PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-EIGHTH PARLIAMENT

FIRST SESSION

Friday, 7 September 2018

(Extract from book 13)

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By authority of the Victorian Government Printer

The Governor

The Honourable LINDA DESSAU, AC

The Lieutenant-Governor

The Honourable KEN LAY, AO, APM

The ministry

(from 16 October 2017)

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Legislative Council committees

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

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

Legislative Council standing committees

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

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

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

participating members

Legislative Council select committees

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

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

Joint committees

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

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

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

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

Environment, Natural Resources and Regional Development Committee — (*Council*): Mr O'Sullivan, Mr Ramsay and Mr Young. (*Assembly*): Mr J. Bull, Ms Halfpenny, Mr Richardson and Mr Riordan.

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

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

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

Law Reform, Road and Community Safety Committee — (*Council*): Dr Carling-Jenkins and Mr Gepp. (*Assembly*): Mr Dixon, Mr Howard, Ms Suleyman, Mr Thompson and Mr Tilley.

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

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

Heads of parliamentary departments

Assembly — Acting Clerk of the Legislative Assembly: Ms Bridget Noonan

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

Parliamentary Services — Secretary: Mr P. Lochert

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-EIGHTH PARLIAMENT — FIRST SESSION

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Mr N. ELASMAR

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Member	Region	Party	Member	Region	Party
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Barber, Mr Gregory John[1]	Northern Metropolitan	Greens	Morris, Mr Joshua	Western Victoria	LP
Bath, Ms Melina[2]	Eastern Victoria	Nats	Mulino, Mr Daniel	Eastern Victoria	ALP
Bourman, Mr Jeffrey	Eastern Victoria	SFFP	O'Brien, Mr Daniel David[8]	Eastern Victoria	Nats
Carling-Jenkins, Dr Rachel[3]	Western Metropolitan	Ind	O'Donohue, Mr Edward John	Eastern Victoria	LP
Crozier, Ms Georgina Mary	Southern Metropolitan	LP	Ondarchie, Mr Craig Philip	Northern Metropolitan	LP
Dalidakis, Mr Philip	Southern Metropolitan	ALP	O'Sullivan, Mr Luke Bartholomew[9]	Northern Victoria	Nats
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Dunn, Ms Samantha	Eastern Metropolitan	Greens	Pulford, Ms Jaala Lee	Western Victoria	ALP
Eideh, Mr Khalil M.	Western Metropolitan	ALP	Purcell, Mr James	Western Victoria	V1LJ
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Ramsay, Mr Simon	Western Victoria	LP
Finn, Mr Bernard Thomas C.	Western Metropolitan	LP	Ratnam, Dr Samantha Shantini[11]	Northern Metropolitan	Greens
Fitzherbert, Ms Margaret	Southern Metropolitan	LP	Rich-Phillips, Mr Gordon Kenneth	South Eastern Metropolitan	LP
Gepp, Mr Mark[5]	Northern Victoria	ALP	Shing, Ms Harriet	Eastern Victoria	ALP
Hartland, Ms Colleen Mildred[6]	Western Metropolitan	Greens	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
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Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Symes, Ms Jaclyn	Northern Victoria	ALP
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Lovell, Ms Wendy Ann	Northern Victoria	LP	Truong, Ms Huong[12]	Western Metropolitan	Greens
Melhem, Mr Cesar	Western Metropolitan	ALP	Wooldridge, Ms Mary Louise Newling	Eastern Metropolitan	LP
			Young, Mr Daniel	Northern Victoria	SFFP

[1] Resigned 28 September 2017
[2] Appointed 15 April 2015
[3] DLP until 26 June 2017;
AC until 3 August 2018
[4] Resigned 27 May 2016
[5] Appointed 7 June 2017
[6] Resigned 9 February 2018
[7] Resigned 6 April 2017
[8] Resigned 25 February 2015
[9] Appointed 12 October 2016
[10] ASP until 16 January 2018;
RV until 14 August 2018
[11] Appointed 18 October 2017
[12] Appointed 21 February 2018

PARTY ABBREVIATIONS

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

CONTENTS

FRIDAY, 7 SEPTEMBER 2018

Friday, 7 September 2018

The PRESIDENT (Hon. B. N. Atkinson) took the chair at 9.35 a.m. and read the prayer.

JUSTICE LEGISLATION AMENDMENT (UNLAWFUL ASSOCIATION AND CRIMINAL APPEALS) BILL 2018

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

Mr JENNINGS (Special Minister of State) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006* (the 'Charter'), I make this Statement of Compatibility with respect to the Justice Legislation Amendment (Unlawful Association and Criminal Appeals) Bill 2018.

In my opinion, the Justice Legislation Amendment (Unlawful Association and Criminal Appeals) Bill 2018, as introduced to the Legislative Council, is compatible with human rights as set out in the Charter. I base my opinion on the reasons outlined in this statement.

Overview

The purpose of this Bill is to amend the *Criminal Organisations Control Act 2012* (the Act) to improve the effectiveness of the unlawful association scheme in Part 5A of that Act and to make reforms to certain appeal processes.

Serious and organised crime negatively affects the Victorian community in a number of ways, carrying both financial and personal costs. The Act targets the sophisticated forms in which serious and organised crime takes place today. The scheme in Part 5A enables Victoria Police to issue a notice to persons warning them not to associate with each other. The notice warns that further associations might result in the persons committing the offence of unlawful association. The offence addresses serious and organised crime by preventing the formation, maintenance and expansion of criminal networks.

The Bill amends the scheme in a number of ways to ensure that it targets serious and organised crime effectively. These changes are modelled in part on the NSW offence of 'consorting' under section 93X of the *Crimes Act 1900* (NSW).

The Bill also introduces significant reforms to improve the operation of criminal appeals in Victoria. An effective system of appeals will correct errors, apply fairly and consistently for all parties, and cause minimal harm to victims and witnesses. In order to achieve this, the Bill abolishes de novo appeals in Victoria and, where appropriate, introduces new appeal processes. The new processes will apply to criminal appeals from the Magistrates' Court and the Children's Court. The reforms will reduce the burden of appeals on victims and witnesses and decrease inefficiencies through the reduction of unnecessary duplication and abandonment of proceedings.

For the following reasons, I am satisfied that the Bill is compatible with the Charter and, if any rights are limited, the limitation is reasonable.

Human Rights Issues

Unlawful association

Right to freedom of association (section 16)

Section 16 of the Charter provides that every person has the right of peaceful assembly and every person has the right to freedom of association with others. The Bill amends provisions which set out the scope of lawful and unlawful association between persons affected by the laws on the basis that prohibiting certain associations can prevent criminal organisations from planning and committing serious offences. In doing so, the Bill limits the freedom of association.

Under the unlawful association scheme, a person who receives an unlawful association notice is prohibited from associating with the person or persons named in the notice. The persons named in the notice will also be 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 offence punishable by imprisonment for three years.

Under the current scheme, a person may be issued an unlawful association notice if that person associates with one or more persons convicted of an 'applicable offence' against Victorian laws named in the notice on at least three occasions in a three month period, or six occasions in a 12 month period. A person can be issued with an unlawful association notice only by a 'senior police officer' (at or above the rank of senior sergeant).

The Bill amends the scheme to enable a person to be charged with the offence of unlawful association if they associate with at least two convicted offenders (whether on the same or separate occasions), on at least two occasions each, after receiving a notice prohibiting them from associating with those persons. It removes the 12 month period over which the unlawful association may take place. It removes the requirement that a senior police officer must reasonably believe that issuing a notice will prevent the commission of further offences in order to issue a notice. It changes the definition of 'senior police officer' to mean a police officer at or above the rank of sergeant. It also amends the definition of an 'applicable offence' for the purpose of this scheme to include offences committed against laws of another Australian State or Territory, or the Commonwealth, which correspond to an 'applicable offence' against Victorian law.

Section 7(2) of the Charter provides that reasonable limits can be placed on rights where they are demonstrably justified in a free and democratic society. The amendments in the Bill are a reasonable and justified limitation of the right to freedom of association because they are necessary to prevent the commission of serious and organised crime and the Bill

preserves some important existing safeguards, while adding new safeguards, to prevent notices from being issued arbitrarily.

The current requirement that lawful association be limited to at least three occasions in a three month period, or six occasions in a 12 month period, is easy to circumvent. It is necessary to lower the threshold of contact between persons before association is considered unlawful in order for the scheme to prevent serious crime effectively. The Charter's right to freedom of association with others under section 16(2) does not include the right to associate for the purpose of criminal activities.

Although the Bill removes the time period over which unlawful association may take place, it does not interfere with the provision in the scheme that an unlawful association notice expires after three years of its making. This means that persons are prevented from associating with one another under the terms of an unlawful association notice for a period of three years only, unless the notice is varied or revoked within that period or another notice is issued after three years. To compensate for removing the time period restrictions on unlawful association, the Bill also requires that the offence of unlawful association arises on association with at least two convicted offenders with whom association is banned, instead of at least one person.

The formation of the requisite belief necessary to issue a notice is a high threshold to satisfy. Its removal will enable the scheme to operate more effectively and achieve its purpose of disrupting serious and organised crime.

Lowering the minimum rank of a police officer who may issue an unlawful association notice to the rank of sergeant strikes an appropriate balance between ensuring the workability of the scheme and ensuring that notices are issued only by police officers with sufficient experience.

The broadening of the scheme to apply in respect of persons convicted of relevant interstate offences is necessary to deter serious and organised crime given that criminal organisations often operate across the borders of States and Territories.

The Bill does not interfere with existing aspects of the scheme which ensure that the limitation of the right to freedom of association is the least restrictive possible. When exercising the power to issue notices and other related powers, a senior police officer must have regard to freedom of association and other relevant rights under the Charter. This is because section 38 of the Charter provides that it is unlawful for a public authority, such as Victoria Police, to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

Notices can only be issued to prohibit associating with a person convicted of an 'applicable offence'. An 'applicable offence' is defined in the Act; it includes all offences punishable by at least 5 years' imprisonment, and certain other offences listed in the schedule to that Act. These are very serious offences. As noted above, a notice cannot be issued to ban associations between people with no criminal record, or where people have committed serious offences that fall short of the 'applicable offence' threshold.

The scheme includes many defences to a charge of unlawful association. These include associations in the course of lawful employment, associations for obtaining legal advice, associations for genuine political purposes and associations for participating in vocational training. The Bill adds the defence of associations for the purpose of making childcare arrangements. The scheme also includes provisions by which a person can seek a 'lawful association authority' from Victoria Police to permit an association that is not specifically listed as permitted in the scheme.

If a person believes that a notice is issued in error, he or she is able to seek an internal review by Victoria Police. The review will be conducted by an officer not involved in the first decision to issue the notice. As a further check on the issuing of notices, the scheme contains annual reporting requirements. Victoria Police is required to report to Parliament on the number of notices issued during the financial year and persons charged, as well as details of such persons such as their age ranges and Aboriginality.

The Bill also introduces new safeguards to ensure Charter rights such as the right to freedom of association are only limited to the extent necessary. It creates a new robust oversight role for the Independent Broad-based Anti-corruption Scheme (IBAC). IBAC will now monitor the use of police powers under the scheme and report on their exercise to the Attorney-General every two years, with the power to make recommendations as to possible improvements to the scheme. Additionally, IBAC will have standing powers to monitor and report on the exercise of powers under this scheme, and will have all necessary powers to discharge this function, including powers of entry to Victoria Police premises, full and free access to all relevant Victoria Police records or documents, and powers to direct police officers to give IBAC any relevant information or document, or answer any relevant questions. IBAC will also have the power to review the making of any unlawful association notice or a proportion of such notices. In support of this function, the Chief Commissioner of Police will be required to report on the number of issued notices to IBAC every three months. These robust and independent oversight powers will protect against inappropriate use of the scheme and allow for continued evaluation of its effectiveness.

The Bill will require that an unlawful association notice contain information to assist a person issued with a notice to assert their rights. This will include information about the review rights available to a person issued with a notice and the right of that person to complain to both Victoria Police and IBAC about police conduct.

The Act also contains a requirement that the Attorney-General undertake a review of the operation and effectiveness of the Act. The Bill amends the review period of the Act to ensure the review captures the operation of the amendments contained in this Bill.

Right to freedom of movement (section 12) and right to freedom of expression (section 15)

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

Section 15 of the Charter provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information.

This Bill will limit the rights in sections 12 and 15 of the Charter, by placing restrictions on the freedom of a person to move freely in Victoria, or communicate with a prohibited person, once issued with an unlawful association notice. For the reasons discussed above I consider that these limitations are reasonable and justified for the purpose of this Bill.

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.

Currently, the unlawful association scheme does not apply to persons under the age of 18. The Bill amends the scheme so that children of, or above, 14 years of age can receive an unlawful association notice. By treating children between the ages of 14 and 18 differently from children below the age of 14, the Bill limits this right. In my view, this limitation is reasonable and demonstrably justified.

It is a troubling feature of serious and organised crime that criminal organisations induce vulnerable young people to take part in criminal activity. The Bill recognises the reality that young people may play a role in serious and organised crime by extending the application of the scheme to children over the age of 14. Children below this age are unlikely to be recruited by criminal gangs to take part in serious criminal activity. Drawing a distinction between this cohort of children and children between the ages of 14 and 18 will help ensure that children are only targeted by the criminal offence of unlawful association to the extent necessary to achieve the scheme's purpose.

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.

The Bill creates special safeguards for three classes of persons who may be considered 'vulnerable', namely, children, Aboriginal people and persons with an impaired ability to understand their rights. This acknowledges the particular hardship suffered by children and persons with physical, cognitive or mental health impairments if they fall into the criminal justice system. It is also necessary and appropriate for Aboriginal persons to be included in light of the over-representation of Aboriginal persons in the criminal justice system and the risk that the changes might disproportionately affect them. The special vulnerabilities of these classes of persons were also identified by the NSW Ombudsman in a 2016 review of the NSW provisions.

The Bill seeks to reduce the likelihood vulnerable groups are disproportionately targeted by requiring that an unlawful association notice can only be issued to these groups by a police officer at the rank of Senior Sergeant or above. In other cases, as noted above, an unlawful association notice may be issued by a police officer at or above the rank of Sergeant. This will increase the scrutiny placed on the use of these powers. The Bill will also provide that unlawful association notices issued to a vulnerable person expire after 12 months, instead of the usual period of three years. While Victoria Police may re-issue a notice once it expires, a shorter duration than would otherwise apply will cause the issuing of notices to vulnerable persons to be reviewed more regularly and reduce the likelihood that notices are issued improperly.

The issuing of an unlawful association notice to a vulnerable person which does not take account of their status as a vulnerable person will not result in the notice's invalidity. To ensure the protection given to vulnerable groups is not diminished as a result, the Bill increases the requirements for information provided on an unlawful association notice, as noted above. A vulnerable person issued with a notice which does not take account of their special status will be provided with information to facilitate the review of that notice.

As further protection, the oversight role given to IBAC by this Bill will ensure that vulnerable groups are not unduly targeted by the scheme. In particular, for the purpose of the report from IBAC to the Attorney-General on the exercise of police powers, IBAC will be required to specifically consider the impact of the exercise of powers on vulnerable groups. Where IBAC proposes to make any recommendation to the Attorney-General regarding vulnerable persons, IBAC must first consult with a relevant public agency. For example, IBAC will be required to consult with the Commissioner for Children and Young People if IBAC proposes to make recommendations relating to children.

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. By amending a provision of the Act relating to lawful association with a family member, the Bill will engage this right.

The Act includes a provision that a person does not commit the offence of unlawful association by associating with a 'family member', provided that association is not for an 'ulterior purpose' such as planning, inciting or committing an offence, expanding a criminal network, or deliberately frustrating the operation of the scheme. A 'family member' is defined broadly under the *Family Violence Protection Act 2008* to include relationships considered by the person to be family ties and recognised as being like family in the person's community.

The Bill amends this provision so that a person does not commit the offence of unlawful association if they associate with a 'relative', 'spouse' or 'domestic partner' and that association is not for an ulterior purpose. The terms 'relative', 'spouse' and 'domestic partner' have the meaning given to them by the Family Violence Protection Act 2008. These terms have a narrower meaning, relying on more objective characteristics, than 'family member'. A 'relative', for example, means immediate family and includes uncles, aunts, cousins, nephews and nieces. A 'relative' also includes a person who, under Aboriginal or Torres Strait Islander tradition or social practice, is the person's relative.

The prohibition on associating for an ulterior purpose recognises that organised crime gang members often share common interests, and in some cases this common interest is a family connection. By narrowing the provision relating to lawful associations with family members, the Bill clarifies who is captured under the definition and prevents a person from undermining the unlawful association scheme by claiming that another person is like a family member for the purpose of associating with them. Permitting associations with a 'relative', 'spouse' or 'domestic partner' for a lawful purpose is consistent with the rights of families under section 17.

Section 17(2) of the Charter provides that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child. The right recognises the special vulnerability of children. The Charter defines children as persons under 18 years of age.

As noted above, the Bill amends the scheme so that children of, or above, 14 years of age can receive an unlawful association notice. If a child breaches an unlawful association notice issued to them, the child may be charged with the offence of unlawful association. Although the application of the unlawful association offence to children limits the right under section 17(2), the Bill is compatible with this right because the limitation is reasonable and demonstrably justified. Preventing unlawful association between a child and other individuals serves the purpose of disrupting serious and organised crime. It also has the potential to protect children by deterring them from participation in criminal organisations.

As noted above, the Bill includes safeguards to make sure that the rights of children, as a class of 'vulnerable person', are limited in the least restrictive way possible. The Bill also provides that where the unlawful association scheme prohibits a child convicted of offences from associating with other persons, the child must have committed very serious offences in order to be issued with a notice. The Bill will add a new Schedule to the Act setting out a list of serious offences for this purpose. The new Schedule will include certain offences listed in Schedules 1 and 2 to the *Bail Act 1977*. The Schedules to the Bail Act set out offences alleged to have been committed by an accused of such seriousness that bail will only be granted to that person if exceptional circumstances or a compelling reason exists to justify bail being granted. The new Schedule will also include certain serious Commonwealth offences, such as drug trafficking and terrorism offences. This safeguard will ensure that only children likely to be involved in serious and organised crime are targeted as offenders under the scheme.

The oversight role played by IBAC, discussed in detail above, will act as an additional safeguard for the rights of children.

Right to privacy (section 13)

Under section 13 of the Charter, a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with.

Under the current unlawful association scheme, a person's conviction for a serious criminal offence is disclosed to the recipient of an unlawful association notice for the purpose of warning them not to associate with one another. This disclosure may interfere with a person's right to privacy. Importantly, however, the disclosure of the person's criminal history is limited. The nature of the conviction itself is not disclosed, nor are aspects of the person's criminal record that are not relevant to the issue of an unlawful association notice. The disclosure is also limited to furthering the purpose of the scheme, namely, to issue notices enabling the prevention of serious crime.

The Bill is consistent with the right to privacy by further limiting the circumstances in which a person's criminal record may be disclosed. It provides that the most recent conviction of an offender named in an unlawful association notice must not be more than ten years old. This restriction on a relevant conviction does not apply if the sentence imposed on the offender for that conviction was a term of imprisonment of six months or more in duration or where the person has been convicted of a sexual offence.

The operation of this provision is substantially similar to the effect of the 'spent convictions' scheme in NSW under the *Criminal Records Act 1991* (NSW). This scheme limits the effect of a person's conviction for a relatively minor offence if the person does not reoffend for a defined period of time. Following completion of that period, the conviction is considered to be 'spent' and does not form part of the person's criminal history. That period is ten years in the case of adults and three years in the case of children. The 'spent convictions' scheme applies in respect of other NSW legislation such as the consorting offence in section 93X of the *Crimes Act 1900* (NSW).

The adaptation of these provisions for the purpose of the Victorian unlawful association scheme limits the disclosure of a person's convictions to circumstances in which either the person's offences are relatively recent or the offending for an applicable offence was so serious as to warrant imprisonment. It prevents the disclosure of the convictions of a person who, though charged with a serious criminal offence, was found by a court not to have committed offending of a serious nature, and who has not been subsequently found guilty of serious criminal conduct for more than ten years.

Right to be presumed innocent (section 25(1))

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

By providing that it is a defence to the offence of unlawful association if the association fell within one of the circumstances provided in the Act, the Bill requires, to a limited extent, that an accused prove matters to establish, or raise evidence to suggest, that they are not guilty of an offence. In doing so, the Bill limits the right under section 25(1).

In my opinion, however, the imposition of a legal burden to rely on these defences is compatible with the right, as any limits on the right are reasonably justified under section 7(2) of the Charter. In particular, I note that the defences under the Act, for example the defences of lawful association with a person for the purpose of making childcare arrangements, being provided a health service or seeking legal advice, are all matters uniquely within the knowledge of the defendant. Conversely, it would be difficult for the prosecution to prove many of the matters giving rise to defences in the negative.

Appeals from the summary jurisdiction

Human rights protected by the Charter that are relevant to the Bill

The Bill amends the *Children, Youth and Families Act 2005* (CYFA) and the *Criminal Procedure Act 2009* (the CPA) to provide for new processes for appeals from the summary jurisdiction. The Bill amends the criminal appeal process in the CYFA to reflect the amendments being made to Part 6.1 of the CPA. Accordingly, the same human rights that are relevant to the CPA reforms are relevant to the equivalent CYFA reforms. The rights that apply to criminal proceedings protected by sections 24, 25, and 26 of the Charter are relevant to these reforms. Similarly, where the new appeal

processes apply to children, the rights of children in the criminal process protected by sections 23, 25(3) and 17 are relevant. Under section 24(1), a person charged with a criminal offence has the right to have the charge decided by a competent, independent and impartial court or tribunal after a fair and public hearing. Section 25(2) provides for particular minimum guarantees for a person charged with a criminal offence, including, relevantly, the right to be tried without unreasonable delay and the right to examine witnesses. Section 25(4) provides that a person convicted of a criminal offence has the right to have the conviction and any sentence imposed reviewed by a higher court. Under section 26, a person must not be tried or punished more than once for an offence of which he or she has already been finally convicted or acquitted. The rights of children in the criminal process require that children be treated in an age appropriate way and that they be brought to trial as quickly as possible.

The new appeal processes also include remand and warrant powers, which are relevant to the right to liberty and security of the person protected by section 21 and the right to freedom of movement protected by section 12. The protection of children and families under section 17 of the Charter is relevant to the abolition of de novo appeals from the Family Division of the Children's Court. Lastly, section 8 of the Charter is engaged by the further evidence provisions, which provide specific tests for the giving of evidence again by children and persons with cognitive impairment.

Rights in criminal proceedings

The right to a fair trial is unlikely to be limited by the Bill because the trial of an accused person will continue to proceed under existing law. The Bill provides a new criminal appeal process for appeals from the summary jurisdiction. Clauses 27 and 40 provide that conviction appeals will involve an appeal by way of rehearing on the evidence given in the original court, and any further evidence that is admitted by the appellate court. This is a common appellate process, which has been explained and applied in numerous cases (e.g. *Fox v Percy* (2003) 214 CLR 118). Where the person has entered a plea of guilty in the original court, or had a conviction recorded in their absence, leave to appeal will be required. Leave to appeal may be granted if the appellate court is satisfied that it is in the interests of justice. This is a broader test than that usually required for a change of plea in the higher courts, which requires the court to be satisfied that letting the conviction stand would produce a miscarriage of justice (see: *R v McQuire* (2000) 110 A Crim R 348, 354).

The new process for sentence appeals in clauses 27 and 40 requires the appellate court to be satisfied that there are compelling reasons to impose a different sentence before allowing an appeal against sentence. This is a broader test than that required for a successful sentence appeal in the Court of Appeal, which requires the demonstration of error. When considering whether there are compelling reasons, the appellate court is to have regard to a presumption in favour of the correctness of the original decision. This is a reflection of the common law position in relation to appeals from discretionary decisions, which is what the appellate court is considering (see: *Australian Coal and Shale Employees' Federation v The Commonwealth* (1953) 94 CLR 621, 627). Where the guilt of an accused is being considered on appeal under the new processes, that consideration will be undertaken by a competent, independent and impartial court. If the appeal is successful, the court may still be satisfied beyond reasonable doubt that the accused is guilty of another charge that was before the original court. For example, if the appeal relates to a conviction for an aggravated version of an offence, and the appellant was also originally charged with the non-aggravated version of that offence, the appellate court may convict the appellant of the non-aggravated offence. This is a standard power that is available to appellate courts on conviction appeals. In such circumstances, the appellate court may only impose a sentence that is no more severe than the original sentence imposed.

The reforms will promote the right to a fair trial by reducing delays in the system. New leave to appeal requirements for certain appeals and the power to strike out appeals where no summary of appeal notice has been filed or that have no reasonable prospects of success as provided in clauses 27 and 40 will rationalise the appeals considered by the County Court. Further, providing that the appellate court consider the evidence before the original court will reduce the time taken to secure, replicate and rehear evidence on a conviction appeal.

The accused's right to examine witnesses will remain and will continue to reflect the powers to call and examine witnesses available to the prosecution. However, where a victim or witness has already been examined in the original court, a transcript or a recording of that evidence will be relied on. Either party will be able to call and examine a witness again as set out in clauses 31 and 44 of the Bill if the court is satisfied that it is in the interests of justice to do so. For the appellate court to receive further evidence from complainants, children or cognitively impaired persons in sexual offence or certain family violence cases, the court must also be satisfied that the evidence is substantially relevant to a fact in issue in the appeal. For these reasons, I am satisfied that the Bill is unlikely to limit the right to a fair trial, but to the extent that it does, it is justifiable as it strikes a balance between protecting the rights of victims and witnesses, and those of the accused.

Clauses 27 and 40 of the Bill also preserve the right to have a conviction and sentence reviewed by a higher court. However, rather than a right to a de novo review, convictions and sentences will be re-determined on the basis of the evidence given in the summary hearing, having regard to the reasons given by the magistrate. The Bill also provides that any other materials submitted at the sentencing hearing may be considered by the court in a sentence appeal.

The new leave to appeal requirements set out in clauses 27 and 40 of the Bill will only apply where the accused entered a plea of guilty or was sentenced in his or her absence in the original court. The appellate court must consider the surrounding circumstances and leave must be granted if it is in the interests of justice to do so. This differs to the test for changing a guilty plea in the higher courts, which requires the court to be satisfied that letting the conviction stand would produce a miscarriage of justice. This simpler test has been chosen to account for the ways in which the summary jurisdiction operates. Where a conviction and sentence was imposed in the person's absence, the person must apply for a rehearing in the original court prior to appealing to the County Court. If they are granted a rehearing, then they will not require leave to appeal any decision made at that new hearing.

Clauses 34 and 47 of the Bill provide that the court may strike out an appeal if it is satisfied the appeal has no reasonable prospects of success. This is a sensible case management tool to avoid the time and expense of fruitless appeals. In each of these circumstances, the appellate court must be satisfied on

the basis of the materials forming the notice of appeal or application for leave to appeal, and principles of procedural fairness will apply. Leave would only be refused, or an appeal struck out, on a reasoned consideration of the merits of the appeal.

The Human Rights Committee of the United Nations has confirmed that the right of review of conviction and sentence does not require a full rehearing but does require more than a consideration of the purely legal aspects of a conviction. Rather, the right of review requires a higher court to take into account the factual dimensions of the case. I consider that this balance is struck by the new appeal processes.

Currently, the offender may appeal to the Court of Appeal against a sentence imposed by the County Court on a de novo appeal under section 283 of the CPA. This only applies where the person is sentenced to a term of imprisonment by the County Court and the original court did not order that the person be imprisoned. This appeal right exists because the County Court is making a new decision on a de novo appeal, which is effectively a first decision. Under the new appeal processes provided for in clauses 27 and 40 of the Bill, the County Court will be conducting an appeal proper and making a second decision in the matter. As there is no longer a need for the County Court's decision to be reviewed again by the Court of Appeal, clauses 36 and 50 of the Bill repeal this right of appeal. Safeguards will still exist for the offender. For example, the County Court must warn the appellant if it is considering imposing a more severe sentence than the original sentence (and the appellant may then choose to withdraw the appeal). Section 302A of the CPA also allows for the reservation of a question of law to the Court of Appeal, and judicial review will still be available. In addition, rather than appealing to the County Court, the offender may appeal to the Supreme Court on a question of law under Part 6.2 of the CPA.

The right not to be punished more than once only applies where a person has been finally convicted or acquitted (i.e. after appeal proceedings are concluded). The new appeal processes will assist an accused in achieving final resolution of their matter by reducing delays, removing inefficiencies and giving them earlier indications of the prospects of success of their appeal. This right does not apply to prevent prosecution appeals against sentence, or to increase a sentence on appeal. That is because an increased sentence on appeal involves substituting one sentence for another, not imposing a second sentence on top of the first. I also consider that, as the Supreme Court of Canada has held in relation to an identical right, this right applies only after appeal proceedings are concluded (*R v. Morgentaler* [1988] SCR 30).

Right to liberty and freedom of movement

Clauses 30 and 43 of the Bill apply existing provisions so that once a notice of appeal or application for leave to appeal has been filed, the offender may apply to be released on bail. Similarly, if on appeal the court remits the matter for further determination by the original court, the appellate court may remand the appellant in custody or grant them bail pending the hearing of the remitted proceedings. In clauses 34 and 47 of the Bill the court may also issue a warrant where the court has struck out the appeal and the appellant had been sentenced to a term of imprisonment. Each of these powers exists for a good reason. I am satisfied that these powers do not limit the right to liberty as any interference with liberty will be on grounds and in accordance with procedures established by law. They do prima facie restrict freedom of movement but reflect a careful balancing of the rights and interests of the appellant, victims and the community and are a justifiable limitation.

Protection of children and families and the right to equality

The Bill promotes the protection of children and families as protected by section 17 of the Charter. In particular, the Bill introduces greater protections for child complainants and witnesses as well as persons who had a cognitive impairment at the time the criminal proceeding commenced. Under the new appeal processes set out in clauses 31 and 44 of the Bill, the appellate court may receive further evidence in addition to the evidence before the original court if it is satisfied that it is in the interests of justice to do so. Evidence to be given by a complainant, or a person who was a child or cognitively impaired at the time the criminal proceeding commenced, for charges of sexual offences, family violence or certain injury offences is protected evidence. This means that the court must be satisfied that the evidence is substantially relevant to a fact in issue in the appeal before the person is required to give protected evidence on appeal. This will reduce the need for children and persons with a cognitive impairment to give their evidence more than once.

Clauses 31 and 44 of the Bill also raise the right to recognition and equality before the law in section 8 of the Charter because, on their face, they provide for differential treatment between persons or groups of persons based on the attributes of age and impairment as included in section 6 of the *Equal Opportunity Act 1995*. Human rights law recognises that formal equality can lead to unequal outcomes and that to achieve substantive equality, differences in treatment may be necessary. Special protections are necessary to minimise trauma and delay to children and other vulnerable witnesses. The limitations provide extra protections for a vulnerable category of witness, rather than removing protections for others. I am satisfied that these measures will protect vulnerable witnesses and ensure that relevant evidence is still available in criminal appeals while maintaining the right to a fair hearing for the accused, as discussed above.

Clause 23 of the Bill also abolishes de novo appeals from final orders of the Family Division of the Children's Court, which can currently be made against a range of protection, treatment and care orders. This will address a high rate of abandonment for these appeals. De novo appeals are not appropriate in these cases and can prolong the instability and uncertainty experienced by a child subject to such proceedings. Other review mechanisms that are available under the *Children, Youth and Families Act 2005* (e.g. by the Victorian Civil and Appeals Tribunal) and appeals to the Supreme Court on a question of law will be preserved. I am therefore satisfied that the abolition of the appeal right to the County Court is compatible with the protection of children and families.

Retrospective criminal laws

The appeal reforms do not interfere with the right to be protected from retrospective criminal laws. The transitional provisions in clauses 38 and 53 of the Bill ensure that previous appeal rights are preserved for offenders who have entered a plea prior to commencement. The new appeals processes will only apply to cases where the accused's plea was entered after commencement (whether that plea is guilty

or not guilty) and the accused is therefore aware that their appeal rights have changed at the time of entering the plea.

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

Second reading

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

Mr JENNINGS (Special Minister of State) (09:38) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This Bill contains a range of important reforms to the criminal justice system. The Bill will amend the *Criminal Organisations Control Act 2012* to enhance the ability of Victoria Police to deter and disrupt serious and organised crime. The Bill will abolish de novo appeals from criminal matters in the summary jurisdiction and replace them with new appeal processes, and abolish de novo appeals from final orders made by the Family Division of the Children's Court.

Amendments to the Criminal Organisations Control Act

In 2015, the Criminal Organisations Control Act was amended to introduce a new offence of unlawful association to address the threat to public safety in Victoria posed by criminal gangs. The new offence replaced the historical offence of 'consorting', which had been used for decades to disrupt associations with known criminals, but had fallen into disuse. Modern technology now allows new, sophisticated forms in which gangs can organise and recruit new members, which presents new challenges for law enforcement. It is appropriate that laws be adapted to meet these challenges.

The offence of consorting has a long history in Victoria and other Australian States, and has for some time been a tool used by police to disrupt criminal organisations. The gangs of today are however far more sophisticated than those of the 1920s, and have many more tools available to ensure their associations occur covertly. The introduction of the 'unlawful association' offence in 2015 recognised that the historical offence of consorting was of limited to no use in the 21st century.

The unlawful association scheme aims to prevent the formation, maintenance and expansion of criminal networks by prohibiting gang members from associating with one another. Gangs and other criminal organisations thrive by recruiting others to their lifestyles of crime — the scheme also seeks to address this by allowing police to stop associations between criminals and those not involved in crime.

Under the scheme, Victoria Police can issue a notice to persons warning them not to associate with each other, where one of the persons has previously been convicted of a serious offence. Further associations between persons issued a notice may involve the commission of the offence of unlawful association.

The scheme has not been used since it was introduced in 2015. This is because the Victoria Police has concerns with some of the complexities of the current scheme making the scheme impractical to enforce. The Government has listened to these concerns and committed — in the Community Safety Statement 2018/19 — to amending the unlawful association scheme to make it a more effective tool for Victoria Police to fight serious and organised crime. The Bill will deliver on this commitment by addressing the shortcomings in the current scheme that have prevented it from operating effectively.

An example of the complexities of the current scheme that is being addressed is the requirement that to be considered a convicted offender under the current scheme a person must have been "tried on indictment". This wording creates legal uncertainty, particularly where a person has plead guilty to a serious offence, rather than stood trial. Victoria Police has concerns that uncertainties such as these can be exploited by those involved in organised crime to frustrate the operation of the laws.

The amendments have been modelled in part on the NSW consorting laws which were modernised and extended in operation in 2012. These laws have been successful in reducing the number of outlaw motorcycle gang members operating within NSW.

Currently, associations that involve one or more persons who have been convicted of one of a number of serious offences against Victorian laws can be the subject of a warning notice. Once a notice has been issued, the recipients of a notice will commit an offence if they associate with a convicted offender three times in a three-month period, or six times in a 12-month period.

The Bill will amend these provisions so that individuals may be charged with unlawful association if they associate with at least two convicted offenders (whether on the same or separate occasions) on at least two occasions each. The Bill will remove the requirement that a notice can only be issued where the issuing police officer reasonably believes that preventing associations between individuals is likely to prevent the commission of an offence. The Bill will also broaden the meaning of an 'offence' for the purpose of the scheme to include offences committed against the laws of another Australian State or Territory which correspond to an applicable offence against Victorian law. These changes are necessary to ensure the scheme operates more effectively to target serious and organised crime.

An unlawful association notice can currently only be issued by a police officer at or above the rank of senior sergeant. The Bill will change this requirement so that a police officer at or above the rank of sergeant may issue an unlawful association notice. This will improve the workability of the scheme while ensuring that notices are only issued by police officers with sufficient experience, but who are accessible to officers in the course of day-to-day policing.

The minimum age of a person who may be issued with an unlawful association notice will be reduced from 18 to 14 years of age. This change reflects the unfortunate reality that criminal gangs often recruit vulnerable young people to take part in criminal activity. It is important that Victoria Police has tools to intervene to avoid young people becoming involved in serious and organised crime.

The Bill will target the scheme at offenders who pose a serious and continuing risk to the community. As noted earlier, an unlawful association notice can only be directed at a convicted offender where their offending was sufficiently serious. Further to this, the Bill will insert a new requirement that the most recent conviction of an offender named in an unlawful association notice must not be more than ten years old. This restriction will not apply if the sentence imposed on the offender for that conviction was a term of imprisonment of six months or more in duration or where the offender was convicted of a sexual offence. It will also provide that, where the offender is a child, he or she must have been convicted of one of an even shorter list of serious offences in order for the scheme to apply. This list of offences will be set out in a new Schedule to the Criminal Organisations Control Act and will be based on offences considered very serious under the Bail Act 1977.

The scheme provides for a number of situations in which associating for a legitimate purpose with a person identified in an unlawful association notice is not an offence. The Bill will clarify that it is up to accused to prove that these circumstances existed. It will allow for association with a relative, spouse or domestic partner or association for the purpose of making childcare arrangements as long as it is not for an ulterior purpose like planning an offence. This will ensure that this safeguard cannot be exploited by criminal gangs based on family connections.

I am aware that there have been some concerns raised about the operation of the consorting laws in NSW. The NSW Ombudsman found, after reviewing the first three years of operation of the 2012 amendments to those laws, that young persons and Aboriginal persons were being issued with warning notices disproportionately. The Government has had regard to the report of the NSW Ombudsman, and has drafted these laws in such a way as to reduce the risk that similar issues arise with Victoria's laws, while retaining operational flexibility for Victoria Police. The Bill seeks to achieve this objective in a number of ways.

The Bill retains safeguards already in the scheme such as the ability of a person to apply for internal review of an unlawful association notice issued to them and the requirement that Victoria Police report annually on the number of notices issued, the age of persons who receive notices, and the number of Aboriginal and Torres Strait Islander persons who receive a notice.

In addition, the Independent Broad-based Anti-corruption Commission (IBAC) will be given a new oversight role in monitoring and reporting on the operation of the scheme and reviewing the making of unlawful association notices. The IBAC must report, at a minimum, on the exercise of police powers under the scheme to the Attorney-General every two years, with the power to make recommendations as to possible improvements to the scheme. In this report, IBAC must consider the impact of the exercise of powers on vulnerable persons. If IBAC proposes to make any recommendations regarding vulnerable persons, IBAC must consult with relevant public agencies such as the Principal Commissioner for Children and Young People in the case of young people or the Commissioner for Aboriginal Children and Young People in the case of Aboriginal children.

The Bill creates special safeguards for three classes of vulnerable persons who are particularly likely to be affected by the scheme, namely: children, Aboriginal people and persons with an impaired ability to understand their rights due to a cognitive, physical or mental health impairment. An unlawful association notice can only be issued to these groups by a police officer at the rank of senior sergeant or above. In other circumstances, a notice can be issued by a police officer at least of the rank of sergeant. The Bill will also cause unlawful association notices issued to a vulnerable person to expire after twelve months, instead of three years. This will ensure that vulnerable groups are not disproportionately targeted.

The Bill also provides that unlawful association notices must include information to assist a person seeking review, including information about the review rights available to a person issued with a notice and the right of a person to complain to both Victoria Police and IBAC about police conduct.

There will also be an independent review of the new provisions required to take place three years after operation.

Appeals from the summary jurisdiction

The right to appeal is a fundamental aspect of an effective justice system. An effective system of appeals will correct errors, apply fairly and consistently, and minimise harm to victims and witnesses.

In Victoria, appeals from criminal cases decided in the summary jurisdiction, being the Magistrates' Court and the Children's Court, are heard in the County Court. These are called de novo appeals because the County Court must hear all of the evidence again, consider the issues afresh and make a new decision. Essentially, an appeal requires the prosecution to prove its case again. Appeals from final orders made by the Family Division of the Children's Court are also heard de novo.

The right to a de novo appeal comes from the 17th century English system of appeals. When justices of the peace began determining summary criminal matters, the de novo appeal acted as an important safety net where the accused gave up the right to have their matter heard by a jury. Victoria is the only Australian jurisdiction that still has a de novo appeal process for these types of cases.

In contrast to when de novo appeals were introduced, the Victorian magistracy of today is a professional, legally trained body which presides over an increasingly complex jurisdiction. It handles over 90% of all cases that come before Victorian criminal courts each year, of which only a small percentage are appealed.

In light of this evolution, it is time to modernise Victoria's appeals from the summary jurisdiction, and to replace de novo appeals with a process that makes more efficient use of our higher courts, while recognising an accused person's right to challenge their conviction or sentence in appropriate cases.

Disadvantages of the de novo appeal

De novo appeals impose a significant 'cost' on victims and witnesses, as they have to give their evidence twice: first at the original hearing and then again, on appeal. This may re-traumatise the person and cause proceedings to be withdrawn if they are not willing, or able, to give their evidence again. On some occasions, appeals are used to harass the victim. These outcomes are inconsistent with the objectives of a modern criminal justice system.

De novo appeals can also undermine the decision of the magistrate, which may indirectly affect public confidence in the administration of justice. Victoria's magistrates are professional, legally trained and independent. Providing parties with an unqualified 'second bite of the cherry' can no longer be justified, particularly where summary procedures and the laws of evidence have continued to evolve to maintain appropriate safeguards against wrongful convictions.

On average, there are more than 200 000 summary criminal matters finalised in Victoria each year. These numbers continue to grow. The de novo appeal system is inefficient, because it duplicates the original hearing on appeal, has high rates of abandonment, and uses police resources inefficiently.

A new appeal system

The revised system of appeals from the summary jurisdiction has been designed to be efficient and fair. The reforms have been developed specifically for the summary jurisdiction, mindful that this jurisdiction operates at a fast pace, often with unrepresented accused and a very high volume of cases. However, the government has balanced these considerations against the needs of victims and witnesses, and the significant benefits of having only one evidentiary hearing. These reforms promote the integrity of the decisions that are made by Victoria's magistrates.

