PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Friday, 12 September 2008

(Extract from book 12)

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By authority of the Victorian Government Printer

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Professor DAVID de KRETSER, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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Privileges Committee — Ms Darveniza, Mr D. Davis, Mr Drum, Mr Jennings, Ms Mikakos, Ms Pennicuik and Mr Rich-Phillips.

Select Committee on Public Land Development — Mr D. Davis, Mr Hall, Mr Kavanagh, Mr O'Donohue, Ms Pennicuik, Mr Tee and Mr Thornley.

Standing Committee on Finance and Public Administration — Mr Barber, Ms Broad, Mr Guy, Mr Hall, Mr Kavanagh, Mr Rich-Phillips and Mr Viney.

Standing Orders Committee — The President, Mr Dalla-Riva, Mr P. Davis, Mr Hall, Mr Lenders, Ms Pennicuik and Mr Viney.

Joint committees

Dispute Resolution Committee — (*Council*): Mr P. Davis, Mr Hall, Mr Jennings, Mr Lenders and Ms Pennicuik. (*Assembly)*: Mr Batchelor, Mr Cameron, Mr Clark, Mr Holding, Mr McIntosh, Mr Robinson and Mr Walsh.

Drugs and Crime Prevention Committee — (*Council*): Mrs Coote, Mr Leane and Ms Mikakos. (*Assembly)*: Ms Beattie, Mr Delahunty, Mrs Maddigan and Mr Morris.

Economic Development and Infrastructure Committee — (*Council*) Mr Atkinson, Mr D. M. Davis, Mr Tee and Mr Thornley. (*Assembly*) Ms Campbell, Mr Crisp and Ms Thomson (Footscray)

Education and Training Committee — (*Council*): Mr Elasmar and Mr Hall. (*Assembly*): Mr Dixon, Dr Harkness, Mr Herbert, Mr Howard and Mr Kotsiras.

Electoral Matters Committee — (*Council*): Ms Broad, Mr P. Davis and Mr Somyurek. (*Assembly*): Ms Campbell, Mr O'Brien, Mr Scott and Mr Thompson.

Environment and Natural Resources Committee — (*Council*): Mrs Petrovich and Mr Viney. (*Assembly*): Ms Duncan, Mrs Fyffe, Mr Ingram, Ms Lobato, Mr Pandazopoulos and Mr Walsh.

Family and Community Development Committee — (*Council*): Mr Finn, Mr Scheffer and Mr Somyurek. (*Assembly*): Mr Noonan, Mr Perera, Mrs Powell and Ms Wooldridge.

House Committee — (*Council*): The President (*ex officio*), Mr Atkinson, Ms Darveniza, Mr Drum, Mr Eideh and Ms Hartland. (*Assembly*): The Speaker (*ex officio*), Ms Beattie, Mr Delahunty, Mr Howard, Mr Kotsiras, Mr Scott and Mr K. Smith.

Law Reform Committee — (*Council*): Mrs Kronberg, Mr O'Donohue and Mr Scheffer. (*Assembly*): Mr Brooks, Mr Clark, Mr Donnellan and Mr Foley.

Outer Suburban/Interface Services and Development Committee — (*Council*): Mr Elasmar, Mr Guy and Ms Hartland. (*Assembly*): Ms Green, Mr Hodgett, Mr Nardella, Mr Seitz and Mr K. Smith.

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Road Safety Committee — (*Council*): Mr Koch and Mr Leane. (*Assembly*): Mr Eren, Mr Langdon, Mr Mulder, Mr Trezise and Mr Weller.

Rural and Regional Committee — (*Council*) Ms Darveniza, Mr Drum, Ms Lovell, Ms Tierney and Mr Vogels. (*Assembly*) Ms Marshall and Mr Northe.

Scrutiny of Acts and Regulations Committee — (*Council*): Mr Eideh, Mr O'Donohue, Mrs Peulich and Ms Pulford. (*Assembly*): Mr Brooks, Mr Carli, Mr Jasper, Mr Languiller and Mr R. Smith.

Heads of parliamentary departments

Assembly — Clerk of the Parliaments and Clerk of the Legislative Assembly: Mr R. W. Purdey

Council — Clerk of the Legislative Council: Mr W. R. Tunnecliffe

Parliamentary Services — Secretary: Dr S. O'Kane

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FIFTY-SIXTH PARLIAMENT — FIRST SESSION

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Deputy President: Mr BRUCE ATKINSON

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Deputy Leader of the Opposition:
Mrs ANDREA COOTE

Leader of The Nationals:
Mr PETER HALL

Deputy Leader of The Nationals:
Mr DAMIAN DRUM

Member	Region	Party	Member	Region	Party
Atkinson, Mr Bruce Norman	Eastern Metropolitan	LP	Lenders, Mr John	Southern Metropolitan	ALP
Barber, Mr Gregory John	Northern Metropolitan	Greens	Lovell, Ms Wendy Ann	Northern Victoria	LP
Broad, Ms Candy Celeste	Northern Victoria	ALP	Madden, Hon. Justin Mark	Western Metropolitan	ALP
Coote, Mrs Andrea	Southern Metropolitan	LP	Mikakos, Ms Jenny	Northern Metropolitan	ALP
Dalla-Riva, Mr Richard Alex Gordon	Eastern Metropolitan	LP	O'Donohue, Mr Edward John	Eastern Victoria	LP
Darveniza, Ms Kaye Mary	Northern Victoria	ALP	Pakula, Mr Martin Philip	Western Metropolitan	ALP
Davis, Mr David McLean	Southern Metropolitan	LP	Pennicuik, Ms Susan Margaret	Southern Metropolitan	Greens
Davis, Mr Philip Rivers	Eastern Victoria	LP	Petrovich, Mrs Donna-Lee	Northern Victoria	LP
Drum, Mr Damian Kevin	Northern Victoria	Nats	Peulich, Mrs Inga	South Eastern Metropolitan	LP
Eideh, Khalil M.	Western Metropolitan	ALP	Pulford, Ms Jaala Lee	Western Victoria	ALP
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Rich-Phillips, Mr Gordon Kenneth	South Eastern Metropolitan	LP
Finn, Mr Bernard Thomas C.	Western Metropolitan	LP	Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Guy, Mr Matthew Jason	Northern Metropolitan	LP	Smith, Hon. Robert Frederick	South Eastern Metropolitan	ALP
Hall, Mr Peter Ronald	Eastern Victoria	Nats	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Theophanous, Hon. Theo Charles	Northern Metropolitan	ALP
Kavanagh, Mr Peter Damian	Western Victoria	DLP	Thornley, Mr Evan William	Southern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP
Leane, Mr Shaun Leo	Eastern Metropolitan	ALP	Vogels, Mr John Adrian	Western Victoria	LP

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FRIDAY, 12 SEPTEMBER 2008

Friday, 12 September 2008

The PRESIDENT (Hon. R. F. Smith) took the chair at 9.34 a.m. and read the prayer.

PETITIONS

Following petitions presented to house:

Euthanasia: legislative reform

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council serious concerns about the Medical Treatment (Physician Assisted Dying) Bill 2008 and any regime which allows voluntary, active euthanasia and urges:

1. members of the Legislative Council to not proceed with passing laws which allow the taking of life of another;

2. support for ensuring access to palliative care and pain management to all those Victorians who need it;

3. consideration is given to international research which demonstrates that when pain is removed or alleviated, the desire to live is reinstated among those who suffer chronic pain;

4. acknowledgement of cases where even individuals who sign an agreement to voluntary euthanasia do and have changed their minds when faced with death;

5. draw attention to the tragic and illegal 'euthanasing' of hundreds of people including many elderly patients in public hospitals who have never agreed to voluntary euthanasia in jurisdictions which have a voluntary euthanasia regime, such as Holland.

The petitioners call on the members of the Legislative Council of the Victorian Parliament to vote against this bill which will legalise euthanasia in Victoria.

By Mr KAVANAGH (Western Victoria) (22 signatures)

Laid on table.

Abortion: legislation

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the need to ensure that existing laws relating to abortion are not out of step with community sentiment and current clinical practice.

The petitioners therefore request that the Legislative Council of Victoria support the passage of a prospective bill to decriminalise abortion in a way which achieves both the safeguarding of women and medical practitioners and ensure that services are high quality, accessible and safe. This will ensure that the law reflects contemporary community standards and that it is simple, clear and transparent.

By Ms PULFORD (Western Victoria) (113 signatures)

Laid on table.

PAPER

Laid on table by Clerk:

Duties Act 2000 — Treasurer's report of exemptions and refunds arising out of corporate reconstructions for 2007–08.

BUSINESS OF THE HOUSE

Adjournment

Mr LENDERS (Treasurer) — I move:

That the Council, at its rising, adjourn until Tuesday, 7 October 2008.

Motion agreed to.

MEDICAL RESEARCH INSTITUTES REPEAL BILL

Statement of compatibility

Mr JENNINGS (Minister for Innovation) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Medical Research Institutes Repeal Bill 2008.

In my opinion, the Medical Research Institutes Repeal Bill 2008, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill repeals the Baker Medical Research Institute Act 1980 and the Prince Henry's Institute of Medical Research Act 1988 as part of this government's commitment to regulatory reform and more efficient government. The Baker Medical Research Institute and Prince Henry's Institute of Medical Research will continue as new corporate entities established under the Corporations Act 2001.

Human rights issues

1. Human rights protected by the charter that are relevant to the bill

This bill does not raise any human rights issues. The bill does not expressly seek to affect any person's existing rights, privileges, obligations or liabilities, but simply to repeal the acts specified and transfer all existing property, rights,

liabilities and staff of the Baker Medical Research Institute and the Prince Henry's Institute of Medical Research to new bodies which are to be the successors in law of the respective institutes.

The bill acts to preserve the entitlements of employees transferred from the Baker Medical Research Institute and the Prince Henry's Institute of Medical Research to the new bodies.

2. Consideration of reasonable limitations — section 7(2)

As the bill does not raise any human rights issues, it does not limit any human right and therefore it is not necessary to consider section 7(2) of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it does not raise a human rights issue.

Gavin Jennings, MLC
Minister for Innovation

Second reading

Ordered that second-reading speech be incorporated on motion of Mr JENNINGS (Minister for Innovation).

Mr JENNINGS (Minister for Innovation) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The bill calls for the repeal of the Baker Medical Research Institute Act 1980 and the Prince Henry's Institute of Medical Research Act 1988 and for the transfer of all property, rights, liabilities and staff of the Baker Medical Research Institute and the Prince Henry's Institute of Medical Research to new bodies.

The Baker Medical Research Institute Act 1980 was enacted to establish a body corporate known as the Baker Medical Research Institute.

The Prince Henry's Institute of Medical Research Act 1988 was enacted to establish a body corporate known as the Prince Henry's Institute of Medical Research.

As part of the state's commitment to regulatory reform and more efficient government, the Baker Medical Research Institute Act 1980 and the Prince Henry's Institute of Medical Research Act 1988 are to be repealed and all property, rights and liabilities held, and staff employed, by the Baker Medical Research Institute and the Prince Henry's Institute of Medical Research are to be transferred to new companies, limited by guarantee, incorporated under the Corporations Act 2001, that are to be the successors in law of those institutes.

Baker IDI Heart and Diabetes Institute Holdings Ltd (ACN 131 762 948), and Prince Henry's Institute of Medical Research (ACN 132 025 024), have been registered with the Australian Securities and Investments Commission for that purpose.

The Baker Medical Research Institute Act 1980 and the Prince Henry's Institute of Medical Research Act 1988 are the remaining two Victorian acts governing medical research institutes.

Being incorporated under their own act (as opposed to incorporation under Corporations Law) provides no apparent advantage for the affected institutes in pursuit of their operational, research or commercial activities.

The Medical Research Institutes (Repeal) Bill 2008 will assist in reducing regulatory burden in Victoria and facilitate the continued operation of the institutes in the field of medical research.

The Baker Medical Research Institute and the Prince Henry's Institute of Medical Research have been fully consulted and are supportive of the repeals.

I commend the bill to the house.

Debate adjourned for Mr DALLA-RIVA (Eastern Metropolitan) on motion of Mr D. Davis.

Debate adjourned until Friday, 19 September.

COURTS LEGISLATION AMENDMENT (COSTS COURT AND OTHER MATTERS) BILL

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Lenders tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Courts Legislation Amendment (Costs Court and Other Matters) Bill 2008.

In my opinion, the Courts Legislation Amendment (Costs Court and Other Matters) Bill 2008, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill contains amendments to the Supreme Court Act 1986, the County Court Act 1958, the Magistrates' Court Act 1989, the Victorian Civil and Administrative Tribunal Act 1998 and the Legal Profession Act 2004.

The bill will amend provisions in these acts to implement the recommendations contained in Crown Counsel's *Report to the Attorney-General — Office of Master/Costs Office* (March 2007) to establish the Costs Court in the Supreme Court.

The Costs Court will have jurisdiction to hear and determine the assessment, settling and taxation of costs in proceedings

in the courts and Victorian Civil and Administrative Tribunal (VCAT).

The Costs Court will perform the functions currently performed by the taxing master and by the registrars of the County Court, Magistrates Court and VCAT with regard to the taxation of costs.

The Costs Court will be established within the Trial Division of the Supreme Court. The amending provisions are included in the Supreme Court Act 1986 and not the Constitution Act 1975 since the VCC will not be performing the court's constitutional functions.

The Costs Court will be presided over by an associate judge, appointed by the chief justice to be called the costs judge. The chief justice will determine the duration of the costs judge's appointment.

The bill aims to give Victorians more opportunities to resolve legal disputes at less cost by establishing a single office with responsibility for assessing and resolving costs disputes across each of the three Victorian courts and VCAT and disputes arising under the Legal Profession Act 2004. A single costs office will:

promote consistency in the determination of assessments and the resolution of disputes;

provide opportunities for the more efficient determination of assessments and the resolution of disputes; and

potentially reduce the cost of determinations and resolutions for litigants.

Human rights issues

1. Human rights protected by the Charter that are relevant to the bill

Clause 5 establishes the Costs Court within the Trial Division of the Supreme Court.

Section 24(1) of the charter provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and impartial hearing.

The purpose of the right is to ensure the proper administration of justice. This right is concerned with procedural fairness.

The bill engages the right because it affects the venue and manner in which costs are taxed. The provisions establishing and governing the Costs Court are consistent with the right because a person will have a proceeding decided by a competent, independent and impartial court after a fair and public hearing.

Conclusion

I consider that the bill is compatible with the charter.

Justin Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Mr LENDERS (Treasurer).

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The bill builds on a range of initiatives in the justice system to ensure that our courts and tribunals deliver justice in a fair and efficient manner. It complements the government's jurisdictional and civil procedure reforms in the courts system in recent years and the development of case flow management processes by the courts themselves.

This bill and the Courts Legislation Amendment (Associate Judges) Act 2008 together will assist the courts to streamline case management.

In 2005 I commissioned a review of the Office of Master and Costs Office. Crown counsel Dr John Lynch prepared an issues paper concerning the functions and governance arrangements of masters and a proposal to establish a costs office. The paper was circulated to each of the courts and VCAT and to the law institute and the Victorian Bar and was also published on the Department of Justice website.
Dr Lynch conducted further consultations and presented a final report to me in March 2007, recommending, amongst other things, the replacement of 'specialist' masters with the office of associate judge and establishment of the Victorian Costs Court.

The reforms to the office of master recommended in Crown counsel's report will be implemented through the Courts Legislation Amendment (Associate Judges) Act 2008, which was passed by the Parliament earlier this year. This act will be proclaimed when the bill receives royal assent.

This bill implements the remainder of Dr Lynch's report by establishing a VCC.

The Law Institute of Victoria originally proposed the idea of a costs office in 2003. The law institute submitted that it would be more efficient if the courts were relieved of the function of taxing costs and if this function was passed to a single office to service all three courts. Such an office would facilitate the application of uniform principles of taxation and uniformity of procedure across all jurisdictions, facilitate the appointment of specialist and expert personnel, relieve magistrates of the burden of undertaking taxations and create greater efficiencies within the courts.

Crown counsel's consultation on this issue indicated strong support for the proposal. In addition to the arguments for the proposal raised by the law institute, the increase in the civil jurisdiction of the Magistrates Court in 2005 and the County Court in 2007, the development of new costs scales and the retirements of the previous taxing master and senior County Court taxation registrar were all factors which gave momentum to the proposal.

The bill creates the Victorian Costs Court as a division of the Supreme Court of Victoria. The Victorian Costs Court will

carry out the functions currently performed by the taxing master in the Supreme Court and the registrars of the County Court, Magistrates Court and VCAT with regard to the taxation of costs.

The chief justice will appoint an associate judge known as the 'costs judge' to preside over the Victorian Costs Court. The chief justice will be able to appoint an associate judge as an acting costs judge as required. The VCC will be responsible for determining taxation matters and other costs disputes from within each of the courts and VCAT. It will also have jurisdiction over non-litigious costs disputes, including solicitor client costs reviews under division 7 of part 3.4 of the Legal Profession Act 2004.

The court will be staffed by suitably qualified court registrars. Registrars' decisions may be appealed to the costs judge. Appeals from the decisions of the costs judge will follow the same structure as for other associate judges and lie to a judge of the Supreme Court.

In combination with the Courts Legislation Amendment (Associate Judges) Act 2008 this bill will assist the courts and VCAT to more effectively apply their resources. For example, the costs judge will be able to delegate functions to registrars as appropriate and concentrate on complex matters and mediations.

The bill demonstrates the commitment of the government to ensure that justice is modern and delivered in an efficient and effective manner.

I commend the bill to the house.

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

Debate adjourned until Friday, 19 September.

