch of humour that truly showcased his resilience. It always amazes me how strong, selfless and determined children can be when facing such immense challenges. Marcus's story resonated with me on a personal level, as I know it did with others, as it reminded me of our family's journey through my brother's own battle with cancer, which he ultimately lost. It was a powerful reminder that despite the incredible advancements we have made in early diagnosis and treatment, childhood cancer remains a leading cause of childhood mortality in Australia. That is why the work done by My Room Children's Cancer Charity is so vital. This volunteer-led organisation has been a beacon of hope for families battling this disease. At least 95 per cent of every dollar donated goes directly towards children with cancer and their families. Thanks to the generosity and compassion of everyone who donated to this event, nearly $1.2 million was raised on the night, an outstanding achievement that will have a lasting impact on so many lives, adding to the over $33 million they have raised in the last three decades.

To the families and children facing this battle every day, know that you are not alone. We stand with you, and together we will continue to push for better treatments, more support and ultimately a cure. Once again, thank you to the amazing My Room team and their dedicated volunteers. Let us all continue to be champions for these brave children and their families. Together we can make a difference and keep the flame of love, promise and hope burning bright.

Western Metropolitan Region community festivals

Trung LUU (Western Metropolitan) (10:05): It is the time of year in which many cultures celebrate the harvest time, and many cultural traditions relate to their festivals. On the weekend I had the honour of attending the Hindu Dharma Community of Melbourne to celebrate the Onam festival. Onam is one of the biggest and most important festivals in the state of Kerala in India. It represents the harvest festival and celebrates the rich culture and heritage, with grand feasts and with families gathering and representing their traditions. The months of August and September, according to the Gregorian calendar, are harvest time, so I want to congratulate and thank the Hindu Dharma Community of Melbourne, especially Venu Nair, the president, and all the volunteers for the wonderful festival. Harvest is also represented in the Chinese calendar in the New Moon festival, which represents harvest time in their traditions. I had the honour of joining NEWGENs Community Education, St Paul's parish and Brimbank City Council in celebrating New Moon at West Sunshine, which represents all the students and all the families in West Sunshine, with the New Moon festival representing thanksgiving and the gathering of families.

Camberwell Junction Activity Centre

John BERGER (Southern Metropolitan) (10:07): In my second members statement this week I have two additional matters to raise. Firstly, last week I had the opportunity to chair the second meeting of the Camberwell Junction Activity Centre community reference group. This was a great opportunity for the community to come together and assemble to plan for things that our growing suburbs and state need. That includes community facilities, public spaces and parks, and it also includes discussing our state's big agenda – that is, building more homes near where more people work, live and play but also building communities that are more energy efficient, climate resilient and primed for the 21st century.

Climate resilience

John BERGER (Southern Metropolitan) (10:08): That brings me to my second matter. I have the opportunity to participate in the Legislative Council's Environment and Planning Committee inquiry into climate resilience. It is investigating the main risks facing our built environment, which includes all of our community of Southern Metro, because we all know all of us face the climate challenge together. I look forward to working with my community of Camberwell and the great electorate of Hawthorn building a better and more inclusive Camberwell for all.

Valerie Broad

Gaelle BROAD (Northern Victoria) (10:08): I rise to inform the house about the amazing work of Valerie Broad. Valerie is the founder of the Bendigo Youth Choir and is set to retire after 40 years of dedicated service. Since establishing the choir in 1984, Valerie has shaped it into a beloved and respected institution enriching the lives of countless young singers and the community. Under her guidance the choir has performed at numerous local events. They have literally brought music to Bendigo and beyond. Their performances have also included prestigious venues such as the Sydney Opera House and Carnegie Hall in New York, but Valerie's leadership has been about more than just musical instruction. She has created a nurturing environment for young people to grow, learn and connect through music. Her commitment to fostering not only vocal talent but also confidence and teamwork has left a lasting impact on generations of singers. Her final event with the choir will be a special concert on 14 September in Bendigo, marking the 40th anniversary of the group. This performance will celebrate Valerie's legacy and will feature a specially commissioned work by composer Paul Jarman. It is sure to be an emotional and uplifting occasion. Though Valerie Broad is stepping down, her influence on Bendigo's musical community will resonate for many years to come.

The Orange Door

Jacinta ERMACORA (Western Victoria) (10:10): Last week I had the pleasure of welcoming the Minister for Prevention of Family Violence Vicki Ward to the south-west coast, where we visited the Orange Door in Warrnambool. Sadly, we must acknowledge that in Warrnambool the rate of family violence is higher than the state average, with a 4.3 per cent jump in the number of reported incidents in the last 12 months. In fact the service has supported more than 8300 people, including more than 3400 children, since it opened in October 2021. The Orange Door provides confidential intake, assessment and referral services for people experiencing family violence. The Orange Door has become a vital service to our community, and I am proud to say that it was the Victorian Labor government that funded it. This investment by the Allan Labor government has truly created a calm and pleasant environment, with much though put into the needs of those seeking help and the staff there who do the help. I very much appreciated listening to the staff with Minister Ward. They had a lot to express about the pressure the service is under and about the inroads they are making. I want to commend the staff for the incredible work they do in preventing and responding to family violence, and I thank the minister for the work she is doing and for her visit to the south-west community.

Berwick Church of Christ

Ann-Marie HERMANS (South-Eastern Metropolitan) (10:11): On Tuesday 28 November 2023 I raised in Parliament an adjournment about the Berwick Church of Christ, which had received a notification from the State Revenue Office that the land exemption under section 74(1) of the Land Tax Act 2005, 'Charitable institutions and purposes', was being removed from what was thought to be the undeveloped portion of the property. It did include of course car parking, areas where there are youth activities and family picnics, and unrealised by the State Revenue Office, there were also partial buildings on that part of the property that also went into a different section. This tax was being made retrospective, back to 2014, on a church that had built its own church and only just paid for it – a mudbrick building. The tax debt amounted to $552,142.50, and it included penalty interest applied to the retrospective period. I am thrilled to say that the church has today advised me that after the appeal there has now been an exemption for it and for this ridiculous amount. But this was an error made by

the City of Casey due to zoning, and it does mean that many other churches and charitable institutions are still facing this type of crisis. I remain concerned that we are attacking people and groups that actually reach out to our community with food banks, charitable ways of helping people and pastoral care. They provide food, clothing and other necessities.

Health workforce

Tom McINTOSH (Eastern Victoria) (10:13): I want to acknowledge our mental health and disability workforce. You support and care for Victorians day in and day out with little fanfare, helping so many people, their families and their extended networks. For me personally in this role it is incredibly valuable to meet so many of you and hear about the rewarding but also the challenging aspects of your role in the work that you do. Ensuring the opportunity for MPs to hear directly from our frontline workers, I want to also acknowledge the Health and Community Services Union – Paul, Bec, Steph, James, Lou and so many of you, all the team there – making sure that workers have the opportunity for MPs and decision-makers to hear directly from them, whether it is veterans in the field or graduates. We have had the opportunity in Parliament of having disability workers come in and talk about the importance of training and what is happening in their field, mental health nurses from 18 mental health service areas coming in, Forensicare coming in and lived-experience workers coming in and talking about their personal experiences and how they are assisting people day in, day out in their work. Also we have been able to get out into your workplaces and hear directly, whether it has been Frankston Hospital, Bayview House or Carinya. So again, I just want to thank you all for the work that you do.

Middle East conflict

Renee HEATH (Eastern Victoria) (10:14): As we approach the anniversary of the atrocities committed on 7 October at the Nova music festival in Israel, I want to highlight a remark from a member of the Greens:

> These were young people, primarily in their twenties. They didn't expect to die, they wanted to have fun at a festival … and tragically they lost their lives.

I could not agree more. Unfortunately, these remarks were not in defence of the innocent people murdered, raped and tortured on 7 October. The Greens could not even stand and offer a minute's silence for those victims. They related to the Greens' support of pill testing at music festivals in Australia. Given the level of sympathy expressed in this statement, I ask how the Greens cannot have the same level of compassion and concern for what happened to young festivalgoers on 7 October last year at the hands of Hamas and their supporters. How can you be so dismissive of the death of over 360 innocent young lives at the hands of terrorists but so passionate about protecting a fraction of that number who tragically died because of decisions that they made themselves. It is time for the Greens to leave behind their left-wing politics, leave behind their student politics – their Israel bashing – and leave behind their incitement, like what we saw yesterday, and join the rest of this house in condemning the actions of Hamas last year.

Business of the house

Notices of motion

Lee TARLAMIS (South-Eastern Metropolitan) (10:16): I move

> That the consideration of notices of motion, government business, 278 to 562, be postponed until later this day.

Motion agreed to.

Rulings from the Chair

Section 85 statement

The PRESIDENT (10:17): Yesterday Mr Davis raised a point of order about whether the Attorney-General should have made a section 85 statement as part of her second-reading speech for

the State Civil Liability (Police Informants) Bill 2024. Mr Davis referred to the Scrutiny of Acts and Regulations Committee *Alert Digest* No. 11 of 2024, which included a comment on this issue. SARC also wrote to the Attorney-General seeking further information about whether a statement addressing the alteration of the jurisdiction of the Supreme Court should be made. It is not the role of the President to determine whether a section 85 statement is required for each bill. That is the responsibility of the member introducing the bill. Any alleged failure to make a section 85 statement is a matter for the Supreme Court when later interpreting the effect of the bill if it is passed and becomes law. If a member of the Council wishes to seek further clarification from the Attorney-General about the effect of the bill on the jurisdiction of the Supreme Court, they can raise it in debate and they also have the opportunity to ask the minister about this during the committee stage.

David Davis: Thank you, President, for your response. Further to that point of order, SARC raised a number of points, and the minister might like to respond to those formally by circulating a letter.

Jaclyn Symes interjected.

David Davis: Fantastic, lovely – thank you. That is right in the timeline of the bill.

Bills

State Civil Liability (Police Informants) Bill 2024

Second reading

Debate resumed on motion of Jaclyn Symes:

That the bill be now read a second time.

Evan MULHOLLAND (Northern Metropolitan) (10:18): Finally we are seeing this bill that was so urgently debated in the lower house that it needed to be guillotined. It was so urgent it needed to wait several weeks for it to be brought up and debated in this chamber. Of the countless instances of reckless disdain and disregard for the rule of law by the Andrews and Allan government, this issue is perhaps the most egregious of the lot. There are not many days in Parliament where a question is as starkly black and white as it is today, as it is with this bill. The Premier is fond of saying, and the former Premier indeed was as well, that in Victoria equality is not negotiable and never will be. It is plain as can be that no person and no member of this place can stand and speak in support of or vote for this bill while also saying they believe in equality before the law and the rule of law in Victoria, because they clearly do not.

Jaclyn Symes interjected.

Evan MULHOLLAND: Ms Symes was interjecting. I will quote from Ms Symes's first speech in this place. She talked about the fight for fairness, overcoming injustice and, most ironically, equality of opportunity. She also mentioned the importance of accountability. It is clear that these values seem to have lasted as long as an ice cube on a summer's day, really, in pursuit of this bill.

In our system of government we have a Parliament that makes laws and we have a judiciary that applies them and interprets them. A judiciary is independent of the executive – or at least it used to be, until this Labor government decided covering their own tracks was a bigger priority than one of the most fundamental pillars of our entire system of government. That is what is at risk here with this bill: the fundamental question of whether the rule of law in our system of government is more or less valuable than Labor's naked political self-preservation that we are seeing today. This bill is a scandalous attempt by Labor to supplant the judiciary and retrospectively change the laws applied at the time to give themselves and just about anyone they can think of immunity to cover for one of the most shocking scandals of government in this state's history. As my friend the member for Malvern said, this is nothing else but the exercise of naked political power at the expense of the rights of other people.

Let us not for a second forget where this all started – under the former Labor government. The Lawyer X scandal is not new. Even the television series *Underbelly* about it is more than four years old now. It was revealed an incredible six years ago now that barrister Nicola Gobbo, Lawyer X, informed against her own clients as a human source for Victoria Police in breach of her legal and ethical obligations to observe client legal privilege. Ms Gobbo broke just about every rule in her profession in terms of conduct and obligation – that is a fact – but Victoria Police, right at the top, were complicit in this. This was not a couple of low-level rogues; it was a carefully orchestrated and sanctioned scheme that struck at the very foundations of the judicial system. Their motto is 'uphold the right' and their code of conduct calls for them to act impartially and with integrity, and I do not think that can be said by anyone in regard to this sordid affair.

The scandal caused the establishment of a royal commission and a two-year investigation by the Office of the Special Investigator, by former High Court Justice Geoffrey Nettle. Nettle's attempt to prosecute a number of people over criminal conduct in the Lawyer X scandal was thwarted because the Labor-appointed DPP Kerri Judd SC refused to authorise prosecutions. After two years of investigations, after millions and millions of dollars, after 5000 pages of admissible evidence had been put together and after Justice Nettle's recommendations that charges be brought against people that had perverted the course of justice, what happened? The Labor-appointed Director of Public Prosecutions denied any charges to go forward. Labor's DPP said no; she knew better than a High Court judge who had spent two years and 5000 pages of evidence.

As a result of this scandal a number of convictions which were secured using the tainted evidence of Ms Gobbo were overturned. In the case of Faruk Orman, who served 12 years in prison, Victoria's Court of Appeal said:

> … Ms Gobbo's conduct subverted Mr Orman's right to a fair trial, and went to the very foundations of the system of criminal trial. There was, accordingly, a substantial miscarriage of justice.

With this bill the government is attempting to shield itself from any responsibility for stealing away over a decade of Mr Orman's life with grubby, tainted evidence and doing so without admitting any fault or admitting how they destroyed confidence in Victoria Police and in our judicial system. This is how this government operates. It is like what Labor powerbroker Graham Richardson said: 'Whatever it takes.'

Nobody has been held criminally accountable for one of the greatest legal scandals in our state's history and one of the greatest legal scandals in our country's history. Nobody has been held criminally accountable for the fact that a man spent 12 years of his life in prison who should not have. When we debated the Special Investigator Repeal Bill 2023 last year, the Attorney-General said this was not a way to sweep the matter under the carpet. Well, here we are a year later and we are seeing another bill that sees the whole sordid affair swept under the carpet. I recall the committee debate at the time, and Ms Symes said this case would not be swept under the carpet and that there would be proceedings to come. But all of a sudden we see a bill to squash that from ever getting to court. The Attorney said at the time that she found my comments bemusing. There is nothing bemusing about the Lawyer X scandal and the way in which, at every step, Labor has sought to cover up and mislead on this whole sordid affair. We know that clause 5 of the bill extinguishes:

> Any cause of action against the State relating to, arising from or in connection with the provision of information or other assistance to Victoria Police by a specified human source …

The bill defines the state in an extremely broad sense to include the state of Victoria, a minister of the Crown, Victoria Police and its members past or present, a public official past or present or any other variations. I hope other members of this place are starting to see the problem here. As the member for Malvern is quoted in the media as saying:

> It's an extraordinary precedent the government's looking to set, to say the government can pass a law, to say, 'It doesn't matter what we did, we're not responsible, you can't sue us'.

I also note that this bill specifies that the Charter of Human Rights and Responsibilities Act 2006 does not apply to this act, including section 31(7). Given Labor's decision recently to oppose my bill that I brought forward to end bikie corruption on building sites by weaponising the charter, I cannot help but notice the hypocrisy here, that they can ignore it when they want to, actually. Labor are big fans of human rights until they get in their way.

Fundamentally, what this bill seeks to do is use the overreaching powers of the state to shield it from damage when caused by its own actions. The legislation is retrospective, which is philosophically a problem on its own and unprecedented in the state of Victoria. As a Liberal I believe in equality before the law. I believe that the state is subservient to the people, not the other way around. I have a problem with the way this bill puts the state government on a different level by allowing it to evade accountability for its actions in a way that no individual citizen could do. For anyone opposite who is going to try to say that opposing this bill would put us on the side of Nicola Gobbo, Faruk Orman or Carl Williams I will say this: the point of equality before the law is that you want fairness and freedoms to apply to all, regardless of whether or not you like them. Even my worst enemies deserve a fair trial and deserve their day in court. To take away these rights from someone in the name of political and financial expediency, as we see on that side of the chamber, really is the bottom of the barrel for this government. It is.

I was amazed to read the minister's second-reading speech in the other place when he cited the need to fund services that benefit the Victorian community as a reason to strip away rights. Meanwhile, they are cutting hospital funding all over the state – they are cutting everything possible to prop up their Suburban Rail Loop. Maybe if you needed to fund services across the state you could pause the Suburban Rail Loop to do that, not extinguish the rights of people and scrap equality before the law with this scandalous bill. Given this government has wasted, what, $1.3 billion on ripping up the east–west link, $600 million on cancelling the Commonwealth Games and $40 billion in infrastructure cost blowouts, it is hard to believe that, as we heard in the bill briefing, an estimated $45 million at risk in Lawyer X related civil proceedings is the primary motivation for the government introducing its bill. It is not – it is to cover up. This is not about preserving taxpayers money at all; it is about protecting the government from the embarrassment of what might come to trial, and it is worth commenting on the process. We saw the government rush this bill through the Parliament without giving the opposition or the crossbench or the media an opportunity to scrutinise it.

This bill upturns many fundamental principles of legislation, the rule of law and our judicial system. Do not just take my word for it. As the Victorian Bar said in their statement:

> The Commonwealth Parliament does not have the constitutional power to enact such legislation, and all Victorian citizens should be deeply concerned that their State Parliament might seek to do so.

To quote the Law Institute of Victoria, this bill:

> … fundamentally undermines the rule of law and administration of justice. The State has enormous power over its citizens, and for it to legislate out of liability when the power is wielded improperly is wrong.

Susan Accary, Victorian president of the Australian Lawyers Alliance, calls it a 'dangerous precedent' and says it 'sends the wrong message about police accountability'. So that is just about all the Attorney's stakeholders. This bill comes into this place with no support from those who know the law and the fundamentals of our justice system. I think it comes here with the support mainly of a Labor government trying to cover themselves up. No other Victorian, no other Australian, no other entity is able to do something wrong and declare themselves beyond punishment. To ask the Parliament to rush it through without care is appalling. The Parliament has a role in scrutinising legislation; that is what we are here for. We are not here to provide a cover-up for a scandal that rocked the core of the state's legal system.

This is not the first attempt to cover up this sordid affair. Victoria Police desperately tried to stop this from coming to light. Labor abolished the special investigator. Labor's DPP refused to prosecute any of the recommended charges. Last year they passed legislation specifically permitting lawyers to be

used as informants against their own clients, and now there is this shameful bill. The thought of what Labor could do next on this front should send a shiver up the spine of every member of this house. Who knows what fundamental right or pillar of our democracy they will not sacrifice at the altar to save their own political skins. The role of the Parliament, the role of us in this place is to protect the rule of law and the rights of all Victorians. Here in this Council we have statues above us, among others, that represent the values of justice, mercy and wisdom. We ought to oppose this absolutely appalling bill.

I want to speak to Mr Limbrick's amendment, which he passed around. I think the Attorney-General might have corrected his homework on that. This is important for all of the chamber to listen to to get a perspective of what Mr Limbrick, quite strangely, is trying to do. It caps all claims at $1 million. One civil claim by Faruk Orman, who was jailed for 12 years due to Lawyer X before having his conviction quashed – why should politicians determine or set a limit on what 12 years of liberty taken away illegally is worth? These are matters that should be determined by a court of law according to the law, not by politicians – who often speak about individual rights and speak about the rule of law and lecture everyone else on it – from the consequences of their votes. It will have the effect of stopping any accountability through the courts for the Lawyer X scandal despite Mr Limbrick's claims. Labor's DPP refused to allow any criminal charges despite the Office of the Special Investigator undertaking two years of work that recommended charges be laid. Now Mr Limbrick's amendment will allow the government to make an offer of $1 million and say 'There you go' to any claimant to stop the matter going to trial and the truth coming out. Supporting an amendment will support covering up police misconduct and the worst legal scandal in Victorian history.

The civil claims allow an offer of compromise to be made. If a plaintiff fails to accept an offer of compromise from a defendant before the trial and the court ultimately awards the plaintiff less than what was in the OOC, the court will award costs against the plaintiff. This will be absolutely ruinous and dwarf the $1 million cap, meaning that the government can effectively stop anyone or any claim from going to court by offering $1 million. This is what I think Mr Limbrick does not understand – that the claim of $1 million will actually prevent it from going to court, because they will be left with massive legal costs because the up to $1 million cap is compromised, and you can bet that is what the government is going to do. You can bet that is what the state of Victoria will do. The principle that the government can pass any law to absolve or limit responsibility for damage to individual citizens is repugnant. No other citizen in this state can change the rules to limit their liability for damaging others, but Labor and Mr Limbrick will do just that. This is the antithesis of equality before the law. This is why Mr Limbrick supporting a special status for the government at the expense of individual citizens is wrong.

Why is Mr Limbrick from the Libertarian Party supporting a special status for government at the expense of rights of individual citizens? I thought Mr Limbrick was massively in favour of the rights of individual citizens. He speaks to this chamber and then lectures us in the Liberal Party on the rights of individual citizens and breaches of human rights. Well, this amendment is not very libertarian. This is the kind of principled leadership from Mr Limbrick that leads his party to preference the Victorian Socialists over the Liberal Party. It is not very principled libertarian leadership from Mr Limbrick. It is very disappointing. He has decided to extinguish the rights of individuals. It is very disappointing. He does not believe in equality before the law. It is very disappointing that he does not believe in human rights. So next time Mr Limbrick gets up in this chamber and talks about human rights or talks about equality before the law and everyone being equal and the overbearing power of the state, then please remind him of this amendment.

If this bill passes and a precedent is established, anything that the government does that hurts a Victorian can be whitewashed by legislation to limit liability. That is the precedent we are setting here today. Labor's bill is not about saving taxpayer dollars, it is about avoiding accountability and political embarrassment. The government that set fire to $2 billion by cancelling the Commonwealth Games and the east–west link has no credibility when it comes to saving taxpayer money, and for the

government to have the excuse that this is about funding for community services in the community, we know from the bill briefing that you would only be looking at around $45 million. Billions of dollars do not seem a problem for you. Forty billion dollars of infrastructure blowouts do not seem a problem for you, so the real reason behind this legislation is political embarrassment and it is about protecting the state from embarrassment.

I just want to go to some important points on Mr Limbrick's amendment, by Ruth Parker, principal and director of Galbally Parker Criminal Lawyers, and what Mr Limbrick's amendment does mean. I think it is important to consult with all stakeholders, and all the Attorney's stakeholders seem to be against this bill. She clearly does not consult with her stakeholders. Ms Parker says:

> Whilst there have been over 1000 criminal cases **affected** by the misconduct of the State, only two have had their convictions overturned as a result …

So of 1000 criminal cases affected, that is only two. She said:

> Those were Mr. Orman and Mr. Cvetanovski. Both were my clients and, accordingly, I can speak with some authority when I say that these appeals were exceptionally hard to achieve. In order to successfully appeal a conviction in these circumstances, there must first be a conviction. Not all affected cases resulted in conviction. For example, Ms. Gobbo informed on Mr. Mokbel in relation to the murder of Lewis Moran. Notwithstanding, Mr. Mokbel was acquitted.
>
> Where there was a conviction, affected by the misconduct of the State / Ms Gobbo, there must be a direct link between the misconduct and the outcome of the trial (ie, the conviction). Further, the miscarriage of justice must be **substantial**. The very existence of a miscarriage of justice is not enough. There have been appeals, most notably the recent unsuccessful appeal of *Karam*, where former clients of Ms. Gobbo have not been able to meet the burden …
>
> When the Royal Commission into the Management of Police Informers (RCMPI) was established, one of its tasks was to identify all of those individuals whose criminal cases had been affected. **Not those whose convictions were unsafe**. Watching the 730 Report on Wednesday night, I was concerned about the manner in which the number of affected people has been misused by politicians and in the media as being equivalent (in some way) to the number of individuals whose convictions will be successfully overturned. And, thereafter, who will then sue the State. These statements have been irresponsible, factually baseless and misleading.
>
> When one undertakes even a cursory analysis of the case studies on the RCMPI website, you will see that the vast majority of those affected cases, were not affected in such a manner which could ever lead to a successful appeal, let alone civil proceedings …
>
> Accordingly, you should be satisfied that this bill is not advanced by the Labor Government to avoid a flood of civil claims –

let us get that right –

> Rather, it is outrageous legislation directed specifically to erode the legal rights of a very small number of people whose matters are already before the Courts. This is clear enough from its retrospective operation. It is also legislation designed to protect senior members of Victoria Police from being held personally liable for their behaviour. I invite you to ask yourselves: what other limb of the state is afforded such a complete protection from being held liable for its intentional misconduct toward its citizens?
>
> The civil proceedings that are currently underway are advanced, have been ongoing for up to four years and, significantly, relate to **intentional** torts. These are not torts of negligence. These are lawsuits instigated because of the intentional and injurious misconduct of the State. They are not comparable to motor vehicle accidents (where there are compensation caps in place) or other forms negligent torts. They involve intentional misconduct over a number of years and involving numerous tortfeasors, including very senior members of Victoria Police and a senior lawyer who swore an oath in the Supreme Court of Victoria. This small number of matters are simply incomparable to any other civil suit that our Courts have ever seen.

You can see the views on Mr Limbrick's amendments are not very flattering. Here we have a case that has been a sordid affair in our state – an absolute scandal. But we have Mr Limbrick, who I thought was a libertarian, really, and I thought if there is someone in this place that is going to stand up for human rights, that is going to stand up for individual freedoms and that is going to stand up for equality before the law, it would be Mr Limbrick. I know, though I was not here at the time, during those

COVID times, which were dark times for many Victorians, many people felt that Mr Limbrick was standing up for their human rights and individual rights, particularly on police wrongly going after people about their freedom to protest or what they could do or their vaccination status – all sorts of issues. People looked at him as a principal defender of individual rights. Well, he cannot say that in regard to this bill. He is supporting a special status for government at the expense of the rights of individual citizens.

In this bill, as we know, if an offer of compromise is made and the plaintiff fails to accept that offer of compromise from a defendant before the trial and the court ultimately awards the plaintiff less than the offer of compromise, the court will award costs against the plaintiff. What this means is that that individual will be liable for ruinous costs. I do not think Mr Limbrick understands what he is doing. I have not found a single stakeholder that supports what Mr Limbrick is doing. I do not understand why he is doing this or what deal has been done. It is sad; it is disappointing. He is someone that is usually on the side of common sense, on the side of the individual and on the side of equality before the law, but not in this case. But this does not mean letting the government off the hook for what has been a sordid affair – what has been a disgraceful attempt at a cover-up. We saw the disgraceful rushing through of this bill as some sort of emergency bill. It was then just left in the upper house while trials were underway to try to extinguish themselves from the issue. We know that costs are not the factor here, nor the need to fund community services for what is a $45 million expectation. This government does not seem to have the respect for taxpayer money to all of a sudden need to find money to fund community services. It could just scrap the Suburban Rail Loop if it needed to do that. $45 million is not going to be a big hole in the budget. This is an outrageous bill, and it should be viciously opposed by this chamber.

Sarah MANSFIELD (Western Victoria) (10:48): I rise on behalf of the Greens to make a contribution to the State Civil Liability (Police Informants) Bill 2024. From the outset, I want to say that the Greens will be opposing this bill. We are aware that there may be amendments that possibly introduce caps to liability, which we will also be opposing should such amendments be made. This is not to say that we do not have sympathy with what the government and the Attorney-General are trying to achieve with this piece of legislation. All of us have had moments in our personal or professional lives where to various degrees we have stuffed up, we have made mistakes and we have had to face some sort of consequence for our actions. I doubt that any of us would have engaged in the kind of conduct described by the High Court as 'reprehensible' to the degree that Victoria Police did over a span of four years during the Lawyer X scandal. But we can certainly sympathise with the government wanting it all to end.

As the Premier put it so bluntly last month, serious repeat offenders should 'feel serious consequences'. While she was referring specifically to criminal consequences for 12-year-old children at the time, we feel that there should be no less expectation with regard to the consequences for the serious repeated misconduct of senior members of Victoria Police. Make no mistake, Victoria Police are responsible for the Lawyer X scandal. Victoria Police are responsible for the royal commission. Victoria Police are responsible for the tens of millions of taxpayer dollars wasted on unnecessary legal costs and damage. And Victoria Police are responsible for the fact that, because of this, Victoria has less money to invest in infrastructure and services, in schools, in health care and in housing that make our communities happier and safer. When it comes to serious misconduct, serious crimes, corruption and incompetence costing Victorians millions in taxpayer money, Victoria Police are repeat recidivist offenders. This is not about the countless good police, who work hard every day to serve and protect us. There are many honest, hardworking people in the police force, and they want to see reform of Victoria Police as much as anyone. This is about an organisational culture that has been allowed to develop, enabled by the Labor government, in which the misconduct of a few has gone unchecked, undermining the reputation of a critical organisation that should be trusted by the community.

We should not forget that as Lawyer X was going on, Victoria Police settled a case brought against it by six young men of African backgrounds for racial profiling and discrimination between 2005 and

2009. This is also an organisation whose entrenched culture of sexual harassment and predatory behaviour against women was so bad that by 2017 a whole victims compensation scheme needed to be set up to pay out survivors. This is also an organisation that has paid out over $40 million in the past five years in damages alone to victims of police harassment, misconduct and violence. But this figure does not include the legal fees that Victoria Police incurred defending civil claims, which are likely to be much higher than the damages themselves. Nor does it include the legal expenses trying to block IBAC from investigating systemic police misconduct, such as the Lawyer X case, which because the taxpayers are funding it, invariably means using the most expensive legal advocates and ending up in the highest of courts.

Because the taxpayer – not police or individual officers – is liable, Victoria Police spare no expense to use every legal resource to try and delay, obstruct and defend against not only those victims seeking damages but those integrity agencies trying to uncover the wrongdoing. We have seen examples of this excess during the Lawyer X saga, with Victoria Police as recently as last week adopting yet another novel defence to try and block paying damages. Let us not for a moment think that this expensive tactic is unique to this case. It is standard operating procedure. This amounts to hundreds of millions of dollars spent not on keeping us safe but on lawyers trying to block exposing police misconduct, often on obscure technicalities. This is an organisation that in 2014 even tried to deny paying damages to its own injured officers by claiming in the courts that police officers were not employees of the state government but in fact were agents of our Sovereign Lady the Queen, meaning injured employees had no grounds to sue the state for compensation. We have no idea how much this absurd legal defence cost Victorians.

If the government spent a quarter of the public money on reforming oversight of Victoria Police as it does on avoiding consequences for their misconduct, Victorians would not only save money but be a lot safer. Now we are presented with a bill, supposedly in response to an emergency that turned out not to be an emergency, to deny damages but not the legal costs in specific cases of police misconduct relating to the Lawyer X scandal. Let us be clear: the Greens are all for limiting the significant legal costs and damages – tens of millions of dollars spent every year – because of the litany of misconduct, corruption and criminal behaviour of Victoria Police. But even given the extraordinary nature of the Lawyer X scandal, denying or limiting damages from this single case among the hundreds of cases involving police every year without limiting the cost of the publicly funded legal defence is not the way to protect taxpayers.

There is only one way to protect taxpayers from excessive financial exposure from the actions of Victoria Police, and limiting the damages is not the way to do it. Rather than stopping the damages, let us invest a fraction of Victoria Police's ballooning legal bill into establishing a fully independent and well-resourced police ombudsman to expose this conduct and drive higher standards and performance. What is more, let us end racist policing by adopting best practice reporting and monitoring of police interactions with First Nations Victorians and people of colour; increasing diversity, including by having equal numbers of women in senior positions and mandating diversity targets in recruitment; removing public liability for the Police Association Victoria; and setting caps on legal defence expenses against police. But the Victorian Labor government has not been interested in getting to the core of the issues that led to the very situation we are in today that led to it having to try and bring on this bill in the first place.

The Greens are not anti police, but we want a more professional police force and a more effective police force, one that can be trusted by everyone in the community to act with integrity at all levels. If we can agree to strive for this, then it is imperative that we establish a fully independent and well-resourced police ombudsman. That is the prerequisite for the best police forces, the most professional and the most respected anywhere in the world. Let us establish a police oversight system that drives excellence in our police force rather than legislating to cover the extensive legal liabilities of a rotten and dysfunctional one.

Georgie CROZIER (Southern Metropolitan) (10:56): I rise to speak to the State Civil Liability (Police Informants) Bill 2024, and I have to say this has been quite a farcical situation given that it was introduced as an urgent bill some weeks ago. We had what occurred in the lower house, it was brought over here and then it stalled. It stalled because the government had not done their homework properly. There are issues around this bill that have been well and truly canvassed by my colleague in the other place Shadow Attorney-General Michael O'Brien. I would urge all members of this house to read his speech, because what the government is doing is setting a precedent that will potentially undermine the very elements of how we apply the rule of law in this state.

We know it has been a sorry saga, the Lawyer X case as it is colloquially known, the case of Nicola Gobbo, who was a barrister who informed against her own clients and who, also being a human source for Victoria Police, was in breach of both her legal and her ethical obligations to observe that very sound principle of client legal privilege. I think this is the issue that is at stake here in relation to what then sparked the royal commission after the issues arose around Faruk Orman. I will not go into all of the details around why he walked free, but that sparked the royal commission. It was a very –

Jaclyn Symes interjected.

Georgie CROZIER: He walked free after it – that is correct. Thank you, Attorney. You are correcting me, correctly. But the point is the royal commission that was undertaken to look into this matter was a really sorry saga in terms of what went on. It occurred under the previous Labor government with former minister Bob Cameron, who is quite prominent still within government circles, the former police commissioner and a whole range of people that were –

Evan Mulholland interjected.

Georgie CROZIER: Mr Overland? Yes, he was appointed by the Labor government to the City of Whittlesea. That is exactly right. Those people are still moving on, but it has been a very, very sordid and sorry saga, and here we are debating this bill, where the government are trying to cover up their mistakes. This is to cover up their mistakes – make no mistake about what this bill will do.

I know that the government has been frantic, as I said, to get this bill through the house. It was introduced as an urgent bill. It should have been knocked out there and then because of the way it was rushed in and the farcical situation that the Parliament had to go through, and here we are a month later debating it. There have been concerns raised by a number of people, including Mr Limbrick. But I will come to Mr Limbrick in a minute. I want to just read this from Jeremy King, who is well known, I am sure, to the Attorney, in relation to some of the issues. He has also got concerns around Mr Limbrick's amendments, which the government has, I understand, agreed to. Those concerns are:

> As you would understand I have significant concerns about restricting an individual's right to sue the government for corruption/misconduct.

That is what this is really about. He said:

> Further, one of the active cases I was involved in, Mr Orman, was unlawfully imprisoned for 12 years as a result of the corruption/misconduct. In this scenario, he would ordinarily be entitled to compensation far exceeding $1 million.

But the amendments that Mr Limbrick is putting forward are just that – $1 million. That is not a difficult task for the government to sign that cheque and be done with that issue. He goes on and explains the issues around the charter of human rights and a unique provision which does not exist in Victoria. He is talking about Mr Eastman, a case that was well known in the ACT. Mr Orman is suing the government based on malicious prosecution and a range of other things. But those lawyers in the room will understand the extent of this, and I think the point I am making here is that there are deep

concerns by those in legal circles around the government's approach. He is saying that given the precedent that this is setting and given what has happened in other jurisdictions:

> To interfere with these torts to restrict them is deeply problematic from the point of holding government to account for misconduct and corruption.

To every Victorian who understands or has been concerned about the lack of accountability or the misconduct and corruption – we have had far too much of that play out in this state over many years in many areas – I say again: this is a bad bill. This government is trying to cover up its mistakes.

Mr Limbrick has quite successfully enabled them to get away with covering up those mistakes. Mr Limbrick's amendments are not going to provide the accountability or those issues that Mr King and others have raised, and we will be asking about these. There are many concerns around how you justify putting a cap on the price of justice by those who have been wronged. It does not matter who it is. If they have been wronged, they have been wronged, and that is why we have the rule of law. Putting a cap on that like this does not presume anything; it does not presume that that person that has been wronged will actually go to court or will actually continue with their case. There is a presumption here through Mr Limbrick's amendments that that is the case. It is not the case. To have that arbitrary cap – what analysis has been done? Why did you pick that figure? There are so many holes in these amendments that have been proposed by Mr Limbrick, which the government are supporting because they know that they have to get themselves out of a pickle. They have got themselves into a terrible bind over this, rushing it in as an urgent bill. It should have been knocked out when it came in. It should have been debated when it came in as an urgent bill, yet it was stalled in this place.

There are other issues that I have not got time to go into. The royal commission itself found the extent of the wrongdoings. The DPP was very questionable around decisions around this case as well, and I think many have commented on that far more eloquently than I. But this bill is a bad bill which is going to set a precedent in this state. It is truly a situation where the government themselves are trying to, as I said, get out of this, to limit the liability of the state by extinguishing causes of action. I think this is a detrimental step to be taking. I want to also make the point that what the bill actually does is it gives the government of the day extraordinary powers to shield the state from the damage caused by its own actions to Victorians. That is the crux of what this bill is doing: it is protecting the government against their own failings and their own wrongdoings. Why should we be supporting a government to cover up mistakes that have occurred in regard to them? The other aspect around it is the retrospective nature that it takes.

I am not going to speak anymore. I know that Mr Mulholland has covered off the many points of this concerning bill. I would urge all members to not support the amendments that are being proposed by Mr Limbrick, given the free ride they will give the government to enable this bill to get through as they want. This bill should be defeated. It is a bad bill. It is a bad precedent for Victoria.

Jaclyn Symes interjected.

Georgie CROZIER: No, we are not supporting Mr Limbrick's amendments. We do not agree with them. As I have said, we want this bill defeated. This bill should have been debated when you brought it in as a so-called urgent bill. It has been stalled here for weeks and weeks and weeks. The only reason you are bringing it on today is because you are supporting Mr Limbrick's terrible amendments. He is enabling this to get through the Parliament. I say that is a bad move – supporting the government and the crossbenchers that are supporting Mr Limbrick. This is a bad bill. It should be defeated as it is presented, unamended. And I say even if it is amended, it should be defeated.

David LIMBRICK (South-Eastern Metropolitan) (11:07): I also rise to speak on the State Civil Liability (Police Informants) Bill 2024. Let me state from the start that I share many of the concerns that the opposition has raised about this bill; in fact I was horrified by it when I first saw it. On the prospect of this bill passing unamended – which, I might add, is still unknown – absolutely I agree it should not pass. We did extensive consultation with many stakeholders, as would have other members

of this place, and the concerns raised with me were raised in the media publicly. The main concern that people had was the human rights charter override – I share that concern – which means that the bill is not subject to the Victorian Charter of Human Rights and Responsibilities, and for that reason I would oppose it. The other problem with it is that it would prevent cases going to court by extinguishment. This is also a very deeply troubling thing that could not be supported.

The government has come out and said, 'Actually, the reason we're doing this is about money, and we don't want to cover up cases.' I share concerns about the report from the Office of the Special Investigator and the fact that people have not been held criminally liable. But when people say the government is paying people, which is what we are talking about here in civil cases, it is not the government paying anyone, it is taxpayers. I challenge the government: if it really is about money, let us look at an option which is a cap. That is what I have proposed, and that is the amendment that my team has come up with. Here is the thing: we still do not know what the outcome of this bill will be. I urge people to support these amendments because they do address many of the concerns that were raised by people during the course of the discussion. I should probably circulate those amendments now, if possible.

Amendments circulated pursuant to standing orders.

David LIMBRICK: What these amendments do in their substantive nature is remove the human rights charter override – which I know many people have concerns about; in fact there was discussion in the chamber yesterday about this – and also replace the mechanism of extinguishment, which was proposed by the government and which I also oppose, with a cap on damages. They do not affect anything to do with costs or settlement or anything like that that could otherwise have happened.

For clarity and transparency during the course of this debate, although I do not support the bill as it is, I will be supporting the second-reading vote, and we will test the amendment during the committee stage. If the amendment fails, I will oppose the bill. We will see what happens during the committee stage of the debate. I am sure many people will have many questions for me, and I will do my best to answer those questions. But I will say this: I acknowledge, like many people in this chamber, that this entire Lawyer X saga has been an absolute scandal. It is the outcome of prohibition. Anyone who knows my background – you only need to read my inaugural speech to know – will know that I am against prohibition. This entire saga has been caused by prohibition, and I am angry at the government for not looking at the root causes of these issues that we have had in this state around organised crime. I wish that they would look at the root causes rather than constantly playing whack-a-mole with the consequences.

We have to acknowledge that the financial resources of the state are not infinite. The taxpayers cannot simply keep going on and on and on and on in our current financial state. If the government claims it is about money, then we will see if it really is about money. My amendment will allow cases to still go to trial. It will not extinguish that right.

Trung LUU (Western Metropolitan) (11:12): I rise today to contribute in relation to this bill. I strongly oppose this bill, because Victorians deserve a transparent and accountable government. It is a dark day when people are pushed away from fair trials, appeals and compensation. Also, on Mr Limbrick's amendment, I oppose the amendment. I do not agree to the amendment. I will go to the bill, but I will address the amendment at this stage now. I was wondering: who are you to dictate and to give a number for persons who have wrongfully been convicted, have spent time in jail and have appealed? You pick a number for their suffering – a number which you determine. It should be the court who decides after it has gone through the court and been discussed in relation to how long that person has been incarcerated, how long he has been put in jail for. This can be determined by the court. It is not for us in the Legislative Council to determine what pain and suffering, for compensation, that person has gone through.

Secondly, this bill fails to meet the expectations of the community of a full and complete disclosure of the Lawyer X scandal. This bill poorly addresses past legal issues. Its rushed-through nature in the Legislative Assembly revealed that this government fears scrutiny. In its haste these actions have not been thought through and they undermine the rules of law. It is unacceptable in a society to change the law to fix political problems. This bill seems to be an attempt with the sole purpose of protecting those in government from embarrassing court cases and protecting those accountable from civil liabilities, rather than what it claims about saving the public purse.

This bill also has in clause 4, by definition, the following groups extinguished from any action: Victoria Police, public bodies appointed by a minister, public bodies appointed by the Governor in Council or ministers, a person holding office under this act or any other prescribed entity. This is not about saving taxpayers. This is not about protecting taxpayers interests. It is about protecting those accountable.

As we have seen with previous payouts, the amount of compensation from the Lawyer X proceedings is not known, but in the 2010 lawsuit Ms Gobbo, alleging damages, demanded $20 million but settled with Victoria Police for $2.8 million. Unregulated interactions with special arrangements are what led us to this debacle over improper handling of confidential information and the recommendations of the royal commission, costing over $200 million of taxpayer money.

This bill also clearly states that the Charter of Human Rights and Responsibilities does not apply. Why is that? It is all about a cover-up. Despite the royal commission, $120 million was spent by the Office of the Special Investigator, which was a 'whitewash' in the words of many special investigators that I have spoken to, some of whom I worked with prior to coming to this house. In his disgust in relation to the Office of the Special Investigator's case against officers – that is, Victoria Police – former High Court Judge Geoffrey Nettle stated that it appeared to be 'a waste of time and resources' to pursue this matter any further. The special investigator's office was closed and disbanded with very little to show after $120 million was spent in two years of investigation. A source for the OSI stated they faced obstacle after obstacle while investigating the officers and those accountable for the debacle of the Gobbo mess. While investigating these officers, the shelving of the investigation should be a concern for us all.