Overview of the reforms

The Bill abolishes de novo appeals and, where appropriate, introduces new processes and tests for hearing appeals from the summary jurisdiction.

(1) Criminal appeals from the Magistrates' Court and Children's Court

The Bill creates two separate processes for hearing conviction and sentence appeals, and for sentence alone appeals.

Conviction appeals will be determined on the evidence given before the original court, with the ability to receive further evidence in limited circumstances and having regard to the reasons of the magistrate. Further evidence may be received if the County Court considers it to be in the interests of justice. However, for certain protected evidence, the County Court must also be satisfied that the evidence is substantially relevant to a fact in issue in the appeal. Protected evidence includes evidence from a complainant, child or person with a cognitive impairment in cases involving sexual offences or offences constituting family violence.

In most cases, victims and witnesses will not have to attend court to give their evidence again because the County Court will determine the appeal using the transcript of evidence given in the original hearing.

The appeal is by way of rehearing on the evidence and the County Court must give the judgement that in its opinion, should have been given by the original court. If the County Court allows the appeal, it must set aside the conviction and may dismiss the charge or convict and sentence the person for another offence that was before the original court.

Leave to appeal will be required if the appellant pleaded guilty in the original court, or if a conviction was recorded in their absence. This changes the current law, which allows an accused to plead guilty in the original court, and then change their plea on appeal, as of right (without having to give a reason).

Sentence appeals will be determined on the evidence and materials that were before the original court for the sentencing hearing. To ensure that the system continues to encourage and promote the offender's rehabilitation, the County Court will also be able to consider any other evidence, material or information that relates to matters that occurred after sentencing, and that concern the circumstances of the appellant.

The Bill introduces a new threshold test for sentence appeals, by providing that the appeal must be dismissed unless there are compelling reasons to impose a different sentence to that imposed by the original court. This is different from the usual error-based appeal tests and does not require the appellant to point to a specific legal error.

The focus of the new test is one of strong persuasion. In considering whether compelling reasons exist, the starting point is that the decision of the original court is correct. The County Court must have regard to the need for a fair and just outcome, taking into account the reasons that the magistrate gave when sentencing the appellant. Ultimately, the question is whether the County Court considers that there are compelling reasons to depart from the original court's sentence and impose a different sentence. It will not be enough for the County Court to consider that there is simply an argument in favour of a different sentence — something must compel the court to determine that a different sentence is required. This new approach ensures a transparent and consistent approach to sentence appeals.

The Bill does not change appeals from the Magistrates' Court or Children's Court to the Supreme Court on a question of law.

(2) Appeals from the Family Division of the Children's Court

The Bill also abolishes de novo appeals against final orders made by the Family Division of the Children's Court. Appeals to the Supreme Court on a question of law and judicial review, as well as other review mechanisms that are available under the *Children, Youth and Families Act 2005* will remain available to the parties. Appeals against temporary assessment orders and interim accommodation orders are not altered by this Bill.

Conclusion

This Bill will comprehensively improve and modernise Victoria's appeals system.

I commend the Bill to the house.

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

Debate adjourned until Friday, 14 September.

SAFE PATIENT CARE (NURSE TO PATIENT AND MIDWIFE TO PATIENT RATIOS) AMENDMENT BILL 2018

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

Mr JENNINGS (Special Minister of State) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006*, (the Charter), I make this Statement of Compatibility with respect to the Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Amendment Bill 2018 (the Bill).

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

Overview

The purpose of the Bill is to amend the Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015 (the Act) to introduce new and modify existing nurse to patient ratios and midwife to patient ratios with which the operators of certain publicly funded health facilities must comply. The Bill also repeals a number of sections in the Act that allow for variations from ratios and changes the categorisation of certain hospitals under the Act.

Human rights issues

Human rights promoted by the Bill

The Bill promotes the following human rights protected by the Charter:

the right to life (section 9 of the Charter);

the right to protection of families and children (section 17 of the Charter); and

the right to protection from cruel, inhuman or degrading treatment (section 10(b) of the Charter).

The right to life (section 9 of the Charter)

Section 9 of the Charter provides that every person has the right to life and has the right not to be arbitrarily deprived of life.

Clause 22 of the Bill will introduce nurse to patient ratios for oncology, acute stroke and haematology settings. The introduction of these new ratios will ensure the delivery of high quality care in these areas of speciality and as a result will promote the right to life of patients in oncology, acute stroke and haematology settings.

Clauses 23, 24, 25 and 27 of the Bill will improve nurse to patient ratios applicable to palliative care inpatient units, emergency departments and special care nurseries, and improve midwife to patient ratios for birthing suites. The improvements to the ratios in these areas of speciality will ensure safe and quality patient care and as a result, will promote the right to life of the patients receiving care in these specialty settings.

Clause 5 of the Bill will introduce a new rounding methodology for ratios under the Act which in most cases will result in a higher number of nurses providing care to patients. This new rounding methodology will therefore promote safe patient care and promote the right to life of patients in public hospitals.

The protection of families and children (section 17 of the Charter)

Section 17(1) of the Charter recognises that the families are the fundamental group unit of society and that families are entitled to be protected by society and the State.
Section 17(2) of the Charter provides that every child has the right, without discrimination, to protection as is in their best interests, in recognition of a child's special vulnerability because of their age.

Clauses 24 and 25 of the Bill improve nurse and midwife to patient ratios in special care nurseries and midwife to patient ratios in birthing suites. These improved ratios will ensure that babies and mothers receive a high quality of care by improving opportunities for dedicated patient care and as a result will promote the protection of families and children.

Protection from cruel, inhuman or degrading treatment (section 10(b) of the Charter)

Section 10(b) of the Charter provides that a person must not be treated or punished in a cruel, inhuman or degrading way.

The Bill's introduction of new patient ratios in specialist areas, improvement of existing ratios and introduction of a new rounding methodology for ratios all promote the right to protection from cruel, inhuman or degrading treatment by ensuring a safe and supportive environment for patients, nurses and midwives in public hospitals.

Other potential human rights invoked

The right to equality (section 8 of the Charter)

Section 8(3) of the Charter provides that every person is equal before the law and is entitled to equal protection without discrimination and has the right to equal and effective protection against discrimination.

The new nurse to patient ratios will distinguish between patients in different hospital settings. This may invoke the protected attributes of 'disability' and 'pregnancy' under the *Equal Opportunity Act 2010* and therefore engage the right to equality and non-discrimination. However, distinguishing the level of care owed to a patient based on their setting in a hospital is reasonable and justified because patients with different illnesses and conditions require varying levels of care depending upon their clinical acuity and the associated

treatment necessary to appropriately manage their illness or condition.

To the extent that the Bill will not benefit persons hospitalised in settings other than those provided for in the Bill, this is reasonable and justified because these other settings are managed through evidence based clinical guidelines and industrial frameworks.

For the reasons outlined it is my view that the Bill is compatible with the Charter.

Jenny Mikakos, MP
Minister for Families and Children

Second reading

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

Mr JENNINGS (Special Minister of State) (09:40) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This Bill presents a historic opportunity to improve the safety and quality of patient care for all Victorians.

Safety is our highest priority, and through improving nurse to patient and midwife to patient ratios, we are supporting our dedicated workforce in our public hospitals and health services to deliver the best possible care.

The landmark introduction of the *Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act* in 2015 was a significant achievement for Victoria, as the first state in Australia to legislate minimum nurse and midwife staffing in public hospitals.

The Safe Patient Care Act has successfully protected minimum workload arrangements and reduced industrial disputes — creating a safe, supportive and productive environment for nurses, midwives and patients.

It is now time to improve staffing ratios to minimise any risk to patients where specified ratios are no longer fit for purpose and do not reflect best practice or safe staffing levels.

Nurses and midwives form part of an integral workforce in our health system and continue to be the most trusted profession in Australia.

There are over 50 000 nurses and midwives in our public health system committed to providing patient-centred, empathetic and individualised care. These staff are managing patients in an environment of increasing patient complexity, changing models of care and the growing demand for health services.

Increasing workloads have the potential to lead to burnout, absenteeism, job dissatisfaction, attrition and poor retention. International and local evidence also confirms a direct relationship between workload levels, patient outcomes and nurse-reported quality of care.

In summary, higher staffing numbers lead to better patient outcomes.

As such, it is now time to improve workload arrangements, create positive, healthy and productive environments and advance the health system for better patient safety.

This Bill specifies minimum staffing levels for a range of clinical settings. Updating the Safe Patient Care Act will guarantee consistency and create greater certainty around the provision of safe and high quality patient care by ensuring that health services provide a higher number of nurses and midwives where required in more complex and specialised environments.

The Bill advances the intent of the Safe Patient Care Act and demonstrates the Andrews Government's greater focus on safe and high quality patient care.

This Bill enhances the Act in four ways:

Firstly, the Bill improves a number of existing ratios to reflect evolving nursing and midwifery practices in response to advancing technologies, changing service models and increasing patient acuity and complexity.

Amendments to the rounding methodology will mean that, in most circumstances, nurses and midwives will no longer be required to carry an additional workload that can at times be 50 per cent greater than the specified ratio.

Ratios in palliative care, birthing suites, special care nurseries and emergency departments will also be updated to maintain their relevance and to reflect contemporary practice and community expectations.

Secondly, the Bill is creating new ratios to better manage highly complex patients in a range of clinical settings that use advanced technologies and specialised treatments.

New minimum safe staffing levels are now provided for inpatient multi-day speciality areas of haematology, oncology and acute stroke units. Managing ratios within mixed speciality wards is also clarified.

These enhancements will create statewide consistency in service provision and ensure the delivery of high quality individualised care that reflects treatment complexity.

Thirdly, as part of a continuous improvement process, the Bill removes redundant and outdated sections of the Act.

Removing the night duty formula in specified emergency departments and the local capacity to vary ratios will reduce confusion and ambiguity, and advance uniform workload management processes.

Finally, the Bill improves the overarching structural and operational functionality of the Act to deliver a contemporary and responsive regulatory instrument that reflects modern practices, and protects patient-care models for all Victorians.

The vision and objectives of the Bill will be achieved over five years. During this time, the Government will work with Victorian public hospitals and health services to monitor implementation and devise opportunities to provide local support as required.

The Government will also continue to support the nursing and midwifery workforce through a range of workforce development programs that target transition to practice and professional skills development.

Every day our nurses and midwives work hard to deliver person-centred healthcare and deliver the best outcomes for all Victorians.

This Bill will improve workload arrangements and have a significant and lasting impact on the provision of safe, empathetic and high-quality patient-centred care in line with community values.

I commend the Bill to the house.

Debate adjourned for Ms WOOLDRIDGE (Eastern Metropolitan) on motion of Mr Ondarchie.

Debate adjourned until Friday, 14 September.

TRANSPORT LEGISLATION AMENDMENT (BETTER ROADS VICTORIA AND OTHER AMENDMENTS) BILL 2018

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

Mr JENNINGS (Special Minister of State) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006* (**Charter**), I make this Statement of Compatibility with respect to the Transport Legislation Amendment (Better Roads Victoria and Other Amendments) Bill 2018 (**the Bill**).

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

Overview

The Bill amends a variety of Acts relating to the transport system.

Relevant to this Statement of Compatibility, the Bill implements a number of reforms to Victoria's road safety laws.

It includes reforms aimed at reducing the burden on courts resulting from the administration of alcohol interlock conditions imposed on the driver licences or learner permits of drink-driving offenders and provides for the mandatory imposition of alcohol interlock conditions in certain situations.

It clarifies the offence of failing to stop a motor vehicle and makes an amendment to an evidential provision concerning road safety cameras.

The Bill provides that it will continue to be the case that offences relating to the driving of an automated vehicle without an automated driving system permit or driving in breach of a condition of such a permit will be offences for which vehicle impoundment, immobilisation and forfeiture apply under the *Road Safety Act 1986*.

The Bill also amends the *Transport (Compliance and Miscellaneous) Act 1983* in relation to over-dimensional vehicles crossing tramway and railway tracks.

Human Rights Issues

Several aspects of the Bill raise human rights issues, which I address in this Statement as follows.

Right to a fair hearing

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

The right to a fair hearing under section 24 of the Charter may be relevant to certain provisions of the Bill which, in effect, transfer court functions in relation to the imposition and removal of alcohol interlock conditions to VicRoads; provide for the mandatory imposition of alcohol interlock conditions with respect to certain offences; and restrict appeals to the Magistrates' Court with respect to decisions of VicRoads in relation to alcohol interlock conditions.

Imposition and removal of alcohol interlock conditions — transfer of court functions to VicRoads

An alcohol interlock is an electronic breath testing device that prevents a vehicle from starting if it detects alcohol in the driver's breath.

Section 31KA of the *Road Safety Act 1986* requires VicRoads to impose an alcohol interlock condition when granting a driver licence or learner permit to persons in certain circumstances. This obligation applies in relation to first time drink-driving offenders with a recorded blood or breath alcohol concentration (BAC) of less than 0.10.

The *Road Safety Act 1986* also empowers the Magistrates' Court to impose alcohol interlock conditions in respect of driver licences and learner permits for other offences, including for:

(a) all first-time drink drivers with a recorded BAC of 0.10 or more, and all repeat drink-driving offences where the person is disqualified from driving under sections 50 or 89C of the *Road Safety Act 1986*; and

(b) all persons disqualified from driving under sections 89 or 89A of the *Sentencing Act 1991* (where the court has also made a finding that the person who committed the offence was under the influence of alcohol or both alcohol and a drug which contributed to the offence) for:

(i) serious motor vehicle offences within the meaning of section 87P of the *Sentencing Act 1991* (for example, culpable driving);

(ii) police pursuit offences;

(iii) motor vehicle theft offences;

(iv) non-road safety offences (dealt with under section 89A of the *Sentencing Act 1991*).

Clause 12(2) of the Bill amends section 31KA of the *Road Safety Act 1986* so as to broaden the offences in relation to which VicRoads is empowered to impose alcohol interlock conditions. VicRoads will now be empowered to impose such conditions for a person disqualified from driving under sections 50 or 89C (unless the person is exempted under new section 50AAAE, discussed below).

Further, the Bill now provides that, in all circumstances, the removal of an alcohol interlock condition from a person's driver licence or learner permit will be determined by VicRoads, a function that was previously, in some circumstances, performed by the Magistrates' Court.

In transferring responsibility for the imposition and removal of alcohol interlock conditions from the Magistrates' Court to VicRoads, the Bill may appear to engage the right to a fair hearing. However, for the following reasons I do not consider that the right is engaged.

While matters that are currently dealt with by the Magistrate's Court will now be dealt with administratively by VicRoads, this does not limit access to courts. Insofar as the right under section 24(1) contains a right of access to courts, it does not require that matters such as decisions relating to the imposition and removal of alcohol interlock conditions, be determined by courts as opposed to non-judicial bodies. Moreover, the Act and some of the provisions in the Bill contain a range of appropriate safeguards and mechanisms to ensure that the administrative scheme implemented by VicRoads is fair. Consequently, I do not consider that this amendment engages the right.

Mandatory imposition of alcohol interlock conditions

The Bill also amends Schedule 1B to the *Road Safety Act 1986*. That Schedule distinguishes between offences for which it is discretionary or mandatory for a decision-maker to impose an alcohol interlock condition. The Bill provides that, for certain offences for which the imposition of such a condition was discretionary, it will now be mandatory, subject to an exemption process under section 50AAAE. For example, where a person was disqualified for driving a motor vehicle while under the influence of liquor or both liquor and a drug to such an extent as to be incapable of having proper control of the vehicle, and that offence occurred before 13 May 2002, the court previously had a discretion whether to impose an alcohol interlock condition. Such a condition will now be mandatory.

However, while the removal of discretion from decision-makers may appear to engage the fair hearing right, in my view it does not do so. This is because the changes alter the substantive law to be applied by the decision-makers. By contrast, the right to a fair hearing is concerned with the process by which findings of substantive law are to be made. Consequently, in my view the right is not engaged.

Even if the right were engaged by making the conditions mandatory, the Bill contains new provisions allowing a person subject to a condition to apply for an exemption from that condition in certain circumstances, such that the process remains fair.

Restriction of appeals to Magistrates' Court

Section 26 of the *Road Safety Act 1986* governs appeals to the Magistrates' Court against certain decisions of VicRoads in relation to driver licences or learner permits. Section 26(5) currently provides that an appeal does not lie against certain decisions of VicRoads to impose (or not remove) alcohol interlock conditions. Clause 9 of the Bill amends section 26(5) to also preclude appeals to the Magistrates' Court from decisions declining to exempt a person from an alcohol interlock condition which they would otherwise be subject to, under new section 50AAAE. Clause 9 of the Bill also amends section 26(5) to preclude appeals to the Magistrates' Court from decisions of VicRoads under section 103ZM(6) to not exempt a person from the prescribed alcohol interlock usage data requirements.

New section 50AAAE establishes a process for a person in certain circumstances to apply to VicRoads to be exempted from the imposition of an alcohol interlock condition on the basis that they are not engaging in hazardous or harmful use of alcohol and are not dependent on alcohol. New section 26(5)(c), inserted by clause 9, limits a general appeal to the Magistrates' Court from a decision not to grant such an exemption. However, new section 50AAAF, inserted by clause 18, allows a person to apply to the Court for a direction to VicRoads that the person has satisfied the evidentiary requirements of section 50AAAE. This, in effect, creates a narrow and tailored form of judicial review in place of the general right of appeal. Therefore, even if the limitation of appeal rights has the potential to affect the right to fair hearing, in my view the substance of clause 9 does not.

It is noted that new section 50AAAF(4) requires the Magistrates' Court, at a hearing of an application under this section, to hear any relevant evidence tendered by the Chief Commissioner of Police. There is no corresponding requirement that the Magistrate must hear evidence tendered by the applicant. To the extent that this may be relevant to the applicant's right to a fair hearing, I do not consider that the right is limited. The relevant material of the applicant will have already been provided by the applicant to the Court, as section 50AAAF(3)(b) requires an application to the Magistrates' Court to be accompanied by the evidence given in support of the application under section 50AAAE. Further, it is appropriate that the Chief Commissioner of Police be able to tender any relevant evidence, as section 50AAAF(3) requires an application to be made on notice to the Chief Commissioner of Police, and the Chief Commissioner of Police may have evidence that is relevant to the matter which should be considered.

New section 103ZM(5) provides that a person whose driver licence or learner permit is subject to an alcohol interlock condition imposed in respect of an offence committed before 1 October 2014, will be subject to the prescribed alcohol interlock usage data requirements. It was previously the case that these requirements did not apply to that group of offenders. If VicRoads is satisfied that there are special circumstances, it may grant an exemption to a person from this new requirement under section 103ZM(6). The prescribed alcohol interlock usage data requirements are set

out in regulations and include requirements such as not using the alcohol interlock device while alcohol affected and not tampering with the device. In my view, the exclusion of a decision under section 103ZM(6) from a general right of appeal does not limit the right to a fair hearing.

Right not to be tried or punished more than once

Section 26 of the Charter provides that a person must not be tried or punished more than once for an offence.

Clause 28 of the Bill amends Schedule 1B to the *Road Safety Act 1986* to provide that, for certain offences, where the imposition of an alcohol interlock condition was previously discretionary, it will now be mandatory, subject to an exemption process under new section 50AAAE. The alcohol interlock condition will be imposed after the person's disqualification period has ended and the person applies to VicRoads for a driver licence or learner permit. A question may arise as to whether this amounts to double punishment for the offence that gave rise to the initial disqualification.

However, the alcohol interlock provisions in the Bill are administrative and regulatory in nature and do not amount to punishment for a criminal offence. The purpose of the alcohol interlock conditions is to protect public safety by reducing the risk of future drink-driving offences, rather than being aimed at punishing affected persons. The requirements are only imposed where a person wishes to apply for a driver licence or learner permit after a period of disqualification for a drink-driving offence. Even if the imposition of an alcohol condition may be seen as a sanction, the sanction is not of a criminal nature and the right in section 26 of the Charter does not preclude imposition of various civil consequences for the same conduct.

No higher penalty

Section 27(2) of the Charter provides that a person has a right not to have a greater penalty imposed for a criminal offence than applied to the offence when it was committed.

Clause 27 of the Bill inserts transitional provisions. New section 103ZM(5) provides that where a person was disqualified from driving because of a drink-driving offence that was committed before 1 October 2014, the person will be required to meet the prescribed alcohol interlock usage data requirements, subject to a special circumstances exemption under section 103ZM(6) of the *Road Safety Act 1986*. These offenders were previously not required to comply with these requirements, which are set out in regulations and include requirements such as not using the alcohol interlock device while alcohol affected and not tampering with the device.

Clause 28 of the Bill amends Schedule 1B to the *Road Safety Act 1986* to provide that, for certain offences, where the imposition of an alcohol interlock condition was previously discretionary, it will now be mandatory, subject to an exemption process under new section 50AAAE. The alcohol interlock condition will be imposed after the person's disqualification period has ended and the person applies to VicRoads for a driver licence or learner permit.

A question may arise as to whether these amendments may result in a person being subjected to a higher penalty for the disqualifying offence than applied at the time the offence was committed, by being subjected to usage data requirements or the imposition of an alcohol interlock condition which may not otherwise have been imposed at the time the initial offence was committed.

However, in my view, clause 27 of the Bill does not engage the right in section 27(2) of the Charter as the requirement to comply with prescribed alcohol interlock usage data requirements does not impose any higher penalty. The application of new requirements, relating to existing conditions, does not amount to the imposition of any penalty. Applicable requirements in a regulatory context, such as licensing, are subject to change to reflect best practice, shifts in policy and technology, and requirements that apply including to conditions.

Similarly, clause 28 of the Bill which provides for the mandatory imposition of alcohol interlock conditions in certain cases, is not punitive or penal in nature. Furthermore, alcohol interlock conditions are imposed when a person applies for a driver licence or learner permit, which is an entirely voluntary process. The alcohol interlock assists a person found guilty of a drink-driving offence to separate that person's drinking from driving and can therefore be better described as a therapeutic measure designed to assist the person to avoid committing another drink-driving offence in the future, and to protect the public against the commission of further drink-driving offences.

Right to privacy

Section 13 of the Charter provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. 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.

A number of clauses are relevant to the right to privacy.

Clause 16 amends the administrative scheme for removal of an alcohol interlock condition. Clause 16 re-enacts current section 50AAAB(2)(c) in new section 50AAAB(1)(b), which provides that a person applying for removal of an alcohol interlock condition must supply a report that complies with current section 50AAAB(3). This report must contain data that indicates compliance with any prescribed alcohol interlock usage data requirements.

Clause 18 creates a new section 50AAAE which, in certain cases, enables a person to apply to avoid an alcohol interlock condition requirement if they can demonstrate that they are not engaging in hazardous or harmful alcohol use and are not dependent on alcohol. The application must be supported by evidence relating to their personal circumstances, which may include medical reports and assessments.

Clause 27 of the Bill inserts section 103ZM(6) of the *Road Safety Act 1986* which provides that pre-1 October 2014 offenders may, in certain circumstances, make an application to VicRoads to be exempted from the prescribed alcohol interlock usage data requirements.

Insofar as the right to privacy is engaged by the requirement to provide personal and sensitive information to VicRoads pursuant to clauses 16, 18 and 27, I consider that any interference with that right is lawful and not arbitrary.

An application for a driver licence or learner permit is entirely voluntary and persons making an application for an

exemption from or removal of alcohol interlock conditions, or an exemption from the prescribed alcohol interlock usage data requirements, will have a minimal expectation of privacy in relation to material of direct relevance to their application. The requirement that information and supporting evidence be provided pursuant to these clauses is to enable VicRoads to decide that the applicant is not dependent on alcohol (for clause 18), has complied with the prescribed alcohol interlock usage data requirements (for clause 16) or has established special circumstances warranting an exemption from the prescribed alcohol usage data requirements (for clause 27). The requirement that the information be provided serves an important public purpose as it enables VicRoads to make informed decisions about who should be subject to alcohol interlock conditions or the prescribed alcohol usage data requirements and whether an alcohol interlock condition should be removed. Therefore, in my view, clauses 16, 18 and 27 do not limit the right to privacy.

Property

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

Mandatory imposition of alcohol interlock conditions

Clause 28 amends Schedule 1B to the *Road Safety Act 1986* so that certain offences will result in the mandatory imposition of an alcohol interlock condition by VicRoads upon the offender applying for a driver licence or learner permit.

The alcohol interlock provisions may be relevant to the section 20 right not to be deprived of a person's property other than in accordance with law, because a person is only able to use their property, being their vehicle, if an alcohol interlock has been fitted. In my opinion, the provisions do not limit the right because, even if the requirement to fit the device in order to use the vehicle is viewed as a potential deprivation of the vehicle, the circumstances in which a device must be fitted are clearly formulated and are in accordance with the law.

Impoundment, immobilisation and forfeiture of motor vehicles

Section 31(2) of the *Transport Legislation Amendment (Road Safety, Rail and Other Matters) Act 2017* (Vic) (the 2017 Act) will amend the existing motor vehicle impoundment, immobilisation and forfeiture provisions in the *Road Safety Act 1986* by amending the definition of 'relevant offence' (which will replace the current definitions of 'tier 1 relevant offence' and tier 2 relevant offence'). The 2017 Act has received the Royal Assent but has not yet been proclaimed.

Clause 56 of this present Bill further amends the definition of 'relevant offence' in the 2017 Act so that it will cover offences under sections 33I(1) or 33I(3) (relating to driving or causing another to drive an automated vehicle without an automated driving system permit where the permit is required) or 33J(1) (relating to driving an automated vehicle on a highway in breach of a current permit condition) of the *Road Safety Act 1986*. These offences are currently subject to the vehicle impoundment regime and they are listed as 'tier 2 relevant offences'. The reason these offences were not included in the new definition of 'relevant offence' set out in the 2017 Act is that these new offences, which were created by the *Road Safety Amendment (Automated Vehicles) Act 2018*, had not yet come into existence when the 2017 Act was considered by the Parliament. Furthermore, the *Road Safety Amendment (Automated Vehicles) Act 2018* could only add these offences to the definition of 'tier 2 relevant offence' because the new definition of 'relevant offence', to be created by the 2017 Act, had not been assented to when the *Road Safety Amendment (Automated Vehicles) Act 2018* was introduced into the Parliament.

The commission of 'relevant offences' can give rise to consequences including the exercise of powers by police officers for the impoundment, immobilisation and forfeiture of motor vehicles and for the exercise of search and seizure powers. The human rights issues raised by these amendments were discussed in the Statement of Compatibility for *Road Safety Amendment (Automated Vehicles) Act 2018* and they were considered to be compatible with the Charter.

Freedom of movement

Section 12 of the Charter provides that every person lawfully in Victoria has the right to move freely within Victoria and to enter and leave it.

Requirement to remain stopped

Clause 32 of the Bill seeks to clarify the offence of failing to stop a motor vehicle when requested by a police officer, or a protective services officer on duty at a designated place (under section 64A of the *Road Safety Act 1986*).

Section 64A currently does not include a specific reference to a person, after being directed to stop, to remain stopped. Clause 32 of the Bill amends section 64A of the *Road Safety Act 1986* to include an express requirement that the driver remain stopped until an indication is given that the person may continue driving.

The amendment to section 64A may amount to a restriction on freedom of movement. However, I consider that any limitation on the right is reasonable and justified. It is a legitimate expectation that drivers remain stopped while engaging with police officers or protective services officers in the context of this provision. As such, the amendment is technical in nature. Remaining stopped until the police officer or protective services officer indicates otherwise is in the interests of public safety and law enforcement.

Restrictions relevant to railway and tramway tracks

Clauses 50 to 54 amend the *Transport (Compliance and Miscellaneous) Act 1983* to transfer certain over-dimensional vehicle regulatory functions from the Public Transport Development Authority to VicRoads and to clarify the circumstances where a permit is required when crossing railway tracks or crossing or moving along tramway tracks.

To the extent that the provisions being amended restrict freedom of movement, I consider any interference to be reasonable and justified. It is appropriate that the circumstances in which tracks can be crossed are regulated. Drivers of over-dimensional vehicles and the operators of those vehicles should be cognisant of the particular laws that are relevant to them. The provisions promote the protection of rail infrastructure and public safety, and ensure that crossings

are carried out efficiently and in a way that minimises disruption to the rail and tram network.

Protection against discrimination

Section 8 of the Charter sets out a series of recognition and equality rights, including the right of every person to equal protection of the law without discrimination, and the right to equal and effective protection against discrimination.

Discrimination, in relation to a person, is defined in section 3(1) of the Charter to mean discrimination (within the meaning of the *Equal Opportunity Act 2010*) on the basis of an attribute set out in section 6 of that Act. One such attribute is discrimination on the basis of disability.

Discrimination includes both direct and indirect discrimination on the basis of an attribute. Direct discrimination occurs if a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute. Indirect discrimination occurs if a person imposes, or proposes to impose, an unreasonable requirement, condition or practice that either has or is likely to have a disadvantageous effect on persons with an attribute.

As noted above, the Bill amends the *Road Safety Act 1986* so that certain offences will result in the mandatory imposition of an alcohol interlock condition by VicRoads (when the person applies for a driver licence or learner permit) unless the person can demonstrate (under new section 50AAAE introduced by clause 18 of the Bill) that they are not dependent on alcohol or engaging in hazardous or harmful alcohol use.

Alcoholism is an addiction to alcoholic substances, and in some cases, addiction may be regarded as a disability. Insofar as dependency on alcohol may be considered a disability, clause 18 may engage the right to protection against discrimination on the basis of disability.

In my view, as the requirement to demonstrate that a person is not dependent on alcohol or engaging in hazardous or harmful alcohol use applies equally to all relevant applicants, any resulting discrimination will be indirect rather than direct in nature. Indirect discrimination is only unlawful (and therefore a limit on the right to equality) if it is unreasonable. The requirement in clause 18 is clearly reasonable. Road safety is of paramount importance to the general community and the inherent requirements of driving a motor vehicle include that drivers meet an appropriate standard of medical fitness and do not pose an unacceptable risk. The requirement is a proportionate response to the risk posed by these drivers and is necessary to protect other road users. For the same reasons, even if the requirement is considered to amount to direct discrimination, and therefore a limit on the right, it is justifiable under section 7(2) of the Charter. I therefore consider that clause 18 is compatible with section 8 of the Charter.

Right to be presumed innocent until proved guilty according to law

Clause 33 of the Bill substitutes section 81(1B) of the *Road Safety Act 1986* to provide that, where an image produced by a prescribed process when used in the prescribed manner (for example, a road safety camera) depicts one or more motor vehicles, a marker on a particular motor vehicle and a message stating the speed of that motor vehicle is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the speed of that motor vehicle on that occasion. The provision supports the issuing of fines for speeding offences.

The right to be presumed innocent may be relevant to clause 33. This right is relevant where a statutory provision shifts the burden of proof onto an accused, so that the accused is required to prove matters to establish, or raise evidence to suggest, that they are not guilty of an offence.

However, clause 33 does not create a legal burden by requiring an accused to raise evidence to contradict the speed recorded by, for example, a road safety camera if they disagree with that speed. It does impose an evidential burden. In my view this does not limit the right. It is reasonable to rely on prescribed processes to streamline prosecutions for relevant offences. Giving an accused an opportunity to challenge that evidence by introducing contradictory evidence is appropriate. It will be up to the Court to assess the probative value of any competing evidence.

Hon. Jaala Pulford, MP
Minister for Agriculture

Second reading

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

Mr JENNINGS (Special Minister of State) (09:42) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Better Roads Victoria

Through *Project 10,000* the Andrews Labor Government set out to deliver better and more targeted investment to address congestion and improve safety across the State. Part of *Project 10,000* is the Government's commitment to build "Better Roads for More Communities". The commitments are:

> "A minimum of $1 billion over eight years will be allocated to repair and upgrade roads in Melbourne's outer suburban and interface communities
>
> A minimum of $1 billion over eight years will be allocated to repair and upgrade roads and level crossings in rural and regional communities
>
> Legislative changes will be made to lock-in a guaranteed proportion of funding for these communities in perpetuity
>
> Victorian Labor will also confirm in legislation the compulsory payment of traffic camera and speeding fines into the Better Roads Victoria Trust Account."

These commitments recognise the important role for State Government to plan and deliver transport projects for the economic prosperity and safety of all Victorian communities.

I am pleased to inform the Parliament that the Government's ambitious eight year target to invest a total of $2 billion in

Victoria's outer suburban and regional roads has been met in just four years.

A total of over $3 billion dollars has already been allocated to outer suburban and interface, and rural and regional communities in the first term of government.

Rural and Regional communities

For years we have been investing in roads to improve conditions and enhance safety for rural and regional motorists. The 2018–19 Victorian Budget alone delivers $433 million for regional road restoration, $261 million for road upgrades and $229 million for safety upgrades.

The government has so far allocated over $1.1 billion to rural and regional communities. These investments in regional areas are fostering thriving regional economies that are creating jobs and providing for the future.

Outer Suburban and Interface communities

The population in Melbourne's outer suburban areas is continuing to grow. This means there will be increasing demand on the road network. Without proper investment in roads — investment for now and for the long term — people in these communities will spend longer in traffic and will need to travel further to get to and from work. This is simply not an option.

This Government recognises the importance of investing in outer suburban and interface roads to ensure that people can get to where they need, when they need. Since 2015, over $1.9 billion has been allocated to roads in these areas.

Outer suburban and regional communities can rest assured this Government will continue to invest in improving safety and congestion on their roads.

Guaranteed funding

This Bill guarantees the allocation of a minimum of 33 per cent of Better Roads Victoria funding to rural and regional communities.

This Bill guarantees the allocation of a minimum of 33 per cent of Better Roads Victoria funding to outer suburban and interface communities.

The guaranteed minimum proportions will be set now for all future investments. This Government is committed to delivering a consistent and guaranteed level of road funding to growth areas and rural and regional communities for the years to come.

The guaranteed funding will be supported by a compulsory payment of an amount equivalent to traffic camera and on-the-spot speeding fines revenue into the Better Roads Victoria Trust Account. Other road-related monies can still go into the account regardless of the source. This will ensure there is a minimum level of funding going into the account, while not preventing other sources of funding to be paid into the account.

Administration of Alcohol Interlocks

The Bill makes changes to the administration of alcohol interlock conditions to simplify the processes and move the majority of alcohol interlock offences into the VicRoads Alcohol Interlock Program. This is designed to take pressure off court resources and allow them to focus on other key areas, such as family violence and community safety.

The Bill transfers responsibility from the courts to VicRoads for the removal of all alcohol interlock conditions for drink-driving offenders once they have met mandatory criteria to demonstrate that they have separated drinking from driving.

VicRoads already manages alcohol interlock removals for some offences, and uses the same mandatory criteria that the courts use, so the necessary systems are already in place. It is expected that this will remove over 5,000 matters each year from the Magistrates' Court.

The Bill also transfers the responsibility of re-licensing offenders and imposing alcohol interlock conditions for most drink-driving offences from the courts to VicRoads. VicRoads will not exercise discretion in the same manner that the courts currently do with respect to making determinations on licence eligibility and interlock conditions.

Most offences that involve drink-driving have had a mandatory minimum interlock period specified in legislation since 2014. In practice, VicRoads will apply the prescribed mandatory minimum alcohol interlock condition period set in legislation.

Under the changes, VicRoads will also assume case management of 'legacy' drink-drivers who had a conviction or finding of guilt prior to 2017 and who have not yet returned to licensed driving.

For legacy offenders who would have formerly been subject to a discretionary interlock condition at the time of their offence, they will be able to apply to VicRoads to be re-licensed without an alcohol interlock condition. They will be re-licensed if they can demonstrate that they are not dependent on alcohol and are not engaging in harmful or hazardous alcohol use. If they cannot provide evidence from a suitably qualified health professional in accordance with the regulations, an interlock condition will be imposed.

Offenders dissatisfied with VicRoads decision will be able to apply to the Magistrates' Court for a review of the decision, ensuring procedural fairness.

More serious offences involving drink-driving — including manslaughter, culpable driving, police pursuits or motor vehicle theft — will still be managed by the court. These serious cases require the discretion of the court to determine whether it is appropriate for the offender to return to licensed driving, and whether the mandatory minimum alcohol interlock condition period set in legislation is sufficient when considering the severity of the offence.

Further Road Safety Amendments

The Bill also removes an anomaly in current sentencing, by ensuring that a minimum mandatory alcohol interlock condition applies to all drink-driving offences that result in licence cancellation and disqualification.

Under the change, a first offence of dangerous driving during a police pursuit or theft of a motor vehicle where the offence was committed under the influence of alcohol will now be subject to a mandatory alcohol interlock condition period of no less than six months. These serious offenders will continue

to be required to apply to the court to be re-licensed once their licence disqualification period has ended.

Additionally, alcohol interlock conditions will no longer be imposed for offences that are not driving-related.

A new mandatory behaviour change program for all drink-driving and drug-driving offenders is being rolled out. This will replace the existing drink-driver education course and individual assessment, which only applied to some drink-drivers. The Bill provides for the repeal of the superseded program.

Other Road-Related Amendments

The Bill extends exemptions from certain fatigue management rules for the drivers of rail replacement buses and buses responding to emergencies so that they also apply to persons who act as record keepers for those drivers.

The Bill will also clarify beyond doubt that a driver who has been directed to stop must remain stopped until a police officer indicates that the person may proceed.

Improvements to the over-dimensional vehicles crossing rail scheme are included.

The requirement for operators involved in movements across a railway track with a vehicle width of between three and five metres will no longer be required to obtain annual permits. This will reduce red tape.

The infrastructure protected under the scheme will now include railway track structures, signalling systems, and level crossing warning devices (e.g. boom gates).

Movements along tramways tracks will also now fall within scope. Operators wishing to take over-dimensional vehicles along tramway tracks will need to obtain a permit.

Amendments are being made to fee setting powers under the scheme so that cost reflective fees can be charged for high-risk applications.

Responsibility for administering the scheme will also be changed from the Secretary of the Department of Economic Development, Jobs, Transport and Resources (under delegation from Public Transport Victoria), to VicRoads.

Public Transport Amendments

Land transactions between some transport agencies will be streamlined. The Bill enables VicTrack to transfer interests in land to VicRoads and the Head, Transport for Victoria for nominal consideration. It also removes the requirement for the Treasurer to approve all VicTrack land transactions. These will avoid unnecessary administration costs for the State and reduce the potential for delays.

The Bill clarifies compensation entitlements for drivers of trains involved in a fatal accident. Legislation will now reflect the existing practice of providing financial assistance to supervising drivers if they are in the driver cabin of a train involved in a fatal incident.

Responsibility for determining conditions of travel on public transport will be transferred from the Secretary of the Department of Economic Development, Jobs, Transport and Resources to the Head, Transport for Victoria. Determining conditions of travel is an operational function, so is better aligned with the functions and power of the Head, Transport for Victoria.

Conclusion

This Bill delivers on our commitments to fund roads in outer suburban and interface areas and in rural and regional areas. It also makes changes to make all Victorian roads safer.

I commend the Bill to the house.

Debate adjourned for Mr DAVIS (Southern Metropolitan) on motion of Mr Ondarchie.

Debate adjourned until Friday, 14 September.

TREASURY AND FINANCE LEGISLATION AMENDMENT BILL 2018

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

Mr JENNINGS (Special Minister of State) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

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 Treasury and Finance Legislation Amendment Bill 2018 (the **Bill**).

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

Overview

The Bill is an omnibus Bill that makes amendments to a number of Acts, with the following amendments relevant to human rights:

extending transport accident benefits payable to family members;

expanding the entitlement to transport accident compensation to cyclists who are injured as a result of a collision with a stationary vehicle;

new powers to require compelled removal of asbestos and imposed management measures; and

clarification of existing inspector powers to ask questions and request documents.

Human Rights Issues

Extending benefits payable to family members

The Bill makes a number of amendments to the **Transport Accident Act 1986** (**TA Act**) to increase claim benefits to supporting family members of persons injured in transport accidents.

Under the existing scheme, the members of the immediate family of a person who is injured or dies as a result of a transport accident are entitled to benefits, including family counselling, and travel and accommodation expenses for hospital visits or funeral attendance. Clause 3 amends the TA Act to include grandparents as members of immediate family, to recognise that changing nature of family units and the supporting role of grandparents in modern society.

Similarly, the Transport Accident Commission (**TAC**) currently pays reasonable travel and accommodation expenses incurred by a parent whilst they visit their dependent child in hospital, in order to allow parents to spend as much time as possible with their children, and to support them in their recovery following a transport accident. Under the current scheme, parents are not compensated for loss of wages as a result of being unable to work during the period of visiting their child in hospital. Clause 12 introduces a new compensation benefit of up to $10 000 per claim to mitigate the loss of wages of a parent visiting their child in hospital.

Finally, the TAC pays dependency benefits to children of a person who dies as a result of a transport accident. A 'dependent child' includes a child under the age of 25 years who is a full-time student, but does not include a person under the age of 25 who is undertaking a full-time apprenticeship. Clause 4 amends the TA Act align the entitlements of dependent full time apprentices with full-time students under the age of 25.

The above amendments, which all provide additional support to children and family members affected by a transport accident, strengthen the Charter's right to protection of families and children in s 17.

Amendments relating to pedal cycles

Part 2 of the Bill makes a number of amendments to the TA Act to expand the entitlement to TAC compensation to cyclists who are injured as a result of a collision with a stationary vehicle. Clause 3 amends the definition of 'transport accident' in s 3(1) of the Act to include a collision occurring between a pedal cycle and a stationary motor vehicle or an open or opening door of a motor vehicle. Clauses 5 to 9 make other amendments to bring the statutory requirements for cyclists in line with the requirements on owners or drivers of a motor vehicle when claiming compensation.