NATIONAL PARKS AND CROWN LAND (RESERVES) ACTS AMENDMENT BILL

Second reading

Debate resumed from 11 September; motion of Hon. J. M. MADDEN (Minister for Planning); and Mr D. DAVIS's reasoned amendment:

That all the words after 'That' be omitted with the view of inserting in their place 'this bill be withdrawn and redrafted to take into account —

(1) the outcome of further consultation with the wider community about —

(a) the negative effects of the proposed amendments relating to the Cobboboonee National Park and the Cobboboonee Forest Park;

(b) the proposed amendments relating to Devilbend and the need to ensure the proper protection of this vital natural asset; and

(c) appropriate management and development of the Frankston Natural Features Reserve; and

(2) the wide community support for the expansion of Warrandyte State Park.'.

Mr JENNINGS (Minister for Environment and Climate Change) — I am pleased to provide what will in effect be a summary of the second-reading speech and the reasons why the government has introduced this piece of legislation, which will add to Victoria's national parks estate.

If we are successful in passing this bill, the Cobboboonee National Park and Cobboboonee Forest Park will be added to the fantastic natural asset base we have in Victoria under the reserves system. These parks will provide lasting benefits in terms of protecting biodiversity, protecting the viability of the flora and fauna and the landscape of the south-west of Victoria.

I am very pleased that it has been identified during the course of the debate that there is a reservoir of goodwill and support for that issue in the chamber, although that has been split by party delineation — The Nationals and the Liberal Party have united as one in opposition to establishing the Cobboboonee National Park. That is not necessarily because of the arguments put by Mr Hall. It will not come as a great surprise that The Nationals oppose the Cobboboonee National Park, but it is a bit of a surprise that the Liberal Party does in light of some of the public commitments and undertakings being made by it in relation to this matter. The Liberal Party is perhaps a bit fraught with conflict and has erred on the side of going along with its allies in The Nationals to oppose the Cobboboonee National Park.

It has come up with what is obviously a contrivance, which is the reasoned amendment moved by Mr David Davis, to prevent this bill being voted on and the national park being established; it is a pretty sorry contrivance. I will deal with that contrivance in a minute, after I talk about the nature and value of the park, the nature of the commitment made by the Labor government at the last election to establish this park and the degree of consultation in consideration of the matters involved. Then I will look at a bit of the sorry political intrigue that relates to this matter, but that will not be a major feature of my contribution to the debate because the government is proud to establish this national park and to establish a continuous parcel of national parks. This park abuts the Lower Glenelg National Park, and it will become a continuous parcel of national park to protect threatened species and endangered and vulnerable plants and vegetation types. An important part of lowland forest vegetation will be incorporated within the reserve system.

We are protecting the Surrey and Fitzroy river corridors. There are many rich cultural heritage values

that the Gunditjmara people have established and maintained for tens of thousands of years, and they can rightly be proud of that cultural heritage. We are pleased to be able to provide a supportive environment to protect and cherish those values in the context of the national park reserves. We want to make sure people can actually come into these reserves, enjoy them and use them for a variety of recreational purposes and to understand flora and fauna values, cultural heritage values, river values and land values. We want them to be able to understand them and appreciate them for upcoming generations.

In terms of the delineation of the national park and the forest park that have been created and the provision of a good conservation basis for the protection of those values into the future, a slightly different regime will be undertaken in relation to the management of and types of activities undertaken within the national park and the forest park. But the thing that unites both of those designations of land tenure is that a variety of activities will be able to be continue. They include bushwalking, and in particular the walking opportunity that has been provided by the Great South-West Walk that goes right through the national park. Tens of thousands of people currently traverse this park from the east and the west. People are able to traverse this rich environment in a passive and environmentally sensitive way. People can picnic and they can carry out nature studies. Interestingly enough, they can ride their horses through the park. They can take four-wheel driving opportunities. They can take their dogs for walk in the forest park. They can have some recreational hunting opportunities in the forest park. Commercial tourism opportunities will continue.

An extraordinary thing about all this is that, despite the government's intention to create a national park and reserve system people can actually use in a way that is actually very satisfactory, some political intrigue has been generated — in quite a malevolent way, I think — by some people who have opposed the establishment of this park. They not only try to live in denial that there has been extensive consideration of the biodiversity and the scientific values that underpin the creation of the park, they have also tried to suggest that there have not been community conversations in the consideration of the issue. They certainly live in a state of denial if they perpetuate that story.

There has been a series of workshops undertaken in the Portland and Melbourne communities. More than 1000 submissions — in fact 1075 submissions — were made in the consultation process. The nature of those consultations was incorporated in the report summary that was provided back to the community. With reference to the people who have been calling out for the individual submissions to be released, it is very important for us to understand that those submissions were provided in accordance with the Victorian Information Privacy Act. By interjection I have been baited to respond to whether there might be some people who oppose the establishment of the park. Yes, indeed there are. I have met with and spent time in the company of many of the key stakeholders opposed to the park on a number of occasions. The consultation issue is a furphy, because there has been — —

Mrs Coote interjected.

Mr JENNINGS — I am not quite sure what that intervention meant. Unfortunately the member is out of her place, so I cannot really pick it up.

The reasoned amendment that Mr David Davis has come up with to prevent this bill being considered is an irrelevant contrivance, pretty much as the policy he wrote prior to the last election on behalf of the Liberal Party supporting Cobboboonee National Park was irrelevant. This reasoned amendment does not make sense, it is opposed by the government and we are very pleased to support the second reading of this bill to create the park.

House divided on amendment:

Ayes, 17

Atkinson, Mr	Koch, Mr
Coote, Mrs	Kronberg, Mrs
Dalla-Riva, Mr	Lovell, Ms
Davis, Mr D. (*Teller*)	O'Donohue, Mr (*Teller*)
Davis, Mr P.	Petrovich, Mrs
Drum, Mr	Peulich, Mrs
Finn, Mr	Rich-Phillips, Mr
Hall, Mr	Vogels, Mr
Kavanagh, Mr	

Noes, 21

Barber, Mr (*Teller*)	Pakula, Mr
Broad, Ms	Pennicuik, Ms
Darveniza, Ms	Pulford, Ms
Eideh, Mr	Scheffer, Mr
Elasmar, Mr (*Teller*)	Smith, Mr
Hartland, Ms	Somyurek, Mr
Jennings, Mr	Tee, Mr
Leane, Mr	Theophanous, Mr
Lenders, Mr	Tierney, Ms
Madden, Mr	Viney, Mr
Mikakos, Ms	

Pair

Guy, Mr	Thornley, Mr

Amendment negatived.

House divided on motion:

Ayes, 22

Barber, Mr (*Teller)*	Mikakos, Ms
Broad, Ms	Pakula, Mr
Darveniza, Ms	Pennicuik, Ms
Eideh, Mr	Pulford, Ms
Elasmar, Mr (*Teller*)	Scheffer, Mr
Hartland, Ms	Smith, Mr
Jennings, Mr	Somyurek, Mr
Kavanagh, Mr	Tee, Mr
Leane, Mr	Theophanous, Mr
Lenders, Mr	Tierney, Ms
Madden, Mr	Viney, Mr

Noes, 16

Atkinson, Mr	Koch, Mr
Coote, Mrs	Kronberg, Mrs
Dalla-Riva, Mr	Lovell, Ms
Davis, Mr D. (*Teller*)	O'Donohue, Mr (*Teller*)
Davis, Mr P.	Petrovich, Mrs
Drum, Mr	Peulich, Mrs
Finn, Mr	Rich-Phillips, Mr
Hall, Mr	Vogels, Mr

Pair

Thornley, Mr	Guy, Mr

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

ABORTION LAW REFORM BILL

Second reading

Mr JENNINGS (Minister for Environment and Climate Change) — In relation to the Abortion Law Reform Bill 2008 and consistent with the practice that was adopted in the Legislative Assembly I make the following statement. In accordance with section 48 of the Charter of Human Rights and Responsibilities, a statement of compatibility for the Abortion Law Reform Bill 2008 is not required. The effect of section 48 is that none of the provisions of the charter affect the bill. This includes the requirement under section 28 of the charter to prepare and table a compatibility statement along with the obligation under section 32 of the charter to interpret statutory provisions compatibly with human rights under the charter.

I move:

That the second-reading speech be incorporated into *Hansard*.

Motion agreed to.

Incorporated speech as follows:

The introduction of this bill represents a significant and historic change in the way abortion will be regulated in Victoria. It is the final step in a process the Victorian government commenced in August 2007 when we announced that we would seek advice from the Victorian Law Reform Commission (the commission) about options to clarify the law of abortion. In providing this advice the commission was asked to provide options which would remove abortion offences from the Crimes Act 1958 where performed by a qualified medical practitioner, reflect current clinical practice and reflect community standards.

Current legislative framework

Abortion is currently prohibited in the Crimes Act 1958. Section 65 provides that unlawful termination of pregnancy at any stage during pregnancy is prohibited. Section 66 also prohibits the supply of an instrument or substance knowing it will be used to unlawfully terminate a pregnancy. Since 1864 versions of sections 65 and 66 have formed part of the Victorian criminal law.

In 1969 a Supreme Court judge, Justice Menhennitt, gave Victoria a legal judgement that has guided the provision of abortion services in this state for nearly 40 years. The judgement outlined the circumstances in which an abortion was lawful, which therefore changed abortion law in Victoria. Justice Menhennitt called this a 'therapeutic abortion' and his ruling sets out the matters the prosecution must prove to satisfy a jury that a termination of pregnancy was unlawful. He said a therapeutic abortion is lawful in the following circumstances:

> For the use of an instrument with intent to procure a miscarriage to be lawful the accused must have honestly believed on reasonable grounds that the act done by him was (a) necessary to preserve the woman from a serious danger to her life or her physical or mental health (not being merely the normal dangers of pregnancy and childbirth) which the continuation of the pregnancy would entail; and (b) in the circumstances not out of proportion to the danger to be averted.

However, the Menhennitt ruling does not provide the Victorian community with a clear statement about when a termination of pregnancy is permissible, because it was not designed for that purpose.

The Victorian Supreme Court has not considered the relevant provisions in the Crimes Act since the Menhennitt rules were formulated and no-one has been charged with performing an unlawful abortion in Victoria for 21 years.

The Menhennitt ruling did not give guidance as to the matters that should be taken into account by the doctor when determining risk of harm to the woman, or the means for determining whether an abortion was the proportionate response to the woman's particular circumstances. The courts of other states, which have subsequently expanded upon the Menhennitt ruling, have provided more authoritative guidance. In 1995, the majority of the NSW Court of Appeal, in *CES v. Super Clinics* affirmed and clarified social and economic factors, both during or after pregnancy, could be considered when assessing risk to the pregnant woman's health.

Modern legislation that reflects current clinical practice and community standards is long overdue. By introducing this bill, we are acknowledging that women should be supported in their reproductive health choices, and deserve legal certainty when making these difficult choices. Medical and health practitioners have strongly advocated on the need for legal certainty on the circumstances in which an abortion is legal. Indeed a wide range of individuals and groups have long campaigned for abortion law reform.

Members of Parliament, like the community more broadly, have a diverse range of views on these matters, which are shaped by deeply personal, ethical, moral and religious values. I hope that the debate on this bill will at all times respect the diversity of views held in the community and the Parliament.

Victorian Law Reform Commission advice

The government has committed to the development of legislation that provides clarity for women, health practitioners and the community about the circumstances in which the termination of pregnancy can be performed. In recognising the sensitivity and complexity of this issue, detailed advice was sought from the Victorian Law Reform Commission.

To explore the key issues associated with this reform, the commission undertook widespread consultation with organisations and individuals. Responses were obtained from 36 meetings and over 500 written submissions were received.

The commission convened a panel of experts from relevant health professions to advise them on current clinical practice and a broad range of medical issues. People were invited to join the panel because of their high professional standing, rather than any direct involvement in the provision of abortion services.

Key issues identified included the need for certainty and clarity in the law; and safe, quality services including a capacity for timely access.

The commission found that the rate of abortion is related to the rate of unplanned pregnancy, and the availability and use of contraception. The commission also found there was a desire for a reduction in the rate of abortion.

The commission found that the great majority of abortions are conducted in the early stages of pregnancy — 94.6 per cent of abortions occur before 13 weeks, and 4.7 per cent occur after 13 weeks but before 20 weeks. A small percentage, less than 1.0 per cent, are performed after 20 weeks gestation.

A 24-week gestational limit is a common threshold for more complex cases and is reflected in current clinical practice in Victoria, in Australia and overseas. This gestational limit was recently affirmed by the Westminster Parliament.

The commission found that reasons for late-term abortions are characterised as either 'foetal abnormality' or 'psychosocial'. Most late-term abortions are undertaken at the Royal Women's Hospital and Monash Medical Centre. Both hospitals have the recognised expertise in the area of foetal abnormality with dedicated foetal management units.

The decisions facing women who wish to proceed with a late-term abortion are difficult and complex. It is common to seek additional advice from a range of medical practitioners in complex cases. In public hospitals these decisions are made by a panel of health professionals (the termination review panel arrangements established at both the Royal Women's Hospital and Monash Medical Centre), while in the private system, good clinical practice sees a second opinion sought in the case of late abortions.

The commission made a number of recommendations to improve the clarity of the law beyond the changes to the Crimes Act. These include that any new laws around termination of pregnancy should not contain mandated information provisions, requirements for mandatory counselling or mandatory referral to counselling, compulsory delay or cooling-off periods, and that any new law should not contain restrictions on where terminations may be performed. This bill is consistent with all of these recommendations.

The Victorian Law Reform Commission has produced a report that clearly articulates current clinical practice, community standards, and options that reflect the terms of reference. I would like to thank the commission for its final report, which informed the development of this bill. I would also like to thank the hundreds of individuals and organisations who gave up their time to participate in the review.

Proposed legislative framework

This bill has drawn on the comprehensive recommendations of the Victorian Law Reform Commission final report on the law of abortion (March 2008), and reflects the two-staged approach based on 24 weeks gestation in the commission's model B.

Under this bill, abortions will be regulated like any other medical procedure where the woman is 24 weeks pregnant or less. Abortion where the woman is 24 weeks pregnant or less will be a private decision for a woman in consultation with her medical practitioner.

After 24 weeks gestation, a registered medical practitioner may perform an abortion on a woman who is more than 24 weeks pregnant only if the medical practitioner reasonably believes that the abortion is appropriate in all the circumstances, and secondly, has consulted at least one other medical practitioner who also reasonably believes that the abortion is appropriate in all the circumstances.

In considering all the circumstances the registered medical practitioner must have regard to all relevant medical circumstances and the woman's current and future physical, psychological, and social circumstances.

The bill also explicitly authorises the administration and supply of drugs by a registered pharmacist or a registered nurse in a hospital or day procedure centre for the purpose of causing an abortion in a woman who is more than 24 weeks pregnant where this is at the direction of a registered medical practitioner. As with surgical abortions the registered medical practitioner must reasonably believe that abortion is appropriate in all the circumstances, and that opinion must be shared by at least one other registered medical practitioner.

Substantial regulation already exists around the delivery of medical services in public hospitals through the Health Services Act 1988 and in private clinics through the Health Services (Private Hospitals and Day Procedure Centres) Regulations 2002. Additionally, the Health Professionals

Registration Act 2005 requires medical practitioners to be registered by the Medical Practitioners Board of Victoria.

This framework provides Victoria with a regulatory framework through which abortions, like any other medical procedure, can be monitored.

As part of the Abortion Law Reform Bill, changes will be made to repeal parts of the Crimes Act that refer to the offences of unlawful termination of pregnancy (sections 65 and 66) and child destruction (section 10). The concept of 'serious injury' will be amended to include destruction of the foetus of a pregnant woman other than in the course of a medical procedure (section 5), and a new offence will be created for an abortion performed by an unqualified person.

The bill also provides that a woman who consents to or assists in the performance of an abortion on herself by an unqualified person is not guilty of an offence.

I indicated earlier that no statement of compatibility has been prepared for this bill. This is because section 48 of the Charter of Human Rights and Responsibilities provides that the charter does not affect any law applicable to abortion or child destruction. I will, however, include some comments on rights protected by the charter in my discussion on the provisions of the bill.

I turn now to the parts of the bill.

Part 1 of the bill contains the purpose of the bill, the definitions and the commencement provisions.

Part 2 of the bill sets out the substantive provisions authorising abortion.

Clause 4 of the bill provides that a registered medical practitioner may perform an abortion on a woman who is not more than 24 weeks pregnant.

Clause 5 of the bill sets out the circumstances in which a registered medical practitioner may perform an abortion on a woman who is more than 24 weeks pregnant. The registered medical practitioner must reasonably believe that the abortion is appropriate in all the circumstances, and the registered medical practitioner's opinion must be shared by at least one other registered medical practitioner who has been consulted in relation to the abortion.

Subclause (2) sets out the matters which a registered medical practitioner must have regard to in forming a belief about whether an abortion is appropriate. The clause provides that the registered medical practitioners consider medical circumstances, and the woman's present and future physical, psychological and social circumstances.

The commission acknowledged that the two-tiered approach places some limits on a woman's right to control over her body. However, the limitations imposed by the bill serve the important purpose of clarifying the circumstances in which a termination may be performed in the later stages of pregnancy. This clarification is particularly important for the small group of registered medical practitioners who perform terminations in the later stages of pregnancy. Clause 5 also provides certainty to professional registration boards who may be called upon to determine whether a registered health practitioner has engaged in professional misconduct by performing or assisting to perform an abortion.

Clause 6 confirms that a registered pharmacist or registered nurse who is authorised under the Drugs, Poisons and Controlled Substances Act 1981 to supply a drug or drugs may administer or supply such drug or drugs to cause an abortion in a woman who is not more than 24 weeks pregnant. This provision is necessary in order to protect registered pharmacists and registered nurses from prosecution where they supply or administer the drugs in accordance with that act.

Clause 7 explicitly authorises the administration and supply of drugs by a registered pharmacist or a registered nurse in a hospital or day procedure centre for the purpose of causing an abortion in a woman who is more than 24 weeks pregnant where this is at the direction of a registered medical practitioner. The registered medical practitioner must reasonably believe that abortion is appropriate in all the circumstances, and that opinion must be shared by at least one other registered medical practitioner.