What this bill is really about is that every individual has a fundamental right to appeal, especially if you feel that your conviction is unfair and unjust. According to the Criminal Procedure Act 2009, part 6.3, section 274, 'Right of appeal against conviction':

> A person convicted of an offence by an originating court may appeal to the Court of Appeal against the conviction on any ground of appeal if the Court of Appeal gives the person leave to appeal.

You have a right to a condition of equality before the law. Everyone is entitled to equal and effective protection against discrimination and to enjoy their human rights without discrimination. It is crucial that the decision on compensation remains in the court – unlike what Mr Limbrick has suggested be done in this chamber – not in the hands of government. Allowing the government to determine who is eligible for compensation under the right of equality is a highly risky process.

When the government rather than the court decides on eligibility of compensation, we are entering dangerous and murky ground that could erode justice and accountability. Gobbo's actions undermined her client–lawyer privilege, a cornerstone of fair legal proceedings, but it does not sanction the government to undermine the justice system. Nicola Gobbo, a criminal lawyer turned police informant in 2004, compromised justice and led to many wrongful convictions. As a result, 125 of her clients were wrongfully convicted and imprisoned. Regardless of their history or background, all citizens, all Victorians, are equal in the eyes of the law. All Victorians have the right to a fair trial and a right to appeal. If they are wrongly convicted, they have the right to compensation, and it should be determined by the court, not the government. This bill allows the government to evade accountability, creating a double standard that undermines equal treatment under the law. It is clear this bill protects those involved in the Lawyer X scandal from liability. Already we see from the royal commission critical

settings being averted for those involved, and now the bill is the next step in allowing them to escape the responsibility of civil liability.

The Law Institute of Victoria believe that:

> … this fundamentally undermines the rule of law and administration of justice. The State has enormous power over its citizens, and for it to legislate out of liability when the power is wielded improperly is wrong.

According to Jack Rush AO, counsellor:

> Not only, as stated, does this extraordinary legislation act retrospectively to strike down Orman's claim, it means the police involved are unaccountable in any way for their "reprehensible" conduct.

Rushing legislation through the Assembly without sufficient debate raised questions about transparency and the legitimacy of the process. What is the real motive of this government for rushing this bill? Prominent legal figures from the law institute oppose this bill, warning the threat to the rule of law has prevented a civil claim of unjust imprisonment.

Now to the victim, Faruk Orman. Mr Orman was the first person who had their conviction quashed because Nicola Gobbo's involvement in his case was deemed a miscarriage of justice. He was unjustly convicted for murder at the age of 25 and then spent a decade in jail, with a large chunk of this in solitary confinement. Mr Orman has always professed his innocence. After 12 years he was released due to a substantial miscarriage of justice, according to the DPP Kerri Judd KC, due to lack of material evidence found contradictory to his allegations. What this bill is doing is whitewashing the responsibility for civil liability.

In conclusion, the State Civil Liability (Police Informants) Bill 2024 is a step backwards for justice in Victoria, undermining accountabilities and transparency in this government. I urge all those in this chamber to reject this bill and uphold Victorians' rights and values. The attempt to erase civil liabilities for those involved in the scandal allows the government to block Nicola Gobbo from exposing politically damaging information. The law should not be passed to limit embarrassment or to protect powerful individuals. Therefore I strongly oppose this bill, and I strongly oppose the amendment raised by Mr Limbrick.

Georgie PURCELL (Northern Victoria) (11:24): I will say from the outset that I will not support this bill or any proposed amendments today. I will aim to be brief with this contribution, but I think it is really important to get a contribution down today, given the attention on this bill and the huge risk that it poses. In this place it is not a flex to be a lawyer; there are far too many lawyers in here. It is not something that I actually talk about often, but I am in fact one. I went to law school. I have been admitted to the legal profession. One thing at law school that is drilled into you from the very beginning is how important the separation of powers is, but not only that – that it should never be interfered with. And that is why I cannot and will not support the erosion of the separation of powers between the executive, Parliament and the judiciary proposed in this bill.

It is entirely unconstitutional and highly inappropriate for the government to impose compensation caps and limit legal rights, especially when egregious abuses of state power are uncovered. This bill in practice would provide blanket immunity for Victoria Police officers and the government – officers who have displayed the most serious kind of misconduct and yet still continue to hold senior positions in the force. They have never been held to account for their gross illegal conduct, for their toying with real lives and for their intentional deception of our courts. While I acknowledge Mr Limbrick's intention and attempt to improve this bill with his amendments today, they do not change the crux of the bill, and that is the issue here at heart and why it cannot be supported by me and members of the crossbench and of course the opposition, who have laid out their intentions as well.

Imposing a $1 million compensation cap and allowing only one civil claim to be pursued arising from the Lawyer X scandal per individual is a severe impingement on an individual's legal rights, and we should all be concerned about that, whether it affects us or not. This would mean that many wrongdoings and cases of illegal conduct would never be prosecuted or realised, nor would justice be

heard. We have never seen this kind of law in this state. This bill creates a concerning precedent for the extinguishment of rights and the removal of liability for all state powers. This has the effect of making litigation unviable as the compensation will not nearly outweigh the emotional and financial costs an individual will pay in running litigation.

The government wasted millions of taxpayer dollars defending the indefensible actions of itself and Victoria Police through the employment of Corrs instead of agreeing to an early settlement years ago. The government now wants to tell Victorians that it is those who have been wronged by the government who are chewing up their tax dollars, but it is the illegal actions of Victoria Police that have caused these proceedings. They had their opportunities for settlement, and they did not take them. Now they want to silence those wronged from telling the whole truth – truth that did not come out through the royal commission, as Nicola Gobbo and others were witnesses and not the ones leading evidence. They do not want you to hear that senior police in court hearings this year have already admitted that there was a so-called systemic tolerance of using a barrister as a human source to act in conflicts of interests. Nothing has been done to address this systemic tolerance of corruption and illegality, and nothing will be rectified until those responsible are held accountable and removed from these positions of power that they still hold. They do not want you to hear that in the Supreme Court of Victoria a judge has already expressed grave concerns that Superintendent Buick, the prosecution's star witness, is allegedly not giving truthful evidence to the Supreme Court. The Office of Public Prosecutions also denied the recommendations of the royal commission to prosecute those involved.

We have heard the government say they want to save taxpayers money. It feels like this comes up every single time we have a debate about taxpayer money, but there are countless other things that we could do to save taxpayer money, starting with stopping propping up the cruel and dying racing industry or, even more relevant to this bill, stopping using taxpayer money to pay the salaries of police officers responsible for this illegal scandal, who were given a pay rise and a promotion from it. This is not about saving taxpayers money, it is about covering things up and shirking responsibility. It is not for the government or this Parliament to determine how much compensation an individual should get for the wrongdoings made against them. That power is entirely for the courts, and it should never be interfered with. While I understand that it is perhaps likely that this bill will pass today and perhaps be amended, I just cannot have my name as a parliamentarian putting a price on 12 years of wrongful imprisonment, the misuse of state power or disrespecting the rule of law.

Nick McGOWAN (North-Eastern Metropolitan) (11:29): I did not need a speech for today's discussion because it does not take much to inform oneself about this bill – at a quick glance even – or to understand the difference between right and wrong. It really is that simple – it is the difference between right and wrong. As Ms Purcell said, our entire justice system is based on a number of key principles, and what this bill seeks to do essentially is to brush many of those aside and, in a unilateral way, remove from a number of Victorians – regardless of who they are and what they are accused of having done – any number of rights, not least of which is their right to access justice.

It is not really surprising that there are now a number of polls out there publicly where this government is quickly losing the support of the public because of acts just like this. There is some consistency with the way this government is now acting, and that is actually forming a trend. Not so long ago they also acted to remove the rights of injured workers in the mental health space. That is exactly what they did. In a disgusting display, the so-called party that represents workers actually removed the rights of workers who had proven their injuries. It removed their right to ongoing support and compensation – not just compensation but support. It was support for their mental health needs. They dictated that at a certain point in time they just cut them off, cut them off at the knees. This is the Victorian Labor Party 2024 for you.

It takes me back a little bit, this bill. I cast my mind back to those greater injustices that we know about around the world. It is ironic that today of all days is the day some might recall in history that, very sadly, the Afrikaner government not only unlawfully threw Steve Bantu Biko into prison but then promptly murdered him. He died on this day, 12 September 1977. Steve Biko was a champion for

equal rights, for equality, for the proper use of the law. It took the Truth and Reconciliation Commission headed by Archbishop Desmond Tutu to get to the bottom of that. If this was South Africa and the year was 1977, then the Afrikaner government would have a very good friend in the Victorian government here in Victoria today. There are no two ways about that. They would be comfortable with you lot – comfortable. Shake your head all you want, but they would be comfortable because what you are seeking to do today, and you know it –

A member interjected.

Nick McGOWAN: It is disgusting. What you are seeking to do is remove the legal rights of people who have been wronged. Let us cast our minds to other examples, shall we? What about the Guildford Four? Does anyone remember the Guildford Four? That was a bombing of a pub by the Provisional IRA. It was also popularised some time later by a movie, but nonetheless it was a bombing of a pub, which the police at the time held a number of Irish citizens responsible for. They never did it, never were responsible. It was done by the IRA. The IRA later admitted that. And even when they admitted that, they still kept them in prison. I mean, this is the equivalent of what we are doing today here with this bill – these gross acts, this gross misuse of the law. As Ms Purcell pointed out, anyone who is legally trained or a barrister and encumbered with such a degree will know that what they are doing goes counter to all their teaching. They will know that it goes counter to all sense of fair play, of justice, of procedural fairness – you name it. They know what they are doing.

Rarely in my time in politics have I seen a government in such a callous manner extinguish the legal rights of the people of Victoria. Of course the most recent example was through COVID. Earlier today I interjected during another member's speech in this place when they referenced the charter of human rights, and I said, 'What a piece of garbage.' It is a piece of garbage. We know it is a piece of garbage, because when it came to COVID there was nothing, and that garbage piece of document did not stand to defend one single human right we have here in Victoria. In fact, if anything, throughout COVID what we learned was we do not have a single human right. We do not have the right to be by our loved ones when they die. That includes our children, our parents, our siblings, our best friends and our partners. We do not have that right. We do not have the right to return to our own state, such is the garbage state of that piece of the so-called charter of human rights. So the inclusion or exclusion of the charter of human rights – I could not give a brass razoo. It is meaningless. I do not know why we even persist with it. We ought to have a proper bill of rights, a bill of rights that is something that actually can be defended and used at caucus. If we did, this bill would never be getting up. That is the truth. It would never, ever get up.

I have not even gone to the substantive arguments about why no-one in this place should support it, much less the Libertarian Party, so called. This is one of the great ironies of today: to be in the chamber – and the representative is not even here to see – and he has put his own amendments forward to limit the rights of individuals and their compensation. Libertarian? Libertarian in name only. I will have to look at the definition of 'libertarian', because if that is libertarian, then I am a hot dog, I tell you what, because that is ridiculous, absolutely inane. And then to sort of fancy foot around with the government and say, 'Oh, well, I might support it if they do these amendments but then I might not' and 'I haven't quite made my mind up' – how could you not make your mind up? What is there to make your mind up about? If you have been wrongly treated by the law, you ought to take and get recourse through the courts. This is removing your right to get recourse.

Unilaterally and without any hesitation this callous Labor government yet again is showing its absolute disdain for the people of Victoria by ensuring that where the system and where the government itself makes an error, it cannot be held accountable for it. So what do we teach our children? Do we teach our children, 'If the government make a mistake, well, that's not so bad, because what they will do is they'll legislate away their risks, they'll legislate away their compensation, they'll legislate away your rights. You will have no rights whatsoever under this government'?

I said a moment ago I had not even got to the crux of really I think my greatest beef – for lack of a better word, and I apologise to vegetarians in the room – with this legislation. That of course is that the plague that I would say has plagued – I would say government, but I am going to include our side of politics. I am going to include everyone. Why not? Let us go just go all in, shall we? The biggest plague on any government, particularly here in Victoria – and I would say it is a scourge – is the very fact that for some two, three or maybe four decades, maybe even longer, probably forever, everyone in this state has been responsible but no-one has been accountable. If there is any fairness, it is in the equal distribution of the responsibility, but no-one is accountable.

Here we have had a massive cataclysmic cock-up by the government, because ultimately they are responsible. We can point a finger at the police who enabled the circumstances. We can point to the police who should never have taken the information from Nicola Gobbo, sought it, accepted it or used it in the first place, and certainly no-one who participated in that in any right space or place should ever be promoted or rewarded for their behaviour. But I tell you what: in our system we have this funny old system called representative democracy, and in theory at least, the minister and sometimes even the leader – the Premier or the Prime Minister, depending on which level of government – take responsibility, because ultimately they are accountable. Well, have we had that here in Victoria? Of course not. The minister's scalp was never taken – never resigned. The police minister at the time should have resigned in disgrace. That they have caused and had the oversight of such a barbaric use of information that corrupted the entire justice system and that no-one has ever been held accountable for that in the state of Victoria, and furthermore that this bill will serve to cover that up so that the hundreds and hundreds of people and their cases who were affected will never be able to see a proper legal recourse, makes the Guildford Four look like they were lucky people. Ultimately, they at least got justice. I mean the Guildford Four got justice. The people in Victoria will never get justice if this bill passes.

I hope someone in time goes back and looks at *Hansard* and actually fathoms the seriousness of what is happening here today. And for those who are visiting this place, let me make this very simple for you: if the government breaks its own laws, then the government is now seeking to protect itself not only by ensuring that you will never get an outcome in terms of justice but also by ensuring that you will never get a cent in compensation. So if anyone in the state of Victoria at the next election chooses to vote Labor, then that is what you are voting for. Well done.

This is what has become of the state government and the Labor Party here in Victoria. And they know better – I know they know better. There are good people in politics on both sides of this chamber – very good people, and smart people and educated people – and they know that what they are doing today is wrong. The only justification for what they are doing is that it is an economic decision: it is going to cost less, and they do not want to be paying out tens of thousands or millions of dollars, whatever, to people who are alleged criminals. I get that it is unsightly, but I did not create this mess. I certainly did not.

But if that is what it is about, a cost-saving exercise, then why didn't we legislate the rights of the Commonwealth authorities when we cancelled the Commonwealth Games? I would have been more inclined to think at least twice about the concept, or toy with it, play with it. I could tantalisingly look at it. I could be a little bit more sympathetic, because $600 million is a lot of money. I would be tempted – you could tempt me. I feel a bit naughty even saying it, but it is true. But I probably would still have landed, when I think back to my mother and what she tried to teach me about the difference between right and wrong, in the same place – that is, it is just plain wrong. I would much rather have fought it out and taken the consequences, because there are consequences. When you are in government and you make decisions and you get it wrong, it is important that two things happen: (1) that someone takes accountability for it – that is yet to happen and will probably never happen, unless there is a change of government – and (2) that for those who were wronged, their circumstances are put right to the extent that that can occur.

We are left pretty much in the same instance as Steve Biko. He could not get any recompense or compensation for his wrong because he was killed. Here I am in this chamber today comparing us to the worst aspects of the Afrikaner government in the 1970s and 80s, comparing the Victorian Labor government to the worst aspects of the IRA in Ireland and the governments of the day and how they treated their various citizens. This is what Victoria has come to today. We are no stranger to it, as I said earlier in this speech. It was only a number of short months ago that we stripped Victorian workers of their mental health rights when it comes to compensation and ongoing treatment, support and assistance, and we did it in this place. Well, we did not do it on this side, and the crossbench did not do it either, and neither did the Greens or the Animal Justice Party. The Labor Party of Victoria did it.

Time and again, and I think it comes perhaps with longevity in government, we get persuaded perhaps by the bureaucrats, persuaded perhaps by the advice that we just cannot have this unsightly mess – it would cost too much, it is administrative, it is all too difficult – and we lose sight of what is right and what is wrong. I see that occurring even today with the Libertarian Party. They have lost complete sense. If they choose to support this in any way, shape or form – to insinuate that you can put a cap on compensation and that somehow fulfils your libertarian box is laughable. We should put through a private members bill that they cannot call themselves the Libertarian Party. They are not acting in a libertarian way. It would be deceptive if it were corporate behaviour. If I were a company, I could not behave that way.

Minister, I know that even you know the difference between right and wrong. I know that very well. I know that deep down in your heart you know this is the wrong bill. I know that you know that this is not the right way to proceed. I call on you, please, at the last moment, to pull it from this place.

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (11:44): I rise to make a few remarks about the State Civil Liability (Police Informants) Bill 2024. At the outset, this is a bill that has been introduced to the Parliament in my name, and I take full responsibility for this bill because it is the right thing to do. It was not an easy decision to come to the conclusion that this is the way that this matter should be dealt with. It took me some time to decide that this was the right thing to do, and I understand that there are strong views in relation to this. I understand that some people do not want to support it, and that is people's right, but there are plenty of people who think this is the right thing to do, including lawyers. As is often the case in my world, you will always find a lawyer who agrees with one thing and lawyers that have polar-opposite views. That is my lot in life. Any characterisation that there are people that do not support this bill in stakeholder world is incorrect, but there have been many misrepresentations by members opposite in relation to this bill, and I will touch on a couple of them.

I do want to at the outset make it clear what this bill is actually about. It is about drawing a line under the spending of taxpayer dollars on the Lawyer X matter now that the work has been done to address this frankly appalling chapter in our history. The misuse of informants happened over a long time under both governments, and it is very clear to me today that, unlike me, no-one in the chamber has read the five volumes of the royal commission's final report. I do not blame you; it is pretty heavy going. But it is a damning indictment of a period of time that should never happen again, and because we have taken steps in that regard, it will not. To suggest that it is a cover-up or an ability to try and hide those wrongdoings is a false characterisation. If anybody has read the report or anybody has read the decisions on the criminal matters that have been brought to the Supreme Court and also the matters that are going to be unaffected by this bill they will see that we will continue to be able to shine a light on matters that people have been held accountable for. The government has been held to account through the royal commission and through the criminal appeal process, which is unaffected.

Mr Mulholland has characterised that the bill contains many errors. Particularly, Mr Mulholland, you went down some avenue and stated that civil claims could only come from people who were convicted. That is false, and there are actually matters on foot right now from people who were not convicted. So I am concerned about some of the matters that were put on record, and I will be pleased to address some of them as I continue in my summing-up.

As I said, we have made sure these things can never happen again, and it is time to limit taxpayer expenditure for these mistakes. The government has designed a bill that extinguishes the causes of action to properly bring finality to these proceedings and expenses. This is a rare step, and as I have articulated it is not one I took lightly but one I feel is necessary. However, as many people have indicated, the government will be supporting a version of the bill as proposed by Mr Limbrick, with a liability cap, because we want to do whatever is possible to reduce costs.

We cannot be clearer about accepting responsibility and condemning the wrongdoing. For affected individuals, criminal appeals are in no way affected by this bill, and that was never contemplated. There have already been successful appeals, and we know more are on foot, each time shining a light on the deeply problematic actions and their impacts on specific individuals as well as the entire justice system. Our government has acted firmly and comprehensively. We established a royal commission and we are following through, with 49 of the 55 recommendations to government fully delivered, as confirmed by the independent implementation monitor.

I want to just touch on some comments that members have made about their assessment that the bill is unconstitutional. In particular, Ms Purcell made this claim. She can say it may be; that is fine, because it is a matter for the courts to determine. The High Court has jurisdiction in these matters; it is not for Ms Purcell or her office to make this claim. To declare that the bill as amended or in its current form would be unconstitutional is, as I said, not something that any of us can claim to assert. The High Court recently upheld an example of limiting liability. They unanimously rejected claims by mining magnate Clive Palmer and his company Mineralogy that legislation passed via the WA Parliament which was intended to prevent him from claiming billions in damages was unconstitutional. He claimed it was; the High Court said it was not. The High Court found that the effect of the WA act might be that it changed existing legal rights but this did not amount to a breach of the separation of powers. Of course the law may have been extreme, but the court ruled it did not interfere with the integrity of the courts, nor was it an exercise of judicial power by the Parliament. Of course liability limitations are rare, but that does not mean that they are offensive to Australian law.

Even with a capped model this reform will still reduce civil claims payouts paid for by the taxpayer. It can help reduce millions being spent on lawyers, courts, departmental resources and the like. The potential number of plaintiffs adds to the need to act. The Royal Commission into the Management of Police Informants identified 124 individuals directly impacted and 1011 as potentially impacted by the Lawyer X saga. So beyond the direct costs there are the costs across government and the justice system, including, as I said, courts and public servants responding to these matters. I do also want to note that it is not my intention to refer to individual matters in this debate or in the committee. This bill is not about individuals, it is about a response to this saga.

I would consider the government's version of the bill the overall better option to achieve cost reductions. But I have had a lot of conversations with people in the chamber, and I accept that my proposal would not receive the support of the house and perhaps Mr Limbrick's might. With that in mind, we will be accepting Mr Limbrick's proposal. It is somewhat hypocritical and bemusing for those opposite to suggest – they have had a pile-on on Mr Limbrick, but I am sure he can defend himself – that they will not be supporting his amendment, even though they acknowledge that expungement is worse. I think that was what I was picking up from their contributions. In some way they do not want to reward Mr Limbrick's 'outrageous' behaviour by, in their own characterisation of the bill, 'making it less worse' – a matter for you to contemplate. We had the bill that was best for taxpayers. Extinguishment would clearly reduce time and resources and avoid more money being spent on lawyers.

Of course in the development of this bill I looked at many options. I looked at a cap, and I looked at a requirement that damages be reduced by a certain percentage. I got a lot of advice in relation to all of these matters. Ultimately, I was persuaded by extinguishment, because the other options do not put an end to litigation and all of the legal costs on both sides and the time and resources needed to manage these matters, which we have already been experiencing. That said, I agree that other options do have

merit. I accept that many in this chamber felt the government's version went too far. We do still want to do whatever is possible to reduce costs, and as I said, it has become clear that the most likely way to secure passage of this bill is to adopt a capped model. I will put on record that I would have preferred a half-a-million-dollar cap to disincentivise unmeritorious claims, but I accept that a $1 million upper limit of the total cumulative damages goes a long way to achieving our cost reduction goals. My intent in supporting this amendment is that it operate as an upper limit of compensation, and I fully anticipate lower claims and awards.

I want to touch on some arguments that have been bandied around about the fact that this bill will somehow create a precedent. No, that is quite absurd. The circumstances surrounding the Lawyer X saga are so exceptional that to suggest this can be somehow used as a precedent for something just does not stack up. There have been accusations that this change will open the floodgates to further limitations on liability for historical sex abuse cases and the like. That is, as with my previous comment, just absurd.

Limiting liability through statute is rare and, as I said, was a difficult decision to make. But it reflects a financial imperative in these exceptional circumstances which, as we know, led to a very expensive, very detailed royal commission. This has absolutely nothing to do with any other form of liability that the state may be facing. Alternate theories about the state restricting liability over, as I said, historical sex abuse cases or environmental or animal activists are baseless and have absolutely nothing to do with this bill.

Liability limitations are not unheard of. I have got some Victorian examples that I have brought to the attention of the Shadow Attorney-General, which he obviously did not pass on to his members. Section 28G of the Wrongs Act 1958 provides that in certain personal injury claims the maximum amount of damages that may be awarded to a claimant for non-economic loss is $577,050. Section 134AB of the Accident Compensation Act 1985 prevents a court from awarding pecuniary loss damages or such damages that exceed a specified amount in certain circumstances. And section 251A of the Petroleum Act 1998 states that the state is not liable in any way for any loss, damage or injury arising out of certain petroleum-related decisions. Any such legislative reform in that regard has gone through a rigorous bill process and a rigorous process through the Parliament, and I would expect this to be the same.

Council divided on motion:

Ayes (22): Ryan Batchelor, John Berger, Lizzie Blandthorn, Jeff Bourman, Moira Deeming, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, David Limbrick, Tom McIntosh, Rachel Payne, Georgie Purcell, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Rikkie-Lee Tyrrell, Sheena Watt

Noes (18): Melina Bath, Gaelle Broad, Katherine Copsey, Georgie Crozier, David Davis, Renee Heath, Ann-Marie Hermans, Wendy Lovell, Trung Luu, Sarah Mansfield, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Aiv Puglielli, Samantha Ratnam, Adem Somyurek, Richard Welch

Motion agreed to.

Read second time.

Business interrupted pursuant to standing orders.

Questions without notice and ministers statements

Pharmacotherapy services

Georgie CROZIER (Southern Metropolitan) (12:03): (669) My question is to the Minister for Mental Health. Minister, tomorrow the state's largest pharmacotherapy prescribing clinic, located in Frankston, will close. There are no alternative GP prescribers of opioid replacement therapies in the

Frankston region aside from Frankston Hospital. Can the minister guarantee Peninsula Health has capacity for all 1100 patients who are reliant on methadone and other medications to manage their addictions and who will have no access to a local prescriber from tomorrow?

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (12:04): I thank Ms Crozier for her question, and of course this has been the subject of a number of questions from Mr Limbrick, who has a keen interest in making sure that the community in Frankston get the health services and the AOD services that they deserve. When it comes to pharmacotherapy, our government are certainly making sure that we are strengthening the system right across the state, but we have been working closely with the Frankston healthcare community to make sure that if indeed this GP service does close down on Friday – and I only say that because there have been a few stop-starts to this, but I do understand that it is due to close this week – as a result of knowing that this situation was coming, we have been working very closely with Peninsula Health. Of course I think it is important to remember that pharmacotherapy and the funding of GP-led pharmacotherapy treatment is a matter for the Commonwealth. Albeit that is the case, the Victorian government has stepped in because we understand that there is a need and that there are a large number of people who rely on pharmacotherapy in the Frankston area. We have invested in additional services being available through Peninsula Health through the Commonwealth's local primary health network as well.

There will be a public pharmacotherapy clinic in Frankston. This new service commenced in March. It is already supporting quite a number of existing patients from the Frankston clinic who consent to being treated by this new clinic, and they have got the capacity to support patients displaced by the closure of the Frankston Healthcare Medical Centre. I am very happy to advise the house that from 12 August the new pharmacotherapy clinic has been operating from a new permanent home across the road from Peninsula Health's Frankston campus. We have been very mindful of the need to make sure that people who rely on pharmacotherapy as part of their AOD treatment services have the support they need in the Frankston area.

Georgie CROZIER (Southern Metropolitan) (12:06): I note the minister could not guarantee that Peninsula Health has capacity for those 1100 patients, or clients. How many people reliant on methadone and other prescribed medications in the Frankston area will be forced to travel long distances outside the Frankston LGA so that they can continue treatment for their addictions?

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (12:07): I thank Ms Crozier for that supplementary question. You are presenting a hypothetical which I have already explained is highly unlikely to occur because of the fact that we have been working closely with Peninsula Health to make sure that public pharmacotherapy services are available.

Housing

Evan MULHOLLAND (Northern Metropolitan) (12:08): (670) My question is to the Minister for Housing. Minister, yesterday in this place you said you would not come in over the top of industry to prescribe the way in which private matters of building and construction are undertaken in housing projects. Given the Premier has already claimed that individuals like Mr Setka are not permitted to enter government construction sites, why are you refusing to make it clear in writing that he is not welcome on Victorian government housing worksites?

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:08): Let us go again: I have been very, very clear about the way in which rights of entry operate under law – very clear – and I have set out on numerous occasions the way in which authorised representatives of registered employee organisations are able to enter a site and to exercise those rights of entry in accordance with the two acts, both of them federal. Mr Mulholland, I have also been very, very clear – completely unambiguous – about the fact that unauthorised entry onto sites should not under any circumstances be allowed. If, for example, you do not hold a relevant, valid right-of-entry

permit to be able to enter a site – and that is information that is publicly available, Mr Mulholland – then you should not be on a building site. As I have said, I do not care who you are. If you are not an authorised representative of a registered employee organisation, then you should not be on a site. If, Mr Mulholland, you ever become an authorised representative of a registered employee organisation, then you may wish to exercise the right of entry in accordance with the law. I doubt that that will ever happen. But as I have said, building sites are inherently dangerous places, and that is why we have industrial manslaughter legislation, which you opposed. That is why we have right-of-entry legislation enacted by the Commonwealth that sits alongside the Fair Work legislation. Mr Mulholland –

Evan Mulholland: On a point of order, President, on relevance, the question was about the minister refusing to make it clear in writing. She could go to that, but she clearly wants to go around it. I ask you to draw the minister back to the question.

The PRESIDENT: The minister has been relevant to the question.

Harriet SHING: I am going to put it on the record here: it is my expectation that everybody who is operating or in control of a worksite is administering the standards and the expectations and the obligations that apply under law to that site. If you are asking me to send a letter to people that says, 'Please comply with the law,' then I am very happy to stand here in this place and say, 'You need to comply with the law.' Mr Mulholland, if you have examples in relation to any unauthorised exercise of power that does not exist or that breaks the law, you should put that in writing to any of the organisations, entities or individuals who are in the process of investigating and empowered to investigate these matters. There are multiple avenues that you can pursue, Mr Mulholland. I would suggest you avail yourself of them.

Evan MULHOLLAND (Northern Metropolitan) (12:12): It is actually legal for someone to enter a worksite with the permission of the occupier or contractor. So what I was asking for was for the minister to make that actually clear. And since you are refusing to make it clear in writing to Victorian government housing contractors that Mr Setka is not welcome on public housing worksites, will you now release the minutes of your meeting with Mr Setka on 4 April so that Victorians can have confidence that you are acting in their interests, not the CFMEU's?

The PRESIDENT: I think that is breaching the same question rule. I could be wrong, but I believe Mr Mulholland actually asked for the minutes to be released from that meeting earlier this week during question time. I think I am right, but I will put the question to the minister anyway and she can answer as she sees fit.

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:13): I would invite you to go back. There is a cute little written record that we keep here called *Hansard*, Mr Mulholland. You may wish to go back to it because it does refer to your question where you were seeking both agenda items and minutes. So what I would invite you to do, Mr Mulholland, is to go back to that answer that I gave in which I said that if you have got any specific requests of any meeting that has occurred, make those requests to the people who have actually coordinated those meetings. But I will also say to you, Mr Mulholland, the meeting in question, which was one of more than 70 meetings that I attended, was one at which there were members of a number of unions present from the building industry group at Trades Hall, and in the first 2 minutes I had occasion to cross paths with the person that you have referred to as –

Georgie Crozier: On a point of order, President, the question was very clear. These questions have been very clear throughout the week to the minister. The agenda listed Mr Setka meeting with the minister in April. Again the minister refuses to release those details, refuses to be up-front with the Victorian public and refuses to answer the questions Mr Mulholland clearly asked. I know the government is exercised by Mr Setka –

The PRESIDENT: Order! That is kind of like a statement. The minister has been relevant to the question, and the minister has actually answered the question twice this week.

Harriet SHING: I was pretty clear. I attended the building industry group meeting because it is really important that we meet with unions. There were many people in attendance at that meeting, and I have been very clear about what occurred there. It is not in fact being withheld. It is a matter of public record.

Ministers statements: housing

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:16): Today I was joined by the Premier and the former member for Hawthorn Mr John Kennedy, who is a staunch advocate of a project at Bills Street in Hawthorn – a project which a current member of the opposition, the leader in the other place, perhaps the soon-to-be former Leader of the Opposition in the other place, opposed and which Mr Davis is on the record as having opposed – to celebrate the completion of 206 new social and affordable homes in Hawthorn. This new housing has replaced 52 old, no-longer-fit-for-purpose dwellings with 103 new social homes and 103 new affordable homes, boosting social housing on the site by 98 per cent. Throughout this beautiful, vibrant development there are fantastic community facilities that include barbecues, pocket parks, 90 additional trees and play equipment. The design of these homes, including features like double-glazed windows, a local energy network and solar panels will provide residents living there with the best energy deal in the market, making it easier for them to stay cool in summer and warm in winter.

We have already started welcoming residents into their new homes, like Markrit, who we met this morning along with her gorgeous dachshund Archie. Markrit moved into Bills Street six weeks ago, and in her words, she believes her new home is the light at the end of the tunnel. She has had to endure some of life's most difficult curveballs, including homelessness and some of the stigma that comes with it. This morning she spoke about how her new home has helped her to overcome the shame she experienced, saying:

> From my personal experience, it has changed my outlook, given me a platform to get on my feet. I can't tell you how grateful I am. It has been the best experience of my life.

Our $6.3 billion investment is changing people's lives. We have more than 9800 homes either complete or underway. I am looking forward to continuing our partnership with the Commonwealth, through the $10 billion Housing Australia Future Fund, which is going to make a significant difference, changing the lives of so many people.

Vocational education and training

Evan MULHOLLAND (Northern Metropolitan) (12:18): (671) My question is to the Minister for Skills and TAFE. Minister, registered training organisation Complete Lean Solutions has been told by your department that, due to no demand, their funding for 2024–25 has been cut. At the same time the South East Melbourne Manufacturers Alliance (SEMMA) was told that Chisholm TAFE is now developing the same course program. If there is no demand, Minister, why is the same course being developed by Chisholm TAFE?

Gayle TIERNEY (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (12:18): I did not actually hear the first part of the question, what was the name of the company?

Evan Mulholland: Complete Lean Solutions.

Gayle TIERNEY: Thank you for the question. The fact of the matter is, as I have said on numerous occasions before this house, management of the contracts for Skills First is determined by the department. The Department of Jobs, Skills, Industry and Regions has got a particular section within the department, the skills and employment group, that deals with Skills First contracts. It then also of course liaises with the Victorian Skills Authority to have the data and the evidence in terms of what is required, what is needed in the labour market, what is not needed, what is popular, what is not popular and what is absolutely aligned with what industry needs. All I can say in respect to this is that I will

take that on notice to find out exactly what has occurred on this occasion, but I do know that SEMMA has been meeting with the Victorian Skills Authority. The last I heard was that there had been constructive dialogue – not just dialogue – and there was the formulation of work that SEMMA and the VSA were working on to deliver what was required, at their request.

Evan MULHOLLAND (Northern Metropolitan) (12:20): I find it quite interesting, again, that it seems to be a department-oriented process. Minister, a letter sent to this RTO from your department refusing to reinstate their funded course allocation due to a lack of demand states:

> I also acknowledge your previous correspondence to Minister Tierney's chief of staff, who has reviewed and endorsed this response.

Minister, given your office is clearly involved with the decision to cut course funding from this registered training organisation but Chisholm TAFE is subsequently developing the same program, will you intervene to reinstate the funded allocations to the RTO originally delivering this program?

Gayle TIERNEY (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (12:21): Again, I will have a look at it because I think there might be some other elements to it. The other thing that I think those opposite – if they are quiet and want to hear the answer – might be particularly interested in is that you cannot expect government to pay for every single course that is delivered or needed. At certain points there need to be contributions by employer organisations and industry more generally. I think that this might have been a consideration of the VSA; it might have been a consideration of the department. I am not privy to those discussions, but I will endeavour to seek those answers.

Animal welfare

Jeff BOURMAN (Eastern Victoria) (12:22): (672) My question is for the minister representing the Minister for Agriculture in the other place. Minister, the government recently released its draft Animal Care and Protection Bill for public comment, to replace the outdated Prevention of Cruelty to Animals Act 1986 – the POCTA act – which is almost 40 years old. Can the minister provide an assurance to hunters that this new legislation will not prevent them from going about their usual outdoor recreation lawfully, as they do now?

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (12:22): I thank Mr Bourman for his question, and I will pass that on to the Minister for Agriculture for a response.

Jeff BOURMAN (Eastern Victoria) (12:22): I thank the minister for passing that on. Can the minister assure Victorian hunters that between the passing of the bill and its enactment they will be consulted meaningfully on the regulations that will underpin the act?

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (12:23): I am very confident the answer to that will be yes, Mr Bourman, but I will let the Minister for Agriculture provide you with her response.

Ministers statements: regional development

Gayle TIERNEY (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (12:23): I rise to update the house on our government's significant capital investment in regional Victoria. In regional development we are delivering a pipeline of almost 700 projects across rural and regional Victoria. This includes the Nyaal Banyul Geelong Convention and Event Centre, backed by more than $400 million of investment; $126 million for the Twelve Apostles visitor centre; and 180 projects through the $20 million Tiny Towns Fund. We are backing in new regional employment precincts, including $25 million for the Ballarat West employment zone and an additional $14 million for the intermodal freight hub; $6 million for the Bendigo regional employment precinct; $15 million for the Gippsland logistics and manufacturing precinct; and $2.5 million towards the Portland North employment precinct, bringing Bunnings into Portland. In Ballarat, where I was

recently, we are delivering 1400 new public car parks by 2026 and $10 million for the restoration of Her Majesty's Theatre. We have backed in $100 million for the Ballarat GovHub, $30 million for the Latrobe Valley GovHub, $133 million for the Bendigo GovHub –

Members interjecting.

Ann-Marie Hermans: On a point of order, President, would you please ask the chamber to be quiet, because there are some details in there that I would actually like to be able to hear.

The PRESIDENT: Interjections are unruly. I uphold your point of order. It is all a bit weird when it is from the same side as the speaker.

Gayle TIERNEY: We are delivering $150 million for the Regional Worker Accommodation Fund, with announcements to come shortly. More broadly, this government has invested $2 billion into regional TAFEs since 2014, including $240 million into regional TAFE capital projects; $1 billion into the Regional Housing Fund; $4 billion into regional rail revival, alongside the Commonwealth; over $500 million in the Barwon women's and children's hospital; and over $650 million for the Ballarat Health Service expansion – just to name a few. In our most recent budget alone we invested $2 billion into regional Victoria, with 28 per cent of place-based expenditure going into our regions, because the Allan government is the government for – *(Time expired)*

Child protection

Georgie CROZIER (Southern Metropolitan) (12:26): (673) My question is to the Minister for Children. The incredible and selfless work of foster carers in Victoria is being taken for granted by this government. Consequently, the number of foster carers has been in steady decline since 2020, and the number of households completing accreditations is also decreasing, as the recent carer snapshot report confirmed. Minister, children younger than 10 years of age are being sent to residential care in record numbers, so I ask: what extra services have you initiated to properly protect these really vulnerable children, some as young as six years of age, who have been placed in residential care?

Lizzie BLANDTHORN (Western Metropolitan – Minister for Children, Minister for Disability) (12:26): I thank Ms Crozier for her question. At the outset Ms Crozier has raised the issue of a decline in foster care, but what Ms Crozier fails to acknowledge to the house – and I think it is important to provide the appropriate context for the house – is that our kinship care numbers are the highest in the country, and it is absolutely a preference that children who are in vulnerable circumstances and who cannot live with their parents live in kinship care in some aspect, whether it be their grandparents or be it members of their other community. This is important for all children, and it is particularly important when we are talking about Indigenous children.

I think it is very important to not take it out of context and mislead the house and paint a picture where the decline in foster care is seen in isolation, when the decline in foster care is actually also representative of an increase in kinship care, which is the absolute preference. But if you would like me to talk about our investments in residential care – which, as we have spoken about in this house before, does go to some of the most vulnerable children in the child protection system and some of those children who cannot live in foster care or kinship care – we are very pleased that on this side of the house we have the biggest ever investment in residential care and at the last budget we invested more than half a billion dollars in ensuring that residential care provides wraparound services for all children in residential care, whatever their age, whatever their circumstances and however long they might be there for, so that all children in residential care get access to the services and the supports that they need.

It is important that we do not take residential care out of context and that the children who are in residential care out of context, but it is also important that we do not take out of context children in foster care and children in kinship care. Kinship care is the absolute preference, and kinship care rates in Victoria are higher than anywhere else in the country.

Georgie CROZIER (Southern Metropolitan) (12:28): Thank you, Minister. I reaffirm that the record numbers of children under 10 in residential care are a major concern. I ask: Minister, school is critical for all children, but will you confirm that all primary school aged children in residential care are actually attending school every day?

Lizzie BLANDTHORN (Western Metropolitan – Minister for Children, Minister for Disability) (12:29): I thank again Ms Crozier for her question. It does indeed open up another whole line of questioning and considerations, as opposed to being a supplementary question. But I would also say –

Georgie Crozier: On a point of order, President, the minister in her substantive answer talked about wraparound services and children in residential care. Education is critical for these children, and so this question regarding children in residential care –

The PRESIDENT: Thank you, Ms Crozier. The minister is 13 seconds into her response of 1 minute.

Lizzie BLANDTHORN: Thank you, President. My point simply was that to do the supplementary justice it would have been good if it had actually been the first question, not a supplementary – but I thank Ms Crozier for the opportunity to answer her question. As we have talked about, the children in residential care are amongst some of the most vulnerable children and some of those who have been most traumatised. There are very complex care plans around each and every one of those children in residential care as well as the care plans around those children in our foster care and kinship care –

Georgie Crozier interjected.

Lizzie BLANDTHORN: Sorry, Ms Crozier, would you like me to answer the question, or would you like to constantly have this dialogue of interruptions? What our government is committed to, through the investment that we have made in residential care and ensuring that we have therapeutic wraparound services, is that the children in residential care get all of the support services, including education supports, that they need to get the most out of their education.

Local government elections

David LIMBRICK (South-Eastern Metropolitan) (12:31): (674) My question is for the minister representing the Minister for Local Government. In just over a month Victorians will vote in local government elections. With a lot more focus on the role of local government in planning decisions that shape our state, I am sure many people will be paying attention. There is a strange provision in the City of Melbourne Act 2001, however, where people who are not citizens, permanent residents, business owners or property owners paying rates are permitted to vote. They simply need to be an occupier of a rateable property for a least one month before the close of the roll. I think that most people would consider that allowing non-citizens to vote in this way is quite strange. Minister, why are temporary residents allowed to vote in the Melbourne City Council elections?

Lizzie BLANDTHORN (Western Metropolitan – Minister for Children, Minister for Disability) (12:31): I thank Mr Limbrick for his question, and in accordance with the standing orders I will refer it to the Minister for Local Government.

David LIMBRICK (South-Eastern Metropolitan) (12:32): I thank the minister for passing that on. My supplementary question is: Minister, how many temporary residents as defined by section 9B of the City of Melbourne Act 2001 voted in the previous local government election?

Lizzie BLANDTHORN (Western Metropolitan – Minister for Children, Minister for Disability) (12:32): Thank you, Mr Limbrick. I will pass that question on to the Minister for Local Government.

Ministers statements: National Child Protection Week

Lizzie BLANDTHORN (Western Metropolitan – Minister for Children, Minister for Disability) (12:32): I rise to inform the house that last week was National Child Protection Week. National Child

Protection Week provides an important opportunity to acknowledge the vital role of child protection and family services staff across the state in protecting and caring for children, young people and families. It was a pleasure to attend both the child protection staff awards and the Victorian Protecting Children Awards last Tuesday to witness the effort and passion of the teams and individuals who work every day to keep children safe and families strong. This year we also recognised the dedication of the child protection litigation office, who are an essential element of our child protection program. There were 202 nominations for the child protection staff awards and 148 nominations for the Victorian Protecting Children Awards, being the third year in a row that a new record for nominations has been reached. I want to acknowledge all finalists and nominees for their recognition and achievements.

I particularly want to recognise the Take Two southern metropolitan leadership group from Berry Street, who were the winner of the Minister's Award for Excellence in Protecting Children. The team developed and delivered a targeted therapeutic intervention program for babies, children and carers. The team created a safe space where babies, children and carers felt comfortable engaging with new people. Their tailored early intervention and supports resulted in many positive outcomes: babies and children began displaying more playfulness and joy in their relationships with their carers. Similarly, carers reported feeling more confident in their parenting abilities and are developing more connected and attuned relationships with their child. The team has engaged and empowered carers, championed the voices of children and promoted self-determination. I congratulate them again for this work.