These amendments are relevant to the Charter rights to freedom of expression (s 15), property (s 20) and fair hearing (s 24).

Right to freedom of expression (s 15)

Section 15(2) of the Charter provides that every person has the right to freedom of expression, including the freedom to impart information and ideas of all kinds. This also encompasses the right not to impart information.

Clause 5 imposes a requirement on cyclists who have been injured to report the accident to the nearest police station within a reasonable time in order to access TAC compensation. Failure to report can result in the TAC not being liable to pay compensation in certain circumstances.

Section 15(3) of the Charter provides that special duties and responsibilities are attached to the right to freedom of expression, and the right may be subject to lawful restrictions, such as those reasonably necessary to protect public order and public health. In my view, the requirement to report accidents to police in order to access compensation is reasonably necessary to the proper administration of the traffic accident compensation scheme, and the efficient and transparent assessment of compensation claims. It is a commonly accepted obligation on road users that accidents involving injury must be reported to police. I also note that this requirement mirrors existing obligations on cyclists under the *Road Safety Act 1986* to report to police particulars of any accident involving injury.

Accordingly, I am satisfied that this requirement does not limit section 15 of the Charter.

Property rights (s 20) and the right to fair hearing (s 24)

A consequence of expanding the entitlements to compensation of cyclists is that it brings application of other parts of the compensation scheme, such as the extinguishment of common law rights to damages in certain circumstances (by way of s 93 of the TA Act). Accordingly, a cyclist who is involved in a collision with a stationary vehicle will no longer have a right to recover common law damages, unless they have sustained a serious injury as required by s 93 of the TA Act.

Section 20 of the Charter provides that a person must not be deprived of property other than in accordance with law. A legal right to damages may be considered 'property' for the purposes of s 20. The right has been interpreted as requiring that any deprivation of property occur in accordance with clear, transparent and precise criteria, and not be oppressive or capricious. As the scheme employs clear criteria for when a common law right is extinguished, and provides for a person to be entitled to enjoy the benefits of the statutory compensation scheme in exchange for the loss of this legal right, the provision does not limit s 20 of the Charter.

Similarly, a provision which abolishes or limits a right to bring legal proceedings may constitute a limit on a person's right to fair under s 24 of the Charter, by impeding their access to the courts of the State. To the extent that fair hearing can be said to be limited, I consider any limit to be reasonably justified under s 7(2) of the Charter. The right to common law damages is only extinguished in circumstances where a cyclist is injured but does not have a serious injury. In such circumstances, the person is provided with access to no-fault entitlements under the scheme, which include immediately payable benefits relating to medical and support services, transport costs, income support and associated benefits for family members.

While such persons will also be subject to statutory thresholds and caps for the recovery of such costs, the extinguishment of common law rights to damages is necessary in order to regulate TAC's liabilities (as the indemnifier of persons

involved in traffic accidents) and ensure that the scheme is able to provide benefits equivalent to the respective needs of each claimant. I also note that courts in the United States, Canada, Germany and South Africa, amongst others, have found similar legislation providing for compensation and limiting the right to claim common law damages not to be irrational or arbitrary in the context of limits on human rights.

Accordingly, I am satisfied that that the limitations on the right to damages in this context is compatible with the Charter.

Framework for the removal or management of asbestos

The manufacture, use, reuse, import, transport, storage and sale of asbestos has been prohibited in Australia since 31 December 2003, effected in Victoria through the **Occupational Health and Safety Regulation 2017**. Despite these prohibitions, a number of instances of asbestos-containing-materials have been imported, supplied and installed in Victoria since 2003. Despite the clear risk to public safety and welfare posed by these materials, there exists ambiguity in the current framework regarding whether duty holders are in breach of existing prohibitions for retaining such asbestos or whether they can be required to remove it.

Clause 25 of the Bill inserts a new Part VIA into the **Dangerous Goods Act 1985** to provide a clearer framework for the removal or management of asbestos that was installed on or after 1 January 2004. New section 39C requires a person who has management or control of property to notify the Victorian WorkCover Authority (**Authority**) as soon as practicable after becoming aware that their property contains asbestos that was installed on or after 1 January 2004. The person must then, within 60 days, enter into an agreement with the Authority to remove the asbestos in accordance with a removal plan approved by the Authority, or to manage the risks associated with retaining the asbestos on the property in accordance with a management plan approved by the Authority. An owner is liable to a penalty if they fail to agree with a removal or management plan, or fail to comply with such plans. The obligations do not apply in relation to property that is domestic premises used solely for domestic purposes.

The new framework is relevant to a number of rights:

- the right to freedom from forced work (s 11), in relation to the requirement on a property owner to remove asbestos under the menace of a penalty;
- the right to freedom of expression, including the right not to impart information (s 15), in relation to the requirement of a property owner to notify the Authority of asbestos; and
- the right not to be deprived of property, in relation to any interferences with a person's enjoyment of property rights effected by the forced removal of asbestos or implementation of a management plan.

The above rights all include internal limitations within their scope that permit lawful restrictions on the right on certain grounds. Accordingly, I consider that these amendments do not limit these rights on the basis of these internal limitations, for the following reasons.

The right to freedom from forced work excepts work or service that forms part of normal civil obligations (s 11(3)(c)). While the phrase has not been subject to judicial interpretation in Victoria, 'normal civil obligations' have been interpreted under international law to include a property owner's obligation to maintain their property in accordance with health and safety standards. Further, such obligations are particularly enlivened where an owner is aware that the condition of their property may endanger the community (principally residents, visitors to the property and neighbours), and the risk is of such a nature that the community may be unaware of the dangers or be unable to adequately protect itself against such dangers. The health and safety risks associated with asbestos are significant, with inhalation of asbestos dust or fibres causing scarring, infection or interactions with a person's immune system leading to genetic damage and resulting carcinomas. Asbestos fibres are normally invisible to the naked eye and can be breathed in easily without noticing. It follows that the work requirements introduced by these amendments would be considered as part of the scope of normal civil obligations on property owners.

The right to freedom of expression is subject to restrictions reasonably necessary to respect the rights and reputations of other persons, or for the protection of public health (s 15(3)). As discussed above, the requirement to notify the Authority about the discovery of matters of health concern to the community clearly comes within the internal limitation of this right.

Finally, the right not to be deprived of property contains an internal limitation of 'other than in accordance with law'. While the effect of a compelled asbestos removal or management plan may deprive a person of their enjoyment of certain property rights (such restricting their use or control of their property) any such deprivation will occur in accordance with law. The scheme includes clear criteria for removing or managing asbestos, and provides for exceptions in the form of management plans where it may not be reasonably practicable to remove asbestos and it is safe to take other protective measures. New section 39F sets out the considerations that the Authority must satisfy itself of when determining whether it is reasonably practicable to require an owner to remove asbestos, such as the likelihood of exposure to asbestos occurring, the degree of harm that would result if exposure to asbestos did occur, the availability of suitable of ways to remove the asbestos, and the cost of removing the asbestos. Accordingly, I am satisfied that the imposition of any restrictions or requirements on the use of land under this scheme will be reasonable, and occur in accordance with law.

It follows that I am satisfied that clause 25 is compatible with the Charter.

Inspector powers to ask questions and request documents

The Bill (through clauses 23, 28 and 31) amends the **Dangerous Goods Act 1985, Equipment (Public Safety) Act 1994** and **Workplace Injury Rehabilitation Compensation Act 2013** to clarify the scope of existing inspector powers to ask questions and request documents under those Acts, in order to align those powers with equivalent powers under the **Occupational Health and Safety Act 2004**.

The amendments clarify that the power to ask questions is not inadvertently restricted to matters concerning documents required to be produced under the scheme, and that the power to request documents does not depend on where the document may be located or whether it is in the person's possession.

These amendments prevent the ability of inspectors to perform their functions from being inadvertently limited.

It is my view that these amendments do not impose any additional limits on human rights, as it merely clarifies the intended operation of existing powers. However, I note that many of these powers to gather information were enacted prior to the introduction of the Charter and have not been considered by previous Statements of Compatibility. Accordingly, I consider it appropriate to briefly discuss the general implications for human rights posed by such information-gathering powers, and why any reasonable limits on rights are considered reasonably justified.

The powers are principally relevant to the Charter's right to privacy (s 13) and the right not to be compelled to testify against oneself or to confess guilt (s 25(2)(k)).

Right to privacy (s 13)

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

The powers permit inspectors to enter specified places (which, in relation to each scheme, are regulated occupational places such as equipment sites, workplaces or places housing dangerous goods) and require a person to produce a document or answer any questions put by the inspector. Not all information required to be provided under these powers will be of a private nature. However, to the extent that these powers do require disclosure of private information, the clearly prescribed nature of these powers protect against any arbitrary or unlawful interferences with the right to privacy. The powers are essential to monitoring industry laws and detecting non-compliance, and to safeguard the rights and interests of employees, consumers and the community in relation to workplaces and high risk industries. The powers are primarily available in respect of industry and occupational premises, where individuals have a limited expectation of privacy by way of the duties and obligations which attach to their roles under the relevant Acts. Confidential requirements apply to the information gained in the exercise of these powers.

Right not to be compelled to testify against oneself or to confess guilty (s 25(2)(k)))

Section 25(2)(k) of the Charter provides that a person who has been charged with a criminal offence has the right not to be compelled to testify against themselves or to confess guilt. The right applies in relation to incriminatory material obtained under compulsion, and extends to cover information that may have been obtained prior to any charge being laid.

The powers to compel information allow a person to refuse or fail to give information if doing so would tend to incriminate the person (with the exception, in some contexts, of the person's name or address). However, the powers do not excuse a person from complying with a requirement to provide a document that the person is required to produce under the respective scheme.

The right to protection against self-incrimination generally covers the compulsion of documents or things which might incriminate a person. However, 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 that are brought into existence to comply with a request for information. This is particularly so in the context of a regulated industry, where documents or records are required to be produced during the course of a person's participation in that industry, and are brought into existence for the dominant purpose of demonstrating that person's compliance with relevant duties and obligations when required by inspectors. The duty to provide documents in this context is consistent with the reasonable expectations of persons who operate within a regulated scheme and undertake the responsibilities and duties that apply to their roles.

These powers enable inspectors to monitor compliance with the respective Acts, investigate potential contraventions, and protect employees from detriment or harm resulting from non-compliance with the regulatory scheme. It is necessary for inspectors to have access to such documents to ensure the effective administration of the regulatory scheme, and to use such documents to bring enforcement action where appropriate.

There are no less restrictive means available to achieve the purpose of enabling inspectors to have access to relevant documents, and access to such documents is necessary to ensure the safety of employees and to protect the interests of industry as a whole. To provide for a full document-use immunity would unreasonably obstruct the role of inspectors and the aims of the scheme, as well as give the holders of such documents an unfair forensic advantage in relation to criminal and civil penalty investigations. Therefore, I consider that the limitation of the privilege against self-incrimination with respect to documents is compatible with the right not to be compelled to testify against oneself in section 25(2)(k) of the Charter.

Gavin Jennings, MLC
Special Minister of State

Second reading

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

Mr JENNINGS (Special Minister of State) (09:44) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Treasury and Finance Legislation Amendment Bill 2018 is an omnibus bill which amends

The *Transport Accident Act 1986* (TA Act) to improve the operational efficiency of the Victorian transport accident scheme by increasing claim benefits to persons injured in transport accidents and their supporting family members and expanding the eligibility of cyclists to access TAC compensation in circumstances where they are injured as a result of a collision with a stationary vehicle;

The *Occupational Health and Safety Act 2004*, *Dangerous Goods Act 1985*), *Equipment (Public Safety) Act 1994*, *Accident Compensation Act 1985* and *Workplace Injury Rehabilitation and Compensation Act 2014* to enhance the operation of the Victorian

occupational health and safety, equipment public safety and dangerous goods regulatory frameworks and the workers compensation schemes; and

The *Emergency Services Superannuation Act 1986* to provide a mechanism for the transfer of the assets and liabilities of the Port of Melbourne Superannuation Fund into the Emergency Services Superannuation Scheme.

The Government is continuing to look at ways to strengthen the performance of the TAC and WorkSafe scheme and the services provided to those injured in a transport accident on Victorian roads and workplaces, as well as looking at ways to enhance the benefits that are available to the family members of those injured, and improve workplace safety standards.

Turning first to the TAC related amendments —

Transport Accident related amendments

The Transport Accident Commission (TAC) administers a world class transport accident scheme aimed at promoting the prevention of transport accidents and to ensure that appropriate compensation is delivered to those who are unfortunate enough to be injured on our roads.

The Government is continuing to look at ways to strengthen the performance of the TAC scheme and the services provided to those injured in transport accidents and their families.

In addition to enhancing the compensation available to TAC clients and their families, this Bill will also extend TAC compensation to cyclists who are injured as a result of a collision with a stationary vehicle by amending the definition of a '*transport accident*' in the TA Act.

Expanding coverage for cyclists

In 2000, the Act was amended to extend access to TAC benefits to a cyclist who was injured in a collision with a parked vehicle whilst riding to or from work as at that time, a cyclist would not have been entitled to workers' compensation benefits following amendments made to the *Accident Compensation Act 1985*.

This meant that cyclists who were unfortunate enough to collide with a parked vehicle if they were not travelling to or from their employment were being treated differently and had very different outcomes to those who were. This amendment addresses this current anomaly.

The unequal access to TAC benefits was highlighted in an incident involving Mr . Richard Wilson on 9 July 2014, where Mr Wilson sustained significant injuries as a result of colliding with a stationary vehicle whilst riding his bicycle. Mr . Wilson was not entitled to TAC compensation because the incident did not occur whilst he was travelling to or from his place of employment.

To ensure that Mr Wilson and other people injured in similar circumstances can be entitled to TAC compensation, this amendment will apply retrospectively to 9 July 2014, the date of Mr . Wilson's accident. This means that a cyclist that has been injured as a result of a collision with a stationary vehicle is now able to make a claim for compensation with the TAC, which the TAC can now accept in accordance with these new provisions.

Increasing benefits for family members

In addition to amending the definition of a '*transport accident,*' a number of additional benefits have also been introduced or enhanced for TAC clients and their families. To acknowledge the changing nature of family units and the supporting role that many grandparents play in a modern society, the Act will be amended so that grandparents will be entitled to the same benefits currently available for immediate family members of a TAC client. This change will apply from the date of commencement and apply to all transport accidents on or after that date.

The Bill also introduces equivalent amendment to the *Workplace Injury Rehabilitation and Compensation Act 2013* and the *Accident Compensation Act 1985*.

The TAC pays for the reasonable travel and accommodation expenses of immediate family members to visit a TAC client in hospital up to a capped amount of $10 780 per claim.

When an injured person requires an extended in-patient stay or family members are required to commute long distances to a hospital, this amount can be insufficient. To address these circumstances, the Act will be amended so that this cap is increased to $20 000, indexed each financial year with CPI. This amendment will apply to all claims for travel and accommodation expenses on or after the date of commencement.

Again, the Bill also introduces equivalent amendment to the Workplace Injury Rehabilitation and Compensation Act 2013 and the Accident Compensation Act 1985.

Payment for loss of wages for parents

If a child is injured in a transport accident and admitted to hospital, the TAC can pay the reasonable travel and accommodation expenses incurred by parents to stay with them. If a parent also incurs a loss of wages as a result of being unable to work during the period that they are with their dependent child in hospital, the TAC is unable to provide them with any financial assistance.

To provide additional financial support to parents, this Bill will introduce a new benefit of up to $10 000 per claim for parents to access if they incur a loss of wages after five working days from the date of their child's first admission to hospital. This change will support the parents of children injured in a transport accident on or after the date of commencement.

Apprentice

The TAC can pay dependency benefits to the child of a person who dies in a transport accident, which can include a lump sum award, weekly benefits and an education allowance. Generally, a child will only be entitled to dependency benefits if they are under 16 years of age. However, if a child is a full-time student between 16 and 25 years of age and they remain dependent on their deceased parent for economic support, they will also be entitled to dependency benefits. This currently does not extend to apprentices in the same circumstances. To ensure that a dependent child undertaking an apprenticeship is not disadvantaged as compared to a child under 25 years of age undertaking studies, this Bill will align the dependency entitlements of a full time dependent apprentice under the age of 25 with those of a dependent full-time student under the age of 25. This amendment will

affect all transport accidents involving an apprentice tradesperson on or after the date of commencement.

LOEC benefit review

If a person is unable to return to work 18 months after their transport accident, then they may be entitled to Loss of Earnings Capacity (LOEC) Benefits from the TAC. LOEC benefits can be paid for a maximum period of 18 months, unless a person's Whole Person Impairment (WPI) is assessed at greater than 50 per cent, and they continue to suffer a loss of earning capacity. A person so assessed will be eligible to receive these benefits until they reach the Federal retirement age, or until their WPI is assessed at below 50 percent or they no longer have a loss of earning capacity — whichever occurs first.

The TAC is currently required to conduct a mandatory review of a person's ongoing entitlement to LOEC benefits at least once in every five year period. The TAC reviews a person's WPI and their work capacity. This may involve a TAC client having to attend a number of medico-legal examinations and vocational assessments. In instances where a person has sustained catastrophic injuries which have destroyed their earning capacity and their impairment level will never fall below 50 percent, conducting a mandatory review is not necessary.

This Bill replaces the mandatory requirement for the TAC to undertake a review of entitlements to LOEC benefits every five years with a discretionary one. The TAC may still undertake a review in appropriate circumstances. This amendment will not have an effect on a person's right to request that the TAC conduct a review at any time and will apply from the date of commencement to all transport accident claims, regardless of when they occurred.

Overseas attendance care

If a TAC client requires attendant care services within Australia, the TAC can pay the reasonable cost of these services for a period of not more than 8 weeks in any year if these services are required by a TAC client overseas. The TAC currently has no discretion to pay for a period of attendant care services overseas beyond this period. In order to support TAC clients who may be required to travel overseas during the course of their employment, this Bill will provide for an additional 4 weeks of overseas attendant care services to TAC clients in these circumstances. The amendment will apply to all requests for these services from the date of commencement.

Payment for court appointed administrator

Severely injured TAC clients may require a Court or Tribunal appointed professional administrator to act on their behalf and manage their financial affairs. Where a professional administrator is appointed by a Court or Tribunal to act on an injured client's behalf, they are entitled to charge fees for their services in managing the financial affairs of a client. Currently, the TA Act makes no provision for the payment of the fees incurred in the management of a client's income and lump sum impairment benefit. This is contrasted with the common law position where an injured person can recover the fees incurred by an administrator in accordance with the High Court case of Willet v Futcher.

To enable the TAC to pay the reasonable fees associated with the professional administration of a client's TAC no-fault compensation; this Bill introduces a new benefit into the TA Act to allow a professional administrator to apply to the TAC to be reimbursed for the costs of their professional administration fees that are set by a Court or Tribunal. This provision will apply to all requests for reimbursement of eligible fees incurred on or after the date of commencement.

This amendment is not intended to impact on the assessment of transport accident common law damages claims. The current practise for the recovery of management fees continues to apply whether these costs are incurred by a professional administrator or by Funds in Court.

Turning next to WorkSafe related amendments —

WorkSafe related amendments

The Bill makes a range of amendments to improve the operation of Victoria's Workers Compensations Scheme as well as Victoria's Occupational Health and Safety, Equipment Public Safety and Dangerous Goods Regulatory Frameworks.

Broadly, the Bill makes amendments to:

provide increased transparency in regards to WorkSafe investigations responding to prosecution requests and to ensure that WorkSafe has sufficient time to undertake these investigations;

clarify occupational health and safety consultation requirements;

provide a clear framework for the removal or control of asbestos installed subsequent to 31 December 2003; and

provide fairer compensation entitlement for injured workers and the family members of injured workers.

The Bill also makes a number of minor amendments clarify the operation of the legislation and to improve consistency.

Providing increased transparency in regards to WorkSafe investigations responding to prosecution requests and ensuring that WorkSafe has sufficient time to undertake these investigations

The *Occupational Health and Safety Act 2004* (OHS Act), the *Dangerous Goods Act 1985* (DG Act) and the *Equipment (Public Safety) Act 1994* (EPS Act) allow members of the public to request prosecutions in circumstances where they consider that a breach of the legislation has occurred.

This Bill introduces amendments to strengthen WorkSafe's accountability and transparency in regards to investigations relating to prosecution requests under these Acts. Specifically, the Bill requires WorkSafe to publicly report any instances where it fails to meet its mandated legislative timeframes for these investigations.

These amendments address recommendations arising out of the Parliamentary Committee Inquiry into the CFA Training College at Fiskville — Final Report (Fiskville Inquiry) and the Independent Review of Occupational Health and Safety Compliance and Enforcement in Victoria 2016 (Compliance and Enforcement Review).

The Bill also makes amendments to ensure that WorkSafe has sufficient time to undertake thorough and comprehensive investigations relating to prosecution requests for more serious indictable offences. These amendments substitute the existing three month timeframe for completion of these investigations, with a requirement that if an investigation into an indictable matter is not completed within nine months, WorkSafe is to refer the matter to the Director of Public Prosecution. In the interim, Worksafe is to provide three monthly updates to the person who requested the prosecution, and the Minister, advising them of the status of the investigation. The Bill also introduces new safeguards to ensure that these investigations are undertaken without undue delay.

Clarifying OHS consultation requirements

The Bill creates an explicit link to clarify that a failure to undertake the consultation procedure in accordance with requirements of the OHS Act amounts to a failure to consult and comply with the obligations in the OHS Act.

The OHS Act places a duty on employers to consult with employees about a number of specified health and safety matters to identify hazards and risks, procedures for resolving health and safety issues and monitoring health and conditions at the workplace. The OHS Act also sets out how the consultation process must occur.

The Independent Review of Occupational Health and Safety Compliance and Enforcement in Victoria identified a lack of clarity regarding whether enforcement action could be taken for a failure to undertake the consultation procedure in accordance with requirements of the OHS Act. The Victorian Government confirmed enforcement is actionable under the current legislation and committed to being more transparent about this obligation.

This amendment confirms the importance of the consultation procedure and clarifies that a failure to undertake the consultation procedure in accordance with requirements of the OHS Act is an offence.

Removal or control of asbestos

The Bill provides a clear framework for the removal or control of asbestos installed subsequent to 31 December 2003.

The Victorian Government is committed to providing a safe workplace for all workers. The unknown presence of asbestos is a significant risk. Buildings constructed post December 2003 are assumed to be asbestos-free and if a building is treated as asbestos free when it in fact contains asbestos, serious health and safety risks may arise.

The manufacture, use, reuse, importation, transport, storage and sale of asbestos has been prohibited in Australia since 31 December 2003. Despite the prohibitions, a number of instances of asbestos-containing materials being imported, supplied and installed in Victoria subsequent to 2003 have been identified. Currently, uncertainty exists as to whether, and in what circumstances, these prohibitions would compel a duty holder to remove asbestos.

To provide a clear framework for the removal or control of asbestos that has been installed after 31 December 2003, the Bill amends the DG Act to insert a provision requiring that any asbestos installed after 2003 must be removed in accordance with a removal plan approved by WorkSafe or controlled in accordance with a management plan approved by WorkSafe. Importantly, the management plan must ensure a level of health and safety that is at least equivalent to that which would be achieved by removing the asbestos.

Failure to comply with the relevant requirements of a removal or a management plan that has been agreed is an indictable offence attracting a maximum penalty of 500 penalty units for a natural person and 2500 penalty units for a body corporate.

Payment of impairment benefits following the death of the claimant

The Bill proposes to build flexibility in the WIRC and AC Acts to enable impairment benefits to be made in specified circumstances where the worker passes away before a claim can be finalised.

In very rare situations, the worker may pass away between their entitlement being determined and the processing of their compensation payment. In these circumstances, WorkSafe is prevented from making the payment.

The Bill proposes to amend the WIRC Act and the AC Act to allow for impairment benefits to be made after the worker has passed away if the worker's degree of impairment had already been determined by WorkSafe prior to their death.

This amendment will ensure fairer outcomes in situations where a claim is well progressed and an injured worker passes away prior to its finalisation and the payment of compensation.

Provisional payments for travel and accommodation expenses

The Bill proposes amendments to expand the ability to make provisional payments to include compensation payments for travel and accommodation expenses of family members including grandparents.

The WIRC and AC Acts currently allow reasonable costs to be paid to family members of deceased workers for travel and accommodation where the deceased worker's burial or cremation is held more than 100 kilometres from their residence. The Bill proposes to allow for these expenses to be paid provisionally, without a claim needing to be lodged.

This amendment ensures that a deceased worker's family can obtain payments more quickly in the period immediately after the worker's death. It ensures that family members are not put under additional financial hardship prior to the conclusion of the compensation process during a very difficult and stressful time.

Turning finally to ESSS related amendment —

Transfer of the Port Fund to the ESSS

In September 2016, the Government leased the Port of Melbourne to the Lonsdale Consortium for a period of 50 years. At the time, the Government agreed that the Port of Melbourne Superannuation Fund should be transferred into the Emergency Services Superannuation Scheme after the completion of the lease transaction.

There are currently 32 members of Port Fund. Only six of these members remain active. The Fund is "fully funded".

Currently, the cost of administering the Port Fund is around $360 000 per annum which is met by the Lonsdale Consortium and the Victorian Ports Corporation (Melbourne). If the Port Fund is transferred to ESSSuper, the cost of administering the Port Fund is expected to reduce to $150 000 per annum because ESSSuper will be able to take advantage of economies of scale.

The Port Fund is currently regulated by APRA, whereas all funds administered by ESSSuper are exempt public sector superannuation schemes regulated by the Victorian Government. Transferring the Port Fund into the ESSS will involve the Port Fund being transferred into an exempt public sector superannuation scheme regulated by the Victorian Government. The Port Fund, in conjunction with ESSSuper, will need to consult APRA to ensure that any requirements they have regarding this transfer are satisfied. In order for the transfer to occur both the Port Fund and ESSSuper have to agree.

This Bill will provide a mechanism for the transfer to occur once the Trustees of the Port Fund (Diversa Trustees Limited) and ESSSuper agreed in writing to the Minister for Finance that the requirements to the transfer have been met.

I commend the Bill to the house.

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

Debate adjourned until Friday, 14 September.

PETITIONS

Following petitions presented to house:

Bunyip North quarry

Legislative Council electronic petition:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the concerns of many hundreds of residents about the proposed Hanson quarry in Bunyip North. These concerns include the —

(1) impact the proposed quarry would have on the community, the environment and on growth;

(2) proximity of the proposed quarry to Mount Cannibal Reserve, Tonimbuk Equestrian Centre and to residences;

(3) detrimental impact on jobs, business and property values;

(4) adverse impact on agricultural production; and

(5) threat to ground and surface water supply.

The proposed Hanson quarry in Bunyip North requires an environment effects statement to receive planning approval. Representatives from the community have been unable to satisfactorily have their interests presented and Hanson Construction Materials Pty Ltd (Hanson) have failed for 12 years to honour the commitments they made to the community. Consequently, community members feel unable to rely on information received from Hanson.

The petitioners therefore request that the Legislative Council call on the government to hold any approvals sought by Hanson Construction Materials Pty Ltd for the proposed quarry in Bunyip North in abeyance until all community, environmental, employment and population growth concerns are satisfactorily addressed.

By Ms SHING (Eastern Victoria) (789 signatures).

Laid on table.

Snowy River railway bridge, Orbost

Legislative Council electronic petition:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the Snowy River flood plain railway bridge at Orbost. This 770-metre timber viaduct was built in 1916 and is the longest railway bridge in Victoria. It has potential as an emblematic marketing feature for this rural region of Victoria. It is a cultural landmark in East Gippsland, being visible from the Princes Highway at Orbost.

We respectfully request that the Legislative Council call on the government to allocate money for the restoration of this historic railway bridge at Orbost so that it can be integrated into the East Gippsland Rail Trail and used for cycling and walking and also for promotions to assist the visitor economy.

By Ms SHING (Eastern Victoria) (385 signatures).

Laid on table.

PROCEDURE COMMITTEE

Review of standing orders

Mr ELASMAR (Northern Metropolitan) presented report, including appendices.

Laid on table.

Ordered that report be published.

Mr ELASMAR (Northern Metropolitan) (09:46) — I move:

That the Council take note of the report.

I take pleasure in presenting a report from the Legislative Council Procedure Committee on its recent review of standing orders. During the course of this 58th Parliament the house adopted 17 separate sessional orders, including reforms to questions without notice, time limits in general business, changes to the sitting hours on a Tuesday, changes to the functions and composition of standing committees, introduction of a video-on-demand service and increasing the duration of the ringing of division bells.

The Procedure Committee has agreed to certain sessional orders becoming standing orders in the 59th Parliament. They include sessional orders relating to video on demand, 4-minute division bells, general business time limits and the President's ability to order written responses to answers to questions without notice. Other sessional orders will lapse after the expiration of this Parliament. The committee also agreed to make some further minor changes to standing orders relating to motions, to the postponement of notices of motion and to the ability of a minister to dispose of an adjournment matter in the house, and to providing further clarity about speaking time limits.

The committee has recommended that the house take steps to adopt these new standing orders as set out in appendices A and B. Accordingly I trust that a motion will be moved and agreed to in the next sitting week to ensure these standing orders are operational for the start of the 59th Parliament. In conclusion, I would like to thank the Clerk and the staff for their hard work.

Ms WOOLDRIDGE (Eastern Metropolitan) (09:48) — I will just speak briefly on the report tabled by Mr Elasmar in relation to the Procedure Committee. As members will see from the report, there have been some successes of the Procedure Committee, which I think have taken us forward as a modern Parliament in relation to e-petitions and video on demand, which members are using actively. It is a credit to the work of the committee. I want to acknowledge Richard Willis, Annemarie Burt, Andrew Young and Natalie Tyler, who have supported the work of the Procedure Committee in order to get some of those outcomes, as well as the members of the committee for their cooperation.

There are only a small number of matters that the committee has recommended be put into the standing orders for the next Parliament. It is fair to say that there are outstanding matters that need to be addressed. From my perspective it is disappointing that this report does not deal with the issue of the production of documents. We have seen even just this week that the management of documents is critical to this house. This house has requested many documents, most of which have either not been provided or not been provided in full, with some serious questions in relation to content that has been redacted or excluded, which we have debated in this house many times. It is disappointing, from my perspective, that this report does not deal with a way forward to manage the production of documents or potentially the appointment of an independent arbiter to oversee, rather than just leave in the hands of the government, the decisions in relation to documents.

As I say, what we have seen this week just highlights even more dramatically how important it is that there is some resolution on that — not only to release information but also to not release information where it can be highly detrimental to individuals involved. I do recommend this report to the house, and I look forward to hopefully being able to take this forward next sitting week.

Mr DAVIS (Southern Metropolitan) (09:50) — I just want to make a few reflections on the very exciting Procedure Committee report. This will be a cure for many with respect to the insomnia they may suffer from. Leaving that aside, I want to draw attention to two matters. The first one was pointed out by Ms Wooldridge, and it relates to the issue of the production of documents. I have long been concerned about the lack of clear agency and responsibility that exists with respect to our standing order on the production of documents, and there will need to be some further focus on this. I put that on the agenda at this point.

The committee was not able to come to some clear way forward on that, but we have seen in the last week a terrible outcome in the lower house, where an abuse of the Parliament's power has occurred and documents have been tabled in error, with massive damage to individuals, in an arrogant step by Premier Daniel Andrews. That makes clear the responsibilities here and the need for greater clarity. Certainly more will need to be said about that, given what Daniel Andrews and his ministers in the lower house have done in their terrible abuse of conventions. At the same time —

The PRESIDENT — Order! Mr Davis, those are matters that were not canvassed by the Procedure Committee. They are not encompassed in the report of the Procedure Committee. Yes, the production of documents issue is a deferred issue to a future Procedure Committee, which will probably have a different composition. At any rate the matter that you are putting forward is by way of debate, and I would suggest that the debate needs to be on the report as it stands rather than reflecting on what may or may not have happened in the other house.

Mr DAVIS — President, I accept your point, but I note the deficiencies in the report are also something we can point to —

Mr Jennings — 'But'! The first word is 'but'.

Mr DAVIS — Yes, indeed. I do believe that it is a serious deficiency. But leaving that aside, there is one other point I want to make, and that relates to the issue

of broadcasting. I think we have got to be very careful with this new version of the standing order, if it is carried by the chamber, given the risk of authorisation by members of staff. We need to make sure that there are clear boundaries between the parliamentary roles and the non-parliamentary roles of staff. We have seen in this Parliament some issues arise relating to 2014.

The PRESIDENT — Thank you.

Ms PENNICUIK (Southern Metropolitan) (09:53) — I would like to start by thanking the secretariat of the committee — the Clerk, Andrew Young; Richard Willis; Annemarie Burt; and Natalie Tyler — for all the work they have done to support the committee. I would like to disagree with Mr Davis. I actually think the work of the Procedure Committee is very exciting. It outlines the structures and processes by which we conduct our business in this house. For the long time I have been here, I have always been on the Procedure Committee, formerly called the Standing Orders Committee, and have taken a very keen interest in the standing orders of this place.

I am supportive of the report that has been tabled today and the changes that it makes in terms of video on demand; questions, with regard to the President being able to order written responses to questions and the requirement that answers be factual; time limits in general business; and division bells ringing for 4 minutes, for example, to accommodate our move out to the new building.

But I would like to say there are many things that have been left out of the report that I would like to have seen included that were put into the sessional orders at the beginning of this session, such as constituency questions and such as the ability for our standing committees to self-reference. They have been left out of this report. In the previous Parliament, when the then government had control of this house, the only references that the committees were able to deal with were those that were agreed to by the government. I think to not have that function going into the next Parliament is a problem, because the functioning committee is one of the hallmarks of an upper house. Anyway, I will have more to say on this report during the debate on the motion to adopt the new standing orders.

Motion agreed to.

NOTICES OF MOTION

Notice of motion given.

BUSINESS OF THE HOUSE

Adjournment

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

> That the Council, at its rising, adjourn until Tuesday, 18 September, at 12.00 p.m.

Motion agreed to.

MINISTERS STATEMENTS

Recreational fishing

Ms PULFORD (Minister for Agriculture) (09:57) — I wish to update the house on a big change underway for Victoria's Statewide Recreational Fishing Roundtable. Recruitment is underway for a new chair. I am told interest is high and there are many strong candidates for this important role. The recreational fishing round table concept was initiated in 2006 to bring all stakeholders together, including the peak body, in one place at the same time. Its purpose is to share ideas, discuss opportunities to improve fishing and for participants to get to know each other given their shared passion for this wonderful pastime.

The first chair was Merv McGuire, and more than a decade later he has decided to pass the baton. More time for fishing for Merv sounds good to me. Merv's chairmanship has brought lots of people together who might otherwise have stayed names without faces. He has seen through challenging times when hot issues were discussed and debated across the table, ensuring everyone's voice received the respect and time it deserved. Governments have come and gone in Merv's time as chair, and the round table has provided an apolitical arena that has stood the test of time.

On behalf of the Victorian government thanks are due to Merv, and I am sure I am joined in this by members of the round table and Victorian anglers. Merv has left fishing in this state better off than when he started, and nobody could ask for more than that. I wish Merv all the best with his future endeavours, and I look forward to reports of trout successfully caught from the Upper Goulburn now that he will have more time to chase them.

Family violence prevention

Ms MIKAKOS (Minister for Families and Children) (09:59) — I rise to update the house on how the Andrews Labor government is testing new and innovative approaches to end family violence and hold

perpetrators to account. I recently announced $4.8 million to trial and evaluate seven new perpetrator intervention programs which target diverse groups. This is an investment by the Andrews Labor government in family violence prevention to make sure that perpetrators are accountable. These trials acknowledge that there is no one-size-fits-all approach to combating family violence, while also encouraging community-based initiatives and recognising the importance of keeping all perpetrators accountable.

The trials run until July 2019, and just some of the groups funded include Bethany Community Support in the Greater Geelong, Queenscliff region and Surf Coast regions to work with men who have cognitive impairments; Bendigo and District Aboriginal Cooperative and the Centre for Non-Violence in Bendigo, delivering bush-setting interventions including health and storytelling with Aboriginal and non-Aboriginal fathers; inTouch, Multicultural Centre against Family Violence in Greater Dandenong to deliver in-language, culturally sensitive interventions for those from culturally diverse backgrounds; and Baptcare and Berry Street in Ballarat and Melbourne to work with female perpetrators, including Aboriginal women.

The new programs respond to recommendation 87 of the Royal Commission into Family Violence, which urged further interventions for perpetrators beyond the current men's behaviour change programs. This investment comes on top of $7.4 million to trial perpetrator case management, as well as a further $9.1 million to create an extra 4000 community-based men's behaviour change places in 2018–19. The case management trial will provide access for up to 2000 places across Victoria and includes dedicated funding for Aboriginal and LGBTI service providers. Under the new and enhanced men's behaviour change program it has been extended from 12 to 20 weeks and includes additional support for victim-survivors and their families.

This is part of the Andrews Labor government's unprecedented $2.6 billion investment since 2017 to help end family violence and includes a record $60.1 million over four years for the changing perpetrator behaviour program. Our government will never stop our work to end our nation's number one law and order issue — family violence — putting the interests of women and children first, while making perpetrators accountable for their actions.

ELECTRICITY SAFETY AMENDMENT (ELECTRICAL EQUIPMENT SAFETY SCHEME) BILL 2018

Second reading

Debate resumed from 8 March; motion of Mr JENNINGS (Special Minister of State).

Mrs PEULICH (South Eastern Metropolitan) (10:02) — I rise to speak on the Electricity Safety Amendment (Electrical Equipment Safety Scheme) Bill 2018, noting some of the detailed work that has been done by our shadow minister, David Southwick in the Assembly, in consultation with stakeholders. While the opposition will not oppose the bill, it has a number of very serious concerns, which I will canvass during my contribution.

One of those issues has been raised by the Scrutiny of Acts and Regulations Committee, which basically identifies some of the unbridled power of Energy Safe Victoria, and certainly they are very, very significant powers with very little accountability apart from directly to the minister and perhaps by individual consumers or persons who are impacted by decisions of Energy Safe Victoria taking matters to the Supreme Court. I am personally aware of some fairly questionable practices in dealing with consumers by Energy Safe Victoria and some of their contractors, who appear to act with a sense of impunity.

The bill amends the Electricity Safety Act 1998 to implement the electrical equipment safety scheme, which is the intent of similar legislation in some of the other states — New South Wales, however, is not a participant. The intent is to harmonise the scheme for participating jurisdictions in Australia and New Zealand to work towards achieving consistent safety requirements in place for relevant in-scope electrical equipment.

The bill is of course littered with jargon that is particular to the industry, but 'in-scope electrical equipment' is defined on page 5 as:

> … electrical equipment that—
>
> (a) operates at or within a prescribed voltage range; and
>
> (b) is designed or marketed as suitable for household, personal or similar use—
>
> but does not include electrical equipment of a type that is declared under section 53 not to be in-scope electrical equipment …

However, Energy Safe Victoria can declare something to be in scope or out of scope simply by means of gazettal, so a very substantial amount of power rests in the hands of Energy Safe Victoria.

In addition to that I just want to place on record the vista of issues that are relevant to certain parts of the bill. Energy Safe Victoria is the regulator responsible for the supply of energy. This is a very, very substantial responsibility that rests with one regulator and therefore, because the bill touches on the powers of Energy Safe Victoria, could I say at the outset that the second-reading debate does allow for a very broad range of discussion of issues pertaining to energy, including the supply of energy, the safety of energy and the affordability of energy, because all of those are powers that ultimately rest with Energy Safe Victoria as the regulator responsible for supply. The minister has power over Energy Safe Victoria, and that power is made in some measure clear in a statement of expectation which was issued in, I think, June 2016. I will come back to that in a moment.

However, as we can see by this governance arrangement, a minister can simply issue a new statement of expectation which substantially changes the obligations of the regulator in terms of how they execute their responsibilities and how they conduct themselves in dealing with consumers, with suppliers and the like. Could I say I believe that the Andrews government has failed dismally in terms of its regulation of energy in the state, and if there is one issue that is a very, very substantial issue for consumers, domestic as well as industry, it is the security of supply as well as the affordability of energy, both electricity and gas. Again, the safety of electrical equipment is impacted upon by supply for things like, for example, planned outages —

Mr Leane — On a point of order, President. I respect Mrs Peulich being the first speaker for the opposition and the scope that she has in that role. I will just say as far as relevance goes that this bill pertains to electrical equipment — everything from a toaster to a drill — but it does not go to supply issues whatsoever. I think that Mrs Peulich gave us all a flu shot — everyone after her will talk about their pet hates, whether it be renewable energy or whatever — but I would flag that this is a very narrow bill as far as what it covers, and I think that people should be relevant to the bill.

Mrs PEULICH — On the point of order, President, the bill outlines very clearly the extensive powers and responsibilities of Energy Safe Victoria, and I would like to point to part 3 and new section 7B — and we will come back to this as well — which looks at the 'Use and disclosure of information by Energy Safe Victoria under part 4 of the Electricity Safety Act 1998'. When taken in conjunction with the recent announcement, for example, of a virtual generator, where information of users will be collected with a view to being able to regulate supply, all of these issues are pertinent and relevant to the bill and to consideration. You cannot look at one small component of the supply and regulation of energy and say it is unconnected to anywhere else, because indeed that would be a fallacy.

The PRESIDENT — I will have a look through the bill to establish whether or not I should set some parameters in terms of the debate. For now I do recognise that Mrs Peulich is the lead speaker and there is more scope for a lead speaker, so I will allow her to continue, and I will just have a quick look at this one section that I think may actually be the parachute. I will just check that and see if I should set some parameters for the debate. Thank you, Mr Leane, for the point of order.