Clause 8 imposes obligations on registered health practitioners who have a conscientious objection to abortion. The term 'registered health practitioner' is defined by reference to the Health Professions Registration Act 2005, and means all regulated health professions, including medical practitioners, nurses, pharmacists, and psychologists. The commission recognised that some health practitioners may have a conscientious objection to abortion, and that such practitioners should not be compelled to provide abortions contrary to their beliefs.

This obligation applies to registered health practitioners who have a conscientious objection to abortion, and requires that, if requested by a woman to advise on, perform, direct or supervise an abortion, the practitioner inform the woman of their conscientious objection, and refer the woman to another practitioner, in the same regulated profession, who the first practitioner knows does not have a conscientious objection to abortion.

These requirements ensure that, as recommended by the commission, an effective referral is made. It is expected that practitioners will, in general, already be aware of practitioners in their regulated profession who do not have a conscientious objection to abortion. However, if they do not have this information, it will be a simple matter for them to consult their peers before referral, as would commonly be the case in relation to other kinds of referral.

Subclauses 8(3) and (4) make it clear that registered medical practitioners and registered nurses who have a conscientious objection to abortion are nevertheless under an obligation to perform and assist abortion in an emergency.

The purpose of requiring the health practitioner to refer the woman to another comparable registered health practitioner promotes the woman's right to make decisions about her own health care, and to receive the highest attainable standard of health care. Requiring a medical practitioner to conduct an abortion in an emergency, and a registered nurse to assist with the procedure, protects the woman's life, and promotes her right to medical care and treatment. Clause 8 has been carefully crafted in order to strike an appropriate balance between the rights of registered health practitioners to conduct themselves in accordance with their religion or beliefs, and to freedom of expression, and the right of women to receive the medical care of their choice.

Part 3 of the bill sets out amendments to the Crimes Act 1958.

Clause 9 repeals section 10 of the Crimes Act. Section 10 creates the crime of child destruction. The commission found that this offence lacks clarity and creates uncertainty, and recommended its repeal.

Clause 10 gives effect to the commission's related recommendation that the offences directed at conduct which causes serious injury contained in sections 16 and 17 of the Crimes Act should be expanded to include assaults on pregnant women, late in pregnancy, that are intended to harm the foetus. Clause 10 amends the definition of 'serious injury' contained in section 15 of the Crimes Act so that the definition includes the destruction, other than in the course of a medical procedure, of the foetus of a pregnant woman, whether or not the woman suffers any other harm. Clause 10 also inserts definitions of terms relevant to this amendment, which are consistent with the definitions in part 1 of the bill.

Clause 11 substitutes new provisions for sections 65 and 66 of the Crimes Act 1958. New section 65 makes it an offence for an unqualified person to perform an abortion on another person, and provides a penalty of up to 10 years' imprisonment for the offence. As recommended by the commission, the new provision explicitly provides that a woman who consents to or assists in the performance of an abortion on herself by an unqualified person, is not guilty of an offence under the section. Only three classes of person are considered to be qualified for the purposes of this section.

These are registered medical practitioners, and, when administering or supplying a drug or drugs in accordance with part 1 of the bill, registered pharmacists and registered nurses.

Exempting pharmacists and nurses from the offence will ensure that, when acting in accordance with a direction given under part 1 of the bill, they will not commit a criminal offence.

Clause 11 also inserts a new section 66 into the Crimes Act which abolishes common-law rules that create an offence in relation to abortion, as recommended by the commission.

Conclusion

The Abortion Law Reform Bill before the house today will provide clarity and certainty for women, health practitioners and the community. The bill acknowledges and reflects community attitudes and current clinical practice that exists in relation to the care and management of women seeking an abortion.

The campaign for abortion law reform has been a long one. I am pleased to say that Victoria now has legislation before the house to provide Victorians with a modern legislative framework that reflects widespread community views and current clinical practice in relation to this important women's health issue.

I commend the bill to the house.

Debate adjourned on motion of Ms LOVELL (Northern Victoria).

Debate adjourned until Friday, 19 September.

PUBLIC HOLIDAYS AMENDMENT BILL

Committed.

Committee

Clauses 1 to 4 agreed to.

Clause 5

The DEPUTY PRESIDENT — Order! Mr Dalla-Riva has foreshadowed an amendment to clause 5; it is amendment 1 standing in his name. I am of the view that it is a test for his further amendments 2 to 11. I invite Mr Dalla-Riva to formally move his amendment and to make any remarks in support of amendment 1.

Mr DALLA-RIVA (Eastern Metropolitan) — As you, Deputy President, rightly indicate, my amendment 1 is a test for my amendments 2 to 11. Subsequently my amendments 12, 13 and 14 will be a test in relation to a different matter. I move:

1. Clause 5, lines 14 to 17, omit paragraphs (a) and (b) and insert —

   '(a) 1 January (New Year's Day) or the Monday after New Year's Day when New Year's Day is a Saturday or Sunday;'.

I indicated the first matter in my contribution to the second-reading debate. It relates to the number of public holidays. This clause is about trying to extend the number of public holidays. This is set out in section 6 of the principal act but is being substituted by clause 5 of this bill, which is the reason for the debate today. A member has indicated that the rationale for the increase in the number of public holidays is a direct result of the Shop, Distributive and Allied Employees Association pressuring the government. Is that the real reason behind the increase in public holidays in this bill?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — No.

Mr DALLA-RIVA (Eastern Metropolitan) — Therefore there is a conflict between one former minister and the existing minister. It appears that somebody was involved with the process of policy development. I ask the minister to refer to yesterday's *Daily Hansard*, because it exactly contradicts the minister's response.

There appears to be no rationale for the government wanting to provide the additional day as proposed in the new bill. I am trying to get clarification on the proposed

amendment covering New Year's Day compared with how it stands under section 6(a) of the principal act. It is the same with the change to Boxing Day, where the principal act states:

> The day after Christmas Day (Boxing Day) or the following Monday when Boxing Day is a Sunday.

The amending legislation splits those two elements. In terms of the proposed section 6(l) and (m), Boxing Day has also been separated. What was the rationale behind making those now two separate those days?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — It might help the member if I simply mention to him that what we are doing is exactly what we have done by gazettal for the last decade. The bill reflects exactly the platform we promised before the last election. It is consistent with what was said publicly in the ALP platform.

The amendments that are being proposed by the coalition would have the effect of reducing the public holidays that have applied by gazettal when Boxing Day and New Year's Day fall on a weekend. They would take away the public holiday for someone who has to work, for example, on 26 December or 1 January. The government cannot support this position, and this is consistent with our public policy position.

Mr DALLA-RIVA (Eastern Metropolitan) — I thank the minister. For the record, it is important to understand that the minister has a deep understanding of this bill. Back in 1993 when he was in opposition here, he debated the Public Holidays Bill in committee. It is interesting reading what Mr Theophanous said as his language has not changed, be it as minister or as a member of the opposition.

Hon. T. C. Theophanous — Still articulate, is that what you mean?

Mr DALLA-RIVA — That would probably be a finer way of putting it, but yes.

Has the minister or the government taken any counsel from some of the peak bodies, in particular the Victorian Employers Chamber of Commerce and Industry, and some of their concerns about the perception of an increased number of public holidays?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — We consult widely on the policy positions we adopt. Obviously the employer groups are consulted, as are employee groups, as well as the rest of the community for that matter. We come to a policy view. In this case we have come to this policy view, which we think is consistent with what we have done in the past. It is certainly fair from the point of view of the workers who are involved. I do not believe that employers are vigorously opposed to that proposition.

Mr DALLA-RIVA (Eastern Metropolitan) — I thank the minister for his answer. Ultimately it was, just for the record, the unions which dominated the policy development process which has caused this.

The final question in relation to this test area is the new section 6(k) in relation to Christmas Day. The minister says he has separated Boxing Day and New Year's Day, which follows, as he said, the gazetted position over a long period. Yet in the principal act Christmas Day and the day after Christmas Day are two separate days. Why is it that the government hates Christmas?

Hon. T. C. Theophanous — We don't hate Christmas, Mr Dalla-Riva.

Mr DALLA-RIVA — It appears that we have an acceptance that the government likes New Year's Day and Boxing Day — yet when it comes to Christmas Day it is now an and/or, which is the argument that I have put forward in the reasons for our amendments on New Year's Day and Boxing Day. It might explain why the government separated New Year's Day and Boxing Day from what currently exists for Christmas Day and has now joined Christmas Day. The government clearly does hate Christmas Day.

The DEPUTY PRESIDENT — Order! Before the minister answers, can I suggest that the role of the committee is actually to get to some of the technical aspects of the clauses and establish government positions as a matter of fact in these matters? I do not think it is helpful if members come with a question such as 'Why does the government hate Christmas?'. I do not think that is part of the committee process. I can accept that it is perhaps some of the to and the fro of the debate, but I do not see it as a substantive question that advances the committee process. I ask members to try to focus on the technical aspects of the bill to get through the committee's work.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — On the technical elements of the bill, I am advised that Christmas Day is in fact already treated in exactly the same way as we are proposing to treat Boxing Day and New Year's Day, so in effect there is no difference.

Mr DALLA-RIVA (Eastern Metropolitan) — I was prepared to let the question settle, but the answer does not make sense because the government is treating it

like the other days and yet, looking at the new bill, it has actually separated New Year's Day and Boxing Day. Maybe I can get some clarity. The government has amalgamated the provisions governing Christmas Day that were in sections 6(i) and (j) of the principal act. It appears that the government has copied those old sections, if that makes sense.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — Perhaps I should clarify. I am now advised that there is a difference in the way that the groups of days are treated. However, Christmas Day has had a substitute day for the last 10 years and that will continue. What the bill does is provide for this other means of dealing with Boxing Day and New Year's Day and it has really just been a policy position that we have adopted.

Ms HARTLAND (Western Metropolitan) — I indicate that the Greens will not be supporting the amendment. We think public holidays are a good thing and that we should have more.

The DEPUTY PRESIDENT — Order! Unless there are any other contributions to be made on this clause, I will put the question. The question is that amendment 1 moved by Mr Dalla-Riva be agreed to. As I have indicated, it is a test for amendments 2 to 11.

Committee divided on amendment:

Ayes, 15

Atkinson, Mr	Kronberg, Mrs
Coote, Mrs	Lovell, Ms
Dalla-Riva, Mr	O'Donohue, Mr (*Teller*)
Davis, Mr P.	Petrovich, Mrs (*Teller*)
Drum, Mr	Peulich, Mrs
Finn, Mr	Rich-Phillips, Mr
Hall, Mr	Vogels, Mr
Koch, Mr	

Noes, 21

Barber, Mr	Pakula, Mr
Broad, Ms	Pennicuik, Ms (*Teller*)
Darveniza, Ms	Pulford, Ms
Eideh, Mr	Scheffer, Mr
Elasmar, Mr	Smith, Mr
Hartland, Ms	Somyurek, Mr (*Teller*)
Jennings, Mr	Tee, Mr
Kavanagh, Mr	Theophanous, Mr
Leane, Mr	Tierney, Ms
Lenders, Mr	Viney, Mr
Madden, Mr	

Amendment negatived.

Clause agreed to; clause 6 agreed to.

Clause 7

Mr DALLA-RIVA (Eastern Metropolitan) — I move:

12. Clause 7, page 4, line 32, after "district" insert ", or a part of the municipal district,".

Amendment 12 is a test for amendments 13 and 14 and relates to the issue of non-metropolitan regions, in particular shires and those areas where a substitute public holiday could be provided. As I indicated in my contribution last night, this amendment arises from concerns raised in particular by the Golden Plains shire, and John Vogels and David Koch also made mention of this matter in their contributions, although interestingly such mention was missing from the contributions of some of the Labor members. This is about asking for an amendment to the bill to allow municipalities to offer substitute public holidays for Melbourne Cup Day.

The argument is about a community which has a connection both with Ballarat and with Geelong and which could have a gazetted public holiday on the same day as a substitute for Melbourne Cup Day. We see that as wrong. We see opportunities to maximise tourism — Golden Plains is only one, but I am sure there are many others — and to maximise opportunities by splitting the substitute Melbourne Cup Day public holiday into two different days, and this amendment would ensure that.

In order to avoid confusion, amendment 14 states:

> … specify the day of the substituted public holiday or days of the substituted public holidays so that there will be a substituted public holiday for each part of the municipal district of that council to which the request relates …

We are being very clear. We have not tried to hide from the fact that this is an important part of the bill. We understand it is the government's intention for everyone to have a day off here and there, and we accept that. We accept that we had a vote on that and we lost. This is not about a party-political statement; it is about what is fair for country Victoria. As a metropolitan member I have talked to my colleagues who represent country areas, and they have expressed their concerns and I understand them. I would have thought there would be the same desire on the part of the government and government members who represent country areas to support this simple amendment, which would provide certainty for non-metropolitan areas.

My question to the minister is: as part of the proposed legislation, why has the government not considered offering an opportunity to split public holidays so that places like Golden Plains shire, for example, have the

capacity to have two separate public holidays, given that shire covers such a large country area?

Mr HALL (Eastern Victoria) — I just wish to reinforce the comments made by Mr Dalla-Riva in respect of this issue. Those of us who represent country electorates know that some of the municipalities within our electorates are very big and can have different community focuses. In East Gippsland, for example, from Bairnsdale through to Omeo and Mallacoota, you see there are differences in focuses and different local events which council could well help celebrate by the declaration of a public holiday. Because of the nature and size of some of those country municipalities it is appropriate that councils do as they would want to — that is, recognise local events by having the ability to declare a public holiday within those regions.

Country municipalities require this amendment; it will better their decision-making ability in the declaration of public holidays. It will be of no extra cost and I cannot understand why the government would refuse to do this. It is just about the location of a public holiday rather than the number of public holidays. As a member representing a country electorate I strongly support this amendment.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — The government cannot support the amendment moved by the coalition. The government's intention with this bill is to ensure that all Victorians enjoy 11 days of public holidays each year and also to reduce confusion for Victorians, especially regional employers and employees. This bill very simply says that in relation to Melbourne Cup Day, in regional Victoria councils can take either that day — Melbourne Cup Day — and have a holiday on that day, or they can take another substitute day and have a public holiday on that day. What they cannot do is take two half days.

Mr Vogels — No, it is not two half days.

Mr Drum — No, one town takes one day and another town takes another day.

The DEPUTY PRESIDENT — Order! The minister can explain.

Hon. T. C. THEOPHANOUS — We are of the view that the way this is being done is to add consistency and to avoid confusion. It is not designed to reduce the holidays. It is designed to increase the holidays in regional Victoria, I say to Mr Hall, because it will ensure that every Victorian gets a holiday, either on Melbourne Cup Day or an alternative day. Where that holiday is declared by a council, it simply makes the point that it has to be a municipality-wide holiday and for a full day. That is the position that the government has adopted. That will add great certainty and great consistency.

Mr KOCH (Western Victoria) — I think the minister has clearly missed what is being requested here from regional Victorian municipalities. There is absolutely no issue in relation to the support of the 11 days — I do not think there is any confusion there — from people who have made representation to myself. All we are seeking here is some discretion for local governments to offer the opportunity to different parts of their communities. Golden Plains shire is obviously a very good example: a portion of that community would like to have the opportunity to have a day to celebrate the Ballarat Cup Day and equally the other half of the community would like to celebrate the Geelong Cup Day. We are not talking about half days or anything; we believe local government should have the discretion to offer these opportunities within their own communities.

Its refusing this opportunity goes further to demonstrate that consideration by this government for regional Victoria is not consistent. We wish to see further consideration of this matter to offer that opportunity to those municipalities who seek it.

Mr VOGELS (Western Victoria) — I think there seems to be a bit of confusion. Because the gazetted day is Melbourne Cup Day the message seems to somehow be getting across that it has to be Geelong Cup Day or Ballarat Cup Day. It could actually be the Geelong show day or the Begonia Festival day in Ballarat; it does not actually have to be for a race meeting.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — In relation to the last question, yes, that is my understanding as well. In relation to the issues raised, there have been circumstances in the past — the shires of Golden Plains and East Gippsland are examples — where no holiday has been provided at all. This bill makes sure that everybody gets a holiday. It might not be on Cup Day, but they get one as a substitute at some other time in the year. The flexibility is there for the shires to have an alternative day as a full day holiday. Quite simply, this will ensure that every single Victorian will get either Melbourne Cup Day or a substitute holiday. I understand out of all the shires the only shire that has raised an issue in relation to this is Golden Plains. I think this is very consistent, and it has been welcomed in regional Victoria.

Mr KAVANAGH (Western Victoria) — My discussions with the government have resulted in the claim by the government that this should not happen, that shires should not be allowed to declare different public holidays in different parts of the shire or municipality on the basis that it may cause confusion. As I suggested last night, the answer to me seems to be that Mr Dalla-Riva's amendment should be passed with the proviso and on the understanding that the shire that declares different public holidays in different parts of the shire thoroughly inform the people who will be affected through advertising. It should not be too big a challenge for any shire to do that.

Mr DALLA-RIVA (Eastern Metropolitan) — I am at a bit of a loss. We have two city-based MPs from the opposition defending the needs of country Victoria and a member of The Nationals. I do it from an understanding gained after having listened to the concerns expressed by country members from the Liberal Party, The Nationals and other parties. The minister obviously represents a city area as well. I am concerned that perhaps the minister may not have engaged in much discussion with his country members on some of the feedback they have had.

It is clear that the government is going down a path of one design fits all. We accept that the previous vote was for a further granting of public holidays. That vote has been held. I guess we are disappointed that the government does not see fit to provide opportunities and choice for country Victoria. Obviously the decision of the government is final, and that is disappointing for people in country Victoria who would like to have the choice, given the large size of some of their areas. It would have been good to have heard some of the government's country members argue why they think it is good to propose this bill and why they oppose my amendments. I will leave it at that.

Ms HARTLAND (Western Metropolitan) — The Greens will not be supporting this amendment. I also take up the point with Mr Dalla-Riva: just because you support this or support the government, it does not mean you are saying we should have 300 public holidays a year. We think they should be gazetted properly and people should have their entitlements.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — The government stands by the clause. We think it is fair, and it gives everyone in country Victoria a holiday, which currently is not the case. We think it is unworkable to have bits of shires having different holidays to other bits of shires, and that is why we have adopted our position.

