PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 3 May 2007

(Extract from book 6)

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

By authority of the Victorian Government Printer

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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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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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THURSDAY, 3 MAY 2007

Thursday, 3 May 2007

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

HON. BRUCE CHAMBERLAIN, AM

The PRESIDENT — Order! I have a little bit of what I think is good news for the chamber; I imagine that could be a matter of opinion. However, it is my pleasure to advise all members of the house that a former President, the Honourable Bruce Chamberlain, AM, has been posthumously recommended for the Redmond Barry award in recognition of his outstanding service to and promotion of library and information services. This premier national award is made possible by the Australian Library and Information Association. Former recipients include the Honourable Barry Jones, AO, the Honourable Gough Whitlam, AC, QC, Mr Kenneth Baillieu Myer and the Honourable Mr Justice Else-Mitchell, CMG.

This is the first occasion on which the Redmond Barry award has been awarded posthumously. There will be an official conferring of the award to the Chamberlain family in due course.

Members who served with President Chamberlain will remember his commitment to the development and promotion of the parliamentary library. Many of you will not be aware that Bruce was also chairman of the Glenelg Regional Library Service in western Victoria for over 18 years. His contribution to libraries was indeed significant, and this award is truly well deserved. I will convey our congratulations to his wife and family.

PETITION

Following petition presented to house:

Disability services: Mooroolbark accommodation

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 decision by the Department of Human Services, eastern region, Victoria, to move four intellectually disabled ladies from their current residence at 254 Manchester Road, Mooroolbark, into separate existing vacancies across the region, with the resultant loss of the longstanding relationship between these ladies, their possible removal from their current day placement (which they have attended for 30 years), from their medical services, therapists and community facilities.

Your petitioners therefore request that the Minister for Community Services, the Honourable Gavin Jennings, instruct the Department of Human Services to reconsider the proposed reconfiguration of 254 Manchester Road, Mooroolbark, and provide the promised new facility to enable the residents and staff of 254 Manchester Road to remain together and for the residents to be able to continue to access their current day placement, medical services, therapy services and local community.

By Mrs COOTE (Southern Metropolitan) (239 signatures)

Laid on table.

CHILDREN'S COURT OF VICTORIA

Report 2005–06

For Hon. J. M. MADDEN (Minister for Planning), Mr Lenders presented, by command of the Governor, report.

Laid on table.

PAPERS

Laid on table by Clerk:

Adult Multicultural Education Services — Report, 2006 (two papers).

Rural Finance Act 1988 — Treasurer's directive of 2 May 2007 to the Rural Finance Corporation.

Subordinate Legislation Act 1994 — Minister's exemption certificates under section 9(6) in respect of Statutory Rule Nos. 25 and 26.

MEMBERS STATEMENTS

Tiger Airways: head office

Mr D. DAVIS (Southern Metropolitan) — I am pleased today to welcome Tiger Airways to Victoria and indicate the opposition's strong support for Tiger moving to Victoria.

Mr Lenders — The member has said something positive!

Mr D. DAVIS — Indeed, Mr Lenders — through the Chair — we met with Tiger Airways and indicated to it our strong bipartisan support for Tiger Airways coming to Victoria. In many respects it was a very likely thing that Tiger would come to Victoria because we are the second-biggest aviation market and we were the only aviation market that did not have a major

domestic carrier based here. Qantas is in Sydney, Virgin is in Queensland and the big Melbourne market lay open for somebody like Tiger to crawl through the jungle and snatch.

The truth is that this government has, on this occasion, secured Tiger. We welcome Tiger coming to Melbourne and have supported that very strongly. At a meeting that was held with Mr Tony Davis some weeks ago I indicated to him that there was strong bipartisan support into the future for Tiger coming to Melbourne. It offers a strong opportunity for Victorian aviation to take steps in competitiveness. I notice that already other carriers are beginning to respond to the increased competition. I look forward to Tiger being in Melbourne and to cheap flights for Victorians.

Lifeline Gippsland: funding

Mr HALL (Eastern Victoria) — This morning I want to commend Lifeline Gippsland for the outstanding service that its members provide to the Gippsland region. I also want to encourage the Bracks government to get behind Lifeline and support those people in their endeavours. Lifeline Gippsland was the first Lifeline service in Victoria and was established in 1968. Since that time its members have continued to provide some invaluable services such as the 24-hour crisis and referral line, suicide intervention workshops and a suicide crisis support program. At times of trauma, particularly on occasions such as the recent bushfires in Gippsland, they provide an extra and excellent trauma support team for those afflicted with bushfires.

Since its inception Lifeline Gippsland has been operating out of some antiquated premises in Maryvale Crescent in Morwell. The people there are looking to establish some new facilities. Recently they obtained a commitment from the federal government to provide $500 000 towards the construction of new facilities — they are looking to do work costing in the order of $2 million. That $500 000 is contingent upon matching funding from the state government. Currently they have an application before the Community Support Fund, but they need an answer from the state government by 1 July, which is the sign-off date for the federal government funding. I strongly urge the Bracks government to act quickly on this application and to support Lifeline Gippsland by matching the federal government's $500 000 grant.

Port Phillip Bay: channel deepening

Ms PENNICUIK (Southern Metropolitan) — Submissions on the 15 000-page supplementary environment effects statement (EES) into the proposal to deepen the shipping channels in Port Phillip Bay are due this Monday, 7 May. The minister has refused to extend this deadline. This is an unfortunate decision because it has not allowed the community anywhere near sufficient time to read, digest and respond to the report. It denies the community fair and meaningful participation in the process. I have struggled to wade through the supplementary environment effects statement and the PricewaterhouseCoopers economic analysis, as have many people to whom I have spoken. It is not good enough for the government to claim that there has been plenty of time. There has not been, and people are angry and frustrated at being overwhelmed with the paperwork and not supported in their efforts to come to terms with it.

Yesterday I raised another aspect of this unfair process which again denies the community fair and meaningful participation. The terms of reference for the panel allow it just four weeks to complete its task and do not allow for the cross-examination of expert witnesses at panel hearings. At the first panel hearing extensive cross-examination of expert witnesses was allowed. I was there for some of it. It was that process that uncovered the many serious flaws in the original EES. In the *Age* of 23 April it was reported that several leading lawyers have criticised the panel's terms of reference and that one has withdrawn from public hearings on the grounds of a lack of procedural fairness, particularly the inability to cross-examine expert witnesses. What do the government and the port have to hide? If the supplementary EES is so good, surely it can stand a bit of scrutiny and public questioning.