Mrs PEULICH — Thank you, President, and whilst you are deliberating that — and thank you for the opportunity of laying on the table the relevant issues to the regulation of energy supply — I would also like to point out to you the enormous power that Energy Safe Victoria has, as seen under a whole range of sections littered through this bill, including the ability to declare electrical equipment not to be in scope, standards for electrical equipment that is not in scope, declaration of electrical equipment to be controlled and suspension of certificates of conformity. These powers are very, very extensive powers, and they certainly cross the differentiation or the distinction between in-scope and out-of-scope equipment and indeed fail to outline what avenues of appeal there are for people who are impacted by this enormous power. I have never heard or seen a government instrumentality — a regulator — having such unqualified power as Energy Safe Victoria.

Could I place on the record my concern in relation to the governance of this particular sector. It is no wonder that there are so many complaints that are lodged and so many issues that are lodged in relation to energy supply. Indeed there is the ability to suspend certificates of conformity and cancel certificates of conformity. The powers are just phenomenal. Also on page 24 it says under —

Mr Leane — What if there's a faulty product?

Mrs PEULICH — No, I just want to say that really when it comes to this legislation there ought to be nothing that should be outside the parameters of this debate, because Energy Safe Victoria has, for example, even the power to 'impose any conditions that must be complied with to maintain an exemption granted under' certain sections of this legislation. It is an absolutely amazing power and also contains a reversal of the onus of proof, which is obviously a legal concept that I think this Parliament has typically been reluctant to embrace. Whilst on the surface the bill looks well-intentioned, I think some of the issues that are within the parameters of this legislation point to why we have so many problems with the sector.

I will come back; I have touched on those. I wanted to just lay on the vista the breadth of issues that are relevant to this legislation, but I will come back to the specific details of the bill and will use that as a platform to touch on areas of concern that I have, that the Scrutiny of Acts and Regulations Committee has and that may actually even contribute to the committee stage of this debate. I think there is enormous capacity to interrogate the intentions of government policy when it comes to the regulator and when it comes to some of the announcements that have been made, some of the schemes that are in place and how they all fit into, for example, the supply of energy.

The bill replaces current separate jurisdictional schemes which have operated independently of one another in relation to the same electrical equipment, obviously the justification being that it creates confusion and additional regulatory burden. Victoria currently has a two-tier system divided between high-risk or prescribed electrical equipment and low-risk or non-prescribed equipment. The bill will introduce a third, medium-risk category and will relabel the existing categories as level 1, being low-risk; level 2, being medium-risk; and level 3, being high-risk.

The bill will require manufacturers and importers of in-scope electrical equipment in Australia or New Zealand and known as responsible suppliers to register themselves and the level 2 and 3 in-scope electrical equipment they supply in Victoria on a central database. But of course at any time Energy Safe Victoria can declare something to be not in scope or out of scope. The new registration requirement will enable industry to register themselves and their equipment once in a single database for the purpose of each participating jurisdiction, replacing duplicative registrations in multiple databases.

This whole direction of harmonisation of laws, given that we have interstate and globalised trade, makes absolute sense, but that should not only apply to safety conditions; it should also apply to labour laws in order to make things easier for business to do business. In particular, in a globalised environment you want international business to be able to invest with some degree of predictability and certainty in Australia and in Victoria. Having a multitude of layers of complex industrial laws makes it very difficult, so the whole direction of harmonising laws is a good thing on the whole. However, as I said before, the powers of the regulator in this instance, I think, raise significant concerns, and the power it will have to interfere with and control supply of energy to consumers will be substantial.

If data is gathered in an empowered database, it seems to me that in the future — probably not too far down the track — suppliers of electricity will be able to turn off certain uses as a way of protecting security of supply. They might decide, for example, that personal domestic air conditioners should be turned off or, who knows, maybe even washing machines, but there will be the ability to centrally control the supply of energy to users.

The PRESIDENT — In respect of the point of order, I have perused the bill. Without wanting to restrict and to anticipate areas that members may wish to go to in their debate, may I make the observation that this bill is very much from my perspective about protecting our electrical supply and the networks and so forth, so the regulatory role is about that protection and the efficiency and proper conduct of those people involved in this industry. Therefore, from my point of view, certainly debate that might touch on reliability of our electricity industry would be within the parameters of this legislation. Matters associated with costs and pricing of electricity from my point of view would not. If members fleetingly refer to that when I am not in the chair, perhaps they might get away with it, but I think the issue is really to look at that reliability and the safety of our systems, and that is what the regulator is all about. It is not about pricing matters, which I would see as being extraneous to this debate and not relevant to the legislation before us.

Mrs PEULICH — Thank you, President, for your guidance. I understand that your guidance pertains to detailed comments on the cost of electricity rather than the cost of the implications of decisions made by Energy Safe, which will impact on cost very, very substantially.

I am personally aware of one constituent — and I have actually raised this matter on several occasions in the Parliament — where he wanted a permit, which he got,

to build a townhouse. He was required by Energy Safe to replace a pole that was outside his property on the footpath, otherwise they would not give him a certificate to proceed. It was going to cost him tens of thousands of dollars to do that, but without doing it he could not proceed with his plan to build his townhouse. Now that to me sounds like a very clever, unacceptable plan to defray the cost of building infrastructure — energy infrastructure and electricity infrastructure — and deferring those costs to the consumer in an unacceptable way, especially given that that power pole was not on my constituent's property.

As I said, the unbridled powers of Energy Safe have been a concern to me for some time. As a result of their decisions, for which I cannot see avenues of appeal — this gentleman has actually tried appealing through me to the Parliament, to the minister and to various other agencies without any satisfaction — it seems to me that what is missing in this legislation is some sort of mechanism of appeal beyond that of the Supreme Court. Not everyone has the power to take matters to the Supreme Court, and nor should they go there. That should be reserved for the most grievous and most serious of matters. I thank you, President, for your guidance and the distinction between the types of costs that we may be discussing regarding this legislation.

The PRESIDENT — Mrs Peulich, you are absolutely right. In the context of such a run of debate, that is quite acceptable and apposite to this legislation.

Mrs PEULICH — Thank you. In coming back to the intent of the legislation, it is very much in line with the direction that this and previous parliaments have been taking with a view to harmonising laws and standards to make doing business, doing import-export and establishing businesses and so on consistent and business friendly. Australia certainly has a long way to go in being a more business-friendly environment.

Just as a small digression, I regularly take in interns from the University of Utah's Hinckley Institute — a political institute. I have students who are Democrats, students who are Republicans, students who are Independents, some who are Mormons and some who are not Mormons — and it was not by design, let me tell you — however, without exception each one of them, including some of the most ardent Democrat activists, have walked away from their internship experience saying, 'I cannot believe how anti-business Australia and Victoria are'. I think that does not bode well for a nation that should be absolutely the leader. Given our multicultural composition, given our wonderful democracy and given the talent that we have, we should be a leader in business and enterprise. The move to harmonise laws and standards is a good one provided that it achieves its intent acceptably.

The bill introduces a new requirement for responsible suppliers and on-sellers of in-scope electrical equipment to ensure that the equipment they offer or supply carries the approved regulatory compliance mark. The bill also introduces new and amended offences in the Electricity Safety Act 1998 to incentivise compliance with the new obligations. The penalty for one of these offences is not small. It is a maximum of 60 penalty units for individuals and up to 240 penalty units, which is approximately $30 000, for companies.

The bill gives further powers — and this is of great concern to me — to Energy Safe Victoria, including an ability to issue infringement notices in relation to the new offences and a continuation of the power to issue prohibition notices. So they have got the power to prohibit something — and I can understand that as a regulator they should have the power to do that — but there ought to be mechanisms for appeal, and they should be well-known. And they should not be the only ones — there ought to be an independent process that gives people some confidence that their issues are being considered on merit. They have a power to cancel registrations and refuse, vary, suspend or cancel certificates, subject to a right of review at VCAT — so yet another VCAT digression. I would have thought there would have been some other intermediary step before going to VCAT.

The bill includes transitional arrangements so that certificates that are in place at the commencement of the bill will remain valid for five years and compliant equipment that is already in stock may be supplied or offered for supply for six months from the bill's commencement date.

The areas of concern have been highlighted. The electrical equipment safety scheme has been in development for a number of years. New South Wales has expressed no interest in participating in the scheme, and I am yet to obtain more information about that. Perhaps the committee stage may lend itself to getting more answers. The costings associated with maintaining and operating the scheme I understand are to be covered by registration costs back-paid by suppliers; however, given the scheme is being driven primarily by Victoria and Queensland, we certainly want to ensure Victoria will not face additional costs if other jurisdictions are slow to join the scheme or ultimately do not do so.

Mr Southwick, our shadow minister for energy, has consulted with Energy Safe Victoria, the Energy Users Association of Australia, Consumer Electronics Suppliers Association, AusNet Services, Powercor, CitiPower and United Energy.

I think the intent of the bill is something that people would agree with, believing that the scheme would reduce the registration costs of electrical suppliers, who would no longer need to pay for registration for multiple electrical safety databases across Australia. Consumers could benefit from this legislation as different jurisdictional safety labels are simplified into one uniform and easy to understand label, helping to eliminate confusion and enhance electrical safety awareness and understanding.

That brings me now to the Scrutiny of Acts and Regulations Committee report on the legislation and the issues that have been identified by this committee — always referred to as a very powerful committee — in its *Alert Digest* No. 2 of February 2018. I note that it has four government members and three non-government members and that it inappropriately delegates legislative power. The details of this particular issue, in terms of how it engages with the Charter of Human Rights and Responsibilities, is that:

> The bill provides that the act will come into force on a day or days to be proclaimed. There is no default commencement date for the bill.
>
> The explanatory memorandum states that the bill:
>
> > … does not identify a default commencement date as the commencement of the electrical equipment safety scheme law is to be coordinated with Queensland and other participating jurisdictions. As an interjurisdictional scheme, the electrical equipment safety scheme law relies on each participating jurisdiction entering into an intergovernmental agreement to formalise the arrangements for the governance, implementation and administration of the scheme. Accordingly, to allow for any contingencies that may occur in any other jurisdictions entering into the intergovernmental agreement, no default commencement date is set.

The question that needs to be answered, perhaps in committee, is: does this mean that the bill will ever be implemented?

Another area that the *Alert Digest* identifies as a problem is the right to be presumed innocent with a legal burden to prove defence. It says:

> … in the charter report below, new sections 54 and 55 would make it an offence to supply certain electrical equipment 'unless' certain conditions are met or authorisations are in place.
>
> It is unclear from the statement of compatibility whether sections 54 and 55 would limit the presumption of innocence by imposing a legal burden on an accused to prove that the conditions are met. While the statement of compatibility states that a number of other offence provisions in the bill would impose an evidential (as opposed to a legal) onus on an accused, it does not refer to sections 54 and 55, even though those sections also impose an onus on the accused. It is therefore unclear to the committee whether sections 54 and 55 would impose an evidential or a legal onus.
>
> The committee's practice note provides that the committee will draw to the attention of Parliament, and seek further advice from the responsible minister or member, where a bill provides insufficient or unhelpful explanatory material, particularly in respect to rights or freedoms, such as the right to the presumption of innocence (i.e., provisions which reverse the onus of proof in criminal or civil penalty offences).
>
> The committee draws attention to the possible reversal of the onus of proof in sections 54 and 55 and, as noted in the charter report below, will write to the minister to seek further information as to whether sections 54 and 55 would impose an evidential or a legal onus on an accused.

I have not been able to see or find the minister's response. If there is one, I would be more than happy to receive a copy, and it may well be that it is addressed adequately.

It goes on also to say that there is a charter issue, that new sections 54 and 55 are not compatible with human rights because of the presumption of innocence exception to criminal offences, the onus being on the defendant to prove the exception applies. According to the *Alert Digest*:

> New sections 54 and 55 of the act make it an offence to supply certain electrical equipment unless certain conditions or authorisations are met or obtained. These sections may impose a burden on an accused to prove that these conditions are met.
>
> …
>
> The committee will write to the minister seeking further information …

These are issues that have been identified by the government-dominated Scrutiny of Acts and Regulations Committee.

New section 54 refers to the standards for electrical equipment that is not in-scope electrical equipment and the onus as being that:

> A person must not supply or offer to supply electrical equipment that is not in-scope electrical equipment unless the electrical equipment—
>
> (a) satisfies the standard prescribed for electrical equipment of the type of electrical equipment to which it belongs; and

(b) is safe to be connected to an electricity supply.

The implications of that are that anyone who imports anything in terms of a consumer electrical item will need to be responsible for their own testing. This is obviously a cost, and I am not sure how workable it is going to be.

New section 55, 'Declaration of electrical equipment to be controlled electrical equipment', says:

(1) Energy Safe Victoria may declare that an item, description, type or component of electrical equipment, that is not in-scope electrical equipment, is controlled electrical equipment.

(2) A declaration made under subsection (1) takes effect on the date specified in the notice.

(3) A person must not supply or offer to supply controlled electrical equipment unless the electrical equipment—

(a) is the subject of a certificate of conformity issued by Energy Safe Victoria that has not expired or been cancelled or suspended and is marked as prescribed; or

(b) is the subject of a certificate of conformity issued by a regulatory authority that has not expired or been cancelled or suspended and is marked as prescribed; or

(c) is the subject of a certificate of conformity issued by an external certifier that has not expired or been cancelled or suspended and is marked as prescribed.

According to the *Alert Digest*, the committee's analysis is that these sections:

> … make it an offence to supply certain electrical equipment unless certain conditions or authorisations are met or obtained. These sections may impose a burden on an accused to prove that these conditions are met. The statement of compatibility notes that various provisions in the new division 7 impose an evidential onus on an accused, and discusses the effect of these provisions on the presumption of innocence …

According to the Scrutiny of Acts and Regulations Committee:

> … the statement of compatibility does not consider whether new sections 54 and 55 limit the presumption of innocence.
>
> The committee notes that any provision that places a legal onus of proof on a person accused of a criminal offence may engage the charter right of an accused person to be presumed innocent until proved guilty according to law in s 25(1). The committee's practice note indicates that the statement of compatibility for a bill that places the onus of proof on an accused should state whether and how that provision satisfies the charter's test for reasonable limits on —

an individual's —

> rights. In particular where a legal onus is imposed the analysis in the statement of compatibility should address whether an evidential onus would be a less restrictive alternative reasonably available to achieve the provision's purpose.

And then the committee conclude that they are going to:

> … write to the minister seeking further information as to the compatibility of new sections 54 and 55 with the charter's right to the presumption of innocence, whether these sections impose an evidential or legal onus and, if the latter, whether an evidential onus would be a less restrictive alternative reasonably available to achieve the provisions' purposes.

I do intend to pursue that in the committee stage.

I mentioned earlier that Energy Safe is very much regulated by the minister in a way that I think many of us would have some issues with. Let me just find this.

Mr Leane — Maybe we should have a recess.

Mrs PEULICH — Play time? This is what happens when you are just about to log in and someone rings. It throws everything out of the system.

An honourable member — Can I have your mobile number?

Mrs PEULICH — Do you want my number? Anyway, I will have an opportunity to pursue these in the committee stage, hopefully by which time I will find the relevant documents and we will cover those in greater detail in the committee stage.

With those words, we do not oppose the intent of the legislation. I have concerns about the breadth of powers of Energy Safe Victoria. I have concerns about how it will exercise its unbridled power to regulate energy supply in a less certain environment, which has been identified by the Australian Energy Market Operator. In a document entitled the *Integrated System Plan* (ISP), dated July 2018, for the national electricity market I think there are issues that we are going to have to seriously deal with, and I am just referring to page 5.

> In the NEM —

the national energy market —

> market participants make investments in generation and storage in response to consumer demand and relevant government policies. The underlying assumption in the ISP is that, in an efficient and competitive market, investors will choose the lowest cost overall solution.

It goes on to talk about the level of investment that is going to be required in order to see a future industry develop in an efficient and competitive way:

> The investment costs associated with replacing old and retiring infrastructure with new plant, in one of the most capital-intensive industries, are significant and unavoidable.

It goes on to say that generators should be retained for as long as they can be economically relied upon. I think these are the problems here with an ideologically driven Labor government through its forced closure of the Hazelwood power plant, the impact this has had on energy supply and its reliability, and the powers that Energy Safe will have through its capacity to control supply and potentially cut off certain classes of consumers when energy supply is threatened or vulnerable.

This particular document also indicates that replacing old and retiring infrastructure will cost anywhere from $8 billion to $27 billion depending on assumptions that are made about economic growth and rate of industry transformation. It goes on to say:

> This level of capital investment is going to be needed, irrespective of this plan.

It is a document that I would certainly recommend to members. There are some other questions that I would like to pursue in the committee stage, like, for example, the push by government towards electric vehicles and what impact that will have on the use of power and on the safe supply of power. Because of course the damage and the cost of not having a safe supply of power is phenomenal, not just in terms of critical industries but in terms of any sort of manufacture. Anything that goes offline can cost a business substantially, can lay people off work and can force compromised health delivery outcomes in hospitals.

Security of electricity supply is vital. The virtual-based generator that the government recently announced it was going to support will give Energy Safe the power to be able to control who accesses energy when perhaps it is less reliable, and that will have a significant impact on consumers, both in terms of cost and in terms of employment, in terms of operations and so on.

Whilst the bill on the surface looks like a fairly well intentioned bill, the fact that Energy Safe, the key regulator, whose powers are phenomenal, is so critical to the operation of this scheme means there are a number of concerns that we have and we intend to pursue in the committee stage. I will end there.

Ms DUNN (Eastern Metropolitan) (10:42) — I rise today to speak on the Electricity Safety Amendment (Electrical Equipment Safety Scheme) Bill 2018. The Greens support this bill.

The ACTING PRESIDENT (**Mr Gepp**) — Thank you for that succinct contribution.

Mr LEANE (Eastern Metropolitan) (10:42) — I actually got a lot out of Ms Dunn's contribution then.

Ms Pulford — Your challenge is to beat it!

Mr LEANE — I am talking in comparison. I am very pleased to speak on the Electricity Safety Amendment (Electrical Equipment Safety Scheme) Bill 2018. This bill amends the Electricity Safety Act 1998 and the Energy Safe Victoria Act 2005. I have spoken on previous amendments to these acts, and I like to always say that the Electricity Safety Act 1998 is one of my favourite acts in Victoria because it covers my A-grade electrician's licence which, while Energy Safe Victoria (ESV) is in the box, I always keep financial.

Mrs Peulich — You might need to go back to it one day!

Mr LEANE — It is funny you should say that, Mrs Peulich, because I actually pulled it out of my wallet before I spoke and checked the expiry date, and it is 2022, so I reckon I might have to get my act together before then.

But as I said, I am very pleased to speak on this bill. I do not think this bill is as complex as Mrs Peulich may have described, and it is certainly not as sinister as Mrs Peulich may have described it as being. I think the regulatory powers — actually I know; I do not think — that Mrs Peulich expressed concerns about in her contribution have been in place since 1999. This bill does not introduce any of those powers that she is concerned about. I do not think anyone should be concerned with those particular powers, because these acts and ESV are really there to keep Victorians safe as far as their interaction with the electricity supply, electrical equipment and electrical products goes.

This particular bill is centred around those particular products for which Victoria, along with Queensland, is spearheading a new national scheme which will make it much easier for everyone involved in using equipment, including consumers. There will be a national regulatory compliance mark on all equipment, from toasters to drills, and consumers will be able to just identify this mark. They will be able to check anything about that particular product around its electrical safety. Also it will be much easier for the regulator if there has

been a problem with any equipment and there needs to be a recall. It will be a much easier process going forward for that to go ahead.

In line with this new safety regime, which as I said Victoria is leading the country on as far as nationalising this particular scheme —

Mrs Peulich — I don't think so.

Mr LEANE — Well, in this particular initiative —

Mrs Peulich — No, it was Queensland.

Mr LEANE — Mrs Peulich, you seem to think that ESV are some sinister communist front. Taking into account your contribution, you seem to think they are some sort of front to take over the world, whereas in my interactions with ESV I have found that they are actually men and women who want to make sure that the electrical supply, electrical equipment and the use of electricity in this state are as safe as can be for everyone. This is where this particular bill is coming into place.

Along with this new initiative of course there are some offences connected with not complying with it. These include offences connected with supplying or offering to supply unregistered in-scope electrical equipment, failing to register as a responsible supplier, the supply or onselling of in-scope electrical equipment which does not carry the regulatory compliance mark (RCM), falsely marking in-scope electrical equipment with the RCM, the supply or hiring out of in-scope equipment which is not safe or is not compliant with prescribed requirements and failing to supply ESV on request with the relevant documentary evidence for in-scope electrical equipment. I think they are all important parts of ESV, making sure that this regime is complied with.

I look forward to further opposition contributions on this bill. Actually I might have been misleading the house then. I am actually happy to admit that I probably did mislead the house then, because I am sure there will be all sorts of concerns around evil wind farms and solar farms. I know one of the members of the Liberal Party who looked to be coming into this chamber is anti-renewable energy unless it is a solar farm on her land that is going to make her a heap of money. There is that sort of thing going on.

As we have said, I am sure there will be all sorts of weird contributions from those opposite, but the bottom line is that this is a very sensible bill that further makes the electricity regime in this state safe.

Mr MORRIS (Western Victoria) (10:49) — Mr Leane, I am sure you will learn something after having listened to my contribution, and Mr Ramsay's, on the Electricity Safety Amendment (Electrical Equipment Safety Scheme) Bill 2018. I am pleased to follow other speakers — and I congratulate Ms Dunn for her significant contribution to this particular bill.

It is an important point to note that in this term of Parliament we have lost at least 22 per cent of Victoria's energy supply with the closure of the Hazelwood power station. I know Mr Leane is in denial about why it is that Hazelwood closed, but we all know why Hazelwood closed. It was because of the direct actions of the Andrews Labor government when they tripled the tax on coal. From there the operators of the Hazelwood power station said, 'This doesn't stack up anymore. We're going to pack up and go'. As a result we saw a 22 per cent loss of energy supply in the state of Victoria.

Every single Victorian knows that it is both electricity and gas prices that have spiralled out of control under this government. They know it is because of the direct actions of Daniel Andrews and his mates that this has occurred and that people are paying more for their electricity and gas. Then Daniel Andrews and his mates came up with the remarkable idea to give $50 of taxpayers money back to them if they logged onto a website and gave the government all their personal details.

I certainly share significant concerns about the use of personal details, owing to what has been exposed this week in the shocking, muckraking, mudslinging, desperate, bottom-of-the-barrel politics that this government has delved into. I certainly think that Victorians need to have a good, hard think about what type of Premier releases the details of a lawyer and details about that lawyer's young daughter publicly in an attempt to try to smear a political opponent. It is a shocking —

The ACTING PRESIDENT (Mr Gepp) — Order! Mr Morris, I invite you to come back to the bill. In the matters that you are now canvassing you have strayed a long way away from it.

Mr MORRIS — Indeed. There was a logical sequence to how I got to where I got to, Acting President, but I certainly will take your guidance and head back closer to the substance of this particular bill. I thought I might go to some of the snake-oil salesman tactics of this government with regard to the Warrenheip battery.

Mr Leane — What are you talking about? Are you talking about the bill at all?

Mr MORRIS — I am. This bill refers to reliability of supply and one of the —

Mr Leane interjected.

Mr MORRIS — Just listen for a moment. There was an announcement by some of the snake-oil salesmen in the government that there was going to be a battery in Warrenheip. I know Ms Pulford knows about this particular empty, hollow announcement.

Mr Leane — The bill doesn't talk about the battery at Warrenheip.

Mr MORRIS — No, not directly, but it talks about supply and reliability. This was one of the marquee announcements that was made by your government, Mr Leane, that this Warrenheip battery was going to ensure supply in particular into Ballarat. In February 2017 there was an announcement about ensuring supply of electricity in Ballarat through a giant battery — $25 million for a battery that was going to ensure supply into Ballarat. This came directly off the back of the forced closure of Hazelwood, and from there the government said that they thought they might introduce this battery. They said it was going to be in place before the summer of 2017. Before the summer of 2017 there was going to be a battery in Warrenheip that was going to ensure supply into Ballarat. However, since then it has come to pass that there was no battery in Warrenheip to ensure supply prior to the 2017 summer, and indeed there is still no functioning battery in Warrenheip to guarantee supply. The government have said they hope to have this battery in place and operational before a very interesting date this year. Mr Ramsay, do you want to have a stab in the dark at which month they want to have it operational by?

Mr Ramsay — Before Santa comes.

Mr MORRIS — They have said they might have it operational in November 2018. How remarkable that this government, if you believe them — and you could not believe them in the past, because they said it was going to be before the 2017 summer — might just have this Warrenheip super-battery operational by November 2018. Can we believe them? Well, if we take them on their previous track record, we clearly cannot. How is this massive battery going to ensure supply? How long —

Mr Leane — On a point of order, Acting President, the President made a ruling, and I think that the scope of this bill does not cover the battery in the particular area of Warrenheip. I think we are straying way off what the bill covers.

Mr MORRIS — On the point of order, Acting President, I did note closely the President's ruling and I actually jotted down a couple of things. The President said that reliability of electricity supply was certainly covered in this bill but not so much pricing. I have only just in passing mentioned pricing, but I have certainly focused on reliability, which is what the battery in Warrenheip is directly related to.

The ACTING PRESIDENT (**Mr Gepp**) — Thank you, Mr Morris. I do refer back to the President's earlier ruling that reliability is in scope within the bill, and there is a relationship between the battery that is being talked about and reliability. On that basis I will ask Mr Morris to continue.

Mr MORRIS — Thank you, Acting President, and I thank Mr Leane for his point of order. It is always good to be kept on one's toes with regard to these matters.

Again I raise the concern that we find ourselves in a situation where the government says one thing and does another. We simply cannot trust this government, whether it is with the Warrenheip battery, with personal information or to keep their word not to raise taxes and charges, as we know they will at every turn.

To go back more specifically to the bill at hand, the bill will replace current separate jurisdictional schemes which have operated independently of one another in relation to the same electrical equipment, leading to confusion and additional regulatory burden. That is something that we should be looking to reduce. Regulatory burden not only makes it hard for businesses to do what they do but also increases costs, and that is something that all governments of whatever persuasion should be moving to reduce rather than increase. Regulatory burden just makes it hard for people to operate and indeed just makes people's lives harder.

Presently Victoria has a two-tiered system divided between high-risk or prescribed electrical equipment and low-risk or non-prescribed equipment. This bill will introduce a third, medium-risk, category and will relabel the existing categories as level 1, being low risk; level 2, being medium risk; and level 3, being high-risk electrical equipment. The bill will require manufacturers and importers of in-scope electrical work in Australia or New Zealand, known as ' responsible suppliers', to register themselves and the level 2 and 3

in-scope electrical equipment they supply in Victoria on a central database.

The new registration requirements will enable industry to register themselves and their equipment on a single database for the purposes of each participating jurisdiction, replacing duplicative registrations in multiple databases. Furthermore, the bill will also introduce a new requirement for responsible suppliers and onsellers of in-scope electrical equipment to ensure that the equipment they offer or supply carries the approved regulatory compliance mark. I suppose this is a point that is important. When we go to an electrical store to buy a piece of equipment, whether it be a fridge or a hairdryer —

Mrs Peulich interjected.

Mr MORRIS — or a hair straightener — I do not have much use for a hair straightener, Mrs Peulich, with not much hair left unfortunately — we certainly as a community should know that we are not going to be injured or hurt.

Ms Pulford — On a point of order, Acting President, it is really cute this moronic filibustering that we have had going on all week, but I just make the point that Mr Morris's hair and his need or lack of need for a hair straightener is unbelievably far from the scope of the bill. I would encourage you, Acting President, to reflect on the President's ruling.

Mrs Peulich — On the point of order, Acting President, it is actually very much within the scope because it is talking about electrical equipment that is used by individuals in a personal consumer capacity rather than in an industrial or commercial capacity.

The ACTING PRESIDENT (**Ms Patten**) — Thank you. I do not uphold the point of order. However, Mr Morris, can you look at the bill and look at the big picture rather than getting a little bit too trivial in the matters.

Mr MORRIS — Thank you, Acting President. I can understand Ms Pulford being rather tetchy, with the corrupt, rorting government that she is a part of falling apart at the seams around her at this point in time. I look forward to, at any time Ms Pulford tries to make any cute contributions in this chamber, jumping to my feet and calling a point of order to make sure that she is always on task and never makes even the slightest bit of an irrelevant contribution. It is remarkable.

Mrs Peulich interjected.

Mr MORRIS — These things go both ways, Mrs Peulich, as we well know.

The bill further increases the powers of Energy Safe Victoria, including the ability to issue infringement notices in relation to new offences and the continuation of power to issue prohibition notices. Energy Safe Victoria will also have the power to cancel registrations and refuse, vary, suspend or cancel certificates subject to a right of review in the Victorian Civil and Administrative Tribunal, or VCAT. After the passing of the Residential Tenancies Amendment Bill 2018 last night I am quite sure VCAT is going to be overrun with requests for pets in properties, whether they be elephants or crocodiles, as Mr Dalidakis confirmed last night will be allowed into residential properties under the bill that was passed last night.

There have been a number of concerns highlighted, including one surrounding the electrical equipment safety scheme, which was developed around 10 years ago by various jurisdictions. To this point New South Wales, for example, has expressed no interest in participating in this scheme. That lack of consistency across the country is always going to be a concern. The costs associated with operating and maintaining this scheme are covered by registration costs paid by suppliers. However, given this scheme is driven primarily by Victoria and Queensland, it should be noted that Victoria should not be facing additional costs if other jurisdictions are slow to join this scheme or indeed if they ultimately do not join the scheme at any time at all.

Mr RAMSAY (Western Victoria) (11:04) — I do note Ms Pulford's point of order, but —

Ms Pulford — Your hair looks very nice, Mr Ramsay.

Mr RAMSAY — No, I was not going to mention my hair, Ms Pulford. I was actually going to make quite a brief contribution, but the President has rather opened up an opportunity and we need to talk about the liability of power. We need to talk about a couple of those things, but I will cut to the chase in respect to this particular bill, the Electricity Safety Amendment (Electrical Equipment Safety Scheme) Bill 2018. It is an important bill, albeit a fairly minor one as far as the technical aspects go. I note that it came before our party room back in February, so this bill has sat around for a long, long time before coming before this chamber.

It appears that the government is slightly agitated about the time we are taking in the debate process, despite the fact that it has floundered around for nearly nine

months. Nevertheless, we will dispense with the bill today, Ms Pulford, hopefully. We will dispense with the bill because we have a non-opposed position and we strongly support anything that creates greater safety in the workplace, particularly in the electrical safety workplace. In a past life I had some experience with Energy Safe Victoria and also with electrical safety in the workplace and in the household, particularly within our farming communities that have no real separation between house and workplace with respect to the work they do.

This bill will amend the Electricity Safety Act 1998 to implement the electrical equipment safety scheme, a harmonised scheme for participating jurisdictions in Australia and New Zealand. It will ensure that consistent safety requirements are in place for relevant in-scope electrical equipment. That all sounds pretty good, up until the point where the harmonisation seems to break down with New South Wales because they do not seem to be interested in harmonising at all. So we have a significant state that, as far as I understand, does not want to participate in the scheme. I am sure Mrs Peulich will use the opportunity in the committee stage to gain a better understanding of why that would be so.

Also around the costing — I am not talking about the costing of the power supply but more about maintaining and operating the scheme by the registration costs, which will be provided by the suppliers — I would be interested to know how that trickle-down effect will occur in respect to the end user in respect to this scheme. I suspect that also will be teased out during the committee stage.

In essence, the bill will bring Victoria into a harmonised electrical safety scheme. I think that is a good thing. It will eliminate the regulatory burden faced by suppliers of electrical goods. I think that is a good thing. If fully implemented, the scheme will also reduce the registration costs for electrical suppliers — well, we will see if that happens — because they will no longer need to pay to register in multiple electrical safety databases across Australia. Presumably that is the benefit of harmonisation of the scheme. Again, we will wait and see if in fact that actually occurs.

Hopefully consumers will also benefit from the legislation as different jurisdictional safety labels will be simplified into one. That is a good thing. It will be a uniform and easy to understand label. Hopefully that will be so. It will also help to eliminate confusion and enhance electrical safety awareness and understanding. Again, that has very good merit as an objective to improve the safety aspects of electricity supply and access.

We have a two-tiered system in Victoria divided between high-risk or prescribed electrical equipment and low-risk or non-prescribed equipment. The bill is going to introduce a third category of medium risk and will relabel existing categories as level 1, being low risk; level 2, being medium risk; and level 3, being high risk. That should be easily read. The bill will also require manufacturers and importers of in-scope electrical equipment in Australia and New Zealand, known as responsible suppliers, to register themselves and level 2 and level 3 in-scope electrical equipment they supply in Victoria on a central database.

The new registration requirement will enable industry to register themselves and their equipment once in a single database for the purposes of each participating jurisdiction, replacing duplicative registrations in multiple databases. It is quite a mouthful, but really I think the point of all this is to create a simpler, uniform, harmonised scheme that all will benefit from. My hope is that will be the case.

Mrs Peulich and Mr Morris spoke about the potential new offences and the amended offences under the Electricity Safety Act 1998 to incentivise compliance with the new obligations. Unfortunately that is the big stick to try and encourage appropriate compliance. These penalties for these offences will be a maximum of 60 penalty units for individuals or, for those uninitiated in penalty units, around $9500, which is quite substantial, and up to 240 penalty units, or around $38 000, for companies. It is a quite big stick approach to compliance under the scheme for individuals and companies.

The bill also increases the powers of Energy Safe Victoria, including an ability to issue infringement notices in relation to the new offences and continuation of a power to issue prohibition notices. Energy Safe Victoria will also have the power to cancel registrations and refuse, vary, suspend or cancel certificates.

Mrs Peulich has raised a concern around the increase in the powers of Energy Safe Victoria. As we know, there are quite a lot of acts that sit under the domain of Energy Safe Victoria. The Gas Safety Act 1997 is one. Obviously we have raised concerns in relation to the reliability of gas supply to the state of Victoria, and it is disappointing to see that the Andrews government is still reluctant to provide conventional gas exploration in this state. It is an absolute necessity. It has to happen. You can keep the moratorium on fracking, but we must move towards being able to access gas onshore, in a

safe manner, with the agreement of landholders and with an appropriate royalty paid in the state of Victoria. You are just going to have to do it, Ms Pulford. Regardless of who is in government next year, that should be the main objective of the incoming government.

I have raised concerns around the plethora of wind farms for the very reason the President described in his ruling, the lack of reliability. We know that when the wind don't blow, the turbines don't flow. We also know that when the sun don't shine, solar power becomes intermittent. To have significant renewable energy targets — 40 per cent by 2020 — puts a huge impost on the state of Victoria. But at the same time, having a policy that actually removes coal-fired power generation is going to have a significant impact on the reliability of energy generation in this state for years to come.

Again, I implore the incoming government to make sure that we have reliability of energy generation, as well as the safety aspects as described in this bill, to be able to power the industries we need to provide economic growth and jobs and the standard of living. We know that, thanks to the federal coalition policies, we have strong economic growth in this country. Victoria is a beneficiary of that, but we cannot rest on our laurels. We have to keep investing in energy generation in this state, without huge taxpayer-funded subsidies, to provide the reliability that the President referred to in his ruling.

In all, without procrastinating, because there are more important things to do tonight and we do not want to prolong the agony of Ms Symes and others who want to see the quick passage of this bill, and given it is my last opportunity to speak on a Friday in this Parliament, in fact any parliament possibly, I could talk about all sorts of wonderful things. Perhaps I will wait until the valedictory speech next Thursday to fulfil some of those obligations on the things that I want to talk about. Nevertheless —

Mrs Peulich interjected.

Mr RAMSAY — Thank you, Mrs Peulich, it is very important. I see that my perhaps replacement is investing heavily in energy across Western Victoria Region — or is proposing to — without taxpayer-funded subsidies, I understand as well. She is not only doing the talk, she is doing the walk as well, so congratulations to her if she is successful in getting a council permit, not to mention a state permit of course, given that she said there would be no taxpayer subsidy to support that UK company to invest in Australia for solar power generation.

Having said that though, of course I am a strong supporter of the use of solar panels where possible and where safe, and that is what this bill is about — that is, providing safety within a harmonisation scheme for electrical use. Of course there are penalties applied to those that do not comply, but I would like to see New South Wales become involved in that harmonisation. It is ridiculous to have the largest state in the country not being a participating member in a harmonisation scheme that is supposed to be Australia-wide and includes New Zealand as well. I look forward to New South Wales coming on board in respect of this legislation to provide safety for electrical use.

Mr O'SULLIVAN (Northern Victoria) (11:16) — I rise to speak on the Electricity Safety Amendment (Electrical Equipment Safety Scheme) Bill 2018. Mr Ramsay covered quite a few of the areas that I was also going to speak about. I am not sure that I have got the eloquence of Mr Ramsay in his enunciation of these issues, but I will give it a try anyway. I will put it in terms that are more relevant to people in northern Victoria than they would be to the sophisticated people of western Victoria, where Mr Ramsay is from.

This bill is an important bill in relation to the safety of equipment used in the electrical world. I regard myself as being a practical type of person. Whether it is mechanics or whether it is plumbing or a whole range of other areas, I would like to think that I have got a practical application that I can bring to the table in relation to those things, but I will admit that anything to do with electronics is something that I am not as au fait with as I am with other areas. I am not an expert in electronics, but I do understand the need for safety when we are dealing with anything in the electronic world.

I do not want to bring a sour note to the chamber, but I would like to pay my respects to the worker who was killed yesterday in a workplace accident in Box Hill and to his family. That is an absolute tragedy. Safety is something that we need to ensure we can provide in the best possible way that we can. That is why I am certainly pleased to speak about the safety elements within this bill.

One thing that does concern me about the general area of this bill in relation to electricity is what we have seen in the last little while in this state in relation to the prices. I know that sometimes you have to spend a little bit of money to make things safer, and in some circumstances that is perfectly legitimate, but what we

have seen occur in this state in the last four years is a level of increase in the price of electricity, particularly for the mums and dads at home in their houses and also for business, which I find very difficult to comprehend. I know that people who have to actually pay those electricity prices are dumbfounded by the rise in their power bills over the last four years in particular.

Nonetheless we need to ensure that when power is connected it is done in a safe way. We need to ensure that when you are buying a product, an in-scope product, that that is safe as well, and I think we have come a long way in that space. By way of example, just recently I was at the Mallee field days up at Speed. I was involved in a stand up there, and one of the things that happened on the first morning of those field days was that the organisers of the field days came around to check that we had the prescribed safety requirements in relation to the supply of electricity to that particular site. I should say that my colleague at the time was Peter Crisp, the member for Mildura in the Assembly, and he was an engineer in the electrical world in a former life. He was right on the job and made sure that everything was in order and tagged appropriately to ensure the safety of the people involved. We have come a long way in that area, because that probably would not have happened 10 years or more ago when things were just left as they were. We are much more conscious of that now, and I was very pleased to see that we fully subscribed to that level of safety, which is paramount.

In terms of electricity here in Victoria, we have spoken and heard a bit about renewables here today, and certainly I support renewables, as I think everyone does. It needs to be done as part of the mix of electricity supply for the state, for not only housing and for the home but also for business. People need a reliable, safe electricity supply to undertake their business. That same safe supply is needed for the house, because one of the things that can create problems in terms of safety is when you do not have security of supply. There could be a break in the electricity supply for whatever reason, then it might come on, it might go off and then come on again. When that power comes on the volume of the supply can create a problem for some equipment in terms of the way that they start up. The influx of that electricity coming to that appliance at that time can create safety issues.

One of the things that I believe we need to do is ensure that our implements are safe. It is not only the implement itself; it is the supply of electricity coming to that implement. If there is a disruption in that, and that machine or appliance, or whatever it may be, has to go through a complete restart, that is where problems can occur and safety issues can occur. So I think that the safety of supply — readily having an appropriate supply of electricity — is also a part of the mix in terms of having safety in anything to do with electricity.

Some of the policies of this government have actually undermined that regular, safe supply of electricity to businesses and to homes. As we know, this government has closed down Hazelwood power station, down in the Latrobe Valley, which supplied 22 per cent of the baseload power for the state, and this government is trying to use renewables to cover the amount of power that Hazelwood did produce. But as we know, and as Mr Ramsay has already pointed to, the fact is that solar panels do not generate power when the sun is not shining, and at night-time the sun does not shine. And if it is not windy, wind turbines are not producing anywhere near as much power as they do when it is quite windy.

While absolutely I agree that there needs to be a place for renewables, and I think we all agree with that, they need to be a part of the general mix of power supply in this state. They are not reliable enough for baseload power, so we need to ensure that we have got a whole mix, and —

Ms Truong interjected.

Mr O'SULLIVAN — Batteries, Ms Truong, absolutely play a role in that, but as we know, the standard and quality of the batteries right now is not good enough to supply the whole of the state. That is something that will improve. There is no doubt that technology is amazing in this space, and mankind is very good at finding solutions. That is certainly a solution into the future. It is not there at the moment, but it will improve. That will be beneficial for the whole state, but it is not there yet.

I was talking to a gentleman last week who owns a hotel — a large hotel — and he said that to have a guaranteed supply of electricity to his hotel, because his power bills had gone up so much, he did two things. He put solar panels on the roof, so that was beneficial, but also he had to go and buy a diesel generator that would automatically kick in if there was a disruption to the power supply from the grid. He also made mention that at times he is actually contacted by the power company, and they ask him to turn on his generator because they want to use his supply elsewhere in the grid. They actually want him to turn on his generator at times to save power. I am not sure that is the solution, asking people to turn off their power. I am not sure that is the solution to a regular supply.

That is where we are. We also know that down at the desal plant there were many, many diesel generators brought in. I am not sure of the exact number.

Ms Bath interjected.