Mr DALLA-RIVA (Eastern Metropolitan) — The Greens voting with the government is evidence of exactly what I argued before — that is, they do not really understand the country. Unfortunately the end result is that people in country Victoria will miss out on greater opportunities in tourism and the like. We will go to the vote.

Committee divided on amendment:

Ayes, 16

Atkinson, Mr	Koch, Mr
Coote, Mrs	Kronberg, Mrs
Dalla-Riva, Mr	Lovell, Ms
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Petrovich, Mrs
Finn, Mr	Peulich, Mrs (*Teller*)
Hall, Mr	Rich-Phillips, Mr
Kavanagh, Mr	Vogels, Mr (*Teller*)

Noes, 19

Barber, Mr	Pennicuik, Ms
Broad, Ms	Pulford, Ms (*Teller*)
Darveniza, Ms	Scheffer, Mr
Eideh, Mr	Smith, Mr
Elasmar, Mr	Somyurek, Mr
Hartland, Ms	Tee, Mr
Jennings, Mr	Theophanous, Mr
Leane, Mr (*Teller*)	Tierney, Ms
Madden, Mr	Viney, Mr
Pakula, Mr	

Pairs

Drum, Mr	Mikakos, Ms
Guy, Mr	Thornley, Mr

Amendment negatived.

Clause agreed to; clauses 8 and 9 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I move:

That the bill be now read a third time.

In so doing I thank members for their contributions.

Motion agreed to.

Read third time.

COUNTY COURT AMENDMENT (KOORI COURT) BILL

Second reading

Debate resumed from 11 September; motion of Mr LENDERS (Treasurer).

Ms PENNICUIK (Southern Metropolitan) — I am pleased to speak today in support of the County Court Amendment (Koori Court) Bill 2008. This bill basically provides for the establishment of a section of the Koori courts, which have already been in operation in Victoria, in the County Court. There are already seven Koori courts around Victoria associated with the Magistrates Court and two Children's Koori courts in Melbourne and in Mildura.

The establishment of the Koori court program is driven by the fact that we know indigenous Australians are overrepresented in the judicial system and many times more likely to be incarcerated or held in remand. This is, of course, a legacy of the disadvantage and injustice indigenous Australians have suffered and continue to suffer. The Koori courts basically have a different way of operating that is slightly less formal than a normal court proceeding where you have the judge or magistrate sitting at the bench and the proceedings are carried out in a formal way. In the Koori courts the magistrate sits at the table with the offender. There are also elders and family members present and others to assist in the resolution of the matter before the court.

The reports I have read suggest that the Koori courts have been operating well — the children's Koori court and the Koori courts attached to the Magistrates Court. Koori courts have been operating for about five years, and the Greens believe their establishment is a very good government initiative. They are designed for and tailored to suit the particular needs and circumstances of indigenous Australians who find themselves engaged with the justice system. The aim is to reduce incarceration and recidivism, and that appears to be happening. In particular recidivism has been reduced by the operation of the Koori Court system. I note that the Koori Court system operates a bit more slowly than perhaps would be the case otherwise; nevertheless the outcomes are very good, so the system should be supported. The Greens certainly support the extension of the Koori courts into the County Court system. With those few words I will say the Greens are supporting the bill.

Mr TEE (Eastern Metropolitan) — I rise to speak on the County Court Amendment (Koori Court) Bill. We are all aware of the significant disadvantage suffered by the Aboriginal community in Victoria and indeed, in Australia. We have the consequences of 200 years of dispossession, and the consequences are clear in terms of the overrepresentation of the Koori community in our justice system.

We know that indigenous Victorians are 11 times more likely than non-indigenous adults to be sentenced to prison, and we know that they are 15 times more likely to be placed on remand. The Koori Court system is about reducing that overrepresentation in our judicial system. It is about responding to that overrepresentation in an inclusive, innovative and culturally appropriate manner. In doing so I think the bill is very compatible with Victoria's human rights charter, which recognises the distinct cultural rights of Victoria's indigenous people.

Victoria's Koori courts are located at Shepparton, Broadmeadows, Bairnsdale, Mildura, Warrnambool, the Latrobe Valley and Swan Hill magistrates courts. Children's Koori Courts are located at the Melbourne Children's Court and at the Mildura Magistrates Court. As Parliamentary Secretary for Justice I had the privilege of participating in the opening of the Swan Hill Koori Court this year. It was a very moving experience and a very significant and important occasion. The opening was well attended and supported by the Koori community, the judiciary and indeed the police. I have also attended and watched the Koori Court proceedings in Melbourne. The key to the success of the Koori Court model is the informal atmosphere in which the court operates — an atmosphere which allows for greater participation of the Koori defendant.

The way the proceedings operate is that the magistrate, the Aboriginal elders or respected persons, the defendant and their families, the Koori Court officers, corrections officers and the defendant's legal representatives, or the prosecutor, can sit together and discuss the issues that have led to the offending behaviour. These underlying issues might include drug or alcohol abuse, mental health issues or indeed homelessness. Where appropriate the defendant can be connected to relevant services that can help address these underlying issues.

A key to the success of the Koori Court is the connection of the defendant with those existing support services to address the causes of the offending behaviour. If we do not address the causes of the offending behaviour, then the behaviour is likely — and our experience shows this — to continue to occur. More fundamentally, the success of the Koori Court is in the connection with the Koori community. The

magistrate can confer with Koori elders who can provide information about the defendant or provide reasons for the offending behaviour. Indeed the Koori elders can engage with and hope to connect with the defendant. The Koori elders are an important link between the defendant and their community. It is also important that the Koori elders are there because they symbolise that the offence is not condoned by either the indigenous or non-indigenous community.

If sentencing is to occur, sentencing options include deferring sentence so that the defendant can be connected to support services, including counselling. While the defendant is being connected to those services the threat of sentence hangs over them, acting as an incentive for them to participate in support services. The fact that the defendant needs to return to the Magistrates Court and report back to their community through the elders and respected persons is another incentive. I think this is an important option available to the Koori Court. When the defendant returns for sentencing the magistrate can then take into account all of the circumstances, including the defendant's participation in the support services, the counselling services, that have been made available, and the defendant's participation is really something the magistrate can take into account when considering the defendant's remorse and prospects of reoffending.

The Koori Court is by no means an easy way out. The magistrate has all the sentencing options available and will sentence on the basis of normal sentencing practices. What the Koori Court does is provide this additional layer — an opportunity for the defendant to address the underlying causes and reconnect with their community.

I am very pleased that this bill proposes that the Koori Court model be expanded to the County Court. It will have the same jurisdiction as the County Court and will be able to hear all County Court offences, with the exception of sexual offences. To access the court the offender must plead guilty or be found guilty of an offence, must consent to sentencing in the Koori Court, and the court must consider that the matter is appropriate to be dealt with in the Koori Court. I think this is an important progression and a step towards reducing Aboriginal incarceration and recidivism, and I welcome the bill.

Mr HALL (Eastern Victoria) — I welcome the opportunity to make a few brief comments on the County Court Amendment (Koori Court) Bill 2008. As others have clearly stated, it establishes a County Koori Court. This follows the success in implementation of the Magistrates Koori Court and also the Children's Koori Court. This is of some interest to me because the trial for this program in the County Court is going to be staged in the Latrobe Valley, at Morwell. We have had a Koori Court operating there for a couple of years now, and I too have received positive feedback from the community about the success of that, particularly from one or two bail justices I have spoken to in recent times who confirm that they believe the Magistrates Koori Court is doing an effective job.

I think it is important to note, simply for the record, that offenders must plead guilty to be eligible to appear in the Koori County Court and also that sexual crimes and crimes of family violence will be exempt from this process. Again, I think that is appropriate. I also make the general comment that although we claim to live in a multicultural society there are still sections of our society in which people from different races and ethnic backgrounds do not get on so well. I put it in those simple terms.

In saying that I know that we all have neighbourhood disputes and neighbourhood issues that we have to deal with. However, it seems to me that sometimes those disputes, when they involve people from different ethnic backgrounds, cause some issues that we need to deal with, and we should not run away from that. There are issues out there relating to race that we need to deal with as a society.

I finally want to commend the work undertaken by Rosemary Smith from the Department of Justice. She is the project manager of the Koori programs and initiatives. I want to congratulate her on the proactive way in which she sought to talk to people about this particular proposal. She made the effort to come to Morwell to speak to me and the member for Morwell in the Assembly, Russell Northe, about this program and provide further information about what it involves. It was not that we requested that information; she was very proactive in making herself available to provide that information for us. That was very positive. From our point of view we were able to give her some useful advice as to people she might contact and provide a briefing to. I put that on the record that this was constructive work done by Rosemary and she deserves to be commended for it. With those few words, as I said, this pilot project will be run through the Morwell court and it is something that we are as local members will take great interest in. We wish it well.

Mr KAVANAGH (Western Victoria) — I rise to express some reservations about this bill. Over the last couple of hundred years Western societies have generally developed a culture of rights. They probably owe more in this respect to the genius of Thomas Jefferson than to any other individual. Thomas

Jefferson declared as being self-evident that all men are created equal. In doing so he did not suggest or was arguing that people are equally intelligent or equally virtuous. He was suggesting a profound spiritual sense of the value of people. He was also talking about equality before the law. In particular, although he was limited by his circumstances and was talking about white males, he was nevertheless holding up an ideal that I think was very worthwhile, and one which we should pursue. I believe racially based courts are not consistent with that ideal of equality before the law.

We know that wealth and education bring advantages to certain people in our legal system. We should probably do more to address that. Some people are unfairly advantaged by being able to afford better barristers and understanding, through their educational background, the whole legal system. As a former practising lawyer I can say that that is seen over and over again.

It is entirely proper and necessary that every court considers the individual circumstances of an accused person or a defendant, and in particular to take account of poverty and any other factors in that person's life that could mitigate their culpability. A very worthwhile thing that has been done in recent decades in Victoria is to instruct judges that jail should be the last option available to them. Jail should only be imposed on a defendant where nothing else is suitable. Judges should look for every other option available before sentencing a person to jail. That is entirely proper and correct. Although regrettably imprisonment is sometimes necessary, it is almost never desirable. There are many pernicious effects of jail. Often jails make people worse and, although they serve as a deterrent, they do not rehabilitate people.

Mr Tee talked about the need for counselling services. Counselling services should be available to everyone in the court system. I think they should be available equally and not on the basis of a person's race. Everyone should have the opportunity to explain their own circumstances. If that is not happening in our court system now we should facilitate it to happen in a better way in the future. That should be done not on the basis of race but on the basis of the individual's needs and the individual circumstances of every defendant.

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

CORRECTIONS AMENDMENT BILL

Second reading

Debate resumed from 21 August; motion of Mr LENDERS (Treasurer).

Mr DALLA-RIVA (Eastern Metropolitan) — I am pleased to make a contribution on behalf of the Liberal Party to debate on the Corrections Amendment Bill 2008 and indicate that the opposition will be supporting the legislation. This is a simple bill in what it does: it provides victims with the additional opportunity to recover damages from prisoners who have received damages awards. All damages awarded to prisoners in a proceedings against the state of Victoria or private prison providers for a breach of duty of care while in prison must be paid into a trust fund maintained by the Department of Justice.

For the record, I raised this issue many years ago, due to an issue that occurred in New South Wales when I was the shadow corrections minister. The issue arose after a prisoner fell out of a bunk bed in a jail; the prisoner suffered severe injuries. He took the matter to, I believe, the highest court in New South Wales and received a significant compensation payout. At the time I was asked for comment, and I said it was inappropriate that prisoners should be afforded significant amounts of money, given that often the victims they have inflicted injury or hurt on were really struggling.

The awarding caused much concern at the time. The media reported it, with some saying it was okay. I remember going on Derryn Hinch's radio program, thinking there would be an issue about him providing some support. The editorials started and he was hooking into me right from the start, which he has done a few other times since. Notwithstanding that, he was of the view that prisoners ought to be able to receive some level of compensation. I argued that it is not the right of prisoners always to do that.

The bill here acknowledges that victims have some level of right in recovery of damages against a prisoner, and it also — in subtext — has the capacity for lessening the ability of prisoners to make claims, spurious or otherwise, against the prison system. To be blunt, prisoners have a lot of time on their hands, and there are some vexatious litigants there, to put it politely. Legislation to limit those individuals, in respect of which we supported this government, was passed many years ago.

This piece of legislation will limit the opportunities of prisoners to make spurious claims against the state or private prison operators as the case may be. That is not to say prisoners do not have a right in terms of their capacity to sue, but it does say that there is the opportunity for victims to receive part of those funds. Once this bill passes there will be prisoners who will be aware that it might be better for them to focus on rehabilitation programs, discover employment opportunities and think about other objectives such as some of the good tertiary education programs that are offered in the prison system and all those types of activities. In themselves those are good incentives for prisoners to move forward, to leave the prison system, to return to society and to develop their capacity.

There are going to be real issues of damage, and there has to be a balance between what is fair for the prisoners and what is fair for the victims. This has broad support from the victims groups. This bill has support from the opposition. The only people who might be aggrieved by it could be the lawyers, who may see that some of the cash cow opportunities arising from the prisoners may be eroded. The government may have a different view on it, but the bottom line is that the lawyers probably would not be arcing up if that were not the case.

This is a bill that has our support, and we look forward to its progress. I understand there will be no amendments — certainly not from us — so Mr Tee need not panic.

Mr Jennings — It is an amendment-free zone over there.

Mr DALLA-RIVA — It is not in general, although it is on this particular bill, and we hope the bill has a speedy passage. I look forward to the counter debate on some of the issues I have raised, but fundamentally I see this as an opportunity for limiting the capacity of prisoners to sue. The government might say prisoners still have that capacity, and I understand they will, but I think if they realise that there are not the cash cow opportunities available they may convert their energies into other, more proactive outcomes like rehabilitation to avoid returning to the prison system, which unfortunately many of them do.

Ms PENNICUIK (Southern Metropolitan) — I will not say I am pleased to speak on this bill today; I am quite troubled to be speaking on this bill. The purpose of the bill is:

> … to amend the Corrections Act 1986 to provide for the creation of prisoner compensation quarantine funds for the purpose of paying into those funds certain damages awarded to prisoners and to provide for the payment out of them of certain amounts recoverable by victims and others from prisoners …

At first glance that sounds a good thing, and certainly the Greens and all fair-thinking people in the community are in favour of victims receiving compensation — financial compensation in particular — for crimes perpetrated against them, but the question before us in this debate is whether this bill is the appropriate means of doing that.

Under the present system assistance is provided to victims of crime under the Victims of Crime Assistance Act 1996 and the regulations of 2000, under which the Victims of Crime Assistance Tribunal can award financial assistance. It is worth reminding the chamber about that assistance. There are four categories for the most serious acts of violence. There is a section for offences committed prior to 1 July 2007 and another for offences committed after 1 July 2007. I will talk to the provisions that apply now — that is, since 1 July 2007. For category A, which covers the most serious acts of violence such as attempted murder, the minimum award is $4667 and the maximum award is $10 000. For category B, which includes armed robbery, aggravated burglary and deprivation of liberty, among other things, the minimum is $1300 and the maximum is $3250. For category C, any offence that involves things such as the threat of death, conduct endangering life, the infliction of serious injury or robbery, the minimum is $650 and the maximum is $1300. For category D, any offence that involves a threat of injury, assault against a person or attempted assault, among other things, the minimum is $130 and the maximum is $650.

My first comment is: if the government is serious about helping victims of crime, it should look at its own table of financial assistance that is available to victims of crime under the Victims of Crime Assistance Act. On any reading of it, the words ‘paltry’, ‘mean’ and ‘inadequate’ come to mind. I know that table just covers financial assistance from the Victims of Crime Assistance Tribunal, but the tribunal is the first port of call and, for many victims, the only port of call, and those figures show what they can expect from that tribunal. A victim’s only other chance of getting assistance is through WorkCover, the Transport Accident Commission or the police fund if the circumstances of the crime perpetrated against them makes them eligible for that. That will help a certain class of victims; it will not help all victims. Other victims would need to go through the process of suing the perpetrator, and in many cases — probably the

majority of cases — the perpetrator will not have any funds, so that will not take them very far.

I see the departmental officers sitting opposite me. I thank them for the briefing they gave me. I told them I had concerns about the bill, and I will go through some of those later in my contribution.

The inherent problem with the bill is that it does not really create fairness. The victims who benefit from this will be those who happen to have a perpetrator who happens to have received a compensation payment and then happen to be notified of that and take action to sue for that money. That does not really create fairness for victims. I wanted to start my contribution with that point so that nobody is in any doubt that the Greens, and I personally, are very much in favour of victims of crime being compensated. The system that is in place now is not adequate, and that is where the government should be focusing its attention. The bill before us does not do anything to fix this issue.

The Scrutiny of Acts and Regulations Committee received correspondence on the bill from the privacy commissioner. The committee wrote to the minister about the concerns raised by the commissioner, and the minister wrote back to the privacy commissioner about those concerns, which I will go to in a moment. It is very rare for the privacy commissioner to make a submission on a bill. In fact I have approached the commissioner about some other bills that have come before this chamber because I saw or suspected privacy concerns with them, but I was not able to ascertain the view of the commissioner on those bills. In this case the privacy commissioner was proactive and wrote about her concerns about the bill. Those matters really go to concerns about the arbitrary disclosure of private information under the bill.

In relation to the concerns the Victorian privacy commissioner refers to, particularly concerning proposed section 104S, there is some detail in her submission about the processes of her office in regard to the conciliation of complaints against people's private and personal information being arbitrarily released. The commissioner said that the process established by the bill has a direct and significant impact on the operation of the Information Privacy Act and that the process by which complaints are dealt with under the Information Privacy Act is strangely altered by clause 104S of the bill, as the requirement that the agreement approved by a court, which is defined in clause 104O of the bill to include a tribunal, is potentially significantly different from the registration of a record of the conciliation agreement under the IPA. The letter is referring to information concerning a prisoner who may have had a confidential settlement with the state for damages as a result of something that has happened to that prisoner. I also draw to the attention of members of the chamber the fact that under the definition, 'prisoner' can mean a former prisoner or a serving prisoner. A prisoner may have had something untoward happen to them in the prison system and may have sued the state.