Bushfires: tributes

Ms PULFORD (Western Victoria) — I would like to recognise the heroic efforts of firefighters, support staff and community workers, some volunteer and some not, who fought so hard and bravely over the summer to keep Victorians safe from some of the worst blazes seen since Ash Wednesday. On Sunday, 22 April, I had the honour and privilege of hosting a civic reception at the Hamilton Performing Arts Centre in the Southern Grampians town of Hamilton. It was just one of many held all over the state on that weekend to thank and award those who risked their lives to protect ours and also to pay tribute to the families and friends they left behind to fight those horrible fires. It was great to see so many people come out to pay tribute to ordinary people who put their lives on hold and on the line to do the extraordinary job of firefighting.

It is worth paying tribute to the sheer hard work and determination of the Country Fire Authority, the

Department of Sustainability and Environment, Victoria Police, the State Emergency Service, the Australian Red Cross, the St John Ambulance, Rural Ambulance Victoria and the Salvation Army, along with local communities and employers, who gave the volunteers time off work. Twenty thousand people, 14 000 of them volunteers, were involved in fighting these fires that burnt more than 1 million hectares of land, and I would like to place on the record how appreciative I and all other Victorians are for their efforts.

Planning: St Helena development

Mr GUY (Northern Metropolitan) — Members will know that I have come in here and talked a number of times about the issue of Evelyn Way in St Helena. Evelyn Way is in a low-density suburb where 55 units are proposed to be built. I have taken a very strong interest in it, as has my colleague Mrs Kronberg. In fact Mrs Kronberg and I went to the effort of putting out a letter to all residents to explain our concerns about the proposal and how it certainly should not fit into the government's Melbourne 2030 strategy.

Members would probably have been as bemused as I was when I received a phone call from a journalist, who was also bemused, who said that the Labor member for Eltham in the other place, Mr Herbert, had decided he would use as an attack point upon me and Mrs Kronberg that we were out there trying to speak to the community four years rather than four weeks out from an election. Mr Herbert was quoted in a newspaper article as saying that it was 'highly inappropriate to use Liberal Party letterhead outside the election period'. We come across court jesters occasionally, but I found Mr Herbert's comments to be rather bizarre and a reflection upon his work ethic, which many people in his own seat should certainly know about.

I repeat that I make no apology — and I am sure Mrs Kronberg makes no apology — for the fact that Liberal MPs from that area will be out in the community four years out from a state election, unlike Mr Herbert and MPs down the road, such as the member for Ivanhoe in the other place, Mr Langdon, who will be out no more than four weeks from the next state election.

Australian Labor Party: conscience vote

Mr DRUM (Northern Victoria) — I want to put on record my objection to the Labor Party in Victoria refusing to give its members a conscience vote on a procedural process regarding the Infertility Treatment Amendment Bill. This again highlights for me the problems of the Labor Party and its inability to trust its own members to make a right and just decision. What Labor Party people call party discipline I liken to a Big Brother dictatorship that would be better suited to Moscow or Beijing, not Victoria.

The bill has generated unprecedented public interest, and in the debate so far we have heard conflicting evidence on health threats to women, on the authenticity of evidence used by the Lockhart report and on the potential benefits of embryonic stem cell research. The best way this chamber can work through this conflicting evidence is through the Legislation Committee.

The federal Labor Party wants to keep pushing Kevin Rudd but refuses to push the Labor Party. To have such good members of Parliament as the Labor Party has in this chamber and then to be totally run by the people upstairs is an absolute insult to them. The nobbling of the free speech of Labor members of Parliament does the Labor Party no favours in the view of the thinking public. I really believe that if the Labor Party is going to be true to itself and encourage free speech in this Parliament, it needs to go the whole hog and not just put up that it is going to have a conscience vote in theory when in practice its members are going to be told how to vote. I cannot stress enough that if the Labor Party wants to dictate to its own members how they should think — —

The PRESIDENT — Order! The member's time has expired.

Vietnam Veterans Association of Australia

Ms BROAD (Northern Victoria) — It was my privilege to open the state conference of the Victorian branch of the Vietnam Veterans Association of Australia in Castlemaine on Saturday, 28 April, and I thank the president, Mr Bob Elworthy, and the members of the state executive for the opportunity. The conference was held in Castlemaine in order to officially recognise the new Castlemaine district sub-branch of the association. I wish to congratulate Mr Lindsay McQueen, president of the new sub-branch, and Mr Bob Miller, the secretary, for their work, together with their supporters, on forming the sub-branch and hosting the state conference as well.

As a member for Northern Victoria Region, a region that includes many sub-branches of the Vietnam Veterans Association of Australia, I very much welcome the actions of the association in supporting veterans and their families in country and regional

Victoria as well as celebrating their achievements. I am proud to be a member of a government whose Premier is Minister for Veterans' Affairs because he believes it is important to support a strong and vibrant veteran community as well as honour the contribution of veterans and their families.

Whatever personal views people may hold about the Vietnam War it is important that we honour and support all veterans who have fought under the requirements of the democratically elected federal government of the day for principles that include the right to hold and express different views and freedom of association, such as the right to join a union without fear of persecution.

Housing: Northcote

Ms LOVELL (Northern Victoria) — I wish to raise once again the plight of the residents of the Roberts Street housing estate. The estate is being rebuilt, so residents will have to move out. They were told by the Bracks government that they will be relocated locally, but last week they were told by an Office of Housing relocation manager that they could be moved as far away as Kensington, Ascot Vale or Collingwood. This has caused much concern amongst residents. They are all elderly, and many of them have doctors in the local Northcote region. They are very concerned about moving as far away as Kensington.

I was pleased to see in a *Northcote Leader* article yesterday that finally Fiona Richardson, the member for Northcote in the other place, has said she supports the group having an independent advocate. However, last night when I spoke to Richard Wynne, the Minister for Housing in the other place, he said that Ms Richardson may have been misquoted. I must say Mr Wynne's conversation with me was conducted in a very aggressive and intimidating manner. I can understand why the housing residents are concerned, because, 'Trust me, I'm from the government' does not gel with people. They want an independent advocate. I call on Fiona Richardson to ensure they get one. Otherwise she should advise the *Northcote Leader* just what her position is on this so that the people of Northcote can be fully informed about it.