Mr O'SULLIVAN — My colleague Ms Bath says it was at Morwell. Diesel generators were brought in in shipping containers to be used as a backup for power supply. I am not sure, in 2018, that is the sort of continuity of supply that we require to cover off on the closure of the Hazelwood power station. That is not what we are about.

I was talking to my boss, Peter Walsh in the Assembly, the other day and he was recently at a business. This business does not want to be publicly named. This particular business is a reasonably sized business in regional Victoria. Their power bill has gone up by $5 million a year in just the last four years. That is really hurting their bottom line, and they are considering their options in terms of what they do next as a result of having such a massive increase in just one aspect of their input costs in terms of electricity.

What I found very amusing — and Mr Finn would probably understand this better than I would — is that we have heard in the last week or two the Premier and the Minister for Energy, Environment and Climate Change come up with a new excuse for the rise in power prices. What have they come up with? They have come up with a scenario related to something that happened some 25 or 30 years ago. They are blaming Jeff Kennett's privatisation of the power industry for the rise in bills today, which is absolutely ludicrous.

It is interesting that power bills were fairly steady for about the first 20 years, but now all of a sudden, in the last four years, they have gone through the roof. The government is going to blame it on Jeff Kennett, because they are telling us how bad privatisation is. What I find interesting, and Mr Finn might be able to help me out, is that I could come up with a couple of examples of how just recently this government has decided that privatisation is the way forward.

Mr Finn interjected.

Mr O'SULLIVAN — The land titles office — I thought you might have come up with that one, Mr Finn. I came up with another one: the port of Melbourne. They thought that one was worth privatising. There are a couple where they have decided that privatisation actually suits their argument, so they are happy to go with that. We could even go back to the state bank if we want to go back a while. We could go back to a whole range of other scenarios as well, but I am not going to go down that path.

I will say that it is an absolute fallacy to blame the massive increase in electricity costs in the last four years on something that happened under Jeff Kennett some 25 years ago. That is absolutely a stretch that is way too long. No-one believes that, and I think the more the Premier and the Minister for Energy, Environment and Climate Change say that, the more they actually hurt their own credibility. I suggest that that is something that no-one believes, so they are probably best to leave that one alone and not go back there.

One thing I do want to talk about, just in talking about household electricity prices, is something that is a sad issue whenever I think about it. I worry about the older people who are sitting in their homes on their fixed incomes — their pensions and so forth. They must dread it every time the mailman comes along to their house. They must absolutely dread it, because nowadays we know with email and so forth, and text messages —

The ACTING PRESIDENT (**Ms Patten**) — Order! Mr O'Sullivan, we had a ruling from the President earlier around the cost and pricing of electricity — it is out of scope. If you could bring yourself back to the bill for the last 90 seconds.

Mr O'SULLIVAN — My apologies. I was not in the chamber to hear that ruling from the President. If I have strayed a little from the bill, I do apologise. I can come back to that on another day in another speech, because certainly that is a topic that needs to be covered.

Safety in relation to the electrical equipment safety scheme is something that is paramount to everyone in this state. As I said earlier, we saw a tragedy yesterday where a worker was killed. It had nothing to do with electricity, I believe at this stage, but just ensuring that people can get home safely when they do go to work I think is a proposition that we can all expect is a given. So we should be doing anything we can to make our society and our community safer, particularly with electricity. You cannot see electricity. You cannot see it so it makes it —

Mr Melhem — You can feel it.

Mr O'SULLIVAN — Mr Melhem says you can feel electricity. Yes, that is true. You can feel it but you cannot see it. Sometimes the safety of something when you cannot actually see is difficult to fully comprehend

and respect, but you certainly can feel it. Mr Melhem, I grew up on a farm and there was —

The ACTING PRESIDENT (**Ms Patten**) — Thank you, Mr O'Sullivan. Your time has sadly expired.

Ms BATH (Eastern Victoria) (11:31) — I rise this morning to make a few comments on the Electricity Safety Amendment (Electrical Equipment Safety Scheme) Bill 2018. If I could just pick up the point of my colleague, Mr O'Sullivan, he was going to a point in terms of: you cannot see electricity but you can certainly feel it. I will finish his sentence because I am also a farmer's daughter and I know that. As a bit of entertainment when I was younger, my older brother would hold onto the electrical fence and then grab hold of me, and there was a lovely warm pulse that went through us, usually a yelp at the end of that conversation and an admonishing also from my brother. Thankfully we all knew that the electrical fences that exist on dairy farms are very, very low voltage and that it is to scare and ward off the cows from going through that fence rather than to do any damage. So I concur with Mr O'Sullivan that electricity is incredibly important.

It is actually the thing that is driving this house today. It drives our society, it enables people to perform operations in our hospitals, it enables students to sit at their desks and find out about the world, it enables industry and it is the pulse of our state and very, very important to us indeed. Also important is the fact that we need to have safe appliances and safe equipment, and it does concern me that in past times we have had equipment and appliances that have come in from overseas that have not met our standards and have created both small and localised accidents, and rather larger ones as well. So it is super important that we have a system that supports the safety of people using that equipment in a variety of formats, whether it be in a household situation or whether it be through industry. Safety is paramount, and I always go through the old adage of, 'Do not get the toast out of the toaster when the toaster is still connected and switched on. Please use that knife when everything is unplugged or, better still, hopefully don't burn the toast'.

So with that I would like to look at some specifics in and around this bill. The bill amends the Electrical Safety Act 1998 to implement the electrical equipment safety scheme, and in doing this it looks to harmonise with other jurisdictions in our country. Noting that, it is interesting that the scheme has been driven in Queensland and specifically here in Victoria. It has taken some years to independently work on this scheme. Indeed I wanted to do some research about the Queensland jurisdiction, under which this is operating in the current time, so I looked at the Queensland government workplace health and safety WorkCover website to see specifically what is meant by in-scope equipment.

This bill looks to increase the categories of in-scope equipment and change them up from there being only two categories, as there are now in Victoria, to inserting a third category and creating, therefore, different requirements for each category. Looking at the overall appliances and equipment across the state that would be used by Victorians, we have somewhere in the vicinity of 50 000 different pieces of equipment and appliances. Indeed those categories are based on safety requirements or at-risk requirements, so we can look at some of the types of appliances that are in category 3. Category 3 is a high-risk category, and it looks at arc welding machines, but also it looks at clothes dryers, toasters — to reference my point before — and microwaves. Category 3 looks at hedge clippers and kitchen machinery, lawn-care appliances and also heating appliances, and you have certainly got the full breadth of industrial equipment. Category 2 talks about floor polishers or scrubbers and flexible heating pads.

When there are three categories and the equipment needs to be distributed in and allocated to those, it is very important that the work done by this government relates to educating industry and key players in the marketplace about how this scheme will work and how that equipment can be registered properly so that there can be compliance and safety throughout this new scheme.

A number of other points were raised in the debate. I acknowledge the work done by my colleague in the lower house and our shadow minister for resources and energy. Mr David Southwick.

Mr Finn — He's a good man.

Ms BATH — He is a very good man — a very thoughtful man. In his contribution he went to the point that there is a concern that the cost burdens associated with creating this scheme may end up at the end point, meaning on the consumers. Will an extra burden be put on people who, in truth, are already suffering under additional burdens such as additional cost-of-living pressures, including the increased cost of electricity?

Another point in relation to this bill that I would like to raise is that the state of New South Wales has decided that at the moment they are not interested in going into this particular scheme. I question and wonder why they

prefer to remain outside this scheme. It is certainly unclear in relation to that.

There are some reasonable aspects to this bill, and The Nationals will be taking a not-oppose position. But as I have said before, we need to address how this cost burden will be borne by the market.

There is another issue that I find quite interesting in relation to the safety of our electricity supply and also making sure that there is security of electricity supply. It relates to a very recent announcement by the Andrews government in relation to microgrids. Indeed the government came and put some money on the table for a grant program in relation to microgrids. Only a few weeks ago, on 21 August, they said that there would be a program to set up new energy technology in the Latrobe Valley. I concur with previous speakers that it is vitally important that we continue to develop new, sustainable and renewable forms of electricity as well as keeping that despatchable baseload power there — that instantaneous, flick on the switch, there it is. We need to keep that while we are progressively and securely moving into a reliable market of renewables.

However, I have some questions in relation to this program. This program came out, as I said, on 21 August, and applications for this grant system close on 17 September. That is only a month for people to look into these projects. The announcement says:

> Eligible project types include microgrids, virtual power plants and smart embedded networks which have renewable energy as the primary energy source.

So there it is. There are some things happening there in that space, with a month for people to put in an application, which raises concerns for me about the fullness, comprehensiveness and scientific nature of these grants. Will they be properly submitted, and what will they look like? The other point in relation to that is that there has been some research in relation to microgrid initiatives. Over in the USA, in Massachusetts, research shows that these microgrid initiatives are fraught with challenges in terms of maintaining stability. We have already got a supply problem in terms of our summer electricity supply, our blackouts and our brownouts, so I am concerned that if overseas jurisdictions have found that microgrids can be fraught, then this system needs to be worked through very closely. The other point I make in relation to that is the fact that this government again and again seems to put the burden back onto businesses, to households, to consumers rather than finding their own energy solutions that give us that reliability.

In finishing my contribution on this bill I just want to go to something that was said earlier by Mr O'Sullivan. It relates to security of supply and the fact that we did see 105 diesel generators —

Ms Lovell interjected.

Ms BATH — Thank you. I advise our whip that I am very happy to continue talking; I am happy to discuss this. The other issue relates to the fact that they had to bring in diesel generators to the Energy Brix site in Morwell. When I quizzed the minister for energy in relation to that electrical supply guarantee the minister came back with an Australian Energy Market Operator (AEMO) report — 'Go and look in the AEMO report'. When I delved into that AEMO report it actually came up with the cost to sandbag last year's energy supply over the summer period. It was $51 million — $51 million for people to be able to turn on their electrical equipment at any point in time and use that equipment. I say to you that this was because they shut down the power station; they burdened the companies with $252 million worth of coal royalties tax.

The other concern is in relation to safety. If we are talking about safety in electrical equipment, if there are these brownouts that can occur and have occurred over periods of time, what will that do to our electrical safety equipment? What will that do to keeping our fridges working and any particular equipment?

We can also look at industry. I was speaking with a pharmacist recently in the Latrobe Valley. Again picking up the point of security of supply, we know that pharmacists often have to keep very expensive medicines and drugs in stock. In this particular pharmacy they keep chemotherapy liquids and treatments — concoctions for chemotherapy patients. They have had to go out and buy not one but two backup generators to make sure that if the electrical system fails during the summer period — or fails at any point in time — there will be security of supply. Not one but two very expensive diesel generators sit there taking up space in their pharmacy. They actually separate out their drugs and chemicals to make sure that if something happens, they have security of supply. That equipment is hugely expensive. So we see our local industries having to fork out thousands and thousands of dollars not only to sandbag their industry but also to be able to supply people in our communities with the things that they need to get better and to go about in some cases curing a disease and in other cases ensuring that there are healthy outcomes for them.

In summing up, as I have said, The Nationals will be taking a not-opposed position. This bill will certainly bring to Victoria a harmonised electrical safety scheme which will eliminate the regulatory burden faced by suppliers of electrical goods. It will also reduce confusion, but it is important that when the different appliances are being allocated there be communication and education for all of those key industry stakeholders so there is clear direction and there is clear support for that transition. My concern is, again, that the cost not be put onto the end point, the consumers in our state, particularly our country residents, who are struggling under additional sources of burden via our increased electricity costs as it is.

Mr FINN (Western Metropolitan) (11:46) — As we have heard from other speakers on the Electricity Safety Amendment (Electrical Equipment Safety Scheme) Bill 2018, electricity is a very, very important commodity, and I am sure this is something that will come as a huge shock to the Special Minister of State, Mr Jennings. It is a hugely important commodity, but not always. For example, last night, even without the light towers the Tigers lit up the MCG, and that in itself was something that had to be seen to be believed. It is just a great pity that I was not actually there to see it, but it is something that I look forward to seeing a repeat performance of at least a couple of more times this year. That is really something that we can all look forward to indeed.

I have to tell the house that I am not in any way, shape or form a handyman. The only thing handy about me might be that I live around the corner or something like that. That would be the only way that you would describe me as handy. I do not muck around with electrical wires and all that sort of thing, but a lot of people do. It is a great pity that Mr Leane is not still in the chamber, because he and I could discuss our mutual friend Dean Mighell, who is the former state secretary of the Electrical Trades Union (ETU). Dean and I used to be on radio together some years ago, and sometimes we had discussions about electrical safety. In fact I know he has appeared on a number of radio and television programs talking about that very thing.

Whilst Dean and I may have our differences on certain issues, in this particular sphere we are as one in that we believe safety when dealing with electrical appliances and when dealing with electrical connections is absolutely paramount, because all you need to do is have one slip-up and you are dead. That is the bottom line. There is no second chance here. Electrocution is probably the most effective way of killing somebody. I have not gone into that at any great length, it has to be said, but I would imagine that that is the most powerful way of killing someone. If you have got fat fingers, for example, and you are mucking around with electrical wires, you had better be very careful, because those wires bite, and when they bite there is no coming back. There is no second chance with that, as Jimmy Barnes has reminded us from time to time. So these sorts of electrical appliances and electrical connections are not to be mucked around with.

It is a great pity and, I suppose, a great irony when I say that we should not be mucking around with electricity that we have as the minister somebody who is mucking around with our electricity supply and our electricity reliability. If the Premier of this state was serious about our power supply in Victoria, he would not have as Minister for Energy, Environment and Climate Change the person he has. Putting her in that position tells all of Victoria that he is just not serious, because, quite frankly, nobody could be serious when dealing with this particular minister.

Mr Melhem — A fine minister.

Mr FINN — Mr Melhem says that Minister D'Ambrosio is a — what was it?

Mr Melhem — F-I-N-E.

Mr FINN — 'A fine minister'. Well, I tell you what, he can come around to my place anytime he likes, because he will be impressed by anything. If he reckons Minister D'Ambrosio is a fine minister, then he is very easily impressed, and I am very happy to embrace that.

We also should be aware that with alternative forms of power there are also dangers involved, particularly with home solar systems and their various connections — and I am not, I have to say, an expert on this — plugging into the normal electricity supply. That does create certain dangers that people should be aware of. It is not uncommon for people to muck around with these things, and it is a danger that people should be aware of. It is something that people really should have in the forefront of their minds when they are dealing with this in terms of safety. I would imagine there are probably thousands of homes throughout Victoria that have solar panels, and we do know that there are times of the year when those solar panels are pretty useless.

I am glad Mr Leane has come back. Mr Leane obviously has been listening to my contribution in his office, Acting President, and I was just talking before, as you will recall, about a mutual friend of mine and Mr Leane's, Mr Dean Mighell, from the ETU.

Mr Leane interjected.

Mr FINN — Mr Leane may be able to contribute to this debate further, perhaps by way of interjection, not that I would canvass interjections. The trouble is we agreed a bit too much, and no doubt about it that was a problem. I am sure Mr Leane will agree that it is good to see Dean Mighell pursuing the issue of electrical safety. As a sparky himself he knows what is going on, I have no doubt at all.

One of the issues that does concern me, particularly with regard to wind power — and there may well be somebody in the house who can enlighten me as to what can be done about this — is that there have been a number of fires in windmills. Now, I am not talking about windmills we used to have on the farm, because I grew up on a farm and we had windmills that pulled up water and that was all fine and dandy. I am talking about these dirty great huge things you can see from the moon. In fact I was down in Colac this time last week, and I could not believe that the things had even grown down there. These dirty great white windmills that stick out of the scenery are just a blight and aesthetically very unpleasant, and it is very unfortunate. I do not know what it is, but there have been a number of fires with these things, and to my way of thinking, particularly with summer coming up, it does not take much —

Mr Melhem interjected.

Mr FINN — Mr Melhem, it does not take much on a very hot day with a very strong wind to start a fire. My very great concern is that these windmills, if that is what they are called — turbines or something like that — could actually start a fire. That concerns me. We could have a situation where a major tragedy occurs as a result of a fire in these particular edifices. That does concern me very, very greatly.

It is extremely difficult when you think about it to imagine that just four years ago Victoria had the most reliable power supply of any state in Australia — now not so much. Now, what would have caused this? In my view it was — well, I do not think it is just my view, I think it is actually a fact — the criminal sabotage of the Hazelwood power plant and the fact that the Andrews government forced the owners of Hazelwood to close it. They were given no choice. They were taxed out of existence. Despite the fact that the Premier told us the day before the last election that there would be no new taxes — it was a fairly decent lie, there is no doubt about that — he did in fact tax the owners of Hazelwood out of existence. As a result of that we have lost up to a quarter of our base load.

We had during summer last year, on particularly warm days, some significant blackouts, in particular hitting, I am sad to say, the western suburbs of Melbourne. I raised those blackouts in the house with the minister, because she was quoted in the media as saying that they were due to a fuse blowing. I thought to myself, 'If you have got three-quarters of the western suburbs blacked out, that is a fairly significant fuse'. That is a huge fuse we are talking about there, and how many fuses blew? I did ask the minister after those comments exactly how many fuses we were talking about with regard to the blackouts that she had attributed to the fuses, and I am still waiting for a reasonable response. I would have thought, for somebody who was so quick to tell us what caused the blackouts in her view, that she would be able to back that up with the appropriate information. But here we are in September, many, many months after this occurred, and I am still waiting on a reasonable response.

With another summer not far away we are going to face again the same sorts of blackouts and quite possibly we are going to face worse blackouts and more blackouts than we did last summer. That is not something that should give any of us any joy. That is not something that we should be happy about at all. The fact of the matter is that in terms of reliability and supply Victoria has gone down the path that South Australia went down about a decade ago. We know what happened in South Australia. We know the old joke. What did South Australia use before candles? Electricity. Of course it was! Unfortunately Victoria will become the butt of those sorts of jokes unless we do something about it now.

We have to build up our base load and we have to build up our power supply with a reliable means of power. It is nonsense to say that we are going to put all our eggs in one basket. It is nonsense to say that we are going to put all our eggs in solar or we are going to put all our eggs in wind power, because some days the sun does not shine, some days the wind does not blow and some days you may not have either. On those particularly cold days where there is no sun and there is no wind, there is just a bitterly cold atmosphere that gets into your bones. We all know the sorts of days that I am referring to. There is no way that you can rely on either wind or solar energy to keep you warm on those days.

Mr Leane interjected.

Mr FINN — Some of us might be able to get around. Mr Leane should have a chat to Dean Mighell about this, because he would know what he is talking about. The fact of the matter is that there are going to be a lot of people suffering this summer and indeed in

following winters as a result of the unreliability of our power supply in this state. It is a huge issue, and I am very pleased that opposition leader Matthew Guy and the shadow minister, David Southwick, are tackling this issue head on. They are going to be dealing with this in a very real, very genuine way to provide for the future and to provide for Victoria's needs in decades to come. I think it is extremely important that that happens. It is a great, great pity that the Andrews Labor government refuses to do that, but I look forward to the Guy government doing just that after 24 November, and I am sure that Victorians will welcome that too.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Massage parlours

Ms PATTEN (Northern Metropolitan) (12:01) — My question is for the Minister for Consumer Affairs, Gaming and Liquor Regulation, represented by Minister Dalidakis, and relates to massage parlours — not assuming you have any knowledge of them here. Right near my electorate office on Sydney Road, near the intersection with Albion Street, there are three massage parlours. If you head 500 metres north up Sydney Road to the intersection with Moreland Road, there are another three. It is a pattern that repeats itself not only along Sydney Road but right across Melbourne — in fact just straight metres from here along Bourke Street. My question for the minister is: does she believe that there is an unusual epidemic of neck injury in Melbourne or perhaps that the incredible prevalence of these massage parlours may be symptomatic of something else?

The PRESIDENT — I will allow Mr Dalidakis to take the question, but I do have the view that the question as posed seeks an opinion rather than a response in terms of what the minister might have information available on. The question was posed in an interesting way, but the way it was directed to the minister, as I said, it is seeking an opinion, and that does concern me.

Mr DALIDAKIS (Minister for Trade and Investment) (12:03) — I am troubled by Ms Patten's question, because — and I do not think this was her intention — in the way that she has framed her question she has trivialised the taking advantage of women in an industry. She has trivialised the fact that there are many women that have been utilised as, in some reports, sex slaves, having had their passports taken by proprietors in a way that is not in keeping with what we would consider to be appropriate not only employment but also treatment of people.

As I understand it, the enforcement around these issues has predominantly fallen to local government. There are from time to time stories, for example in local papers where I live, about such establishments being closed down. I know that the member for Bentleigh in the other place has spoken about this in our region — in my electorate, given I live in the lower house electorate of Bentleigh as well — and about the concern about women being taken advantage of.

My view would be that, as in keeping with guidelines, I will take this question on notice and pass it on to the minister for her considered response, but I am not sure that we in this place should be making light of what is a very serious situation — a situation that treats people as less than what they deserve and especially exploits women from international backgrounds in a way that again would suggest that our society has unfortunately let them down as well.

Supplementary question

Ms PATTEN (Northern Metropolitan) (12:05) — Considering I have been raising this issue with this government for nearly four years, I take some umbrage at the lecture I have just received on this matter. By way of supplementary, assuming that unregulated sexual services, which the minister seems to be assuming, are being provided by these parlours, then obviously the current regulatory system is not working, as I have been saying in this house for some years. So I ask: is it not time that the government introduced a modern, best-practice approach, including the decriminalisation of sex work as the internationally recognised best practice, for the regulation of the adult industry?

The PRESIDENT — I indicate that I have concerns with the supplementary question in that the member cannot ask for legislation as such. I will take it in a broader context about addressing the regulatory system that is already in place, so I will allow it on that basis, but members need to be very careful about asking directly for legislation in questions.

Mr DALIDAKIS (Minister for Trade and Investment) (12:06) — I meant not to be disparaging to you, Ms Patten, in your substantive question. I listened intently when you gave your inaugural speech in this place and was moved by both your history and your experience, so I appreciate that you come to this position with experience within the industry and an understanding of the industry better than most people

both in this Parliament and across society. My comment was certainly just in relation to the construct of your question, not in terms of what you are attempting to elicit as a response.

In terms of regulatory settings, there are many different things that go towards the way they are set, the way they are constructed and of course the way that they are monitored. Being the minister representing the minister in the other place, I do not have a good appreciation of those settings, and as such I will seek the minister in the other place's response in relation to the very queries that you make regarding that. But again, I wish to reiterate that the government's view is that if we can do something to protect vulnerable women, that is what we will do.

Land rezoning

Dr RATNAM (Northern Metropolitan) (12:07) — My question is for the minister representing the Minister for Planning. Underlying the Ventnor saga that has played out this week is a deep problem with the integrity of our urban planning system here in Victoria. When land is rezoned in Victoria that drastically inflates the value of a piece of land, none of that new value, that uplift, is captured. Take Fishermans Bend, for example — millions of dollars were handed to big property developers and owners overnight with Mr Guy's rezoning decision. These windfalls should be going to funding new infrastructure, affordable housing, open space and community spaces that neighbourhoods need when more housing is allowed through rezoning. But instead, both Labor and Liberal planning ministers have sat on their hands and done nothing about curbing this honey pot — this part of the system that makes it rife for corrupting influences on decision-makers.

Minister, does the government record the changes in value that occur when rezoning so that the government and indeed the public have knowledge of the private wealth created by ministerial decisions?

Mr DALIDAKIS (Minister for Trade and Investment) (12:08) — I thank Dr Ratnam for her question. I am not prepared to accept the construct of her question — that somehow Labor's history in planning is even close to some of the appalling decisions that were taken by the previous planning minister. I am not here to make light of what are very serious allegations in relation to Ventnor, which you prefaced in your question, or indeed in relation to the rezoning of Fishermans Bend, which is in my electorate of Southern Metropolitan Region. These issues have ensured that the former government has not been open and transparent, in terms of the Ventnor decision, with the hiding and the withholding of documents from the Auditor-General and the Ombudsman. It has not been open and transparent in relation to the rezoning of Fishermans Bend, nor was it appropriate in terms of its planning for public space, for public transport requirements in the future, for educational requirements indeed in planning for future areas where schools would be required, whether they be primary or secondary, and for kindergarten places and spaces for our young people.

There are a whole lot of issues that this government has had to try and unpack with planning decisions, and decisions that I believe that Minister Wynne has taken with the highest level of both ethical consideration and integrity. In the fullness of time, history will show that Minister Wynne has probably been one of Victoria's best planning ministers, and I especially say that noting that he has had to deal with making changes to some of the planning requirements that the previous minister, Mr Guy, took when he was in government — planning changes, for example, again if I reflect on my own community, such as those in Bentleigh, where he changed height limits, which have really seen some streets in Bentleigh become high-rise destinations rather than destinations of communities.

Dr Ratnam, I will happily seek guidance from Minister Wynne in the other place in response to your substantive question, but I do not believe that it is fair for you to even draw breath to refer in the same sentence to Minister Wynne and Mr Guy and their planning decisions.

Supplementary question

Dr RATNAM (Northern Metropolitan) (12:12) — I look forward to a response regarding the very specific question I asked, which was about whether the government records the changes in value that occur when this rezoning happens. To that point, my supplementary question is: if these uplift and windfall gains are not recorded, how can the public be confident that a minister's rezoning decisions are benefiting the community as opposed to merely providing profit to property developers and land speculators?

Mr DALIDAKIS (Minister for Trade and Investment) (12:12) — I think that question is substantially different from the substantive. That would indeed probably have been better as the substantive question rather than the supplementary. In any respect, I will take that question on notice, pass it over to Minister Wynne in the other place and seek his response.

Duck hunting season

Ms PENNICUIK (Southern Metropolitan) (12:13) — My question is for the Minister for Agriculture. Today is Threatened Species Day, and it is also Biodiversity Month and the international Year of the Bird. The annual hunters' bag survey, which is coordinated by the Game Management Authority, is meant to be an important component of assessing the impact of duck shooting on our native waterbirds, which are protected species apart from when they are declared to be game species in the March-to-June duck shooting season. The 2017 *Aerial Survey of Wetland Birds in Eastern Australia* found that most game species' abundances were well below long-term averages, in some cases by a significant order of magnitude. Minister, the original concept of this survey was that it would be conducted widely across Victoria, but the number of surveys has fallen from around 110 wetlands to 19 this year. Minister, why are so few wetlands being surveyed by the Game Management Authority (GMA)?

Ms PULFORD (Minister for Agriculture) (12:14) — I thank Ms Pennicuik for her question, and I wish her a happy day, month and year for each of those things. At its heart I think Ms Pennicuik's question goes to the capability and function of the Game Management Authority, which is —

Ms Pennicuik — Questionable.

Ms PULFORD — I think it is a matter of public record that the GMA has not been managing its responsibilities well. There was an extensive report into the GMA. There have been I think some legitimate concerns around the GMA's budget, the level of which was set by the former government when they established the GMA in 2014 and which I am pleased to report to the house we have been able to resolve in recent times, which is good. There will be additional resources going to the GMA.

The Pegasus review, which is a public document on the GMA website — and it was public before that too — details the difficulties that GMA had in fulfilling its responsibilities around the 2017 duck season opening weekend. That report came back to government not terribly long before the opening of the 2018 season, and we put in place a range of measures to improve compliance and improve enforceability along with some additional resources. All of those things I think resulted in a much better outcome for the 2018 season. I thank our hunting community for their response to that. There were plenty of people in our hunting community who were not particularly thrilled with the new arrangements, but the leaders of Field & Game Australia, the Australian Deer Association and the Sporting Shooters Association of Australia were certainly conveying messages to their members about the need to be responsive to the new arrangements, and I thank them for that. I thank everyone for having done a much better job in 2018 than in 2017. I would also say that of course the overwhelming majority of hunters are doing the right thing, but on opening weekend in 2017 we had some completely unacceptable behaviour and behaviour that is unacceptable to most in our hunting community.

The surveying that Ms Pennicuik referred to is an important part of the preparation for the opening weekend and the arrangements for the 12-week-long season. The methodology has not changed, but one of the actions in the government's *Sustainable Hunting Action Plan* is to develop new methodology. That work is underway, but I am happy to share with the house — I think I have done it on previous occasions — that some of the deficiencies in the functioning of the GMA have been the higher priority in recent times. Policy work and delivery work on all of the actions in the *Sustainable Hunting Action Plan* are very much still underway. Some good progress is being made on many of those actions —

Ms Pennicuik — On a point of order, President, the question was simple: why have so few wetlands been surveyed in comparison to the past? The minister has just under 30 seconds to perhaps answer that question.

Ms PULFORD — I would respond by saying that, as I indicated earlier in my answer, there have been no changes made to the methodology in relation to those surveys. Those surveys are not conducted by the government or by the GMA. They are surveys that are run through the eastern states each year and that inform the decision that the GMA board makes, so —

The PRESIDENT — Thank you, Minister.

Supplementary question

Ms PENNICUIK (Southern Metropolitan) (12:18) — Thank you, Minister. The survey is actually coordinated by the GMA, and the number of wetlands surveyed over the years has fallen, in particular in the years since the GMA was established. The other question I wanted to raise with regard to the survey is that every year I raise with you the number of non-game species that are caught up in the duck shooting season that are shot and left on the wetlands to die and are collected by duck rescuers and others. There is no section in this year's report on wounded or

unretrieved birds. For example, in just eight wetlands last year birds such as swans and pelicans were identified. Why is there no section on wounded or unretrieved birds in this year's survey?

Ms PULFORD (Minister for Agriculture) (12:19) — It is a bit of a leap from the substantive question to the supplementary question. Those numbers that Ms Pennicuik seeks are numbers that I would typically have to hand in the weeks immediately after opening weekend and at the conclusion of the season, which was some months ago, so I must confess I do not have that information immediately to hand, but I will seek, with your forbearance, President, the opportunity to provide Ms Pennicuik with a written response to provide her with that information.

As to why it is not in the contents of the report, I will similarly seek to respond to that. But I do not tend to tell my agencies what they ought and ought not report on. That is really a decision for the boards of those organisations and also a matter of compliance with various legislative and other regulatory requirements.

Timber industry

Ms BATH (Eastern Victoria) (12:20) — My question is to the Minister for Agriculture. Minister, there are reports that two recently closed timber mills were compensated for their closure by the Andrews government or bought out by the government. Can you inform the house of the nature of any compensation or buyout between the government and each of these mills associated with their closure?

Ms PULFORD (Minister for Agriculture) (12:21) — I thank Ms Bath for her question. I am advised that both the Dindi sawmill in Murrindindi and the P. R. Adams sawmill at Nowa Nowa have decided to cease their operations and that workers at those two mills have been advised. I am also advised that those workers will receive their full entitlements. Our department is meeting with the workers to provide the support that is available to people in circumstances where their business closes — so training and other support. I understand that the Dindi sawmill will cease its operations towards the end of the month and that P. R. Adams are planning a slightly longer term, staged approach to the redundancies at that business.

These businesses are both highly dependent on native forestry, and in recognition of that the government is providing some immediate support to both the businesses and the local communities. The specific nature of some of the information Ms Bath sought is commercial-in-confidence information, including information that we do not typically release in relation to companies that VicForests enters into contracts with, including things like the size of the timber resource that is contracted to them. But what I can indicate is that the mills will be provided with assistance, including contractual relief for forgone timber contracts and assistance with plant and equipment and site remediation. The workers in these businesses will receive support for entitlements and industry standards; a dedicated personal employment broker to help each worker identify and secure new employment; access to training, counselling and other work experience; and access to the back-to-work wage subsidies that are available to people across the state in similar situations.

I think it is important, in anticipation of Ms Bath's next question, to indicate to the house that these closures were driven by the mills, not by the government. Those mills have engaged with their workers and communities about the reasons for these decisions and will be coordinating with their local councils as well as support continues.

Supplementary question

Ms BATH (Eastern Victoria) (12:24) — I thank the minister for her response. Minister, the government purchased Australian Sustainable Hardwoods and has now involved itself with two other mill closures. Can you advise the house how many other timber mills the government is currently negotiating with in regard to their closure?

Ms PULFORD (Minister for Agriculture) (12:24) — VicForests, in the ordinary course of events, is always talking to the mills that it supplies about their future plans and desires for timber resource availability, so that is —

Ms Wooldridge — How many are talking about closure?

Ms PULFORD — The overwhelming majority of mills are very much looking forward to a good future and are very interested in securing further resources. The nature of those discussions between VicForests and individual companies is, I think, something that has always been and ought to continue to be a matter between those mills and VicForests. I think the words Ms Bath used — and correct me if I am wrong, Ms Bath — suggested that this was something that the government has initiated. That is not the case; these companies approached the government.

Production of documents

Ms WOOLDRIDGE (Eastern Metropolitan) (12:25) — My question is to the Leader of the Government. Minister, Steve Herbert lost his job because of ministerial impropriety. Adem Somyurek lost his job because of accusations put to the Premier and potential breaches of the ministerial code of conduct. Yesterday on the Faine morning program a listener stated:

> I'm a public servant. If I was responsible for releasing this kind of information, I would be in breach of privacy laws and have a high chance of losing my job. Will anyone in Parliament lose their job?

Minister, why hasn't anyone in the Andrews government lost their job yet over this massive privacy breach, which gets worse and worse as every day passes?

Mr JENNINGS (Special Minister of State) (12:26) — I can understand why Ms Wooldridge asked this question. I understand why she has hope that there may be some pathway so that she can claim some ministerial scalp in relation to it, but with the process, the legal exposure and what might be on the face of it some embarrassing circumstances in relation to personal information there is not a linear path that connects them all in terms of a legal obligation or actions being taken by ministers that would connect them to a situation where that would be the appropriate course of action.

The government does recognise responsibility to the Parliament, to the people, in relation to disclosure of information that we believe is in the public interest. We also recognise that there were unintended consequences in relation to a variation from normal scrutiny that would apply at a departmental level in relation to freedom of information or privilege considerations at a departmental level in terms of narrowing the scope of documentation that may have been provided by departments in relation to what they believed to be the scope of the reference from the Legislative Assembly. The government does accept its responsibility for making remedy. That is the reason why my colleagues in the Legislative Assembly have taken action to remedy that situation. They recognise that; they continue to do so. They do not resile from the release of information which they believe is to the public benefit in relation to the resolution of the Assembly. In terms of the scrutiny —

Mr Ondarchie — It doesn't matter who you hurt?

Mr JENNINGS — Mr Ondarchie, it does matter.

Mr Ondarchie — It doesn't sound like it.

Mr JENNINGS — It does matter. There are a whole range of public policy matters that the government considers matter; ministerial accountability is definitely one of those things. In fact that is at the heart of the reason why there has been the release of information that was denied the Ombudsman and the Auditor-General by the previous administration. That is the reason why we believe that these matters should be understood. In fact if any action needs to be taken in relation to the release of extraneous material, those actions are being undertaken. That is not being ignored, that is not being run away from; it is being acknowledged.

Honourable members interjecting.

The PRESIDENT — Thank you.

Honourable members interjecting.

The PRESIDENT — Mr Leane, people have counselled you to be quiet. I suggest that you accept their counsel.

Supplementary question

Ms WOOLDRIDGE (Eastern Metropolitan) (12:29) — Thank you, Minister. Minister, you talked about ministerial accountability, and you have also informed the house previously that the Premier requested the documents and is ultimately responsible for the production of those documents. The Premier's action in orchestrating this Ventnor documents debacle potentially amounts to multiple breaches of the ministerial code of conduct. Given the code is ordinarily administered by the Premier, will you now step in and refer the Premier's potential breaches of the ministerial code of conduct to the Department of Parliamentary Services secretary for immediate investigation?

Mr Jennings — To where?

Ms WOOLDRIDGE — Can I clarify — the Department of Premier and Cabinet. Will you refer the Premier's potential breaches of the ministerial code of conduct to the Department of Premier and Cabinet secretary for immediate investigation?

Mr JENNINGS (Special Minister of State) (12:30) — President, I will assist you, given your concerned look, by not drawing attention to the inappropriate nature of the question and the consideration. There is nothing in the member's question that indicates that she has identified what a breach of the code may be.

Honourable members interjecting.

Mr JENNINGS — She has not. It is not apparent to me what that is, and there is nothing in the question that would make me consider that a referral is appropriate.

Production of documents

Mr RICH-PHILLIPS (South Eastern Metropolitan) (12:31) — My question is also to the Leader of the Government. Yesterday, just after 9.00 a.m., the President claimed that departmental officials and members of his private office had apologised to the innocent Victorian citizen whose personal, financial, banking and family details were published online. That citizen, however, indicated that no apology was forthcoming in the morning and in fact it only occurred after 1.00 p.m. Can the minister confirm that no apology had in fact been issued when the Premier claimed it had and it was not given until 4 hours later?

Honourable members interjecting.

The PRESIDENT — Order! Can I just have the opening words of that question again please.

Mr RICH-PHILLIPS — Yesterday, just after 9.00 a.m., the Premier claimed that departmental officials and members —

The PRESIDENT — Thank you. You said 'the President'.

Honourable members interjecting.

The PRESIDENT — Thank you. The question is in respect of a statement that was made by the Premier, and for clarification I made no such statement.

Mr JENNINGS (Special Minister of State) (12:33) — I am glad we are all listening; we are all on top of our game today. Can I say to you that I can say very, very clearly, regardless of relying on anybody else's words or anybody else's statements or any other speculation, that in the doorstop I did yesterday morning at 10 to 9 I apologised in a public manner to the person who was affected by this matter. The Deputy Premier, who I understand was on radio at the same time as I did that doorstop, did exactly the same thing. So any suggestion that an apology had not been issued within the time frame that Mr Rich-Phillips has conveyed in his question is wrong.

Honourable members interjecting.

The PRESIDENT — Enough!

Supplementary question

Mr RICH-PHILLIPS (South Eastern Metropolitan) (12:34) — I thank the minister for his response. It highlights the depth to which this government has fallen that the minister indicates that a statement he made in a doorstop somehow constitutes an apology being conveyed to that citizen. Minister, that apology was required because of the breach of privacy associated with the Premier's documents debacle. In the last hour we have seen yet another citizen have their private bank details revealed in that document dump. Can you inform the house how many other private citizens' personal information has been breached through that document release and who are therefore liable for further apologies from the government?

Honourable members interjecting.

The PRESIDENT — Order! The supplementary question is at best tenuous.

Mr JENNINGS (Special Minister of State) (12:35) — Thank you, President, for your assistance. In fact Mr Rich-Phillips asked the first question about the real-time effect of something. He did not get the answer he wanted so he is actually now asking me to provide real-time updates on matters that I am not responsible for dealing with in the Legislative Assembly. The processes of the reconciliation of information that has been released in the Assembly is being managed in the Assembly. I am not managing it on a minute-by-minute basis, and I am not going to give you real-time appraisals that you will sometimes misconstrue and reinterpret and fit me up for something that I may or may not have said.

Production of documents

Ms FITZHERBERT (Southern Metropolitan) (12:36) — My question is also to the Leader of the Government. Minister, four documents motions were passed by this house months ago relating to the West Gate tunnel project, the $225 million AFL deal, the medically supervised injecting centre and the Cricket Victoria and Junction Oval agreement. These documents are clearly in the public interest. Will the Andrews government produce these documents before the rising of the 58th Parliament, or will its last production of documents remain as the medical records, financial records and psychiatric evaluations of Victorians?

Honourable members interjecting.

The PRESIDENT — Order! Mr Gepp! Mr Leane! I am prepared to hear from Mr Jennings.

Mr JENNINGS (Special Minister of State) (12:37) — In relation to Ms Fitzherbert's question, I will talk to my colleagues and see whether in fact I can answer in the positive or the negative in relation to her question before the end of the term.

Supplementary question

Ms FITZHERBERT (Southern Metropolitan) (12:37) — Minister, given the demonstrated lack of assessment or filters on the production of documents by the Andrews government, what specifically has been the hold-up for these documents not being presented to the Council?

Mr JENNINGS (Special Minister of State) (12:37) — In relation to this matter, I do rely on the advice that is provided and the considerations that occur within departments — the legal and FOI considerations that may occur within those departments — what the consideration of my colleagues may be and the advice that may come to government in terms of the release of material, and that is considered within the government and responded to accordingly either by the release of information or by an explanation provided by the Attorney-General. That has been the process that has applied during the course of the term, and that will continue to be the case and situation until the end of the term.

Public sector employee information

Mr RICH-PHILLIPS (South Eastern Metropolitan) (12:38) — My question is again to the Leader of the Government. Last month the government was embroiled in another politically motivated privacy breach with the release of the salaries and personal details of former ministerial staff. Will the minister now update the house on the investigation by the public sector commissioner into that breach of personal information?

Honourable members interjecting.

Mr JENNINGS (Special Minister of State) (12:39) — My colleagues are encouraging me to provide some context to the question that Mr Rich-Phillips has asked. The context —

Honourable members interjecting.

The PRESIDENT (12:39) — Order! Mr Gepp, would you like to have a cup of coffee outside of this place? Fifteen minutes. Minister, without assistance. Thank you.

Mr Gepp withdrew from chamber.

Mr JENNINGS — The context of Mr Rich-Phillips's question was the release of information that did relate to the private salary of a number of individuals who worked in the previous administration that was released at the same time as other payroll material that related to the number of ministerial staff that had been appointed during the last few months of the Napthine government that clearly did not go on leave whilst they participated in campaign activities during the course of the election time frame. That has now been referred for the appropriate authorities to consider whether it is a misuse of public money or inconsistent with —

Honourable members interjecting.

Mr JENNINGS — You may choose to say that. I am giving the context of what has happened. It was about a massive increase in ministerial staff that looked as if they were recruited to work —

The PRESIDENT — Thank you. It seems there are some other people who would like to join Mr Gepp at the coffee table.

An honourable member interjected.

The PRESIDENT — Well, they might consider, then, before they interject. The minister to continue.