I violently disagree with Mr Dalla-Riva's statement. He said he hopes this bill will limit the capacity of prisoners to sue. Many charters of human rights would say that just because somebody is a prisoner, it does not mean they have abrogated all of their human rights. They retain their human rights. Even though they are deprived of liberty for a certain amount of time as imposed by a court, that is the only right they have lost.

The prison environment is one where people can be discriminated against. They can have acts of violence perpetrated against them or they can have ordinary, everyday accidents. They can slip on the floor in the prison kitchen or something like that and be injured through no fault of their own. They should retain the right to sue for those injuries. For Mr Dalla-Riva to say that he hopes this bill limits the capacity of prisoners to sue is reprehensible, to use that word again.

Mr Dalla-Riva interjected.

Ms PENNICUIK — Mr Dalla-Riva, I do not think you can argue your way out of this one at all.

Prisoners may come to a confidential agreement with the state, and the problem the privacy commissioner has with the bill is that even though those confidential agreements have to be approved by a court they will no longer be confidential agreements. That is one issue.

The Human Rights Law Resource Centre made quite a long submission; it is against the bill and points out flaws in it. I have read through that submission, and I think there are significant issues about this bill, particularly its mandatory nature. It says that the Secretary of the Department of Justice must — and the word is 'must' — publish or cause to be published in the *Government Gazette* and two widely circulated newspapers the name and address of a prisoner, the fact that a prisoner has been awarded a compensation payout and the contact details for victims of the prisoner so that the victims can apply to be Secretary of the Department of Justice for more information. The centre has complained about that as an arbitrary invasion of personal privacy, and it does not go just to the privacy of the prisoner but to the privacy of the

prisoner's family as well, particularly in the case of former prisoners. The privacy commissioner in particular suggests that that could be ameliorated by making that 'must' into a 'may' or giving some discretion to the Department of Justice in that regard.

There is also a provision in the bill regarding the determination of what amount of the prisoner's compensation will be quarantined by the Department of Justice. An amount of money is awarded to a prisoner for a damage that occurred to them, and a court will decide how much of that particular award needs to be kept for medical and legal costs, and the rest can be quarantined by the Department of Justice for 12 months. The Human Rights Law Resource Centre makes the point that it is very difficult for courts to make the determination about how much will be needed by the prisoner for medical or legal costs. If that determination is wrong and the rest of the amount is quarantined, that could mean that such medical and legal costs cannot be met.

In the determination the court must have regard to whether or not there will be enough funds left over in the award of compensation to the prisoner for victims' compensation. I cannot see why a court would be taking that into account. I cannot see the link between the damages that may be paid to a prisoner, or any person, and the payment of something to another person who may or may not sue in the future. I really cannot see the link. The two things are not linked. They are directly linked in the bill, and that is a big flaw.

I also asked the officers from the Office of Corrections where the bill came from. We have many bills put to us that have come out of national agreements. Yesterday we were speaking about model regulations for fatigue management, which have gone through 10 years of discussion and negotiation, and there are national model regulations. I was told about New Zealand and Queensland — that New Zealand has adopted a similar model and Queensland is about to. I took it upon myself to have a look at those, and what I found was that the New Zealand model has been heavily criticised by the Human Rights Commission of New Zealand, which made a huge submission about its impacts on human rights, and the same is happening with the Queensland legislation. So it was not exactly a ringing endorsement to draw my attention to those other pieces of legislation, which are the only precedents that I was pointed to.

The Human Rights Law Resource Centre has made the point that in its view the bill is incompatible with the human rights charter on a number of levels, including the right to recognition and equality before the law, the right to privacy and reputation, the protection of families and children, the right to humane treatment when deprived of liberty, which is particularly apposite to this bill, and the right to a fair hearing. It makes the following point — and perhaps Mr Dalla-Riva would be happy about this, but I would not be:

> … the bill would deter prisoners who are victims of discrimination, vilification, and sexual harassment —

or any other misfortune —

> from raising complaints against the state.

That is not something we would like to see.

The Human Rights Law Resource Centre says:

> At worst, the bill may have the effect of sanctioning discrimination against prisoners who have potential claims pending against them. Prisoners in this category are unlikely to commence legal action against the perpetrators of their mistreatment because they will not receive any compensation … and are likely to be left out of pocket at the end of the litigation process.

And that goes to the divvying up of the compensation claim. The centre considers that:

> … the arbitrary deprivation of compensation payments from individuals for a period of at least 12 months to be more than a mere 'temporary seizure', as was suggested in the government's statement of compatibility. Twelve months is an extended period of time, particularly if the prisoner has legal fees and medical costs to cover, which have not been adequately provided for in the apportionment process …

As I mentioned at the start of my contribution, the intention of the bill is to provide a source of compensation for victims, but in doing so we need to make sure we are not infringing on the rights of prisoners and that it does not make one class of victims more able to get compensation than another class of victims just through circumstance — just because some perpetrators may have more funds than others. The government should be looking at having its own victims of crime assistance and compensation systems applying across the board and allowing equity for all victims to gain compensation.

Even if members think this bill should pass, they should note that some serious flaws with it have been raised by reputable and concerned organisations, not the least being the Victorian privacy commissioner. It always astounds me when we have bills coming in here that groups like that raise their concerns and even suggestions as to how they could be fixed, yet we end up passing flawed legislation.

I am concerned that that is what we will be doing in this case. I foreshadow that I will be moving that this bill be referred to the Legislation Committee; that would be a

good step. The Legislation Committee, which is a committee of this house, looks at bills about which concerns have been raised. It would enable the privacy commissioner and the Human Rights Law Resource Centre to present to the committee, and the committee to consider the issues associated with the bill and its particular clauses, and come back to this house with an improved bill. I also will be asking the minister questions in the committee stage.

Mr TEE (Eastern Metropolitan) — The bill provides an opportunity for victims to consider their existing rights by notifying them of money received by prisoners in respect of claims that those prisoners have brought against the state or indeed against private prisons, and it quarantines those moneys for at least 12 months.

Currently we know that victims of crime have a legal right to bring proceedings against those who have offended against them, but often that legal right is hamstrung by the financial circumstances of the offenders, who may not have any resources. This bill quarantines any damages paid to those prisoners as a result of any successful claims made against either, as I said, the state or private prison operators. The funds are paid to the Secretary of the Department of Justice and quarantined for at least 12 months.

The bill also provides for public notification of a successful claim by a prisoner to a victim so they can consider whether or not to take any civil action. The bill also provides for victims to be registered so that information can be disclosed to them, and it provides for the payment to victims of money held in the fund. The bill does not in any way change the law as it currently stands in relation to who can claim funds, but it allows access to those funds where a successful claim is made against the prisoner.

Ms Pennicuik made a number of suggestions and accusations, and we refute those. She mentioned the special financial assistance and indicated that damages payable under this scheme were not as generous as they should be. They were around $100 to $7500. What she omitted to mention were the other awards of damages that may be made, including $60 000 for counselling services, medical and other expenses, loss of earnings up to $20 000 and, in exceptional circumstances, other reasonable expenses to assist in the recovery. This government has a proud record in relation to looking after the rights of victims and this is another step in that direction.

Motion agreed to.

Read second time.

Legislation Committee

Ms PENNICUIK (Southern Metropolitan) — I move:

> That the Corrections Amendment Bill be referred to the Legislation Committee.

Briefly, as I foreshadowed in my contribution, I would like the bill to be considered by the Legislation Committee because of the submissions from the privacy commissioner and the Human Rights Law Resource Centre about the flaws in the bill. In fact the Human Rights Law Resource Centre is opposed to the bill in its entirety. However, the privacy commissioner has made some suggestions about how the bill could be improved from his point of view.

We do not use the Legislation Committee enough in this chamber when we have bills before us that impact on human rights, and those impacts on human rights have been raised with the government and with the Scrutiny of Acts and Regulations Committee (SARC). Often, as is the case here, the responses by the department or the minister to questions that have been raised are not even before us when we are debating the bill. I know a response will be forwarded from the department to the Human Rights Law Resource Centre about this bill, but that response is not available for me to see. Perhaps some of my fears or concerns could have been allayed if I had seen that response. As recently as this morning my office has been in contact with the department looking for that information.

It is the case here that a lot of legislation goes whizzing through. I have made the point many times in the chamber that we often deal with bills — as do members in the Legislative Assembly — that SARC may have raised questions and written to the minister about, but the response from the minister is not seen by anybody in the Assembly. In many cases, if not most, it is not seen by anybody in the upper house before the bill is passed. It makes you wonder what the point is of the Scrutiny of Acts and Regulations Committee if the deliberations of that committee, the questions it has raised and the answers it has received are not all before the Parliament before it debates a bill. Why have that committee looking at legislation if the time frames do not match, particularly when we have a bill that has human rights implications? I think we should make use of the Legislation Committee in this regard. This bill could be referred to it. The parties that have made submissions and made their concerns about certain aspects of the bill known to the government can be called to the committee to give evidence or make suggestions. That evidence can be explored in some depth in the committee and the committee can report

back to the house as to whether the bill should be left unamended or be amended.

It is not the role of the Parliament to accept that government bills are always perfect and cannot be improved. It is not the case that they cannot be improved. Organisations in the community which have expertise in this area have pointed very clearly to where they think this bill can be improved. I think it is incumbent on the Parliament to take that on board and to use the structures and processes that we have before us, in this case the Legislation Committee. It can go through the processes I have outlined and assure me and those expert organisations that we are passing legislation that we should be, that does not unduly infringe on people's rights and that does achieve what its second-reading speech says it is aiming to achieve. I am not convinced that that is the case at the moment. I urge government and non-government members to support referral of this bill to the Legislation Committee.

Mr TEE (Eastern Metropolitan) — The bill provides a very simple proposition: to quarantine funds paid to prisoners so victims can rightfully seek to access that money. It does not change the law in terms of a prisoner's right to claim compensation. It does not change the law in relation to a victim's right to claim compensation. It is a simple proposition to hold that money in a trust fund so the legal issues around access to that money can be determined. We ought not allow ourselves to have a situation where victims of crime are left waiting for compensation or might even be denied compensation while the Legislation Committee reconsiders that proposition. For those reasons, the government will not be supporting the proposition put by Ms Pennicuik.

Mr DALLA-RIVA (Eastern Metropolitan) — I agree with one thing I have heard so far and that is the passion Ms Pennicuik has come to the chamber with in relation to this bill. Listening to the debate Ms Pennicuik contradicted herself. There is no stopping prisoners from being able to sue. There are issues about privacy, and issues have been indicated by certain legal groups. The one thing that has not been mentioned is support from the victims groups.

It would be fair to say that the Legislation Committee is there to flesh out issues relating to legislation. It is not to be used, as Ms Pennicuik may see it, as a vehicle for interest groups to raise their particular concerns about the bill of rights and the rights of prisoners. Most people in the community understand that when a prisoner is incarcerated they lose their rights. On Ms Pennicuik's admission, prisoners do not lose their rights in this bill. I argued for the bill on the basis that if prisoners know there is less likelihood of receiving a cash outlay because they make some frivolous claim — and they do; having been the opposition corrections spokesman for a while I know this is the unfortunate nature of prisoners — this will force them to think twice about whether to undertake a litigation process.

In my view the Legislation Committee is designed to explore legislation. I have heard no debate from Ms Pennicuik, apart from a few issues she raised in her contribution to the second-reading debate, that would give rise to any reason for this matter to be referred off to the Legislation Committee. On that basis we will not be supporting her motion.

House divided on motion:

Ayes, 4

Barber, Mr	Kavanagh, Mr
Hartland, Ms (*Teller*)	Pennicuik, Ms (*Teller*)

Noes, 33

Atkinson, Mr	Madden, Mr (*Teller*)
Broad, Ms	O'Donohue, Mr
Coote, Mrs	Pakula, Mr
Dalla-Riva, Mr	Petrovich, Mrs
Darveniza, Ms	Peulich, Mrs
Davis, Mr D.	Pulford, Ms
Davis, Mr P.	Rich-Phillips, Mr
Eideh, Mr	Scheffer, Mr
Elasmar, Mr	Smith, Mr
Finn, Mr	Somyurek, Mr
Hall, Mr (*Teller*)	Tee, Mr
Jennings, Mr	Theophanous, Mr
Koch, Mr	Thornley, Mr
Kronberg, Mrs	Tierney, Ms
Leane, Mr	Viney, Mr
Lenders, Mr	Vogels, Mr
Lovell, Ms	

Motion negatived.

Committed.

Committee

Clause 1

Ms PENNICUIK (Southern Metropolitan) — Regarding clause 1, when I received a briefing on the bill I asked the officers of the department about its genesis. I was wondering if the minister could apprise me of where the bill came from and what the context of it is in terms of what I mentioned in my contribution — namely, laws in other states and national laws.

Hon. J. M. MADDEN (Minister for Planning) — In relation to the member's question, this bill came out of a policy initiative to further strengthen the recognition

by this government of the harmful effects of crime on victims. In a sense it was a relatively pragmatic response to the effect of crime on victims and the need to respond to that accordingly.

Clause agreed to; clause 2 agreed to.

Clause 3

Ms PENNICUIK (Southern Metropolitan) — Proposed section 104U(2)(b)(iii), which is on page 6 of the bill, says that the — —

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Brookland Greens estate, Cranbourne: landfill gas

Mr D. DAVIS (Southern Metropolitan) — My question is to the Minister for Planning. It is known that government officials were called to Brookland Greens estate last week to assess the escalating levels of methane. When was the minister informed about the dangerous situation for the residents at Brookland Greens estate?

Hon. J. M. MADDEN (Minister for Planning) — I welcome the member's question in relation to this very serious matter and one which should be of great concern to the community, and which of course is of great concern to this government. We recognise how concerned those community members are. There could be nothing worse than having to be dislocated or relocated from your own home, and of course I acknowledge the difficulty that is associated with these residents in this community.

Let me put this perfectly clearly to you, Mr Davis, through the Chair: my responsibility is in relation to planning matters and planning authority. The responsibilities for emergency services and environmental monitoring rest with other ministers in this government, and I suggest Mr Davis should address his question to the appropriate minister, who sits in this chamber, my colleague the Minister for Environment and Climate Change, Gavin Jennings, who is responsible for the Environment Protection Authority in relation to these matters.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — It is clear that the minister and the government knew of this crisis and did nothing. Why did the minister not act last week when he knew this situation would endanger lives?

Hon. J. M. MADDEN (Minister for Planning) — I am disappointed with the attitude of the opposition and with Mr Davis in relation to scaremongering about this matter, which is a very serious matter for the residents. The prime issue of importance is their safety and their security going into the future. Whilst Mr Davis might feel compelled to direct questions of that nature inappropriately to ministers when he knows who the responsible ministers for either emergency services or for monitoring through the EPA are, it is not appropriate to direct a question of that nature to me. But given that, Mr Davis, let me just say this — —

Mr D. Davis — When did you know this?

Mr Pakula — You're a grub.

The PRESIDENT — Order! Mr Pakula's reference to Mr Davis in that fashion is unacceptable. I ask him to withdraw.

Mr Pakula — I withdraw.

Hon. J. M. MADDEN — As far as I am aware this is an issue that has been monitored for some time by the EPA and what has come to light very recently is the extent of some of these issues. It has been known for some time, I understand, that smells or gas emanating from what was a former landfill site have been an issue of relevance to the council for a long time — —

Mr D. Davis — When did you know?

Hon. J. M. MADDEN — But let me make this perfectly clear: what has arisen only very recently is the extent of it, through the monitoring by the appropriate authorities, and hence those appropriate authorities have taken the course of action they have to take in relation to this matter. We want to make sure the primacy of this matter is not a political football.

Honourable members interjecting.

The PRESIDENT — Order! The constant interjections from David Davis and other members on my left are distracting not only me but the rest of the house. I remind them that I am also a member who represents that district, and I am particularly interested in hearing the answer.

Hon. J. M. MADDEN — Of prime importance is the security and safety of those residents, and the respective authorities that are responsible for these matters — the EPA, the Country Fire Authority and the

emergency services — are responding in conjunction with the council, which is the relevant authority in this matter. It was the operator of the landfill site for many years prior to its closure and has been the planning authority for this project. We want to make sure that the occupants of these dwellings in this suburb are cared for through the Department of Human Services and the emergency services and that each of those households is supported in this time of crisis, rather than looking for excuses, scaremongering or making a political football of this important and serious issue, which of course is what the opposition is seeking to do in this instance.

Brookland Greens estate, Cranbourne: landfill gas

Mr SOMYUREK (South Eastern Metropolitan) — My question also relates to the Brookland Greens estate. As a resident who lives only a couple of kilometres from the estate, I can assure members that it is a serious issue. My question is directed to the Minister for Environment and Climate Change. Can the minister please inform the house of how the government is assisting the City of Casey to address the issue of landfill gas migration at Brookland Greens estate and support affected residents?

Mr JENNINGS (Minister for Environment and Climate Change) — I am happy to answer Mr Somyurek's question and to provide the house with relevant information about the way in which the government, in collaboration with the various agencies, including Victoria Police, the CFA (Country Fire Authority), the EPA (Environment Protection Authority), the City of Casey and the Department of Human Services, is providing support to households within the Brookland Greens estate in Cranbourne at this moment.

I am happy also to outline the program by which the government, through the EPA, will support the City of Casey as the land-holder of the landfill in question in Stevensons Road, Cranbourne, to improve the performance of the landfill so as to abate the methane which is currently coming from that location and to provide certainty for the householders in that neighbourhood who choose to leave that they can return to their homes at the earliest opportunity — with confidence that they are living in a well-monitored and safe environment. Certainly that is the intention behind every action the government has been undertaking in collaboration with those agencies and with the City of Casey in the last few days.