Throughout both awards ceremonies one thing was constant: not only were the finalists and winners champions in promoting the rights and wellbeing of children and families but they spoke to the support that they received from their teams and managers and across the children and family system. That support should be broader. We are obligated in this place to acknowledge and support those in the children and family system, who every day strive to improve the lives of children and families, and that is a responsibility we all have.

Ballarat car parking

Joe McCRACKEN (Western Victoria) (12:34): (675) My question is to the Minister for Regional Development. Minister, last week you were in Ballarat to open the extension of the multistorey car park, where an additional 400 car parking spaces came on line funded by your department's Regional Car Parks Fund. Minister, are these parking spaces part of the 1000 car parks promised at the 2018 election for Ballarat, which was actually an election commitment taken to the 2018 election?

Gayle TIERNEY (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (12:35): I thank Mr McCracken for his question. He is quite correct: I was in Ballarat last week. One of the many things that I did – I was with Juliana Addison, the fantastic local member – was to announce 400 extra public free car parking places at the Ballarat Base Hospital. Of course this government is on track to deliver over 2000 car parks in Ballarat by 2026, and that includes almost 1400 free spaces in and around the Ballarat CBD by 2026. This of course will be supporting jobs growth and helping the centre to be an even better place to live, work, stay and play, and it also includes 147 completed car parks in the CBD, the 400 just opened at the Ballarat Base Hospital and another 900 through the Ballarat station redevelopment. And of course there is the council's smarter car parking program –

Joe McCracken: On a point of order, President, I ask that the minister be relevant to the question. I asked if these 400 parking spaces were part of the commitment given to Ballarat for 1000 car parks in 2018. She is not answering whether that is a yes or a no.

Harriet Shing: Further to the point of order, President, Mr McCracken would be well served to go back to the preamble to his question, which in fact referred to the minister's visit to Ballarat last week, and she is in fact going exactly to that detail to talk about what has been delivered.

The PRESIDENT: I did hear the minister mention a number of car parks and the number of car parks promised to be delivered in a timeframe, so I think she has been relevant to the question.

Gayle TIERNEY: Further, there are 120 car park spaces at the Ballarat GovHub, which I announced with Juliana Addison – again, the very active car parking proponent of Ballarat – and they will become available next year. That is so that locals have even more free public car parking options to go where they want to go. This is an exciting opportunity that Ballarat residents understand, and if you listened to your local 3BA radio station, you would understand this as well, Mr McCracken.

Joe McCRACKEN (Western Victoria) (12:38): I am so glad the minister mentioned 3BA, because they reported that these car parking spaces will not be free after the start of next year. So I am asking the minister: given that the car parks will actually be under the control of the hospital, what guarantee can you give that they are going to be free after the start of next year? They are not going to be in the state government's control, they are going to be under the hospital's control.

Gayle TIERNEY (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (12:38): This is unfortunately another free 101 lesson today. The fact of the matter is that they are 400 free car parking spots over and above anything else that Grampians Health made comment on. Grampians Health made a comment about their staff and their services; the 400 places that we announced are over and above.

Housing

Samantha RATNAM (Northern Metropolitan) (12:39): (676) My question is for the Minister for Housing. We know that privatisation always costs Victorians a lot of money and we always end up with fewer public assets and worse service delivery. As part of Labor's plans to privatise Victoria's public housing estates, almost half a billion dollars has been allocated just for the demolition. We understand that $100 million of this has been awarded to John Holland to undertake the demolition, and at PAEC we were told that $10 million has been earmarked for the relocation. There is absolutely no visibility on how the rest of the $340 million is going to be spent. We are also hearing from residents that multiple outsourced private contractors are being commissioned to engage with them as you move to force residents from their homes and communities. Minister, how much is this government spending on consultants and contractors in your project to demolish and privatise Victoria's 44 public housing towers?

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:40): What a valedictory question from Dr Ratnam. Firstly, community housing is not privatisation, and I want to be really, really clear: when we deliver, as we are delivering, on our record investment in social and affordable housing across the state we will be doing so, as we have done so, in partnership with the community housing sector. This is despite the fact that the Greens and the opposition have consistently opposed the development of social and affordable housing to put roofs over the heads of some of the most vulnerable people in Victoria.

Just today I was at Bills Street in Hawthorn, opposed by the opposition. That was not long after I went to again visit Markham Estate in Ashburton, opposed by the Greens, opposed by the opposition. That was not long after I was at Harvest Square in Brunswick, opposed by the council, opposed by the opposition. While you are in the process of saying why it is that housing should not be delivered for people most in need, we are in the process of building it. When we allocate money towards building that social and affordable housing to continue the work to develop, as we have done already, 9800 homes either completed or in planning or construction, it is for the purpose of providing housing to people who need it most. We make absolutely no apologies for providing fit-for-purpose housing for people most in need –

Samantha Ratnam: On a point of order, President, I ask that you direct the minister back to the relevance of the question that I asked, which was quite specific. The minister has not been relevant to the question that I asked. I can repeat it if you would like, but you have asked me not to do that before. It has not been relevant.

Harriet SHING: Further to the point of order, President – Dr Ratnam, your question went on for about 35 seconds. You started from one part of the housing spectrum and continuum, and then you went in kind of a tangential fashion through to the question. When you start with that preamble, I am well within my rights to go to the detail that you set out within it and to counter some of the misinformation that you yet again perpetuate in this place.

Samantha Ratnam: Further to the point of order, President, I understand that you have previously given members or ministers licence to speak to the context in which a question might have been asked, but I seek your guidance about whether that extends to a minister focusing on any specific word they wish to speak to to avoid answering the exact question. If I say the word 'the' in a question, can the minister focus just on the word 'the' or do they have to actually focus on the content of the question? I asked a very specific question. I think the minister is taking liberties on your previous ruling and is abusing your previous ruling.

The PRESIDENT: I agree with the point of order that a minister should not pick just one word. But I do not think in this instance the minister was just picking one word out of relevance to the question, so I will bring the minister back to the question.

Harriet SHING: As Dr Ratnam referred to on multiple occasions, as she has done on multiple occasions, it is really important to distinguish between the claims being made by the Greens and what we are doing in partnership with community housing providers. This is not, no matter how much the Greens wish for it to be, privatisation. We cannot build housing without builders. We cannot develop sites without development. What we do in that work around the 400 –

Samantha RATNAM: On a point of order, President, with less than 30 seconds to go I ask the minister to stay relevant to the question that I asked. She has refused to stay relevant to the exact question. I can repeat it if she has forgotten it.

The PRESIDENT: There is no need to repeat it. I believe the minister has been relevant.

Harriet SHING: Dr Ratnam, when we talk about the development of housing, including the 9800 homes that we are either in the process of building, planning or have completed, this occurs not in a vacuum – not up in your ivory tower or somewhere in Greens headquarters – this happens in reality. $436 million has been allocated towards the development of sites for a tripling of density to make sure that you and your friends in Greens land can have affordable homes and rentals as well as that additional uplift in social housing.

Samantha RATNAM (Northern Metropolitan) (12:46): While you refuse to answer the substance of my question, I think it is important to state for the record that when we talk about the privatisation and outsourcing of public housing estates, your government has announced that two-thirds of each of these public housing estates is going to be for private housing. That is called privatisation. Yes, some community housing, but two-thirds of the estates are going to be for private housing. That is privatisation. We also heard during the PAEC that the government was in the process of engaging KPMG as consultants to develop an investment case for the demolition and privatisation of the towers. Mind you, this investment case seems to have been commissioned after the decision to demolish the towers. This seems to confirm what the community has been thinking since the announcement was made, that the decision to demolish the towers was not grounded in any sound logic or prior feasibility work, but rather that the government is scrambling to justify its decision after the fact. How much is your government paying for consultants KPMG to do this investment case?

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:47): What a supplementary. If only we had value from each word that you said in this place, Dr Ratnam. The $436 million that has been allocated in the budget, and it is there for all to see, was discussed at PAEC. And you are right to identify that it did come up at PAEC. What I would suggest, Dr Ratnam, is that you would be well served going to the transcript of PAEC, whereupon there was a question asked. I do not want to paraphrase myself because I do not have the transcript

right here in front of me but what I am happy to say is that there was a question about whether the costs associated with delivery of that money would come from within the $436 million that has been allocated. The answer to that question as given by Simon Newport, the CEO of Homes Victoria at the time, was: yes, it would come from within that allocation of $436 million. Again, this is part of the overall package –

Samantha RATNAM: On a point of order, President, I asked a very specific question. The minister has not been relevant to the question that I asked in my supplementary: 'How much have you paid KPMG?'

The PRESIDENT: I believe the minister has been relevant. I will make a determination maybe later. Under the process that we have, I will consider it later. There have been rulings before in terms of certain details that you would not expect the minister to have on hand during question time that may be better served as questions on notice. The minister has 10 seconds. I will commit to you now before I respond that I will review.

Harriet SHING: Dr Ratnam, as I said at the outset, there is $436 million, which includes the work to develop and to engage with communities on what we will be doing to deliver the largest urban renewal project in Australia's history, and we will continue to do that however you may characterise it.

Ministers statements: Cherry Creek Youth Justice Precinct

Enver ERDOGAN (Northern Metropolitan – Minister for Corrections, Minister for Youth Justice, Minister for Victim Support) (12:49): I rise to update the house on my recent visit to the Cherry Creek Youth Justice Precinct. Last week I had the pleasure of attending the quarterly rewards and recognition event, a ceremony to celebrate the dedication and outstanding contributions of our hardworking youth justice staff. The event, now in its second year, is an integral part of fostering a culture of recognition and appreciation within our youth justice system. I was honoured to meet many of the dedicated staff, who work tirelessly to support the young people in their care every day. The ceremony recognised outstanding achievements across three categories: the centre excellence award, the safety award and the directors award. These awards recognise individuals who have gone above and beyond in their roles to deliver positive outcomes for young people in custody as well as making their workplaces safer and more effective for all. I had the privilege of presenting certificates to the winners and hearing their stories. I was particularly impressed by the peer support initiatives that have been embedded into the workplace at Cherry Creek.

Youth justice work can be extremely fulfilling but it can also be challenging. It is fantastic to see our staff supporting one another in this important work alongside the structured health and wellbeing supports that are available. Our youth justice staff are not only providing daily care and guidance, they are making a difference by giving young people the best opportunity to turn their lives around and make a positive contribution to our society, because we know that working with these young people to change their behaviours is the key to keeping us all safe. I again want to congratulate the award recipients and extend my thanks to all the staff at Cherry Creek for their unwavering commitment to making Victorians safer now and into the future.

Written responses

The PRESIDENT (12:51): Ms Blandthorn will get answers for Mr Limbrick from the Minister for Local Government. Minister Symes has committed to Mr Bourman for two questions on agriculture. Minister Tierney committed to Mr Mulholland on the two questions that he asked her directly.

Samantha Ratnam: On a point of order, President, will you review the relevance of the answer I received to see if the matter can be taken on notice?

The PRESIDENT: Yes, I can recommit to that. I think there are a few things to work through in terms of, as I said, what is reasonable to expect the minister to have detail on and things like that. But I will get back to the house later today.

Melina Bath: On a point of order, President, I have some overdue constituency questions, directed to the relevant ministers but still outstanding: 887 on housing, 964 on WorkSafe, 985 on police, 1015 on education and 1072 on housing.

Harriet Shing: On the point of order, President, I am very happy to seek answers to those questions and follow up.

Georgie Crozier: President, I was going to raise a point of order after constituency questions, but as Ms Bath has just raised hers that have not been answered, there was a ruling by the Speaker in the lower house yesterday regarding ministers who had not responded. They have got until the end of the September break to provide those answers. The opposition have 161 questions outstanding. I can go through them. I am just wondering: would you consider a similar ruling for ministers to also be required to answer questions, given that the Speaker made that ruling yesterday?

The PRESIDENT: I apologise, Ms Crozier. I was not aware of any ruling in the other chamber, and we do operate separately for a reason. I think the process we have is that if people have some outstanding constituency questions that have not been responded to and if they want to bring them up in the chamber now, they should feel free to.

Constituency questions

Eastern Victoria Region

Tom McINTOSH (Eastern Victoria) (12:53): (1120) My question is to the Minister for Skills and TAFE. Access to quality training helps people upskill into meaningful, well-paid careers. The Allan Labor government understands this, which is why we are backing in our TAFE providers by investing $555 million from the budget in our TAFE network and providing certain courses for free. The Mornington Peninsula has a booming economy with jobs in trades, horticulture and agriculture, hospitality, tourism, health and caring roles and wellbeing. To drive this economy forward, the peninsula needs skilled people trained in industry best practice, ready for work. I recently attended the Committee for Frankston and Mornington Peninsula members breakfast at Chisholm TAFE Rosebud campus and heard from CEO Josh Sinclair about the committee's strategic plan for skills and planning. Good training gives people access to the skills they need to get jobs so that they can support themselves and their families and contribute to the economy of the local community. Minister, what is the government doing to support access to skills and training on the Mornington Peninsula shire?

Northern Victoria Region

Wendy LOVELL (Northern Victoria) (12:54): (1121) My question is for the Minister for Regional Development, who has recently been spruiking the appeal of tiny towns. Minister, why is the government intent on destroying tiny towns in Macedon by forcing mid-density housing into country villages? Macedon Ranges shire is filled with villages that are small in size but big in charm and country lifestyle. Thirteen tiny towns in Macedon, including Riddells Creek, have recently received tiny town grants, but these towns will not remain tiny if the Labor government has its way, with housing targets for the shire set at a 60 per cent increase, including 12,700 homes and 35,000 people to be brought into the area. The Minister for Planning is currently considering approving a development proposal that would almost double the size of Riddells Creek, squeezing 3800 people into a town that has currently only 4500. The Labor government's policy will destroy the charm and character of the tiny towns that make them so attractive, and I call on the government to reassess its approach to development in order to preserve the beauty and character of our tiny towns.

South-Eastern Metropolitan Region

Rachel PAYNE (South-Eastern Metropolitan) (12:56): (1122) My constituency question is for the Minister for Community Sport. My constituent is a resident of Cranbourne North and plays soccer with the Lynbrook Falcons, one of the biggest clubs in the area. The Lynbrook Falcons home ground is at Lawson Poole Reserve. My constituent helps around the club often, making sure the clubrooms and pitches are kept tidy, but despite their best efforts the facilities just are not fit for a growing club. The club has asked their local council to fund some upgrades, and thankfully the pitches will now be fixed in the off-season; however, they still require more fencing, road repairs, lighting, improvements and other facilities. So my constituent asks: will the minister fund infrastructure improvements to the Lawson Poole Reserve so that their club can continue to be a source of community connection in the south-east?

Northern Victoria Region

Gaelle BROAD (Northern Victoria) (12:56): (1123) My question is to the Minister for Government Services in relation to the Victorian government's online consultation platform Engage Victoria to ensure that resident views are being correctly represented. The Riddells Creek planning group wrote an open letter to the Minister for Planning on 13 August on behalf of local residents to raise serious concerns about major discrepancies in the community consultation process surrounding the proposed Amess Road development, which calls into question the integrity of the Engage Victoria website. In July the local member, Mary-Anne Thomas, said she had been advised by the Department of Transport and Planning that only 118 submissions had been received. After further questions were raised, on 12 August it was revealed that a further 1072 submissions had been received. The planning group has called for an immediate review and audit of the Engage Victoria site to identify any technical issues. As the government utilises it as a centralised platform, it is important that the data collected and presented is accurate. On behalf of local residents I ask the minister to facilitate an independent review and ensure that the residents receive a response to the concerns raised.

Northern Metropolitan Region

Samantha RATNAM (Northern Metropolitan) (12:58): (1124) My constituency question is for the Minister for Education. I am once again urging the minister to fund infrastructure upgrades for Pascoe Vale South Primary School. Enrolments at Pascoe Vale South have been growing rapidly. Many young families have been moving into the catchment area, and it is vital that their local primary school be able to meet their needs. Since I last raised this matter in the chamber, the school council has garnered the support of over 1500 people in a petition calling for the school upgrades. This speaks to just how widespread support is for the required upgrades. The school has diligently been seeking grants from the state and federal governments to no avail. Minister, it is time you intervene. Will you commit to the $4.7 million in funding to help upgrade their school's 70-year-old administration building and construct a new covered outdoor learning area?

Northern Metropolitan Region

Evan MULHOLLAND (Northern Metropolitan) (12:58): (1125) Minister, like Mr McGowan, it is toilet time, and this is quite important to my multicultural communities in the north. On 2 April, 16 July and in a 2017 media release the Minister for Environment said that they had upgraded amenities at the northern section of the Greenvale Reservoir Park to install two new toilets, only for the Minister for Environment, after being questioned on this, to clarify that Parks Victoria had clarified that no toilets had actually been installed. Many of my multicultural communities, particularly in the northern suburbs, would actually like toilet blocks at the northern section of the Greenvale Reservoir Park so they can do what they have to do at the park and enjoy a picnic. I ask the Minister for Multicultural Affairs to pass this on to the Minister for Environment: when will toilet blocks actually be installed at the northern section of the Greenvale Reservoir Park?

Northern Victoria Region

Georgie PURCELL (Northern Victoria) (13:00): (1126) My constituency question is for the Minister for Climate Action. Northern Victoria is home to a number of wind farms. Whilst a great initiative for the environment and one that is crucial for our future, it is local birds that are paying the ultimate price, flying into the blades and plummeting to their deaths. But it does not have to be this way. Smøla farm in Norway has provided the solution. In their experiment just two-thirds of a single blade was painted black on four turbines. Incredibly, they found that there was a 70 per cent reduction in bird fatalities from just these four turbines. There was also a 100 per cent reduction in white-tailed eagle fatalities. Since then various energy companies in Spain and America have been trialling the painted blades, following this huge success in Norway. My constituents want to know if the minister will trial this life-saving initiative in Northern Victoria too to save the lives of our birds.

Sitting suspended 1:01 pm until 2:02 pm.

Southern Metropolitan Region

David DAVIS (Southern Metropolitan) (14:02): (1127) My constituency question today is for the Minister for Energy and Resources, and it concerns the government's *Gas Substitution Roadmap*. I ask the minister to explain to the community whether this applies to towers and heights and new developments within the government's proposed 10 zones, three of which are in my electorate. So does the *Gas Substitution Roadmap* apply to the Moorabbin, Chadstone and Camberwell zones where the government is doing high-density, high-rise development without council or community input or approval? Will those three zones restrict the choice of gas connections as the government goes forward under its *Gas Substitution Roadmap*?

Northern Victoria Region

Rikkie-Lee TYRRELL (Northern Victoria) (14:03): (1128) My question today is for the Minister for Roads and Road Safety in the other place. Echuca Road, Mooroopna, is the main thoroughfare for thousands of trucks, cars, buses and cyclists every week. While it is pleasing to see at least some of this road has been recently repaired, my constituents have reported a very dangerous section between McFarlane Road and Macisaac Road in the inbound lane. Road users have reported bubbling, pitting, crumbling, potholes and rutting of the road surface along this stretch. They have also reported seeing cars and trucks set off course, almost colliding with the kerb, due to the rough conditions. My constituents urgently ask: will the minister direct Regional Roads Victoria to fix this dangerous section of Echuca Road in Mooroopna before it causes a serious incident?

North-Eastern Metropolitan Region

Richard WELCH (North-Eastern Metropolitan) (14:04): (1129) My constituency matter is directed to the Treasurer in the other place. New data from the ABS shows that 150,000 Victorian businesses shut down across 2023–24. Victoria has the worst business growth figures in the nation. In my electorate, businesses within the Suburban Rail Loop precinct, so areas like Kingsway in Glen Waverley and Whitehorse Road in Box Hill, are under additional commercial stress due to disruption from the building works, the uncertainty of planning and tax changes, compulsory acquisitions and increasingly insecurity of tenure due to redevelopment propositions. Businesses are drifting away, and remaining businesses are facing terrible stress. Many have told me they are just months away from having to close their business. To date, the compensation to these businesses from the Suburban Rail Loop Authority has been pitiful, ineffective and in some cases insulting. None is adequate. My question is: will he please provide adequate support?

Eastern Victoria Region

Melina BATH (Eastern Victoria) (14:05): (1130) My question is to the Minister for Regional Development. Latrobe Valley has seen the closure of Hazelwood power station, the disastrous decision to shut down the native timber industry and the imminent closure of Yallourn power station. The

soon-to-be defunct, with varying degrees of success, Latrobe Valley Authority was established to support workers who had lost their jobs due to the closure of Hazelwood power station. In four years time, potentially slightly longer, the Yallourn power station will close, followed by Loy Yang thereafter. Since the mass redundancy from Regional Development Victoria earlier this year, how can workers who will lose their jobs have any faith that RDV will be able to help them now and into the future?

Eastern Victoria Region

Renee HEATH (Eastern Victoria) (14:06): (1131) My question is for the Minister for Housing. At a community stakeholder meeting last month I met with various agencies and individuals who deal directly with people affected by homelessness in my region. I was told that there are currently 8000 people that do not have a home in Cardinia and Dandenong, but this figure is more than likely to be under-reported, as living in a car is not classed as being homeless. I was told that there are many things that the government can do right now to address this issue, including to stop taxing households that are using a room for short-term housing. My question to the minister is: are you willing to use all policy levers available to reduce taxes and incentivise households to relieve the burden of homelessness and provide more rooms for people so they can have a safe place to stay?

South-Eastern Metropolitan Region

Ann-Marie HERMANS (South-Eastern Metropolitan) (14:07): (1132) My question is to the Minister for Skills and TAFE. The Labor government recently cut 22 private training organisations, and this has significantly impacted providing a workforce for both struggling and any growing manufacturing and building trades. This is particularly happening in my electorate of the South-Eastern Metropolitan Region. This makes no sense, when the government's own Skills First program outlines industries that are considered priorities, like the renewables sector and housing. Victorian manufacturers face skill shortages, such as welders, computer numerical control machine operators and engineers. The South East Melbourne Manufacturers Alliance, SEMMA, says the government's funding cuts to the 22 private registered training organisations affect much-needed nationally accredited courses. My question is: will the minister reinstate and financially support our training needs in the south-east?

Western Victoria Region

Bev McARTHUR (Western Victoria) (14:08): (1133) My question for the Minister for Agriculture concerns news that turbines at the brand new Golden Plains wind farm are falling to pieces. One of my constituents, Russell Coad, found these serrated trailing edges 750 metres from the turbine on his farm, and other pieces fell within metres of the Barunah CFA fire shed. French owners, soon to be the recipients of $180 million of Victorian electricity bill payers' subsidies annually, have warned farmers:

> … we recommend hard hats be worn if critical farming works are required to be completed within 400m of the turbines.

If this is happening with brand new turbines, what will happen in future decades? The extreme weather event which caused this problem for the turbines was – you have guessed it – wind. The next 'save our sheep' campaign is going to involve fitting ewes and lambs out in hard hats. Minister, will you issue a graziers warning to Victorian farmers on the threat from serrated trailing edges of wind towers?

Bev McArthur: On a point of order, Deputy President, I have a number of unanswered constituency questions, which I understand we are allowed to raise at this point in time: 671, asked on the 20th of the 2nd 2024 on planning, due on the 5th of the 3rd 2024; 834, to the Attorney-General, unanswered, due on the 16th of the 5th 2024; 939, emergency services, due on the 3rd of the 7th; 958, health, due on the 4th of the 7th 2024; 988, on transport, due on the 14th of the 8th; 1016, on health, due on the 27th of the 8th; 1027, health, due on the 28th of the 8th; 1045, transport, due on the 29th of the 8th; 1056, roads and road safety, due on the 10th of the 9th; and 1074, environment, due on the 11th of the 9th.

Jaclyn Symes: Mrs McArthur, I will follow those up. Ministerial officers are certainly going to be focused on clearing any backlogs over the mini break.

Bills

State Civil Liability (Police Informants) Bill 2024

Committed.

Committee

Clause 1 (14:12)

The DEPUTY PRESIDENT: I have been advised that because Mr Limbrick's amendment changes clause 1 and the answers will be different if it is not accepted by the house, the minister would like Mr Limbrick to move his amendment first so that we can deal with the clause, whether it is amended or not amended, in its entirety. Mr Limbrick, I ask you to move your amendment 1, which is a test for all your remaining amendments.

David LIMBRICK: I move:

1. Clause 1, lines 3 and 4, omit "extinguishing causes of action" and insert "providing for a maximum cumulative amount of damages or other monetary compensation".

As I stated in my second-reading speech, the objective of this amendment is to remove the extinguishment parts of the bill and replace it with a limit on damages, also to remove the human rights charter override allowing cases to proceed and also to ensure that the bill is not ignoring the Victorian Charter of Human Rights and Responsibilities.

Evan MULHOLLAND: Mr Limbrick, your amendment 1 seeks to replace the extinguishment of causes of action with a damages cap. How can you justify putting a price on the justice of those affected by such reprehensible conduct, capping damages at $1 million regardless of the severity of harm?

David LIMBRICK: I think you are asking for an opinion on that, aren't you, Mr Mulholland? What we are doing here is we are trying to enhance the right of people to take things to trial. The initial bill did not allow that, through extinguishment. What I have tried to come up with here is a compromise. The idea of limiting damages is not unique to this bill, and in fact it was pointed out by the Attorney-General in her speech, where there are other references. So I would say that having a limit is recognising the fact that the taxpayer resources of this state are not infinite.

Evan MULHOLLAND: How did you come to the $1 million cap, as in the price, and what analysis or research has been conducted to show that is fair compensation for those that have had their rights trampled on by the state?

David LIMBRICK: I have consulted with a number of people about this. To my knowledge in other areas where there are caps there is no empirical justification. Ultimately, it is a matter of perception. The Attorney-General has already put on the record that she would have preferred it to be a lower figure, and I have consulted with others that believed it should be a higher figure. I believe that the value that I am proposing, $1 million, sits somewhere in the middle of that and believe that it is an appropriate balance.

Evan MULHOLLAND: Given that there are tests, I will ask some questions on the other clauses as well. On clause 5(2A)(a) of your amendment ensures that non-economic damages remain limited by the Wrongs Act 1958. What is the evidence to support this approach?

David LIMBRICK: The intention of this is – it is more of a technical thing – to ensure that we do not inadvertently change the function of the Wrongs Act. That is why we are putting that in there.

Evan MULHOLLAND: By omitting clause 6 you seek to remove the exemption of this bill from the Charter of Human Rights and Responsibilities Act 2006. How do you plan to reconcile this change?

David LIMBRICK: The human rights charter does not make any assurances of specific damages or remedies. Section 39 of the charter says that a person has a right to seek a remedy, but the charter is completely silent on the terms or limits of such remedies. If such a limit were incompatible with human rights, then limitations on remedies in the Wrongs Act and the Defamation Act 2005 would also be incompatible with human rights.

Evan MULHOLLAND: I would have thought that there would be no limit, given the substantial breaches of human rights that have been undertaken – but anyway, I digress. Your proposed amendments to clause 5 suggest that the maximum payout for any victim would be capped at $1 million. How can you explain why victims of the Lawyer X scandal should be subjected to an artificial limit when their lives have been so irreparably damaged by state-sanctioned misconduct?

David LIMBRICK: The limitation to certain classes of people is something that is contained in the substantive bill and is not the subject of my amendment.

Evan MULHOLLAND: Mr Limbrick, the royal commission found significant wrongdoing in the use of human sources under the Labor government's watch. Do you really believe that limiting damages will bring closure to victims and restore trust in the Victorian justice system?

David LIMBRICK: No, I do not. I think there are many further things that could happen. It is outside the scope of this bill and certainly outside the scope of this amendment, but I think there are many things that need to be done in this state to clean up the police force and clean up the justice system. I know the Attorney-General has spoken about some of those things, but I certainly think that absolutely more needs to be done.

Evan MULHOLLAND: Mr Limbrick, your amendments shift the focus from accountability to budget management. How can you justify this shift when the integrity of the justice system and compensation for egregious breaches of legal rights are at stake?

David LIMBRICK: The intent of the amendment is to actually enhance the rights that were originally going to be extinguished in the bill, and therefore we are allowing, through this amendment, any cases to proceed that anyone would wish to take to court. This is not stopping cases going to court. That would be my response.

Evan MULHOLLAND: Mr Limbrick, aren't your amendments an example of government overreach that is placing arbitrary caps on compensation that only go to support state governments overstepping or even breaching their lawful responsibilities?

David LIMBRICK: When we talk about money here, it is not the government's money. It is taxpayers money.

Sarah MANSFIELD: We have been advised that the state's legal costs in defending these matters will likely exceed any damages sought. If the intention of your amendments is to save taxpayers money, why have you not sought to cap or limit the state's legal defence costs rather than just the damages?

David LIMBRICK: It is actually an interesting proposal that you are talking about there. It is certainly outside the scope of the bill and this amendment, but it is also something that I am open-minded about. It is also worth stating that under model litigant rules it is expected that the state would try to resolve these disputes in a manner that is least impactful on all parties, including economically, and the state's obligation to model litigant rules should be adhered to in this regard.

Sarah MANSFIELD: Given that the focus or the rationale for your amendments is really based on savings, can you advise on the estimated savings that your proposed damages cap will likely deliver to the state?

David LIMBRICK: I think the big unknown here is – no, I cannot provide that. I do not think the opposition can provide that. I am not even sure the government can provide that. That is why I am so concerned about the potential liability and why I am trying to do this. I do not think we know the answer to that.

Sarah MANSFIELD: You partially addressed this in a response to Mr Mulholland, but the degree of the impact of Lawyer X has varied quite significantly on individuals. It goes from very serious impacts involving wrongful conviction and serious periods of imprisonment to relatively minor and insignificant impacts. So how did you come to a single round figure of $1 million as a damages cap for all individuals affected?

David LIMBRICK: It is a similar question to what Mr Mulholland asked. But further to that, I would also say that hopefully the government will adhere to the model litigant rules and that these things will be settled before they go to court, as per the rules. Therefore as the Attorney-General has said, she would have preferred a different figure to what I have come up with. Other people have said that it should be another figure. Other people have said there should not be caps at all. I have come up with what I think is in the middle of what that range of opinions is.

Sarah MANSFIELD: Just to confirm, in terms of coming to that decision it was several different opinions about what the right amount should be. Have you read and considered the royal commission report or consulted with lawyers on both sides of the civil matters in terms of informing the cap you have arrived at?

David LIMBRICK: The royal commission actually made no recommendations on damages or remedies, and the economic risk of Victorians in the face of expensive litigant costs was never part of the scope of the royal commission. I might add that our party supported the recommendation to establish the Office of the Special Investigator and also that members of Victoria Police who have committed criminal wrongs against people as part of Lawyer X should face the consequences for doing so. That would be my answer.

Sarah MANSFIELD: Victoria Police pays out millions of dollars in damages every year, separate from the Lawyer X matters, so if the intention is to save taxpayers money, why have you limited the cap to Lawyer X matters and not all police damages, which are far more substantial in terms of the financial impact on taxpayers?

David LIMBRICK: I would respond by saying that that sort of limitation would substantially expand the scope of the bill. But I would note on the comments from Dr Mansfield earlier in the debate about having a police ombudsman and enhancing oversight of Victoria Police that I would certainly be very happy to have those sorts of conversations about how we could better manage this in the future. But certainly legal costs are outside of the scope of this.

Sarah MANSFIELD: Have you received any advice supporting the constitutional soundness of the amendments you have proposed, and are you confident that they will stand up to any challenge?

David LIMBRICK: No, I have not received constitutional advice. I would point out that this remains the government's bill. If the government has concerns about constitutionality, I assume that they will reject it in the lower house. I would note that the Attorney-General pointed out in her contribution similar cases that have survived High Court challenges. But ultimately, on whether or not it would survive a High Court challenge, I do not have the resources to get that sort of advice.

Sarah MANSFIELD: We have heard legal opinion that amendments that you have proposed will almost certainly be challenged on constitutional grounds, which will inevitably end up in the High

Court. Do you have any estimate on the likely additional cost for taxpayers on legal costs defending your proposed amendments?

David LIMBRICK: We cannot see into the future. There are a lot of unknowns here. But if a challenge proceeds, that would be a matter for the court. It is a hypothetical scenario that I do not have an answer to.

Evan MULHOLLAND: Mr Limbrick, would I be right in saying your amendments would not stop people bringing their cases to court?

David LIMBRICK: I am not sure I understand Mr Mulholland's question, but with my amendments the whole intention is to allow cases to go to court.

Evan MULHOLLAND: Mr Limbrick, civil claims allow an offer of compromise to be made, but if a plaintiff fails to accept it before trial the court will give the plaintiff less than what was in the offer and the plaintiff will be ordered to pay costs, likely well over any $1 million cap. Do you accept that this will lead to cases not proceeding to court?

David LIMBRICK: It is my understanding that the Supreme Court has full discretion over how it handles costs and it can choose to award them as it sees fit, including in a scenario different to what you have outlined.

Jaclyn SYMES: Mr Limbrick, as you will be aware, the government is inclined to support your amendment because it is our desire to do whatever is possible to reduce costs. Can I just confirm your amendment is an upper limit? My view would be that there will be some cases where the plaintiff's claims are higher than the cap, but in other cases the plaintiff's claim in any court or settlement outcome would probably be much lower, and those cases would still be assessed in the ordinary way and the cap is just an upper limit. Can you confirm that that is your understanding of how it would apply?

David LIMBRICK: Yes, that is the intent.

Nick McGOWAN: Just to be clear, Mr Limbrick, what the Attorney is establishing or trying to do there is ensure that when any judge takes into account any decisions in the future, they are actually creating in the mind of the judge a scale, the end of the scale being a million, being the most. That actually then puts pressure on the judge downwards to ensure that the amount the person may receive would be on a scale that is of the most severe to the least severe. In fact by putting this forward what you are actually admitting to, in giving your answers to the Attorney as you have just done, is that most of the people will not even get in the order of magnitude that is the maximum permissible under your amendment.

David LIMBRICK: I am actually not certain what the question was there. It was more of a statement I think, so I will leave it at that.

Nick McGOWAN: It was not a statement. It was a clear question. The question was whether you understood, and clearly the answer was no. Do you know that you are enabling the government's bill by giving your support and that you will be directly responsible for curtailing the legal rights of hundreds and hundreds of Victorians who have been mistreated by this government under law and by your protection?

David LIMBRICK: Look, if the opposition wants to attack me for defending the interests of taxpayers, then that is their problem; that is their issue. But the fact of the matter here is that I have seen a situation, a bill presented to this house, which I was not happy with, but I understood there were financial implications for the state. I am trying to show leadership here and trying to come up with a solution that is beneficial to the taxpayers of Victoria. The opposition has come up with nothing, so if you want attack me over this, feel free to go ahead.

Nick McGOWAN: Far from an attack, what you have actually revealed to this chamber, this Parliament and the state today is that you cannot even say that with any certainty you are actually saving any money, because you do not know how much it will cost. So my question to you is: having already admitted you actually have no costings, no guarantee –

Jaclyn Symes interjected.

Nick McGOWAN: It is not nothing, says the Attorney. This Parliament is completely blind. You, Mr Limbrick, who are bringing forward this amendment, cannot even answer the basic question. You stand in this chamber and you tell us that the reason for your amendment is to save money. You were asked a direct question by the Greens – rightly asked – because if that is the raison d'être for your amendment, you cannot even tell us how much it will save, because you do not know how much you are saving. So how can you possibly substantiate such an answer?

David LIMBRICK: I would retort back with: by opposing this bill, like the opposition is doing, how much financial liability are you exposing the state to? You do not know the answer to that either.

Nick McGOWAN: Mr Limbrick, a question for you. I personally do not choose to put a price on justice. Yes, you are right. As far as I am concerned, if somebody has been wronged and the court decides that they are due – that is a court, a judge, a judge probably appointed by this Attorney-General, so I congratulate her on that – I have every confidence that that judge is going to do the right thing and give them an amount which is actually due to them under law. I have no problem with that at all. I do not think the people of Victoria do. All I said was: do you have a problem with that?

David LIMBRICK: I am not sure that question is relevant to the amendment.

Evan MULHOLLAND: Mr Limbrick, parliamentary debates, particularly the committee stages of debates, can be used in court to help discern the intent of particular pieces of legislation. Do you accept this?

David LIMBRICK: That is my understanding, yes.

Evan MULHOLLAND: Do you accept that a judgement or a court may look upon Ms Symes's questioning about the scale below the cap? Do you accept that that questioning may be looked upon as the intent behind your amendment?

David LIMBRICK: My intent behind the amendment is clear. It is to put a cap on it.

Nick McGOWAN: Do you concede therefore, Mr Limbrick, that with the words of the Attorney, the chief law officer of the state, the Attorney herself has made it crystal clear to any judge in the future that the upper limit, the upper scale, of any amount –

Jaclyn Symes: There is no scale.

Nick McGOWAN: The scale is implied, Attorney-General, as you know. The upper limit is now implied by the Attorney-General.

David LIMBRICK: I think maybe that is a question better directed to the Attorney-General, but clearly my intent here is a cap.

Nick McGOWAN: If that is your intent, then it may well be that no-one ever gets close to that cap. Nonetheless given that is the case, one of the other questions I have for you is in respect to how you arrived at that sum. The Greens have already asked this question, and I do not think they really received an answer other than perhaps, you know, licking your finger and putting it in the air and coming up with a $1 million figure. I know the Attorney-General expressed a desire for half a million, so the halfway point is $750,000. To give comfort to those who may have to actually go through this horrid, torrid legal process because they have been wronged by the state government, how did you arrive at the $1 million decision?

David LIMBRICK: I have already covered this with questions from Mr Mulholland and Dr Mansfield.

Nick McGOWAN: Just further to that question, that is not an answer, because I was here for one of those answers and I watched the other one on TV, and they did not receive an answer. The best I could deduce from what you said was that you just came up with it. I am also not clear. Therefore the question for you is: how many lawyers did you actually consult when you came up with this amendment, excluding the Attorney-General?

David LIMBRICK: As to how many lawyers, I have had numerous people contact me both since the bill was first introduced and since my idea on an amendment became public. Many people have made representations to me with all sorts of ideas on whether it is a bad idea or a good idea. As the Attorney-General stated in her summing-up, she had similar feedback. But as to the exact number, I could not tell you off the top of my head.

Evan MULHOLLAND: If an ordinary citizen were to engage in egregious conduct such as the state engaged in via the Lawyer X scandal, is it not the case that the victim could pursue damages without a cap?

David LIMBRICK: I am not across all areas of law, but certainly, as we have outlined here in some other sections, there are caps on other types of compensation. The answer is: this is a special limitation.

Evan MULHOLLAND: It is a special limitation for government. Why then should the state have a lower ceiling for liability than a person?

David LIMBRICK: The state does not have their own money. The state's money is Victorians' money, and therefore it is indeed finite.

Evan MULHOLLAND: Wouldn't you agree that egregious behaviour by the state upon individuals resulting in, say, 12 years in prison illegally due to actions by the state should result in fair compensation?

David LIMBRICK: As I have pointed out, the intent of this amendment is to improve rights that were not afforded under the original bill, and therefore allowing cases to go to court and seek compensation is an improvement on what the government was initially proposing. The intent here is to improve rights rather than remove them.

Nick McGOWAN: Mr Limbrick, I do not intend to keep asking questions. I could do that all day. I have one last question, really, and I will come to it. I hope that you understand that in what you are proposing today and the support you are giving the government, you are enabling. Without you enabling, this bill may not actually proceed. I do not blame the government. They are institutionalised at this point in their tenure, so that is fine; I get it. They have got advice to protect their economic interests; I get that too. I do not blame them in some respects. But to enable that behaviour, and as somebody who represents the Libertarian Party, you are now going to be responsible through this amendment for actually placing one of the greatest, if not the biggest, retrospective curtailments on the legal justice rights of hundreds and hundreds – the Attorney yesterday afternoon spelt out for us I think it was 1000-plus and then 140 or so in her opening remarks for the first reading. You will be directly responsible for that. While you think you may be doing a good deed, this is not a good deed. Whenever you enable the wrong thing to happen, that responsibility rests with you squarely. I hope you realise that.

David LIMBRICK: I do not intend to respond to that.

Evan MULHOLLAND: Wouldn't you agree that there needs to be a safeguard against false imprisonment, deprivation of liberty and egregious breaches of privacy by the state?

David LIMBRICK: Yes. Although it is outside the scope of this bill, I am well on the record saying that there needs to be better police oversight in this state. In fact I have seen out-of-control policing during the pandemic. In your second-reading speech you had a go at me and also said that I did some good things. I did not see many members of the opposition going out there and bearing witness to it and I did not see many government members bearing witness to it, but I went out there and bore witness to it, and I saw the excesses of the state with my own eyes. Yes, there do need to be better oversight mechanisms in this state.

Evan MULHOLLAND: How do you balance the public interest in this against your cap on compensation?

David LIMBRICK: Not all cases are about money, and this amendment is silent about non-financial remedies. If someone feels it is in the public interest to bring a case to court, then that is exactly what this amendment is enabling.

Evan MULHOLLAND: Yes, but would you not agree that taxpayers have an interest in prudent management of our law enforcement services, thereby negating the need for any action at all?

David LIMBRICK: I agree; I wish that none of this happened myself. It was well before my time in Parliament indeed. I think the government has been very clear on their responsibilities here and what has happened and acknowledging it. I totally agree that none of this should have happened, but it has.

Evan MULHOLLAND: Would you not agree that the current situation, where compensation is not capped, may actually put a check on the egregious breaches of privacy, false imprisonment and deprivation of liberty that the Lawyer X scandal has resulted in?

David LIMBRICK: It is outside the scope of this amendment and bill, but what I would like to see is the people responsible for this charged, and I hope that the opposition agrees with me on this.

Evan MULHOLLAND: Mr Limbrick, as I have already explained, they actually will not be, because the government can just flag a million-dollar offer of compromise to limit its responsibility or damages in individual cases. If they do not accept that and go to court, they can be put to costs, and the claims would be over the million-dollar mark and ruinous for any individual that even tries to go to court. Mr Limbrick, by limiting damages, does your amendment indirectly downplay the severity of the miscarriages of justice caused by the actions of Nicola Gobbo and Victoria Police?

David LIMBRICK: The simple answer is no.

Evan MULHOLLAND: I think it does, because it places a cap on that, and I think every sensible person watching this would know that. Mr Limbrick, clause 5(2A)(b) – for those playing at home – ensures that court powers over costs remain unaffected. Do you expect this to lead to a more protracted litigation as parties may still be incentivised to push cases to court, knowing their legal costs may be covered even if their damages are capped?

David LIMBRICK: The intent of this is to remain silent on the issue of costs and leave that to the courts.

Evan MULHOLLAND: Mr Limbrick, how do you justify retaining the potential for significant legal costs, under clause 5(2A)(b), while limiting compensation for actual victims of Victoria Police's misconduct?

David LIMBRICK: The intent of this is to enable the ability for claims to go to court. By remaining silent on costs, it leaves it to the court to decide how it proceeds with that.

Evan MULHOLLAND: Mr Limbrick, your amendments propose reducing the long title of the bill to reflect your damages cap rather than extinguishing causes of action. Doesn't this downplay the seriousness of the state's misconduct by framing it as a financial issue rather than a question of justice?

David LIMBRICK: The answer is no.

Evan MULHOLLAND: Mr Limbrick, if a damages cap is set at $1 million, how do you expect this amount will be split among multiple claims, particularly if more victims come forward over time?