Schools: Colac

Ms TIERNEY (Western Victoria) — On Monday, 23 April, I represented the Minister for Skills, Education Services and Employment in the other place, Jacinta Allan, in opening the Colac Primary School's new and refurbished school buildings. The state government contributed nearly $692 000 to the cost of this work. In addition to the refurbishment, the new buildings and new computers, there is also a new basketball court, staff car park and water tanks.

I thank Colac Primary School, the principal, Mr Halliwell, teachers, support staff, parents and students for their efforts and the $15 000 fundraising contribution. The school assembly of the morning was driven by school captain Jessica Casey, and all students were actively involved. I thank those involved in Colac Primary School for giving me the privilege of sharing their joy.

This week Colac had another good reason to celebrate, and again it concerned education. On Tuesday the Treasurer, Mr Brumby, announced a $5 million commitment for a new Colac secondary school. The excitement in the town was well characterised in the *Colac Herald* of Wednesday, which ran the banner headline 'Millions to initiate secondary merger'. The mayor, Cr Ritchie, said, 'It's a really great day for education in the Colac district' and the principal of Colac College, Richard Cooper, was quoted as saying, 'It's not just the schools benefiting, it's the wider community'. I look forward to being involved in each step of the secondary school's construction.

I am proud to be part of this government, a government that makes sure that rural and regional Victoria really does matter.

Budget: debt

Mr THORNLEY (Southern Metropolitan) — I rise to pay tribute to that humble champion of modern capitalism, the risk-return curve. Because shareholders only make a return when debt-holders have been paid, they undertake greater risk. Accordingly they expect greater returns. That is why financing new investments with equity is more expensive than financing them with debt. That is why people use a mix of the two — to keep the cost of capital low. When a company finds investments that generate returns above the cost of capital, it creates value. That is the genius of capitalism. If you find investments that generate returns above your cost of capital, you would be nuts not to invest in as many of them as possible. If you stall while competitors move, you will quickly become road kill in a competitive marketplace.

And so it is in our business. If we have opportunities to invest in assets that generate higher returns — as infrastructure and human capital do — we owe it to the people to take up those opportunities. We also owe it to the people to finance those investments with low-cost capital to maximise wealth creation.

Some of those opposite do not understand the difference between debt-funded investment and debt-funded consumption. They must have all paid cash for their houses if they think debt is so bad. If they cared about growth, jobs and creating wealth in our society, then they would want to see new productive investment, and they would want it funded at low cost. If the knuckle-draggers opposite cannot find a bigger problem with the budget than some debt-funded investment, it will be a long and lonely road in opposition for them.

Koori Court: Bairnsdale

Ms MIKAKOS (Northern Metropolitan) — On 20 March this year I made every effort to attend the opening of Victoria's seventh Koori Court in Bairnsdale. The opening of this new court follows the success of the five adult Koori courts at Shepparton, Broadmeadows, Moe, Mildura and Warrnambool as well as the success of the court's operation in the Children's Court of Victoria.

An independent evaluation of the Koori Court has labelled it a resounding success particularly with substantially reduced recidivism. An important component of the Koori Court is the involvement of Koori elders or respected persons, who have been able to contribute significantly in reducing reoffending rates amongst indigenous offenders.

I am gratified as the chair of the Aboriginal justice forum to have seen the concept of the Koori Court take off in such a successful way. This is a testament to the partnerships that have been developed between government agencies, the Koori community and the broader community in regional and rural Victoria. The Koori Court is an important component of the Aboriginal justice agreement, which has been funded quite considerably by the Bracks government since it has been in office. Those initiatives are supported in this year's budget as well.

I take this opportunity to congratulate everyone involved with the opening of the Bairnsdale Koori Court, particularly the magistrate, the elders and respected persons. I wish them every success in the future.

Rail: Dandenong line

Mr SOMYUREK (South Eastern Metropolitan) — I rise to congratulate the Bracks government on investing $2 billion in projects to improve the metropolitan rail network as part of its *Meeting Our Transport Challenges* statement. This is a massive program to relieve bottlenecks, improve the safety system and provide extra services.

In my electorate the Dandenong rail corridor will benefit from this investment. The Dandenong rail corridor is a vital public transport link for the south-east of Melbourne and services an area with more than half a million people — 15 per cent of the population. Improving services on the Dandenong line is a priority because just three trains in the peak period is equivalent to 2000 cars or the use of a whole lane on the Monash Freeway for an hour. With more people using the system there has been a massive 16 per cent increase in morning peak periods patronage over the last two years. The commencement of these works will help to address the community's needs. The government has committed to building a third line from Caulfield, initially to Springvale and ultimately to Dandenong. Other work will include additional stabling, signalling improvements, upgrades to stations and level crossings, improvements to modal interchanges and additional car parking.

In Cranbourne there will be a $35 million upgrade to Cranbourne station, which will help to improve service along the entire Dandenong rail corridor. The project will provide benefits in rail services several years ahead of the completion of the third track. It will enable more services to operate from Cranbourne and improve reliability for passengers on both Cranbourne and Pakenham lines, helping to have more trains running on time.

STATEMENTS ON REPORTS AND PAPERS

Box Hill Institute: report 2006

Mrs KRONBERG (Eastern Metropolitan) — I am delighted to rise and report on the Box Hill Institute annual report of 2006. From the outset I would like to place on the record that until December last year I worked in the centre for business programs at Box Hill Institute. The institute is recognised as Australia's no. 1 global vocational education and training provider. Its mission is to ensure the provision of positive learning environments for students and to prepare them to excel in the global marketplace. It provides a pool of highly skilled, talented and well-educated individuals for commerce, industry and the community whilst ensuring that the institute's working environment attracts and nurtures leaders in vocational education and training and services.

Box Hill Institute's forward planning rests on the strategic platform of its being a leader in learning,

community relationships, technology and participating globally. It undertakes to accomplish these objectives by managing students and customers, capacity and capability, and business growth and business performance, thus ensuring the institute's long term financial viability.