If I had been asked the question 'When did you become aware of the situation of the methane coming from the landfill in this location?', I would have been able to provide the house with the answer to that question. During the first few days of becoming Minister for Environment and Climate Change I became aware of the monitoring that had been being undertaken in this neighbourhood and which commenced in March 2006. In terms of the neighbourhood, it has been common knowledge since March 2006 that methane was being monitored. On becoming minister I was advised about an extensive program that had been undertaken by the EPA in conjunction with the City of Casey, with the knowledge of the people who live in that community, and of the importance to monitor the evidence of methane within that community. From March 2006 to the current day there has been ongoing, continual monitoring of that neighbourhood in terms of the incidence of methane emissions within that community. That happened with the full knowledge of many of the households that are currently experiencing distress because of the urgency of the matter.

The important element of this is that we need to know that the monitoring has been undertaken on a quite extensive basis — 50 monitoring devices have been available to that community since March 2006 — and that we are continually assessing the incidence of methane being generated within that community, some of which has unfortunately been emitted into households and into contained areas within those households. That is the very important element for people to understand — that it is actually the concentration of methane that may be discovered in a confined space that makes it combustible. And it is very important for people to understand that whilst this may be a recurring issue, it is a temporal issue and it varies significantly, with two overriding factors: one being the connection between the methane gases subterraneanly in connection with groundwater variation, and the other being the atmospheric pressure that is above the ground. Those things in this environment are very difficult to predict in a pre-emptive way unless there is significant action being undertaken to prevent the transmission of gas from the landfill beyond the site of the landfill. That work is currently being commissioned and is currently being subjected to work between the EPA and the City of Casey.

But what does it mean in practice? What it means in practice is that very low levels of methane emission into households have been monitored regularly within that community between March 2006 and last week. Last week — in fact on 31 August, which is a bit over a week ago — there was a very high reading found within a contained area in one house in Powerscout

Retreat in this neighbourhood. Interestingly enough, this is exactly the same street in which the first incidence of methane emissions was discovered in March 2006, so the epicentre that has led to high concentrations has been in this same area.

The monitoring device detected that there was a high concentration of methane, but by the time the relevant authorities got to the location the temporal nature of the methane emissions meant that the methane was not detectable. Such is the temporal nature of the ebb and flow of the prevalence of methane.

In this context it has been very important for the relevant agencies — and indeed the government — to try to make sure that we are alive to real risk and we convey the real risk to people who live in this community. It is essential that we convey the real risk so that people can make very conscious, deliberate and determined decisions about what is right for themselves and their family. Up until last week there had not been an accumulation of evidence which suggested that people within their respective households would need to take action, such as the action that residents are currently being advised to consider. International best practice in relation to this matter would indicate that when an occurrence such as this has occurred it is wise and sensible to actually apprise all households within a proximity of 250 metres of the location of what the potential risk may be — which is a real risk if methane is emitted into a confined area.

Is it a situation that is highly likely to cause an explosion? No, it is not; it is not highly likely. However, it is the considered position of the relevant agencies — the EPA, the CFA and Victoria Police — to advise households of the real risk that is present, as low as it may be in reality, of an explosion and of the need therefore to take remedial action.

What is the remedial action? In relation to the household where this matter was discovered on 31 August, in the days following the discovery that household was fully aware — fully aware — of its circumstances and advised to relocate temporarily while ventilation was retrofitted into the household to ensure that methane would not accumulate within a confined space within that household. Within two days of that retrofitting being installed in that house the family chose to return to their house because they felt safe in doing so. They made that decision themselves.

The relevant agencies considered whether containing this as an issue in terms of information to this household is appropriate or whether it is appropriate to share it with a broader community. The assessment was made by the agencies to share it — as distressing as the potential may be and as alarming as it may — so that people can make up their own minds about how to protect themselves, to assess the risk, to understand what action will be put in place and to organise their lives accordingly.

The government understands the importance of trying to provide the best form of information, and there have been various methods by which the whole community has been engaged in this. Notwithstanding the fact that monitoring has been going on in their neighbourhood since March 2006 — a highly visible monitoring process — in terms of the sense of the real risk members of the community have been relatively resigned to the notion that it is very unlikely. In circumstances where there is an urgent need to convey the acuity of the real risk in a confined space, the dynamic in terms of the community's sense of that issue has changed dramatically — understandably.

The government committed significant funding yesterday to support the EPA and the Casey City Council to retrofit households with ventilation equipment to try to make sure that we roll out a program throughout the relevant households within a 250-metre zone around this location as a first-order priority to make sure that households can live with the notion that there has been a technical contribution to increase their safety. That work has already been commissioned, and funds have been allocated to support that work.

Beyond this, in relation to the number of monitors that have been available to the community as I have indicated to the house, since March 2006 somewhere of the order of 50 monitors have been in this neighbourhood, and by next Friday we anticipate somewhere of the order of three times that number of monitors will be in that neighbourhood to support households and the community to make the assessment in real time of what the risks may be and so add to the armoury of the technical solutions that will provide households with real-time advice about the potential of the risk.

Beyond this there is ongoing mitigation work that will need to be undertaken by the city council, which is the owner and operator of this landfill site, and it is currently being advised by the Environment Protection Authority about the way in which work should be undertaken on the site itself to either capture or contain the methane. That program, as has been discussed in the public domain, may take the best part of a year to satisfactorily complete or it may take longer to make sure that we can finally successfully address the

containment and capture of any methane emissions from that site. That will be undertaken concurrently with the activity to make sure that the individual households are protected and monitored very closely.

That is the nature of the funding, the program, the technical support and the monitoring guidance that will be given by the EPA in relation to this matter. The government takes this issue extremely seriously. The EPA sees it as extremely important for it to continue to seek better performance out of the landfill and to monitor it closely with the neighbourhood. Since March 2006 it has done so in a way that has not led to alarm within that community. It will continue to support that community until any distress and alarm is resolved. The government is committed to achieving those outcomes.

Brookland Greens estate, Cranbourne: landfill gas

Mrs PEULICH (South Eastern Metropolitan) — My question without notice is directed to the Treasurer, and I ask: how much stamp duty did his government collect from the homebuyers of the Brookland Greens estate?

Mr LENDERS (Treasurer) — My response to Mrs Peulich is this: we have an extraordinary, serious issue on our hands, that my colleague Mr Jennings and Mr Madden have gone through. What we are seeking to do is firstly to deal with the issues we have at the moment — that there is a community that has understandable concerns, as Mr Jennings addressed.

I will not make this a political debate, so I will take Mrs Peulich's question on notice, because I think it is not the way to go, to start scoring points out of this when the foremost thing on the mind of the government is: how do we deal with a community that is concerned and wants certainty into the future? The last thing it wants is a political debate in this chamber about these issues.

Looking to the future, there will be a time when we can look back to the past for whatever lessons are to be learnt, but we are looking forward to the future, and that is where I think this debate should be.

Supplementary question

Mrs PEULICH (South Eastern Metropolitan) — My supplementary question is intended to do precisely that — to elicit an understanding of what the government is prepared to do to find a long-term solution. Stamp duty of between $10 million and $15 million has been collected from the residents of the estate. How much is the Brumby government willing to spend on emergency assistance and to ensure that the Brookland Greens estate is made safe for the future of these affected families?

Mr LENDERS (Treasurer) — My colleague Mr Jennings has already announced money that the government has dealt with for those immediate things dealing with safety and concerns of families. I have answered the rest of Mrs Peulich's question in my substantive answer.

Planning: activity centres

Mr TEE (Eastern Metropolitan) — My question is to the Minister for Planning. The design of public spaces is a critical component of good planning, particularly in Melbourne's activity centres. I ask the minister to update the house on how the Brumby Labor government is supporting councils to improve their public spaces in and around activity centres.

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Tee's interest in matters around urban amenity in these activity centres. One of the major investments that will assist the rejuvenation and renewal of many of these neighbourhood centres and principal activity centres is not only our investment but the partnerships we form with local government going into the future to make sure we accommodate those needs.

As recently as last week I had the pleasure of being in the bayside suburb of Mordialloc. We had the good fortune to open the new public works in and around the station there, which have improved the amenity, the safety, the security and the public realm spaces around the station. That is thanks to a $235 000 grant from this government through the Creating Better Places program. That will link the station to the retail centre as the first stage; the second stage, which is also being supported by this government, is to link the retail centre to the beach so that when people use public transport they feel safe, secure and accommodated in those public spaces but also so there is an improved public amenity.

What complements this is a sense of connected and linked community spaces, which will help add value to not only the local usage and patronage of these areas but also to the retailers and business opportunities in these areas. This will also provide opportunities for jobs and job growth in these regions. So these are very significant investments.

Two weeks ago I visited Footscray, and I know some members of this chamber have a specific interest in the

Footscray renewal project. As part of that I had the pleasure of opening the Nicholson Street mall upgrade. Likewise, that degree of investment — that renewal — is in what I understand is one of the country's oldest pedestrian malls — it was originally created in the 70s, so it is looking a bit tired. The renewal of not only the areas around the station but the mall have helped contribute to greater amenity, greater vitality and in particular greater business activity and security in those areas.

It is important that we maintain those strong partnerships with local government. What is also important is that these investments with these local governments not only add to prosperity and job opportunity in this state but make Victoria, and particularly these centres, an even better place to live, work and raise a family.

Brookland Greens estate, Cranbourne: landfill gas

Mr D. DAVIS (Southern Metropolitan) — My question is to the Minister for Environment and Climate Change, and I thank him for his earlier contribution today on the issue of Brookland Greens. Will the minister explain to the house what impact an Environment Protection Authority officer's failure to rebut expert evidence presented on behalf of the developer to Victorian Civil and Administrative Tribunal had on the final decision by VCAT to grant the Brookland Greens permit?

Mr JENNINGS (Minister for Environment and Climate Change) — I do not accept the premise in the question. I do not consider that in fact the involvement of the Environment Protection Authority in matters before the Victorian Civil and Administrative Tribunal is something that warrants my concern because in fact I have gone through the material that EPA has consistently provided, not only in terms of VCAT considerations but in terms of its discharge of its responsibilities, and I am well satisfied with the nature of the professionalism that has been undertaken by the EPA through this exercise.

This is not something, as I have indicated to the house, that I am recently aware of. I have been acutely aware of this issue for over a year. I continue to have very high expectations of the way in which the EPA would perform in relation to discharging its responsibilities, and there has not been any evidence that has been provided to me that it has not discharged its responsibilities at all levels, whether in fact before VCAT in relation to monitoring the performance of this landfill and in terms of trying to provide support to various agencies and the households in question. I am always happy to look at continual improvement with any organisation that I administer, but there has not been any evidence that the EPA has fallen short of either its statutory or professional requirements.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — Was this failure to rebut evidence due to the departure of the Environment Protection Authority officer during the middle of the hearing?

Mr JENNINGS (Minister for Environment and Climate Change) — I do not think I have anything to add to my substantive answer.

Housing: benefits

Mr ELASMAR (Northern Metropolitan) — My question is to the Treasurer, John Lenders. The Brumby Labor government has invested $510 million in public housing. What are the triple bottom line benefits to Victoria?

Mr LENDERS (Treasurer) — I thank Mr Elasmar for his question and his interest in public housing and particularly the nature of his question asking about the triple bottom line on these issues. As many government members in this house commented in debating the budget, in 2007 this state Labor government invested more than $500 million in new social housing stock. It is worth noting that we were the only state that has invested in public and social housing over and above the commonwealth-state housing agreement — a big investment in housing.

This does three things on the triple bottom line. Firstly, and obviously the most significantly, it addresses the housing needs in this state for people who needed social housing, so the extra units that came in — the 2350 new and redeveloped social housing properties across Victoria — were designed to meet a need that had not been met and was a need that is now being addressed by that. The social aspect of that is clearly an obvious component that I think no-one in the house would dispute. The environmental aspect on this is also one that is an interesting area where all these houses had environmental design features. If you look at the Atherton Gardens estate in Fitzroy, you see incredibly innovative use of tank water, grey water and recycled water, so we have the environmental aspect of the triple bottom line. Thirdly, on the issue Mr Elasmar raised of the economic aspect of this, what we have seen is the creation of jobs — jobs in the construction area, jobs in the maintenance area — jobs, jobs and more jobs that

assist in growing this state of Victoria. What we have actually seen is 355 Victorians gain ongoing employment, and of these 70 per cent are still employed through programs that come through here, the public tenant employment programs plus more generally the construction program.

Mr Elasmar's question is a very good one. It goes to the triple bottom line. It goes to an investment in social infrastructure. My colleague Ms Broad has done extraordinary work over the years in this area. She knows more than anyone in this house and she probably should have taken this question if the standing orders had enabled her to answer it. We know that this investment delivers jobs, delivers good housing outcomes for people and in an environmentally sustainable way. I thank Mr Elasmar for his question. These are the actions that make Victoria an even better place to live, work and raise a family.

Victorian Funds Management Corporation: investments

Mr D. DAVIS (Southern Metropolitan) — My question is to the Treasurer. Has the Treasurer been briefed on the Victorian Funds Management Corporation's $500-million investment in the Members Equity Bank, and if so, when?

Mr LENDERS (Treasurer) — I thank Mr David Davis for his question. In opening my answer I draw his and the house's attention to section 10(4) of the Victorian Funds Management Corporation Act 1994. Let me reflect on who was the Treasurer of Victoria in 1994? It was Alan Stockdale, a Liberal colleague of Mr Davis. There is a series of things under Mr Stockdale's act, but essentially the criteria are that the board of the Victorian Funds Management Corporation makes individual investment decisions and the board of the VFMC is not subject to a ministerial direction. Mr Davis asked me when I was informed. There is no procedure for the board of the VFMC to inform me as a minister of individual investment decisions, because they are made by its managers under a delegation from its independent board. In response to Mr Davis's — —

Mr D. Davis — You asked for a briefing?

Mr LENDERS — Mr Davis said did I ask for a briefing. I guess the premise of Mr Davis's question or interjection — —

An honourable member interjected.

Mr LENDERS — I am pleased that his leader is actually watching him in the house here today, because he might actually do a bit of an assessment performance, and Mr Rich-Phillips may get the job he deserves.

The premise of Mr Davis's question is that I am meant to be making individual investment decisions for the VFMC — that is the premise of his question — whereas the VFMC is an independent statutory body set up under legislation by Alan Stockdale and which has a hands-off approach from the minister. So no, I was not briefed about an individual VFMC investment decision on the matter he refers to. No, the VFMC did not brief me and I did not seek information. The first I heard about it yesterday was when his leader and his shadow Treasurer asked questions of the Premier in the Legislative Assembly.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — I take the Treasurer's points, but I am also very interested in what steps, so let me ask the minister who in the VFMC was involved in the investment decision process and who made the approach from Members Equity Bank?

Mr LENDERS (Treasurer) — Mr David Davis clearly needs to go to an audiologist; he does not listen to the answer. I suspect he has written a question and written a supplementary question and does not listen because his agenda is to come in here and besmirch reputations and make assertions.

In my answer to his previous question I pointed out the act, which says these are independent decisions of the VFMC. If Mr Davis actually paid heed to an organisation and understood the financial sector, he would know that the board of an institution will delegate these issues to its fund managers — the actual people at the desks making decisions. They will make the decision. I do not know who they are. I know who the board of the VFMC is and I know who its senior management are. I do not know who the individual people are sitting behind computer screens making these decisions, because they are correctly the decisions of senior management to employ qualified people to make these decisions. The board is held accountable for them.

What I would say to Mr Davis in response to his question is that there is delegation to the VFMC board under the powers of the act set in place by Alan Stockdale. It makes further delegations down to its individual investors, and they make investment decisions at arms-length from governments. I hope Mr Davis does not view the role of government as being that I as a minister, or he as a potential minister,

interfere in these matters. That is not how this government operates. We have an independent body; it makes the decisions, and they are not checked with me or reported to me. What is reported to me is whether they met the prudential guidelines. What is reported to me is how the fund performs. The only person on behalf of the public, beyond the board, to scrutinise that is the independent Auditor-General, in whom I have more confidence than I do in Mr David Davis.

Business: taxation

Ms BROAD (Northern Victoria) — My question is also to the Treasurer, John Lenders. Can the Treasurer update the house on how Victorian businesses are faring under the Brumby Labor government in relation to taxation competitiveness?

Mr LENDERS (Treasurer) — I thank Ms Broad for her question and her ongoing interest in the state of Victoria. I am going through my notes to find a substantive answer to Ms Broad because I have been caught unawares by the question. In the spirit of keeping the house fully informed I will try to locate that information.

Now I have some information in front of me. I assume one of the motivations behind Ms Broad asking the question was her having read some of the material in the *Australian Financial Review* this week about Victoria's tax competitiveness with other states. I do not wish to be overly critical of a Labor colleague, but some of the comments from my Queensland colleague, Treasurer Andrew Fraser, were unfortunate and uninformed. The *Australian Financial Review* picked up on some of Mr Fraser's comments comparing taxation between Victoria and other jurisdictions.

Mr D. Davis — We are a high-taxing state under you.

Mr LENDERS — I take up Mr David Davis's interjection, 'We are a high-taxing state under you', if I quote him correctly. If you look at the combination of royalties and taxes across the eight jurisdictions of Australia as a percentage of the economy — —

Mrs Peulich — That's a low watermark.

Mr LENDERS — Mrs Peulich says it is a low watermark. I can tell her there is a low figure. In the state of Victoria our total state taxation — that is, taxation and royalties — as a percentage of the economy is 4.81 per cent. In the great low-taxing state of Queensland, the combination of royalties and taxation is 6.01 per cent of the economy. We are, in taxes and royalties, the lowest taxing state in Australia. Not only that — —

Hon. J. M. Madden — There's more!