David LIMBRICK: This is a limit per person, and that is the intent of the amendment.

Evan MULHOLLAND: Back to the question before, in terms of how you justify retaining the potential for significant legal costs under clause 5(2A) while limiting compensation for actual victims of Victoria Police misconduct: I understand you have said that it is your intent for it to remain silent on costs, but don't you accept that this severely limits the compensation for victims of Victoria Police misconduct but no-one else?

David LIMBRICK: This is not only relating to Victoria Police, it is my understanding, so no.

Evan MULHOLLAND: Just back to a point I went to before on the offer of compromise: an offer of compromise can be made, and then it goes to court. Civil claims usually lead to the successful party having to pay the others' costs, which often come into the hundreds of thousands and perhaps the millions. Do you accept this may lead to many victims simply not bringing their cases to court due to the $1 million cap, which is an inevitable reality? Do you accept that due to the $1 million cap, this will inevitably lead to cases not being brought to court?

David LIMBRICK: Firstly, that is a hypothetical, but secondly, costs and awarding of costs are at the full discretion of the court.

Trung LUU: In relation to the State Civil Liability (Police Informants) Bill, as you mentioned, can this relate to other matters besides the Gobbo case in relation to police informants?

David LIMBRICK: The question that you are referring to does not actually relate to the amendment but relates to the bill itself, and it is quite clear in the bill itself.

Trung LUU: In relation to your amendment, it is limited to $1 million in the case of compensation for false imprisonment and other means, and this is limited to the maximum. In relation to the bill, if the victim happened to suffer an incident and during incarceration this was a fatal incident and they were deceased, would that $1 million cap still apply to that victim?

David LIMBRICK: We could go through a range of hypotheticals all day. That is a hypothetical question that I cannot really answer.

Trung LUU: But you said this does relate to police informants, so there can be a situation involving other police informants where the victim could sustain incidents with a fatal result; would the cap still apply to $1 million compensation only?

David LIMBRICK: As to which cases this would apply is outside the scope of my amendment and is actually part of the bill, so I would suggest that maybe you direct that question to the Attorney-General at your leisure.

Evan MULHOLLAND: Mr Limbrick, I thank you for putting up with our questions today. Why should a corporation face a greater liability ceiling than the state, despite the fact the state is the most powerful entity in Victoria?

David LIMBRICK: I am not certain how that is relevant to the amendment that I am proposing.

Council divided on amendment:

Ayes (21): Ryan Batchelor, John Berger, Lizzie Blandthorn, Jeff Bourman, Moira Deeming, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, David Limbrick, Tom McIntosh, Rachel Payne, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Rikkie-Lee Tyrrell, Sheena Watt

Noes (18): Melina Bath, Gaelle Broad, Katherine Copsey, Georgie Crozier, David Davis, Renee Heath, Ann-Marie Hermans, Wendy Lovell, Trung Luu, Sarah Mansfield, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Richard Welch

Amendment agreed to.

Evan MULHOLLAND: Ms Symes, now including Mr Limbrick's amendment, which is now your bill –

Jaclyn SYMES: It has always been my bill.

Evan MULHOLLAND: Yes. The Frankenstein's monster of the Labor Party and the Libertarian Party's bill has replaced the extinguishment of causes of action with a damages cap. How does the government justify putting a price on justice for those affected by such reprehensible conduct, capping damages at $1 million regardless of the severity of the harm?

Jaclyn SYMES: Mr Mulholland, I maintain my position that the government's version was a better overall option for the taxpayer. As I indicated in my summing-up, we have come to this decision after a lot of thought, and I am comfortable in the decision that I take responsibility for for the benefit of Victorians.

Jeff BOURMAN: I have a quick question, Attorney-General. Listening to one of the questions earlier from one of the Liberals, you would be led to believe that the $1 million cap was for all claims. That was what I heard. Can you confirm to me it is $1 million per claim, not across all claims?

Jaclyn SYMES: Per claimant.

Jeff BOURMAN: I was just making sure. Given the invective I was hearing from the opposition, I reckon it would be really cool if they got their facts right.

The DEPUTY PRESIDENT: I will rule that out.

Evan MULHOLLAND: Ms Symes, for introducing a $1 million cap on damages for all causes of action, as far as you are aware has the government conducted any analysis to show that this is a fair compensation for those who have had their rights trampled by the state? I note that Ms Symes preferred an arbitrary half a million dollars. So have you done any analysis to show that this is a fair compensation for those who have had their rights so egregiously trampled on by the state of Victoria?

Jaclyn SYMES: Mr Mulholland, you are asking me for an opinion in relation to what I consider fair compensation or not. That is not what this bill is about. This bill is about ensuring that finality for this saga – that it can come to an end for the benefit of taxpayers in the order of reducing the amount of funds that may be payable for claims. When it comes to my comments in relation to a preference of $500,000, what I base that on is that I am concerned that there may be an incentive when you put a $1 million cap in for that to be presented with a view that it is the going rate. For people whose claims may be much less than that, they might be inclined to take a proceeding to court in the hope that they get what they may think is the going rate. I would have preferred a $500,000 cap to disincentivise claims, particularly unmeritorious claims, but I accept that the $1 million upper limit goes a long way to achieving our cost reduction goals.

Evan MULHOLLAND: Cost reduction goals – maybe scrap the Suburban Rail Loop and you can meet your cost reduction goals. I wonder why there was not this kind of bill for liability for the Commonwealth Games cancellation, but anyway. Ms Shing might have considered it; she had the portfolio. It probably was considered, actually. You are probably revealing cabinet discussions there, Attorney.

The bill ensures that non-economic damages remain limited by the Wrongs Act 1958. Do you have any evidence to support this approach?

Jaclyn SYMES: Mr Mulholland, I do not need evidence. It is for an abundance of caution, so that it is not bumping up the Wrongs Act stuff.

Evan MULHOLLAND: The bill now suggests that the maximum payout for any victim will be capped at $1 million. Can you explain why victims of the Lawyer X scandal should be subjected to this artificial limit when their lives were so irreparably damaged by state-sanctioned misconduct?

Jaclyn SYMES: Mr Mulholland, I have stated the purpose of this bill. It is to bring finality to the Lawyer X scandal; that was my intention with the bill as proposed. I would point out that the now amended bill provides a $1 million cap for compensation for court orders only.

Evan MULHOLLAND: Ms Symes, the bill now, including its name, shifts the focus from accountability to budget management. How can this shift be justified when the integrity of the justice system and compensation for egregious breaches of legal rights are at stake?

Jaclyn SYMES: Mr Mulholland, I went over this in great detail in my summing-up.

Evan MULHOLLAND: By now limiting legal damages, is the government indirectly downplaying the severity of miscarriages of justice caused by the actions of Nicola Gobbo and Victoria Police?

Jaclyn SYMES: Mr Mulholland, again, it has become very clear that no-one other than me and perhaps a few others has read the five volumes of the final report that was delivered by the royal commission just about a week before I became Attorney-General. It was presented to me with the full responsibility of implementing the recommendations that were directed to government. Following my appointment, I have also appointed an implementation monitor to ensure that the recommendations are implemented. I appointed the special investigator, on the recommendation of the royal commission, to see if there was any further work that needed to be done in relation to matters that the royal commission was not able to conclude. There is nothing in this bill that stops any criminal appeals. As you would be aware, there have been some concluded, there are some on foot and there may be some into the future. These matters have been well ventilated. There has been accountability, responsibility and indeed government action.

Evan MULHOLLAND: In preparing for this bill did the government, prior to its introduction and prior to Mr Limbrick's amendment itself, consider caps?

Jaclyn SYMES: I did.

Evan MULHOLLAND: What were they? And how did they land on extinguishment? How did you land on that?

Jaclyn SYMES: Again, Mr Mulholland, I was quite open about the way I came about formulating this bill, and I put on the public record that I considered a range of options before being convinced that full extinguishment was the appropriate course of action.

Evan MULHOLLAND: How do you justify retaining the potential for significant legal costs while limiting compensation for actual victims of Victoria Police's misconduct?

Jaclyn SYMES: In the bill as I presented it to the Parliament, full extinguishment would have been the inability to bring civil action, so it would have reduced those costs. As has become apparent, the will of the house was not to support the bill as I presented it. Mr Limbrick proposed an amendment. As I have indicated, in the government's willingness to support that amendment it is not our preference, but we think that it will go some way to achieving the purposes of the bill that I brought to this house.

Evan MULHOLLAND: Ms Symes, civil claims allow an offer of compromise to be made, but if a plaintiff fails to accept it before trial, the court will give the plaintiff less than what was in the offer

and the plaintiff will be ordered to pay costs likely well over the $1 million cap. Do you accept that this will lead to cases not proceeding to court?

Jaclyn SYMES: Mr Mulholland, I will not be drawn in reflecting on hypothetical individual cases and what different pathways different cases may take, but I do want to be clear that I would expect, in the normal way, many cases will settle before court.

Georgie Crozier: They don't want this to go to court.

Evan MULHOLLAND: No. Given the concerns raised by the Victorian Bar and the Law Institute of Victoria (LIV) that this bill undermines the rule of law and sets disturbing precedents, how can you justify the caps and also the bill in general?

Jaclyn SYMES: Mr Mulholland, it is not a matter for me to justify the caps. I have said I accept an amended bill. Of course I have consulted with many lawyers. We have spoken to the bar, we have spoken to LIV. I justify my decision because, as the Attorney-General, I took this to cabinet and convinced my colleagues that it was the best thing to do for Victorian taxpayers, and I stand by my position.

Evan MULHOLLAND: Ms Symes, when did you decide to go with Mr Limbrick's option of caps rather than yours of extinguishment?

Jaclyn SYMES: Mr Mulholland, it was not a choice – being able to choose between one or the other. It became clear that the bill would fail if it was not amended. And as explained about why the government has accepted Mr Limbrick's, it is not an acceptance that his proposal or the model that is a result of his amendment is preferable to the one that I brought to the house. I maintain it is not, but it is better than no bill. It is better than no protection for Victorian taxpayers, which is the position of the Liberal Party.

Evan MULHOLLAND: How can you justify the retrospective legislation to limit the state's ability, a limit that applies to no-one else in society?

Jaclyn SYMES: Yes, I can confirm, Mr Mulholland, that it is a very narrow bill applying to a specific cohort of people.

Evan MULHOLLAND: Does the government plan to use these limits as a negotiating tactic with Ms Gobbo?

Jaclyn SYMES: I will not be reflecting on individual cases, particularly cases that are before the court.

Evan MULHOLLAND: Did you receive any formal advice on your $500,000 number that you came to?

Jaclyn SYMES: Not formal, no.

Council divided on amended clause:

Ayes (21): Ryan Batchelor, John Berger, Lizzie Blandthorn, Jeff Bourman, Moira Deeming, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, David Limbrick, Tom McIntosh, Rachel Payne, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Rikkie-Lee Tyrrell, Sheena Watt

Noes (18): Melina Bath, Gaelle Broad, Katherine Copsey, Georgie Crozier, David Davis, Renee Heath, Ann-Marie Hermans, Wendy Lovell, Trung Luu, Sarah Mansfield, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Richard Welch

Amended clause agreed to.

Clause 2 (15:32)

David LIMBRICK: I move:

2. Clause 2, omit this clause and insert –

"**2 Object**

The object of this Act is to limit the extent to which the State is required to devote further financial resources to responding to the matters that were the subject of the Royal Commission into the Management of Police Informants.".

Amendment agreed to; amended clause agreed to; clauses 3 and 4 agreed to.

Clause 5 (15:35)

David DAVIS: Attorney, it will not surprise you that on this clause I would ask about the section 85 aspects of this, and the Scrutiny of Acts and Regulations Committee has raised issues. I understand you may have some response to SARC's comments, and I would certainly appreciate that, because it does worry me on two levels. First of all, a section 85 override is never a good thing and needs to be justified. Secondly, it is not done overtly or frankly, but actually I think the SARC material is right and it does have a de facto section 85 effect. In that sense I think particularly you as Attorney-General and the first law officer of the land ought to be aware of the need to diminish the number of section 85 statements and certainly ought to in a, how can I say, model litigant mode make sure that where there is a section 85 override it is frank and clear.

Jaclyn SYMES: Thank you, Mr Davis, for the opportunity to put on the record that I disagree with you on this one. It is my view that the bill would not alter the jurisdiction, authorities or powers of the Supreme Court of Victoria and therefore does not enliven section 85 of the constitution. Instead the bill comprises an alteration to the substantive law by – it did extinguish, but I would update that – inserting caps in certain causes of action such as to have that effect, and in those circumstances I do not consider that a statement under section 85 of the constitution is necessary in relation to the bill. As I said, I think I am right and you are not, but as I am always of the view that that is not a matter for me to be determinative of, if it gets tested, it will not be by me.

David DAVIS: Attorney, I thank you for your comments, but it is not just me who has this concern. It is SARC as a whole, and I just think it may be worth reading this into the record here:

> Clause **[5]** may raise an issue as to the jurisdiction of the Supreme Court.

This is what SARC said in *Alert Digest* No. 11.

Jaclyn SYMES: It says 'may'; you said it does.

David DAVIS: Well, I am reading what SARC says, all right. I will keep going. I am being direct and open on this:

> Clause **[5]** may raise an issue as to the jurisdiction of the Supreme Court. While there is case law suggesting the removal of a cause of action does not interfere with the Court's jurisdiction (at least with respect to statutory causes of action), this is not without doubt in relation to common law causes of action (e.g., relevantly, false imprisonment) in proceedings *already on foot* in the Supreme Court in which the "cause of action" as defined in the Bill is the *only* cause of action brought by the person, and therefore clause **[5]** may functionally require the Court to dismiss (or indefinitely stay) the proceeding in those circumstances.

They cite a series of analogies:

> … *South Australia v Totani* (2010) 242 CLR 1; *Attorney-General (NT) v Emmerson* (2014) 253 CLR 393, 434 [68]–[69].

They go on to say:

> The Second Reading Speech did not address the possible alteration of the jurisdiction of the Supreme Court. **The Committee will write to the Attorney-General on whether a statement addressing the alteration of the jurisdiction of the Supreme Court should have been made.**

I think there is sufficient doubt on this, Attorney-General, that you cannot just blithely dismiss this. It may well see those with causes of action impacted, effectively limiting their access to the Supreme Court in reality.

Jaclyn SYMES: It is a statement that Mr Davis has made. But, Mr Davis, we are providing a law. With respect to SARC's work – and I thank them for their view and the acknowledgement that these issues can be complex, and I do preface the emphasis on the comments that were made – that is often the case when you are legislating to create laws that the courts then go on to interpret. That is exactly what we are doing here. We are providing a law, and there is no impediment on the ability for the court to interpret that. We are just providing a cap for them to interpret the law within and therefore apply the law within. It is not impeding on their jurisdiction. We are just, as we do in many cases, making a law.

David DAVIS: I wonder whether you might explain why you have not – or maybe you have – responded to SARC formally in a timely way, given this bill was a bill that began in haste but has actually lingered for a lot longer than originally planned.

Jaclyn SYMES: Well, as you may appreciate, Mr Davis, the content of the bill has been in a state of discussion between many members of this place and indeed those outside of this place, and when I had a reasonable view or a reasonable prediction of how today would unfold, I responded as best I could to SARC, given that I thought that this bill was likely to be amended. So that is why the SARC response was today.

David DAVIS: I thank the minister for that response. I wonder whether she would make that response available to the house. Members may wish to see a copy. Not having had the benefit of seeing your response –

Jaclyn SYMES: I just read out my answer.

David DAVIS: Well, there you are. I thank the Attorney-General for it, and I am going to read it out again, because people should understand that the response to SARC today is simply three short paragraphs:

> The Committee has queried whether a statement addressing the alteration of the jurisdiction of the Supreme Court should have been made in the Second Reading Speech for the Bill.
>
> In my view, the Bill would not alter the jurisdiction, authorities or powers of the Supreme Court of Victoria and therefore, does not enliven section 85 of the Constitution. Instead, the Bill comprises an alteration of the substantive law –

which is just what you have said –

> by extinguishing certain causes of action such that they are no longer available.
>
> In these circumstances, I do not consider that a statement under section 85 of the Constitution is necessary in relation to the Bill.

Attorney-General, I just think that that is not quite satisfying for the chamber and for the committee. Not only do I think that it would have been better if it had been circulated earlier, but leaving that matter aside, I think the SARC examination there really has not been refuted and has not really been properly disposed of in any meaningful way. It is just simply an assertion by you that they are wrong. The chamber can make up its own mind on one level, but it may well become a matter of jurisdiction. In those circumstances I am always more prepared to be cautious rather than bludgeon ahead without actually taking into account some of the warnings that may have come, in this case from SARC. So I am going to indicate that I think there should have been a section 85 statement. I think the SARC commentary is more persuasive, if I can be honest, than yours, and we may have to agree to differ on that. But in that circumstance I do not believe we should support this clause.

Jaclyn SYMES: Your comments stand in respect to your views, Mr Davis, and that is fine. I do disagree, but I think it is probably incumbent upon me to explain that I do not just make a statement

because I think it is right. I have obtained advice from the department and the Victorian Government Solicitor's Office (VGSO) to inform my statement and my SARC response.

David DAVIS: The minister says she has received advice. I wonder whether she would make that advice available to the committee. That would be helpful.

Jaclyn SYMES: Mr Davis, I have reflected that advice in my answer to SARC, and the SARC answer stands to reflect the advice from my department, which is informed from the VGSO.

David DAVIS: It seems to me that we are again left in a position where we have got a three-paragraph bland assertion from the minister and then an assertion that she has had departmental advice that she appears unwilling to share. Again, in those circumstances, we will have to agree to disagree. I find the SARC material more persuasive than the minister's position.

Evan MULHOLLAND: Are there any other legal precedents in Victoria, Australia, where such a cap has been applied to cases involving police misconduct?

Jaclyn SYMES: Mr Mulholland, we are not aware of any. In formulating the policy response to this issue and indeed the thinking around the State Civil Liability (Police Informants) Bill 2024, I went to great lengths to ask for examples of similar legislation or issues that would inform the landing that I could then take to cabinet. As I went through in my summing-up, there are liability limitations in Victoria in the Wrongs Act 1958, the Accident Compensation Act 1985 and the Petroleum Act 1998. But your specific question was in relation to whether any of those or any other matter has affected Victoria Police misconduct cases, and we are not aware of any.

Evan MULHOLLAND: Is the government concerned about potential legal challenges to the $1 million cap, especially if claimants argue that it violates their rights to fair compensation?

Jaclyn SYMES: I am aware that this bill could be challenged, yes. Like a lot of the legislation that the Attorney brings to the Parliament, you are never beyond reproach of a constitutional challenge on many of those cases. Similar to industrial relations laws that we seek to bring to the chamber as well, we often reflect on what might happen. So it is certainly open, like it is in many pieces of legislation, and I will leave my comments there. I do not have any predictions for you, Mr Mulholland.

Evan MULHOLLAND: And on that note, has the government received advice from the solicitor-general on the potential for legal challenges into the validity of this bill?

Jaclyn SYMES: Mr Mulholland, I have had extensive conversations with the solicitor-general in relation to this matter.

Evan MULHOLLAND: For the benefit of the chamber, would you be able to table any advice?

Jaclyn SYMES: Mr Mulholland, legal privilege would apply to any formal advice, but as I have said, I have had many conversations with lawyers, including the solicitor-general, on this matter.

Evan MULHOLLAND: Has the government received constitutional advice on this bill – on the constitutionality of this bill?

Jaclyn SYMES: Mr Mulholland, I have answered your question.

Evan MULHOLLAND: I will be a bit more specific. Has the government received any advice on the constitutionality of the civil liability cap?

Jaclyn SYMES: Mr Mulholland, I have received a range of advice for a range of models. I was very interested in understanding all of the options in relation to how I could approach this matter. I am not going to go into detail on any of that advice or I will risk waiving privilege.

Evan MULHOLLAND: How does the government intend to address claims where actual damages may exceed the $1 million cap, given legal costs alone may exceed this?

Jaclyn SYMES: Mr Mulholland, I am not going to go into individual cases or hypotheticals.

Evan MULHOLLAND: Which stakeholders have the Attorney-General consulted specifically in relation to the civil liability cap?

Jaclyn SYMES: Mr Mulholland, as you will appreciate, the legislation that the government brought to the Parliament was not a cap. We brought in a bill that did something different. As I have explained, I have had numerous conversations with people about various models, and with different parties. I have had conversations about the merits of full extinguishment versus caps. There have been various stakeholders, both in writing and in conversations, that have discussed a range of these models. The usual suspects – the bar have been engaged and LIV have been engaged, but not specifically detailed about a cap because it only came into existence today.

Evan MULHOLLAND: Well, you did vote for the amendment, and it is now in the government bill. As you have stated in a roundabout way, do you accept that there has not been consultation done on Mr Limbrick's amendment of a cap?

Jaclyn SYMES: No, I do not agree with that.

Evan MULHOLLAND: Does the government accept that some claimants may be left worse off from taking action if their legal costs exceed $1 million?

Jaclyn SYMES: Mr Mulholland, I have stated that it is not my intention to go through hypothetical individual cases and give you an assessment on them.

David DAVIS: I just have one follow-up, with the indulgence of the chamber. I thought I had finished this, but I have read further into the Attorney's letter. She says at a later point:

> In my view, this purpose would not be achieved if clause 5 were to exclude proceedings that have already commenced in the courts, given this would result in the continuation of these proceedings and further significant financial expenditure by the State.

It seems to me that the Attorney is quite clearly, in her own letter, seeking to extinguish proceedings. That seems to me to be the essence of limiting the jurisdiction of this case at the Supreme Court.

Jaclyn SYMES: That is no longer what the bill does.

David DAVIS: Well, it caps it, which limits it.

Jaclyn SYMES: It does not extinguish it. It is the original bill. I had to respond to the original bill.

David DAVIS: I understand it is the original bill, and this is another problem with the late arrival of these things. It does cap it, as I understand it, in the new arrangement and this would still apply as I see it.

A member interjected.

David DAVIS: Yes.

Jaclyn SYMES: No, what you said is wrong – it did not make sense.

David DAVIS: We will have to agree to differ.

Nick McGOWAN: Forgive me, Attorney-General. I may have missed the nuance before. I heard today you refer to your preference for the $500,000 cap. How did you arrive at that figure? Was the advice that you received that that was the preferable figure for some reason?

Jaclyn SYMES: I explained my view about $500,000 being an appropriate cap, Mr McGowan, but we are currently now in clause 5 of the bill, which replaces clause 5 that I brought into the Parliament in a substantive way because my proposal was a full extinguishment and now we are looking at a cap. I gave my views in relation to where I would have liked to have seen the cap set, and

that is not an amendment that I have pursued. It was merely a comment in relation to my approach to accepting Mr Limbrick's amendment.

Nick McGOWAN: I suppose I am just trying to understand why you would have liked $500,000. Is there a basis for that in policy or was it just a general position in terms of, if you had to have that acceptance, then that was somewhere you found more preferable than your own position initially?

Jaclyn SYMES: Mr McGowan, for your benefit I have gone through this, but I will repeat it, because I did flag that I had some concerns around $1 million being high. It perhaps would build expectations and encourage higher claims, particularly those that may be unmeritorious. It was my view that $500,000 would be more effective in discouraging claims that lack merit or are poorly framed. I was also concerned that $1 million might create an expectation that that is the going rate for matters that would not ordinarily have sought or believed to have been of value of up to $1 million. All of that, however, is moot, because I have chosen not to move an amendment to Mr Limbrick's amendment and have accepted his proposal of a $1 million cap.

Nick McGOWAN: I am not quite sure whether I am any clearer as to your rationale. I heard the earlier answers in terms of the preference for the $500,000, but I will move on, nonetheless. Now that it is $1 million, what sort of financial implications does that have for the state? Presumably there have been some figures. We were unable to be enlightened by Mr Limbrick, so presumably you may have perhaps, I hope, some figures that you can share with this place in terms of what we the people of Victoria might expect now to be a financial consequence of this amendment and, more broadly, the bill when it becomes an act.

Jaclyn SYMES: It is our view that the bill, as amended, will reduce the financial impost on the state, which is the intention of the original bill. We believe that the original bill would have had a greater effect in reducing the drain on the taxpayers' finances. We are concerned about legal costs, court resources, department resources, and we would have liked to have had the ability to limit those. This will go some way perhaps to being a disincentive for some claims. There is nothing to stop anyone bringing a claim forward under the amended bill.

The ability for the government to calculate how much this would cost if we did nothing, if we fully extinguished or with the cap is really difficult to calculate. A full extinguishment is obvious, but to date we have spent hundreds of millions of dollars on this saga. That is the motivation for this bill to bring that to an end. As the royal commission identified, there are 120-odd directly impacted people from the misuse of Ms Gobbo as a police informant and 1011 people who are indirectly impacted. There could be a range of civil actions of various people that are caught in that cohort as identified by the royal commission who may seek to make a claim against the state, and in that sense we do not know who would and we do not know the merit of their claims, and I sought to ensure that there was no incentive for people to roll the dice to take action against the state.

That is what the extinguishment would have had the potential to do and therefore protect the finances. We do not have a clear answer in relation to the question that you have asked. Obviously there are some matters on foot. I cannot disclose the details of those matters, but obviously that is a basis for what we think certain individuals may seek to claim. But I repeat: the bill's intention was not about penalising individuals, it had the broader purpose of reducing the financial burden on the state and bringing this saga to an end.

Nick McGOWAN: Excluding the matters on foot, have you asked for and received advice in respect to the financial exposure the government would expect to have should this bill not have passed, or be about to pass – the actual magnitude of that?

Jaclyn SYMES: We have certainly sought to obtain that information. It is not clear, particularly as no civil cases have come to a conclusion in the courts, so there could be people waiting to see what happens. As I said, we know that there are 124, I think, directly impacted people who may have claims and over 1000 who have been incorrectly impacted who may have claims. In that instance it is difficult

to put a number on this. I think the cap will go some way to reducing the financial burden. Had we not done anything, I think that the costs could be substantial, but they were unable to give me a figure that I can provide to you.

Nick McGOWAN: Thank you, Attorney-General, for the answer. I suppose today has perhaps given us some clarity in that respect, though, because as you say, in very rough maths and basic calculus, if each of the 1000 claimants did lodge a claim and were successful in obtaining the uppermost limit, that is a billion dollars just there – with change of course, because it would be upward of a billion dollars. But that would represent the maximum exposure this government might now have, potentially.

Jaclyn SYMES: That is an unrealistic worst-case scenario. I think I went to this in my questioning of Mr Limbrick's amendment, but for those who would not have a cause of action, they would get advice that it was less than $1 million, say $100,000. But my concern about a cap is that they might be encouraged to see if they can get more than what they would be advised is probably the ordinary amount for the harm that they were seeking compensation for. But we will have to wait and see.

Evan MULHOLLAND: I am just following up from Mr McGowan's question. You said that you were not quite sure what the liability was. But I recall sitting in, as I usually do for most bills, on the government's bill briefing, where we were advised that there was an estimated $45 million liability for the combination of cases. Who is right? Where did that figure come from? How did that eventuate? Or are you now unsure of what the total figure is?

Jaclyn SYMES: I do not think you will find anyone that can be sure about the total figure, Mr Mulholland. Looking at legal costs, trial costs and the 'known knowns', a minimum of $45 million is the advice that I have been provided, but that is only based on the information that we have at hand. That has not factored in the possibilities of what we do not know.

Evan MULHOLLAND: Through this bill and clause 5, is the government admitting that the extent of the damages caused by egregious behaviour of the state to the victims is actually greater than, in your case, $500,000 and, in Mr Limbrick's case, $1 million?

Jaclyn SYMES: Mr Mulholland, you are asking me for an opinion.

Evan MULHOLLAND: Through the insertion of the cap, which is now government endorsed, does the government accept that the extent of the damages caused to victims is greater than the $1 million cap?

Jaclyn SYMES: Mr Mulholland, you are attempting to draw me on individual matters. It will depend on each case. As I have clearly set out, the acceptance of Mr Limbrick's amendment brings in a cap that applies to the courts.

Evan MULHOLLAND: You spoke before about the cost to government and, I notice, the ability to fund government services, and the framing of this now government-endorsed bill seems to have moved from justice to cost management. Is it now, as part of this bill, government policy that through the prism of costs and I guess the economic dividends to the state the damages to victims are now considered by the government as greater than $1 million?

Jaclyn SYMES: Mr Mulholland, I will respond by drawing you back to the objects of this bill. It is the government's intention to limit the extent to which the state is required to devote further human and financial resources to responding to the matters that were the subject of the Royal Commission into the Management of Police Informants and to promote finality in relation to those matters. Our object and aim is that. It always has been and has not changed.

Evan MULHOLLAND: Does the Attorney-General acknowledge that imposing a cap on compensation could be perceived as undermining the justice system's ability to fully compensate victims for the wrongs committed against them by the state?

Jaclyn SYMES: Mr Mulholland, my intention was to bring finality to this matter and to limit the extent to which the state is required to devote financial and human resources. Under the amendment that object is obviously limited in some way, but that remains my motivation.

Evan MULHOLLAND: Has the government requested advice on the legality of limiting the costs payable to an individual that has a cost order made in their favour?

Jaclyn SYMES: No. You might want to give me some context for that question, but the answer is no.

Evan MULHOLLAND: I am happy to repeat the question. Has the government requested advice on the legality of limiting the costs payable to an individual that has a cost order made in their favour?

Jaclyn SYMES: The answer is no. Given there are matters on foot, we did not want to act in a manner that was unfair.

Evan MULHOLLAND: Attorney, how much taxpayer money does the government anticipate saving through the implementation of these cost caps?

Jaclyn SYMES: As I think I have answered this question, Mr Mulholland, it is difficult to say, but we are confident that it will result in a reduction in the financial burden to the state.

Evan MULHOLLAND: Did the department classify this bill as low risk in legal terms?

Jaclyn SYMES: I did not ask that specific question, Mr Mulholland.

David LIMBRICK: I move:

3. Clause 5, line 10, omit "**extinguished**" and insert "**– limit on amount of damages or other monetary compensation that may be awarded**".
4. Clause 5, lines 11 to 14, omit all words and expressions on these lines and insert –

"(1) The total maximum cumulative amount of damages or other monetary compensation that may be awarded to a person in respect of any and all causes of action against the State relating to, arising from or in connection with the provision of information or other assistance to Victoria Police by a specified human source must not exceed $1 000 000.".

5. Clause 5, page 5, after line 11 insert –

"(2A) Nothing in this section –

(a) increases the maximum amount of damages available for non-economic loss that is specified in section 28G of the **Wrongs Act 1958**; or

(b) affects any power of a court to order costs in a proceeding; or

(c) affects any power of a court to grant an indemnity certificate under the **Appeal Costs Act 1998**.".

This amendment has already been discussed at length.

Council divided on amendments:

Ayes (21): Ryan Batchelor, John Berger, Lizzie Blandthorn, Jeff Bourman, Moira Deeming, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, David Limbrick, Tom McIntosh, Rachel Payne, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Rikkie-Lee Tyrrell, Sheena Watt

Noes (18): Melina Bath, Gaelle Broad, Katherine Copsey, Georgie Crozier, David Davis, Renee Heath, Ann-Marie Hermans, Wendy Lovell, Trung Luu, Sarah Mansfield, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Richard Welch

Amendments agreed to.

Council divided on amended clause:

Ayes (21): Ryan Batchelor, John Berger, Lizzie Blandthorn, Jeff Bourman, Moira Deeming, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, David Limbrick, Tom McIntosh, Rachel Payne, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Rikkie-Lee Tyrrell, Sheena Watt

Noes (18): Melina Bath, Gaelle Broad, Katherine Copsey, Georgie Crozier, David Davis, Renee Heath, Ann-Marie Hermans, Wendy Lovell, Trung Luu, Sarah Mansfield, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Richard Welch

Amended clause agreed to.

Clause 6 (16:21)

The DEPUTY PRESIDENT: Mr Limbrick is seeking to omit this clause, so if you are supporting Mr Limbrick's proposal you would vote no to this clause.

David LIMBRICK: For the sake of clarity, this clause in the original bill installed a human rights charter override, so I will be opposing this clause 6.

Jaclyn SYMES: I have some comments in relation to this. The charter override was always only an avoidance-of-doubt provision acknowledging interference with rights. With the new proposal we are comfortable that the override can now be removed from the bill in its original form. It is my view that any limitation on rights from the amended bill can be justified and that the bill is compatible with the rights set out in the charter. We are okay with this amendment.

Clause negatived.

Clauses 7 and 8 agreed to.

Long title (16:23)

David LIMBRICK: I move:

> 7. In the Long title, omit "extinguishing" and insert "providing for a maximum cumulative amount of damages or other monetary compensation which may be awarded in".

This amendment merely changes the description of the new operation of the bill. That is all it does.

Amendment agreed to; amended long title agreed to.

Reported to house with amendments, including amended long title.

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (16:24): I move:

> That the report be now adopted.

Motion agreed to.

Report adopted.

Third reading

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (16:24): I move:

> That the bill be now read a third time.

Council divided on motion:

Ayes (21): Ryan Batchelor, John Berger, Lizzie Blandthorn, Jeff Bourman, Moira Deeming, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, David Limbrick, Tom McIntosh, Rachel Payne, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Rikkie-Lee Tyrrell, Sheena Watt

Noes (18): Melina Bath, Gaelle Broad, Katherine Copsey, Georgie Crozier, David Davis, Renee Heath, Ann-Marie Hermans, Wendy Lovell, Trung Luu, Sarah Mansfield, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Richard Welch

Motion agreed to.

Read third time.

The PRESIDENT: Pursuant to standing order 14.28, the bill will be returned to the Assembly with a message informing them that the Council have agreed to the bill with amendments.

Constitution Amendment (SEC) Bill 2023

Second reading

Debate resumed on motion of Harriet Shing:

That the bill be now read a second time.

Jeff BOURMAN (Eastern Victoria) (16:28): I am going to make a very short contribution. I will be supporting the Constitution Amendment (SEC) Bill 2023 for a couple of reasons. One, it provides for jobs in the Latrobe Valley and Gippsland, which desperately need them.

David Davis interjected.

Jeff BOURMAN: You have had your chance, Mr Davis.

Members interjecting.

Enver Erdogan: On a point of order, President, there have been a number of interjections. Could Mr Bourman be heard in silence, please?

The PRESIDENT: I will uphold the point of order. Mr Bourman, you can start from the start if you like. You have got a bit of time.

Jeff BOURMAN: I would not worry too much, President. One of the things I have always believed in is that essential services such as electricity should be held by the state. Over the time of my life I have watched essential services being sold off. This will make it harder, though not impossible. I thank the Liberals for their salty responses.

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (16:29): Victoria's energy system should never have been sold off in the first place.

Members interjecting.

Ingrid STITT: But the SEC is back, and this bill delivers on our election commitment to enshrine the SEC in the Victorian constitution, protecting it from those opposite and making sure Victorians can rely on publicly owned energy jobs and emissions reductions for decades to come. By safeguarding the SEC in Victoria's constitution we can ensure this important future institution can continue to power our state for the good of all Victorians and for good. Under this bill the government will hold a controlling interest in its portfolio, renewables will replace fossil fuels, and new projects will be owned by every Victorian to benefit every Victorian. The bill provides that the SEC will have

the following objectives: to support Victoria's transition to net zero greenhouse gas emissions; to generate, purchase and sell electricity in Victoria; to own or operate or participate in the operation of renewable energy generation and storage systems and facilities; to develop or support or participate in the development of or invest in renewable energy generation and storage systems and facilities; and to supply energy-related products and services to energy consumers in Victoria.

After some very productive conversations with Legalise Cannabis, the government is moving a house amendment to insert a new section 105(f), which reads:

> to develop and invest in strategic renewable energy generation and systems and facilities and strategic renewable energy storage systems and facilities necessary to maintain Victoria's energy system security and reliability in the long term.

I would ask that we circulate my amendment.

Amendments circulated pursuant to standing orders.

Ingrid STITT: This expands the objectives of the SEC to include the development of and investment in emerging and less commercial technologies which are also needed to support Victoria's energy transition and maintain energy security and reliability in the post-transition period. The SEC has already commenced building its portfolio of renewable generation and storage assets needed to accelerate Victoria's progress towards its renewable energy targets.

The SEC is also ideally placed to play a leading role in investing in and developing emerging renewable technologies and systems and facilities which are not yet demonstrated as commercially viable in the Victorian market but which are critical to an orderly transition and maintaining energy security and reliability. For example, there is a particular need for accelerated development of long-duration energy storage systems, such as pumped hydro, flow batteries and mechanical and thermal storage systems. Long-duration storage systems will be critical to supporting energy reliability as Victoria transitions to renewables, but investment cases for these asset classes and technologies can be challenging under existing market conditions. This does not change the government's commitment to the SEC operating under competitive neutrality for commercial activities but simply makes it clear that the SEC can consider these sorts of strategic investments that the market is unable to deliver. We thank the members of the Legalise Cannabis Party for the constructive conversations that have occurred over the last few months, and this amendment helps reinforce the role of the SEC.

The bill sets out that the state will always fully own and control the SEC or have a controlling interest in the SEC, with the balance of funding invested from like-minded entities, such as industry super funds, who are focused on a fair deal for Victorians, not just profits. This ensures that the state will always have ownership of the SEC's operational and strategic decision-making processes, including control of appointments to the board. This requirement also captures the SEC's successor entities, whichever legal form they might take.

In terms of prohibited activities to protect our SEC from those opposite, this bill prohibits a number of things. It prohibits the SEC from doing anything that would result in the state not having a controlling interest in the SEC. The bill also prohibits the SEC from owning, operating or investing in a fossil fuel facility – the SEC will always be 100 per cent renewable. The bill provides that any transfer of shares that is contrary to the state having a controlling interest in the SEC would be void. Similarly, any commercial arrangement for owning, operating or investing in a fossil fuel facility would be void.

There are a number of amendments, which we will speak in more detail about during the committee of the whole, but in summary, we will not be supporting any of the amendments moved by the opposition. As is their wont, it is a bit of a mixed bag. A lot of them are aimed at giving a future Liberal government the opportunity to sell off the SEC once again, but some go as far as expanding the remit of the SEC to own or operate fossil fuel infrastructure.

The government will be supporting one of the amendments moved by the Greens. Their proposed new clause 4 reinforces the government's clear commitment that any or all profits generated by the SEC will remain with the SEC and be used to invest in further renewable energy and storage projects.

This is such an important bill, protecting the SEC for good so it cannot be sold off again. We cannot change what was done in the past, but we can ensure that it does not happen again in the future. We are getting on and building up the SEC, putting power back in the hands of Victorians and accelerating our transition to cheaper, more reliable renewable energy. We know privatisation has not worked. We are returning power into the hands of Victorians because it is what Victorians deserve and it is what they voted for. I commend the bill to the house.

Council divided on motion:

Ayes (23): Ryan Batchelor, John Berger, Lizzie Blandthorn, Jeff Bourman, Katherine Copsey, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, Sarah Mansfield, Tom McIntosh, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt

Noes (15): Melina Bath, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Renee Heath, Ann-Marie Hermans, David Limbrick, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Richard Welch

Motion agreed to.

Read second time.

Instruction to committee

The PRESIDENT (16:44): Dr Mansfield's amendments on sheet SMA14C, circulated by Dr Mansfield, in my view are not within the scope of the bill. Therefore an instruction motion pursuant to standing order 14.11 is required.

Sarah MANSFIELD (Western Victoria) (16:44): I move:

That it be an instruction to the committee that they have the power to consider amendments to the Constitution Act 1975:

(a) to prohibit the construction of fossil fuel facilities in Victoria; and

(b) to constrain the power of the Parliament to make laws repealing, altering or varying the provisions of the Constitution Act 1975 relating to the matters set out in paragraph (a).

Council divided on motion:

Ayes (37): Ryan Batchelor, Melina Bath, John Berger, Lizzie Blandthorn, Gaelle Broad, Katherine Copsey, Georgie Crozier, David Davis, Moira Deeming, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Renee Heath, Ann-Marie Hermans, Shaun Leane, David Limbrick, Wendy Lovell, Trung Luu, Sarah Mansfield, Bev McArthur, Joe McCracken, Nick McGowan, Tom McIntosh, Evan Mulholland, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt, Richard Welch

Noes (1): Jeff Bourman

Motion agreed to.

Committed.

Committee

Clause 1 (16:51)

David DAVIS: I do not intend to drag this committee stage out, but I have a number of questions. Will the minister confirm that the SEC, in its former days, had more than 20,000 employees?

Ingrid STITT: I know it was a large and proud institution back in the day. We will take that on notice and get you an accurate figure as to how many employees it held at its height.

David DAVIS: I can inform the minister that it did have well over 20,000 employees. I ask the question now: how many employees are there at the SEC today?

Ingrid STITT: As the member would know, we are in the process of establishing the SEC, and I will seek some instructions from the box, but obviously we have publicly stated that we will be creating many, many jobs. There are currently around 50 employees at the SEC, but as you know, Mr Davis, there are plans to expand the SEC's recruitment, and all jobs are advertised in Morwell and in Melbourne.

David DAVIS: I ask the minister: how many are employed in the Latrobe Valley at the moment? My understanding is that the number is one. The minister may well wish to confirm that.

Ingrid STITT: What I can confirm at the moment is that is a matter that is technically outside the scope of the bill, Mr Davis, but the total number of employees is 50. I do not have a breakdown currently between Melbourne and Morwell, but of course those figures will rapidly change once we establish the SEC and the work of the organisation continues to expand. There is one in Morwell at the moment, but of course that will not stay the same for too long. Jobs are advertised in both locations, as I have already indicated.

David DAVIS: With the leave of the committee I may just ask a couple of quick questions before I talk about amendments. The first of those is: will the government mandate or require government agencies to order their power through the SEC?

Ingrid STITT: I do recall you raising this in your second-reading contribution some while ago now. The government electricity contracts, as you would expect – like all government utility contracts – are managed centrally to allow the government to achieve the best value for money through the scale of the contract. We are committed to powering all government operations with renewable electricity by 2025. The best value for money to achieve this commitment is through 100 per cent renewable electricity for government, and that would be through engaging the SEC to power government. The government will achieve much better value for money from a public institution rather than private companies whose biggest goal is maximising profit. Importantly, this will ensure the SEC can quickly secure a large customer book and a firmed renewable energy generation portfolio so they can scale faster and rapidly secure their role as a significant participant in the Victorian energy market.

David DAVIS: Essentially the minister has confirmed that the government will require all government bodies, entities and agencies to go through the SEC in some centralised process. That is what you are saying, isn't it, Minister?

Ingrid STITT: Well, no, that is not quite what I said, Mr Davis. What I said was that in order to provide best value for taxpayers, the government centralises its energy contracts – that is what I said – and there are benefits that flow to the SEC and to the community through doing so.

David DAVIS: Well, there is a little bit of sophistry here, but let me ask it a different way. Will a government entity be entitled to go through another government agency – perhaps in another state – or through a private agency to secure energy if it is able to do so more cheaply than what the government is offering?

Ingrid STITT: I think the way that I would answer that question, Mr Davis, would be to point out that the bill that is before us today does not relate to government energy purchases.

David DAVIS: I will take that as a very clear indication that the government is going to centralise its purchasing and prohibit agencies from purchasing externally and in doing so will force agencies to pay a higher price for electricity through the government's central purchasing or central requirements system.

Ingrid STITT: I do not accept the assertions that you are making. I have been pretty clear. That is speculation, Mr Davis, and it is speculating about price, amongst other things.