In his message the president of the Box Hill Institute's board, Associate Professor John Rasa, stated that the institute took vocational education and training to the next level in 2006. For the sixth year in a row the institute was a finalist in the Victorian training awards in the large training provider of the year category and was further recognised as Australia's best exporter of education and training at the Australian export awards.

The institute has several multimillion-dollar contracts with international partners, with emphasis now being on capacity management in order to deliver on these agreements. The Box Hill Institute is recognised as the new specialist centre for information and communications technology, and when combined with the specialist centres for biotechnology training and services to small to medium enterprises, this highlights the fact that the Box Hill Institute is at the forefront of delivering skills training in growth areas.

The report from the chief executive officer, John Maddock, highlights the following: the Box Hill Institute delivered more than 7.71 million student contact hours of training, which is a 4.5 per cent increase on the previous year; degree enrolments jumped 153.9 per cent, reflecting confidence in the institute's new bachelor programs; the institute exceeded all of its targets as per the performance and funding agreement with the state government. The financial performance remained sound, with a significant operating surplus and a solid working capital. The institute's student management system recorded 35 354 vocational education and training enrolments and 227 higher education enrolments in 2006, a total of 35 581 compared with 35 721 in 2005.

The centre for business programs delivers vocational training and education in the fields of business, finance, government, retail and sport and fitness. The centre successfully delivered the associate degree in commerce for the first time in 2006. Ongoing projects for the vocational course teams include refinement and development in order to be responsive to the marketplace demands. The centre continued its presence in its five extended campuses in China, and growth was experienced in both its Vietnamese and Fijian campuses. The focus of attention also included the development of new extended campuses in China, Kuwait and Singapore.

The chart at page 23 showing the percentage of 2006 government profile delivery by the centre, however, may have either a typographical error or an error of omission, and it may be that the centre for business programs may inadvertently be listed under the heading 'Building programs'.

The independent audit report by the Auditor-General says that the statement of performance of Box Hill Institute of TAFE with respect to the 2006 financial year is presented fairly in accordance with the Financial Management Act of 1994. I commend the report to the house.

Aboriginal Affairs Victoria: indigenous affairs report 2005–06

Mr ELASMAR (Northern Metropolitan) — I am speaking today on the *Victorian Government Indigenous Affairs Report* for July 2005 to June 2006. Let me firstly say that the Bracks Labor government has confirmed and demonstrated to its indigenous community a commitment to achieving reconciliation between indigenous and non-indigenous Victorians with a vision for a reconciled Victoria.

This is my first opportunity to speak on the important subject of Victoria's first peoples, who are acknowledged, respected and valued, and entitled to have a fair share of the prosperity enjoyed by all.

I wish to congratulate the Minister for Aboriginal Affairs, Gavin Jennings, for being the force behind the *Victorian Government Indigenous Affairs Report*. Minister Jennings, as we know, also provided the blueprint of the government's social policy programs outlined in *A Fairer Victoria*, which provided our state's largest single investment in indigenous affairs to improve the health and prosperity of indigenous Victorians.

In 2003 the government developed the Victorian indigenous affairs framework (VIAF), *Improving the Lives of Indigenous Victorians.* It is now a strong and respectful partnership between government and indigenous communities. The VIAF particularly provides for improving outcomes for indigenous people with input and direction from indigenous communities.

One of the most important announcements in the *Victorian Government Indigenous Affairs Report* is the goal to improve life expectancy and quality of life for indigenous Victorians. On average these citizens die 20 years younger than other Victorians and experience greater hardship and trauma during the course of their lives. To meet this goal the government will rebuild

human, economic and the social capital of indigenous communities. The government is committed to improving indigenous Victorian lives by imposing clear priorities to act upon such as improving maternal health and early childhood health and development; improving literacy and numeracy; improving year 12 completion or equivalent qualification and developing pathways to employment; preventing family violence and improving justice outcomes; improving economic development, settling native title claims and addressing land access issues; and building indigenous capacity.

These actions, once implemented, will guide sustained government effort over the next 10 years with three set priority outcomes. The first outcome is safe, healthy and supportive family environments with strong communities and cultural identity. The second outcome is positive child development and the prevention of violence, crime and self-harm. The third outcome is improving wealth creation and economic sustainability for individuals, families and communities.

Improving the Lives of Indigenous Victorians also sets out a partnership coordination and management framework, with principles of reform that outline how we will further improve the effectiveness of government coordination and the way that government engages and works with indigenous communities.

Over the past year the government implemented a range of programs and initiatives. This report provides an overview of some of our key programs and initiatives for indigenous Victorians under the following five themes of the framework. The first is partnerships: recognising and respecting indigenous people's rights to self-determination expressed through active partnerships with government that involve indigenous Victorians in our planning, management and delivery of services. A wonderful example of this is the successful partnership in Shepparton. The second theme is land and culture: delivering land justice to indigenous Victorians and protecting Victoria's indigenous cultural heritage for future generations. An example of this is the Wimmera native title settlement negotiations that were successfully concluded with the settlement of a major native title claim over the Wimmera region. The third theme is economic development and participation: improving education and training outcomes — —

The PRESIDENT — Order! I know the member could go on much longer on this very important report, but the member's time has expired.

Central Gippsland Institute of TAFE: report 2006

Mr O'DONOHUE (Eastern Victoria) — I am pleased to rise to speak on the 2006 annual report of the Central Gippsland Institute of TAFE. I commence by saying what an important part the technical and further education sector plays in educational opportunities for country Victorians and for all Victorians, and in particular what an important role the Central Gippsland Institute of TAFE plays in delivering educational opportunities to the people in Gippsland.

The Central Gippsland Institute of TAFE is a large institution with campuses at Newborough, Morwell, Warragul and Leongatha, as well as one at Chadstone. This institute aims to have flexible delivery methods, and it has demonstrated its capacity to increase its revenue base by innovative fee-for-service educational opportunities through short courses, online education and other methods. I congratulate the institute on that flexibility and foresight. In that context, this TAFE has a very sound financial position. Its financial surplus has grown from $120 000 in 2003 to $2.337 million in 2006, and revenue has similarly grown from $18.845 million in 2002 to nearly $23 million in 2006. The institute is to be congratulated on that achievement.