Mr LENDERS — There is more; Mr Madden says there is more. If we look at how states fund their services, we see that the Victorian government is an efficient, targeted service-delivery government. We raise $42 million a year from royalties, which comes to less than $9 per citizen. Queensland raises $3.6 billion in royalties, which comes to more than $900 per citizen. Not only do Victoria and New South Wales receive unfair treatment under the GST arrangements — and that is a historical legacy that both sides of politics in this place would agree on, where there has been a movement of funds away from Victoria and New South Wales to the other states — but those other states, like Queensland and Western Australia, receive an extraordinary amount of royalty revenues. If you calculate it per capita, Queensland's royalty revenues would give Victoria a boost equal to our entire payroll tax base, equal to our entire stamp duty base. It is little wonder that Queensland can try to provide more services when Queensland and the other states have traditionally milked revenue from Victoria and New South Wales, and they also now have the new streams of royalty duties.

My response to Ms Broad is that we are in a position where, despite its disadvantaged tax base, this state has delivered better and fairer taxes, better and fairer services, more targeted services and different outcomes. We are building on the skills of our people; we are building infrastructure for our people; we are doing better with less. They are the critical things that make this state a better place to live, work and raise a family. They are the actions of a government making the best out of a financially less advantageous circumstance than any state other than New South Wales.

Solar energy: feed-in tariffs

Mr KAVANAGH (Western Victoria) — My question is for the Minister for Environment and Climate Change, Mr Jennings. It relates to the feed-in tariffs for solar-generated electricity. I am prompted by the experiences of a particular constituent, Katarina Mrahr of Highton. Ms Mrahr has a 1.75-kilowatt photovoltaic system made up of 10 panels on the roof of her house. She was going to add more panels to produce more electricity until the government's policy was announced in May, after it was determined that the government will limit payment to those generating 2 kilowatts per day or less and only for net production.

Given that carbon emission is becoming a bigger issue every day in Australia and is reaching a critical level, will the government reconsider its policy and adopt measures that will encourage rather than discourage solar energy production?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank the house for the opportunity to answer Mr Kavanagh's question and to reflect on the very eclectic nature of Mr Kavanagh's contributions. I have been plotting the political centre of activity of his contributions today and I have found that he has straddled a fair terrain. On this occasion he is in the same terrain as those he sits among, our Green friends on the crossbench.

It is good to hear him in the context of supporting sustainable outcomes and appreciating the value of renewable energy. I hope that is something that might unite us all — that would be a good thing. I would be very pleased if that unites us all. I am very pleased that his constituent is mindful of that and has taken some opportunities to be wise and generous enough to invest in putting a solar system on her roof. I would hope they find the pricing levers and mechanisms that will assist not only Mr Kavanagh's constituent but other people right around the nation to pick up photovoltaic cells and install them on their roof.

Mrs Coote interjected.

Mr JENNINGS — I am happy to give certainty to the President and the chamber that this answer will be shorter than my last, in a contribution on a whole variety of things, including black plumes.

The important message I want to convey to Mr Kavanagh is that it is the intention of the government's commitment that we anticipate being embedded in legislation that will be coming to the Parliament later this year to find ways we can to support the uptake of solar panels to generate electricity and to feed back into the grid. There has been an argument, as he well and truly knows and his constituent may know, about the relative price signals and pricing structure to achieve maximum delivery of systems and what role they might play in a combination of carbon markets, in relation to the move from the Victorian renewable energy target to the mandatory renewable energy target of the commonwealth's jurisdiction and what pricing mechanisms may be generated by retailers or generators themselves in relation to driving a diverse distributor network of solar energy in the future.

This area will become increasingly a feature of public policy and market forces in the years to come. The government has made a decision about its level of support and the pricing structure that it prefers will be embedded in that legislation. I am sure the member and other members in this chamber will have the opportunity to reflect on the legislation when it is debated in this place. The ultimate intention of the government's legislative program, through the market mechanisms and through the introduction of mechanisms generated by national harmony in this area or by the sector itself, will add increasingly to the number of solar panels that will be on households throughout Victoria and Australia in the years to come. Of that we can be confident.

Malvern Valley Primary School: shared facilities

Mr SCHEFFER (Eastern Victoria) — My question is to the Treasurer. Can the Treasurer inform the house of progress on effective use of community resources and innovative partnerships?

Mr LENDERS (Treasurer) — I thank Mr Scheffer for his question. It is an issue that we as a government have been very focused on right through the tenure of our government for the past eight and a half years: how we can better use the resources of the state more effectively so that rather than having silos where there are government resources or community resources, we can actually bring them together for a community outcome.

I had the privilege last week on behalf of the Minister for Education of opening new sporting facilities at the Malvern Valley Primary School in my electorate. Mr Scheffer would be familiar with the school, which is in an area he used to represent in the last Parliament. The long and the short of this is that this school was burnt down several years ago. It was a tragedy to the local community and caused extraordinary dislocation, a lot of expense and a lot of anxiety in the community. The government, as part of its commitment to rebuilding schools, has rebuilt the school. There is a new school in place. But what I want to report on today is, to me, extraordinarily exciting. The school community in conjunction with the City of Stonnington has actually put in place shared facilities. The local oval, next to the school, has shared facilities — change rooms and a range of other facilities — and the school and the local community share the facilities. It is a fantastic use of resources. It means that the resources can be used seven days a week for a lot of hours of the day. They are not sitting idle at any time; they are used all the time. The partnership is fantastic.

I had the great privilege — I always love going to schools — of seeing the students there at 8 o'clock in the morning very excited, seeing these wonderful things happening in their community and seeing the parents coming out and sharing in that facility, and I had the privilege of enjoying a great community breakfast afterwards as well as being shown through the school by school leaders.

Malvern Valley Primary School is but one example of where, with partnership between the state government, local councils and bodies like schools, we can achieve a lot more than the sum of its parts through the value of all of them being put together. It is a great outcome. I commend it to the house. I say to anybody in the house who wants to see a partnership at work that they should go to Malvern Valley Primary School, which is evidence of how you can make Victoria a better place to live, work and raise a family.

CORRECTIONS AMENDMENT BILL

Committee

Debate resumed.

The DEPUTY PRESIDENT — Order! The committee reconvenes in respect of clause 3 of the Corrections Amendment Bill 2008. I had recognised Ms Pennicuik with a question.

Ms PENNICUIK (Southern Metropolitan) — I direct the Minister for Planning to division 2, new section 104S, which is part of clause 3 on page 5 of the bill.

The DEPUTY PRESIDENT — Order! I ask Mr Viney to make sure the advisers are available, because the minister tends to rely quite substantially on advisers and they not here to hear the question.

Ms PENNICUIK — Is the minister with me at new section 104S? That is part of the clause of the bill that the privacy commissioner has raised a concern about. The privacy commissioner has made representation about that to the Scrutiny of Acts and Regulations Committee to the effect that this proposed section 104S reverses section 35(6) of the Information Privacy Act. I note that the minister has written back to SARC suggesting that that is not the case, but I have read that letter and I am not convinced by the minister's response. I am asking how the minister can assure me that that does not reverse section 35(6) of the Information Privacy Act by requiring a court to approve rather than register an agreement, which is what the current situation is. That seems to be the crux of the question.

Hon. J. M. MADDEN (Minister for Planning) — I can only concur with the advice that has been provided to the member by the Attorney-General in relation to these matters. Any answer I would give would only reflect the advice which has been provided either to, through or from the Attorney-General, so I concur with the letter that is provided here.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister. I will let that stand, and perhaps I could be advised if the minister receives further advice. Page 6 of the bill sets out proposed section 104U, and the deputy privacy commissioner makes the point that no guidance is given to a court or tribunal as to the process by which an agreement can be approved. Does the minister know whether there is any guidance? The fact that there is no guidance is a concern to the privacy commissioner.

Hon. J. M. MADDEN (Minister for Planning) — I ask Ms Pennicuik to clarify her question.

Ms PENNICUIK (Southern Metropolitan) — The bill requires a court to approve an agreement rather than to register an agreement, whereas the status quo is for it to just register an agreement. As this bill requires a court to approve an agreement, the privacy commissioner is saying that they have to adduce whether or not it can be approved but that there is no guidance as to how they do that.

Hon. J. M. MADDEN (Minister for Planning) — As is normally the case where the courts have some discretion, they are matters for the courts.

Ms PENNICUIK (Southern Metropolitan) — Further down in that provision proposed section 104U(2)(b)(iii) says that the court must give regard to:

> … the need to ensure as far as possible that victims are not deprived of an opportunity to enforce a successful claim for damages against a prisoner.

The minister might need to take this on notice, but in my contribution to the debate I made the point that I cannot understand how a court can link the amount of damages awarded to a prisoner for a wrong done to them to the possible hypothetical suing of that prisoner by another person in the future. I do not see how the two are linked.

Hon. J. M. MADDEN (Minister for Planning) — I am happy to seek to provide that advice from the relevant minister. I repeat the previous answer that,

where there is some discretion in relation to the courts, then those are matters for the courts.

Ms PENNICUIK (Southern Metropolitan) — My last question goes to proposed section 104Y on page 9 of the bill. Proposed subsection 104Y(1) says:

> The Secretary must publish a notice advising of an award of damages … as soon as practicable after the amount of damages is paid to the Secretary …

The question raised by the privacy commissioner and others is why is it so definitive. The privacy commissioner suggests that it should give some discretion to the secretary, so that the secretary 'may' do that, not 'must' do that.

Hon. J. M. MADDEN (Minister for Planning) — It is an argument about the degree of discretion, and in these instances we have sought to be prescriptive so that there is little if any discretion by the secretary. That will give claimants or potential claimants a bit more security about how and where they should seek information in relation to any potential claims.

Mr DALLA-RIVA (Eastern Metropolitan) — I have a very brief question which was raised in the debate and perhaps Mr Tee could help us. Can the minister point to anywhere in clause 3 where it says that a prisoner is excluded from the right to sue or to claim for compensation as a result of damage, injury, malfeasance or whatever legal term one could use, harassment or the like? Is there any indication in the bill that a prisoner is precluded from taking legal action against a person for any such instance that may occur while the prisoner is in jail?

Hon. J. M. MADDEN (Minister for Planning) — Without going into a lengthy dissertation about what this bill is about, I think the member has moved away from the bill, which is really about providing victims with the ability to claim compensation. Whilst I appreciate that the member has a particular interest in these matters, it is not my understanding that the bill seeks to do a great deal of reform in this area.

Clause agreed to; clauses 4 to 8 agreed to.

Reported to house without amendment.

Third reading

Hon. J. M. MADDEN (Minister for Planning) — I move:

> That the bill be now read a third time.

In doing so, I thank members of the chamber for their contributions to debate.

Motion agreed to.

Read third time.

Sitting suspended 12. 57 p.m. until 2.03 p.m.

FAMILY VIOLENCE PROTECTION BILL

Second reading

Debate resumed from 21 August; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Since 1987 Victoria has had the Crimes (Family Violence) Act which was introduced to put in place some measures to address the issue of domestic and family violence in the community. As a consequence of that legislation, in recent years the Victorian Law Reform Commission has undertaken a review of the success or otherwise of the 1987 act. In 2006 the commission produced *Review of Family Violence Laws — Report*, which made a number of recommendations for the updating of the Crimes (Family Violence) Act and suggested enhancements relating to the operation of family violence law.

Two years after the production of that report by the law reform commission, the Family Violence Protection Bill has been introduced into this Parliament. The bill before the house this afternoon makes a number of changes to the law relating to family violence. It extends the definition of 'family violence' to include additional matters such as economic abuse and threatening or coercive behaviour. It extends the definition of 'family member' to include people such as carers or others in a family-like relationship. It introduces a family violence safety notice to be issued by members of Victoria Police. It allows police to undertake searches of homes for weapons without a warrant where they believe there are grounds for an intervention order to be issued under the Family Violence Protection Bill. It makes a number of changes with respect to the way witnesses are questioned by respondents to family violence orders. The bill also reduces the penalty that applies in respect of a breach of an intervention order. The bill seeks to reduce the penalty for second and subsequent offences from five years imprisonment to two years imprisonment, which puts a second or subsequent offence on the same footing as a first offence. The coalition parties intend to move amendments including an amendment with

respect to that provision, and I ask that they be circulated.

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

Mr RICH-PHILLIPS — The coalition parties will support this bill. It is our view that, on the whole, there are some important progressions with respect to family violence provisions in this legislation, and as such we will support the bill. One of the key changes in this proposed law relating to family violence is the introduction of family violence safety notices. A Victoria Police officer can seek the issuing of a family violence safety notice by another Victoria Police member of the rank of sergeant or above where the officer is called to intercede in a domestic disturbance and believes it would be appropriate for an intervention order to be sought outside the normal hours during which an intervention order could be obtained from a court. So on weekdays outside normal business hours and at weekends Victoria Police will have the capacity to issue a family violence safety notice that can cover the same matters as an intervention order, without direct recourse to a court by a member of Victoria Police of the rank of sergeant or above.

This is something that is strongly supported by the coalition parties. It is in fact an item that arose from coalition policy, and credit should go to the member for Scoresby in the other place, the former shadow Minister for Police and Emergency Services, Kim Wells, and Ms Lovell, the Deputy Leader of the Opposition in this place, who in her former portfolio of shadow Minister for Women's Affairs put together that proposal in 2003. Five years later we see that policy adopted in this bill on a trial basis. It is something we would have liked to have seen implemented far earlier, but we certainly support the inclusion of that family violence safety notice mechanism in the legislation before the house.

One of the concerns the coalition parties have with the bill relates to the breadth of some of the definitions that are being introduced, including terms such as 'economic abuse' and 'coercive behaviour'. On a literal reading of those elements of the bill arguably any type of disagreement between partners, as inevitably occurs from time to time, could be interpreted in a broad sense as family violence. The definitions are broad in what they potentially could be read to include, and that is something that in practice the Parliament will need to be aware of and monitor once this bill comes into effect to ensure that those provisions are not misused.

Obviously the potential for those types of broader provisions to be used in tactical skirmishes in Family Court matters and the desire to use one of these new provisions to put a position relating to family violence on the record prior to pursuing a divorce proceeding or something like that through the Family Court is also a matter of concern. That is a matter that has been raised by both the Criminal Bar Association of Victoria and the Family Law Bar Association — the way in which the broader definitions can be used or misused. With respect to that matter the Criminal Bar Association in its submission noted:

> … given the emotional context in which these applications can often be made, there is risk that such proceedings will be instigated to achieve ulterior purposes.
>
> It has been the unfortunate experience of some members of our association that some legal practitioners recommend that their clients (the potential applicant) make an application for an intervention order as a means of showing that their partner is the problem in the breakdown of a relationship. This course of action can tend to swing the pendulum in Family Court proceedings in favour of an applicant.

That is one of the concerns that the coalition parties have — that these broader definitions will be used for tactical reasons leading into Family Court matters. The fact that that concern has also been expressed by the Criminal Bar Association serves to reinforce that concern. The Family Law Bar Association also expresses a similar concern in its submission with respect to this bill. It notes in its conclusion:

> Overall the FLBA is concerned that it will open the floodgates to applications by persons with motives and agendas other than those seeking genuine protection under the legislation. The overall effect is that much of the federal jurisdiction exercised under the Family Law Act by the Family Court or the Federal Magistrates Court is going to be exercised in a summary way in the context of a very much expanded definition of domestic violence.

So, again, from the Family Law Bar Association we have similar concerns about the way in which the expanded definitions could be misused as a tactical tool to assist in Family Court proceedings rather than legitimately to address family violence issues.

The area where the coalition is seeking to amend the bill relates to the decision by the government to reduce the penalty for second and subsequent breaches of intervention orders. Currently under the existing law a penalty of up to five years is provided for second and subsequent offences. We accept that, but given it is dealt with as a summary matter, in practice a five-year penalty cannot be applied, and the purpose for which we have moved the amendment to the bill this afternoon is to ensure that such a matter can be dealt with as an indictable matter.

That is what the amendment that the coalition parties are advocating seeks to do. The amendment does not take away from the bill the capacity for a penalty to be imposed for a summary offence. Discretion will be available to a prosecutor as to whether a penalty will be sought as a summary offence or whether a higher penalty for a second and subsequent offence will be sought through the County Court as an indictable offence.

A lot of work has been done in this area. I note the substantial contribution made by my colleague the member for Warrandyte in the other place, Mr Ryan Smith, who has pursued this particular issue with great interest on behalf of his constituents in Warrandyte and has put a substantial amount of work into researching the background of the Sentencing Advisory Council's recommendations in this area as well as the proposed amendment and indeed the response by the government when this matter was canvassed in the other place.

The arguments put up by the Attorney-General in opposing this amendment simply do not hold water when they are compared with the content of the Sentencing Advisory Council (SAC) report. The Attorney-General, in his comments, claimed that this matter had been the subject of extensive consultation during the course of the development of this bill and referred to the Sentencing Advisory Council report.

However, a reading of the SAC report shows quite clearly that this matter was not the subject of extensive consultation. In fact it was the subject of just two weeks consultation by the SAC, with a very limited distribution of a consultation paper to unidentified interested parties and a subsequent round-table discussion two weeks later with other interested parties. From the report that the SAC has produced it is evident that the number of parties that participated in that round-table consultation was very limited. So that flies in the face of the argument that the Attorney-General made when he opposed those amendments in the other place.

The Attorney-General also made the argument that requiring this matter to be dealt with as an indictable offence in order to get the higher penalty would unduly traumatise the application for an intervention order. The position there is that the prosecutor will have discretion in this matter if there is a belief that the applicant would be unduly traumatised by such an approach — by seeking a higher penalty as an indictable offence. They will have the option of seeking a penalty as a summary offence up to the two years that is currently provided for in the bill.

The coalition parties do not accept that the argument of trauma for the applicant is a valid reason to oppose these amendments. Equally, the argument put forward that graduated penalties are inappropriate is not supported by the Sentencing Advisory Council report, which notes that there is no anomaly in having a graduated penalty regime for an offence such as this. It is ironic when you read the SAC report that it reached the conclusion it did on the two-year recommendation, because it seems to fly in the face of much of the evidence in the SAC report — as limited as the consultation process was.