Sarah MANSFIELD: The financial accommodation levy applies to government-owned entities declared to be leviable authorities for the purposes of the Financial Management Act 1994. The purpose of the levy is to remove the competitive advantage that government entities may experience in borrowing and is consistent with the competitive neutrality principles as prescribed by the national competition policy framework. The bill does not contain legislative prohibition on the government applying a financial accommodation levy, but can you make a commitment that the Allan Labor government will not be applying this levy on the SEC?

Ingrid STITT: Essentially the financial accommodation levy is a payment that can be required of a public entity in circumstances where they have accessed financing from the state at rates below what a private entity would access from private finance from an otherwise similar project. The financial accommodation levy is added to the cost of capital to close that gap. Some aspects of competitive neutrality, such as not passing laws specifically favourable to a public entity over their private competitors, simply have to be complied with. There is not really any room for discussion about it. However, a financial accommodation levy is only payable under certain circumstances, and if those circumstances do not arise, then competitive neutrality principles are met even in the absence of any levy being imposed. The government believes that the circumstances in which a financial accommodation levy would be needed to comply with competitive neutrality can be avoided, so we do not see the need to impose a levy on the SEC for the foreseeable future.

Melina BATH: Minister, on the purpose clause, clause 1(a) says:

> to require that the State always has a controlling interest in the SEC …

And the SEC is about investing in renewable energy generation. Assuming, Minister, that there will be multiple generators of different aspects – solar, wind, whatever – can you explain to the house how that controlling interest exists? Does it exist as an overall percentage – that is, 51 per cent in its entirety – or does the state anticipate having that share, and I am just using 51 per cent as an example, in each of those multiple energy generators and/or batteries et cetera?

Ingrid STITT: One hundred per cent, essentially, is the answer. The new section 104(2) provides several definitions of a controlling interest, depending upon the corporate form of the structure of the SEC or any of the SEC successor entities at any given time. So it is 100 per cent.

Melina BATH: If I just, for example, move to – and we have not moved this amendment in clause 4, but let us continue the discussion on this – developing or investing in strategic renewable energy generation systems and facilities, does your 100 per cent mean that the government will have a 100 per cent controlling interest in each of those particular facilities?

Ingrid STITT: It is a 100 per cent controlling interest in the SEC. It is about control of the entity, not necessarily the broader description you have just given.

Melina BATH: In short, you are controlling the SEC because it is a government entity, but I guess my further point to that is: does the minister in this entity that will be the new SEC look to have any interest in energy generation systems, facilities et cetera? Will the SEC in its 100 per cent have any interest in investment, whether it be whatever percentage, in these systems?

Ingrid STITT: Perhaps if I can explain it in this way. The distinction is the SEC is a company and the projects are an asset of the company. The company must be 100 per cent government owned.

Melina BATH: Would the government own those assets or would they have any share in those assets or would they have nil share in those assets?

Ingrid STITT: It is difficult, Ms Bath, to be absolutely definitive in answering, because it will vary depending on the project, with the goal of a majority ownership share across the portfolio. It is going to be on a project-by-project basis that you would have to assess things, but I think you are conflating projects with the entity.

Melina BATH: I understand, but you have also just said that you will own assets, and those assets will be storage, generation et cetera. I just think it would be good for the public to understand, separate to the entity, what the involvement of the government is. If the answer is 'varied', then that is your answer, but what do you foresee in establishing the new SEC as being the government's involvement or ownership or part ownership of the assets?

Ingrid STITT: I think I have answered this already, Ms Bath. The government will own a share of each asset. The level of ownership will vary depending on the project, but the SEC as an entity will be government controlled.

Sarah MANSFIELD: I am going to withdraw my amendments 1 to 3 and 10 and 11. They are the amendments that are under group B on the running sheet, on SMA13C. That group B set – I will be withdrawing those.

The DEPUTY PRESIDENT: Dr Mansfield has withdrawn her amendments 1 to 3 and 10 and 11 on her sheet SMA13C. I invite her to move her amendments 1 to 3 on her sheet SMA14C.

Sarah MANSFIELD: I move:

1. Clause 1, line 1, omit "**Purpose**" and insert "**Purposes**".
2. Clause 1, line 2, before "The purpose" insert "(1)".
3. Clause 1, after line 11 insert –

> "(2) The purpose of this Act is also to amend the **Constitution Act 1975** –
>
> (a) to prohibit the construction of fossil fuel facilities in Victoria; and
>
> (b) to constrain the power of the Parliament to make laws repealing, altering or varying the provisions of the **Constitution Act 1975** relating to the matters set out in paragraph (a).".

These are the out-of-scope amendments we are seeking to put forward. These are to prohibit the construction of fossil fuel facilities in Victoria. It is reasonably self-explanatory. We would like to take this opportunity to get in the constitution a prohibition on the construction of fossil fuel facilities in Victoria. We know according to the science that to avert the worst impacts of dangerous climate change we must keep fossil fuels in the ground and rapidly move to 100 per cent renewable energy, while supporting people and communities as we do it. Getting more renewables is only part of the equation. We need to stop using fossil fuels. That means no new coal projects, including things like the Hydrogen Energy Supply Chain, and no new gas projects, like are being proposed at the moment – it is really disappointing to see that new offshore gas project. The Greens have had a consistent record of opposing new fossil fuel projects, and we would like to see this enshrined in the constitution.

Ingrid STITT: The government does not support this amendment. The Allan Labor government is leading the nation on climate action. We have got the most ambitious renewable electricity targets, and we are delivering on these each and every day. Not only are we moving away from coal-fired power generation, but we are doing that work to electrify Victorian homes and businesses and reduce our reliance on fossil gas. But the transition does not happen overnight. There is no magic button we can press. Production is falling faster than supply, which means we need some transitional interim supplies to meet our needs. On our way to 95 per cent renewables, we need to keep the lights on, we

need to protect consumers and we need to support industry, so we will not be supporting this amendment.

David DAVIS: The opposition will not be supporting this amendment.

Council divided on amendments:

Ayes (7): Katherine Copsey, David Ettershank, Sarah Mansfield, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam

Noes (31): Ryan Batchelor, Melina Bath, John Berger, Lizzie Blandthorn, Jeff Bourman, Gaelle Broad, Georgie Crozier, David Davis, Enver Erdogan, Jacinta Ermacora, Michael Galea, Renee Heath, Ann-Marie Hermans, Shaun Leane, David Limbrick, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nick McGowan, Tom McIntosh, Evan Mulholland, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Rikkie-Lee Tyrrell, Sheena Watt, Richard Welch

Amendments negatived.

Clause agreed to; clauses 2 and 3 agreed to.

Clause 4 (17:18)

David DAVIS: I move:

1. Clause 4, after line 14 insert –

"Division 1 – Entrenched provisions".

Amendment 1 is a test for my amendments 9 to 12. These clauses deal with the competitive neutrality of the SEC and the requirement of the SEC to comply with state and Commonwealth competitive neutrality requirements. The government has given various commitments, but none of these are worth the paper they are written on. They are worth nothing. The minister told us in the early part of this proceeding that they intend to force every single government agency to go through the SEC. I have no doubt that the government will also begin the process of requiring this of those who contract with government, including builders and including anyone else who supplies government. They are going to sweep them all up in a forceful way to say, 'You will go with a government agency.' They are going to start, we have heard today, with every single government entity being forced to go through the SEC – even if they have to pay more, even if the government agency sought to go with another provider that might have a better renewable profile than the government. That is quite possible because the government is going to, in a Stalinist way, actually force every single agency, every school, every hospital, every government department – the whole lot – to come through the SEC. That is what they are going to do, and that is what we have heard the minister say, in effect, today. She tried to manoeuvre around the fact. This seeks to simply put in place competitive neutrality arrangements. The amendments state:

> **SEC must always comply with all requirements of a Registered participant in the national electricity market.**

The SEC must comply with directions of the minister. The SEC must be open to freedom of information. That seems to me to be a very reasonable request. Another amendment states:

> **SEC must not prevent Victorian electricity consumer choice**

Consumers must be able to choose and must not be able to be forced. I have asked for an annual report of the SEC in one of these clauses as well. Another amendment states:

> **SEC must publish information about Victorian domestic customer electricity consumption costs and greenhouse gas emissions produced by Victorian domestic customers**

This is a very reasonable set of points, as is:

> **SEC must annually publish information about permanent full-time equivalent employees in the Victorian energy sector**

And:

> **SEC must annually publish information about the amount of electricity supplied to Victorian consumers …**

These are base-level accountability mechanisms for the SEC, ensuring that it behaves as a proper market participant. I have no doubt this bill will go through today, and I have no doubt the government will vote against this, because the government's intention is that the SEC will not behave as a competitively neutral participant but the SEC will behave as a government-overarching body that will have the power to do whatever it wants with every single government entity. It is going to force them all, without exception, to purchase their electricity through the SEC, even if it is more expensive and even if it has got a superior renewable profile.

Ingrid STITT: Thank you for that embellishment, Mr Davis. If I could just, firstly, indicate that the government will not be supporting this amendment. Firstly, in relation to competitive neutrality, we have been very clear that the SEC will comply with its competitive neutrality obligations, and it is not an option to do otherwise. Competitive neutrality requirements are set out in legislation. They are consistent with Australia's national competition policy. Victoria has a competitive neutrality policy that ensures government entities engage in significant business activities and that they operate fairly within the market and do not have a net competitive advantage because of being publicly owned. The competitive neutrality policy applies to all federal, state and local governments. This is just an attempt by the opposition to create hooks for endless legal and administrative challenges to the operation of the SEC. Furthermore, proposed section 108(2)(b) creates risks for the Victorian government as it purports to require the SEC to comply with a potential corresponding Commonwealth policy even if the Victorian government has not agreed to or endorsed the policy. The Victorian government should retain discretion over the competitive neutrality policy its agencies are required to comply with.

On the question of consumer choice, the government will also not be supporting this amendment. No household is being forced to buy electricity from the SEC – it is not even a retailer. There are extensive legislative and regulatory protections in place to ensure that electricity consumers have a choice over who they choose to purchase electricity from. The Essential Services Commission Energy Retail Code of Practice 2022, the Electricity Industry Act 2000, the national energy consumer framework and the Australian Consumer Law offer protections to energy consumers in the national energy market. The Victorian government has committed to powering government operations with 100 per cent renewable energy by 2025 through our Victorian renewable energy target auctions. The best value for money for taxpayers to achieve this commitment can be delivered through the SEC managing these VRET contracts and retailing to government.

The DEPUTY PRESIDENT: The question is that Mr Davis's amendment 1 to clause 4 on his sheet DD129C, which tests his amendments 9 to 12, be agreed to.

Council divided on amendment:

Ayes (16): Melina Bath, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Renee Heath, Ann-Marie Hermans, David Limbrick, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Rikkie-Lee Tyrrell, Richard Welch

Noes (23): Ryan Batchelor, John Berger, Lizzie Blandthorn, Jeff Bourman, Katherine Copsey, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, Sarah Mansfield, Tom McIntosh, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt

Amendment negatived.

David DAVIS: I move:

2. Clause 4, page 4, line 4, before "The" insert "(1)".
3. Clause 4, page 4, after line 20 insert –

"(2) The purpose of this Part is not to restrict the ability of Victorians and Victorian government entities to choose who will supply electricity to them.".

Amendments 2 and 3 are straightforward. Amendment 3 on my list inserts a new provision in clause 4. This is one of the entrenched provisions. This is a provision that seeks to ensure that this whole bill is not misused and that choice is protected.

Ingrid STITT: As I have already outlined, the government will not be supporting Mr Davis's amendment.

Council divided on amendments:

Ayes (16): Melina Bath, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Renee Heath, Ann-Marie Hermans, David Limbrick, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Rikkie-Lee Tyrrell, Richard Welch

Noes (22): Ryan Batchelor, John Berger, Lizzie Blandthorn, Katherine Copsey, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, Sarah Mansfield, Tom McIntosh, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt

Amendments negatived.

David DAVIS: I move:

4. Clause 4, page 6, line 7, before "The" insert "(1)".
5. Clause 4, page 6, line 14, after "and" insert "subject to subsection (2)".
6. Clause 4, page 6, after line 30 insert –

"(2) The SEC must sell electricity at the least cost consistent with –

(a) the long term viability of the SEC; and

(b) its objects.".

On these amendments 4 to 6, the essence is that the SEC must sell electricity at the least cost, consistent with the long-term viability of the SEC and its objects. I will be frank. One concern I have here is that the government uses the SEC as a cash cow, as a milk cow, to actually tax people by stealth, putting additional layers of charge onto government agencies and those who are contracted to the SEC, and in doing so steals money back into consolidated revenue. We know what is happening with the water authorities – there is a billion dollars being torn out of the water authorities. That is the feel. My concern is that the government will tear money out of the SEC after it has scooped the money across. This is a simple provision that says the SEC must sell electricity at the least cost, consistent with the long-term viability of the SEC and its objects.

Ingrid STITT: I have to say that that is a very weird conspiracy theory, Mr Davis. Needless to say, we will not be supporting this amendment. The cost at which the SEC sells electricity to customers is a matter for the SEC and its board, and it will be determined consistent with the SEC's strategic and commercial objectives, including its objectives to accelerate Victoria's transition to affordable and reliable zero-emissions electricity systems. Furthermore, the SEC as a state-owned company is required to perform its functions, including the setting of prices for electricity, as efficiently as possible and consistent with prudent commercial practice. It is not appropriate for the Victorian constitution to regulate the SEC's commercial and operational decision-making at this level. I completely reject the assertions that Mr Davis has made, and the government will not be supporting the amendment.

Council divided on amendments:

Ayes (16): Melina Bath, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Renee Heath, Ann-Marie Hermans, David Limbrick, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Rikkie-Lee Tyrrell, Richard Welch

Noes (22): Ryan Batchelor, John Berger, Lizzie Blandthorn, Katherine Copsey, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, Sarah Mansfield, Tom McIntosh, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt

Amendments negatived.

Ingrid STITT: I move:

1. Clause 4, page 6, line 30, omit "Victoria." and insert "Victoria;".
2. Clause 4, page 6, after line 30 insert –

> "(f) to develop and invest in strategic renewable energy generation and systems and facilities and strategic renewable energy storage systems and facilities necessary to maintain Victoria's energy system security and reliability in the long term.".

As I indicated in my summing-up comments, the new section 105(f) expands on the objects of the SEC to include the development of and investment in emerging and less commercial technologies which are also needed to support Victoria's energy transition and maintain energy security and reliability in the post-transition period. Whilst the SEC has already obviously commenced building its portfolio of renewable generation and storage assets needed to serve government load and accelerate Victoria's progress towards its renewable energy targets, the SEC is also well placed to play a leading role investing in and developing emerging renewable technologies and systems and facilities which are not yet demonstrated as commercially viable in the market but which are critical to an orderly transition and maintaining energy security and reliability. We thank the Legalise Cannabis Party for their constructive engagement on this matter.

David DAVIS: The opposition will not oppose this amendment, but I would ask the minister one question alone on this: how will the financial viability of these investments be tested?

Ingrid STITT: The SEC will remain bound by its obligations, Mr Davis, to operate its business efficiently and consistently, and that will obviously include prudent commercial practice. With its commitment to earning sustainable returns across the portfolio, that would enable the SEC to reinvest returns into the system on behalf of the Victorian people. Ultimately these are questions for the board.

David ETTERSHANK: I just wish to make a brief statement. Legalise Cannabis Victoria believes that the SECV should be using its significant capacity to enable parts of the state's electricity infrastructure that would not necessarily be given priority in the private sector. This includes investment in new and emerging or less commercially viable technologies. So we welcome the government's amendment, which importantly adds a goal to the justification for the SEC's existence. It expands the objectives of the SEC to include the development of and investment in those emerging and less commercial technologies, as I mentioned earlier, which are needed to support Victoria's energy transition and to maintain energy security and reliability into the future. With this amendment in place, Legalise Cannabis is happy to support this bill. It will ensure that the SEC will be able to invest in and develop innovative technology in the state's very necessary transition to renewable energy. Finally, I would like to thank Minister D'Ambrosio and her staff for their assistance and patience in accommodating our request for this amendment. I commend the bill to the house.

Amendments agreed to.

David DAVIS: I move:

7. Clause 4, page 7, line 2, before "Despite" insert "(1)".

8. Clause 4, page 7, after line 8 insert –

"(2) Despite subsection (1), the SEC may own or operate or participate in the operation of a gas storage facility or gas distribution facility, or distribution pipeline, if to do so would be consistent with, and would support, Victoria's transition to having an electricity system operating in Victoria in respect of which net zero greenhouse gas emissions are attributable to the electricity system's operation.

(3) In this section –

distribution pipeline has the same meaning as in the National Gas (Victoria) Law.".

The Liberals and the Nationals understand the importance of the energy transition, but in doing so we believe that gas has a very significant role. That is in stark contrast to the state government, which has declared war on gas at every turn – in stark contrast to the federal government, which has admitted that gas has got a significant role, an interim role and a firming role. Consequently, amendments 7 and 8 seek to insert some new aspects into this set of provisions, to the effect that:

> Despite subsection (1), the SEC may own or operate or participate in the operation of a gas storage facility or gas distribution facility, or distribution pipeline, if to do so would be consistent with, and would support, Victoria's transition to having an electricity system operating in Victoria in respect of which net zero greenhouse gas emissions are attributable to the electricity system's operation.

This is an amendment that says gas has got a role in getting us there. If that is the case, it should not be counted out.

Ingrid STITT: This is a backwards amendment from the opposition. For a party that purports to be opposed to government ownership, this is an interesting move, Mr Davis. The SEC's purpose is to accelerate the transition to renewable energy, which we know is the cheapest form of new energy there is. We have always said that gas-fired generation will have a place in our energy system, but the reality is that it is very expensive and it is not getting any cheaper. We have to reduce our reliance on it, which is exactly what the government's plans outline. Building more renewable energy, particularly firming storage, is the best way to bring down the cost for Victorians, and the SEC will do just that and not get stuck on the fuels of the past. It is important that we take a sensible approach, so the government will not be supporting this amendment.

Council divided on amendments:

Ayes (15): Melina Bath, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Renee Heath, Ann-Marie Hermans, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Rikkie-Lee Tyrrell, Richard Welch

Noes (22): Ryan Batchelor, John Berger, Lizzie Blandthorn, Katherine Copsey, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, Sarah Mansfield, Tom McIntosh, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt

Amendments negatived.

Sarah MANSFIELD: I move:

4. Clause 4, page 7, lines 4 to 6, omit all words and expressions on these lines and insert –

"(a) if it is a body corporate in which shares have been issued –

(i) do anything contrary to section 104(2)(a); or

(ii) pay any dividend, or make any other distribution of profits to the shareholders of the SEC or the State; or

(b) if it is a body corporate established by or under an Act in which shares have not been issued, pay any dividend, or make any other distribution of profits to the State; or".

5. Clause 4, page 7, line 7, omit "(b)" and insert "(c)".

6. Clause 4, page 7, line 14, omit "104(2)(a)" and insert "104(2)(a)(i)".

7. Clause 4, page 7, after line 14 insert –

"(2) A payment of a dividend or a distribution of profits that contravenes section 106(a)(ii) or (b) is void.".

8. Clause 4, page 7, line 15, omit "(2)" and insert "(3)".

9. Clause 4, page 7, line 17, omit "106(b)" and insert "106(c)".

These are constitutional amendments to ensure that the SEC's profits are always directed into further investments in renewable energy projects and cannot be ripped out of the organisation by the current or any future government in the form of dividends. We know that governments frequently like to pull billions of dollars out of public corporations – for example, the TAC – but for the SEC to fulfil its stated function of consistently accelerating renewable investment it cannot be used as a cash cow whenever the government is strapped for money.

Absurdly, the government could actually in theory even direct any dividends received from the SEC into funding new fossil fuel projects. So a key government promise at the time of the announcement was that all SEC profits would be invested back into more renewables, but there is currently nothing in the bill that would hold the government to that promise, or any future governments, which is probably the bigger concern: that any future government would abide by this commitment. This amendment really just fixes that oversight and assists in fulfilling the stated intention of some of the commitments around the SEC.

Ingrid STITT: The government will be supporting this amendment. We were very clear during the election campaign that any profits that the SEC may generate will stay with the SEC and be used to invest in further renewable energy generation and storage projects. I think that this amendment makes that abundantly clear, and it was always the case. I think it also demonstrates pretty strongly that Mr Davis's conspiracy theories are just that. Given this amendment reinforces the public commitment already made by the government, we are very happy to support it.

Council divided on amendments:

Ayes (22): Ryan Batchelor, John Berger, Lizzie Blandthorn, Katherine Copsey, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, Sarah Mansfield, Tom McIntosh, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt

Noes (15): Melina Bath, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Renee Heath, Ann-Marie Hermans, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Rikkie-Lee Tyrrell, Richard Welch

Amendments agreed to.

Council divided on amended clause:

Ayes (22): Ryan Batchelor, John Berger, Lizzie Blandthorn, Katherine Copsey, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, Sarah Mansfield, Tom McIntosh, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt

Noes (16): Melina Bath, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Renee Heath, Ann-Marie Hermans, David Limbrick, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Rikkie-Lee Tyrrell, Richard Welch

Amended clause agreed to.

Clauses 5 and 6 agreed to.

Reported to house with amendments.

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (18:13): I move:

That the report be now adopted.

Motion agreed to.

Report adopted.

Third reading

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (18:13): I move:

That the bill be now read a third time.

David Davis: On a point of order, President, this is a bill that entrenches a series of provisions which I think Victorians should be very concerned about. The minister has indicated that there is nothing to prevent the government compelling every government agency and wider fields, and I would be very concerned if that were to occur. So I just want to put that on record. I also note that clause 4 was not passed with an absolute majority or with a special majority, and I think that that is significant.

Council divided on motion:

Ayes (24): Ryan Batchelor, John Berger, Lizzie Blandthorn, Jeff Bourman, Katherine Copsey, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, Sarah Mansfield, Tom McIntosh, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Harriet Shing, Adem Somyurek, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt

Noes (16): Melina Bath, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Renee Heath, Ann-Marie Hermans, David Limbrick, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Rikkie-Lee Tyrrell, Richard Welch

Motion agreed to by special majority.

Read third time.

The PRESIDENT: The question is:

That the bill do pass.

Council divided on question:

Ayes (24): Ryan Batchelor, John Berger, Lizzie Blandthorn, Jeff Bourman, Katherine Copsey, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, Sarah Mansfield, Tom McIntosh, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Harriet Shing, Adem Somyurek, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt

Noes (16): Melina Bath, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Renee Heath, Ann-Marie Hermans, David Limbrick, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Rikkie-Lee Tyrrell, Richard Welch

Question agreed to.

The PRESIDENT: Pursuant to standing order 14.28, the bill will be returned to the Assembly with a message informing them that the Council have agreed to the bill with amendments.

Criminal Organisations Control Amendment Bill 2024

Introduction and first reading

The PRESIDENT (18:24): I have received the following message from the Legislative Assembly:

> The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to amend the **Criminal Organisations Control Act 2012** and to make consequential amendments to certain other Acts and for other purposes.'

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:25): I move:

> That the bill be now read a first time.

Motion agreed to.

Read first time.

Harriet SHING: I move, by leave:

> That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:25): I lay on the table a statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006:

> **Opening paragraphs**
>
> In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006*, (the **Charter**), I make this Statement of Compatibility with respect to the Criminal Organisations Control Amendment Bill 2024 (**Bill**).
>
> In my opinion, the Criminal Organisations Control Amendment Bill 2024, 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 *Criminal Organisations Control Act 2012* (the **Act**) by:
>
> - modifying the existing unlawful association scheme in Part 5A of the Act to expand police powers to prohibit persons from associating with each other
> - introducing a serious crime prevention order scheme enabling a court to impose conditions restricting the activities of the person subject to the order, being a person who is an eligible offender or involved in serious criminal activity
> - creating a criminal offence which prohibits a person over 18 years of age from displaying the insignia of certain organisations to be prescribed in regulations in a public place or public view, where that person knows or ought reasonably to know that the mark is an insignia of that organisation, and
> - prohibiting members of certain organisations to be prescribed in regulations from entering Victorian Government worksites.
>
> The Bill's purpose is to disrupt serious and organised crime in Victoria.
>
> **Human Rights Issues**
>
> The Bill limits the following rights under the Charter:
>
> - right to recognition and equality before the law (section 8)
> - right to freedom of movement (section 12)
> - right to privacy and reputation (section 13)
> - right to freedom of thought, conscience, religion and belief (section 14)

- right to freedom of expression (section 15)
- right to peaceful assembly and freedom of association (section 16)
- right to protection of families and children (section 17)
- right to culture (section 19)
- right to property (section 20)
- right to a fair hearing (section 24)
- right to be presumed innocent until proven guilty according to law and rights in criminal proceedings (section 25), and
- right not to be tried or punished more than once (section 26).

Under the Charter, rights can be subject to limits that are reasonable and justifiable in a free and democratic society based on human dignity, equality and freedom. Rights may be limited in order to protect other rights.

As discussed below, these limitations are reasonable and justified in accordance with section 7(2) of the Charter.

Unlawful Association (Part 2)

The Bill will:

- expand police powers to issue unlawful association notices to persons, prohibiting them from associating with each other, where one of the persons has previously been convicted of a serious offence, by:
    - removing the requirement that the previous conviction was 'heard on indictment', so that convictions for lower-level offending, or following a guilty plea, can trigger the use of the scheme
    - replacing the current requirement that a police officer reasonably believes that preventing association between individuals is likely to prevent the commission of an offence, with a requirement that the officer is satisfied that issuing the notice is likely to prevent or inhibit the establishment, maintenance or expansion of a criminal group or a criminal network
- reduce the duration of a notice, from 3 to 2 years, to ensure the grounds for issuing a notice are considered afresh within a shorter period
- expand police powers to charge for the offence of contravening an unlawful association notice, by lowering the threshold for the offence so that the recipient of a notice commits an offence if they associate with the person named in the notice once, at any time the notice is in effect, instead of requiring that the recipient of a notice associate with a named person 3 times in a 3-month period, or 6 times in a 12-month period
- narrow the exception to the offence for association with family members, by amending the definition of 'family member' so that it applies to a more confined group of people
- provide additional exceptions to the offence where association occurs:
    - during the provision of welfare services
    - in the course of emergency services volunteering, or
    - in the course of an Aboriginal person or Torres Strait Islander engaging in or performing a cultural practice or obligation.
- create a new oversight function for the Independent Broad-based Anti-corruption Commission (IBAC), by requiring IBAC to monitor and report on the operation of the scheme and conduct periodic reviews of unlawful association notices. To ensure IBAC has the information it needs, Victoria Police will be required to report to IBAC quarterly on the use of powers.

<u>Right to peaceful assembly and freedom of association (section 16)</u>

Section 16 of the Charter protects every person's right to peaceful assembly and freedom of association with others, including the right to form and join trade unions.

The Bill sets out the scope of lawful and unlawful association between persons and expands police powers to prohibit persons from associating with each other, abrogating the rights to peaceful assembly and freedom of association.

The unlawful association scheme prohibits a person who receives an unlawful association notice from associating with the person or persons named in the notice. Such other named persons are also banned from

associating with the recipient of the notice (through provisions that allow for reciprocal notices to be issued). Should the persons continue to associate, they will be at risk of committing an indictable offence, with a penalty of up to 3 years' imprisonment.

The Bill expands police powers to issue unlawful association notices to persons, where one of the persons has previously been convicted of a serious offence, in the following ways:

- Expanding the categories of offences that can form the basis for issuing a notice to include offences committed against the laws of another state or territory, or the Commonwealth.
- Removing the requirement that the conviction for the serious offence that forms the basis of a notice was 'heard on indictment', so that convictions for lower-level offending, or following a guilty plea, can trigger the use of the scheme. This will potentially extend the scheme to a larger group of people.
- Replacing the requirement that a senior police officer holds a reasonable belief that issuing a notice will prevent the commission of further offences. Victoria Police advises that the formation of the requisite belief is a high threshold to satisfy and a major hurdle to using the unlawful association provisions.

The Bill also expands police powers to charge for the offence of unlawful association. Under the current scheme, a person contravenes a notice if that person associates with one or more persons convicted of an 'applicable offence' named in the notice on at least 3 occasions in a 3-month period, or 6 occasions in a 12-month period. To increase the efficacy of the scheme, the Bill removes the requirement for multiple occurrences of association within a set timeframe for a person to be charged with the offence of unlawful association. Instead, a person may be charged if they associate with the person named in the notice on one occasion.

Section 7(2) of the Charter provides that reasonable limits can be placed on rights where the limits are demonstrably justified in a free and democratic society.

The limitation on these rights supports the purpose of the unlawful association scheme of preventing and inhibiting criminal conduct. This is achieved by prohibiting individuals from associating with each other where one of them has previously been convicted of a serious offence, and thereby preventing and inhibiting the establishment, maintenance and expansion of criminal groups and criminal networks.

The Bill introduces new settings and preserves existing settings in the Act, that aim to mitigate against the risk of notices being issued arbitrarily or having disproportionate negative impacts, including the following:

- The new test for issuing a notice includes a requirement that the officer is reasonably satisfied that doing so is appropriate in all the circumstances. This threshold, coupled with the requirements under section 38 of the Charter that a police officer give proper consideration to relevant human rights when making a decision to issue a notice, imports a blanket requirement of proportionality.
- If a person believes that a notice has been issued or amended in error, they can seek internal review by Victoria Police. The Bill increases the minimum rank of the reviewing officer from Senior Sergeant to Inspector, and allows a person to seek an extension of time in which to apply for review. In addition, the Bill includes a process allowing people to seek revocation of a notice, where there has been a substantial change in circumstances. For example, it may be appropriate to revoke a notice on compassionate grounds, such as because the person has a terminal illness.
- The Bill retains the existing mechanism authorising lawful association with the person named in the notice, by allowing a person to apply to Victoria Police for a lawful association authority.
- The scheme retains the exceptions to the offence of unlawful association. These include exceptions where association occurs in the course of lawful employment, obtaining legal advice, or participating in vocational training and association for genuine political purposes. As noted above, the Bill introduces additional exceptions, including for association that occurs in the context of receiving welfare or support services, and engaging in emergency services volunteering.

The Bill contains measures to support accountability and transparency regarding the use of powers. The Bill creates a new oversight role for IBAC to retrospectively monitor the use of police powers under the scheme and report annually to the Attorney-General. The Bill also requires the Attorney-General to cause a review of the operation and effectiveness of the Act to be undertaken 3 years following commencement of the Bill. The inclusion of reporting obligations and independent oversight aims to enable continued evaluation of the scheme's effectiveness and ensure government will know if any groups are being unfairly targeted by these laws.

The amendments in the Bill are a reasonable and justified limitation of the rights to peaceful assembly and freedom of association because they are necessary to protect public safety by preventing the commission of serious and organised crime.

Right to freedom of movement (section 12)

Section 12 of the Charter provides that every person has the right to move freely within Victoria and has the freedom to choose where to live.

The rights of both the recipient of a notice and the person named in the notice to move freely within Victorian and to choose where to live are limited because they are prevented from being in company with each other, unless an exception applies.

For the reasons discussed above in relation to freedom of association, this interference with the right to freedom of movement is not arbitrary or unlawful and is proportionate to the legitimate aim of crime prevention.

Right to privacy and reputation (section 13)

Section 13 of the Charter provides that a person has the right not to have their privacy unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked.

Prohibiting both the recipient of a notice and the person named in the notice from being able to choose to associate with each other limits this right because it affects their 'interest in the freedom of their personal and social sphere'.[1]

In addition, the Bill amends provisions that engage the right to privacy of the person named in a notice, because the provisions require that the person is named in the notice and identified as an offender.

Importantly, the disclosure of the person's criminal history is limited. Neither the nature of the conviction nor aspects of the person's criminal record that are not relevant to the issue of the notice are disclosed.

The requirement to specify the individual on an unlawful association notice supports the purpose of the unlawful association scheme, to prevent and prohibit criminal conduct, by clearly setting out who the recipient of a notice is prohibited from associating with, and the basis for imposing the notice (namely, that the specified individual has previously been convicted of a serious offence).

For these reasons, the interference with the right to privacy is not arbitrary or unlawful and is proportionate to the legitimate aim of crime prevention.

Right to freedom of expression (section 15)

Section 15 of the Charter provides that every person has the rights to hold an opinion without interference (section 15(1)) and to freedom of expression (section 15(2)), which includes the freedom to seek, receive and impart information. The right contains an internal limitation in section 15(3) that allows freedom of expression to be limited where it is reasonably necessary to respect the rights and reputation of others, or for the protection of national security, public order, public health or public morality.

The Bill engages this right by amending provisions that prohibit a recipient of a notice and the person named in the notice from receiving, seeking, or imparting information with each other once a notice has been issued, unless an exception applies.

The prohibition supports the purpose of the unlawful association scheme, to prevent and inhibit criminal conduct and to promote community safety by preventing associations that may lead to the establishment, maintenance and expansion of criminal groups and criminal networks. In addition, not all communication is prohibited but can still occur where an exception applies, including communication between family members, or communication for genuine political purposes, or in lawful protest or industrial action. This ensures the Bill does not go further in restricting the right to freedom of expression than what is necessary to fulfill its purpose.

For these reasons, the interference with the right to freedom of expression is lawful and reasonably necessary for the protection of public order.

Protection of families and children (section 17)

Section 17(1) of the Charter provides that families are 'the fundamental group unit of society and are entitled to be protected by society and the State'. The Charter does not define the term 'family', however it is likely to be given a broad interpretation.

Under the Act, a person who receives a notice is not prohibited from associating with a family member, provided the association is not for an 'ulterior purpose'. The scope of the relationships covered by the term 'family member' is broad, including any person that can reasonably be regarded as 'like family' when having regard to specified considerations.

The Bill amends the definition of 'family member' in the Act so that it applies to a narrower class of persons, changing the scope of lawful and unlawful association between family members. The amendment will mean that relationships considered by the person, and recognised in the person's community, as being like family, are no longer considered family member relationships for the purpose of the unlawful association scheme. Therefore, conceptions of family or kinship systems based on non-Western or Aboriginal or Torres Strait Islander constructs, will not be recognised for the purpose of the exception. In doing so, the Bill limits the right to protection of families.

The unlawful association scheme aims to prevent the establishment, maintenance and expansion of criminal groups and criminal networks, including criminal networks that operate based on, or utilising, familial connections. The amendments to the definition of 'family' are designed to remove the potential for a broader interpretation of the term facilitating the exploitation of family relationships by criminals, to further criminal conduct. In addition, the Act enables a person who receives a notice to apply to Victoria Police for specific permission to attend an event or gathering. This may enable, for example, attendance at a family gathering, wedding or funeral. Therefore, the purpose of the limitation is to allow the scheme to operate as intended.

Section 17(2) of the Charter provides that every child has the right, without discrimination, to such protection as is in the child's best interests and is needed by the child by reason of being a child. In recognition of this right, the Act does not apply to persons under the age of 18 years, and so no person under the age of 18 can receive an unlawful association notice.

Recognition and equality before the law (section 8)

Section 8(3) of the Charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination. The purpose of the right to equality is to ensure that all laws and policies are applied equally, without a discriminatory effect.

Section 3(1) of the Charter adopts the definition of 'discrimination' in the *Equal Opportunity Act 2010*, which includes both direct and indirect discrimination on the basis of a protected attribute, including race. Under section 9 of that Act, indirect discrimination occurs where a person imposes a requirement, condition or practice that is unreasonable and has, or is likely to have, the effect of disadvantaging persons with a protected attribute.

The Bill includes special provisions for Aboriginal and Torres Strait Islander people, by introducing: a new exception to the unlawful association offence based on Aboriginal cultural practice and obligation; a requirement for Victoria Police to report quarterly to IBAC on the number of Aboriginal and Torres Strait Islander people subject to the scheme; and a requirement for IBAC to report on the impact on Aboriginal people.

The new exception will ensure that an Aboriginal or Torres Strait Islander person does not commit the unlawful association offence, if the association occurs in the course of fulfilling a cultural practice or obligation. The requirement for specific reporting on the number of Aboriginal and Torres Strait Islander people subject to the scheme will enable any disproportionate impact on Aboriginal and Torres Strait Islander people to be monitored and acted upon.

These provisions recognise that Aboriginal and Torres Strait Islander people are over-represented in the criminal justice system, and the potential for the Bill to have a disproportionate effect on Aboriginal and Torres Strait Islander people. This has been found to be the case in New South Wales (NSW), when the NSW Ombudsman and the NSW Law Enforcement Conduct Commission reviewed the operation of the NSW consorting laws.

Section 8(4) of the Charter provides that measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination. Accordingly, the special provisions for Aboriginal people do not constitute discrimination.

Right to take part in public life (section 18)

Section 18(1) of the Charter provides that every person in Victoria has the right, without discrimination, to participate in the conduct of public affairs.

Under the Act, association for a genuine political purpose is not prohibited. In addition, section 11 of the Act provides that the powers under the Act are to be exercised in a way that does not diminish the freedom of persons in Victoria to participate in lawful protest, advocacy, dissent or industrial action.

Cultural rights (section 19)

Section 19(1) of the Charter provides all persons with a cultural, religious, racial or linguistic background, the right, in community with other persons of that background, to enjoy their culture, to declare and practice their religion and to use their language.

Section 19(2) of the Charter acknowledges that Aboriginal persons hold distinct cultural rights and provides Aboriginal persons with the right, with other members of their community, to enjoy their identity and culture, to maintain and use their language, to maintain their kinship ties and 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 amends provisions which set out the scope of lawful and unlawful association between persons, including by prohibiting associations between persons who share cultural and community ties. In doing so, the Bill limits cultural rights.

The unlawful association scheme aims to prevent the establishment, maintenance and expansion of criminal groups and criminal networks, including criminal networks that operate based on cultural and community connections. The prohibition on association, including association for cultural purposes, supports this purpose by removing the potential for the exploitation of cultural ties by criminals, to further criminal conduct.

The Bill introduces a new exception where association occurs in the course of an Aboriginal person or Torres Strait Islander engaging in or performing a cultural practice or obligation. This will enable the exercise and enjoyment of distinct Aboriginal cultural rights, including maintaining kinship ties and connection to land, identity and culture.

For non-Aboriginal people and Torres Strait Islanders, the Act contains a provision under which a person subject to an unlawful association notice can apply to Victoria Police for specific permission to attend an event or gathering. This would allow, for example, attendance at cultural or religious events, without the risk of charge for the unlawful association offence.

Replacing Declarations and Control Orders with Serious Crime Prevention Orders (Part 3)

The Bill establishes a new serious crime prevention order scheme for the purpose of preventing and inhibiting the involvement of individuals in serious criminal activity by restricting the activities of adult individuals. On application by the Chief Commissioner of Police, the County Court (or the Supreme Court exercising its jurisdiction to hear any matter under section 85 of the *Constitution Act 1975*) may make a serious crime prevention order requiring compliance with conditions. The application can be made in relation to a person aged 18 years or older who is either an eligible offender or who the court is satisfied, to the civil standard of proof, has been involved in serious criminal activity. The term 'eligible offender' is the same as that used in the unlawful association scheme.

The Court may impose a serious crime prevention order if satisfied there are reasonable grounds to believe that compliance with the conditions would protect the public by preventing or inhibiting the individual's involvement in serious criminal activity, and that imposing the conditions is otherwise appropriate in all the circumstances.

The Bill contains a non-exhaustive list of example conditions that the court may impose. For example, the court may consider it appropriate to impose conditions that prohibit the individual subject to the order from associating with specified individuals, leaving Victoria or Australia, possessing or using certain things such as firearms, telecommunications devices, cash or an alias, engaging in specified business activities or specified activities in respect of property. Further, the court may also consider it appropriate to impose conditions requiring the individual subject to the order to provide information and notifications to Victoria Police regarding specified things, for instance a change in address or employment. However, the court must consider what is already required of the individual under other instruments when determining conditions to impose.

Under the Bill, the maximum duration of a serious crime prevention order is 5 years, though it may be renewed more than once. Contravention of a serious crime prevention order is an indictable offence, punishable by a fine and/or imprisonment.

The Bill provides for the mutual recognition and application of corresponding orders made under similar regimes in other Australian jurisdictions. The Bill also applies the existing criminal intelligence provisions in Part 4 of the Act, enabling Victoria Police to protect the confidentiality of criminal intelligence used to support an application for a serious crime prevention order.

<u>Freedom of movement (section 12); Right to privacy (section 13), Rights to peaceful assembly and freedom of association (section 16); Cultural rights (section 19); Property rights (section 20)</u>

The Court has a broad discretion under the serious crime prevention order scheme to impose any conditions that it considers appropriate. Accordingly, it is not possible to exhaustively provide examples of every possible condition that could limit or engage rights as it is dependent on the specific circumstances of a matter before the court.

However, the non-exhaustive list of conditions set out in the Bill provides guidance as to the range of conditions which may be imposed. For instance, the following conditions contained within the new section 17 (clause 41) provide an illustrative example of the diversity of rights that may be engaged and/or limited:

- A condition that prohibits an individual from leaving Victoria or entering a specified place may limit the right to freedom of movement under section 12 of the Charter.
- Imposing a condition that prohibits an individual from undertaking a particular activity in respect of property rights may limit the right not to be unlawfully deprived of property under section 20 of the Charter.
- Where a condition is imposed that prohibits an individual from associating with a specified individual, the right to peaceful assembly and freedom of association under section 16 of the Charter may be limited.
- Requiring an individual to notify and provide information to Victoria Police about specified things may limit the right not to have a person's privacy unlawfully or arbitrarily interfered with under section 13 of the Charter.

To the extent that the rights of an individual may be limited via the imposition of conditions, I consider that any limitation on these rights is reasonable and justified under section 7(2) of the Charter.

The Bill sets out clear criteria that the court must be satisfied of when making a serious crime prevention order. Following satisfaction that the eligibility criteria has been met, the court is only permitted to impose a condition on an individual if satisfied that there are reasonable grounds to believe compliance with conditions would protect the public by preventing or inhibiting the individual from being involved in serious criminal activity and imposing conditions is appropriate in all the circumstances. The criteria for making a serious crime prevention order reflect the stated purpose of the scheme, to protect the public by preventing or inhibiting individuals from engaging in serious criminal activity.

It is open to the court to determine what conditions are appropriate to impose on an individual subject to a serious crime prevention order or whether it is appropriate to impose an order in the circumstances. In either event, the court must assess the future risk that a person will be involved in serious criminal activity, whether there are circumstances that establish reasonable grounds to believe a condition would protect the public and prevent or disrupt future involvement in serious criminal activity and the appropriateness of conditions before they may be imposed.

The criteria require the court to strike an appropriate balance when imposing a condition between the protection of the community via the prevention or disruption of serious criminal activity and the restriction on an individual's liberty that the condition may cause. Therefore, the court must ensure that any conditions imposed are adequately tailored to the circumstances of each case. This ensures that conditions are appropriate and proportionate to the risk that an individual may be involved in serious criminal activity.

Oversight by the court is an important safeguard to ensure that any interference with the rights of an individual will not be arbitrary, and no more than necessary to achieve the purpose of the serious crime prevention order scheme. Accordingly, I am satisfied that any limitation to human rights under the Charter by the imposition of a condition under a serious crime prevention order is proportionate.

Right to a fair hearing (section 24)

Section 24(1) of the Charter provides that a party to a civil proceeding has the right to have that proceeding decided by a 'competent, independent and impartial court or tribunal after a fair and public hearing'.