Its different campuses offer different courses and interact together, but they have different areas of specialisation. The Warragul campus offers courses in business studies, hospitality, health and community studies and has a youth development unit. The Leongatha campus, which has great interaction with the Gippsland campus of Monash University and the Bass Coast campus of Chisholm Institute of TAFE through the Southern and Coastal TAFE Alliance, offers programs such as commercial training.

The recent opening of the commercial training kitchen has been a great development. It offers the Victorian certificate of applied learning program as an alternative to mainstream secondary education, which, I might say, is a very important thing, given that, sadly, retention rates in country government schools have as a percentage fallen from the low 70s in 2002 to below 70 per cent now. This is an indictment of those responsible for the availability of educational opportunities and their delivery to country Victorians, particularly to those in the Gippsland region.

The Morwell campus offers courses in fashion, clothing and textiles. It has an academy of music and also offers courses in retail, horticulture, hospitality and tourism. The Yallourn campus offers art and design, hair design

and beauty, health and community services, child studies and other courses.

One of the great problems I see for the Central Gippsland Institute of TAFE is the lack of public transport connecting the different campuses. If you are a student in Leongatha who wishes to take a course in Morwell, or indeed in Warragul, your opportunities to access those different courses by travelling on public transport are virtually non-existent. Again, the government must do more to deliver proper public transport outcomes to people in Gippsland, not just by offering connections to Melbourne but by linking the different communities across Gippsland. This TAFE institute is overcoming this lack of infrastructure and investment by the Bracks government partly through its innovative i-learning and e-learning programs. The number of students participating in these courses has grown from 600 in 2003 to 2400 currently. That is important for people who may be geographically isolated or cannot access services due to the lack of spending on public transport infrastructure by this government.

In summary, I congratulate the Central Gippsland Institute of TAFE on its report, on its sound financial management and on the opportunities it presents to country Victorians, particularly in the Gippsland region. I commend the report to the house

Timber industry: code of practice

Mr SCHEFFER (Eastern Victoria) — The 2007 code of practice for timber production contributes to making sure that the commercial timber industry, operating on public and private land, is able to improve its environmental performance. Part 5 of the Conservation, Forests and Lands Act 1987 gives the minister the power to make codes of practice which specify standards and procedures for carrying out activities that are allowed under various laws.

The Sustainable Forests (Timber) Act 2004 sets out a framework for sustainable forest management and sustainable timber harvesting in state forests. Part 6 of the act states that people who have an agreement with VicForests for harvesting and selling timber, anyone who holds a timber harvesting operator's licence or anyone else harvesting timber in a state forest must comply with the relevant code of practice. The code of practice for timber production 2007 is prepared under that act.

The purpose of the code of practice is to make sure that commercial timber cultivation and harvesting in Victoria is economically viable and sustainable — in other words, that the timber industry is compatible with environmental, social and cultural values. The code of practice for timber production 2007 which was tabled last month is the second revision since the first was tabled in the Victorian Parliament in 1989. A previous revision was tabled in 1996 and ongoing revisions from time to time are necessary so that the code remains relevant to a dynamic timber industry and is informed by the most recent developments in scientific knowledge and reforms in the law and regulation.

The present code will be effective from 1 July. Its key purpose is to make sure that the development of the industry occurs within a framework and process that leads to outcomes that balance timber harvesting with conservation of the environment.

The code is organised into four chapters. The first sets out the principles and is followed by three separate applications of the principles on public native forests, private native forests and plantations. There are seven principles relating to the maintenance of the natural environment; the sustainability of the ecology; the health and vitality of forests; soil, water and river assets; Aboriginal and non-Aboriginal cultural heritage values; the safety of the working environment; legal obligations and operational requirements. Each of the three chapters contains a number of code principles with relevant operational goals, mandatory actions arising from relevant operational goals, an indication of the relevant legal requirements for the operational goals, and a final section entitled 'Guidance' that gives some means that can help achieve the stated goals.

All this sounds rather complex when it is described orally, but the layout of the code of practice provides a very sound structure that enables timber industry participants to give appropriate consideration to the consequences and responsibilities involved in their enterprise. The code also includes a very useful glossary containing definitions that apply to the interpretation of the terms used in the document, as well as two appendices — a list of relevant legislation, regulations and policies that apply to forest management and a list of relevant guidance documents.

The present code was intended to have been completed in 2006, after the 10-year review of the 1996 revision. Revising the code has been a challenging task because of the complexity of the issues and the high number of stakeholders involved who all need to be given an opportunity to provide input. I believe most stakeholders support the code and the process that developed it, and the industry in particular places great store on it because of its clarity and functional

organisation. I commend the code of practice to the house.

Auditor-General: report on giving Victorian children the best start in life

Mr DRUM (Northern Victoria) — I would like to make a statement on the Auditor-General's report on giving Victorian children the best start in life, which is a report into many of the programs that are being run by the Department of Human Services (DHS) at the moment. In effect the Auditor-General looked very carefully at some of the programs and initiatives that have started recently. The Best Start program has been reported on, as well as municipal early years plans and children's centres. The report looks at how services are being delivered, and also looks at how reporting procedures and data collection are working. Many of the programs have thrown up very good sets of participation numbers, so a lot of the programs are reaching the people.

The report also throws up a whole series of shortcomings in the collection of data that is used to try to help improve service delivery and participation rates. The audit conclusion states:

> However, except for two Best Start sites, there was insufficient quantitative data at the local level that showed the initiatives directly contributed to increased participation in maternal child health and kindergarten services.

In one of the crucial areas the report shows that there has been insufficient quantitative data to show whether or not participation rates for maternal child health and kindergarten services have been impacted on.

The report also brings forward the fact that vulnerable clients have been classified in an inconsistent way. It is quite staggering that in this day and age we cannot even get right the classification of what is a vulnerable client. Existing systems are not designed to maintain a record of their existence, although some information is collected on Aboriginal children. Some of the other key findings have related to service participation rates. Although the DHS has conducted extensive research to identify vulnerable children and families and high-risk groups, it recognises the need to collect better data and to improve service delivery. Again, there is a real theme coming through.