Mr JENNINGS — Thank you, President. I was giving context to the chamber in relation to the vast amount of public money that could have been used to support the outgoing Napthine government in relation to its election campaigning activity. That matter has been referred for the appropriate authorities to examine. I have provided the house previously with an explanation that, whilst some of that material had been subject to FOI consideration, some of it clearly had not, and the private matters that were released were subject, as Mr Rich-Phillips has reminded the chamber, to the consideration of referral to the public sector commissioner and a forensic examination of where this material may have been generated, who had access to it and how it may have subsequently arrived in the public domain.

Whilst I have provided that update to the house previously, I have not been afforded in the last couple of weeks what the outcome of that consideration may be. I will seek some information from the public sector commissioner about those matters, but as they are beyond what I have already contributed to the house, I do not have any further knowledge on the matter.

Supplementary question

Mr RICH-PHILLIPS (South Eastern Metropolitan) (12:42) — I thank the minister for his answer. Minister, complaints have also been made to the information commissioner by some former staff whose personal information was leaked. Has the information commissioner launched a formal investigation into possible criminal breaches by the government of the Privacy and Data Protection Act 2014 related to the release of that salary information?

Mr JENNINGS (Special Minister of State) (12:42) — The information commissioner, as I have also said to the house previously, operates in terms of his acquitting his statutory responsibilities independent of me, not requiring direction from me in relation to what he investigates and how he would deal with those matters. He has not provided me with any advice about whether he either has received a complaint or is pursuing it, but I am happy to take his advice about that matter.

Electorate office staff

Mr FINN (Western Metropolitan) (12:43) — I am loath to disappoint Minister Jennings, but my question is to the Minister for Families and Children. Minister, you were quoted in the Ombudsman's report on the red shirts rorts affair and subsequently confirmed in the Privileges Committee inquiry that you presigned time sheets for your electorate officer-cum-field organiser, so I ask: have you been contacted or interviewed by Victoria Police in relation to their fraud and extortion squad investigation into Labor's red shirts rorts scandal yet, and if so, when?

Mr Dalidakis — On a point of order, President, very clearly this matter is out of scope in the 58th Parliament but also has nothing to do with the minister's duties. It happened indeed in the 57th Parliament when my —

Honourable members interjecting.

The PRESIDENT — Thank you! Talk to me.

Mr Dalidakis — President, let me be very clear that, having sat on the Privileges Committee, unlike Mr O'Sullivan interjecting, I took my position on that very seriously. We dealt with the matter, and the matter referred to a range of issues that occurred in the 57th Parliament before Minister Mikakos was indeed a minister. It was dealt with, it was dispatched and a report was handed down. This is not a question or a matter for question time.

Mr Davis — Further to the point of order, President, the Minister has answered questions on this matter previously, and it is entirely within the house's purview to ask about simple matters of fact about whether she has been interviewed by the police or not.

Ms Shing — Further to the point of order, President, there have been rulings and consideration of the substance of this issue by you in the context of questions which have already been put to the Leader of the Government in this regard, and in this matter I seek that you have reference to rulings already made from the Chair as they relate to questions put in these terms.

Mrs Peulich — Further to the point of order, President, the reports were tabled in this Parliament. The Privileges Committee undertook its work in this Parliament. The minister, it can be argued, was a beneficiary of the activities which were the subject of those investigations. The ministerial code places certain obligations on the minister in terms of her accountability and transparency, and could I urge that you dismiss the complaints about the minister not answering the question. Clearly it is the business of this particular Parliament to have those questions answered.

The PRESIDENT — Order! Well, those points of order were all around the garden path. That was really interesting. None of them were relevant — not one! Mr Davis's got closest; there is no doubt about that. The reality is that the issue of scope, because what might have been the original incident occurred in the last Parliament, is irrelevant because there have been so many other aspects of that that have been explored in this Parliament by way of inquiries and so forth. This question is actually quite specific, and it does not go to matters of a historical nature; it goes to a relatively contemporary matter as to whether or not the minister has been interviewed by the police. It is up to her to respond to that question. I might tell you, I have been interviewed by the police.

Honourable members interjecting.

The PRESIDENT — It was in regard to how our guidelines operate — or don't.

Ms MIKAKOS (Minister for Families and Children) (12:48) — I have made it very clear previously that I will cooperate with any investigation. In fact the Ombudsman found in her report that I did cooperate with her. In fact that was never the subject of any commentary, either in her report or in the Privileges Committee. I find this question rather interesting coming this week, of all weeks, when it has become highly apparent that Matthew Guy, as Minister for

Planning, did not actually cooperate fully with the Ombudsman and actually withheld documents from the Ombudsman —

Mrs Peulich — On a point of order, President, Minister Mikakos is clearly debating the question rather than answering a very simple and direct question, which goes to the heart of her accountability and transparency, and honesty.

The PRESIDENT — There was an element of debate in it, but at this point the minister obviously has time to address the matter, which was a specific question. I think the issues she was raising were extraneous to the question that has been put.

Ms MIKAKOS — Thank you, President. I am just wishing to make the point that my cooperation, the level of my cooperation, stands in huge contrast to the Four Million Dollar Man, who did not hand over relevant documents to the Ombudsman. It actually needed to be the Legislative Assembly that brought these documents to light.

Mr Davis — On a point of order, President, the member is straying into territory that is extraneous and nothing to do with this highly specific question on whether she was interviewed by the police or not.

The PRESIDENT — Might I say that when we start to talk about some of these matters we should be mindful of due process, and there is process in place in some of the matters that Ms Mikakos has referred to, which I do regard as extraneous, and I would suggest that Ms Mikakos really do address the question. She has provided sufficient context I think, suggesting that she has been cooperative with the inquiries to date, so I ask her now to address the question itself.

Ms MIKAKOS — Thank you very much, President. You are absolutely right. There is an issue of due process here, yet those opposite have absolutely no interest in relation to allowing due process to occur. In fact Mr Finn has sought to take out of context information I provided to the Privileges Committee and tried to portray it in a particular manner, because I provided very lengthy information to the Privileges Committee around this issue and made it very, very clear exactly all the circumstances that occurred in relation to this matter. And in respect of contributions from those opposite during the course of various points of order, I remind those opposite that in fact —

Mr Finn — On a point of order, President —

Ms MIKAKOS — You are not actually interested in the answer.

Mr Finn — the question that I asked is very, very specific. It has nothing to do with what Minister Mikakos is now speaking about. I asked specifically: has she been contacted and/or interviewed by Victoria Police in relation to their fraud and extortion squad investigation into Labor's red shirt rorts scandal? I would have thought a yes or no and a date would have been a sufficient answer.

The PRESIDENT — Order! That might well have been the case, but the problem that I have from the chair is that the preamble actually mentions the Privileges Committee and evidence that was led in the Privileges Committee by the minister, and therefore her answer thus far, having moved on from what I regard as the extraneous information she was putting to the house, is now apposite to the question that was asked.

Ms MIKAKOS — Thank you very much, President, because both Mr Finn and his colleagues through the points of order that we have just had have made a number of assertions which I take strong exception to, and I think it is important that those opposite are reminded of the fact of what the Ombudsman actually concluded in her report. We know that those opposite do not actually like her report. They did not like her findings. They did not like her conclusions, which is why we had the Privileges Committee process in the first place.

The Ombudsman actually found that members of the government acted in accordance with advice that had been provided to them, acted in good faith and did not derive a personal benefit — these were her conclusions; these were her findings in relation to these matters — and in fact that we had acted on the advice provided to us by Mr Lenders. These were in fact findings of the Ombudsman. Again I reiterate to those opposite that I have said previously and I reiterate again that I will cooperate with any investigation, as I have done in the past, unlike your leader, who hid documents from the Ombudsman. And the answer to Mr Finn's question is in fact no.

Supplementary question

Mr FINN (Western Metropolitan) (12:55) — Minister, have you provided any documents to the Victoria Police fraud and extortion squad investigation, and if so, which documents are they?

Mr Dalidakis — On a point of order, President, I'm pretty sure that was asked and answered.

The PRESIDENT — Order! No, the question is apposite to the substantive question and it does go to a different matter in the sense that it is seeking a response

from the minister about the provision of documents, as distinct from an interview.

Honourable members interjecting.

The PRESIDENT — Nonetheless, I will allow that supplementary question.

Honourable members interjecting.

The PRESIDENT — Order! Thank you, Minister. I did hear an answer to the substantive question.

Ms MIKAKOS (Minister for Families and Children) (12:56) — Clearly Mr Finn was not listening to the answer I gave to his substantive question.

Honourable members interjecting.

The PRESIDENT — Order! Perhaps the reason why some of the members in the opposition did not hear the answer that the minister provided to the substantive question is that they were interjecting and only hearing their own voices. Minister, without assistance.

Ms MIKAKOS — I know this has been a very difficult week for those opposite, and unlike Mr Guy, who withheld documents from the Ombudsman that have only come to light this week, I reiterate that I will cooperate fully in respect of any investigation.

Honourable members interjecting.

The PRESIDENT — Order! I must say I have difficulty intervening on this one. Minister, without assistance, and preferably not reflecting on this week. I do not think it is a week that we should all be really proud of.

Ms MIKAKOS — Thank you very much, President —

Mrs Peulich interjected.

The PRESIDENT (12:57) — Mrs Peulich, 15 minutes.

Mrs Peulich withdrew from chamber.

Ms MIKAKOS — I reiterate again that I will cooperate with any investigation, as I have done in the past. No documents have been sought from me, and therefore none have needed to be provided.

QUESTIONS ON NOTICE

Answers

Mr JENNINGS (Special Minister of State) (12:58) — There are 13 written responses to questions on notice: 10 989–92, 11 056, 12 522, 12 572, 12 699, 12 763–4, 12 828, 12 831, 12 870.

QUESTIONS WITHOUT NOTICE

Written responses

Mr O'Donohue interjected.

The PRESIDENT (12:58) — Mr O'Donohue, you are actually looking at me and I am on my feet. Go and keep Mrs Peulich company for the 15 minutes.

Mr O'Donohue withdrew from chamber.

Mr Mulino interjected.

The PRESIDENT — I am on my feet, Mr Mulino. Careful.

An honourable member — Go on, kick him out.

The PRESIDENT (12:59) — I would, except he has not been a repeat offender. In regard to today's questions, I seek written responses to Ms Patten's question to Mr Dalidakis, both the substantive and supplementary questions, in two days; Dr Ratnam's question to Mr Dalidakis, both the substantive and supplementary questions, two days; Ms Pennicuik's question to Ms Pulford, the substantive and supplementary questions, one day; Ms Bath's question to Ms Pulford, the substantive and supplementary questions, one day.

Ms Pulford — Her, I answered.

The PRESIDENT — I hear the minister, and yes, I thought that you did provide, particularly on the substantive, quite a comprehensive answer, but the question actually went to a fairly specific matter to quantify that compensation.

Ms Pulford — Based on the fact that is confidential information.

The PRESIDENT — I am giving you the opportunity to reflect on that and whether or not any part of that can be met. If it cannot, I will be accepting the answer, I think. In terms of the confidentiality, I respect commercial-in-confidence situations, but I give you the opportunity to reflect on that matter.

Ms Fitzherbert's question to Mr Jennings, the substantive question, two days. Mr Rich-Phillips's question to Mr Jennings, the substantive and supplementary questions, one day. Thank you.

Mr Jennings interjected.

The PRESIDENT — This is the second question.

In respect of other questions, Ms Wooldridge has written to me to request the reinstatement of question on notice 10 191. The answer provided by the minister is identical to an answer given the last time the question was reinstated in February 2017, and I did not regard it as an adequate response on that occasion. I have not changed my view and I reinstate the question again.

Ms Fitzherbert has raised with me a concern about the questions that she posed on 5 September to the Minister for Families and Children for the Minister for Mental Health in another place. I have considered both the original and supplementary questions that were put on that day and whilst the minister has provided some information which I think is useful to the member in respect of going to some of the matters that she raised, the specific questions that were posed have not been responded to, and therefore I reinstate those questions, both the substantive and supplementary, for a further written response.

Ms Wooldridge — On a point of order, President, I have received a written response from the Leader of the Government in relation to my question about the cost to the taxpayer of external agencies engaged to work on the Suburban Rail Loop policy. The response refers us to the annual reports. As you have ruled many times before, the capacity to ask a specific question in this house and have it answered in this house is entirely appropriate, rather than being referred to other, as yet unpublished, documents. So I ask you to reinstate the question.

The PRESIDENT — I have had the opportunity to look at that question, courtesy of Ms Wooldridge earlier today, and I am of the view that the response was not adequate in terms of the question. So I therefore do reinstate the supplementary question for a further written response.

Thanks to all the points of order we have actually got to the lunch break, I think. The chair will be resumed at 2 o'clock for constituency questions.

Sitting suspended 1.03 p.m. until 2.04 p.m.

CONSTITUENCY QUESTIONS

Eastern Victoria Region

Ms BATH (Eastern Victoria) (14:04) — My constituency question today is for the Minister for Energy, Environment and Climate Change, the Honourable Lily D'Ambrosio in the other place. Situated along Old Walhalla Road at Toongabbie is the C37 Track, which is a gazetted protected zone and under the auspices of the Department of Environment, Land, Water and Planning. In preparation for the oncoming bushfire season, a stretch of the track has recently been cleared by bulldozers, leaving a substantial amount of debris — in effect, fallen trees, branches and the like. One of my constituents has reported that the site is not a firewood collection point, but the debris, if it is not removed, will create considerable fuel load and actually add to the potential fire risk in that area. So my constituent wants me to ask: will the minister enable Toongabbie residents to collect this debris from the side of the road and enable there to be less fuel risk in that space?

Northern Metropolitan Region

Dr RATNAM (Northern Metropolitan) (14:05) — I recently met with a number of residents in Broadmeadows and members of the Broadmeadows Progress Association who are devastated that the government is planning to sell their parkland to property developers. The community has used this space as parkland for a decade. Ministers Wynne and Foley are trying to pull the wool over the community's eyes by saying that this sale is about inclusionary housing. It is not. The Labor government is proposing to sell 27 000 square metres of public land to a private developer in exchange for 15 affordable homes. Inclusionary zoning means asking private developers to build affordable housing on private land; inclusionary zoning does not mean handing public land at discounted rates to big developers in exchange for very few homes. If the government is serious about affordable housing, will the government stop the sale of this land and keep it for building new public and affordable housing with the remainder of the land being retained as vital green open space for this community?

South Eastern Metropolitan Region

Mr RICH-PHILLIPS (South Eastern Metropolitan) (14:06) — My constituency question is on behalf of Mrs Peulich, and it is directed to the Minister for Planning as it relates to the ongoing rezoning and development application for Kingswood golf course currently being decided by Kingston City

Council, with over 7000 objections being lodged thus far. Mrs Peulich brings the minister's attention to *Planning for Golf in Victoria: Discussion paper*, June 2017, on the Victorian government's planning website, and refers to page 24 of the document, which reads:

> Eight former golf courses in metropolitan Melbourne are presently being redeveloped. These include Kingston Links golf course, Kingswood golf course and Keysborough golf course.

Mrs Peulich notes that this is not a done deal and that the application is still live and the course is far from redeveloped. It is still an active golf course and is zoned thus. Can the minister assure the house that there are no state plans to support a rezoning of the Kingswood site as has been described in the government's own discussion paper?

Ms Pulford — On a point of order, Acting President, I seek your advice, either as Acting Chair or perhaps from the President at another point in time, about the appropriateness of the member delivering a constituency question on another member's behalf.

The ACTING PRESIDENT (**Ms Dunn**) — Thank you, Minister Pulford. I will certainly seek advice from the President in relation to referring to another member. It is the same constituency in this instance, but I will refer that to the President for you.

Ms Pulford — Maybe the President can consider both that scenario —

The ACTING PRESIDENT (**Ms Dunn**) — Yes, absolutely.

Western Victoria Region

Mr PURCELL (Western Victoria) (14:07) — My constituency question is for the Minister for Police. The Port Fairy Folk Festival is an annual event that attracts thousands of people from throughout Australia and overseas. It is a volunteer-run festival, and it has been running for more than 40 years. For the last two decades it has actually given about $4 million to the community and also $3 million to volunteer groups and organisations. Additional police are allocated to the event each year, but any charges for the extra police have usually been waived. It is an event that really does not incur much; I have never even seen a cross word, so it is not one that is heavily policed. However, this year more than $6000 was charged to the festival, which was reduced when the waiver was requested, but it still cost them $4600. I therefore ask the minister: will you waive the charge for the provision of the police services for this community event?

Western Metropolitan Region

Mr FINN (Western Metropolitan) (14:09) — My constituency question is to the Premier. Premier, growth in Melbourne's west is continuing at a gallop. One only needs to travel to the municipalities of Wyndham, Hume and Melton to see they are centres of population growth and are set to remain so for decades to come. Infrastructure, health, education and policing are under extraordinary pressure in many parts of the west, and no action seems to be on the horizon to change this appalling situation. I ask: has the Premier given any consideration to instituting a west-specific plan to overcome this neglect?

Northern Metropolitan Region

Mr ONDARCHIE (Northern Metropolitan) (14:09) — My constituency question is for the Minister for Roads and Road Safety in the other place. It is in relation to an accredited transport industry driver education organisation in my electorate of Northern Metropolitan Region. They have some concerns about VicRoads criteria when it comes to the assessment for awarding a heavy vehicle licence. By way of example, this organisation in my electorate of Northern Metropolitan Region received a response from VicRoads that they may be reading the licensing criteria incorrectly when they fail applicants for speeding or stopping in the intersection. According to written advice from VicRoads, if a speeding incident does not appear to impact road safety, then the driver education organisation should look past that matter and give the applicant their heavy vehicle licence. Well, that does not sit well with the driver education facility that I am talking about, because that area is full of transport logistics, heavy vehicles and lots of trucks. The question I have for the minister is: could the minister advise me of the actual criteria that VicRoads use to determine who should get a heavy vehicle licence?

Southern Metropolitan Region

Mr DAVIS (Southern Metropolitan) (14:10) — My question is for the Minister for Public Transport. It concerns the sky rail CD9 line and the advisory committee that was established in 2015 and reported secretly to a range of government bodies, including the Level Crossing Removal Authority (LXRA) and the minister herself. My understanding is she appointed the committee. She appointed as its chair Mr Steve Dimopoulos, the member for Oakleigh in the Assembly. I have seen in the FOI that I have obtained from the LXRA after a significant fight that there was a declaration of interest that was required for those members of the committee. I therefore ask the minister

whether Mr Dimopoulos filled out that declaration of interest. If he did, will she release that declaration of interest, and if he did not fill it out, why not? This is important because he had a clear conflict of interest, owning properties in that area, including Carnegie.

Western Victoria Region

Mr MORRIS (Western Victoria) (14:11) — My constituency question is for the Minister for Public Transport and relates to the Ballarat train line and the lack of trains on that particular line arriving on time. It is of great concern. I have met with many commuters at the Ballarat, Wendouree and Ballan railway stations when I have been there with our very hardworking candidates Amy Johnson and Andrew Kilmartin, who are doing an excellent job in highlighting the significant concerns that the Ballarat community have about our train service. I did want to ask the minister: in terms of the Ballarat train service, which has had a devastatingly low on-time performance, what is the minister going to do to fix this service that she has overseen and has become a complete mess?

ELECTRICITY SAFETY AMENDMENT (ELECTRICAL EQUIPMENT SAFETY SCHEME) BILL 2018

Second reading

Debate resumed.

Motion agreed to.

Read second time.

Ordered to be committed later this day.

BUILDING AMENDMENT (REGISTRATION OF BUILDING TRADES AND OTHER MATTERS) BILL 2018

Second reading

Debate resumed from 24 August; motion of Ms PULFORD (Minister for Agriculture).

Mr DAVIS (Southern Metropolitan) (14:14) — I am pleased to rise and make a contribution on behalf of the coalition to the Building Amendment (Registration of Building Trades and Other Matters) Bill 2018. It is an important bill and a bill that lays out a number of significant changes. It is a bill with which we have some concurrence but also significant concerns, and I will lay those points out bit by bit.

The bill seeks to make it an offence for a person to carry out certain types of building work without being registered or licensed. It seeks to provide provisional registration for certain builders who carry out certain building work and introduce related offences; to provide a licensing scheme for building employees who carry out certain building works and introduce related offences; to make provision in relation to certain wall cladding products; to clarify the grounds for discipline of registered building practitioners in relation to breaches of dispute resolution orders; to provide for further regulation of swimming pools and spas; and to make a number of consequential other amendments and related minor amendments to other acts. It also amends the Local Government Act 1989 to provide for councils to enter into agreement to rectify cladding on buildings and to provide for councils to declare and levy charges to fund such rectification.

In effect the bill has a series of parts. It can be divided, I guess, into four categories: registration and licensing; pools and spa regulation; cladding product regulation; and strengthening of powers of the Victorian Building Authority (VBA) and Minister for Planning.

In registration and licensing, the objective of the bill is over a period of time to make it illegal to work in the building industry without being registered and licensed. After the expected passage of the bill a provisional licensing scheme will be implemented with the conditions to be determined by a subsequent regulatory impact statement (RIS). The commencement date of the bill is 1 September 2020. There are about two years to undertake the RIS. Once provisionally registered, trade contractors and employees will be expected to upgrade to full registration within a five-year period.

I just want to say something about this section of the bill in general first. There is an ongoing debate as to how arrangements in this Parliament should operate and whether it is a good principle — and it is more common in the federal Parliament than in ours — that a head of power is created and then regulations and licensing arrangements below that operate. I personally have been more persuaded that it is better to lay out the full details in black and white at an early point in the chamber so that the community can see and understand and so the debates can be had in more open session. I understand that it is easier to adjust and change regulation than it is to change legislation, and I understand that there is a legitimate countervailing argument, but this bill falls into the category of setting up the provisional registration but the actual detail of what will be there long-term is to be undertaken as a regulatory outcome, and that is, in theory, to follow the regulatory impact statement.

To answer the basic question of how the machinery will work, the information of course is not here, because the regulations, if this bill is passed, are down the track and yet to be made, and indeed the assessment of the regulations that are yet to be made are down the track too. They are basic questions like, 'How much will it cost, what will be the impact on the economy, what will be the impact on the building industry and', importantly, 'what will be the impact on housing affordability?'. Those are questions which from this bill we cannot answer, and the government has no answers to those questions because it actually has not done the detailed work that would give an answer. But let me be very clear here: this will add to the cost of regulation, it will add to costs for the building industry and it will add to the cost of new houses and apartments and make them less affordable. The question is by how much and what the balance to be struck there is in terms of having better quality. Will this advantage quality? Let us see if the RIS can demonstrate that that will actually be the outcome. But again the RIS is not there and the regulations are not there, so we actually do not know what the impact on quality will be.

When we look around other jurisdictions there are other jurisdictions with a greater level of building industry registration and licensing than Victoria. It is a question — an open question, I think — as to whether they have better building systems and better outcomes for their consumers. My point here is that these are very legitimate questions, and they are questions for which the government has no answer, because it has not actually done the work.

I would be more persuaded if parallel with this there was a set of regulations that had been proposed and was being tested, that the RIS process was part-way through that and if there was a paper that looked at this and some economic work that said, 'It's going to jack up the cost of a new home by 10, 15 or 20 per cent', a home that somebody might buy on the edge of the city for $500 000. With a 10 per cent increase on that, that is $550 000. That is a very significant impact on local communities and on young families, and these are points that are unanswerable from what we have in front of us today. I am not saying that there is not a case, because I think there is a case, for greater regulation of the building industry. There is a case for better registration process, and there is a case for better processes in terms of overall licensing and holding those in the industry to account for the results that occur — quality is an important outcome — but what you want to see is a regulatory system that actually delivers the improved quality but does it at the lowest cost and with the lowest impact on, ultimately, housing affordability.

I should say that for pool and spa regulation the bill requires councils to keep and maintain a swimming pool register consistent with Building Act 1993 regulations. It creates a new category of registered swimming pool inspectors and provides a framework to require an owner to undertake mandatory periodic self-assessment of their pool barrier's compliance and independent assessment of pool compliance as well.

In preparation for the bill's passage the government has requested the Victorian Building Authority to create a voluntary register and online interactive pool and spa barrier self-assessment tool. It is good sense to get ahead of the regulation rather than waiting for it to come in, so I certainly give that the tick. There are to be additional pool and spa regulations made after the bill's passage, but like registration and licensing, these will be determined by the subsequent RIS. Again, it is where the balance lies and how the balance is struck that is the salient point. This makes me nervous, even though regulations are in theory disallowable — and in fact I did disallow one earlier in this Parliament — because disallowing is a very rare event. In thinking back over the cases of disallowance when accepting planning scheme amendments and the disallowance of regulations, I can only think of one in my time in Parliament that I have moved — and that was successful — but it does point to the rarity of those cases. So I think it suits governments that prefer to do things behind the scenes with interest groups and deals and arrangements being struck. It suits them to do these regulatory changes rather than bringing these thing up-front so that everyone can see them.

I make the point that we in general agree with greater regulation of the pool and spa sector. We actually understand the importance of that. The desire to prevent childhood deaths in particular is something that has been discussed over a long period. Regulations were initially tightened in the 1990s in this area, and I think the community strongly supports any reasonable steps that actually do limit terrible outcomes. No-one would wish such a terrible event on any family, so sensible steps that can impact there are important.

In cladding product regulation the bill gives the Minister for Planning the power to declare a ban on the use of combustible external wall cladding product. The provision has been made in response to the Victorian Cladding Taskforce interim report, which recommends priority measures to prevent the use of aluminium composite panels with a polyethylene core, as agreed at the Building Ministers' Forum, and expanded polystyrene, or EPS, cladding for classes 2, 3 and 9 buildings of two or more storeys and for classes 5, 6, 7 and 8 buildings of three or more storeys. The bill also

provides for cladding rectification agreements to allow building owners and owner-operators to access low-cost finance to fund cladding works and allow long-term costs to be borne over time.

What I would say on this is this is a terrible situation that we as a broad community find ourselves in with these buildings, and it does point to inadequate regulation over a longer period of time. There was the fire down at Docklands that we saw several years ago, and the terrible situation in England with that tower — the images genuinely shock anyone who sees them. The images post the fire of the kitchens and the rooms where people perished are just genuinely shocking things to see. There has been I think a failure of regulation over a longer period. There are many layers to this, and I am thankful to the cladding task force for briefing me on some of these points; it was instructive.

I am going to make some criticisms. This is clearly step one in managing what is a very big and complex situation. There is a question about what can be used in the future and this takes one step on that. It does not deal with the longer term national issue of materials coming into the country and indeed being manufactured elsewhere around the country and being used and what is accredited and what is not accredited. It does not deal with the failure of those national bodies — I make the point 'national' as opposed to 'federal' quite clearly — to come to sensible conclusions.

I have been critical in this chamber of John Thwaites for holding a position on the task force at the same time that he held a position accrediting a number of products. Clearly that had the capacity for him to be seen to be checking his own work as it were, which was clearly an untenable position. I note that after that criticism he resigned from that position, although it does not fully diminish the concern that I think is there about his position at the head of the task force. I cast no broad aspersions on Mr Thwaites, who is well known to me from time in Parliament over a long period, but I just think that the need to be pretty sharply beyond reproach on these points is important. With respect I do not think that the task force has quite got there. I think there is still a long way to go here. I think that they have not understood that the mechanisms they are proposing here, or that the government is proposing via the Parliament, are only one wedge of this.

I do think that there is an aspect of unfairness where somebody in good faith — I will just use a case study as it were — buys into a tower and all the reasonable checks are done and then a small number of years later finds out that there is actually a cladding problem. There is no question that this has a direct hit on the value of the property. I in no way resile from the checking process — I think that the checking process must occur for public safety — but there is no question that when a building is designated as a building of risk, whatever level that is, that has a direct effect on the property. A loan may be advanced or some assistance advanced by a council through rates forgone for a period but later to be scooped back, so in effect a supplement to help deal with the problem now. I am not saying that is wrong in itself, I am saying this is not adequate overall. There is a real question about what is going to happen with the title and the debt that is attached to the title. Make no mistake here: this will directly hit the property value for people who bought in good faith.

Let us also be clear over here about who is responsible. People have been pointing in different directions on this. Is it the builder? Possibly there is some significant responsibility. Is it the building surveyor who has laid out what is required and then later ticked it or otherwise? I think building surveyors are also being put in the gun. Then there are the body corporates. What role does a body corporate have over a longer period? The body corporate will carry a lot of the difficult decision-making that will occur. I have spoken to a number of senior people in bodies corporate who are very concerned about what this means for their buildings, for their properties and for their saleability. These are quite serious issues.

I think the VBA itself ought not be immune from question and criticism. To be absolutely clear and fair, this is not pointing just at this government or just at the last one, but even going back much further into the 2000s. Matthew Guy, as planning minister, did try to take a significant step in reforming the VBA. I notice there are other steps in here and I do not resile from that, but there is a longer term question about the VBA's role and I think what can only be called a regulatory failure.

These products have been mandated or not mandated, ticked or not ticked as the case may be, but the question of how this has been regulated is a very real one. I think the truth of the matter is this bill starts the process where property owners, with a small bit of time assistance from councils, are going to be made to wear the costs. Let us be clear about what is actually happening here: this is not the community facing up and saying actually there are a broader set of responsibilities here. That is not what is in this bill; that is not there. There is nobody — not the VBA — stepping forward and saying, 'Oh, no, we got it wrong in the period in the early 2000s when many of these

buildings were built'. I do not hear that coming out of government.

In a sense I am putting some of these things on the agenda today because I think they are going to have to be confronted. And no-one should imagine that we are alone in this; to be absolutely fair there is a national issue here too — the national bodies that ticked products, the lack of clarity that there was about what product was suitable for what and the testing regimes that were in place or more often were not in place. These are all points that have not been fully grappled with, in my humble estimation, so in a sense I am putting these on the agenda because they are very concerning things. To the extent that this provides some time assistance to property owners, that is welcome.

I give another example to the chamber. I was down in a country shire in the last few weeks talking to the head planner in that municipality, and the head planner became aware, not through the authorities informing them but through a local building's owners corporation talking to the council and saying, 'Our building has been designated high-risk. What does that mean?'. It is an eight-storey building in a seaside town. Relatively recent — I think it is eight years old. So what does that mean? The owners were trying to understand that, seeking assistance from the council. The council had not been informed by the VBA. I would make a broader criticism of the VBA over a much longer period — it is not a great communicator.

It was by chance that the council was able to attend with the owner's corporation, the building owners, to be briefed about what that designation meant. The council had not at that point been fully brought into the process. Given that this bill actually gives them responsibilities, there are some real questions about how that will operate. I think there are some risks in the long haul that our building surveyor system will really take a pounding through some of this process, and we need to be very careful to make sure that there is the capacity for our building surveyors to insure and get the support that they need in that respect.

I do not want to see our system seize up or come to a halt because of the litigation that I think inevitably is going to result here. Others in the chamber would perhaps have the same view as me. If I was an owner of a building or a unit or an apartment in a large complex and we collectively were clobbered with a rating that meant that we had significant costs to meet, naturally you can see where this process is going to go. There is going to be litigation, I would hazard to suggest, and those owners corporations are going to be looking at the builders, at the developers potentially, at the building surveyors and potentially at the Reserve Bank of Australia and the regulatory authorities more broadly nationally.

If somebody has in good faith bought in and the certificates are in order, the processes appear to be in order but the wrong cladding is on the outside of the building, whose fault is that? And this particular matter is not easy to answer. You cannot answer it here. It is actually a matter of who signed what when, what checks went on, whether the material was the material that it was claimed to be and whether the national authorities had ticked that material for that purpose or not. There is a complex chain of course that we are talking about here.

I want to put on record my concern for the many families whose largest asset is going to be hit through the sequence that has occurred here. Again, I am not in any way trying to make this a party-political or partisan matter. I am trying to say that there is a broad sweep of responsibility, and this is going to have to be more generally managed as time goes forward.

The bill, as I say, also leaves greater power for the VBA and the Minister for Planning in a number of ways. There is the destructive testing power of authorised personnel to determine regulatory compliance of building products. This is going into the future and is supported. There is the increase in the power of the VBA in dispute resolution orders by enabling the VBA to suspend the registration of non-compliant practitioners. The Minister for Planning will also have powers to declare a ban on the use of combustible external wall cladding products, and the bill will allow the minister to issue ministerial directions to municipal building surveyors or private building surveyors that relate to their functions under the Building Act or regulations made under this act. There is no specific objection, and I do want to make the point that many of these steps we agree with, but we think that this is only the start of what is going to be a long and complex process.

The opposition will move some amendments here to remove licensing and to restrict the registration to a number of building categories. I note, and I will come to this in a moment, the input of the Housing Industry Association (HIA), the Master Builders Association of Victoria and others on this — and a number of people with various trade qualifications, and indeed a large number of consumers who have contacted me and other members of the opposition over a period about deficiencies in the processes and about the opportunity to improve some of these outcomes. So our

amendments will seek to put in place the registration but not include the licensing that is proposed.

We will also seek to regulate or to change the bill in a different way, which is to put in place requirements around the suitability of people to sit on panels and registration bodies and, if unsuccessful, amending licensing bodies. We will seek to argue that those who have been the subject of negative orders by the relevant authorities — Fair Work, Federal Court and the Australian Building and Construction Commission (ABCC) processes — will not be suitable to sit on a registration body or a licensing body.

We do not think that is appropriate. We think that people, whatever their background — whether they have an employer or a trade union background otherwise have perfectly good merit to sit on the relevant bodies. But we think people who have been subject to negative orders, adverse orders, ought not sit on those registration and licensing bodies. We think that is the wrong thing, and we do not think that will strengthen any system of regulation or any system of licensing.

I am happy for those amendments to be distributed.

Opposition amendments circulated by Mr DAVIS (Southern Metropolitan) pursuant to standing orders.

Mr DAVIS — Obviously there will be a committee process later, and we will seek to amend the bill. I am not sure whether that will be today but whenever it is, we are happy to have that discussion. I should, as I have said, thank both the HIA and the VBA in particular for input on this bill. I think they have different viewpoints and I will put those on the agenda here. The HIA says:

> The bill includes provisions for the implementation of a registration and licensing of trades scheme in Victoria. There has been an expectation for some time that a registration of trade system may be introduced by the government. It was not expected that occupational licensing would also be introduced at the same time.

I think that is the position in effect of the opposition: that we see the need for the registration side. We are less excited about the position going forward on licensing.

The HIA's policy position supports licensing and registration of some types of building practitioners when a clear case is made to support this. In particular, the policy supports licensing registrations of builders undertaking building work and of trade contractors' high-risk work such as electrical, plumbing or gas fitting. It also supports the licensing registration of trade contractors who contract directly with consumers, subject to a reasonable monetary threshold. HIA does not generally support the licensing registration of builders who are working exclusively for builders as consumer protection is not required in these circumstances.

I understand the point that they are making, that if you have got a head builder who employs trades, that head builder remains responsible to the consumer and to the regulation authorities for the outcomes and for their workforce as well. In Victoria building practitioners who are engaged to complete building work by a property owner or consumer are currently required to be registered by the VBA. Building practitioners engaged by project managers also need to be registered. This includes contractors who work in trades, including but not limited to carpentry, waterproofing and bricklaying. These building practitioners are also exempted from registration when the contract price for their work is less than $10 000 or where they are only undertaking a single trade such as tiling or painting.

HIA — and I will quote their commentary directly lest I get it wrong because I think it is important to get this on the record:

> HIA has major concerns about part 2 of the bill, which includes provisions around the registration or licensing of trades.
>
> Lack of detail
>
> The most important difficulty with the legislation is the lack of detail about which trades will need registration or licensing and what qualifications and experience will be required. In particular, the qualifications and experience required by licensed trades is very unclear and there are reasons to suspect that the standards required of licenced trades will be much less than registered trades. While this means that the costs of the new registrations scheme cannot yet be qualified; it also means that the benefits, if any, of the scheme also cannot be identified.

This is the point I made before. The difficulty of registration is another point that the HIA makes:

> It is however clear from the bill that registered trades, unlike licensed trades, will need to prove that they are both capable of working for builders as subcontractors and owners as head contractors. That the registered trade has no interest in working for owners directly will be irrelevant. They will need to develop business management skills and hold domestic building insurance eligibility to continue in business as a registered trade. If the trade cannot or does not want to get registered, but wants to continue in the building industry, their only option is to apply for a licence and be an employee.
>
> It is not clear that builders will be willing to employ these workers.

So there is a risk to the workforce that has not been fully thought through or quantified. This is again where the cart is put before the horse.

The HIA also points out the impact on contractor and building businesses:

> The bill will have a significant impact on trades who have never had to be registered before and will disturb unnecessarily well-established business relationships. Initial feedback from members suggests that many trades will need to make a tough decision — to only get a licence and then hope to find an employer, or leave the industry. Many trades will not be interested in applying to be registered. The impact on the availability of trades —

and we already have significant shortages —

> and therefore the cost of building work, is obvious. It is unlikely that improvements, if any, in the quality and workmanship of trades will be enough to justify these costs.

That is the essence of much of this. If you are going to regulate, you need to understand what the costs of that regulation are and the benefits. These have obviously not been quantified at all.

Another significant concern is the ability of the proposed registration licensing authority, the VBA, to administer the new legislation. The VBA already struggles to administer the existing building registration scheme, with relatively simple applications to renew registration taking months. Even if significant funds were allocated to the VBA, it is difficult to understand how the right skills and experience will be available to allow the VBA to administer the new legislation without major disruption to the building industry.

Again, I intend to ask of the minister in committee: how do you intend to implement this? What resources are allocated now for the VBA? Where in the budget line item do I find the money to implement this scheme? I think these are very reasonable questions that the HIA is raising. Can we see what that line item is of money for additional work, and how much, and what will be the steps taken by the VBA to actually implement these points? The document continues:

> Interstate workers
>
> There are registered trades in other states. They could use the mutual recognition system to apply for registration in Victoria. There is a possibility that these workers will benefit over Victorian trades who have never experienced the registration or licensing system —

of this type.

Let us be clear what is going on here. A building worker registered in New South Wales will jump to the top of the queue because of the mutual recognition arrangements, whereas the Victorian builder — perhaps in Wodonga, just on the other side of the border to Albury — who has not been registered will be at the back of the queue. I think this is a legitimate point that is being made.

Let us understand how the government intends to address that point. Does the government have a way forward? The opposition has pointed to a cross-border commissioner role. Following the opposition's announcement we would fund one for four years and base it in Mildura, the government have said they will fund one for about a year. I think this is a classic role for a cross-border commissioner to actually get in and make sure there are not obscure and untoward things that happen and unusual sets of incentives that are perhaps not intended by anyone but have not been fully thought through. We will certainly be asking the minister to explain how that is going to work for those arrangements.

Regarding registration by the VBA — I just need to backtrack a tiny bit — the VBA company registration takes six to eight weeks is what I am told. That is quite a long time. There is no assessment of skill, just the last two months if a builder has a company already. There is a need, I think, to see how this process is going to be impacted by these registration arrangements too. To have the company you have got to be registered, as I understand it. I will be interested to hear the minister's view on all of this and how that will operate. How will the machinery of those points, with the company that you run and the builder who is registered, work? Economists would call this occupational closure, where you have a trade or profession that is registered and not only a protection in name and for certain procedures but a set of systems in place that only allow them to perform certain works. We are certainly going to have quite a strong system of occupational closure. Again this is a matter for the RIS to look at closely. The pity is that there is no RIS there now.

Also there are employment issues. What happens to the employment contract if a licensed trade employee loses their licence or fails to obtain a licence? Will the employee not be satisfying an inherent requirement of their position and lose their job, or will the employer be forced to continue employing the employee even if they cannot perform the work for which they were first employed? There are a set of questions there that I will be interested in the minister responding to, along with other sets of questions. We have said that we think removing the licensing arrangements, largely part 2 of the bill, is one significant way to go.

The Victorian Managed Insurance Authority (VMIA) does carry some load in the building area through the last-resort building insurance, and I would be interested if the minister can provide some information on the impact on the VMIA of these processes. How will the requirements around registration impact? How will the requirements and the financial hurdles impact? What will be the outcome in terms of that domestic building insurance that is required of all registered builders by the VMIA? Will those who are registered have to have their own insurance as well? I want to understand a number of those points as well.

The HIA on a broader front has published a state election policy document which lays out a number of its points to support a better housing sector and a more available housing sector. I think in this context it is worth looking at the whole industry and asking how this bill fits within that context. I am going to put the HIA policy imperatives on the record because I think they are significant. The first is regarding affordability and housing supply:

1. Land supply to support Melbourne and beyond

   Better monitor and manage the availability of land that is 'shovel-ready' at an affordable price.

The opposition has obviously said it will bring forward the 290 000 lots inside the urban growth boundary. We are also interested in a decentralisation policy that will see a better outcome in terms of the state's significant population growth of 143 000 last year in Victoria. Ninety per cent of that growth was in metropolitan Melbourne. We are in no way underestimating the very significant growth in our capital city, but our decentralisation policy will over time seek to move a bigger share of that growth into our regional centres and other country areas. That is one way we see to augment the supply.

The policy position document continues:

2. Responsibility for housing supply

   A dedicated ministerial portfolio responsibility to monitor, manage and promote housing supply in all forms.

Under 'Training for a skilled future':

3. Skilled trades for a future workforce

   Support trade training in residential building as a career of choice and work with industry to develop appropriate options for continuing professional development.

Under 'Cutting red tape':

4. Improving domestic building contracts

   Review domestic building contracts legislation to reduce overlap and unnecessary burdens on builders and consumers —

this bill in truth of course and perhaps in part justifiably add to burdens and red tape —

5. Streamlining domestic building disputes

   Implement immediate reforms to streamline the lengthy delays at Victoria's compulsory domestic building dispute resolution service (DBDRV) and ensure owners and builders can directly proceed without delay.