This right encompasses the right of a party in civil proceedings to be afforded procedural fairness, thereby ensuring a person is aware of the case alleged against them and is provided access to necessary information.

The Bill amends Part 4 of the Act to apply the existing provisions protecting criminal intelligence to the serious crime prevention order scheme. Accordingly, the Chief Commissioner may apply to the Court for an order protecting criminal intelligence which is sought to be relied upon in support an application for a serious crime prevention order.

The existing provisions under the Act provide that criminal intelligence encompasses 'any information, documents or other thing relating to actual or suspected criminal activity in Victoria or elsewhere', which if disclosed could reasonably be expected to prejudice a criminal investigation, risk the discovery of confidential sources or endanger a person's life or safety. Given the risks to individual and public safety, and the administration of justice associated with the disclosure of criminal intelligence, its protection is imperative.

Unless the court orders otherwise, applications for orders protecting criminal intelligence must be heard in closed court. This will result in the person subject to a serious crime prevention order being excluded from the hearing to preserve the confidentiality of intelligence sought to be relied upon. However, special counsel may be appointed to represent the interests of the individual, and may communicate with them prior to the

hearing and seek further information from them during the hearing where necessary to represent their interests.

I consider that non-disclosure of criminal intelligence in support of a serious crime prevention order against an individual, may result in unfairness. For instance, unfairness may arise in circumstances where an individual is not able to adequately respond to the case against them as they cannot know all the information that the Chief Commissioner relies upon. Therefore, it is my view that provisions related to the protection of criminal intelligence may limit the right to a fair hearing under section 24 of the Charter.

However, I consider that any limitation of this right supports the purpose of the serious crime prevention order scheme, which is to protect the public by preventing or inhibiting individuals from being involved in serious criminal activity.

The reason being that criminal intelligence relied on for a serious crime prevention order by its nature will likely relate to serious and organised crime. As a person subject to a serious crime prevention order is either an eligible offender with a conviction, or is involved in serious criminal activity, it would not be appropriate to provide that individual with criminal intelligence or have such information be heard in open court. To do so may have serious ramifications on preventing or inhibiting serious criminal activity in ongoing investigations and affect public safety.

The Bill preserves the existing framework in the Act for the protection of criminal intelligence and makes criminal intelligence protection orders available under the serious crime prevention order scheme.

The existing framework affords the Court substantial discretion, which provides a crucial balance to justify any limitation on the rights of a person to a fair trial. For instance, an application for the protection of criminal intelligence must be heard in closed court unless the court orders otherwise. However, the court retains the discretion to adopt a different procedure if a closed court hearing is inappropriate in the circumstances.

Further, the court must undertake a balancing exercise when considering whether to make a criminal intelligence protection order. The court retains a discretion whether to grant an order if satisfied that the reasons for maintaining the confidentiality of the criminal intelligence outweigh any prejudice or unfairness to the respondent to the substantive application.

In my view, these provisions appropriately balance the need to retain the confidentiality of criminal intelligence material and the interests of a party in being able to participate in a hearing that may impact upon them.

Accordingly, I am satisfied any limitation of the right to a fair hearing for a party where the Chief Commissioner makes an application to protect criminal intelligence, is reasonable and demonstrably justified pursuant to section 7(2) of the Charter.

Rights in criminal proceedings (section 25)

Section 25(1) of the Charter provides that a person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. Section 25(2) broadly sets out the minimum rights of a person charged with a criminal offence in criminal proceedings.

I do not consider that the Bill limits the rights of a person in criminal proceedings.

The serious crime prevention order scheme is civil in nature, not criminal. Section 135 of the Act that this Bill amends expressly provides that unless otherwise specified, proceedings are civil in nature. On this basis, the court need only be satisfied on the civil standard of proof when determining an application for a serious crime prevention order.

The Bill includes eligibility criteria the court must be satisfied of when making a serious crime prevention order. The court must be satisfied that the individual the subject of the application is either an 'eligible offender', which requires a past conviction, or has been involved in serious criminal activity whilst aged 18 years or older. Insofar as the court must be satisfied whether a person has been 'involved in serious criminal activity' it must be satisfied on the balance of probabilities.

Whilst a past conviction may be a trigger for eligibility under the scheme, it is not enough in itself for an order being made. Instead, the threshold test for making a serious crime prevention order is based on the court's assessment of future risk, not merely that a person has been convicted or because of past conduct. That is, the court must assess whether there is a reasonable belief of a future risk of an individual being involved in serious criminal activity that would be prevented or inhibited via the imposition of conditions and therefore protect the public. Relevantly, the majority of the High Court has observed that comparable serious crime prevention order regimes involve an assessment of future risk by the court that includes considerations of past offence, though do not constitute a trial for an offence.[2]

In dealing with rights in criminal proceedings, section 25 of the Charter also encompasses the right to be presumed innocent until proven guilty according to law.

Clause 41 of the Bill inserts new section 31 in the Act which provides that an individual who knowingly or recklessly contravenes a serious crime prevention order commits an indictable offence. Under new section 31(3), service of a copy of a serious crime prevention order is *prima facie* proof that an individual knows that a serious crime prevention order that applies to them is in effect, unless evidence is adduced to the contrary.

The legal maxim that ignorance of the law is no excuse is particularly relevant where a document is served on an individual. In such circumstances, it is reasonable to assume that a person served with a document is aware of its contents, unless there is evidence of the contrary.

The presumption of innocence requires that the prosecution must prove an offence beyond reasonable doubt. However, requiring an individual to adduce evidence to rebut their knowledge that a serious crime prevention order applies to them and is in effect, may be considered to shift the burden to an accused. However, in my view, an individual need only adduce evidence to the contrary which would be entirely within their knowledge. The burden then remains with the prosecution to prove absence of this knowledge to the criminal standard of proof, beyond all reasonable doubt, which is consistent with the presumption of innocence.

Right not to be tried or punished more than once (section 26)

Section 26 of the Charter provides that a person must not be tried or punished more than once for an offence in respect of which that person has already been finally convicted or acquitted in accordance with law.

This right embodies the fundamental common law principle of 'double jeopardy', which guarantees finality and certainty in the criminal justice system. This principle ensures that a person is not subjected to multiple prosecutions for an offence for which they have been finally acquitted or convicted.

I do not consider that the Bill engages or limits the right not to be tried or punished more than once.

As outlined above in relation to section 25 of the Charter, the serious crime prevention order scheme is a civil rather than criminal scheme. The purposes of the scheme relate to the prevention of serious criminal activity and the protection of the public, rather than punishment. If an order is imposed its purpose is preventative and does not constitute a penalty. Further, as also addressed above, the criteria for making a serious crime prevention order require consideration of a future risk of criminal activity by the court. Relevantly, the majority of the High Court has commented that a comparable serious crime prevention order regime in another Australian jurisdiction did not involve double jeopardy, and constituted a different approach to a different subject.[3]

Insignia of Certain Organisations (Part 4)

The Bill creates a new summary offence for a person who is 18 years or older to publicly display a mark that is insignia of an organisation, subject to specified exceptions, where:

- the person knows, or ought reasonably to know, that the mark is insignia of an organisation
- that organisation is a Part 5B organisation, being an organisation prescribed in regulations, and
- if the regulations prescribe a mark in respect of that organisation, the mark is either a prescribed mark or consists of "1%" or "1%er".

Insignia is defined in the Bill to mean a mark that denotes an organisation (including that organisation's name or logo), or indicates membership of, or an association with, the organisation. If the mark consists of a "1%" or "1%er" symbol, it will be insignia where it relates to a prescribed organisation and that organisation is a motorcycle club.

The Attorney-General may recommend the making of regulations prescribing an organisation following consultation with the Chief Commissioner of Police, where reasonably satisfied that prescribing the organisation is:

- likely to substantially assist in disrupting or preventing serious criminal activity, and
- reasonably necessary to prevent or disrupt serious criminal activity.

Regulations may also be made prescribing a specific mark of an organisation.

The offence is accompanied by the following enforcement powers:

- A police officer may direct a person to cease the public display of insignia, with non-compliance being a further summary offence.
- A police officer may seize without warrant a thing bearing insignia of a prescribed organisation where a police officer reasonably believes that a person is committing or has committed the substantive offence of publicly displaying insignia of a prescribed organisation, that the public display is still occurring where the thing is located at a public place, and where the person has been informed of or asked of specified matters.

- A magistrate may issue a search warrant in respect of the offence of publicly displaying insignia of a prescribed organisation in accordance with section 465 of the *Crimes Act 1958* as applied by new section 124ZV of the Act authorising police to enter a specified building, receptacle, place or vehicle and search for and seize any thing upon or in respect of which an offence against new section 124ZN of the Act is suspected to have been committed or is likely to be committed within the next 72 hours, or which there is reasonable ground to believe will afford evidence as to the commission of any such offence.
- A court may order the forfeiture of property bearing a mark the public display of which constituted an offence of publicly displaying insignia for which a person has pled, or been found, guilty.

Freedom of expression (section 15)

Publicly displaying insignia of an organisation is likely to be considered a communicative act that constitutes expression. Part 4 of the Bill therefore limits the right to freedom of expression by preventing a person's ability to impart information and ideas though the public display of insignia of prescribed organisations.

Victoria Police has indicated that some organisations use public display of insignia to intimidate, stand over and influence others in the community by creating fear and an implied threat of violence, and also to attract and recruit new members through visual presence and status. The purpose of Part 4 of the Bill is to prevent or disrupt serious criminal activity created or facilitated by the display of insignia. The limitation on freedom of expression therefore supports that legitimate purpose.

Further, the scheme is confined in a number of ways to ensure that it is the least restrictive means reasonably available to achieve this purpose. With respect to section 15(3) of the Charter, that purpose of preventing or disrupting serious criminal activity via the prohibition on the public is directed at ensuring the rights and reputations of other persons are respected and the protection of public order.

First, the offence only applies to adults only where a person knows, or ought reasonably to know, that the mark is an insignia of a particular organisation. This ensures that freedom of expression is not unnecessarily constrained, for example, where a person displays a mark without realising it is insignia of that organisation. Similarly, the Bill provides that the offence is subject to a range of exceptions which mitigate impacts on freedom of expression by ensuring that legitimate displays of insignia are not prohibited. Specifically, a person does not commit the offence if the display was engaged in reasonably and in good faith for a genuine academic or educational purpose, in the performance, exhibition or distribution of a work of art, in making or publishing a fair and accurate report of any event or matter, by a member or officer of a law enforcement, integrity or intelligence agency in the performance of the member or officer's duties for the purposes of the administration of justice, in opposition to the criminal activity of the organisation of which the mark is an insignia, or for an unrelated purpose as provided in new section 124ZP of the Act.

Second, as noted above, the offence only applies to displays in or visible from a public place. That is, a person may continue to express themselves through the display of insignia of prescribed organisations in a manner that is not publicly visible. The offence also does not prohibit insignia displayed via tattoos or other like processes, even where the tattoo is visible on a person whilst in public.

Third, the offence will only apply in relation to organisations prescribed in regulations. The Bill provides clear criteria and processes for when an organisation may be prescribed to ensure the scheme has a confined impact directly related to its purpose. Specifically, an organisation may only be prescribed upon recommendation by the Attorney-General as the responsible Minister administering the Act where the Attorney-General has first consulted with the Chief Commissioner of Police and is satisfied on reasonable grounds that the application of the prohibition on publicly displaying an insignia to the organisation is likely to substantially assist in disrupting or preventing serious criminal activity, and is reasonably necessary to prevent or disrupt serious criminal activity. The Attorney-General would need an evidentiary or factual basis for such a conclusion.[4]

If the Chief Commissioner of Police informs the Attorney-General that a person has been involved in serious criminal activity while a member or prospective member of an organisation being considered for prescription, the Attorney-General must take that into account when considering whether to be satisfied of the above criteria.

Fourth, while the definition of insignia, outlined above, is broad, the Bill sets out a mechanism for prescribing only specific insignia of an organisation where that would be a less restrictive means of achieving the scheme's purpose of preventing or disrupting serious criminal activity. This will allow for more targeted application of the offence where the risk of serious criminal activity is limited to particular insignia or where there is a risk that application to all insignia of an organisation may have unintended consequences. Where one or more marks are prescribed in relation to a given organisation, the scheme would only apply in relation to the prescribed marks that meet the definition of insignia, as well as the "1%" and "1%er" symbols where they denote or indicate membership of, or an association with, the organisation and that organisation is a

motorcycle club. The scheme will not apply to any other marks of the organisation that are not prescribed, whether or not they would meet the definition of insignia.

For these reasons, I consider that that the scheme is appropriately targeted to ensure that it will only apply where it is necessary to achieve the legitimate purpose of prevention or disruption of serious criminal activity. Accordingly, I am satisfied any limitation of the right to a freedom of expression, is reasonable and demonstrably justified pursuant to section 7(2) of the Charter.

Rights to peaceful assembly and freedom of association (section 16)

The Bill may also limit the rights to peaceful assembly and freedom of association by disincentivising membership of those same organisations on the basis they have been prescribed and/or for fear of criminal penalties if the association is conveyed through display of the organisation's insignia.

Further, as I have outlined extensively above, I consider the scheme is appropriately constrained to achieve its legitimate purpose. In particular, I emphasise again whilst the offence prohibits the public display of insignia of prescribed organisations, including the public visual representation of an association with other persons as part of an organisation, it does not prevent association between members of a prescribed organisation. Nor does it prevent persons identifying themselves verbally as associated with other members of those organisations.

Consequently, I consider any limitation of rights to peaceful assembly and freedom of association is considered reasonable and demonstrably justified.

Right to freedom of thought, conscience, religion and belief (section 14)

Section 14(1) of the Charter provides that every person has the right to freedom of thought, conscience, religion and belief, including the freedom to have or to adopt a religion or belief of that person's choice, and the freedom to demonstrate that person's religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private. Section 14(2) of the Charter also provides that a person must not be coerced or restrained in a way that limits that person's freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Given that organisations are yet to be prescribed, I accept that depending on the nature and tenets of such organisations, the right to freedom of thought, conscience, religion or belief in the cause embodied by that organisation may be affected. However, as outlined above, the Bill seeks to prevent and disrupt serious criminal activity and has been appropriately constrained to achieve that legitimate purpose. As such, to the extent that Part 4 of the Bill may be capable of limiting the right to freedom of thought conscience, religion and belief, I consider such a limitation to be reasonable and demonstrably justified.

Recognition and equality before the law (section 8)

Part 4 of the Bill limits the right to recognition and equality before the law by prohibiting the public display of insignia of organisations to be prescribed in regulations as outlined above, confining the scope of the scheme to impact select organisations who are to be treated differently to other organisations.

The limitation ensures that the impact of the scheme (including in relation to other Charter rights outlined in this Statement) is appropriately confined for the purpose of achieving the legitimate purpose of preventing and disrupting serious criminal activity. Consequently, this limitation is considered reasonable and demonstrably justified.

Right to be presumed innocent until proven guilty (section 25(1))

The Bill limits the right to be presumed innocent until proven guilty by creating an offence for the public display of insignia of prescribed organisations which contains a list of exceptions outlined above. This has the effect of placing an evidential onus on the accused to demonstrate that the display was engaged in reasonably and in good faith for the purpose of one of the exceptions.

Further, by prohibiting the public display of insignia of prescribed organisations, for the purpose of preventing and disrupting serious criminal activity, an implication may be created that anyone who wears or displays such insignia is a criminal and/or a member of a criminal organisation. However, I do not consider this to limit the presumption of innocence as provided for by the Charter, noting that the scope of the offence relates only to public displays of the insignia of prescribed organisations and does not inhibit a person from private display of insignia that is not visible from a public place, nor does it inhibit membership of the organisation itself.

Whilst the offence places an evidential onus on the accused to adduce evidence suggesting a reasonable possibility that they have engaged in the display of the insignia for the purpose of one of the listed exceptions reasonably and in good faith, this does not transfer the legal onus of proof. Once the accused has pointed to evidence of the exception, the prosecution must still prove the elements of the offence beyond reasonable doubt.

The placement of an evidential onus on the accused is required, as the purpose for which insignia is displaced will be known by the accused for which they should be able to readily point to supporting evidence. The burden is also necessary to prevent a person from displaying insignia under an exception dishonestly for some improper purpose.

The exceptions have been designed to ensure that the offence is specifically targeted to achieve its purpose of preventing serious criminal activity. As I have already indicated, they ensure the offence does not prohibit displays of insignia reasonably and in good faith for specified legitimate purposes, the prohibition of which would not prevent or disrupt serious criminal activity. These exceptions are therefore designed to mitigate the broader impact of the offence on various other rights outlined in this Statement of Compatibility. Further, the matters within the exceptions will generally be uniquely within the knowledge of the accused.

The offence could have been drafted to require the prosecution to demonstrate beyond reasonable doubt each and every exception does not apply in every case, even in the absence of evidence to suggest an exception may apply. However, this would have placed such a high burden on the prosecution as to render the offence unworkable.

Consequently, I consider placing an evidential onus of proof on the accused with respect to the exceptions reasonable and demonstrably justified.

Right to privacy (section 13(a))

The right to privacy, as outlined above, encompasses an individual's 'interest in the freedom of their personal and social sphere in the broad sense'.[5] Part 4 of the Bill affects an individual's autonomy because it prevents them from being able to choose to wear particular clothing or publicly display marks of their belonging to an organisation. Similarly, Part 4 of the Bill interferes with a person's home by prohibiting the display of insignia of prescribed organisations on such private property in such a way that it would be visible from a public place.

The interference with an individual's autonomy directly supports the purpose of Part 4 of the Bill which is to prevent or disrupt serious criminal activity. As already noted, the scope of the scheme is confined in a number of ways to ensure that it is the least restrictive means reasonably available to achieve this purpose such that I do not consider the interference to be arbitrary.

Similarly, any interference with a person's home is necessary to ensure that persons cannot circumvent the operation of the offence by displaying insignia on private property that is visible from a public place. As previously explained, the prohibition of displays that occur on private property but are visible from a public place limit the scope of the offence only to parts of a person's private property that are in public view. A person remains free to own, possess and display insignia of a prescribed organisation in the complete privacy of their home where it is not in public view.

Separately, the enforcement powers within Part 4 of the Bill, as outlined above, also limit the right to privacy by:

- enabling a police officer to interfere with a person's bodily privacy when exercising seizure powers in accordance with new sections 124ZV and 124ZW of the Act, and
- potentially enabling a police officer to enter and search a person's home where authorised under a search warrant issued by a magistrate under section 465 of the *Crimes Act 1958* as applied by new section 124ZV of the Act.

However, these search and seizure powers may only be exercised in accordance with the law and are subject to appropriate limitations and safeguards. Notably, a police officer may only exercise warrantless seizure powers under new section 124ZW of the Act, where they reasonably believe that a person is committing or has committed the offence of publicly displaying insignia of a prescribed organisation and where the display is continuing. The offence is in turn further confined as outlined above only in relation to marks that meet the clear definition of insignia set out in the Bill of organisations that have been prescribed in accordance with clear criteria and processes that ensure the scheme only applies as far as needed to achieve its legitimate purpose.

The requirement that the public display is continuing ensures that the warrantless search powers are only available to respond to and prevent ongoing offending against new section 124ZN of Act where there would not be time to permit a search warrant. The confinement of the warrantless search powers to being exercised in public places only, also reflects the greater impact to privacy where an item is located on private property. Prior to a police officer exercising the seizure power, they must also:

- inform the person from whom the thing is to be seized that the officer believes that the person is committing an offence against section 124ZN
- inform the person that the officer has the power to seize the thing and intends to do so
- inform the person that reasonable force may be used to assist in the seizure, and

- ask the person to hand the thing over.

Police may only retain an item seized under a search warrant issued as provided under by section 124ZV, or without warrant under new section 124ZW of the Act for a specified period before the item becomes eligible for collection. Specifically, seized items become eligible for collection by the owner of a seized thing or a person from whom it was seized or another person on either's behalf:

- when 3 months elapse without a person being charged with an offence against the Act in relation to the public display of a mark that the thing bears
- when a decision is made, within that period, not to charge such an offence, or
- if a person is charged with such an offence, when all the relevant proceedings have concluded without a forfeiture order being made.

The search warrant powers may only be carried out after a magistrate has been satisfied by the evidence on oath or by affirmation or affidavit of any police officer of or above the rank of senior sergeant that the specific statutory preconditions outlined above have been met. Further the search warrants are subject to the continued oversight of the Magistrates' Court and the various requirements of the other provisions of Subdivision (31) of Division 1 of Part III of the *Magistrates' Court Act 1989* apply.

I am therefore also of the view that the search and seizure powers outlined above are not arbitrary.

Accordingly, I am of the opinion that Part 4 of the Bill does not limit and is not incompatible with the right to privacy protected by section 13(a) of the Charter.

Property rights (section 20)

Section 20 of the Charter provides that a person must not be deprived of their property other than in accordance with law. This final limitation of 'other than in accordance with law' requires that the law be adequately accessible and formulated with sufficient precision, and not operate arbitrarily or selectively.[6]

The seizure powers discussed above also engage the right to property by depriving a person's ability to enjoy and exercise their exclusive control over things seized by police. Part 4 of the Bill also limits property rights by providing for the forfeiture of things seized pursuant to new section 124ZW of the Act where those things are not collected within a specified period of time and the power for a court to order the forfeiture of seized property bearing a mark the public display of which constituted an offence of publicly displaying insignia for which a person has pleaded, or been found, guilty.

These powers ensure that police have the ability to remove insignia of prescribed organisations from public display in the swiftest manner possible, to prevent them from being publicly displayed again in the future, and to deter others from engaging in the conduct prohibited by the Bill, and are therefore directed at the legitimate purpose of Part 4 of the Bill. Victoria Police has advised that without such powers, the practical enforcement of the offence would likely be significantly undermined. In particular, there would be no practical and operationally workable means of preventing a person who police find publicly displaying insignia of prescribed organisations – that is a person who has not been deterred by the new offence alone – from continuing to display insignia after police leave. I therefore consider that the powers are a necessary addition to the new insignia offence to ensure Part 4 of the Bill is capable of achieving the purpose of preventing or disrupting serious criminal activity.

Further, I consider the powers are appropriately confined and structured and do not operate arbitrarily or selectively. As outlined above, the seizure powers may only be exercised in accordance with the law and are subject to appropriate limitations and safeguards.

The forfeiture powers are also clearly set out in law and subject to appropriate limitations and safeguards. While the forfeiture of seized things not collected within a specified period operates automatically by force of law, there are practical obligations on police to give notice that the seized thing has become eligible for collection to each person who is an owner of a seized thing and, where the thing was seized under new section 124ZW of the Act and was being carried or attended by a person when seized, that person, where such persons are discernible from Victoria Police records. Further, I consider that the timeframes for collection are reasonable and fair, being 3 months after the last person received notice that the seized thing is eligible for collection, or if no notice has been issued, 4 months after the time at which the seized thing became eligible for collection. The power to forfeit items where no notice has been issued reflects that there may be circumstances where gang insignia being displayed in a fixed location and it is unclear who owns the thing or attended to the thing.

The power for a court to order the forfeiture is also clearly set out in law and subject to appropriate limitations and safeguards. This power is only enlivened in relation to property that has been seized and bears a mark the public display of which constituted an offence of publicly displaying insignia for which a person has pleaded, or been found, guilty, and only on application of the prosecution. Further, there are clear criteria and processes

that must be followed before forfeiture may be ordered. With respect of a seized thing that is not a motor vehicle, new section 124ZZA of the Act sets out a simple process reflecting the relatively low value of the largely personal items it is expected to apply in relation to and ensures that the court maintains a broad discretion as to whether or not to order forfeiture.

For seized motor vehicles, the Bill applies Division 1 of Part 3 of the *Confiscation Act 1997* as if the offence against new section 124ZN of the Act were a Schedule 1 offence within the meaning of the *Confiscation Act 1997* while preventing the broader application of the forfeiture power to other tainted property within the meaning of that Act. The process set out in Division 1 of Part 3, and the associated provisions of the *Confiscation Act 1997*, are complex and its application to motor vehicles used to display insignia reflects the comparatively high value of motor vehicles and the fact that they may be more likely to give rise to third party ownership or security interests.

Consequently, I consider that the interference with property rights is appropriately confined and structured, and to the extent such interference amounts to a limitation of those rights, is reasonable and demonstrably justified.

Exclusion of Members of Certain Organisations from Victorian Government Worksites (Part 5)

The Bill will:

- introduce an indictable offence, punishable by up to 3 years' imprisonment, that prohibits members of prescribed organisations from entering an area that is a Victorian Government worksite, to which public access is restricted, and where development is taking place
- provide a broad definition of 'development' that includes construction, demolition, subdivision and relocation
- provide for land to be prescribed as a 'Victorian Government worksite' in regulations, if the area is, or is located at, a project area, or an area at which the Attorney-General is satisfied on reasonable grounds public construction is occurring, and where the Attorney General is satisfied on reasonable grounds that applying the offence to such areas is likely to substantially assist in disrupting or preventing criminal activity in relation to public construction
- define 'project area' to include a number of locations delineated under other Acts in relation to public infrastructure projects such as the Suburban Rail Loop
- define public construction to include construction by, or on behalf of, a Department or public body
- provide for organisations to be prescribed in regulations, where doing so is likely to substantially assist in, and is reasonably necessary to, prevent or disrupt serious criminal activity in relation to public construction
- amend section 11 of the Act – which operates to preserve the freedom of persons in Victoria to participate in lawful protest, advocacy, dissent or industrial action – so that it does not apply in relation to the offence and, thereby, ensure the new offence can apply where the person who is a member of a prescribed organisation is also a union official, and
- clarify that the offence applies despite anything to the contrary under any other law.

Right to freedom of movement (section 12)

The right of members of prescribed organisations to move freely within Victoria would be limited because the scheme prohibits them from entering Victorian Government worksites.

However, the scheme only applies to worksites to which public access is restricted. The limitation is therefore consistent with limitations on the right applying to most other Victorians. As the purpose is to prevent criminal activity in relation to public construction, the restriction on the right is considered lawful and necessary to protect public order, and therefore is proportionate to the legitimate aim of crime prevention.

Right to privacy and reputation (section 13)

The right to privacy includes a person's 'interest in the freedom of their personal and social sphere in the broad sense'.[7] On one interpretation, the right may be limited 'where employment restrictions impact sufficiently upon the personal relationships of the individual and otherwise upon the person's capacity to experience a private life'.[8]

Therefore, the right of members of prescribed organisations to privacy and reputation may be limited in so far as the Bill restricts the ability of persons to be employed or engaged to do work on a Victorian Government worksite.

The exclusion from employment in these circumstances is considered necessary to achieve the purpose of preventing criminal activity in relation to public construction. For these reasons, the limitation is lawful and non-arbitrary, as it is proportionate to the legitimate aim of crime prevention.

Right to freedom of expression (section 15(2))

The right of members of prescribed organisations to seek, receive or impart information is limited, because the physical exclusion from Victorian Government worksites prohibits this expression in these locations, particularly in the context of union activities and industrial action.

The offence is directed at preventing criminal activity in public construction, and the limitation it imposes is reasonably necessary to maintain public order.

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

The rights of members of prescribed organisations to peaceful assembly and freedom of association is limited by the exclusion from Victorian Government worksites. The exclusion will prevent members from engaging in peaceful protests or union activities on Victorian Government worksites.

The limitation is lawful and non-arbitrary, as it is proportionate to the legitimate aim of crime prevention and the social need of prohibiting members from working on Victorian Government worksites. The proportionality of this limitation is evidenced by the fact that members are not prohibited from engaging in peaceful protest or union activities at any other location, including any area that is accessible to the public.

Right to take part in public life (section 18)

The right of members of prescribed organisations to, without discrimination, participate in the conduct of public affairs is limited, in so far as they are prevented from engaging in lawful protest, advocacy and industrial action at Victorian Government worksites.

The right of construction workers who are not members of prescribed organisations to participate in the conduct of public affairs through freely chosen representatives may also be limited, in so far as the offence prohibits union representatives (who are members of prescribed organisations) from attending worksites in that capacity.

The offence aims to prevent criminal activity on Victorian Government worksites, by keeping members of prescribed organisations off these sites. This is intended both to prevent crime and to protect other important rights of workers. Therefore, the limitation is reasonable and justified to achieve this purpose.

Conclusion

I am therefore satisfied for the reasons outlined above that the limitations on rights discussed are reasonable and justified in the circumstances.

Hon Jaclyn Symes MP
Attorney-General
Minister for Emergency Services

[1] *Kracke v Mental Health Review Board* [2009] 29 VAR 1 [619].
[2] *Vella v Commissioner of Police for New South Wales* (2019) 269 CLR 219 [78].
[3] Ibid.
[4] *George v Rockett* (1990) 170 CLR 104 at 112 (the Court).
[5] *Kracke v Mental Health Review Board* [2009] 29 VAR 1 at [619] (Bell P); *Castles v Secretary, Department of Justice* (2010) 28 VR 141 at [77] (Emerton J).
[6] *Hoverspeed Ltd v Commissioners of Customs and Excise* [2002] EWHC Admin 1630 at [152]–[158]; *PJB v Melbourne Health (Patrick's Case)* (2011) 39 VR 373 at [91] (Bell J).
[7] *Kracke v Mental Health Review Board* [2009] 29 VAR 1 [619].
[8] *ZZ v Secretary, Department of Justice* [2013] VSC 267, [94].

Second reading

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:25): I move:

That the bill be now read a second time.

Ordered that second-reading speech be incorporated into *Hansard*:

The Criminal Organisations Control Amendment Bill 2024 amends the *Criminal Organisations Control Act 2012* to reform Victoria's unlawful association scheme, introduce a new serious crime prevention order,

prohibit the public display of the insignia of prescribed organisations, and prohibit members of prescribed organisations from entering Victorian Government worksites.

Organised crime in Victoria

The Australian Institute of Criminology estimates that serious and organised crime cost Australia up to $60.1 billion in 2020–21, including direct and consequential costs arising from organised crime activity and costs associated with prevention and response to serious and organised criminal activity.

Outlaw motorcycle gangs, or OMCGs as they are commonly referred to, represent some of the more highly visible, but certainly not the only, organised crime groups known by police to be operating in Victoria. Victoria Police reports that 26 individual recognised OMCGs are recorded and operating in some capacity in Victoria alone, with 40 such groups operating across Australia. Victoria Police estimates that there are 2,000 OMCG members and associates who have links to Victorian addresses. Research undertaken by the Australian Institute of Criminology in 2022 indicates that 4 in 5 Australian OMCG members had a recorded criminal history, and that OMCG members were nearly three times as likely to have contact with the criminal justice system by age 33 than others. One in 4 members had been apprehended for a recent violent or intimidation offence, and one in 8 for a recent organised crime-type offence.

Victoria Police has emphasised the increasing sophistication of these groups, noting that in recent years OMCGs have been known to collude to establish a larger organisation to facilitate major criminal ventures, with each OMCG contributing to its activities. Victoria Police has identified linkages between OMCGs and other organised crime groups with consistent attacks on tobacco stores and related businesses, fraud activities, and a wide range of other serious offending.

Victoria Police has also observed that, in recent years, high ranking members of OMCGs have shifted residence from other Australian states to Victoria where they openly congregate and consort with other serious organised crime entities, driven by effective interstate anti-association laws and serious crime prevention orders.

Unlawful association

The objective of the unlawful association scheme is to prevent and inhibit the criminal conduct of criminal groups or criminal networks, by preventing associations that may lead to this conduct.

In 2015, the Criminal Organisations Control Act was amended to introduce the unlawful association scheme. The scheme has not been used since it commenced in 2016.

The Bill modifies the unlawful association scheme to expand police powers to prohibit persons from associating with each other. Under the scheme, Victoria Police can issue a notice to persons warning them not to associate. Subsequent associations between persons issued a notice may constitute the offence of unlawful association.

Threshold to issue an unlawful association notice

Currently, Victoria Police can issue a notice directing two or more people over the age of 18 not to associate with each other, if:

- one of them has previously been convicted of an applicable offence tried on indictment, and
- the issuing officer reasonably believes that preventing association between the two is likely to prevent the commission of an offence.

The Bill amends this test to expand police powers to issue an unlawful association notice, in the following ways:

- Removing the requirement that the conviction was 'tried on indictment', so that a notice may be issued where a person was convicted for an applicable offence heard and determined summarily or following a plea of guilty. This expands the scope of the scheme to capture less serious offending and will enable Victoria Police to issue notices to a much broader group of people.
- Replacing the requirement for a police officer to believe a crime is likely to be prevented with a requirement that the officer is reasonably satisfied issuing the notice is likely to prevent or inhibit the establishment, maintenance or expansion of a criminal group or a criminal network, and thereby to prevent or inhibit criminal conduct. The officer must also be satisfied issuing the notice is appropriate in all the circumstances, following consideration of a list of factors such as whether issuing the notice is proportionate to the risk of criminal conduct.

The Bill also amends the definition of 'applicable offence' to capture serious offences punishable by at least 10 years imprisonment, offences that are linked to organised crime, and comparable interstate offences, recognising the cross-border operation of organised crime. However, the Bill provides that the unlawful association powers may not be applied in relation to a person on the basis of a conviction for an applicable

offence which has since become spent, or for childhood offences unless the conviction was for a specified serious offence that occurred within the past 2 years.

Offence of unlawful association

Currently, the recipients of a notice commit an offence if they associate with a person named in the notice 3 times in a 3-month period, or 6 times in a 12-month period. This is a serious offence, and if found guilty, the person faces up to 3 years imprisonment.

The Bill will lower this threshold, so that the recipient of a notice commits an offence if they associate with the person named in the notice just once, at any time the notice is in effect. This will increase the efficacy of the scheme by making it easier for Victoria Police to charge persons for associating in contravention of a notice.

The Bill also clarifies the practical operation of the offence, amending the definition of 'associate with' to make it clear that chance encounters or inadvertent meetings do not, of themselves, cause a person to commit the offence. Specifically, the Bill amends the definition to clarify that, in order to commit the offence, there must be some seeking out or acceptance of the other person's company or communication. Therefore, an accidental meeting or communication will not be an 'association' for the purpose of the offence, consistent with the High Court's interpretation of the New South Wales provision in *Tajjour v New South Wales* (2014) 254 CLR 508.

Exceptions to the offence

The unlawful association scheme provides for a number of situations where an exception applies and associating does not constitute an offence. For example, persons subject to a notice are permitted to associate with family members, if it is not done for an ulterior purpose.

The Bill narrows the exception for association with family members by amending the definition of 'family member' so that it applies to a more confined group of people. The new definition includes close family relationships, but will no longer capture any person who can reasonably be regarded as 'like family', having regard to specific considerations. The definition retains the 'intimate personal relationships' exception, to ensure that relationships such as engaged couples are included. It does not, however, extend to mere close friendships.

The Bill also introduces new exceptions where an association occurs while receiving welfare services, or in the course of emergency services volunteering, or an Aboriginal person or Torres Strait Islander engaging in or performing a cultural practice or obligation.

Safeguards

The Bill strengthens the process for seeking the internal review of an unlawful association notice by increasing the minimum rank of the reviewing officer and enabling a person to seek an extension of time to apply for a review. In addition, the Bill includes a process enabling a person to apply to a court to revoke a notice if there has been a substantial change in circumstances.

The Bill also reduces the duration of an unlawful association notice from 3 to 2 years. This will ensure that the grounds for issuing a notice are reconsidered afresh within a shorter period of time.

Independent oversight of the unlawful association scheme

The Independent Broad-based Anti-corruption Commission (IBAC) will be given a new monitoring and oversight role. IBAC will be required to report annually to the Attorney-General on the exercise of unlawful association powers and conduct periodic reviews of unlawful association notices. To ensure IBAC has the information it needs, Victoria Police will be required to report to IBAC quarterly on the use of powers.

Concerns have been raised about the use of similar consorting laws in New South Wales. The NSW Ombudsman and the NSW Law Enforcement Conduct Commission have both found that young persons and Aboriginal persons have been disproportionately subject to the scheme. The Bill seeks to ensure that similar issues do not arise in Victoria. Under the revised scheme, police will not be able to issue an unlawful association notice to anyone under the age of 18. In addition, Victoria Police is required to report on the number of Aboriginal people and Torres Strait Islanders who receive a notice or are charged with the offence. Therefore, government will know if any groups are being unfairly targeted by these laws.

Serious crime prevention orders

The Bill will introduce a new serious crime prevention order scheme to replace the declaration and control order scheme in the *Criminal Organisations Control Act 2012*, which has not been used since it was introduced.

The purpose of the serious crime prevention order scheme is to prevent and inhibit the involvement of individuals in serious criminal activity. The scheme enables the Chief Commissioner of Police to apply for a

court order restricting the activities of individuals aged 18 years or older who are involved at the most serious end of organised crime. Provided the court is satisfied that certain criteria are met, it may make an order requiring an individual to comply with tailored conditions commensurate to their risk profile, to curtail future involvement in serious criminal activity and protect the public.

These reforms have been modelled on, and are substantially similar to, the equivalent New South Wales scheme in the *Crimes (Serious Crime Prevention Orders) Act 2016* (NSW), though they have been adapted to the Victorian legislative framework. The Victorian scheme is broadly consistent with the New South Wales scheme. For example, the comparable operative provision (new section 16 in the Bill and section 5(1) in New South Wales) gives the court discretion to make an order and requires the court to undertake a balancing exercise and future risk assessment before making an order. Further examples of consistency between the schemes include, but are not limited to, the civil nature of both schemes, equivalent durations of the orders, and that both enable orders to be varied or revoked.

The analogous New South Wales scheme has been upheld by the High Court in *Vella v Commissioner of Police for New South Wales (2019)* 269 CLR 219. In upholding the validity of the equivalent scheme, the majority of the High Court outlined 6 steps to be followed before a court may make a serious crime prevention order. Those steps are reflected in new section 16 of the Bill. The High Court decision outlines a 6-step approach as follows:

(i) the person must be at least 18 years old;

(ii) the person must have been convicted of, or there is proof of involvement in, serious criminal offending;

(iii) the court must assess whether there is a real likelihood that the person will be involved in serious crime related activity;

(iv) the court must consider whether there are reasonable grounds to believe that the order would prevent, restrict or disrupt serious crime related activities;

(v) the order and conditions must be tailored to protect the public by preventing, restricting or disrupting further serious criminal related activities; and

(vi) the court must consider whether the order should be made in the circumstances.

Serious crime prevention orders may only be made by the court

The court may make a serious crime prevention order requiring an individual the subject of an application to comply with conditions imposed under that order, where satisfied on the balance of probabilities that the individual is either:

- an 'eligible offender', which is a conviction-based pathway and is defined consistently with the unlawful association scheme, or
- has been involved in serious criminal activity while 18 years or older.

The second limb recognises that a person may be 'involved in' serious criminal activity without being convicted of an applicable offence. This reflects that some individuals, for example leaders of organised crime groups, may not directly offend but facilitate others offending, and provides a mechanism to restrict those individuals' activities.

Where the court is satisfied that either of the eligibility criteria has been met, it must also be satisfied, to the civil standard of proof, that there are reasonable grounds to believe that compliance with the conditions would protect the public by preventing or inhibiting the individual's involvement in serious criminal activity and imposing the conditions is otherwise appropriate in the circumstances. Once satisfied the criteria have been met, the court may make a serious crime prevention order. The criteria ensures that any conditions are appropriate and proportionate to the risk that an individual may be involved in serious criminal activity. This is due to the requirement that the court balance the protection of the community via preventing or inhibiting the involvement of an individual in serious criminal activity as against the restrictions that a condition would place on the liberty of a person.

The court has a broad discretion to impose suitable conditions. The Bill includes a non-exhaustive list of conditions the court might impose. For example, the court may impose conditions prohibiting association with specified individuals, the use of an alias, the possession of firearms or cash or prohibiting the individual leaving Victoria or Australia. However, the Bill also requires the court to consider what is already required of a person subject to existing orders of a court or tribunal or undertakings amongst other things.

Judicial discretion and oversight in making serious crime prevention orders and determining appropriate conditions is an essential and fundamental safeguard that has been included in the scheme. This safeguard reflects the significance of serious crime prevention orders on the lives and activities of the persons subject to

them, ensuring that any conditions imposed are appropriate and proportionate to prevent and inhibit serious criminal activity and protect the public.

A serious crime prevention order may be in force for a maximum duration of 5 years, although it may be varied or revoked earlier in certain situations. The Chief Commissioner of Police may apply to the court for the renewal of a serious crime prevention order and may do so more than once.

Offence for contravention of a serious crime prevention order

It will be an indictable offence to contravene a serious crime prevention order. Contravention of a serious crime prevention order is punishable by a fine of up to 600 penalty units, which is currently $118,554, and/or 5 years imprisonment.

Protection of criminal intelligence

The Bill applies the existing criminal intelligence provisions in the *Criminal Organisations Control Act 2012* to the serious crime prevention order scheme. Accordingly, Victoria Police may seek to protect the confidentiality of criminal intelligence relied upon to support an application for a serious crime prevention order.

Where the Chief Commissioner of Police makes an application for a criminal intelligence protection order, the court retains a discretion to grant the order after balancing whether the need for confidentiality of the criminal intelligence outweighs any prejudice or unfairness to the individual. Unless ordered otherwise, criminal intelligence protection order applications will be heard in closed court to preserve the confidentiality of the intelligence. Whilst this will preclude an individual subject to an serious crime prevention order from attending court, the Bill provides for the appointment of special counsel to represent the interests of the individual in proceedings related to the protection of criminal intelligence.

Recognition of corresponding interstate orders

The Bill provides for the application and enforcement of corresponding orders made in other jurisdictions under similar regimes. This prevents a person to whom a similar interstate order applies from moving to Victoria and avoiding restrictions that they would otherwise be subject to.

Review of the serious crime prevention order scheme

In addition to oversight provided by judicial discretion, the Bill contains further oversight mechanisms to ensure that the serious crime prevention order scheme operates as intended, is proportionate and effective, and any unintended consequences are identified. Accordingly, the Bill provides that the Attorney-General must cause a statutory review to be undertaken 3 years following the commencement of the scheme.

Prohibition on the public display of insignia of certain organisations

Members of some criminal groups, including OMCGs, wear and display ‘colours’, such as patches, logos or other insignia, to represent their affiliation with the group. Victoria Police has indicated that such public displays are used to intimidate, stand over and influence others in the community by creating fear and an implied threat of violence, and also to attract and recruit new members through visual presence and status.

The Bill creates a criminal offence banning the public display of insignia of certain organisations to be prescribed in regulations. The offence is complemented by a range of enforcement powers. The purpose of this new scheme is to prevent or disrupt serious criminal activity in Victoria which is created or facilitated by the display of insignia. The offence will bring Victoria in line with other Australian jurisdictions and have a positive outcome for community order and safety.

The offence prohibits anyone over 18 from displaying a mark in a public place or in public view if the mark is insignia of an organisation that has been prescribed and the person knows or ought reasonably to know, that the mark is an insignia of that organisation. The knowledge element provides a safeguard against inadvertent displays by persons who were unaware or who couldn’t reasonably have known that the mark is an insignia of an organisation.

It is intended that the offence be capable of capturing a broad range of ways in which insignia might be displayed. For example, the offence may apply to the public display of insignia on clothing, jewellery, and other accessories as well as signs, flags and paintings on vehicles or buildings. Whilst the physical display of a phone displaying an insignia published on the internet would be capable of being captured by the offence, the act of publishing the insignia on the internet is not prohibited by the offence. The offence also does not apply where the public display of the insignia occurs by means of tattooing or other like process. This is consistent with human rights considerations under the *Charter of Human Rights and Responsibilities Act 2006* and the prohibition on the display of Nazi symbols in Victoria.