In relation to the provision and identification of service gaps, the report indicates that as part of the Victorian child and adolescent monitoring system the DHS intends to survey children with a disability, children of recent immigrants and children in out-of-home care. The DHS also intends to conduct a survey of Aboriginal children's health and wellbeing to be piloted as part of Aboriginal Best Start. It anticipates that each survey will be repeated every two to four years. This is a worthwhile initiative. Again, it makes you wonder why we have not already been doing that type of monitoring and work using those types of surveys. In relation to addressing service gaps, both the DHS and the councils around Victoria recognise the need to improve service delivery to vulnerable children and their families. The DHS has acknowledged that it could be doing better in relation to the collection of data, especially when regarding the data surrounding vulnerable clients. One of the things that it is looking forward to possibly doing now is using a standard set of definitions so that we do not have one set of definitions for one group of bureaucracy and then another set of definitions for another group.

This is quite a detailed report from the Auditor-General. He has looked at the recent initiatives and the money that has been spent through the DHS. In summary, he says that many of these programs are working well in relation to participation numbers. He has pointed out very clearly that whilst everyone acknowledges that they need to improve, we need to get greater participation. That can only be done by the DHS being serious about its collection of data and reporting procedures and by its making sure that into the future it is concerned not so much about how it looks in public but is more concerned about how it goes about getting the data it needs for better service provision.

Bendigo Regional Institute of TAFE: report 2006

Mrs PETROVICH (Northern Victoria) — I rise to speak on the report of the Bendigo Regional Institute of TAFE. In 2006 we saw the Bendigo institute make further progress towards its vision of being a major contributor to the economic and social development of the region by being the leading provider of workforce skills for industry. It is estimated that 24 per cent of jobs require a university qualification, 62.3 per cent require a vocational education and training qualification and 13.7 per cent require no qualifications at all. Currently only 20 per cent of the Australian working-age population, which includes people between the ages of 15 and 64, have a university qualification, and only 29.9 per cent of the population have vocational education and training qualification. Alarmingly, 50 per cent have no qualifications at all.

The Bendigo Regional Institute of TAFE city campus was opened by a former member for Warrandyte in the other place, Phil Honeywood, in his role as Minister for Tertiary Education and Training. It has a very

complementary design. It is an extensive campus with new architecture complementing a very old streetscape in McCrae Street, Bendigo, an area which dates back to the Bendigo gold rush.

This institution gives both young people and mature-age students the opportunity to engage in a variety of educational opportunities in country locations. The city campus, based in McCrae Street, Bendigo, provides a range of courses and supports the other campuses in Castlemaine, Echuca, Kerang, Kyneton and Maryborough. The Castlemaine campus is also located in a fantastic streetscape of gold rush Victorian buildings. It is based in Lyttleton and Etty streets in Castlemaine. That campus has experienced growth in both students and contact hours and is doing very well. It provides a variety of courses including certificates I and II in information technology and certificates I and II in business.

Many other courses are delivered in partnership with businesses in the area. Because of the nature of the businesses in the area the campus meets fluctuating demand for engineering apprentices from throughout the southern region. It also provides hobby courses and other activities including sculptural welding courses. In addition to providing qualifications in those major course areas, the institute delivers short courses on subjects such as QuickBooks and food hygiene, which is most helpful for the many community groups which are running fundraisers and those who require knowledge of proper food handling and hygiene.

The Echuca campus has an interesting partnership with Oscar W's, a fine local restaurant. This has seen current year 10 students complete front-of-house training to a very high industry standard. The institute has a great community partnership with the Campaspe Cohuna Local Learning and Employment Network, which is designed to find other opportunities to keep children who may be having difficulties in staying at school connected with the educational system. It also has a great relationship with CVGT and the local secondary schools. This enables students to attend structured TAFE programs.

The Kerang campus is providing the Men in Sheds program, which is a great mentoring program. It is an opportunity for older men to pass on their skills to younger people. It is also a place for men to meet and communicate. It is very important to have those opportunities in times of drought. This campus has played a very useful role in providing people in drought-affected areas with a place to meet and talk. A number of other farming programs are run very successfully out of Kerang.

The Kyneton campus is an interesting one. In spite of operating out of portable buildings, this unit provides an opportunity for the two local secondary colleges — Sacred Heart College, the Catholic college in Kyneton — —

The PRESIDENT — Order! The member's time has expired.

Deakin University: report 2006

Mr VOGELS (Western Victoria) — I would like to comment on the Deakin University annual report for 2006. Deakin University is Australia's no. 1 university for the provision of high-quality distance education programs, flexible learning and professional development courses. It is committed to rural and regional Victoria, with an excellent campus in Warrnambool, two campuses in Geelong and two campuses in Melbourne.

By any measure 2006 was a great year for Deakin University. Without doubt the most significant development was Deakin's success in its bid to establish a rural and regional medical school in Geelong. In April 2006 the Prime Minister announced that Australia's newest medical school would be established at the university's Geelong campus at Waurn Ponds. With a commencing student intake of 120 places, Deakin's medical school is the largest to be introduced in Australia in recent times. It is the most significant academic development at Deakin since the amalgamation in the 1990s that created the multicampus Deakin University we know today.

As a former president of a rural health service I understand the importance of getting GPs out into country Victoria. The medical service in the town I come from, Timboon, is a good example. We have a fantastic, brand-new hospital. Approximately 80 babies were born in that hospital last year. We have excellent staff and nurses and we are getting an ambulance service, but we find it very difficult to keep doctors. We have two excellent doctors in Dr Mick Brownstein and Dr Jeannie Brown, but their kids are getting to the stage where they need to prepare for university. They do not particularly want to send them to boarding school, so they think they would like to move to either Geelong or Melbourne to be with their children as they go through university — and I can understand that. They have given excellent service for 10 years at Timboon. We are on the hunt for new doctors, and it is very difficult. We have been trying for nearly 12 months now, and we still have not been successful. To their great credit, Dr Brown and Dr Brownstein have decided that they

will not leave Timboon in the lurch but will stay until we find some new doctors. That is fantastic.