6. Managing trade contractors

   Support independent contracting in the housing industry and ensure a balance between skills development and registration requirements —

that is very much into the zone we are looking at now, but we really do have to look more closely at our trade colleges to get better outcomes.

7. Reforming property valuations

   Revise plans for centralised annual property valuations.

I think that is in this year, but I think there is great nervousness across a significant part of the building sector. Under 'Reforming planning and building laws':

8. Streamline planning approvals

   Expand Victoria's streamlined planning process 'VicSmart' to include a wider range of low-impact residential development matters.

9. Reducing planning red tape

   Implement the outcomes of the Smart Planning program to improve the performance of local councils in planning approvals.

Not all of the slowness in planning is due to local councils, I might add; some of it is due to slowness in the centre. The current minister is not always as fast as you would like in actually bringing forward approvals when there are opportunities to do so.

The next policy imperatives are:

10. Managing subsidised community housing

    Prohibit the use of mandatory affordable housing quotas and use broader financing methods to support community housing providers to deliver long-term affordable housing projects.

11. First home buyer loans

> Introduce a government supported loan program to assist low income earners to enter the housing market.

The government is already providing a significant subsidy via the assistance with stamp duty that is in place, and in truth I think that has had mixed effects. It has certainly helped in some regional areas, but it appears to have been a factor — not the only factor — in driving up the cost of housing on the edge of the city, where supply has been limited. If you make available more money to chase reduced supply, you get an obvious outcome: prices increase significantly. Particularly in some of the growth areas in the south-east and some in the north there has been a significant escalation in prices. We have already indicated that we will bring on more lots to help manage that.

Under the subheading 'Reduce the tax on housing' the next policy imperative is:

12. Reduce up-front levies and new home buyer taxes

> Reduce local council infrastructure contributions, allocate unspent state infrastructure contributions (GAIC), and reduce the triple dip application of stamp duty on a new home.

There are a couple of points that I will make here. This is the state government that promised it would not increase taxes, charges and levies. Daniel Andrews stood on the front steps of this building on the Friday night before the election and said, 'I make that promise to every Victorian' — that taxes, charges and levies will not be increased beyond the CPI. He said the same at the Sky News election forum in Frankston. He said the same on numerous occasions. 'I make that promise to every Victorian' is what he said — he would not increase taxes, charges and levies beyond the CPI. Well, he has. He has introduced new taxes, new charges, new levies. There are well over a dozen of them, depending on how you count them. If you count double hits on land tax and stamp duty increments over time on overseas purchasers, there are closer to 16 new and increased taxes, levies and charges.

We are not arguing that some of those were not justified in certain ways. One of the things I would say is that where the government does collect these taxes, charges and levies, they have to be applied properly. The case in point here is the growth areas infrastructure contribution (GAIC). The government is sitting on hundreds of millions of dollars of growth areas infrastructure contribution money. That is a tax by another name. Whatever you want to call it, it is a tax. That tax has been applied to land in the growth areas, and that growth areas land is now being developed, but the tax that is being collected there for the specific and express purpose of funding infrastructure in those growth areas is not being spent sufficiently by the government. The government is sitting on it. Tim Pallas is like a dragon sitting on a pile of gold. He does not want to let it go to the people in the growth areas from whom, in effect, it was indirectly collected, because they paid for it in the price of their land. Make no mistake: they paid for it, and that infrastructure should be available.

We have said we would do more in terms of works in kind, both for development contributions and GAIC. We would look at bringing forward as much of those works as we possibly can. We would do that because that is to the benefit of those communities — they would get the infrastructure sooner. It is also to the benefit of the land developers in those areas, because the land developers obviously have an interest in seeing that infrastructure built at the time rather than seeing a precinct structure plan with nice shaded areas — there is an oval over here, it looks all nice and green on the map, but there is nothing there at the moment. However, the money that could fund that is sitting in 1 Treasury Place over here and not being spent out in the growth areas, where it should actually be spent. So I say we have got to do more works in kind and we have got to make sure that Treasury does not impede the legitimate movement of those development contributions, the GAIC. Councils are sometimes reluctant and slow on this, but in many respects less so than the central government. I say we have got to get cracking with getting that funding brought forward.

As I have made clear, the impact of population growth is very significant. We want to see Victoria as a state of cities, not a city-state. We want to see a decentralised Victoria. We want to see proper transport links, but we also want to do what is necessary to bring forward land availability in our regional cities —

Mr Gepp — On a point of order, Acting President, on relevance, Mr Davis is straying way down into areas that are not covered directly by this bill and that are matters before the house at the moment. I have enjoyed his contribution up until the last few minutes, but I think he needs to come back to the substance of the bill now after he has been boring everyone for 50 minutes by straying down other avenues.

Mr DAVIS — On the point of order, Acting President, my contribution is directly relevant to the matters of the bill. The state faces challenges in its growth and —

The ACTING PRESIDENT (**Ms Dunn**) — It is not a time for debating, Mr Davis. There is no point of order, but I would ask the member to stick to the bill.

Mr DAVIS — I will make the point very strongly: our strong population growth means that we need effective trades to be available. We cannot build the new stock that we need without the trades being available. We need highly competent and well-educated tradespeople. We need to make sure that they are available, and we need to make sure that the quality is there. This bill potentially could improve quality, but we think that there are aspects of this that go, frankly, too far.

We think that the licensing goes too far, but we do agree with the registration component. We will seek to amend the bill to change it in that way and will also seek to amend it to make sure that those who sit on relevant panels and those who sit on relevant registration bodies or licensing bodies are not people who have been subject to negative or adverse findings by a court, the Federal Court, Fair Work or the ABCC. We think it is wrong that somebody that has been the subject of a negative report would sit on a licensing body. People who sit on there should be people who have got capacity and knowledge, but they have also got to be beyond reproach. If they have got convictions, if they have got other negative findings, that is a concern. We will seek to make those amendments in due course.

In speaking to this I want to also talk about some of the work that the Scrutiny of Acts and Regulations Committee (SARC) has done on this. Ms Bath and others will know that I have a penchant for following SARC's work closely. Very few people do, but I do. I have often recommended it, as I said earlier in the day, as an insomnia cure. If somebody is having trouble sleeping, they can always read the latest SARC report in detail. However, in relation to the building —

An honourable member interjected.

Mr DAVIS — No, no. It has not. As I make the point, I am probably unusual in that respect.

The SARC *Alert Digest* No. 12 of 2018 does make some legitimate points. It provides that part 2 would come into operation later, and this is a longstanding point. The committee is satisfied that the delay is legitimate, and I do not disagree with that. On the right to be presumed innocent — the reversal of the onus of proof — the committee will write to the minister seeking further information. I will come back to his points on the relevant points about the presumption of innocence. On the presumption of innocence, the report says:

> The committee observes that these provisions may be interpreted as requiring an accused to prove their innocence by either raising evidence of a reasonable excuse or actually proving that they have a reasonable excuse, for committing the relevant acts.

SARC makes some further points and says it will write to the minister seeking further clarification. The minister comes back to SARC on 30 August, just in very recent days. He talks about the default commencement date and responds to the committee's points about proposed new sections 169FA and 169FB, and the minister responds:

> The new sections do not remove the presumption of innocence or reverse the overall onus of proof on the prosecution to prove the offence beyond a reasonable doubt.

I am quoting Minister Wynne here.

> Rather, each exception is, in effect, an expressly recognised defence to the relevant offence. The new sections do impose an evidential burden on an accused or potential accused within the meaning of section 72 of the Criminal Procedure Act 2009 when it comes to demonstrating an exception to that offence. It is for an accused to provide evidence of the reasonable steps that they have taken. This is appropriate because, in many instances, knowledge of the steps taken may reside with the person who alleges that he or she took those steps, and will only be available to the authority if provided by a potential accused.

I accept that. The minister goes on:

> In the absence of express admissions, the offence provisions would not be able to operate effectively if, to make out the offence, a prosecutor had to adduce evidence of matters or knowledge of which may reside exclusively with an accused or potential accused. In my view, the exception provisions provide a potential accused with a clear defence and so are the best way to achieve the policy intent of ensuring that the offence does not apply when a person has taken reasonable steps in the circumstances.

I think it is worth putting those points on the public record in the chamber as part of this process.

I do want to point, as I did earlier, to the issues around union impact. It is possible that some of the provisions in this bill may be misused by union groups that actually seek to work with the shape of the legislation. That will mean that those people who are currently contractors, and independent in that sense, either become employees or are forced to take their full registration arrangement. I should also note that we want to ask some questions about provisional registration. I am conscious that I have only got a small amount of time. I have some questions about how the provisional registry will operate — the machinery of

that. I also seek to understand how the threshold will work for handymen, who may be doing small-scale works, and what the arrangements will be. In a sense I am putting those points on notice now so the minister can respond when I ask some questions about a number of those issues.

In conclusion, the opposition will seek to amend this bill with large tranches of amendments. We hope the chamber will support us on those matters.

Dr RATNAM (Northern Metropolitan) (15:11) — I rise to speak on the Building Amendment (Registration of Building Trades and Other Matters) Bill 2018. I indicate the Greens will be supporting this bill. I want only to make some brief comments on two aspects of the bill in particular. Firstly, I want to indicate the Greens support for the provisions relating to the licensing and registration schemes. The building industry is a very important industry. We rely on the skills of those involved in the industry to ensure our buildings are safe and fit for purpose, whether it is a 30-storey tower or a suburban home. We also know that the building industry is one of the most dangerous industries. Yesterday's crane accident is only the most recent illustration of the danger of the industry. The Greens support the reforms in this bill that seek to provide an additional level of security that people engaged in the building industry have the necessary skills and experience.

The bill also introduces new provisions relating to flammable cladding, which we have seen on the outside of many buildings across Melbourne. The bill gives the minister the power to ban high-risk cladding materials. This is very welcome. We have seen the tragic outcomes of installing this cladding on buildings, both in Melbourne at the Lacrosse building and in London at Grenfell Tower. The dangerous flammable cladding should never have been allowed on Melbourne's buildings in the first place, but it was because successive governments took their eyes off the ball. When the Victorian Cladding Taskforce investigated the use of cladding across Victoria, it found that systems failures led to major safety risks and widespread non-compliant use of combustible cladding in the building industry across Victoria.

These system failures go all the way back to 1994 when the Kennett government took building surveyors out of local government and essentially privatised the service. When you privatise what should be an essential public service you see standards drop. We now have a crisis on our hands in terms of combustible cladding on many buildings. We believe it is a failure of government oversight and regulation which has created the situation we find ourselves in today, but the government is not willing to take responsibility for removing the dangerous cladding, instead placing the burden on owners of property.

The owners did not install this cladding; it was developers cutting corners and opting for the cheapest option — developers that have seemingly been more focused on the final profit than the quality of building materials, the design of the building or the safety of the people who ultimately live there. But this bill puts the onus to pay for the removal of cladding on home owners. The bill creates a scheme whereby home owners can apply to council for long-term loans to help them pay for cladding rectification. But this is not good enough. There is a significant cost involved in removing and replacing the cladding — up to tens of thousands of dollars. Many Victorians will struggle to meet these costs. If they do not, they are continuing to live in unsafe conditions and may also face eviction if they are given a non-compliance notice.

The Greens believe that because the state's lack of proper oversight and regulation is what has created this situation the responsibility for rectifying the cladding should lie with government. The Greens have called for a cladding safety fund to be established which would cover the up-front cost of replacing the cladding. The fund would include a mechanism for the government to seek to recoup costs from the company or the authority responsible for the improper use of the flammable cladding. This is a much fairer and more effective system. Government should act in the best interests of the people it represents. This includes taking responsibility for its own mistakes and using its financial power and resources to address these mistakes. While we will be supporting this bill, we call on the government to do more to help home owners and renters live in safe and secure homes.

Mr GEPP (Northern Victoria) (15:14) — I too rise to speak on the Building Amendment (Registration of Building Trades and Other Matters) Bill 2018. This bill's objectives are to deliver better outcomes for domestic building consumers and building practitioners through further improvements to the practitioner registration and disciplinary system, improve compliance with swimming pool and spa barrier standards and implement some recommendations of the Victorian Cladding Taskforce and the Coroners Court.

I will not go into the depths of all aspects of the bill. They have been covered by other speakers, including Mr Davis. When I moved my point of order earlier, I was a bit churlish about Mr Davis's contribution, which up to a point —

Mrs Peulich interjected.

Mr GEPP — I do not need your help, Mrs Peulich, but if you want to provide it, then go ahead. Up to a point Mr Davis was making some very reasonable points in his contribution. Then of course he did stray. But he did cover many aspects of the bill, which I will not repeat. Of course the substantive parts of the bill that we are considering deal with a number of aspects, including the registration of building trades and employee licensing, an improved swimming pool and spa barrier compliance framework, changes to disciplinary measures, continuing professional development for plumbers, cladding-related measures and other measures to improve the operation of the Building Act 1993.

Consultation around this bill has been quite extensive with organisations such as the Master Builders Association of Victoria, the Housing Industry Association, the Australian Institute of Building Surveyors and the Victoria Municipal Building Surveyors Group. The trade registration employee licensing measures have been the subject of consultation with the Construction, Forestry, Maritime, Mining and Energy Union. The swimming pool and spa measures have been the subject of consultation with Life Saving Victoria, the Swimming Pool and Spa Association of Victoria, Kidsafe Victoria, Landscaping Victoria and the Real Estate Institute of Victoria. The cladding measures have also been the subject of consultation with the local government sector and the Municipal Association of Victoria. There has been widespread consultation on all elements of this bill.

I particularly want to leave the building aspects of the employee registration and licensing until the end, so I will come back to those. I will deal briefly with the other aspects of the bill and of course swimming pool and spa barriers. This bill will introduce a framework for the creation of a better funded and more proactive and systemic compliance and enforcement regime for pool and spa barrier compliance. Much of that framework will be delivered by the regulations. The other key aspect of the bill in relation to this area is that it introduces amendments that will now require councils to keep and maintain a swimming pool register in accordance with those regulations. We can never do enough, as we know, to improve the safety of our kids in particular around water and swimming pools and spas. One drowning is too many, and this government, as it has demonstrated time and time again over the past four years, is committed to doing everything that we can to keep our kiddies safe. There have been coronial findings to support the introduction of a compliance barrier under the current framework, so I am very pleased that this bill will go to some of those issues.

On the cladding-related measures, Mr Davis touched on some of these and reflected upon two fires in particular — the Lacrosse building fire in Melbourne and the fire in the Grenfell Tower in the UK. Who will ever forget the horrific scenes that we were all watching on television of the fire in Grenfell and the aftermath of the reporting. I think everybody who watched any of that footage was touched deeply by those images. We of course formed a task force to look at the circumstances here in our state, and that task force continues its work to reduce the risks of combustible cladding. Through the work of that task force we are well ahead of other jurisdictions on auditing, assessment and rectification orders. What this bill will do is enable dangerous cladding products to be banned.

I just want to deal very quickly with Mr Davis's contribution. I do note that he acknowledged that we go way back in time in terms of the materials that were allowed in the use of construction for many years, so I do acknowledge that. But I was a little bit confused. I was not quite sure whether he was saying we should do this or we should not do it. Of course when you undertake rectification and examination of these sorts of things, inevitably there are consequences, but that does not mean that we do not do it. We only have to again remind ourselves of those horrific images from Grenfell in London and that in itself has got to be enough incentive for us to do something in this area.

What this bill will also do is enable dangerous cladding products to be banned, but it will also give the power to the Victorian Building Authority to carry out destructive testing and sampling, again strengthening our efforts and endeavours to ensure that construction in this state is done in the safest possible way using materials that we can be confident will be as safe as we can possibly get them for the citizens of this state.

I want to spend most of the rest of the time on the registration of building trades and employee licensing. I heard some of the objections coming from Mr Davis about the regulatory impact statement, the RIS. What does that mean and when should it be done? Should it be done now, should it be done afterwards, what is the cost factor et cetera? But what I did not hear about from him during that part of his contribution in any great depth was the impetus behind this.

Think about, just for a moment, the types of dwellings and commercial buildings that we are talking about being constructed. We want them to be done by people who are properly trained, who are properly skilled and

who are properly licensed to be able to carry out this work. We do not want sham contractors. We have all heard the stories over the journey, and we want to weed that element out and we want to get rid of it, and prior to this bill we were actually lagging behind. If you look at, for example, registrations in places like Queensland and New South Wales. I think our registrations for domestic builders, limited, is 4956; for commercial builders, limited, 3396. Contrast that with the estimates of the Master Builders Association of Victoria — 46 000 registered or licensed trade practitioners in Queensland and 40 000 in New South Wales. So there is a job of work that needs to be done, and we are concerned about building work being performed by people that are insufficiently trained and the lack of accountability for non-compliant work. This bill will create the capacity in the act to restrict building work to tradespeople who hold the requisite skills and experience.

I cannot imagine in too many other circumstances where we would not support the introduction of a regime that requires people who we are placing a great amount of trust in, in terms of construction, to be licensed, registered and properly trained. The end goal of this scheme — and we must bear this in mind — is that the trade contractors would become registered building practitioners and employees would need an employee licence or registration to perform restricted building work. Mr Davis touched on skills shortages, and to avoid any shortage and to provide fairness there will be a provisional licensing and registration regime that will be put in place. So despite the assertions of those opposite, these things have been thought through by the minister and the minister's department. They are areas that we will continue to work on with the industry, but the bottom line here is that we need a regime that is applicable across the board so that we can all be very, very confident that we have got very highly skilled, trained, registered and licensed people carrying out the building works, both domestic and non-domestic, in the state of Victoria.

With just a hint of latitude, I hope those opposite will be okay with this. I do not want to suggest for a moment that what we saw yesterday in Box Hill had any relationship to any one person being at fault. There will be processes and investigations that will go on that will determine those matters, but what it did highlight for all of us I think is that we are talking about an industry where we all have heard the stories, as I said earlier. We all know of the sham contractor or the shonky building arrangement that has occurred where people get it done on the cheap, but of course inevitably that means you are getting a product that is defective and inevitably will lead to significant problems. What we know is that in terms of health and safety the industry that most suffers from workplace injury and death in this state is the construction industry, and unfortunately we saw it yesterday all too starkly with the death of a construction worker and the hospitalisation of two others. One person is at this very moment fighting for their life.

I was very moved when I saw those images again on television last night, and in full disclosure my son is a mechanical services plumber. He works on non-domestic construction sites, and I hear again and again and again some of the issues in relation to health and safety. He has not worked for a couple of weeks now because his job has been shut down because it is unsafe, and I have got to say that when he told his mother that he would not be at work for a couple of weeks because the job is unsafe, she said, 'Thank goodness. Thank goodness you were able to come here and tell me that in person', because last night — and I do not want to get emotional — there was a family that was grieving for the loss of another worker on a construction site, killed. When are we in this state going to be outraged about that? We need to be outraged about it.

I often hear across this chamber barbs thrown at me about my relationship with the CFMEU. I have got to say to you that I take my hat off to those people from the CFMEU who I spoke with last night who were traumatised, the women and men from the CFMEU who were down on that site, who today have spent all day wrapping their arms around the family and colleagues of the worker who passed away and the others who are in the hospital, because that is what they confront every day. I also take my hat off to the emergency services workers who had to go to that site yesterday and perform what I am sure were for them very, very difficult tasks.

I know Mr Dalla-Riva and Mr Bourman, whom I have had private conversations with, have told me about the worst aspects of their role in a past life as police officers, and to those people who went to that site yesterday and performed the wonderful work that they did, thank you, and please, please, please, we need to be outraged. We cannot allow this to continue. I commend the bill to the house.

Mr MORRIS (Western Victoria) (15:30) — I do rise to make a contribution to the Building Amendment (Registration of Building Trades and Other Matters) Bill 2018, and I think there are times that we can agree on things in this place. I certainly was quite moved by Mr Gepp's contribution there and think it is something that we recognise, that having a safe workplace and

ensuring that mothers and fathers get to come home is just so incredibly important. That is why we are here.

I have often said in this place that the first and most important role of any government is to protect the community, and that is not in any one sense, whether it be through crime or whether it be through unsafe workplaces. I certainly concur that this is the most important role of government and something we should all in this place be working together to achieve, to make sure that, whether it be a son, daughter, mother or father, they do get to come home at the end of each working day. I think we were all devastated to hear of another death at a workplace, and it is something we should always be striving to ensure does not happen. I think it is something that we should reflect upon very deeply, the fact that we have this very important role to play, and ensure that everybody does get home safely. Mr Gepp, I think we all agree on that point.

I did want to go to the specifics of the Building Amendment (Registration of Building Trades and Other Matters) Bill 2018. I note that the purpose of this bill is to amend the Building Act 1993, but it also seeks:

> (b) to amend the Local Government Act 1989 to provide for—
>
> (i) Councils to enter into agreements to rectify cladding on buildings; and
>
> (ii) Councils to declare and levy a cladding charge to fund the rectification …

There are two points I want to raise about this particular matter. One is that the Local Government Act 1989 is an act that Mr Leane spoke about as his favourite act earlier today. The Local Government Act is one that I have a great affinity for, but I also think it needs significant reform. It was a very small act when it was first introduced and it has been amended a number of times. As a result it has become rather voluminous. I think it has gone too far in some directions and certainly should be reined in.

With regard to the cladding on buildings, I think this is an important area and that there are certainly many lessons that need to be learned from what we have seen. The Grenfell Tower fire certainly did make us all absolutely aghast — seeing those 72 deaths in a fire that continued to burn for 60 hours. It was something that was certainly horrifying to see, and something that we need to learn from to ensure it does not occur here in Australia. We have obviously had a couple of near misses with regard to cladding fires here in Victoria. The work of the group who are assessing what to do about that non-compliant cladding is important work and it is to ensure the safety of all Victorians because we certainly would not want to see a fire like that occur here in Victoria. That significant loss of life was absolutely devastating, and this situation is something that we need to ensure is rectified here in Victoria.

This bill would make it an offence for a person to carry out certain types of building work without being registered or licensed. It also provides for the provisional registration of certain builders to carry out certain building work and introduces related offences. It also provides a licensing scheme for building employees who carry out certain building work and introduces related offences. It makes provision in relation to certain wall cladding products, clarifies the grounds for disciplining of registered building practitioners in relation to breaches of dispute resolution orders and provides for the further regulation of swimming pools and spas. I have certainly had some concerns raised with me personally with regard to this particular area.

I think many in this house would agree with me — I am the father of children who are not young but are still on the younger side — that we do need to ensure that swimming pools are kept safe to ensure that the possibility of the sort of tragic events we hear happening about all too often is reduced, to keep our children safe from drowning. It is important that we get this regulation right. We would not want to get it wrong and have an overly burdensome regime that people might try to get around. At the same time it is incredibly important that our children are kept safe.

The bill will further go on to make consequential and other miscellaneous amendments and also make related minor and consequential amendments to other acts. I suppose when describing this bill one could say that it is best divided into four categories: the registration and licensing, the pools and spa regulation, the cladding product regulation and the strengthening of powers of the Victorian Building Authority and the Minister for Planning.

With regard to the registration and licensing and these objectives of this bill, over a period of time the bill would make it illegal to work in the building industry without being registered and licensed. If this bill were to be passed, a provisional licensing scheme would be implemented, the conditions of which would be determined in a regulatory impact statement (RIS), which I know Mr Gepp made reference to in his contribution. The commencement date of the bill would be 1 September 2020 as a result of the two-year time frame in which to complete that RIS. Once a provisionally registered contractors and employees would be expected to upgrade to full registration within

five years, so there is a significant time frame there in which people are able to get that registration.

With regard to the pools and spas regulations, this bill requires councils to keep and maintain a swimming pool register consistent with Building Act 1993 regulations. It also creates the new category of 'registered swimming pool and spa inspector' and provides a framework to require owners to undertake mandatory periodic self-assessment of pool area compliance and an independent assessment of pool barrier compliance.

A significant issue, and one that I certainly became aware of when I was a little more closely involved in local government, is the cost shifting that can occur from state government to local government. Now, we all know that this government today introduced a rate capping regime which has had some extraordinarily negative impacts, particularly on regional and rural councils, which are experiencing significant growth and, due to that significant growth, are struggling to keep up with the infrastructure needs of their communities. When we are talking about the more rural communities, some of these communities are not having growth; they are actually having negative growth. Indeed they are contracting in the size of their population. However, what is not contracting is the number of roads they have and the many other bits of infrastructure, whether it be football ovals or tennis courts or the like, that they need to maintain.

When you are in an inner-city council, you have got significant population in a very densely populated area. Therefore for your kilometre of road you might have thousands of people that are paying rates to maintain that road. However, in a regional council you may have 100 kilometres of road that just a couple of ratepayers are making a contribution to maintain, so the rigidity of the rate capping regime that this government has implemented has certainly adversely affected regional and rural councils. I suppose this is just further evidence of the metro-centric style of this government and that Daniel Andrews is the Premier of Melbourne, not the Premier of Victoria, as is often said to me by my many constituents. One of the concerns that may arise is that this registry —

Mr Dalidakis — Are you talking to yourself in the mirror again?

Mr MORRIS — No, not at all. I have certainly heard Mr Andrews described as the Premier of Melbourne on many, many occasions, and that is not just in my office, Mr Dalidakis. It is by others outside of my office who have certainly addressed —

Mr Dalidakis — As you are walking into the office.

Mr MORRIS — It has actually been printed a couple of times in the Ballarat *Courier*. I will send it to you if you like, Mr Dalidakis.

The substantive concern that I raise is that this potential cost shifting to local councils could make implementing this very difficult. When you introduce a new role for local government without an income stream that is going to pay for that role, you have got a finite budget and there needs to be cost cutting in some areas. We would not want to see child and maternal health services, we would not want to see libraries and we would not want to see road infrastructure funding being cut as a result of this change. That is not to say that this is not important, but that we should be looking at ensuring that there are not adverse impacts due to this piece of legislation.

With regard to the cladding product regulation, this bill gives the Minister for Planning the power to declare a ban on the use of a combustible external wall cladding product, and this provision has been made in response to the *Victorian Cladding Taskforce: Interim Report* that, from memory, Mr Baillieu and Mr Thwaites were working on. This report recommended:

> … priority measures to prevent the use of aluminium composite panels (ACP) with a polyethylene core (as agreed at the Building Ministers' Forum) and expanded polystyrene (EPS) cladding, for class 2, 3 or 9 buildings of two or more storeys, and class 5, 6, 7 or 8 of three or more storeys.

The bill further provides for cladding rectification agreements, also known as CRAs, to allow building owners and owners corporations to access low-cost finance to fund cladding works and to allow for any long-term costs to be borne over time. I think the legislation just during this week might have had a record number of acronyms involved, but that is probably by the by.

The bill also strengthens the power of the Victorian Building Authority (VBA) and the Minister for Planning in a number of ways, for the VBA one being with regard to destructive testing powers of authorised personnel to determine the regulatory compliance of building products and another increasing the power of the VBA dispute resolution orders, also known as DROs. So we have got the DROs enabling the VBA to suspend registration of non-compliant practitioners. For the Minister for Planning, these powers include the aforementioned power to declare a ban on the use of a combustible external wall cladding product as well as allowing the minister to issue ministerial directions to municipal building surveyors or private building

surveyors that relate to their functions under the Building Act 1993 or regulations made from the act.

I do note that Mr Davis has had the amendments that he had drafted circulated. I certainly do commend these particular amendments that deal with prohibited persons. I think we do need to ensure that people involved in this particular industry are of a high standing and are ones that adverse decisions have not been made against as a result of undue behaviour, unsocial behaviour, illegal behaviour and the like in the past. I certainly look forward to the committee stage. It remains to be seen whether or not we will get to that today, but I certainly —

Ms Symes — No, not today. Mary ruled that out. Doesn't your whip tell you what's going on?

Mr MORRIS — I am just over here keeping my head down, Ms Symes, and doing the very best I can. So on that point, thank you, Acting President.

Ms BATH (Eastern Victoria) (15:46) — I am pleased to make a few comments this afternoon on the Building Amendment (Registration of Building Trades and Other Matters) Bill 2018, and as I do so I just note that the commencement date for this particular bill, if enacted, is in late 2019. Indeed being on the Scrutiny of Acts and Regulations Committee (SARC) and acknowledging the great work that SARC does from time to time, we did write to the minister to understand why there is a greater length of time than a year, which is the usual time that once a bill is enacted it would come to fruition. The minister responded and felt that there was a significant amount of work that still needed to be done on this behind the scenes, and so a reasonable acceptance of that came through from SARC.

There are about four key measures in this bill. In effect it is to amend the Building Act 1993, and it looks at four main specific sectors. One is in terms of registration and licensing of professionals. I know we have some comments around licensing, and the fact is that some amendments put forward by Mr Davis propose to remove that licensing component. There seem to be some considerable issues around that and concern out in the marketplace, particularly from builders in my patch of Eastern Victoria Region. The government is looking over a period of time to make it illegal to work in the building industry without being registered and licensed.

The second part goes to swimming pools and spas, and it looks at forming and shoring up the regulations around them. Councils will be mandated to keep and maintain a swimming pool register, and owners will be required to conduct periodic self-regulation.

The third part to this amendment in this bill will be cladding product regulation, which will include the banning of aluminium composite panels, such as polyethylene core. This has come about in accordance with the Victorian Cladding Taskforce's interim report. I believe that task force was set up in response to a ministerial request through the Victorian Building Authority as a result of terrible occurrences that happened at the Grenfell Tower in London back in 2017 and in response to fires back in 2014 in our own Docklands area. Fires involving inappropriate cladding material have caused great tragedies, particularly the Grenfell fire, where lives were lost and poor and helpless people suffered terrible fates which their families are still living with.

The fourth area is the strengthening of the powers of the Victorian Building Authority and the Minister for Planning.

Indeed the opposition has its own amendments. I know Mr Davis foreshadowed the fact that the Liberals and The Nationals will be proposing a number of amendments, including one about the removal of licensing from this bill to at least make that side of it, which is unacceptable to us, a more proper process, but not overly onerous and restrictive so that people can conduct their businesses and make a dollar out of them.

Another measure is to restrict registrations to a number of categories. A lot of amendments in the bill will be in relation to the suitability of the people who are to sit on panels that will be looking at the registration of other professionals — the type of people we have there and the type of people we should have there. Naturally if somebody has gone through a process — for example, if Fair Work has deemed that they have had some negative orders placed on them because they are not practising in a professional, competent and responsible manner — then they should be deemed to be unsuitable to sit on a board. I think that is quite appropriate.

Looking at some particular clauses of the bill, we know that — and I alluded to it just then — clause 79 talks about compliance in terms of cladding and non-compliant cladding. I do not feel in reading that section that the definition of what is non-compliant cladding is specified in the bill. It seems to me that there is a lack of clarity around that. Certainly if you want to have something be compliant, you need to know and understand — and the industry needs to know — what is non-compliant.

The bill looks to the registration of swimming pools and spas. That is around clause 26. It points to the fact that councils will be responsible for maintaining a register of swimming pools and spas within their own municipality and for carrying out routine inspections. Now, what it does put to me — and I think Mr Morris alluded to this in his contribution — is the fact that there are many councils now who feel, rightly or wrongly, that there is an ever-increasing burden on them to provide additional services and infrastructure, and certainly services, in a pressurised market.

We do have a thing called a rate cap on there, and rate caps have certainly been well received by a vast proportion of the population, but rate capping also comes with limitations. My question is: what is this government doing to provide additional support and services to the councils that then have to implement a register and monitor swimming pools in their municipalities? Of course safety is one of the most important things that we need to provide in this place and in all tiers of government, particularly too as responsible landowners, house owners and swimming pool owners in our electorates and in our towns.

Data from the Coroners Court says that there are two main risks of toddlers drowning. This is a huge sadness when it happens to any family. One risk is, unfortunately, the lack of adult supervision. This can happen with the most wonderful, supportive and vigilant parents. Unfortunately sometimes toddlers can just evaporate, as it were, into thin air, fit through a very small space, hop down the street and be away in the blink of an eye. It is an absolute tragedy if that happens — if a child wanders off and comes to harm via a pool. I am sure all parents are quite vigilant about that. There has been a lot of advertising in relation to water safety and pool safety. I commend all levels of government for that, because it is so important to keep our children safe.

Another issue relates to non-compliance of existing standards in relation to the types of pools. Indeed the types are classified in three different ways, depending on their date of construction.

The framework within this bill comes into effect after the regulatory impact statement (RIS) has been completed. I have some concerns around the fact that this bill will go through. Yes, it is great that there will be close inspection of swimming pools and spas, but what does that mean for the council and what does it mean if the RIS has to be completed before there are real eyes on that?

In relation to some other points within the bill, I would just like to raise something that has come through for me from my own electorate. A builder in my electorate — a registered building practitioner — has some concerns in relation to this legislation. My constituent runs a small to medium-sized company in central Gippsland, and he has now focused his work, honed his work, to specialise in renovations, extensions, bathrooms and the like.

There was a time when he was able to quote large-scale building construction — large homes et cetera — and win tenders for their construction, but there seems to be a glut of volume builders moving into certain patches of Gippsland so that they can in effect squeeze out the smaller players. They are registered and totally kosher — they are allowed to be in that marketplace; it is a free marketplace — but what we do see is some of those smaller players being squeezed out in terms of the home construction market.

To paraphrase my constituent, he says that you often find that the client will just go for the cheaper option. What we see sometimes with the cheaper option is that people do not get quality fittings and fixtures, quality roof trusses and a depth and quality of build. At the end of the day it is the client's choice, but my constituent feels that the larger scale builders often undercut. Again, this is a fact of life.

One of his concerns in relation to the bill is that he feels, as a sole trader and someone who also relies heavily on subcontractors, that each subcontractor will have to be provided with a copy of the client's plan — yes, you do if you are a subcontractor — and then you bid back in after seeing the overall value of the job. In a competitive environment my constituent fears that the mandatory registration and licensing of these subcontractors will push up the price of each trade, resulting in, again, a higher value that will be hard to compete with in a larger market. He feels that this bill and the discussion around this have caused confusion in the market and clarity is lacking. He goes to the fact that he feels that the wider building community has not been communicated with consistently and well. Indeed part of the discussion of the concerns that we are having is that the peak bodies of the building industry — for example, the Master Builders Association of Victoria and the Housing Industry Association — are in fact opposing this section that deals with licensing; hence why the Liberals and The Nationals have listened to this and are keen to have that section removed from the bill.

There are some needed and important positives in this bill, but there are also some parts that need to be removed or amended. I look forward to Mr Davis's amendments being agreed to as part of a sensible approach to finessing and improving this bill.

Mr RAMSAY (Western Victoria) (15:58) — I would just like to make a few statements in relation to the Building Amendment (Registration of Building Trades and Other Matters) Bill 2018. When I had a look at the bill I thought, 'What does this mean to me?'. What it means to me is I do not think I will be able to continue building pergolas anymore. I am quite handy at building pergolas, and I am going to have to go and get myself a licence, get registered and do a whole lot of other things to whack up a pergola for all my mates that want to have barbies out on the back terrace.

But in all seriousness I actually think most of the components of this bill are good. It actually puts more compliance and rigour around workmanship for those in the building trade, particularly the head contractor, but it also makes the subcontractors responsible for their own workmanship in relation to compliance and registration.

I also believe the clauses around safety for pools and spas are good. I heard the discussion with Neil Mitchell about six or seven months ago when this bill was mooted. There was a range of questions that were raised through the interview process about what the bill will mean for interlocking —

Business interrupted pursuant to standing orders.

Sitting extended pursuant to standing orders.

Mr RAMSAY — As I was saying, I was listening to 3AW and Neil Mitchell when a number of callers were asking about some of the detail around what the bill will mean for old pool and spa fences and for those interlocking doors in houses that have pools right outside the door, which are potentially used as the fence for either the pool or spa, and how they would be impacted by the new legislation and also the regulatory impact statement (RIS), once we know what that is. Perhaps I might get the opportunity to talk about that impact in the committee stage.

Generally speaking — and it has all been said before — there are new cladding restrictions and compliance requirements in relation to fireproofing and cladding that is used on the outside of buildings. We have seen some horrific incidents of buildings with very substandard cladding catching fire — mainly overseas cladding, I might add, that obviously, for whatever reason, met the regulations in this country, but the material itself was obviously a very high fire risk. This bill weeds out the poor cladding material that has been used on some of these buildings and gives them a greater fire safety rating, and that is a good thing.

As has been identified in other contributions, the Housing Industry Association (HIA) of course do have some concerns in relation to licensing and registration. Again, in the committee stage we might have a better understanding of the regime that will be introduced to have head contractors and subcontractors licensed to enable them to carry out building works.

The purpose of bill will amend the Building Act 1993 to make it an offence for persons to carry out certain types of building work without being registered or licensed — we have covered that off; to provide for the provisional registration of certain builders to carry out certain building work and for the introduction of related offences — we talked about that; to provide a licensing scheme for building employees to carry out certain building work and the introduction of certain offences — obviously HIA have got some concerns about that; to make provision in relation to certain wall cladding products — I talked about that; to clarify the grounds for discipline of registered building practitioners in relation to breaches of dispute resolution orders; to provide further for the regulation of swimming pools and spas — I have briefly covered that off and will look for more detail in respect of that in the committee stage; to make consequential and other miscellaneous amendments — we will learn more about that; to make minor and consequential amendments to certain other acts; to amend the Local Government Act 1989 to provide for councils to enter into agreements to rectify cladding on buildings; and to provide for councils to declare and levy charges to fund such rectification, and I am interested to know on what basis and how that collection will take place.

There is quite a lot of responsibility sheeted back to local councils. I am not sure if there is going to be some sort of support for local councils to carry out these new functions; I may have missed all of that in the bill. There is a requirement for councils now to create a register and to inspect pool and spa safety fences going back to the year 2000 and something — I cannot remember the date; I will find that out. Again, that is quite a lot of responsibility to sheet back to councils. I know they have responsibility now in relation to the issuing of permits, but I suspect if you go out to some of the outlying houses that have pools around Melton most of them would not have even been inspected, far less any of them having some sort of pool fence. So I can perhaps have some reservation about whether councils have the capacity, resources and/or even

funding to be able to complete their obligations under this bill. Perhaps that is a question we might ask the minister when the opportunity arises.

Registration, licensing, pool and spa regulation, cladding product regulation and strengthening the powers of the Victorian Building Authority and the Minister for Planning are the essence of this bill. Of course if you do not have the appropriate registration or licence and are working in the building industry, it will be deemed that you are working illegally and then come with some costs associated with that. I see there are some terms of time here. After the expected passage of the bill a provisional licensing scheme will be implemented, the conditions of which are to be determined by a subsequent regulatory impact statement, which we are yet to see.

The commencement date of the bill is 2020. It is expected to take two years to complete the RIS analysis. Once provisionally registered, trade contractors and employees will be expected to upgrade to full registration within five years. So we have got a bit of a time frame to work on, and obviously the RIS is a sort of living document in motion.

I do not wish to prolong my contribution at this stage. I do not know if we are getting to committee today, but there are a number of questions I would like to ask, particularly in relation to the licensing and registration of subcontractors and other workers and also with respect to the council's responsibility in relation to this bill for both the cladding and the pool fence and spa regulations.

I do note Mr Davis has foreshadowed a number of amendments that we will be seeking in relation to this, but overall we are not opposing. We are seeking some amendments to make the bill better, but at the end of the day this bill will make it safer in relation to having our children protected, particularly around pools and spas. It will improve the material used for cladding to give our communities greater safety in respect to fire risk, and hopefully it will improve the workmanship and compliance within our building industry by the use of some registration and licensing powers.

Motion agreed to.

Read second time.

Ordered to be committed later this day.

ELECTRICITY SAFETY AMENDMENT (ELECTRICAL EQUIPMENT SAFETY SCHEME) BILL 2018

Committed.

Committee

Clause 1

Mrs PEULICH — As we do not have amendments I am hoping that perhaps all of our questions can be answered under clause 1. We want to start off with the two concerns that were raised by the Scrutiny of Acts and Regulations Committee, the first one being that there is an inappropriate delegation of legislative power. I understand that the committee has written to the minister.

Mr Jennings — Yes.

Mrs PEULICH — And I was not quite sure of the response.

Mr JENNINGS — In fact I can actually read the response from the minister if you are happy for me to do that. It states:

> I refer to your letter of 20 February 2018 seeking clarification as to whether new sections 54 and 55 in the Electricity Safety Act 1998, as proposed to be inserted by clause 7 of the Electricity Safety Amendment (Electrical Equipment Safety Scheme) Bill 2018, would limit the presumption of innocence by imposing a legal burden on an accused to prove that certain conditions are met. I note:
>
> > section 54 creates an offence for a person to supply or offer to supply electrical equipment that is not in-scope electrical equipment, unless the electrical equipment satisfies the acceptable prescribed standard and is safe to be connected to an electricity supply; and
> >
> > section 55 creates an offence for a person to supply or offer to supply electrical equipment which has been declared to be controlled electrical equipment by Energy Safe Victoria, unless it has been issued with a certificate of conformity that is current and the equipment is marked as prescribed.