Organisations in relation to which the offence will apply

The offence will only apply in relation to organisations prescribed in regulations. The Bill provides clear criteria and processes for when an organisation may be prescribed to ensure the scheme has a confined impact directly related to its purpose. Specifically, an organisation may only be prescribed upon recommendation by the Attorney-General where the Attorney-General has first consulted with the Chief Commissioner of Police and is satisfied on reasonable grounds that the application of the prohibition on publicly displaying an insignia to the organisation is likely to substantially assist in disrupting or preventing serious criminal activity, and is reasonably necessary to prevent or disrupt serious criminal activity. In considering that threshold, the Attorney-General may have regard to whether any person has been involved in serious criminal activity while a member or prospective member of the organisation.

Meaning of insignia

A mark – meaning an image or symbol, including a logo, or a piece of text, including a name, abbreviation or acronym – is an insignia of an organisation where it denotes that organisation or indicates membership of, or an association with, an organisation. Further, a mark that consists of a "1%" or "1%er" symbol will be an insignia of an organisation where it denotes or indicates membership of, or an association with, the organisation and that organisation is a motorcycle club. This reflects the use of these "1%er" symbols by those motorcycle clubs who engage in criminal activities and pride themselves on being the 1% who operate outside of the law. These changes will not affect the vast majority of motorcyclists who are law-abiding.

This means that the insignia of prescribed organisations need not be set out in the regulations; only the name of the organisation. This will provide flexibility and adaptability if organisations alter their insignia to circumvent the prohibition.

Nevertheless, there may be occasions where the scope of insignia prohibited by the scheme may be confined to specific insignia while still achieving its purpose of preventing and disrupting serious criminal activity. In such instances, the regulations may prescribe specific marks in respect of an organisation, the scheme would only apply in relation to prescribed marks as well as the "1%" and "1%er" that meet the definition of insignia.

Exceptions

The offence will be subject to a range of exceptions, recognising that there may be legitimate displays of insignia of prescribed organisations that this Bill does not seek to limit. The exceptions apply where a display occurs reasonably and in good faith:

- for a genuine academic or educational purpose
- in the performance, exhibition or distribution of a work of art
- in making or publishing a fair and accurate report of any event or matter
- by a member or officer of law enforcement integrity or intelligence agencies in the performance of the member or officer's duties
- for the purposes of the administration of justice
- in opposition to the criminal activity of the organisation of which the mark is an insignia, or
- only for purposes not in connection with the prescribed organisation to which the mark is an insignia.

The requirement that the exceptions only apply where a display occurs reasonably and in good faith is intended to ensure organisations and their members and associates do not seek to utilise these exceptions merely as a means to escape liability for the continued public display of insignia. For example, it is not intended that a prescribed organisation could commission an artist to paint its club logo or a variation of that logo on the side of its club house in a way that is clearly visible from public places and rely on the exception for exhibiting a work of art.

Enforcement powers

The offence prohibiting the public display of insignia of prescribed organisations is intended to operate as a strong deterrent to such conduct. However, Victoria Police has made it clear that there will be individuals who may continue to flaunt the law by displaying insignia. In addition, there may be occasions where the general enforcement, investigation or prosecution of the offence requires supporting powers. Consequently, the Bill includes tailored enforcement powers.

First, police officers will be empowered to direct a person to cease display of an insignia, whether on public or private property, within a reasonable time. A police officer may give a direction to the person responsible for the display or may leave a direction in relation to a property, including a motor vehicle from which the public display is occurring. A person who, without reasonable excuse, does not comply with a direction to

remove is liable to a penalty of 10 penalty units for an individual, which currently equates to $1,976, or 50 penalty units for a body corporate, which currently equates to $9,880.

Alternatively, police will be able to seize without warrant property bearing insignia of a prescribed organisations where a police officer reasonably believes that a person is committing or has committed the offence of publicly displaying insignia. This seizure power is available where the thing to be seized is located in a public place, the public display is still occurring and the police officer has asked and informed the person carrying or attending the item of certain things. Police may use reasonable force to seize property in accordance with this power if it is necessary to effect seizure.

In circumstances where the power to seize without warrant does not apply, the Bill also provides for the search and seizure warrant power under section 465 of the *Crimes Act 1958* to apply in respect of the offence of publicly displaying insignia of a prescribed organisation. This ensures, for example, that police can enter private property and seize insignia in public view, or where police are otherwise unable to effect seizure while the offence is occurring. Police must apply to the Magistrates' Court for the warrant, ensuring adequate oversight whilst enabling practical enforcement of the offence. This is in line with powers introduced to enforce the prohibition on nazi insignia in the *Summary Offences Amendment (Nazi Symbol Prohibition) Act 2022*.

Lastly, courts will also have the discretion to order the forfeiture of a seized item where the person from whom it was seized is found guilty or pleads guilty to the public display of insignia offence. For motor vehicles seized, forfeiture provisions in the *Confiscation Act 1997* apply, including to address circumstances where there are multiple interests in a seized vehicle.

Offence for members of declared organisations to enter Victorian Government worksites

On 15 July 2024, the Premier announced a response by the Victorian Government to allegations of organised criminal involvement in the Victorian construction sector following allegations in the media of criminal activity and allegations of criminal associations involving the Construction, Forestry and Maritime Employees Union.

To respond to those allegations, and to assure the Victorian community that government funded construction projects operate with integrity, the Bill will introduce a new offence to prevent members of declared organisations from entering prescribed Victorian Government worksites.

The Bill provides that it is an indictable offence for an adult who is a member of an organisation prescribed under regulations to enter an area that is, or is located at a Victorian Government worksite, to which public access is restricted, where development is taking place. The offence is punishable by up to 3 years imprisonment and/or a fine of 360 penalty units, which currently equates to $71,132.

Definition of Victorian Government worksite

The Bill defines a Victorian Government worksite as an area that is prescribed in regulations made by the Governor in Council on the recommendation of the Attorney-General.

To ensure that the offence is targeted at publicly funded infrastructure projects where there is a risk of organised criminal involvement, the Attorney-General may only recommend a worksite is prescribed where it meets certain criteria. The worksite must be located at a project area, or an area the Attorney-General is reasonably satisfied is a location where public construction is occurring. Project area is defined to include: a project area under the *Major Transport Projects Facilitation Act 2009*; the *Suburban Rail Loop Act 2021*, or the *Development Victoria Act 2003*, or a nominated project under the *Project Development and Construction Management Act 1994*. Public construction is defined to include maintenance, rehabilitation, alteration, extension or demolition of any improvements on land by, or on behalf of a Department or public body.

The Attorney-General must also be reasonably satisfied that prescribing the area is likely to substantially assist in, and is reasonably necessary to, prevent or disrupt criminal conduct in relation to public construction. This ensures that the offence is applied in a way that is proportionate to and justified by the risk of organised crime involvement in the construction industry.

Prescribed organisations

The offence will only apply to members of organisations that are prescribed in regulations by the Governor in Council on the recommendation of the Attorney-General. The Attorney-General may only recommend that an organisation be prescribed if the Attorney-General has consulted with the Chief Commissioner of Police, and the Attorney-General is satisfied on reasonable grounds that applying the offence to that organisation is likely to substantially assist in disrupting or preventing criminal activity in relation to public construction, and is reasonably necessary to prevent or disrupt that activity.

Conclusion

The Bill makes a range of important amendments that aim to prevent, disrupt and counteract serious and organised crime in Victoria and keep our community safe. The Government has worked hard to ensure the reforms are both operationally workable and effective for police and subject to appropriate protections and oversight. To this end, the Bill includes a requirement that the new provisions be reviewed 3 years after they come into operation to ensure that is the case and identify any unintended issues early.

I commend the Bill to the house.

Georgie CROZIER (Southern Metropolitan) (18:25): I move:

That the debate on this bill be adjourned for one week.

Motion agreed to and debate adjourned for one week.

Roads and Road Safety Legislation Amendment Bill 2024

Introduction and first reading

The PRESIDENT (18:26): I have received the following message from the Legislative Assembly:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to amend the **Road Safety Act 1986**, the **Melbourne City Link Act 1995**, the **EastLink Project Act 2004**, the **Road Safety Camera Commissioner Act 2011**, the **West Gate Tunnel (Truck Bans and Traffic Management) Act 2019**, the **North East Link Act 2020** and the **Marine (Drug, Alcohol and Pollution Control) Act 1988** and for other purposes.'

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:26): I move:

That the bill be now read a first time.

Motion agreed to.

Read first time.

Harriet SHING: I move, by leave:

That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:27): I lay on the table a statement of compatibility with the 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 Roads and Road Safety Legislation Amendment Bill 2024 (the **Bill**).

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

Overview of the Bill

The Bill amends the *Road Safety Act 1986* (the **Act**) to:

- Enforce the no-truck zone offence currently in s 65BA(1) of the Act through the use of a new type of camera (**no-truck zone camera**) and adding the offence to the operator onus scheme in Part 6AA of the Act;
- Amend the registration number rights scheme to introduce age limits for the holders of such rights, clarify the scope of the scheme and allow for the imposition of fees for the transfer of registration number rights;
- Amend terminology relating to accessible parking to be more inclusive;

- Provide for the refunding of penalty reminder notice fees, collection fees and enforcement warrant fees, where an extension of time has been granted to deal with an infringement notice;
- Clarify that transport safety infringements may be subject to the *Children, Youth and Families Act 2005*; and
- Provide for digital driver licences and learner permits.

The Bill also makes consequential amendments to the *Road Safety Camera Commission Act 2011* and amends the *Marine (Drug, Alcohol and Pollution Control) Act 1988* to provide for the refund of infringement penalties and related fees in respect of alcohol related offences committed while in charge of a vessel.

Finally, the Bill also makes amendments to the *Melbourne City Link Act 1995*, the *Eastlink Project Act 2004*, the *West Gate Tunnel (Truck Bans and Traffic Management) Act 2019* and the *North East Link Act 2020* to effect the refund of various fees where an extension of time has been granted to deal with an infringement notice.

Human rights issues

The following rights are relevant to the Bill:

- Right to equality (s 8);
- Right to privacy (s 13); and
- Right to be presumed innocent (s 25(1)).

Right to equality

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

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

Registration number rights

Division 2 of Part 2 of the Bill pertains to registration number rights (as described in s 5AD of the Act) and seeks to introduce an age limitation (to be prescribed by regulation) for the holders of these rights. Clause 12 of the Bill inserts into s 5AC(2) of the Act the requirement for a person to have attained the prescribed age before registration number rights can be sold to them. Clause 14 amends s 5AD(2)(d) of the Act to provide that registration number rights may be transferred only to persons who have attained the prescribed age.

The introduction of an age limitation to the ownership of registration number rights engages the right to equality, in relation to the protection from age discrimination. The amendments constitute direct discrimination against persons who are under the prescribed age, in respect of ownership of registration number rights, and therefore limit the right to equality.

I am of the view, however, that this limit on the right to equality is demonstrably justifiable under s 7(2) of the Charter, in the context of the importance of the purpose of the limitation, its nature and extent, the relationship between the limitation and its purpose, and the availability of any less restrictive means to achieve the purpose that the limitation aims to achieve. While the exact prescribed age will be set by future regulation, the policy intention of these amendments is to mirror the age restriction on eligibility to be the registered operator of a vehicle and so prevent a person who is under the prescribed age from buying or inheriting registration number rights, when they are not yet able to register a vehicle in their name. This age restriction seeks to ensure consistency between the legal and financial obligations of registered operators of vehicles, such as being responsible for the vehicle and any fees, charges and penalties associated with its use, and ownership of registration number rights, and this ultimately protects road users by ensuring that only those persons who are of sufficient age are able to register vehicles and obtain registration number rights.

The age restriction will achieve its purpose by preventing young people from obtaining registration number rights when they are not yet able to register a vehicle in their name. Further, the restriction is temporary; a person may purchase or inherit registration number rights once they attain the prescribed age. While I note that the prescribed age (and any resulting interference with rights) will be determined by the content of future regulations, these will be subject to the requirement for the Minister to prepare a human rights certificate justifying any resulting limitation on the equality right. In my view, there is no less restrictive alternative to

the imposition of an age restriction in order to prevent persons who have not attained the prescribed age from obtaining registration number rights when they are not yet able to register a vehicle in their name.

As such, in my view, the age restriction provision is reasonable and justifiable on the basis that it prevents ownership of registration number rights by persons who have not attained the prescribed age and who are not yet able to register a vehicle. I therefore consider that Division 2 of Part 2 of the Bill is compatible with the Charter.

Promotion of equality rights

The amendment to the language regarding accessible parking in clauses 18 to 20 of the Bill promotes the right to equality under s 8 of the Charter by ensuring terminology in the Act is inclusive with regard to persons living with a disability.

Right to privacy

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

Digital driver licences and learner permits

Clause 26 inserts new s 18ba into the Act, which provides that the Secretary to the Department of Transport and Planning may make a copy of a digital driver licence or learner permit in order to check its validity. Clause 40 of the Bill inserts new s 90K(fa) into the Act, which allows the Secretary or a relevant person to use or disclose relevant information, which may include identifying information disclosed as part of an application for a driver licence or vehicle registration, for the purpose of verifying the authenticity of a digital driver licence.

As these amendments concern the use and disclosure of identifying information, they engage the right to privacy. I am of the view that the right is not limited, as any interference is pursuant to a properly circumscribed law, and is not arbitrary, in that the application of the provision will be consistent, predictable and proportionate to the legitimate aim of monitoring that all Victorian vehicle drivers have the appropriate driver licence or learner permit. These powers constitute the minimum necessary steps to verify authenticity of digital driver licences and learner permits, maintain the integrity of the digital driver licencing system and safeguard against fraud.

Further, in relation to making a copy of a digital licence or learner permit, property rights are protected by new s 18ba(2) in clause 26, which provides that the Secretary must not confiscate the electronic device on which the digital licence or permit is displayed, unless authorised by another law.

No-truck zone cameras

Division 1 of Part 2 of the Bill introduces the use of no-truck zone cameras to detect the use of heavy vehicles in declared no-truck zones. Clause 3 inserts a new definition of no-truck zone camera into the Act, while clauses 5 to 8 create evidentiary presumptions where information relevant to a no-truck zone offence is obtained from a no-truck zone camera. These cameras will be trained on a no-truck zone and take photographs and produce messages when heavy vehicles drive in that zone. Accordingly, they may interfere with the right to privacy, which generally protects against surveillance and the collection of information about a person's movements.

I am of the view, however, that the right to privacy will not be limited by the use of no-truck zone cameras, as their use will be pursuant to a properly circumscribed law and would not be arbitrary. A person has a reduced expectation of privacy in relation to the use of optical devices in a public area such as a road, and particularly in relation to their engagement in a regulated activity posing risks to public safety such as the use of heavy vehicles. The cameras are necessary for the proper enforcement of the no-truck zone scheme, which serves a variety of important public interest purposes, including safer roads and upholding the amenity of residential areas. Any information collected by the cameras will be subject to existing information sharing restrictions as provided by the Act and the *Privacy and Data Protection Act 2014*.

Accordingly, the no-truck zone camera provisions of the Bill are compatible with the right to privacy under the Charter.

Right to be presumed innocent

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

Reasonable excuse defence

Digital driver licences and learner permits

Clause 33 of the Bill expands the offences in s 59 of the Act for failure to produce a driver licence or learner permit to the failure to produce or display for inspection a digital driver licence or learner permit. These offences have a 'reasonable excuse' exception which may engage the right to be presumed innocent.

By expanding the scope of offences which contain a 'reasonable excuse' exception, these amendments increase the circumstances in which an evidential burden is placed on the accused, in that they require the accused to raise evidence of a reasonable excuse for failing to produce the digital driver licence or learner permit. However, the amendments do not transfer the legal burden of proof. Once the accused has pointed to evidence of a reasonable excuse, which will ordinarily be peculiarly within their knowledge, the burden shifts back to the prosecution to prove the essential elements of the offence. Accordingly, I do not consider that an evidential onus of this kind limits the right to be presumed innocent, and that clause 33 is compatible with the right to be presumed innocent under the Charter.

Evidentiary presumptions

A number of clauses in the Bill contain a presumption that in the absence of evidence to the contrary, certain evidence amounts to proof of certain facts. The presumptions are relevant to the right to be presumed innocent because they require that, in proceedings for a relevant offence, a person bears an onus of proof to provide evidence of certain matters.

Driving heavy vehicle in a no-truck zone

Clause 5 of the Bill introduces new s 66A into the Act, which provides that the no-truck zone offence in s 65BA(1) that is detected by a prescribed no-truck zone camera or by a prescribed process is an operator onus offence for the purposes of Part 6AA of the Act. Accordingly, the registered operator of a heavy vehicle will be presumed to be responsible for no-truck zone offences committed using the heavy vehicle, unless they provide evidence that someone else was responsible for the vehicle at that time or explain why they are not able to do so (for example because the heavy vehicle had been stolen).

This clause is relevant to the presumption of innocence in s 25(1) of the Charter because it requires that an accused person bears a burden to adduce (or point to) evidence of certain matters. However, it does not limit the right to be presumed innocent as it only places an evidential (rather than a legal) burden upon an accused. Once the accused has adduced (or pointed to) some evidence that they were not responsible for the offence, the onus shifts to the prosecution to prove that they were responsible beyond a reasonable doubt. Courts have generally taken the approach that an evidential onus on an accused does not limit the presumption of innocence.

Even if the clause is considered to limit the right in section 25(1) of the Charter, any such limit is, in my view, reasonable and justified. The clause is necessary to ensure the effective administration of a regulatory scheme designed to protect the public from safety and amenity risks arising from the use of heavy vehicles in residential areas. The use of no-truck zone cameras will support enhanced enforcement of the no-truck zone offence in section s 65BA(1) of the Act, which otherwise depends upon roadside observation by police or authorised officers of the National Heavy Vehicle Regulator. In addition, the nature of any limitation is minimal, as the relevant offence is a regulatory offence enforced by way of fines, not imprisonment.

Clause 6 of the Bill inserts new s 80E into the Act, which provides that for proceedings relating to a no-truck zone offence, evidence that a heavy vehicle was in a no-truck zone on a relevant occasion as indicated or determined by a prescribed no-truck zone camera when used in the prescribed manner, or an image or message produced by a prescribed no-truck zone camera when used in the prescribed manner, is in the absence of evidence to the contrary, proof of that fact.

Clause 7 inserts new s 83B into the Act, which provides that a certificate containing prescribed information from an authorised person certifying certain information obtained from a no-truck zone camera is admissible in evidence in any proceeding, and that in the absence of evidence to the contrary the certificate is proof of the matters stated in it.

Clause 8 inserts a general evidentiary provision into s 84 of the Act that in any proceeding for a no-truck zone offence, an image or message produced by a prescribed no-truck zone camera used to detect an offence when used in a prescribed manner, or an image or message produced by a prescribed process, will in the absence of evidence to the contrary be proof of certain facts such as date, time or location of the alleged offence, or the registration number or general identification mark of the vehicle involved in the offence.

These provisions are relevant to the presumption of innocence as they deem a fact to be proved in the absence of contrary evidence, and thus reduce the prosecution's burden to prove an accused's guilt.

However, I do not consider that these clauses limit the right as again they only place an evidential burden on an accused to raise contrary evidence. Once a person has adduced some evidence to the contrary of the assumed fact, the burden of proof shifts to the prosecution to prove the elements of the offence. As previously noted, courts have generally taken the approach that an evidential onus on an accused does not limit the presumption of innocence.

I do not consider there are any less restrictive means reasonably available to achieve the legislative purpose, as it would be impractical to require prosecutors to establish the veracity of no-truck zone camera evidence in relation to every infringement in which the accused elects to have the matter heard in court. These provisions regarding the information produced by no-truck zone cameras are necessary to ensure the effective enforcement of the no-truck zone scheme. They relate to establishing issues that are probabilistically likely to be the case, such as the correct functioning of the cameras and associated technology, which would otherwise require the marshalling of highly technical evidence that would be difficult, lengthy and costly for a prosecution.

I am therefore of the view that these evidentiary presumption provisions are compatible with the right to be presumed innocent under s 25(1) of the Charter.

Hon Harriet Shing MP
Minister for Housing
Minister for Water
Minister for Equality

Second reading

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:27): I move:

That the bill be now read a second time.

Ordered that second-reading speech be incorporated into *Hansard*:

The roads and road safety legislation amendment Bill 2024 makes important changes to deliver on the government's commitment to remove trucks from inner west streets following the opening of the west gate tunnel, facilitates the modernisation of driver licences and learner permits, makes improvements to the custom plates business, and improves the clarity and operation of various transport legislation.

Removing trucks from the inner west

With the west gate tunnel due to open in 2025, thousands of motorists will benefit from a more connected Melbourne every day. However, the tunnel isn't only about saving time, it is about improving liveability, amenity and health outcomes for residents of the inner west. That is why, as part of the delivery of the west gate tunnel project, the government committed to introducing 24-hour truck bans in the inner west.

The government has also committed $10.2 million in the 2024–25 budget to provide 24/7 camera enforcement for truck bans in the inner west of Melbourne. This bill facilitates the use of cameras as a tool to detect non-compliant trucks and enables enforcement by the department of transport and planning and the national heavy vehicle regulator.

With 24-hour no-truck zones in place in the inner west, an estimated 9,000 trucks will be removed from local streets each day. This means cleaner air, reduced noise and improved health outcomes for local families.

The enforcement of existing truck curfews is reliant upon authorised officers catching drivers breaking the rules red-handed. This enforcement approach is resource intensive and proving to be ineffective, and it will not be sustainable once 24-hour bans come into operation. The bill will introduce a range of measures to support compliance and enforcement of 24-hour truck bans, including by enabling the use of no-truck zone cameras to detect potential offences 24 hours a day, 365 days a year.

The amendments to the *Road Safety Act 1986* in part 2 of the bill will enable the use of images captured by the new cameras as evidence. The bill provides that images from prescribed no-truck zone cameras can evidence the fact that a heavy vehicle was in a no-truck zone. The bill also provides that evidence from these cameras is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the relevant fact on the relevant occasion.

The cameras will use a vehicle recognition system to detect non-compliance. The system distinguishes trucks from cars and delivers photographic evidence of potential non-compliance. Details of heavy vehicles detected in a no-truck zone will be provided to the national heavy vehicle regulator for investigation and, if warranted, enforcement action.

Under the offence the government has already delivered, there are exceptions for trucks with origins and destinations within the no-truck zone area to ensure that local businesses and households can continue to receive and supply goods. Officers of the national heavy vehicle regulator will investigate whether a driver of a heavy vehicle had a legitimate reason to drive through a no-truck zone before taking enforcement action.

The bill will also provide the ability for enforcement officers to issue traffic infringement notices to any driver or operator of a heavy vehicle who unlawfully enters a no-truck zone. If an offence is detected and verified, then an infringement notice can be issued to the registered operator of the vehicle. The bill also prescribes the no-truck zone offence as an operator onus offence under the *Road Safety Act 1986*, meaning that the registered operator of the vehicle will be liable for the offence unless they nominate the driver of the vehicle at the time of the offence or provide a reason why they are not able to do so.

Supporting the rollout of digital driver licences

In May 2023, this government made a commitment to Victorian drivers that they would have the option to carry their driver licence on their mobile phones by 2024. After a successful trial last year, where more than 15,000 Ballarat residents opted to download a digital licence onto their mobile device, a statewide rollout has already begun. So far, more than 900,000 Victorian drivers have signed up for a digital licence.

This bill provides clarity and certainty for drivers, the community and law enforcement, putting beyond doubt that digital driver licences and learner permits are valid documents under the *Road Safety Act 1986*. This means that drivers will be able to feel comfortable getting in their cars with just their mobile phone for identification, and not have to worry about whether they have their licence card because they left their wallets, purses or other items at home.

The bill further supports the use of digital driver licences by making it clear that if drivers are asked to produce their driver licence to a police officer, they may show their digital licence on their mobile device. Digital licences are updated in real time, so any changes to a person's licence status or a change of address will show immediately. This means that, unlike physical licence cards, drivers will not have to return their digital licence if their licence is suspended as the status of the licence will be clearly visible on a digital device.

To protect the rights of Victorians, mobile phones and other electronic devices used to display digital driver licences will not be able to be confiscated, retained or destroyed for any reason under the *Road Safety Act 1986*. However, this does not prevent police or other authorities from seizing personal property under other laws.

Delivering better custom plates services

In 2022, the joint venture operator, a consortium of aware super, Australian retirement trust and Macquarie asset management, entered a 40-year partnership with government and commenced operations of the former VicRoads registration and licensing business. The joint venture partnership, which generated 7.9 billion dollars upfront for the state, will deliver upgraded customer service systems and better custom plates services for Victorians.

This bill delivers on the government's commitment to ensure that Victorians are provided better custom plates services. It will enable the joint venture operator to implement new custom plates business models which will help to support its delivery of the VicRoads modernisation process.

The amendments in the bill will allow registration number rights to be sold subject to either an upfront fee or to an ongoing periodical charge, or both. To support the future introduction of ongoing periodical charges, the bill provides that certain rights may be suspended under the regulations if a periodical charge is not paid. The bill will also enable contracts of sale of registration number rights to provide that a fee is payable upon transfer to another person.

Being an owner of registration number rights comes with legal responsibilities. An owner of registration number rights is responsible for the use of the combination and any number plates on which it is displayed. With the future introduction of periodical charges, owners will be subject to ongoing financial obligations. Therefore, the bill introduces a minimum age for persons to whom registration number rights may be sold or transferred. The minimum age, which will be prescribed by the regulations at 16 years of age, is the age at which a person may register a vehicle in their name.

Improving the clarity and operation of transport legislation

The bill also makes a range of minor amendments to the *Eastlink Project Act 2004*, the *Marine (Drug, Alcohol and Pollution Control) Act 1988*, the *Melbourne City Link Act 1995*, the *North East Link Act 2020* and the *West Gate Tunnel (Truck Bans and Traffic Management) Act 2019*, to improve the administration of infringement processes by clarifying that all fines and associated costs are to be refunded if a person has been granted an extension of time to deal with an infringement notice.

The bill also modernises the language used in relation to the accessible parking permit scheme contained in the *Road Safety Act 1986*. The act has fallen out of step with current best practice in relation to accessibility and inclusion. The use of the term 'accessibility' is preferred, as it helps reinforce the message that the transport network should be accessible for all Victorians.

I commend the bill to the house.

Georgie CROZIER (Southern Metropolitan) (18:27): I move:

That debate on this bill be adjourned for one week.

Motion agreed to and debate adjourned for one week.

Short Stay Levy Bill 2024

Introduction and first reading

The PRESIDENT (18:27): I have received the following message from the Legislative Assembly:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to impose a levy in relation to the provision of short stay accommodation, to amend the **Owners Corporations Act 2006** and the **Taxation Administration Act 1997** and for other purposes.'

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:27): I move:

That the bill be now read a first time.

Motion agreed to.

Read first time.

Harriet SHING: I move, by leave:

That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:27): I lay on the table a statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006*, (**Charter**), I make this Statement of Compatibility with respect to the Short Stay Levy Bill 2024.

In my opinion, the Short Stay Levy Bill 2024 (**Bill**), as introduced to the Legislative Council, is compatible with the human rights as set out in the Charter. I base my opinion on the reasons outlined in this Statement.

Overview

This Bill introduces the short stay levy (**SSL**) and consequently amends the *Taxation Administration Act 1997* (**TA Act**) and the *Owners Corporation Act 2006* (**OC Act**).

Many provisions of the Bill do not engage the human rights listed in the Charter because they either do not affect natural persons, or they operate beneficially in relation to natural persons.

Human rights issues

The rights under the Charter that are relevant to the Bill are the right to property, the right to privacy, the right to freedom of movement, the right to a fair hearing, the presumption of innocence and the right against self-incrimination.

Right to property: section 20

Section 20 of the Charter provides that a person must not be deprived of his or her property other than in accordance with law. This right is not limited where there is a law that authorises a deprivation of property, and that law is adequately accessible, clear and certain, and sufficiently precise to enable a person to regulate their conduct.

Imposition of SSL

Part 2 of the Bill prescribes the regime by which the SSL operates. These clauses engage the right to property to the extent that a natural person may be liable for the SSL.

The imposition of SSL is not arbitrary because it is precisely formulated in Part 2 of the Bill. The clauses are adequately accessible, clear and certain, and sufficiently precise to enable affected natural person taxpayers to inform themselves of their legal obligations and to regulate their conduct accordingly. Furthermore, these natural persons will have the protections provided by the TA Act including rights of objection, review, appeal and refund of overpaid tax.

Reimbursement for SSL by occupiers of short stay accommodation

Clause 15 obliges a person, other than the owner or renter, who is in exclusive occupation of short stay accommodation, and who accepts direct bookings in respect of that accommodation, to remit amounts of money to the owner equivalent to any SSL chargeable in respect of those bookings and applicable penalty tax and interest. This may engage the right to property to the extent that natural person occupiers may be liable to make payments to owners of short stay accommodation.

The amounts required to be paid to owners by occupiers are not arbitrary as the SSL is precisely formulated in Part 2 of the Bill. These clauses are adequately accessible, clear and certain, and sufficiently precise to enable affected natural person occupiers to inform themselves of their legal obligations and to regulate their conduct accordingly.

OC Act amendments

Division 1, Part 6 of the Bill amends the OC Act to allow owners corporations to make rules by special resolution prohibiting the use of certain lots as short-stay accommodation. This engages section 20 of the Charter to the extent that an apartment owner or lessee may be deprived of the right to use the apartment for short-stay accommodation.

Any deprivation of property pursuant to these OC Act amendments would be in accordance with the law and would not be arbitrary. Special resolutions require the agreement of 75 per cent of the total lot entitlements of all lots in the owners corporation. Further, disputes about rule breaches, including whether rules were validly made, may be referred to the Victorian Civil and Administrative Tribunal for resolution. Any limit on the right to property under these provisions is justified as allowing owners corporations to make rules regarding the use of lots for short stay accommodation is directly related to the purpose of the Bill to promote the return of residential property to the long-term rental market. The amendments further protect the amenity of properties governed by the owners corporation for owners and residents. There are no less restrictive means available to achieve the objectives of the amendments.

TA Act investigative powers of tax officers

The TA Act will apply to the Bill. Part 9 of the TA Act provides authorised officers with investigation powers to administer and enforce taxation laws. Section 20 of the Charter is relevant to a number of powers which provide for authorised officers to enter certain premises, and to seize or take items. These powers are discussed in detail below in relation to the right to privacy.

The powers of an authorised officer include, under section 76 of the TA Act, the power to seize a document or thing where the officer has reason to believe or suspect it is necessary to do so to prevent its concealment, loss, destruction or alteration. Similarly, section 81 of the TA Act provides that an authorised officer may seize a storage device and the equipment necessary to access information on the device if the authorised officer believes, on reasonable grounds, that the storage device contains information relevant to the administration of a taxation law and it is not otherwise practicable to access the information on the device.

Sections 76 and 81 of the TA Act, as they will apply to the SSL, do not limit the right in section 20 of the Charter because they are sufficiently confined and structured, accessible, and formulated precisely such that any deprivation occurs in accordance with the law. Further, these provisions guard against any permanent interference with property where no offence has been committed. For example, the TA Act provides that reasonable steps must be taken to return a document or thing that is seized if the reason for its seizure no longer exists (section 84), and the document or thing seized must be returned within the retention period of 60 days, unless the retention period is extended by an order of the Magistrates Court (section 85).

Right to privacy: section 13

Section 13(a) of the Charter provides that every person has the right to enjoy their private life, free from interference. This right applies to the collection of personal information by public authorities. An unlawful or arbitrary interference to an individual's privacy will limit this right.

Obligation to provide SSL liability information

Clauses 17 and 18 of the Bill require those liable to pay SSL to register with the Commissioner, lodge returns, and pay the requisite tax. Returns are to be in the form, and contain the information, determined by the Commissioner. Clause 20 of the Bill requires registered SSL payers to notify the Commissioner if, because of a change in circumstances, the registered SSL payer is no longer incurring a liability for the SSL and does not expect to incur any such liability in the future.

Clause 21 of the Bill requires an owner to provide a booking platform provider with a declaration under the section if a premises is not short stay accommodation.

Not all information required to be provided in a return or declaration will be personal information. However, to the extent that the collection of personal information may result in interference with a person's privacy, any such interference will be lawful and not arbitrary. These provisions do not require that a person's personal information be published, and only require the provision of information necessary to achieve the purpose of taxation administration.

TA Act investigative powers of tax officers and secrecy provisions

The investigative powers of the Commissioner and authorised tax officers will apply to the administration of the SSL. The following investigation powers may engage the right to privacy, as well as the right not to impart information, which forms part of the right to freedom of expression under section 15 of the Charter:

- Section 73 of the TA Act provides that the Commissioner may, by written notice, require a person to provide the Commissioner with information, produce a document or thing in the person's possession, or to attend and give evidence under oath.
- Section 76 of the TA Act which provides for entering and searching premises, as outlined above.
- Section 77 of the TA Act provides that an authorised officer may apply to a magistrate for a search warrant in relation to a premises, including a residence, if the authorised officer considers on reasonable grounds that there is, or may be within the next 72 hours, on the premises a particular thing that may be relevant to the administration or execution of a taxation law.
- Section 81 of the TA Act which provides for obtaining information from a storage device, as outlined above.
- Section 86 of the TA Act provides that an authorised officer may, to the extent it is reasonably necessary to do so for the administration or execution of a taxation law, require a person to give information, produce or provide documents and things, and give reasonable assistance, to the authorised officer.

In each provision that permits investigators to exercise powers of entry and search, the powers of investigators and other authorised persons are clearly set out in the TA Act and are strictly confined by reference to their purpose. They are also subject to appropriate legislative safeguards.

Section 92 of the TA Act permits a tax officer to make certain disclosures of information obtained in the administration of a taxation law. Specifically, section 92(1) permits the disclosure of such information for several different purposes, including in accordance with a requirement imposed under an Act, in connection with the administration or execution of a taxation law, to an authorised recipient such as the Ombudsman or a police officer of or above the rank of Inspector, or in connection with the administration of a legal proceeding arising out of a recognised law.

Consequential amendments to section 92(1) of the TA Act pursuant to clause 32 of the Bill will further permit disclosures of information obtained under or in relation to the Bill to a Council for the purpose of regulating short stay accommodation.

The types of information that may be disclosed include, but are not limited to, information regarding land ownership, tax liabilities and payments by taxpayers, taxation defaults by taxpayers, and applications for objection, appeal and review under Part 10 of the TA Act by taxpayers.

Permitted disclosures are strictly confined to their legitimate purposes and are subject to considerable legislative safeguards. In particular, section 94 of the TA Act prohibits 'secondary disclosure', that is, on-disclosure of any information provided by a tax officer under section 92, unless it is for the purpose of enforcing a law or protecting public revenue and the Commissioner has consented, or a disclosure made with the consent of the person to whom the information relates (or at the request of a person acting on behalf of that person). Further, section 95 provides that an authorised officer is not required to disclose or produce in court any such information unless it is necessary for the purposes of the administration of a taxation law, or to enable a person to exercise a function imposed on the person by law.

Further, the amendments to section 92(1) of the TA Act ensure that the Commissioner and municipal councils can exercise their respective regulatory and administrative functions in accordance with legislation.

Accordingly, to the extent that these provisions could interfere with a person's privacy, any interference would not constitute an unlawful or arbitrary interference.

Freedom of movement: section 12

TA Act investigative powers

Section 12 of the Charter provides that every person lawfully within Victoria has the right to move freely within Victoria. As the SSL will be administered under the TA Act, the administration of SSL may involve the exercise of the investigative powers provided in section 73 of the TA Act. These investigative powers may also be exercised in relation to the collection of reportable information under Part 9 of the TA Act.

As set out above, the administration of the SSL may involve the exercise of investigative powers provided in section 73 of the TA Act. Among other things, this section provides that the Commissioner or an authorised officer may exercise their power to direct a natural person to attend and give evidence in relation to a matter. Accordingly, a person's right to move freely within Victoria may be engaged.

Although the power to compel a person to attend a particular place at a particular time may limit a person's freedom to choose to be elsewhere at that time, this differs qualitatively from the types of measures that Victorian courts have regarded as engaging the right to freedom of movement, such as restrictions placed on a person's place of residence, or ability to leave their residence, and police powers to conduct a traffic stop.

To the extent that section 73 of the TA Act limits the right of freedom of movement, any such limit is demonstrably justified under section 7(2) of the Charter, as the Commissioner's power to compel a person's attendance to give evidence will in certain circumstances be essential to obtain the information needed for the proper administration of the SSL, and for the collection of reportable information in accordance with the TA Act.

Right to fair hearing: section 24(1)

TA Act review processes

The right to a fair hearing is protected under section 24 of the Charter which provides that a person charged with a criminal offence or a party to a civil proceeding has the right to a fair hearing. The right to a fair hearing applies to both courts and tribunals, such as the Victorian Civil and Administrative Tribunal. Generally, the right to a fair hearing is concerned with procedural fairness and access to a court or tribunal, rather than the substantive fairness of a decision of a court or tribunal determined on the merits of a case.

Clause 33 of the Bill inserts a new subsection (14) into section 135 of the TA Act to provide that it is the intention of sections 5, 12(4), 18(1), 96(2) and 100(4) of the TA Act, as those sections apply after the commencement of the Bill, to alter or vary section 85 of the *Constitution Act 1975*. These provisions preclude the Supreme Court from entertaining proceedings of a kind to which these sections apply, except as provided by those sections.

Section 5 of the TA Act defines the meaning of a non-reviewable decision in relation to the TA Act. 'Non-reviewable' is referred to in sections 12(4) and 100(4) of the TA Act.

The reason for limiting the jurisdiction of the Supreme Court in relation to a compromise assessment under section 12 of the TA Act is that agreement has been reached between the Commissioner and a taxpayer on the taxpayer's liability, and the purpose of section 12 would not be achieved if a compromise assessment were reviewable.

Section 18 of the TA Act establishes a refund application procedure, adherence to which is a condition precedent to taking any further action for recovering refunds. The purpose of the provisions is to give the Commissioner the opportunity to consider a refund application before any collateral legal action can be taken. The purpose of these provisions would not be achieved if the Commissioner's actions were subject to review.

Division 1 of Part 10 of the TA Act establishes an exclusive code for dealing with objections, and this Division will apply where the Commissioner issues an assessment for SSL. This code establishes the rights of objectors in a statutory framework and precludes any collateral actions for review of the Commissioner's assessment. The objections and appeals provisions of Part 10 of the TA Act establish that review of assessments is only to be undertaken in accordance with an exclusive code identified in that Part. The purpose of these provisions would not be achieved if any question concerning an assessment was subject to judicial review except such judicial review as provided by Division 2, Part 10 of the TA Act.

A power is provided to the Commissioner under section 100 of the TA Act, which provides the Commissioner with discretion to allow an objection to be lodged even though it is out of time. This decision is non-reviewable

to ensure the efficient administration of the TA Act and to enable outstanding issues relating to assessments to be concluded expeditiously.

To the extent that limiting the jurisdiction of the Supreme Court may limit a natural person's fair hearing rights as protected under section 24(1) of the Charter, any such limit would be demonstrably justified. The classification of certain decisions under the TA Act as 'non-reviewable' is directly related to the particular statutory purpose and context of those particular decisions, and the TA Act provides an alternative regime for dealing with objections, which is necessary for the efficient discharge of the Commissioner's functions under the TA Act.

Presumption of innocence: section 25(1)

The right in section 25(1) is engaged 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 the accused person is not guilty of an offence.

TA Act defence of reasonable excuse

The TA Act will apply to the SSL. The right to be presumed innocent may be considered relevant to strict liability offences in the TA Act which place an evidential burden on the defendant to rely on a defence such as the defence of honest and reasonable mistake.

Section 73 of the TA Act empowers the Commissioner to issue a written notice requiring a person to provide information, produce a document or thing, or give evidence. Section 73A provides that the Commissioner may certify to the Supreme Court that a person has failed to comply with a requirement of a notice issued under section 73. The Supreme Court may inquire into the case and may order the person to comply with the requirement in the notice. Section 73A(4) provides that a person who, without reasonable excuse, fails to comply with an order of the Supreme Court under section 73A(2), is guilty of an offence.

Section 88 of the TA Act makes it an offence for a person, without reasonable excuse, to refuse or fail to comply with a requirement made or to answer a question of an authorised officer asked in accordance with sections 81 or 86 of the TA Act.

Section 90 of the TA Act establishes a defence of reasonable compliance for offences relating to the investigation powers of authorised officers under Part 9 of the TA Act. It provides that a person is not guilty of an offence if the court hearing the charge is satisfied that the person could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates, or that the person complied with the requirement to the extent that he or she was able to do so.

TA Act failure to exercise due diligence

The right to be presumed innocent is also relevant to section 130C of the TA Act. Section 130C of the TA Act establishes the criminal liability of an officer of a body corporate for the failure to exercise due diligence in certain circumstances, and which imposes a legal burden of proof on that officer. Section 130C provides that if a body corporate commits a specified offence, such as giving false or misleading information to tax officers contrary to section 57(1), or tax evasion contrary to section 61, an officer of the body corporate is also deemed to have committed the offence.

Section 130C(3) provides that it is a defence to a charge for an officer of a body corporate to prove that they exercised due diligence to prevent the commission of the offence by the body corporate.

The defence in 130C(3) of the TA Act imposes a legal burden on the defendant. The imposition of a legal burden to rely on the defence of due diligence is compatible with the right to presumption of innocence in section 25(1) of the Charter, as any limits on the right will be reasonably justified under section 7(2) of the Charter. Section 130C applies only to a narrow range of offences of dishonesty, and only to officers of a body corporate as persons who carry on a specific role and possess significant authority and influence over the body corporate.

The purpose of these provisions is to ensure compliance with the SSL by deterring intentional acts of dishonesty in the administration of the SSL. A person who elects to undertake a position as officer of a body corporate accepts that they will be subject to certain requirements under the Bill and the TA Act and will be expected to be able to demonstrate their compliance with these requirements. This includes the expectation that an officer of a body corporate can demonstrate compliance with a requirement to exercise due diligence to prevent the commission of these offences of dishonesty by the body corporate taxpayer. Moreover, whether an officer of a body corporate has exercised due diligence is a matter peculiarly within the knowledge of that person. Further, a defence is available for the benefit of an accused to escape liability where they have taken reasonable steps to ensure compliance in respect of what could otherwise be an absolute or strict liability offence.

Conclusion on presumption of innocence

Although these provisions require a defendant to raise evidence of a matter to rely on a defence, it imposes an evidential, rather than legal burden.

Courts in other jurisdictions have generally taken the approach that an evidential onus on a defendant to raise a defence does not limit the presumption of innocence. The defences and excuses provided relate to matters within the knowledge of the defendant, which is appropriate in circumstances where placing the onus on the prosecution would involve the proof of a negative which would be very difficult. These provisions of the TA Act are compatible with the right to the presumption of innocence protected by the Charter.

Rights in criminal proceedings: section 25(2)(k)

TA Act investigative powers

Section 25(2)(k) of the Charter provides that a person charged with a criminal offence is entitled not to be compelled to testify against himself or herself or to confess guilt. The Supreme Court has held that this right, as protected by the Charter, is at least as broad as the common law privilege against self-incrimination. It applies to protect a charged person against the admission in subsequent criminal proceedings of incriminatory material obtained under compulsion, regardless of whether the information was obtained prior to or subsequent to the charge being laid. The common law privilege includes immunity against both direct use and derivative use of compelled testimony.