I am confident that 2007 will be another excellent year for Deakin. Through Professor James Dunbar and the Greater Green Triangle it has been very involved in running pilot programs for studies into diabetes. They run what they call the Greater Green Triangle diabetes project. It is about lifestyle intervention. It was great to see the state and federal governments announce a couple of months ago a joint funding stream of about $200 million to look into obesity and diabetes and all the things that go with them. I am very confident that the Greater Green Triangle, together with Deakin University and Flinders University, which is running this pilot project, will be successful in attracting some of the $200 million in funding announced by the Prime Minister.

I would like to congratulate the vice-chancellor, Professor Sally Walker; the pro vice-chancellor, rural and regional, Professor Rob Wallis; the dean of the faculty of health, medicine, nursing and behavioural sciences, Professor John Catford; and especially Professor James Dunbar, director of the Greater Green Triangle university department of rural health, for the excellent work they are doing in protecting the health of rural Victorians. We all know and understand that country Victorians seem to have more health problems than our city cousins. These people are doing a great job of ensuring there will be GPs et cetera around country Victoria. I commend the report to the house.

BUSINESS OF THE HOUSE

Orders of the day

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

> That the consideration of orders of the day, government business, nos 1 and 2, be postponed until later this day.

Motion agreed to.

Mrs Coote — On a point of order, President, I have some major concerns with this. We are trying to run this place with some efficiency and there is no Government Whip on the other side. There are second readings which will be pushed around for the day. I do not think it is good enough. Could the President please have a word with the whip.

The PRESIDENT — Order! There is no point of order. I suggest Mrs Coote is more than capable of having a word with the whip, but I thank her anyway.

INFERTILITY TREATMENT AMENDMENT BILL

Second reading

Debate resumed from 2 May; motion of Mr JENNINGS (Minister for Community Services); and Mr FINN's amendment:

> That all the words after 'That' be omitted with the view of inserting in their place 'this bill be withdrawn and redrafted to provide for a separate principal act dealing with research involving embryos, rather than including those matters in the Infertility Treatment Act 1995'.

Mrs KRONBERG (Eastern Metropolitan) — I rise to speak on this bill after deep thought and extensive research. We realise that the main purpose of this bill is to amend the Infertility Treatment Act 1995 in order to modify the existing regulatory framework to allow the use of somatic cell nuclear transfer in stem cell research while retaining the existing prohibition on human cloning for reproduction.

From the outset I assure my fellow members of this Council that I have listened intently to all speakers in this debate. This issue has been an extremely complex one to deal with, having a vast amount of scientific material needing to be absorbed and ordered. I place on record my appreciation for the quality of the work of the shadow Minister for Health in the other place, Mrs Shardey, in arranging access to high quality information packs, briefings and meetings with esteemed members of our scientific community.

As members of Parliament participating in this debate we have received a vast amount of letters, emails, phone calls, deputations and visits from numerous members of the community who oppose this form of research. I have not received very much material in support of this bill from individuals, save that supplied by the scientific community and from our own robust research endeavours, and that provided by my own very hardworking colleagues.

As I said from the outset to many people, I have read all of these submissions, the correspondence, the letters and the emails. I have spoken to people directly, and I have listened to them intently. I have been deeply touched by the interfaces I have had with community members, family, friends and medical professionals. I even made an appointment with my doctor, him being a devout Baptist, just to see what his view was on the subject. All have shared their views and concerns with me and I thank them for their wise counsel and the sincerity of their approaches. I am richer for the information with which they have provided me.

I have not been influenced by extreme views or behaviour in my approach to this debate. Rather I have taken the opinions of many members of the community into consideration and have looked for common themes, common issues and common concerns. I wish to thank those who have made contact with me for their sincere efforts to inform and persuade all of us who are involved in this debate. As far as the community's views are concerned, one has to ask on an issue such as this whether there is any common ground. Can common ground ever be found between the widely varying, indeed divergent, views on morality held by members of our society.

When it comes to this debate, some people believe that the value of an embryo as a potential human being is most important. Others place greater importance on the values attached to treating disease and overcoming infertility. I have undertaken to approach this debate with the most objective view possible to muster, given my upbringing and personal values. I have dipped into my soul in contemplating this bill. I have taken into account the needs of the community and the ramifications for the future, and in fact how lucky and privileged I am to stand here as a member of Parliament as a fit and able-bodied individual.

During quiet moments of reflection, having the fortune to speak on this debate today, I share with the Parliament that it is 29 years this day since I gave birth to my eldest son, Andrew, and so I am very much focused on what it is to be a mother and to bring life into this world. Also I will share the fact that during quiet hours of the night some of the images and the horrors of the experiments on humans by Dr Mengele during the Holocaust, and the atrocities visited upon the people of Harbin in Manchuria by invading Japanese in the 1930s, have reminded me of the lowest levels of depravity reached by people. I surmise that many people who oppose this legislation envisage medical communities in time behaving like these monsters. I must say that I derived a degree of comfort from having met a number of our scientists at the Australian Stem Cell Centre at Monash University.

No-one I spoke to was prepared to risk what would become a 15-year prison term in order to satisfy a personal thirst for scientific conquest or deviant or unethical behaviour. I was witness to their professionalism and their express desire to solve a constellation of health problems and diseases which afflict humanity. As a nation and as a state we are fortunate indeed to have a scientific community of the calibre of the people we met at the Australian Stem Cell Centre. As a proud Victorian I am keen to see that we grow as a scientific community and remain at the forefront in the field of stem cell research and that we ensure that all research in this field is undertaken with the strictest regulatory regimes imaginable. Furthermore, it is critical that the scientific community in a society such as we have in Australia be at the forefront of research endeavour, not only for the medical and therapeutic benefits but, importantly, so that we can contribute to international regulatory regimes from an informed perspective, which will support the global ethical base that this type of research must have.

I would like bring to the attention of the chamber some material I found buried in the Lockhart report. It points out some of the countries which have legislation permitting the creation of human embryos specifically for research purposes. It states:

> The practice also probably happens, without legislative oversight, in the United States. These are also countries in which there is considerable investment in stem cell research, including Belgium, China, Singapore and the United Kingdom.

I would like members to pay special attention to something else I have noted. I find it very interesting, perhaps a little concerning and something that probably warrants further exploration, that Germany does not allow the creation of embryonic stem cell lines from either surplus or cloned embryos; however, it does permit the importation of embryonic stem cell lines and their use in research. That reinforces my desire to have our scientific community contribute in an authoritative way to good practice and ethical conduct in this field of endeavour around the world, and perhaps those people who are finding other ways around proper accountability and ethical conduct may be brought to account. In other words, we should be in the loop and have credibility as a scientific community in this field in order to prevent envisaged excesses of scientific zealotry in the future.