It goes on to the most relevant bit — that is, the introduction of the concept:

> I confirm that it is intended that these two offences impose an evidentiary and not a legal onus on the accused.
>
> As with other offences in the bill, the burden of proof would thereby rest with the prosecution to prove each element of these offences. If the accused were to subsequently produce evidence of an exception applying, the burden would shift back to the prosecution to prove the absence of the exception.
>
> The exceptions for these two offences generally relate to matters which are likely to be known by both the prosecuting

> authority and the accused (e.g. the applicable standard applicable to the electrical equipment whether a certificate of conformity has been issued in respect of the electrical equipment). Nevertheless, and consistent with the reasons given in the statement of compatibility for this bill, I consider that it is reasonable to require participants in a regulated industry to be sufficiently apprised of the standards applicable to them, and of certification labelling requirements applicable to regulated electrical equipment.
>
> I therefore consider it appropriate in this case for the accused to bear the evidentiary onus of proving that an exception to the offence applies, and I consider that these provisions do not unreasonably limit the right to be presumed innocent.
>
> Thank you for the opportunity to respond to the committee's concerns. I trust that this information is of assistance. Please contact my office should the committee require additional information …

Now I formed my layperson's view about what that was and you may have formed your own during the course of it so maybe we can compare. Somebody who has electrical equipment — in most instances that would be a distributor or somebody who is using a piece of electrical equipment — has an obligation to make themselves aware of the standard that should apply. If they make themselves aware of that standard and the way in which they become aware of that standard — so that can actually be the evidence that I know it complies with what the standard is, I can demonstrate that and I have relied on that and I can therefore produce that as a piece of evidence — then it is the regulator's responsibility to demonstrate something to the contrary to indicate that you have not got that evidence.

Mrs PEULICH — Can I just ask for a point of clarification there. I was reading the material on the Energy Safe Victoria website. Clearly they have got a role in terms of providing information about standards, but to actually obtain the certificate of conformity is another matter. Is that the responsibility of the distributor or whose responsibility is it, and who issues the certificate of conformity?

Mr JENNINGS — Most of the responsibility within this piece of legislation in terms of regulatory environment falls to the distributor, as you would be aware. It is basically the clearing house between the range of electrical products and the distribution; and then within the compliance regime and the standards that apply within this, whether it be in the retail sector or whether it be being used, in fact the distribution network is the key clearing house of compliance and the recognition of those standards.

But what we are talking about here in terms of these two categories in sections 54 and 55 is that they are higher order and more risky or more complex electrical systems that would not be in a domestic situation. They are likely to be industrial applications or of higher risk and therefore in terms of those who are more likely to use them, not only would it be a distribution issue, but because of the nature of that industrial scale or the complexity of the risk associated with it, you would expect the purchaser or the person who is applying this piece of equipment would be in a position to be able to ascertain and form a view of the relative compliance. If they can demonstrate how they have formed that view, based upon standards and the evidence that is available to them, then in fact that would be a defence where the onus is not on them to prove that the equipment was not compliant. The onus is reversed because they had already taken the pre-emptive effort of ascertaining that standard.

Mrs PEULICH — One small clarification: this entire legislation actually applies overwhelmingly to in-scope electrical equipment, which is basically designed or marketed as suitable for household, personal or similar use, rather than the industrial use to which you referred, so I assume that you will just want to correct that on the record.

Mr JENNINGS — These two categories as I am advised —

Mrs Peulich — Three categories, three levels.

Mr JENNINGS — I will have a conversation with the people in the box and then come back to you. No, sorry — the three categories that you are describing in relation to risk —

Mrs Peulich — They are all in-scope — apply to in-scope electrical equipment.

Mr JENNINGS — I will come back and talk to you about that.

I will stick to what I have actually said, but we will work our way through it. In relation to clauses 54 and 55, in clause 54 there is a reference to 'not in-scope electrical equipment' and in 55 it is 'controlled electrical equipment'. Your question related to the in-scope risk.

Mrs PEULICH — Thank you for that clarification. You answered two of the three issues of concern raised by the Scrutiny of Acts and Regulations Committee. The first one was the delegation of legislative power in relation to the commencement date by proclamation. Basically the explanatory memorandum states that the bill does not identify a default commencement date, as the commencement of the electrical equipment safety scheme law is to be coordinated with Queensland and

other participating jurisdictions. So does this mean that this scheme will not begin unless all of the jurisdictions are participating?

Mr JENNINGS — In the first instance it is expected that Victoria and Queensland will enter into an intergovernment agreement that will allow for the scheme to be introduced in our two states, and then there is an expectation that the desirability for other jurisdictions to join would soon follow from that. We do not want to get too far ahead of our own enthusiasm — New South Wales have not indicated that they will be participants in the scheme — but we would hope that in fact we would be able to have a harmonised system with New South Wales eventually. Our ambition is that by demonstrating a critical mass and a regulatory environment that applies across the states we can harmonise it as much as possible. That is our intention. The intergovernment agreement between Victoria and Queensland is imminent. We are hoping to conclude that by the end of this calendar year, and then in relation to the proclamation and the introduction of the operative date of the scheme it will come in within the first half of 2019 after that intergovernment agreement has been struck.

Mrs Peulich — Just between Victoria and Queensland?

Mr JENNINGS — In the first instance, yes.

Mrs PEULICH — Thank you, Minister. My comments earlier were that the broad thrust of trying to harmonise laws in an environment where we have interstate and international businesses makes a lot of sense, but obviously we do have a number of concerns that we wanted to explore. Are you able to shed some light as to the reason why New South Wales is apprehensive about joining the scheme? I know you cannot speak for that —

Mr JENNINGS — No, in fact I am not speaking for them, but I did have a conversation with the briefing officers in relation to this. They are confident that in fact there will be a critical mass that is established and a regime that is actually seen to be popular with the distribution network and that will be closer in its form to a streamlined compliance regime that will have a critical mass and a consistency and therefore be more appealing to New South Wales, who have actually been cautious about not wanting to relinquish their scheme, which they have confidence in. It is not a matter of their not being confident; it is a matter of whether they have increased confidence about this being the national model. The people that advise me do not want to get too far ahead of that. They want to be appropriately diplomatic and respectful of New South Wales integration, but we believe that we have tried to create a scheme that can ultimately be harmonised and that they would see as desirable ultimately to join.

Mrs PEULICH — I know that it does take time for states to come on board with a harmonisation process. Given your reference to New South Wales's concerns about a critical mass, are we talking about the cost imposts? One of my concerns is that Victoria may be left with the costs of the harmonisation process if other states do not participate. Are you able to comment on that?

Mr JENNINGS — I will have a conversation. This has not been drawn to my attention. Ultimately in terms of cost structures and compliance you would appreciate the industry itself in a federation would like as much as possible to have a consistent, harmonised regime. In terms of cost structures, if you have a look at the relative size of the markets just as market forces you would have to actually say that Victoria's and Queensland's combined market will have a larger centre of gravity than New South Wales. In terms of the market pressures in relation to that regulatory regime, you would expect, subject to New South Wales's satisfaction, that the industry actually would probably be pushing market forces in that direction, but I will have a conversation with the team about that.

I have been encouraged to stick with what I said, but I will add that in terms of the way in which the registration system under this scheme would be designed, registration would be maintained in the Queensland jurisdiction, where those fees are established, and the funds for the national rollout would be derived from those revenues. Everything else that I said to you in relation to the desirability of distributors to be registered if they can through one harmonised scheme would be a market force that we believe will assist us in delivering on the harmonisation that I described before. So the market itself will lead to a regulatory regime that is cost-effective for it and effective in relation to reaching its markets.

Mrs PEULICH — If you could just clarify for me, when Victorian stakeholders pay for registration into the scheme, will that go to Queensland?

Mr JENNINGS — Yes.

Mrs PEULICH — So money will actually go into Queensland?

Mr JENNINGS — To enable the registration process then to be harmonised by the compliance regime. So effectively the regulation will actually cover

Victoria for the money. At one level you could say that the money is leaving Victoria, but it is coming back in terms of supporting the regulatory environment in Victoria, so it is basically a closed loop.

Mrs PEULICH — Given that we do not control the cost structure — presumably it is based on the Queensland model — how will the Victorian government protect Victorian taxpayers from incurring additional costs if this scheme is not fully adopted by other jurisdictions?

Mr JENNINGS — The nature of how the regulatory environment works is that it has been designed to provide certainty, clarity and greater cover from a consumer's perspective or a user's perspective in relation to the compliance regime ultimately to reduce duplication of accreditation standards, of notification of how standards apply and of accreditation. It is introducing a scheme that is consistent and will reduce the regulatory burden significantly. It provides greater confidence for the distributor, for the retailer, for the purchaser and for the user through this scheme. There are a lot of in-built savings from a streamlined, consistent process beyond the critical mass question which you and I were talking about a minute ago in relation to where the scheme may apply across markets across Australia.

Those factors will come together to mean that whilst the range of electrical products and the range of the market may increase in the future, the dynamics that have been established by having a consistent and more streamlined process will significantly reduce the regulatory compliance burden for businesses. By design, the answer to your question is this is meant to assist greatly in relation to their compliance challenge and their compliance cost because it is actually creating consistency far beyond what currently exists.

Mrs PEULICH — Is this subject also to an annual indexation of charges?

Mr JENNINGS — The additional protection — to answer your question beyond what you have asked me in the last two questions — is that under the intergovernmental agreement which underpins this scheme, there are requirements for fee structures to be agreed between jurisdictions. So there will be default settings in Victoria to represent the interests of Victoria's distributors or users of electrical equipment in relation to those cost breaches. Whilst there may be some variation of what the annual licence or the licensing fee may be over time, it will not be able to be introduced by Queensland potentially at the expense of Victorian distributors or users of electrical equipment without Victoria agreeing to it.

Mrs PEULICH — Does that mean that each participating jurisdiction must agree, a bit like the GST, to an increased fee structure for that to proceed, given that it is a cost recovery model? If one disagrees, does that mean no fee increases?

Mr JENNINGS — That is the nature of the agreement that has been drafted, yes.

Mrs PEULICH — Are you able to shed some light on what those fee structures are?

Mr JENNINGS — The team who are advising me in the box have been very good to me because rather than me going through the book, they have been able to give me the direct page. So in the first instance, the fees to register equipment will be, approximately, for the first-year registration, $75; for the second-year registration, $150; and for a five-year registration, $375. As you can see, the longer that you have confidence in your product in the marketplace, you would actually register —

Mrs PEULICH — Say that again, that last bit.

Mr JENNINGS — Register of equipment will be, as I have described, $75 for the first year, $150 for two years and you get a slight discount if you actually register it for five years, $375.

In relation to certification, certification of a product will not change from the current structure. A new fee of $200 per year will apply to register a responsible supplier as well as a new fee of $75 per year to register level 2 and level 3 in-scope equipment.

Mrs PEULICH — So of the fees and the levels that you have now shared with us, how many of those are new charges?

Mr JENNINGS — Everything that I have outlined to you is a new fee, a new charge.

Mrs PEULICH — In view of your answer, could you indicate, based on present-day market conditions — and perhaps the department has done this work — how many unique products these charges would apply to and how much money would be generated as a result of this new scheme?

Mr JENNINGS — I will get advice on the first bit. I can answer the second bit.

The bit that I could have answered whilst I was here is that there are 2800 responsible suppliers across the

country and there are 60 000 items, in scope, of electrical equipment. We believe that the annual revenue derived from this scheme would be in the order of $3 million a year.

Mrs PEULICH — Thank you very much. In addition to the $3 million of extra revenue that will be generated by this scheme, are you able to indicate what other costs will be borne by, say, Energy Safe Victoria or any other authority or agency in terms of the administration of the scheme?

Mr JENNINGS — Do you mean from the other functions that Energy Safe Victoria undertakes?

Mrs Peulich — No, related to the scheme.

Mr JENNINGS — Related to this scheme —

Mrs Peulich interjected.

Mr JENNINGS — Yes, that is why I was trying to work out exactly what the question was.

Mr JENNINGS — I have been provided with two estimates in relation to your question. There is an allocation of somewhere in the order of $420 000 a year. That will include responsibility for maintaining the administrative database and compliance activity that supports the scheme. We think the database will in the first instance cost in year one about half a million dollars to generate and then an on-cost on average of about $250 000 a year to run.

Mrs Peulich — By?

Mr JENNINGS — That is by the scheme. In relation to the first issue, in relation to your question about Energy Safe Victoria's issue about its administrative costs and its other activities, somewhere in the order of $420 000.

Mrs PEULICH — Given, obviously, that Victorian households are struggling with cost-of-living pressures and under this government paying $300 more for electricity and $500 more for gas, will this bill only serve to push up the cost of basic household electrical items and, worse than that, the cost of living?

Mr JENNINGS — No. You and I are not going to have a debate about energy prices, but what I want to draw to your attention is my answer to a previous question. There are significant regulatory savings in terms of the regulatory and compliance burden that businesses and the electrical safety equipment or supply process will lead across the market. Somewhere in the order of about twice the amount of savings is anticipated to the market, to suppliers and therefore then to consumers from the administrative costs that I have outlined to you. We estimate the administrative costs being in the order of about $420 000 and we estimate the savings in the regulatory burden being in the order of $900 000 a year.

Mrs PEULICH — Will the government be putting an additional tad under $500 000 per year into the Energy Safe coffers, or is that going to be funded out of its own operational costs?

Mr JENNINGS — Energy Safe Victoria has already incurred the establishment costs out of its existing budget. Beyond that, in terms of Victoria's share, when I talk about the cost of the national database Victoria's share of that is expected to be in the order of about a quarter of that cost going forward. We are anticipating that being costed within the funding envelope that is available to Energy Safe Victoria.

Mrs PEULICH — Are you able to outline or perhaps list the distributors, or some of the distributors, who have been consulted as part of the devising of this scheme, as part of the development of this legislation, and indicate whether there were concerns expressed by some of those impacted by the new regime?

Mr JENNINGS — There has been a national process that has run through a national forum called the Electricity Regulatory Authorities Council, which brings together the industry and the regulatory environmental bodies across the country. They have assiduously worked their way through these issues, as I am advised, since 2007. Within that time frame they have engaged with the peak bodies that are representing industry — and there are distributors and consumers — in relation to these matters, which include, in terms of the industry side of the equation, the Australian Industry Group, which has been participating through that process; the Consumer Electronics Suppliers Association; the Australian Cablemakers Association; and Lighting Council Australia.

Mrs PEULICH — Were there concerns expressed by any of those significant industry groups?

Mr JENNINGS — I am aware that they are supportive of this regulatory environment. Indeed as participants they have had ample opportunities to have their matters resolved, and they are supportive of the structure of the regulatory environment in the bill before the house.

Mrs PEULICH — Why has the government jumped the gun and commenced with a solar-for-households scheme prior to this Electrical

Safety Amendment (Electrical Equipment Safety Scheme) Bill 2018 passing the Parliament?

Mr JENNINGS — I am not sure where Mrs Peulich is getting her direct feed of questions from now, but that seems to be a different matter than what we have been discussing in relation to the regulatory environment. The government's policy on renewable energy, as you know —

Mrs Peulich — No, we are talking about electrical safety at the moment.

Mr JENNINGS — Well, your question is not about that.

Mrs Peulich — Yes, it is.

Mr JENNINGS — No, it is not about that, because solar panels already exist in Victoria; they are subject to a regulated environment, and we are adding to a regulated environment in relation to compliance. The only intent of your question is to have a discussion about the policy merits of the Victorian government supporting an increase in the rollout of solar panels, which is not in any shape or form jumping ahead, as you describe it, of this piece of legislation.

Mrs PEULICH — Perhaps I can ask a clarifying question so that you can better understand where I am coming from. How can the government ensure the safety of all workers operating under the government's solar-for-households scheme given it has not yet passed this bill?

Mr JENNINGS — Not only will this bill actually assist in the area of activity that you described, it will assist in the future in terms of a more consistent and reliable compliance regime for all electrical goods into the future. The question that you asked may more directly relate to the confidence level in the training and registration of those who undertake the installation of electrical equipment to provide for that confidence in a situation where, yes, there will be increased opportunities for employment and distribution of solar panels because of the policy settings of the Victorian government, but we are not in a situation where there is an existing deficit in the regulatory or training regime, apart from wanting to scale it up from what currently exists.

Mrs PEULICH — I have a couple more questions from a couple of other angles as well just to wind things up. Given the increased frequency of power outages or blackouts and brownouts and the possibility, ultimately, of Victorian consumers' energy being controlled in times when security cannot be maintained, as a way of directing it to critical sectors, who is responsible for equipment that fails or that is damaged as a result of brownouts and blackouts that emanate from a lack of security of electricity supply? For equipment that may have met compliance and conform to standards and all of that, is it just the insurance companies that people make a claim to? Who actually picks up the tab for equipment, including some of the equipment that may actually be covered by this legislation, when there is damage to that equipment as a result of brownouts, blackouts and power surges?

Mr JENNINGS — In the first instance, in regard to your assumption that the number of outages is increasing, you should be mindful of long-term trends and the long-term outcome in relation to circumstances where there may be load shedding or blackouts that occur in Victoria or elsewhere within the national electricity grid. On that basis the premise of your question would not be that over the long term there is an increase of those occurrences, although the system always has to be alive to what happens in terms of the need for load shedding or where there is an inability to meet peak demand. You are right to assume that any adverse outcome would be subject to assessment about the fault in the network that may have led to damage or equipment, which may or may not have anything to do with lack of supply. Certainly the insurance industry will be well-versed in dealing with circumstances such as apportioning responsibility, whether that be any stage of the generation or distribution network or from the suppliers to the distributors of electricity, and any other aspect of identification of where the blame may lie for those circumstances.

Beyond that I might have a quick conversation with the people in the box, and I will be interested to hear if they can augment my answer to you.

They were happy for me to stick to the answer I gave you.

Mrs PEULICH — The reason I asked that question is that I know a lot of people and a lot of businesses who lose product — sometimes food — and sometimes their electrical devices are damaged beyond repair as a result of the brownouts, blackouts, power outages and so forth. I noted in reading through some of AusNet Services' reports on the net that there are a lot of obligations in terms of the strengthening of infrastructure, but if that is not done, then the security of supply is compromised and the damage and the cost are worn either by the consumer or by the insurer. I just wanted to lay that on the record.

Lastly, and I am mindful of the clock, it never ceases to amaze me, the power that the regulator has under this

act. Could you explain to me the process of appeal, where perhaps the regulator may have deemed something as not meeting a standard or may have declared that electrical equipment may be controlled electrical equipment or many of the other —

Business interrupted pursuant to standing orders.

Sitting extended pursuant to standing orders.

Committee resumed.

Mrs PEULICH — I am looking at the other powers of Energy Safe Victoria. For example, under new section 62H, Energy Safe Victoria may at any time require any controlled electrical equipment or level 3 in-scope electrical equipment that is subject to a certificate of conformity that it has issued to be re-examined or tested by Energy Safe Victoria; that a certificate of conformity may be suspended or some other fairly significant action can be taken that would certainly impact on the consumer and perhaps the distributor. Could you outline the process of appeal, because it seems to me that most of the power is vested in Energy Safe Victoria, and whilst we all recognise the importance of occupational health and safety it seems to me in terms of a governance model that perhaps it is a little too weighted in favour of the regulator.

Mr JENNINGS — In terms of the simple coverall, to answer your question, administrative decisions, whether they relate to the regulatory environment, whether they relate to the compliance regime or whether they relate to the certification of products, they are all appealable to VCAT — that is, appealable within the state of Victoria.

If ESV does not actually certify a product, somebody may seek remedy through VCAT, but they also could go to see whether they can achieve compliance and certification in another jurisdiction. That is possible for them. In fact in terms of the checks and balances in the scheme, ultimately we want it to be consistent and we want it to be applied. But in terms of the way in which it works, a distributor, because they operate in national markets, may go to a different jurisdiction if they do not get the result they want. Presumably if they do not get that result either, they will either then challenge it in VCAT or whatever is the administrative appellate body in that other jurisdiction.

Clause agreed to; clauses 2 to 18 agreed to.

Reported to house without amendments.

Report adopted.

Third reading

Motion agreed to.

Read third time.

ADJOURNMENT

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

That the house do now adjourn.

Racecourse Road, Flemington, safety

Mr ONDARCHIE (Northern Metropolitan) (17:06) — My adjournment matter today is for the Minister for Roads and Road Safety in the other place, and it is regarding Racecourse Road, Flemington. Racecourse Road and the overhead bridge is one of the worst black spots in Melbourne for trucks hitting rail bridges and tram wires. Truck crashes are causing lengthy delays for motorists and tram passengers on this busy arterial road, and these delays are on average happening once a week and causing major traffic and public transport problems.

Yarra Trams has recorded 12 major incidents since February this year near or under bridges at Newmarket station and Boundary Road. In the latest major incident a truck brought down tram and power lines during the morning peak hour on 30 July, causing major delays. The Public Transport Users Association has said that further safety measures are required, such as the rollout of rail bridges at Montague Street, South Melbourne, and Napier Street in Footscray.

There are safety issues with these roads, because if a truck were to lose its container or cargo after hitting a bridge, it could seriously injure or even kill somebody. The action that I ask for from the minister is to instruct VicRoads to investigate Racecourse Road, Flemington, and act to make the road safer and more efficient for motorists and tram users, perhaps through the use of laser beams or some sort of gantry in that area.

Wallan aquatic centre

Ms SYMES (Northern Victoria) (17:08) — My adjournment matter this evening is for the Minister for Sport, and it relates to the proposed aquatic centre in Wallan. As the minister would be aware, the Andrews Labor government has been a huge supporter of local sporting and recreational facilities in the growing Wallan community.

The sportsground on the Wallan Secondary College site has been upgraded to a full-sized Australian Rules football oval to host a range of school sports and the local cricket club. We have also funded a new netball court and upgraded the change-room facilities at Greenhill Reserve, the home of the Wallan Football and Netball Club.

I think this is news to the Liberal candidate for the Assembly seat of Yan Yean. Not that I have actually met this woman, but she is reported as saying on her Facebook page that Labor has not provided any funding in 18 years to this football club, which is not true, but it is still on her Facebook page despite that having been pointed out to her. Perhaps it is this lack of an eye for detail which has seen this candidate miss Labor's announcement in relation to the new aquatic centre for Wallan. Ms Klein is currently operating a petition gauging the community's interest in a local swimming pool. We actually already know that locals would like closer access to a swimming pool in their community. We have provided $150 000 to develop a master plan and determine the site, size and features that best suit the community. So I am not quite sure how asking them whether they want one or not is really going to help her. She might want to just have a look at what we have already been doing.

Labor has a great record working with Mitchell shire on recreational facilities. That of course is identifying what the community wants. One of the best assets of Wallan is the adventure playground and splash park, which is certainly a favourite feature for families, including my children, who very much like playing in that space. So the action I ask of the minister is to provide an update on the Wallan master plan in relation to timing and also advise whether there are any plans, from a departmental perspective, in relation to community engagement that will accompany the finalisation of that planning stage.

Nursery equipment program

Ms FITZHERBERT (Southern Metropolitan) (17:10) — The issue that I am raising is for the Minister for Families and Children. It is in relation to the nursery equipment program. I have previously raised this issue but to the incorrect minister; I raised it with the Minister for Health.

The minister is of course familiar with this program. It is a Victorian state government initiative of some years standing, and it is about providing basic equipment for vulnerable Victorian families at no cost when a maternal and child health nurse has identified a safety concern. It is open to all clients of the maternal and child health service, and it is currently administered by Each on behalf of the Victorian government. It provides baby cots and car seats to families and ensures that these meet Australian safety standards. The service requirements are to manage orders; to procure and arrange delivery and assembly or installation of the equipment; to administer payments for all equipment purchases, delivery and installation; and also to provide timely and accurate reports on all aspects of service delivery.

The action that I am seeking is to be provided with performance data on the program for the last complete financial year for which data is available. In particular I would like to know how many families were assisted, how many cots and car seats were distributed, what the cost was per unit and what the total cost of the program was.

West Footscray factory fire

Ms TRUONG (Western Metropolitan) (17:12) — A community meeting held at Maribyrnong council last night on the West Footscray fires was well attended and had representatives from the Metropolitan Fire Brigade, Environment Protection Authority Victoria (EPA), all local councillors, the Department of Health and Human Services (DHHS), WorkSafe Victoria and various others invited by council. It was clear to those attending that there is no comprehensive record about the impacts on people's health, and there was a resignation that Stony Creek is indeed dead.

'How do we assess the true impacts for the recovery efforts and management of future incidents?' was the question left hanging. The EPA only doorknocked within a few blocks of the fire to warn residents, but we know that the impacted area was much, much larger. They were asked last night about accountability for the incident, and as I am learning is quite typical, they were vague in their responses, citing a pending police investigation. DHHS representatives said that not enough people presented at hospital or at GPs to warrant an investigation. Our community survey, that hundreds of residents have responded to, tells us otherwise. A look at the advice on the fire on the VicEmergency website this morning was telling. There are blanket claims that there is nothing to worry about in regard to asbestos, but they will test for it anyway.

We want the minister to hear for herself how distressed and confused we are feeling about this fire. We are still getting conflicting information that is abstract, and it is unclear which authority will ultimately help us recover and regain confidence that the risks of these industrial areas are being properly monitored and managed.

The action I seek is that the minister comes to meet with our communities in the west next week to share all the data the government has been relying on to assess the impact of the fire and to listen to the impacts and concerns we still have. I would also like to add that I would be happy to share the questions and data from our community survey and help in any way that will help restore the safety of the air, water and the local environment for impacted communities and businesses.

Prostate Cancer Awareness Month

Ms SHING (Eastern Victoria) (17:13) — My matter this evening is for the attention of the Minister for Health in the other place, Ms Hennessy, and it relates to September being Prostate Cancer Awareness Month. Prostate cancer is the most commonly diagnosed cancer in men in Australia. There are almost 20 000 diagnoses every year and close to 3500 deaths every year from this disease.

Prostate cancer is an area which is, as many know, very dear to my heart. I lost my brother to prostate cancer coming up to three years ago. He was diagnosed at 39 and he died at 42. One of the things that he imparted to so many around him in the last stages of his life was that no-one ever died of embarrassment and no-one ever died from getting their symptoms checked out. In this regard it is important this September, as we do come around again to an opportunity to talk about prostate cancer awareness, to highlight the symptoms, which include feeling a frequent or sudden need to urinate, finding it difficult to urinate, feeling discomfort when urinating or finding blood in urine or semen, and pain in the lower back, upper thighs or hips, which may be indicative that further examination and a test for the purposes of prostate cancer are required. To that end I note that there is a power of work going on to raise awareness. The Prostate Cancer Foundation of Australia is putting a lot of work into social media this year to make sure that people are aware of the need to get tested if they are over 50 or over 40 and have a family history of prostate cancer.

To this end the action that I seek from the Minister for Health this Prostate Cancer Awareness Month is to allocate resources for the purposes of specific social media information to be distributed which highlights the need for men to get their prostates checked in the event that they feel there may be an issue, if they are 50 or older or if they are 40 or over with a family history, and to make sure that that information is also made available to people who can share it with those whom they love. Anyone with a prostate should be aware of this as a significant health issue, and I ask that these resources be committed as a matter of priority.

Duncans Road, Werribee

Mr FINN (Western Metropolitan) (17:16) — I wish to raise this evening an adjournment matter for the Minister for Roads and Road Safety. I have previously raised with him the need for a diamond interchange at Duncans Road, Werribee. I want to make it very, very clear that the issue that I wish to raise with him tonight is not that; it is not that at all. That is certainly still very much on the agenda, but what we are very keen to do — and I noticed that there have been a number of calls for this in local newspapers this week — and what we need is an urgent upgrade of Duncans Road. It is interesting that Ms Mikakos is in the chamber; she would be well aware of Duncans Road because it is near where her youth prison was going to be.

In fact it is an area which leads to Wyndham Harbour, which is a new development in Werribee and a very, very exciting development in Werribee. Naturally, as happens with these new developments, it is going to bring a lot of traffic and a lot of cars, and Duncans Road is really going to struggle with the amount of traffic that it will have to carry. Werribee South is also at the end of Duncans Road. Werribee South is, I suppose, somewhat of a hidden jewel in the western suburbs but more and more it is becoming an unhidden jewel, so that too is leading to much more traffic, to greater numbers of cars heading down to Werribee South.

Clearly there is a need for an upgrade, and I would suggest not just an upgrade but a significant upgrade to Duncans Road, because we are going to be struggling to cope with residential traffic as well as the tourism traffic which will be going to Wyndham Harbour, as I said, Werribee South and also the tourism precinct of Werribee — the Werribee zoo, Werribee Mansion, Werribee Park and surrounds. It is already an issue, but it is going to be a major issue in the years ahead. I would suggest that the minister get on top of this now, and I ask him to direct VicRoads to provide the appropriate upgrade to Duncans Road and ensure that local residents and also those who are visiting the area are able to travel safely and efficiently on that particular road.

Tamil community

Dr RATNAM (Northern Metropolitan) (17:19) — My adjournment matter is for the Minister for Multicultural Affairs. Victoria is home to thousands of first and second-generation migrants of Tamil descent. Many chose to make Melbourne their home after having to leave Sri Lanka after the war, including my family. The Sri Lankan Tamil community is also joined

by Tamil communities from India, Singapore, Malaysia and beyond. Much of the community settled in the south-east metropolitan area of Melbourne following migration and have established themselves as a resilient, vibrant and thriving community.

However, the impact of war on the Tamil culture has been felt deeply, with many having to leave their communities in haste to escape the conflict. Many arrived in Victoria with few possessions and little social support. The community developed some informal systems of support that have helped people to connect with others, particularly in the early days post arrival. However, this support has not been able to reach many. As a culture and a community that values collectivism and cooperation, the loss of community support post migration has impacted many detrimentally.

The success of Australia's multicultural story has been built on supporting migrant communities to nurture the very best of their cultures as people move through the settlement journey. The freedom and support to maintain cultural identity have helped people navigate the grief and isolation that many people who migrate experience.

Having secured a site, the Tamil community is now working towards establishing Victoria's first Tamil community centre in Dandenong and is seeking community and government support to make this a reality. This comes at an important time for the Tamil community here in Victoria. The centre will provide activities for seniors and youth, spaces for community events, library and language supports and more. There are many newly arrived people from Tamil backgrounds, some of whom have arrived as asylum seekers and refugees, who will especially benefit from the proposed social programs and activities planned for the centre. It will also provide a space for the established Tamil community to provide support for those who have arrived more recently. This is likely to reduce demand on other government-funded services, as has been experienced when other multicultural communities are provided with the support to resource organic networks of people who are able to support others. I ask the minister to outline what support the government is providing to help establish Victoria's first Tamil community centre here in Victoria.

Ovine lice

Mr O'SULLIVAN (Northern Victoria) (17:21) — My adjournment matter this evening is for the Minister for Agriculture. It is something of a technical matter, but I am sure that the people in her department will understand what I am going to be requesting of the minister. Under the Livestock Disease Control Act 1994 there are a set of regulations in relation to the declaration of diseases and exotic diseases. Under schedule 1 of the regulations in terms of what are declarable diseases, in 2016 ovine lice was included on the list of declarable diseases under part A, 'Diseases of mammals and birds'. In 2017 ovine lice was left off that list. The action I am seeking from the minister is that she explain why ovine lice does not appear on schedule 1 of the regulations. If it is an oversight, can she consider asking the department whether ovine lice can be reinstated in that schedule?

As we know, biosecurity in the agricultural sector is very important in terms of lice in sheep. If sheep go through a set of saleyards or are transported by truck — even if a lousy sheep rubs itself against a fence post to try and seek relief from the itching — as a result lice can be left in an area where they can be picked up by the next sheep that is in the same vicinity, and therefore ovine lice can spread to other sheep, into other flocks, into other farms and very quickly into other states and communities.

Our reputation in the agricultural sector is very important in terms of biosecurity. I am interested to see if the minister can give some sort of an explanation and rectify this issue with Agriculture Victoria so this situation can be fixed. I am not sure why ovine lice is not on the list for 2017, but I think it would be in the best interests of this state and of farmers if this biosecurity matter could be dealt with.

Moolap wetlands

Mr RAMSAY (Western Victoria) (17:24) — I congratulate Ms Shing on her contribution. I am a rural ambassador for the Prostate Cancer Foundation of Australia, which is very separate from my adjournment matter. Anyway, it needs actual money — funding — as well as social media communication.

My adjournment matter tonight is for the Minister for Energy, Environment and Climate Change, the Honourable Lily D'Ambrosio. The action I seek is for the minister to indicate when the final plan is going to be released for the Moolap wetlands. I raise this because just recently the government announced a $590 000 grant for the Victorian coastal wetland restoration project through the Department of Environment, Land, Water and Planning. Deakin University are also partnering up with this restoration project, contributing $100 0000 for their part, but in addition to that we also have a government that is about to release a draft plan for the wetlands — I suppose to transition from draft to implementation this year.

The confusion for industry and other stakeholder groups is that we have a Victorian coastal wetland restoration project that is being funded by the government. We have a draft wetlands project, which is still to transition into implementation, but we also have the Moolap structure plan, which encompasses Point Henry and a number of other private landholdings, including Winchester and others, as well as some of the wetlands and the salt flats. Ridley Corporation, which is the other one I was thinking of, also has substantial holdings in that precinct. There has been a lot of interest, and I have raised it in this Parliament before, about when the government, through the Department of Environment, Land, Water and Planning, will release the Moolap structure plan, because it is important for the development of that particular area of Geelong.

It is becoming more complicated now, with the government making all these grants for these different restoration projects and wetland projects, when we do not know what the infrastructure plan will show in respect to land use and planning around that precinct. I have called on the Minister for Planning, and now I am calling on the Minister for Energy, Environment and Climate Change to indicate when the Moolap structure plan will be released so we can have a better understanding about all of these other small projects that the government is currently funding and how they fit into the larger vision for that area.

Latrobe Special Developmental School

Ms BATH (Eastern Victoria) (17:26) — My adjournment matter this evening is for the Minister for Education, the Honourable James Merlino in the other place, and relates to a school in my region called Latrobe Special Developmental School. Latrobe Special Developmental School is just an absolutely amazing school and does incredibly wonderful work under arduous conditions. They have been in operation for the last 60 years, and they are committed to educating children from five years to 18 years who reside in the Latrobe City area. They are supported by a great group of specialist teachers, teacher aides, allied health staff and school parents and friends who do a really great job. They have been sticking bandaids on their dilapidated buildings for many, many years now.

We have put considerable pressure on the government. I presented on behalf of the school community a petition signed by almost 3000 people from the Latrobe Valley community in this place some months ago. The Labor government has come back with some funding. The funding commitment is $6 million, but it incorporates funding for Traralgon Secondary College and also Latrobe Special Developmental School. The community actually feels quite in the dark about this, and I will explain why. They have so far completed an asset requirement list, or asset list, of what they would like to have done and what their needs are for the special children in their school. They have comprehensively completed that. They are now waiting for the Department of Education and Training to come back and sit down with them to have proper and complete dialogue as to what the school will look like and where it will be. They have concerns that it will be co-located — as in a dual facility — with Traralgon Secondary College and that the individual needs of their students and their school community will not be heard. Indeed they are concerned that their voice in relation to choosing an architect will not be sufficiently heard, and they feel that their wishes will be overlooked in some form by the education department and the Labor government.

In fact I have had quite in-depth discussions in relation to this. They do not want a retrofit of their school that will mean the needs of their students are not met. The action I seek from the minister is for him to, A, provide transparency about whether it will be a standalone school or whether it will be co-located, and B, ensure there is weight, measure and significance given to the wishes of the parents and the school community about the architect that will be chosen to ensure a best fit for their school and for their students going forward for the coming decades.

Ms Shing interjected.

The PRESIDENT — I think the action is for consultation with the parents of the school.

Indian cultural precincts

Mrs PEULICH (South Eastern Metropolitan) (17:30) — The matter that I wish to raise is for the attention of the Minister for Multicultural Affairs, and it is in relation to a 2014 commitment to establish several Indian cultural precincts. One was presumably building on some of the Indian characteristics in Dandenong. Another one was proposed for the north, and another was for the west. A fourth one was considered for the City of Monash. That was in 2014. Four years later the community has got no further advice or evidence of those promises being delivered. So the action that I seek from the minister is that he provide information about the progress that has been made on the establishment of those Indian cultural precincts on those proposed sites, because there seems to be a lot of uncertainty and certainly no evidence of that commitment being delivered.

I note that many groups from the Indian community are seeking representation on having infrastructure developed to serve their communities. To me much of that need would have been picked up if indeed the government had delivered on its commitment to deliver cultural precincts for the Indian community in some of those proposed sites, but there seems to be no advancement on that. So the action that I am seeking from the minister is a report on the extent to which those promises have been delivered or progressed and any outstanding time lines that may apply.

Taxi Services Commission

Mr DAVIS (Southern Metropolitan) (17:32) — My matter is for the attention of the Minister for Public Transport in the other place, and it concerns an ongoing issue about the behaviour of the taxi services commissioner towards those who hold taxi licences. Some who had held taxi licences before had the value of those licences destroyed on 9 October last year. Licences are now essentially close to valueless, but the government has continued with its process of targeting and harassing a number of individuals. I have had a number of cases brought to my attention. Some of these are quite serious, but what now appears to be happening is a targeted witch-hunt is occurring, where those who have stood up to the government and undertaken political campaigns against the government are now being targeted for special attention, where they are being investigated by the taxi services commissioner. Some taxidrivers obviously have regular clients, particularly disabled people, and they provide by and large a very good service.

I am aware of a number of these cases, but a further one has come to my attention today. Andy Thompson, who has been very vocal in putting the case of taxi licence holders, now appears to be the target of the Taxi Services Commission, with large detectives being sent around to interrogate his regular clients about their usage of taxis. This appears to be a coordinated pattern, and I am deeply concerned that this government knows very little in the way of bounds. It is prepared to use political and other harassment tactics to attack those who are prepared to stand up and be critical of it.

What I am seeking from the minister is that she ensure that there is a review of the behaviour of the taxi services commissioner, in particular in relation to the case of Mr Andy Thompson, to make sure that there is no targeting of or other untoward focus on his particular case. What we need is a situation where those who are providing services to the public are able to do so without fear or favour and that those who have been prepared to stand up and make political commentary about the government's approach are not targeted.

We, after all, live in a modern democracy, where the ability of people to enjoy their political rights is a central tenet. This is a longstanding democracy that we have here, and the idea that the government would be turning the powers of the state onto individuals — I am worried too in Mr Thompson's case that he may be taking a significant —

The PRESIDENT — Thank you, Mr Davis.

Responses

Ms MIKAKOS (Minister for Families and Children) (17:35) — This evening I received the following adjournment items: from Mr Ondarchie to the Minister for Roads and Road Safety; from Ms Symes to the Minister for Sport; from Ms Truong to the Minister for Energy, Environment and Climate Change; and from Ms Shing to the Minister for Health. I acknowledge her personal and family tragedy that she referred to in her adjournment. I know she feels very deeply about these issues in light of that, and I thank her for her continued advocacy around these issues. There were also adjournment items from Mr Finn directed to the Minister for Roads and Road Safety; from Dr Ratnam directed to the Minister for Multicultural Affairs; from Mr O'Sullivan directed to the Minister for Agriculture; from Mr Ramsay directed to the Minister for Energy, Environment and Climate Change; from Ms Bath directed to the Minister for Education; from Mrs Peulich directed to the Minister for Multicultural Affairs; and from Mr Davis directed to the Minister for Public Transport. All those matters will be referred to the relevant ministers for a response.

In addition, Ms Fitzherbert referred a matter to me. She addressed it to me in my capacity as Minister for Families and Children, but it is actually within my portfolio responsibilities as the Minister for Early Childhood Education that it falls. She referred specifically to the nursery equipment program, which is an excellent program funded by our government that provides safe nursey equipment for vulnerable Victorian families at no cost where a safety concern has been identified by a maternal and child health nurse. The program is open to all clients of the maternal and child health service, which, as members would be well aware, is a free universal service available to all families in Victoria with children from birth through to school age.

I am very proud that as a government we have provided record funding to our maternal and child health service.

In fact we have seen it significantly expanded, not only with a record budget investment of $133 million over four years to grow the service and enable more nurses to be recruited but also with the enhanced maternal and child health program, which particularly supports vulnerable families, to be expanded from currently where a family no longer receives support when a child turns 12 months to eventually match the universal service to when a child turns three and a half. We have also provided additional visits for women at risk of family violence, additional staff on the 24/7 maternal and child health phone line and many other supports for Victorian families.

In relation to the particular program the member referred to, this is a very important program that we are funding as a government. It is in fact Each that administers the nursery equipment program on behalf of the Victorian government. The way it works is that in attending to a family through a normal maternal and child health visit, if the maternal and child health nurse believes that a family meets the eligibility criteria, then they would contact Each to provide specific equipment to that family. It is a checklist that they look at around safe sleeping, and it is open, as I explained, to all clients of the maternal and child health service, both the universal and the enhanced program, that meet the eligibility criteria. Essentially they are looking at issues such as drug and alcohol issues and mental health issues, but also other issues around vulnerability and disadvantage. By providing this equipment they are really seeking to improve the health and wellbeing of the child and give them a safe physical environment. The available nursery equipment is a cot ensemble, including a cot mattress and mattress protector, and car restraints. They are all incredibly important pieces of equipment that vulnerable families might struggle to get. Of course this program means that the equipment that is provided, those baby cots and car seats, meets Australian safety standards.

Regarding the funding the member sought, my advice is the funding for the 2017–18 financial year was $1.4 million. In terms of numbers — there was a bit of chatter and I could not quite catch it — there were quite a few subquestions within that adjournment matter around detail, but it went to things like the number of cots and the number of different types of equipment if I heard correctly. I can seek some further information for the member around that level of detail. I was surprised that she did not actually put those types of questions through as questions on notice, but nevertheless, if we can provide that further detail, we will do so. Of course, as I explained, it is in fact Each that is contracted by my department to run this program; it is not run directly by the department. We can see what further detail is able to be provided.

I thank Each for administering this program. It is vitally important because essentially what this program is aiming to achieve is a reduction in the number of children dying through sudden infant death syndrome every year because they have not been placed in safe sleeping positions or are being exposed to risk by being put into cars without being properly restrained. This is a very targeted program; I think it is important that the member understands that in terms of the nature of the program. I believe that there are about 1200 families that receive support each year, but we can provide some further information to the member around that level of additional detail.

I have no written responses to adjournment matters this evening.

The PRESIDENT — Then the house stands adjourned. Go Demons!

House adjourned 5.42 p.m. until Tuesday, 18 September.