Section 86 of the TA Act, which will apply to the SSL, is outlined above. It is an offence to fail to comply with a requirement made or to answer a question under this section. Section 87(1) limits the right to protection against self-incrimination by providing that a person is not excused from answering a question, providing information, or producing a document or thing on the ground that to do so might tend to incriminate the person or make the person liable to a penalty. Section 87(2) provides that, if a person objects to answering a question, providing information, or producing a document or thing, the answer, information, document or thing is not admissible in any criminal proceeding other than proceedings for an offence against a taxation law, or proceedings for an offence in the nature of perjury.

Section 87(1) of the TA Act is a reasonable limit on the right to protection against self-incrimination under section 7(2) of the Charter. The ability of an authorised officer to require a person to give information or answer questions will be necessary for the proper administration of the SSL. Section 87(2) of the TA Act only authorises the admission of evidence obtained under section 87(1) in an offence against a taxation law, or proceedings for perjury, and otherwise preserves both the direct use immunity and derivative use immunity. This section directly promotes the objective of the TA Act, which is to facilitate the administration and enforcement of Victoria's taxation laws and is a significant public purpose.

Further, with respect to the power of an authorised officer to require the production of documents, I note that at common law, the protection accorded to the compelled production of pre-existing documents is considerably weaker than the protection accorded to oral testimony or to documents brought into existence to comply with a request for information.

There are no less restrictive means available to achieve the purpose of enabling the proper administration of the SSL, as providing an immunity that applies to the offence of perjury or an offence under the SSL or the TA Act would unreasonably obstruct the role of the authorised person to investigate compliance with the SSL.

Conclusion

For these reasons, in my opinion, the provisions of the Bill are compatible with the rights contained in sections 12, 13, 20, 24(1), 25(1) and 25(2)(k) of the Charter.

Hon Jaclyn Symes MP
Attorney-General
Minister for Emergency Services

Second reading

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:28): I move:

That the bill be now read a second time.

Ordered that second-reading speech, except for the statement under section 85(5) of the Constitution Act 1975, be incorporated into *Hansard*:

In our *Housing Statement* last September, the Government recognised the issues with adequate access to long-term rental properties across the state, particularly in regional Victoria.

To encourage the return of more properties to the long-term rental market, this Bill introduces a levy on short stay accommodation booking fees, for bookings made on and after 1 January 2025.

While short stay accommodation has become a popular feature of Victoria's visitor economy, it has reduced the ability for many properties to be used for longer-term accommodation. When residential properties are used for short stay accommodation they cannot be made available as longer-term accommodation.

This is why we are taking action on short stay accommodation, as part of our plan to unlock housing supply and improve housing affordability pressures felt throughout Victoria.

The short stay levy will fund Homes Victoria to support their important work in building and maintaining social and affordable housing across the state. Revenue collected from the levy will go to Homes Victoria with 25% of funds to be invested in regional Victoria.

The Commissioner of State Revenue (Commissioner) and the State Revenue Office (SRO) will administer the Levy under the *Taxation Administration Act 1997* (TAA).

The Bill will also amend the *Owners Corporations Act 2006* to address the provision of short stay accommodation in strata developments.

Liability for levy

The levy will apply to each booking of accommodation premises for a short stay of less than 28 days made on or after 1 January 2025.

As the liability arises when a guest completes the short stay, there is no levy if a booking is cancelled prior to the booked dates. If a guest does not cancel the booking but never commences the stay, the levy does apply.

In general, all short stays in properties such as houses and apartments will be liable for the levy. The levy will also apply to short stay accommodation in separate residences, such as cabins and granny flats. The levy applies whether the whole or a part of premises is being rented out for short stays.

Transitional arrangements will be in place so that all bookings made prior to 1 January 2025 will not be liable for the levy, even if the stay ends on or after 1 January 2025.

Principal places of residence

If premises are occupied as the principal place of residence of the owner or renter of the premises, a short stay in that premises will not be subject to the levy. For example, a room made available for short stays in an owner's or renter's principal place of residence will not have a levy liability. However, if accommodation is provided in a separate dwelling at the same property this will be subject to the levy.

A principal place of residence is not defined in the Act but it is a concept common to other taxes and schemes administered by the SRO, such as in the relevant eligibility criteria for the First Home Owner Grant and certain concessions and exemptions from land transfer duty and land tax. The meaning of principal place of residence is derived from well-developed common law principles. However, the Bill provides that in determining whether premises are occupied as a principal place of residence of an owner or renter, regard must be had to every place of residence of that person. In the case of renters, it is also a requirement that the residential rental agreement be made in good faith and not for the purpose of avoiding the levy.

Commercial accommodation

The Bill specifically excludes commercial residential properties as defined under Commonwealth GST legislation from the levy base, such as hotels, motels, resorts, hostels, caravan parks and similar accommodation. Commercial accommodation cannot generally be used for long-term residential occupation and is often subject to strict regulatory arrangements.

Other exclusions

The levy will also not be applied to residential student accommodation, rooming houses, retirement villages, residential care facilities, supported residential services, temporary crisis accommodation and accommodation provided by facilities to their employees, contractors or clients. As with commercial accommodation, these types of premises are not considered suitable for long-term rental or for sale on the housing market.

Payment of levy

In most cases the levy will be payable by providers of booking platforms.

A booking platform is defined as a person who carries on a business that facilitates and accepts bookings for short stays, regardless of whether the platform facilitates payment.

If a person uses a booking platform to arrange short stays, the platform provider is responsible for paying the levy to the extent of any stays booked through them.

However, owners and renters are responsible for paying the levy in respect of any direct bookings – that is, bookings they arrange themselves without the use of a booking platform.

Liable parties must register with the Commissioner and lodge regular returns in relation to all short stays provided during the return period. For larger levy payers with annual total booking fees above $75,000, returns must be lodged after the end of each quarter commencing on 1 January, 1 April, 1 July and 1 October. However, if annual total booking fees are $75,000 or less, returns are only required annually after the end of each calendar year. The different return periods will ease the administrative burden on smaller taxpayers. Payment of the levy is due 30 days after the end of the return period.

The rate of the levy is 7.5% of total booking fees for each completed short stay. Total booking fees are inclusive of GST and cleaning fees, as well as amounts waived, refunded or credited for cancelled short stay bookings, but exclude credit card fees and payment surcharges.

Joint and several liability

If a booking platform is used to provide short stay accommodation claimed by the owner or renter to be outside the scope of the levy – for example, because the accommodation is provided in their principal place of residence – they are required to provide a declaration of this to the booking platform.

If this declaration is later found to be incorrect, both the owner and booking platform will be jointly and severally liable for any shortfall in levy payments. The booking platform will have the right to recover any levy amounts paid by them, from the property owner.

Licensees and occupants

The Bill requires licensees or other exclusive occupants of premises (who are not renters), who provide short stay accommodation through direct bookings, to pay amounts to the owner sufficient to cover the levy liability payable, plus GST and any interest or penalty tax payable. If these amounts are not paid the owner will have the right to recover the amount from the licensee or occupant.

Taxation administration

The Bill amends the TAA to make the new Act a taxation law under the TAA. This will give the Commissioner and the SRO the power to administer the levy using the same framework that applies to other taxation laws. This includes the ability to issue assessments, pay refunds, impose penalties and interest on tax defaults, recover unpaid levies, carry out investigations and consider objections. A person assessed for the levy will have entitlements to object to the levy assessment similarly to other taxpayers, as well as rights of refund, review and appeal.

The TAA is also amended to permit the Commissioner to disclose certain levy payer information collected through administering the levy to councils for the purpose of regulation of short stay accommodation activity. The information permitted to be disclosed is expected to include matters such as property owner names and addresses and relevant details about short stay bookings. All disclosures will be subject to the strict terms of the taxpayer secrecy provisions of the TAA. This includes strict conditions to limit the secondary disclosure of information that councils receive from the Commissioner.

Owners corporations

The Bill amends the Owners Corporations Act 2006 to address the provision of short stay accommodation in strata developments. Specifically, the Bill authorises owners corporations to make rules to prohibit the use of lots as short stay accommodation.

This new rule making power will only impact lots in a strata development that are not the principal place of residence of the lot owner or the principal place of residence of a lessee or sublessee of the lot owner, such as a renter under a residential rental agreement.

In addition, an owners corporation rule prohibiting the use of lots as short stay accommodation will be of no effect if the rule is inconsistent with any other Act or law of the state, including relevant local government planning provisions.

This new rule making power may assist in diverting residential lots from the short-stay market to the longer term residential accommodation market, providing additional choice for Victorian renters, and it will also provide an additional option to owners corporations that are concerned at the amenity impact on residents of a strata development flowing from the use of properties as short stay accommodation.

Jurisdiction of the Supreme Court of Victoria

I draw the members' attention specifically to clause 33 of the Bill. This clause proposes to limit the jurisdiction of the Supreme Court to ensure that the legislative regime under the TAA applies to short stay levy in the same way as it does in relation to any other taxation law. Accordingly, I provide a statement under section 85(5) of the *Constitution Act 1975* of the reasons for altering or varying that section by this Bill.

The introduction of the levy and the new powers for owners corporations in this Bill will provide incentive to property owners to transition residential properties away from short term accommodation and towards the longer-term rental market, helping to reduce rental prices and vacancy rates, and increase the availability and affordability of rental housing for all Victorians.

I commend the Bill to the house.

Section 85(5) of the Constitution Act 1975

Harriet SHING: I wish to make a statement under section 85(5) of the Constitution Act 1975 of the reasons for altering or varying that section by the Short Stay Levy Bill 2024.

Section 85 of the Constitution Act 1975 vests the judicial power of Victoria in the Supreme Court and requires a statement to be made when legislation that directly or indirectly repeals, alters or varies the court's jurisdiction is introduced. Clause 33 of the bill inserts a new subsection (14) into section 135 of the Taxation Administration Act 1997 to provide that it is the intention of sections 5, 12(4), 18(1), 96(2) and 100(4) of the Taxation Administration Act 1997, as those sections apply after the commencement of that clause, to alter or vary section 85 of the Constitution Act 1975.

The bill introduces the new short-stay levy. Part 6 of the bill makes consequential amendments to the Taxation Administration Act 1997 to enable the SSL, consistent with other state taxes, to be administered under the Taxation Administration Act 1997 and any regulations made under it.

The Supreme Court's jurisdiction is altered to the extent that the Taxation Administration Act 1997 provides for certain non-reviewable decisions and establishes an exclusive code that prevents proceedings concerning an assessment or refund or recovery of tax being commenced except as provided by that act. It is desirable that the legislative regime under the Taxation Administration Act 1997 applies to the SSL in the same way as it does to other taxes administered under the Taxation Administration Act 1997.

Accordingly, in order to ensure that the jurisdiction of the Supreme Court is limited in relation to the SSL in the same way as it is in relation to other Victorian taxes, it is necessary to provide that it is the intention of this bill, for the relevant provisions of the Taxation Administration Act 1997 to apply to the administration of the SSL, and for the jurisdiction of the Supreme Court to be altered accordingly.

Business interrupted pursuant to standing orders.

Harriet SHING: I move:

That the meal break scheduled for this day pursuant to standing order 4.01(3) be suspended.

Motion agreed to.

Harriet SHING: Section 5 of the Taxation Administration Act 1997 defines the meaning of 'non-reviewable decision' in relation to that act, which will also apply to the SSL. No court, including the Supreme Court, has jurisdiction or power to entertain any question as to the validity or correctness of a non-reviewable decision.

Section 12(4) of the Taxation Administration Act 1997 provides that the making of a compromise assessment is a non-reviewable decision. Similarly, section 100(4) provides that a decision by the commissioner of state revenue not to permit an objection to be lodged out of time is a non-reviewable decision. Decisions may be made under section 12(4) or section 100(4) in relation to the SSL.

Section 18(1) of the Taxation Administration Act 1997 prevents proceedings being commenced in the Supreme Court for the refund or recovery of a tax except as provided in part 4 of the Taxation

Administration Act 1997. As the SSL will be a tax for the purposes of section 18(1), proceedings for its refund or recovery will be similarly limited.

Section 96(2) of the Taxation Administration Act 1997 prevents a court, including the Supreme Court, considering any question concerning an assessment of a tax except as provided by part 10 of the Taxation Administration Act 1997. As the SSL will be a tax for the purposes of section 96(2), proceedings in relation to any assessment of SSL would be similarly limited.

To ensure that the jurisdiction of the Supreme Court is limited in relation to the SSL in the same way as it is in relation to other taxes administered under the Taxation Administration Act 1997, it is necessary to provide that it is the intention of sections 5, 12(4), 18(1), 96(2) and 100(4) of the Taxation Administration Act 1997 to alter or vary section 85 of the Constitution Act 1975.

I commend the bill to the house.

Georgie CROZIER (Southern Metropolitan) (18:32): I move:

That debate on this bill be adjourned for one week.

Motion agreed to and debate adjourned for one week.

State Civil Liability (Police Informants) Bill 2024

Council's amendments

The PRESIDENT (18:32): I have received a message from the Legislative Assembly in respect of the State Civil Liability (Police Informants) Bill 2024:

The Legislative Assembly informs the Legislative Council that, in relation to 'A Bill for an Act to limit the civil liability of the State by providing for a maximum cumulative amount of damages or other monetary compensation which may be awarded in causes of action in relation to the provision of information and other assistance by specified human sources and for other purposes' the amendments made by the Council have been agreed to.

Adjournment

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:33): I move:

That the house do now adjourn.

Fruit fly

Wendy LOVELL (Northern Victoria) (18:33): (1152) My adjournment matter is for the Minister for Agriculture, and the action that I seek is for the minister to renew funding for the Queensland fruit fly management programs in Victoria and establish a working group to develop a new Victorian fruit fly strategy. In the middle of 2021 the state government released their four-year *Victoria's Fruit Fly Strategy 2021–2025* and announced four years of funding to implement that strategy to manage fruit fly in Victoria. The Goulburn Murray Valley fruit fly area-wide management program has been a great success, with state, national and international awards to prove it. In Cobram pest pressure was reduced by 83 per cent and there was a 60 per cent reduction across the wider region. But as the program's budget has gradually shrunk, pest pressure has increased. There is now a serious risk that the important gains made in previous years could soon be completely lost.

Both the four-year strategy and its associated funding expire in the middle of next year, and there is no certainty about whether they will be renewed. Labor cannot manage money, and they are trying to pay off their massive debt through short-sighted cost cutting. It would be a terrible act of sabotage if Labor were to end funding for this important Victorian agricultural program. But when I look at how Labor handled the Commonwealth Games debacle, no amount of mismanagement would surprise me.

Agriculture is vital to the Victorian economy, and in my region of Northern Victoria horticulture is particularly important. There are 5000 horticultural producers in the state, employing around 11,000 people. The fruit-growing industry has a value of around $3 billion a year, with exports being around $1.6 billion, and $1 billion worth of those exports are crops affected by fruit fly. Victoria must start planning now for a new fruit fly strategy to take over from the old one, and the government must commit to funding the coordination and education activities that will be an important part of an effective strategy.

Since 2013 Victoria has been transitioning from a government-led regulation regime to one of a shared responsibility and cooperation between government and fruitgrowers. It would be a gross failure of responsibility for the government to abandon the horticulture industry, but it seems Labor could now try to shift the entire burden of fruit fly management onto commercial growers. Fruit flies do not only breed in commercial plantations but breed in backyard fruit trees and in the 8 million hectares of public land owned and managed by the Victorian government. The government still has an essential role to play in funding, overseeing and carrying out fruit fly management programs, even if most of the work is done by commercial growers. I urge the government to establish a working group of relevant stakeholders as soon as possible to begin discussing the next iteration of the fruit fly strategy.

Community safety

Sonja TERPSTRA (North-Eastern Metropolitan) (18:36): (1153) My adjournment request this evening is to the Minister for Police, the Honourable Anthony Carbines in the other place. Over the last week we have seen violent protests take place outside the Land Forces expo, which is being held at the Melbourne Convention and Exhibition Centre in South Melbourne. As a trade unionist and a person who has engaged in many peaceful protests, I want to condemn in the strongest possible terms the violent acts of fascism and extremism that we have seen in recent days in Melbourne. This is not protesting; this is violent extremism underpinned by fascism, and the Greens political party are complicit in inciting these acts. In fact the part-time member for Richmond has appeared in numerous news broadcasts claiming credit for the protest. We saw masked protesters engaging in acts of extreme violence. Projectiles were hurled at police, who in working for the state of Victoria in keeping Victorians safe, deserve to go to work and come home without the threat of occupational violence and aggression. This is something that the intelligentsia and the Greens will never understand.

Rocks, bricks, horse poo, acid and other weapons were used. Innocent Victorians trying to get to their workplaces were prohibited from going about their daily routine. Journalists who were attending to report the news were also subject to occupational violence and aggression by the fascists attending. Additionally, violent acts of animal cruelty were committed, incited by the Greens, where police horses were targeted by individuals. Horses can weigh anywhere from 600 to 800 kilograms, and trying to attack with violence this large animal heightens the risk of extreme harm, even death, if the horse slipped and fell on people attending the protest or even those trying to get to work.

The action that I seek is for the minister to update me on the charges that have been laid against those who have committed acts of animal cruelty directed at police horses and violent occupational aggression towards police officers. I look forward to hearing the outcome of any investigation by the appropriate and relevant authorities and the identification of individuals who have engaged in such violent, fascist and extremist actions. They should be subject to the full force of the law.

Greening the North

Samantha RATNAM (Northern Metropolitan) (18:39): (1154) My adjournment matter tonight is for the Minister for Environment. Broadmeadows is one of the fastest growing areas in Melbourne. It is a vibrant community and an important service hub for the wider community, but it seems left behind in state government investments for improving amenity and services for residents. Hardworking local advocates and organisations like the Broadmeadows Progress Association have long held concerns about the lack of tree canopy and green open space available to residents. The problems are well documented by research on this topic. A study by the Victorian Council of Social Service shows a

high correlation between disadvantage and the heat island effect in certain areas of Melbourne. Hume is the sixth-most disadvantaged Melbourne local government area and has the fifth-worst heat island effect. Broadmeadows has only 4 per cent canopy cover, far below Hume City Council's goal of 20 per cent coverage. What is more, a significant proportion of residents live over 400 metres from the nearest green open space, while the planning scheme states that everyone should live within 250 metres of green open space. Professor Joe Hurley from RMIT's Centre for Urban Research has stated that:

> We are systematically developing inequitable cities in terms of resilience to heat and heat is the biggest killer of people in our cities in Australia, in terms of natural disasters.

Tree canopy is vital to making suburbs livable, comfortable and safe. Trees help reduce the urban heat island effect, which is only getting worse with climate change and a higher frequency of heatwaves. Tree canopies are especially important for disadvantaged communities because they reduce cooling bills in summer and support mental health and wellbeing.

Hume City Council's climate action plan intends to increase the canopy cover of trees across the city. They have planted over 7000 trees this year, which is an excellent accomplishment and beyond the council's target of 5000. But more needs to be done, and the state government has a responsibility to provide support. I understand that the Northern Councils Alliance, which includes Hume City Council, wrote to your government to request funding for a Greening the North initiative. It would do wonders to address the risks posed by urban heat and improve amenity for residents. It would support additional tree planting, especially mature trees, which have an immediate impact on canopy cover, improving existing green spaces, implementing passive irrigation and acquisition of land for new parks. It could also involve reserving Crown land that the state government wants to sell off for councils like Hume to use to build new parks and a review of the Victorian planning schemes to ensure that new suburban developments retain existing trees and increase the number of trees developers have to plant. My ask is that the Victorian state government support Greening the North to increase tree canopy cover and green spaces in Broadmeadows and the growing outer north to reduce the impacts of the worsening urban heat island effect.

Pakenham community hospital

Renee HEATH (Eastern Victoria) (18:41): (1155) My adjournment is for the Minister for Health. On 15 April 2019 a historic, 850-year-old building, Notre Dame cathedral in Paris, was gutted by a devastating fire. The cathedral sustained massive damage, including the collapse of the roof and spire and the destruction of much of the building. The reconstruction of the cathedral has been a monumental task requiring painstaking work and the careful consideration of important historic and religious elements, causing construction to be undertaken in a cautious manner. There have also been delays caused by the pandemic and the sourcing of accurate material. Yet it is still due to reopen later this year, meaning the five-year goal and the 2024 date that was set in the aftermath of the blaze is probably going to be met – which brings me to another building, the Pakenham hospital, which was meant to be complete this year. It was promised by Daniel Andrews to be started in 2018.

When Labor promised a new Pakenham hospital they said it would be complete by 2024. However, it is not because of the painstaking labour, it is not because of the religious elements or historical elements; it is just because Labor simply cannot manage health and certainly cannot manage a budget to save themselves. Minister, it has now been 2146 days since Labor promised a new Pakenham hospital and there has not even been a shovel in the ground. My constituents are travelling further and further than necessary to access care, and it is putting demand on health services all around that are already under pressure and adding extra stress to an already traumatic time for these individuals. Minister, the action that I seek is for you to tell the community of Pakenham: when will you deliver the Pakenham hospital?

Warrnambool sewage treatment plant

Jacinta ERMACORA (Western Victoria) (18:44): (1156) My adjournment matter is for the Minister for Water, and the action I seek is an update on the critical Warrnambool sewage treatment plant upgrade project and for the minister to arrange for me to visit the site and see the progress that has been made to date. My region's importance as a food industry hub means that demands on the plant are much higher than would normally be expected based purely on population growth. While it is successfully meeting current demands, the plant is operating at capacity. Development in the Warrnambool area is expected to continue as a result of population growth as well as food industry expansion. New housing estates are being established in the areas around Hopkins Point Road, Aberline Road, Wollaston Road and north and south of Dennington. Infill development is also occurring in the established residential areas, and future industrial growth has been earmarked for a site east of Horne Road.

The plant currently services nearly 15,000 houses, a figure expected to increase by more than 80 per cent to 25,000 properties in the next 50 years. It is also vital that we are able to cater for the growth of our local industries into the future. Upgrading this plant is essential in ensuring we can protect and enhance the local environment and support the economic growth and prosperity of the south-west of Victoria. I also want to make sure that the surrounding area of Thunder Point is returned to the state it was in prior to the project, consistent with the consultation with Eastern Maar, the community and environmental groups.

Police conduct

Katherine COPSEY (Southern Metropolitan) (18:45): (1157) My adjournment this evening is to the Attorney-General, and the action I seek is that she stop the use of excessive force by Victoria Police. Melbourne Activist Legal Support, MALS, fielded independent legal observers to monitor the policing of protests against the Land Forces weapons fair on 11 September 2024. Their initial report states:

> Incidents of excessive force documented … by legal observers may constitute unlawful assault by police.

Legal observers witnessed:

> … police assaulting and OC spraying medics, and obstructing them when attempting to treat injured people.
>
> Police were observed continuing to fire directly at medics as they escorted people away from police lines with OC spray, and tear gas, and charging at them using batons and shields.
>
> The MALS legal observer team itself was subject to gross violation of its independent and internationally recognised role.

The statement continues:

> In July 2024, the United Nations Human Rights Council called upon all States 'to pay particular attention to the safety and protection of those observing, monitoring and recording protests, including human rights defenders, lawyers, journalists and other media workers, taking into account their specific role, exposure and vulnerability.'

Even so, on multiple occasions, and despite wearing jackets that clearly stated 'Legal observer' on them, those:

> … observers, themselves were assaulted, OC sprayed, pushed and grabbed by police.

It continues:

> On one occasion, three MALS legal observers were at a location to safely view injured people in police custody. The observers were grabbed by members of a –

police public order response team –

> Evidence Gathering Team and forcibly moved away. Two of these observers were able to return to the area to document injuries and police actions.

The Victorian Aboriginal Legal Service have said the use of anti-terror laws and expanded police powers against anti-war protesters represented a 'disturbing encroachment' on the democratic right to protest. They said:

> Our people, and all people, have a human right to have our voices heard on issues which affect us. Protests must be safe spaces for all people. Where police use excessive force, this makes protests unsafe and goes against our right to protest peacefully …

The increasingly violent culture of protest policing in Victoria must be reversed, and I hope that IBAC conducts an independent investigation of this week's policing operation. I urge the Attorney-General to take seriously these observations recorded by independent legal observers, and I request that she intervene to stop the use of excessive force by Victoria Police.

Vietnamese language education

Trung LUU (Western Metropolitan) (18:48): (1158) My adjournment matter is for the Minister for Education and is regarding Vietnamese language education. The action I seek is for the minister to commit additional funding for the teaching of the Vietnamese language in our education system. ViệtSpeak, a language education advocacy organisation based in Melbourne's western suburbs, have detailed their great concern around underfunding of Vietnamese language education in our schooling system. The Vietnamese community is one of the fastest growing communities in Victoria. It is currently the third most spoken language in our state after English and Mandarin; however, in a state like Victoria, which promotes multiculturalism, the Vietnamese language is undersupported in the public education system, even though this is one of the fastest growing communities.

Although the number of Italian speakers in Victoria is lower than the number of Vietnamese speakers, there are 241 Italian language programs in state schools, compared to 11 for Vietnamese according to 2020 figures from the Department of Education and Training. This represents a failure by the state government to serve the Vietnamese-speaking community. The Western Metropolitan Region is the home of many people from culturally and linguistically diverse communities. Nearly 18.5 per cent of residents in Brimbank City Council alone speak Vietnamese as their main language. Therefore providing a robust Vietnamese language education is not a luxury but a necessity if ongoing language loss, as recent studies indicate, can occur in one generation.

Instead of allocating $216 billion to the Suburban Rail Loop in the east, the minister could direct some funding towards a Vietnamese education program in communities that desperately need this support. So I ask the minister: will you provide adequate and clear-cut funding for the Vietnamese community for Vietnamese language education within our education system to prevent language loss and maintain the culture and diversity of the western suburbs?

Animal welfare

Georgie PURCELL (Northern Victoria) (18:51): (1159) My adjournment matter is for the Minister for Environment, and the action I seek is urgent action on the disastrous state of wildlife care on Phillip Island. Phillip Island has proven to be a haven for critically endangered species, with the island being crucial to numerous species' survival. The eastern barred bandicoot was declared extinct in the wild in 2013, but after 67 eastern barred bandicoots were placed on Phillip Island in 2017 as part of a population recovery program, population numbers have boomed and they are no longer declared extinct. But instead of building upon this success and safeguarding the natural preserves of Phillip Island to protect threatened species, the government has decided to fund the development of a new tourist attraction, locking up even more wildlife in cages.

The Minister for Environment recently spent over $100,000 on the business Reptile Encounters – which does reptile children's parties, using them as props and playthings – to put together a site plan for a zoo. This is just the beginning. Let me remind you that this government spends absolutely no dollars on local wildlife rescue efforts that it relies on, yet it happily blows away over $100,000 for just a plan for an interactive reptile zoo so our wildlife can be poked and prodded by members of the

public who know nothing about them. What the government should be doing is using that money to reopen a shelter for wildlife on Phillip Island, which is so sorely needed.

The local volunteer wildlife shelter had to close in 2019 due to immense overcapacity and absolutely no funding or support from this government. The Department of Energy, Environment and Climate Action has also senselessly forced the killings of Cape Barren geese, swamp wallabies, brushtail possums and ringtail possums on Phillip Island, stopping Phillip Island Nature Parks from being able to rehabilitate them and forcing the euthanasia of healthy and orphaned animals. While Phillip Island Nature Parks have a dedicated wildlife hospital, in practice it is only a seabird hospital. Multiple accounts say upon visiting there have been only five to seven animals in care, which is totally inadequate given the hundreds of animals on the island in need of care.

During summer, between the roundabout at Cape Woolamai and the first roundabout in Cowes, only a 10-minute drive, a local counted 52 dead animals. There are now only three koalas left on the island. In what should and can be a wildlife haven on Phillip Island, due to mismanagement by the department, hundreds of animals are dying, species are becoming threatened and locals have nowhere to turn to help wildlife. I ask the minister to urgently intervene in this wildlife crisis on Phillip Island and re-establish wildlife shelters.

Regional health services

Georgie CROZIER (Southern Metropolitan) (18:54): (1160) My adjournment matter this evening is for the attention of the Minister for Health, and it is in relation to the severe shortage of visiting radiologist services in Bairnsdale. My colleague Mr Bull, the member for the area, has raised this issue a number of times with the Minister for Health. He delivered a speech in Parliament in February. He has also written to the minister through questions on notice and has spoken about this around the failure of Bairnsdale Regional Health Service to have appropriate radiology services and called on the minister, at that time, to immediately act. In fact in his speech at the time he said, around the shortage and how people in his area were being treated, that this is not just about a private contractor's failure, this is about a minister who has utterly failed in their duty to protect the health of all Victorians. We are not asking for luxury, we are demanding the basic right to health care that is equal to that received in Melbourne. Rural lives are not lesser lives. The minister must act now. He made that speech. He also put questions on notice. In a response to the question on notice in March, answered in June, the minister said:

> My department informs me that affected services are working through mitigation strategies and exploring options to better support the region's needs for radiology services.

Well, nothing has happened, and it is still very, very concerning for those people that are requiring these diagnostic services and radiology where there are reporting delays for cancer diagnostics. I-MED is contracted to provide radiology services five days per week, but they are lucky to get two days per fortnight. The admin team reports it receives about six referrals each day. They are inundated, and then they have to decide who they need to allocate appointments to. It is a really serious issue, what is happening, and there is huge concern around those people with potential cancer diagnoses and other life-threatening issues that are not being seen in a timely fashion. As I said, it is not fair for the staff to decide who they are booking for the limited appointments that are available, and as they say, how can you decide whose cancer diagnosis is timelier than another's? I think they absolutely nailed their concerns regarding this very serious issue. The action I am seeking is for the minister to immediately intervene in this issue. Enough of the lip-service – she has provided some answers to the member, but the people of Gippsland, like the rest of rural and regional Victorian patients, deserve to have access to basic healthcare services.

Victorian Electoral Commission

Nick McGOWAN (North-Eastern Metropolitan) (18:57): (1161) I think I addressed my concerns initially during my maiden speech in this place in respect to the Victorian Electoral Commission

(VEC). It has been an observation of mine over some time, perhaps even decades, that the public in this state have year after year lost confidence in the performance of the Victorian Electoral Commission. We only need to look back to the last election to know that that was on full display. Not in my lifetime can I recall the electoral commission running out of ballots and actually having to administer blank bits of paper.

Harriet Shing: That's how much they didn't want you in Parliament.

Nick McGOWAN: Well, that's how much they just didn't want to do their job. I mean, I do not know what they were smoking at that polling booth, but I tell you what, it did affect their performance. I suppose, as much as I poke fun at them, it is actually very serious, because if the reputation of the VEC, which I would argue is in tatters, continues to decline, then at some point people will start to question our own democracy, and I do not want that. I want them to be the impartial conveyors of elections.

There is an example that has come to my attention, and it is timely because we are about to have council elections, as we all know. Back in the 2020 election in the municipality of Banyule in my area of North-Eastern Metropolitan Region there was a former Labor member by the name of Craig Langdon. I am sure some in this place remember that name all too well; perhaps you remember that name too, Minister, and President, for that matter. You have all been around long enough. Well, very sadly, Jenny Mulholland OAM and her son David Mulholland were defamed, and they received, rightly, damages and costs due to Mr Langdon's malicious actions – that is the only way to put it.

But that is not the end of the story. The story is actually the failure of the VEC in the first instance to actually intervene, as was asked for by the Mulhollands at the time. The VEC's complete failure to do this meant that the Mulhollands, like very many people in Victoria and very many who may contest elections in the days and weeks to come, may find themselves at the pointy end of the VEC, which just simply fails to act. I certainly do not want anyone to be in that position, because when it is your name and your reputation on the line, these are people's lives we are dealing with. I would like to ask the Premier to investigate their particular case – because there is a County Court record of this. It went all the way to court, and it cost them an enormous amount of time, stress, energy and effort. No-one should be put through that. I do not want to see anyone who stands for any party have to go through what the Mulhollands went through, and I would appreciate the Premier investigating that case to ensure that the VEC performed its duties adequately.

State Emergency Service funding

Ann-Marie HERMANS (South-Eastern Metropolitan) (19:00): (1162) My adjournment is to the Minister for Emergency Services, and the action I seek is for the minister to heed the calls from the Victorian SES to improve their funding and provide necessary resources to enable them to continue to provide effective emergency responses in critical situations.

I have had a number of SES units – Chelsea, Narre Warren and Knox – contact my office asking for support in securing sustainable funding for their volunteers, which is sadly lacking in this budget. VICSES is a volunteer-based organisation committed to providing emergency assistance to minimise the impact of emergencies, reduce trauma to those exposed to emergencies and enhance community resilience across Victoria. The 4800 volunteers statewide respond to all manner of emergencies, including floods, storms, tsunamis, earthquakes, landslides and road crashes. Like the CFA, they are sometimes the first responders to road and rail accidents involving local people they may know. Between July 2022 and June 2023 SES volunteers provided over 287,000 hours of emergency relief, which has been estimated to equate to an economic value of over $500 million. Again, though, this government is forcing an important body of dedicated volunteers to face critical funding challenges that threaten their ability to effectively deliver essential services and maintain operational readiness.

The organisation currently depends on volunteer-led fundraising to procure vital equipment, maintain facilities and replace end-of-life fleet assets, but it is simply becoming unsustainable. This government

did not give the SES in Victoria any funding increase in the 2023–24 budget even though 74 per cent of the state's SES costs are associated with disasters caused by natural hazards in this state and our roads are appalling and still require repair.

Victoria's budget is in sharp contrast to the approach taken in New South Wales, South Australia, Western Australia, Queensland and Tasmania, states that maintain funding and acknowledge the enormous work done by their SES. Our SES faces the impending crisis of end-of-life fleet assets, with 51 per cent of the fleet's vehicles set to reach the end of their life by 2028 and 88 per cent by 2036, necessitating a capital investment of over $150 million. The fleet expansion will not even cover the ever-increasing needs of the growing Victorian population in a world challenged by intense natural hazardous events. Minister, your Labor government is continually failing to provide our emergency services with necessary support and funds. Will you please help our Victorian SES and provide their services with more resources?

Haven Torquay

Bev McARTHUR (Western Victoria) (19:03): (1163) My adjournment debate matter for the Minister for Housing concerns the Haven Torquay project. Funded by Homes Victoria and delivered by a partnership between Mind Australia and The Haven Foundation, it will comprise 12 self-contained one-bedroom units with common kitchen, dining, recreation and meeting areas. The objective is laudable – to deliver affordable and accessible homes for people whose capacity to live independently is impacted by long-term mental ill health – but the proposed location is so woefully inappropriate that it turns this from a fabulous project into a living nightmare for local residents. The facility will be built on Silvereye Street, right next to Torquay Coast Primary School and the Torquay YMCA Early Learning Centre. It is extremely close. As one parent wrote to me:

> At 8.45am daily about 200 children sit and wait for the gates to open at the school bike rack, five metres from where the 'Haven Home' will be …

The units have no outside area, so residents will spill onto the street, and with the best will in the world, the very nature of these facilities means that on some occasions behaviour including arguments and substance abuse will be manifest. It may not be often, but why risk it at all so close to a school?

It is particularly galling that residents and parents have been kept in the dark about this development. They feel if they had been able to contribute earlier, a more suitable site could have been found. Victorian planning laws provide short cuts for projects developing community care accommodation, and the future use of the site was not announced when it was purchased, apparently due to confidentiality agreements. But it is completely understandable that the consequence of this is that local people feel blindsided and disempowered by this process.

The irony is a far better location exists and is already owned by the state government. The site of the now cancelled Torquay community hospital on South Beach Road would be ideal. I feel enormous sympathy for the residents and parents who were shut out of this process for so long and who see a sensible alternative solution being ignored. The icing on the cake is this: some Surf Coast councillors now disparage those residents and parents raising legitimate concerns as 'stigmatising mental health sufferers'. That is frankly disgraceful, so I stand with them and with Polwarth MP Richard Riordan in asking the minister to please work with her government colleagues and direct Homes Victoria to reconsider the location.

Disaster recovery

Gaelle BROAD (Northern Victoria) (19:06): (1164) My adjournment is to the Minister for Emergency Services. It has been nearly two years since floods impacted much of central and northern Victoria. During the parliamentary inquiry into the floods many councils raised concerns about the onerous nature of Victoria's agreement with the Commonwealth under the disaster recovery funding arrangements. The application process for financial assistance is wrapped in red tape, and some local councils are still awaiting funds while others have reported that they have given up because the process

is simply too time consuming. At recent public hearings into the financial sustainability of local councils, concerns were again raised about Victoria's arrangements, which unlike other states do not allow flood-damaged infrastructure to be built back better – to receive funding, it must be built to the same standard as before. With parts of our state subject to repeat flood, fire and storm events, this has led to some infrastructure being rebuilt three or more times when some minor improvements, such as bitumen roads, would mean the road would be built to withstand future floods, making it more resilient.

The action I seek is for the minister to update Victoria's agreement with the Commonwealth to ensure that betterment is permitted under Victoria's disaster recovery funding arrangements, to reduce the heavy burden of paperwork on local councils seeking reimbursement for recovery works and to provide an update once these changes are implemented.

Suburban Rail Loop

Richard WELCH (North-Eastern Metropolitan) (19:07): (1165) My adjournment matter is for the Minister for the Suburban Rail Loop, and I want to address what I consider a serious concern regarding the misuse of taxpayers funds. The government is using Big Build and SRL community grants programs to compromise the Victorian community in some instances, to camouflage funding of political causes in others and to elicit support in yet others. These funds, under the guise of fostering community engagement, are too often nothing more than exercises in exploiting the needs of local organisations or funding allies.

The obscenely bloated $250 million SRL Community Projects Fund, the $10 million North East Community Fund and the $2.2 million Creative Projects Fund may sound like benevolent initiatives, but they are being used as pork-barrelling at its finest. In a previous adjournment I highlighted some of the more spurious examples of these payments, but it is getting worse. These funds are selectively allocated to marginal electorates or politically sensitive areas, exploiting with caveats on silence or disguising political collateral as project information. This is corrupt practice, and it needs to be called out. These funds are being allocated far outside all the normal protocols of oversight and due process for allocating taxpayer money – and it is exploiting the opaque governance structures of Big Build enterprises to camouflage and hide it.

At a time when money is short and debt is high, no Victorian wants payments going to non-essential artworks or self-indulgent trimmings on these projects. The expectation must be that our taxpayer dollars go to projects that matter, projects that build a stronger, more prosperous future for all Victorians, not just those in the way of projects and certain privileged individuals. Will the minister rule out any non-essential promotional materials or artworks or other non-essential expenses on the Suburban Rail Loop?

Somerton Road–Fleetwood Drive, Greenvale

Evan MULHOLLAND (Northern Metropolitan) (19:10): (1166) My adjournment is for the Minister for Transport Infrastructure, and I once again seek the action of the minister to provide an urgent – this time urgent – update on the works at the intersection of Fleetwood Drive and Somerton Road in Greenvale. Many locals have shared their frustrations since 2021 at the works between Major Road Projects Victoria, the Department of Transport and Planning, Hume City Council, CivilworX and Jemena, all involved in works that have a quite tricky array of companies and departments to work through. Locals have had enough of the blame game between them all, between this cabal, and just want answers. I have visited the site and been given a tour of the development, and I share my constituents' frustration at the delays and share their passion for seeing this much-needed intersection opened to ease congestion in the area. Trust me, my office is just around the corner from this intersection and I see the traffic on a daily basis.

I previously urged the utility company Jemena to hand over the certificates of completion and compliance for the site. This was required due to a lack of urgency or interest from this Labor state

government and their department officials, and my advocacy and prodding seem to have worked and have led to them handing over the certificates. Once again we find ourselves in a similar predicament born of Labor incompetence and intransigence. The developer, Solovey, advised me that so far only one of eight milestone dates has been met by the department, with the other seven due in the next six days. I wonder whether that will happen, whether they will meet that timeline. I have just been advised this afternoon that the latest delays involve concerns around state government officials not meeting commitments and due dates for inspections and other requirements.

This is of deep concern to my community, who have waited long enough for this project to be completed and for Fleetwood Drive to be opened. Locals in Greenvale want this intersection opened right now. They want local roads available and easy access. To think that these ongoing delays could be down to officials in the final stages shirking deadlines and allowing the project to drift is unacceptable to me and it is unacceptable to my constituents. It has been closed for long enough. People just want Fleetwood Drive open, for the community to be able to get home sooner and for traffic to be reduced. We know that it is connected with the $222 million upgrade of Mickleham Road – for 1.6 kilometres, by the way, which makes it the most expensive road duplication in the state. I seek the action that the minister provide me and my constituents in Greenvale with an update.

Responses

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (19:13): This evening there were 15 matters for the adjournment and, save for one matter raised by Mrs McArthur this evening, they will be referred to the relevant ministers for response. Mrs McArthur, there are a couple of things in the matter that you have raised this evening that I can provide you some assistance with now while I am on my feet, but bearing in mind what you have said this evening there are a couple of things that may also sit with the Minister for Planning. So in order to help you out I am happy to perhaps go through some of the detail on Silvereye this evening to the extent that it sits alongside the social housing component of what is being done but then also perhaps to seek some further information for you. It perhaps goes a little beyond the standing orders as far as adjournments are concerned, but perhaps we can do a tandem effort.

What we are doing in Torquay, as you have quite rightly identified, is delivering social homes to people with complex needs, and this is part of a group effort between our community housing provider the Haven Foundation, which is a subsidiary of Mind Australia, Homes Victoria and the partnerships alongside the planning framework with the Surf Coast shire. You have identified the importance of this accommodation to people with specific needs. However, it seems – and I have seen correspondence from a number of members of the community; I know it has been the subject of public discussion as well beyond what the local member has said – it is an issue which people have raised, and I am aware of it.

It is a matter that has been really informed by the proximity of the site to public transport, medical services, shops and supermarkets, and it meets the requirements of the relevant planning scheme for community care accommodation as under the auspices of the Surf Coast Shire Council. Because it meets those requirements it is not then subject to a planning permit, and one of the purposes of the relevant clause of the planning framework is to support the confidentiality of community care accommodation. The Surf Coast shire is the responsible authority under that framework, and they have issued a certificate of compliance to confirm that no planning permit is required. Homes Victoria has also advised that the housing provider, Haven, will continue to engage with the local community to address concerns about the project, and you have named a few of the concerns here this evening, but there are a number of them which continue to inform local discussions, and Homes Victoria will continue that work.

Mrs McArthur, noting that there was also a request I think in the terms that you described this evening for the adjournment for some intervention from the planning minister, why don't I see what I can do beyond what sits within my remit as Minister for Housing and get you an answer which perhaps goes

to the purpose of your adjournment in the first instance? On that basis I will then refer all other matters to the relevant ministers.

Questions without notice and ministers statements

Written responses

The PRESIDENT (19:16): I committed to Dr Ratnam to review the answer to a question she asked Minister Shing at question time. I was concerned about the level of detail expected for a minister to answer in question time on something that should be considered a question on notice, but the crux of the question was how much the government is spending on consultants in a project to demolish and privatise 45 public housing sites in Victoria, and the minister's response up-front was that there is not a program to privatise public housing, therefore she acquitted the question.

The house stands adjourned.

House adjourned 7:17 pm.