Given the short time this afternoon, President, I note that the coalition parties support this legislation. We particularly support the provision that picks up our policy relating to the capacity for Victoria Police to issue family violence notices, and we look forward to the support of the house for this amendment, which will retain the existing penalty for breaches of intervention orders.

Ms HARTLAND (Western Metropolitan) — I thank Mr Rich-Phillips for going through the technical detail of the bill. This is a very important bill for women because the consequences of living with family violence are serious and have been confirmed by researchers all over the world. For Australian women under 45, family violence is the leading contributor to illness, disability and death. As for children, simply witnessing ongoing physical and psychological abuse of their mothers can often mean a life riddled with depression and anxiety.

We need to protect vulnerable members of our communities from the devastating effects of family violence and, as the Greens policy states, women and children should be able to live free from violence and abuse. Having come from a fairly fractured family, I remember my mother trying to survive on a pension pre-Whitlam, when there was actually a proper welfare safety net put in place. One of the difficulties for her in ever thinking about leaving my father was that she simply had nowhere to go and no pension to support her. I am really encouraged by the fact that this new bill actually broadens the definitions of family violence to include emotional, psychological and economic abuse.

In my experience more than anything else psychological and economic abuse are often the things that keep women confined to their homes. It is good to see that no longer will one man be able to prevent a woman from contacting her family or friends, because being cut off and isolated often also keeps women locked into violent relationships. The fact that she will not be able to be coerced into giving up control of her

income or assets is also good. Obviously this law is good. It goes to helping women, but we are never going to be able to completely eradicate family violence until we eradicate the idea that somehow women are second-class members of society and it is quite acceptable to do this.

Under the proposed law women subjected to family violence can choose to remain in their homes and the violent person will be excluded. This law will be backed up by changes to the Residential Tenancies Act 1997 which enable women to change the locks on the family home even if they are not party to the tenancy agreement. This is a very important point in the bill. Women can also apply for new tenancy agreements or have the terms of their existing agreements reduced once a final family violence order with an exclusion condition has been issued. This will reduce the high risk of women becoming homeless, poverty stricken and unable to access social support systems. It will also reduce the disruption to their children's education and activities. I have often encountered women who had to move from place to place to literally outrun their former partners or husbands. They will have a lot more protection with these laws.

Intervention orders and family violence safety notices will help empower women to leave abusive relationships. However, as Amnesty International's *Setting the Standard — International Good Practice to Inform an Australian National Plan of Action to Eliminate Violence Against Women* report shows, there is too little enforcement of these orders in Australia. It is good to see the work the Chief Commissioner of Police, Christine Nixon, has done in pushing for a cultural change in the police force to make its members understand that family violence is a crime, not just a bit of a dispute. Law enforcement officers must remember that they are under an obligation to charge an offender when there is evidence that a crime has taken place. Intervention orders and safety notices should not be used as a replacement for criminal action.

We must also change the way incidents of family violence are treated by respected members of our community and our services. Family violence is often shoved under the carpet, with people saying, 'Let's not talk about it, let's not think about it'. I recently had the opportunity to read a report titled *Raped by a Partner*, which was published by Women's Health Goulburn North East. This reports a number of women speaking about their experiences. One woman was asked by her GP how she had come by her injuries. She told him that her husband had raped her and the doctor replied, 'You'll just have to be a little less physical next time'. It just underlines that people do not accept that these sorts of incidents can happen within marriage.

It is also unacceptable that family violence referrals to the Department of Human Services are not treated as seriously as other referrals. Even with Christine Nixon's cultural change, police officers need more training so that family violence is not trivialised. It is unacceptable that other service providers also treat it in a trivial manner. Doctors and ministers often know what is going on but do nothing about it.

I had the fortunate experience last year of going to a function in Maribyrnong where a group of schoolchildren were being taught about what was acceptable and what was not in family relationships. Speaking to them was a real eye-opener, to see that 14 and 15-year-olds were thinking and talking about the serious nature of what is the proper way for a relationship to occur.

In looking at this bill, something that I have heard again and again from the service providers and the legal centres is that this is a really excellent bill. It goes a long way towards achieving what is needed, but the thing that is not here is the extra funding and resources required so that those services can continue to do the outreach. If we have the good bills but without the good resources, there is a problem. My closing remark before talking about the amendments is that I do not believe our society has a right to live in comfort while family violence still exists. What happens in your neighbour's home is the responsibility of our society, and we all have to work to eradicate violence.

In terms of the amendment — I understand why it has been moved, and I understand the principle of it — I know from talking to a number of the legal centres which deal with these issues quite often that they do not think it is a good idea to have the five-year sentence. One of the good things about this bill, as I understand it, is that most women can access the Magistrates Court; it is quick and the legal centres can help them. But if it is a five-year penalty, then it is a summary offence — then you have to go to the higher jurisdiction, which limits women.

One of the quotes that I have from one of the legal centres sums up really well the conditions that women often suffer in these things. It is that we need to place the emphasis on the fact that complainants are not looking for harsh sanctions for breaches of intervention orders; they are simply looking for protection. They are simply looking for their situation to be treated seriously.

Complainants are looking for the police to actually enforce the orders so that when they ring and they say an intervention order has been breached, they know that those who have breached it will receive the sanctions. The legal centres go on to say that where sanctions such as suspended sentences are effective, complainants are often quite satisfied as long as they know that what they are talking about is going to be taken seriously.

This is an incredibly important bill. It talks about the need to protect women and about the fact that women have a right to live in a family situation without this level of violence. I would be urging the government to always give more resources to these services. For the reasons outlined, we will not be supporting the Liberals' amendments.

Debate interrupted.

DISTINGUISHED VISITOR

The PRESIDENT — Order! I bring to the attention of the house that in the gallery we have a distinguished visitor, the Honourable Eric Kent, a minister in the John Cain government. Mr Kent was also the member for the then Gippsland Province and Chelsea Province, which I am very familiar with. Welcome, Mr Kent.

Debate resumed.

Mr TEE (Eastern Metropolitan) — Family violence is a fundamental violation of human rights. It is unacceptable in any form. It occurs in all areas of society, regardless of location, socioeconomic or health status, and regardless of age, culture, social identity or religion. For far too long family violence was the hidden epidemic. It was seen as a private matter. It was seen as a domestic matter that was not talked about except in hushed tones and in terms that often blamed the victim. This attitude often meant that victims suffered in silence, and they were actively discouraged from seeking help. Thankfully, those community attitudes have changed. Domestic violence is recognised for what it is. It is a crime, and we need to expose it and we need to provide mechanisms to protect and support the victims. This is what this bill goes a long way towards doing.

This legislation provides a supported response to those who have the courage to report family violence. It goes a long way to ensuring that every Victorian, but particularly women and children, can live safely in their homes. The bill recognises the idea of family violence, and it removes the current inadequate focus on physical and social violence and recognises that family violence can involve emotional, psychological or indeed economic abuse.

Mr Rich-Phillips is concerned that this definition is too broad and is open to abuse. In fact the contrary is true. We know that family violence is underreported and we know that we need to do more to ensure that family violence is exposed and dealt with. The bill goes a long way towards ensuring that these measures cannot be abused, because unlike the current provisions in the Crimes (Family Violence) Act, this bill requires that applications for intervention orders be sworn or affirmed by applicants or certified by police. There is an additional layer of protection there. In any event there is the independent magistrate, an independent arbitrator, who hears the evidence carefully and makes the decision. I think the concerns about the breadth of the definitions have been addressed in the bill.

I want to briefly address one of the issues that Ms Hartland touched on which concerns the silent witnesses of family violence — the children. We know that the impacts on children living in a home where there is family violence can be devastating. We know that children under six years old are particularly vulnerable. We know that during those first six years, children learn the skills that they need to cope with life. They learn how to make friends, they learn how to manage and deal with conflict, they learn how to negotiate life's challenges.

The research is becoming increasingly clear: children's development in these early years can be stunted, and it can be stunted when the child lives in a stressful home environment. Those children go on to suffer enormous difficulties. We know that there are risks in terms of their capacity to concentrate when they are at school, that they have difficulties negotiating in the playground with other kids and that they have difficulties forming and maintaining relationships. There is a risk that they can become disruptive and fall behind in their schoolwork, and this can have long-term consequences as it can prevent the child from reaching their full potential as an adult. It is absolutely critical that we protect children. This bill recognises the importance of children and includes the children who are the witnesses of violence or the consequences of violence as children to be protected under the bill. I welcome that initiative.

The bill also provides the tools to deal with family violence situations. A particularly important tool is the capacity of police to issue family violence orders. This is an important tool to use outside of court hours. We know that family violence often occurs at night and is often alcohol-related, and that is the time when

intervention orders are needed, not necessarily on Monday to Friday, 9 to 5. It is critical that the police have the tools to make sure that the perpetrator is taken out of such situations whenever they arise.

The other aspect of the bill that I think is particularly helpful is the consideration required of the courts in terms of whether the perpetrator should be excluded from the house. Currently, where there is family violence, the victim and the children flee the home to escape the violent family member. Again, this can have devastating consequences for the family and particularly the children. Often the family has to move out and move in with other family members or with friends. They often have to seek shelter or sometimes indeed they become homeless. The children lose contact with school and they lose contact with their community and with their friends, so moving out of the home often has some important unfortunate downstream consequences. The bill requires the court to consider whether an adult respondent should be excluded from the victim's residence so that the victim and the victim's children can stay within their network and within their supports. I think that is an important initiative.

I am very concerned about reports in the newspapers that quote the opposition community services spokeswoman, the member for Doncaster in the Assembly, Mary Wooldridge, as saying this bill is soft. I note from a report in the *Maroondah Journal* that that allegation is supported by the member for Warrandyte in the Assembly, Ryan Smith. This is really a slap in the face for those groups that have participated in this process and worked to develop this legislation. This is really a concern for those victims groups that were involved in the process of delivering this important legislation. The soft-on-crime allegation is an absurd and ridiculous proposition.

The bill tackles domestic violence front on. There is no compromise. There is no softness brokered by this bill. I might explain for the benefit of Ms Wooldridge and Mr Ryan Smith how the bill works: where the offender is guilty of an assault, they face the full force of the law, and this bill does not change that outcome. If an offender is guilty of assault, they are subject to the full range of penalties, which may be two years, five years or life imprisonment, depending on the degree of assault. As I said, this bill does not change that protection; it does not affect that protection at all. The bill also provides a two-year penalty for breach of an intervention order. This is in addition to any other penalties that may be available for assaults. We have an additional penalty: this is for a range of behaviours, some of which can be aggravated behaviour, but some of it might be phone calls, or it might be behaviour such as being in the vicinity of the victim. So it is behaviour which is in breach of an intervention order but is not behaviour that really warrants the outcome being proposed by the opposition in its amendment.

Those breaches of the intervention order really need a quick response, a quick intervention, that stops the offending behaviour before it escalates. Access to the magistrates, as proposed in this bill, is also needed. We know that breaches of an intervention order that go to the magistrates currently receive on average a penalty of around one month's imprisonment.

What the amendment proposes, and what Ms Wooldridge and Mr Ryan Smith want, is a five-year penalty. The consequence of that penalty is that the intervention order moves from the Magistrates Court to the County Court, which means you move to a more formal hearing process, you move to a costs process, and you move to the delays and the formality associated with the County Court. This formality of the County Court can be very traumatic. It can be a disincentive for victims to proceed, and really there is a risk that it will shut victims out from proceeding, and the risk of victims not proceeding immediately when there is a breach of the intervention order is that that breach may escalate. It is important that we are able to have a rapid summary jurisdiction available for those victims to prosecute breaches of an intervention order earlier. I think we need a justice system that works and which delivers for the victim.

We do not need the cheap politics which are behind the stunt in calling this bill a soft-on-crime option, when clearly it is not. All this amendment does is add a layer of confusion and complexity which is unhelpful. We will not be supporting the amendment.

I conclude by saying that family violence is a scourge in our community. Many victims do not report domestic violence. I hope this bill will provide the support to encourage more to come forward, and I hope it will drive home the message that family violence is not acceptable.

Motion agreed to.

Read second time.

Committed.

Committee

Preamble postponed.

Clauses 1 to 122 agreed to.

Clause 123

Mr RICH-PHILLIPS (South Eastern Metropolitan) — With respect to subclause (2) which provides that a person must not contravene a family violence intervention order, for which the penalty given is level 7 imprisonment or two years maximum, I ask the minister to inform the committee in what court that matter would be dealt with, and how a prosecution would be brought under that provision?

Hon. J. M. MADDEN (Minister for Planning) — I am informed that that would occur as a summary offence within the Magistrates Court.

Clause agreed to; clauses 124 to 232 agreed to.

Clause 233

The DEPUTY PRESIDENT — Order! Mr Rich-Phillips has indicated that he will move amendment 1 standing in his name, which I understand is a test for his second proposal. I therefore invite Mr Rich-Phillips to formally move his amendment and to make any remarks in regard to it.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I move:

1. Clause 233, lines 7 and 8, omit "against section 37 or 123 of the **Family Violence Protection Act 2008**".

The amendment is a test of amendments 2 through 6. The amendment the coalition is proposing is to insert a new provision within the Crimes Act, proposed section 31C, which would deal with the issue of second and subsequent breaches of intervention orders. The issue the coalition is seeking to address is the preservation of the existing penalty for second and subsequent breaches of intervention orders, which is provided for in the current legislation as imprisonment of up to five years. As noted in the second-reading debate, we accept that for a summary offence it is not possible for that penalty to be imposed at the moment. Therefore this amendment seeks to insert this provision into the Crimes Act so the matter can be dealt with as an indictable offence and thus that penalty can apply. It is the view of this side of the house that the existing penalty of up to five years for second and subsequent offences is appropriate, and we are seeking to make that operable through this amendment, which would allow a second or subsequent offence to be dealt with in the County Court.

Hon. J. M. MADDEN (Minister for Planning) — I think most of those matters have been covered in the debate by our side of the house, and I think there have also been remarks from members from other parties in relation to this matter. It is really about the promptness and ability to effect the imposition of the bill but also the elements of the bill which seek to prosecute those who contravene those intervention orders, and to do that in a swift and effective manner.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — The minister has already indicated to the committee that a prosecution can be brought in the Magistrates Court under proposed section 123, and therefore I am not clear on why the government would object to this provision for a prosecution to be brought for a more serious penalty in the County Court.

Hon. J. M. MADDEN (Minister for Planning) — I am informed that if it were dealt with as an indictable offence with a five-year catch to it, then basically there is quite an extensive process of determining that it is an indictable offence and should be conducted as such. In many ways it adds layers of complexity to the process to ensure that a prosecution is potentially viable but also probable.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Would the prosecution not retain the discretion to prosecute that matter as a summary offence if it felt that potential trauma to the applicant warranted it being dealt with as a summary offence rather than a more complicated indictable offence as the minister has suggested?

Hon. J. M. MADDEN (Minister for Planning) — I recognise the point Mr Rich-Phillips is seeking to make, but I think the difficulty is trying to determine that, the clarity or the lack of prescriptive guidance in relation to that, and then the lack of certainty about either the process leading into or the possibility of an outcome in relation to either matter at either level.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I would assume that the Director of Public Prosecutions would have some experience in making these types of decisions. This would not be new to the DPP.

Hon. J. M. MADDEN (Minister for Planning) — I am sure Mr Rich-Phillips is correct, but I stand by my comments about trying not to add layers of complexity to a process that might be quite difficult for the victims. It is not sought to make it any more difficult for them or to prolong their degree of difficulty through an extensive process.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Is it the government's view that there should be no recognition of second and subsequent

offences in terms of penalty? Is it the government's view that they are no more severe than a first breach of an intervention order?

Hon. J. M. MADDEN (Minister for Planning) — The Sentencing Advisory Council has advised that increased penalties for subsequent breaches do not have a deterrent effect on the occurrence of these incidents. Whilst it might read well on a piece of paper, its impact may not bring about what we all seek to achieve, which is to reduce these incidents.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I ask whether the minister is aware that the Sentencing Advisory Council also said there was nothing anomalous in having a graduated penalty regime for this offence.

Hon. J. M. MADDEN (Minister for Planning) — I am advised that at the end of the day it recommended against it.

Committee divided on amendment:

Ayes, 16

Atkinson, Mr	Koch, Mr
Coote, Mrs	Kronberg, Mrs
Dalla-Riva, Mr	Lovell, Ms
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Petrovich, Mrs
Finn, Mr (*Teller*)	Peulich, Mrs
Hall, Mr (*Teller*)	Rich-Phillips, Mr
Kavanagh, Mr	Vogels, Mr

Noes, 20

Barber, Mr (*Teller*)	Pakula, Mr
Broad, Ms	Pennicuik, Ms
Darveniza, Ms	Pulford, Ms
Eideh, Mr	Scheffer, Mr
Elasmar, Mr	Smith, Mr
Hartland, Ms	Somyurek, Mr
Jennings, Mr	Tee, Mr
Leane, Mr	Thornley, Mr
Madden, Mr	Tierney, Ms (*Teller*)
Mikakos, Ms	Viney, Mr

Pairs

Drum, Mr	Lenders, Mr
Guy, Mr	Theophanous, Mr

Amendment negatived.

Clause agreed to; clauses 234 to 272 agreed to.

Postponed preamble

Preamble agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Hon. J. M. MADDEN (Minister for Planning) — I move:

That the bill be now read a third time.

In doing so I wish to thank the members of the chamber for their contributions.

The PRESIDENT — Order! I am of the opinion that the third reading of this bill requires to be passed by an absolute majority.

Bells rung.

Members having assembled in chamber:

The PRESIDENT — Order! In order that I may determine whether the required majority has been obtained, I ask those members who are in favour of the question to stand where they are.

Required number of members having risen:

Motion agreed to by absolute majority.

Read third time.

ADJOURNMENT

Mr LENDERS (Treasurer) — I move:

That the house do now adjourn.

Motion agreed to.

House adjourned 3.05 p.m. until Tuesday, 7 October.