Having tracked through all the information presented to us, I have some concerns. That the National Health and Medical Research Council's ethical guidelines on the use of assisted reproductive technology in clinical practice and research still remain in draft form at a time when this debate is under way causes me great consternation, and I am bemused as to why something has not been done to rectify this. I am concerned about the impact this legislation may have on women and their long-term health prospects resulting from their participation in research. Nobody has been able to give dimension to the number of eggs that would be required for this research endeavour, what kind of drain it would be on medical budgets or the pain and suffering for any women willing to participate. We should ask what

safeguards should be provided to protect the rights of women. I would like to place on record a brief explanation of what a woman is required to endure when eggs are harvested from her body. The Women's Forum Australia submitted to the Scrutiny of Acts and Regulations Committee inquiry into the Infertility Treatment Amendment Bill that women describe:

> … the extraction process as invasive and uncomfortable, requiring several clinical visits and multiple injections of hormones. Often a dozen or more eggs are produced at a time, instead of one or two per cycle.

To obtain mature oocytes women are given follicle stimulating hormone to stimulate maturation of oocytes in the ovaries. After monitoring daily the hormone levels the mature eggs are then collected at ovulation. The submission goes on:

> A recent edition of the journal *Nature* (Pearson 2006) describes a typical egg extraction procedure:
>
> > A gonadotropin-releasing hormone agonist is taken daily for one to two weeks. This stops the pituitary from stimulating ovulation.
> >
> > The woman then injects gonadotropins such as follicle stimulating hormone to trigger the development of several egg-containing follicles.
> >
> > A third hormone triggers final maturation of the eggs.
> >
> > Eggs are collected with a needle inserted through the wall of the vagina into the ovary.

I quote further from the forum's submission:

> … women who undergo the process experience a serious condition known as ovarian hyperstimulation syndrome (OHSS) … When OHSS occurs 30 or more eggs start to develop simultaneously, fluid leaks out of the blood vessels …

collecting in the woman's abdomen. I have to ask how could we find any way of assuring women they will not be at future risk when they have taken on such a burden? It can interfere with work in the short term and the ability of the woman to care for her children. Of course there are statistics that prove that ovarian hyperstimulation syndrome has led to death. The long-term health risks are not well understood. Super-ovulatory drugs can actually lower the chance of achieving pregnancy, risking chromosomal damage to more than half the eggs in a woman's ovaries. This would have to be of great concern to an altruistic woman who was prepared to contribute her eggs to the research endeavour. She would see a very large rate of spoilage which would render those eggs inappropriate for the pursuits of our scientists.

The submission points to a 2.3-fold increase in the risk of ovarian tumours in a study of a reasonable sample size of 3837 women in 1994. It is important to note that another study by Brinton et al. concluded that:

> … it may be some time before epidemiological studies can amass the follow-up times required to fully assess the long-term effects.

A question arises as to who will drive the effort to monitor these effects when we recognise the fact that private fertility clinics will be harvesting these eggs. We imagine they would have little interest in finding out the potential risks of the drugs they use. I think in legislative discussion in the future we should drill down and focus intently on that point.

It is very difficult to accept the argument by cloning advocates that since women are permitted to undertake the risks of egg extraction for assisted reproduction, then as some sort of extension or corollary they should be free to assume the same risks for cloning. The risks of egg harvesting for research are the same as those for assisted reproduction technology and, as with any medical procedure, the risks must be weighed against the benefits.

This legislation includes a new definition of the human embryo. Clause 4 amends the definitions in section 3 of the principal act. Clause 4(1) replaces the existing definition of the term 'human embryo' in section 3(1) of the principal act with a new definition developed by the National Health and Medical Research Council. The new definition of the term 'human embryo' allows for entities such as those that have arisen out of somatic cell nuclear transfer. There are alternatives being discovered as we debate this legislation, and I have wrestled with that fact. There is a new category of stem cells found in both the placenta and the liquid that surrounds foetuses — the amniotic fluid — and they are now subject to serious research endeavour. I draw upon material that a member of this chamber, Peter Kavanagh, made available to the other members — that is, a *Newsweek* article from the 'To your health' section of the MSNBC.com website dated 7 January 2007. It contains a really interesting summation of some of the benefits of providing greater funding into and having a greater strategic focus on the pursuit of amniotic stem cells. These stem cells are described as being pluripotent.

Pluripotent stem cells are cells that give rise to all the cell types of the body — the three primary layers being the ectoderm, mesoderm and endoderm — but not to the whole organisation. Pluripotent cell lines have an indefinite self-renewal capacity in culture while remaining in an undifferentiated form. However, with the right stimuli these cells can differentiate into many cell types. This potential ability to generate healthy

cells of different tissue types — such as liver, kidney or nervous tissue — in the laboratory has been the stimulus for a highly active area of medical research called regenerative medicine, which concerns the repair of damaged or defective cells and tissues in the body.

Some of the challenges for stem cell research include maintaining stem cell lines in culture without them becoming degraded over time, controlling differentiation to derive populations of the required cells and ensuring that transplanted cells assume the required structure and function and do not develop into tumours or cause other unwanted side-effects. Stem cells must withstand the immune barriers to transplantation. Embryonic cell researchers believe this can be done by creating embryo clones of the person to be treated and extracting the patient-matched embryonic cells — that is where we derive the term therapeutic cloning'.

Many aspects of this debate, such as absorbing the concept of working through processes to develop a proof of concept through animal models and thus showing the potential for clinical trials and human benefits, were compelling for me. To illustrate the point I draw upon the words of Jack Martin, emeritus professor at the University of Melbourne. In his written submission Professor Martin told the committee that he believes lifting ethical barriers could be considered if, and only if, animal models show clear proof of concept and the potential for clinical trials and human benefits exist. I quote from page 48 of the Lockhart report. It states:

> For several of these conditions there are appropriate experimental models that can be studied in animals, but in no case have embryonic stem cells been shown in animal research to provide a cure that is sufficiently prolonged and free of complications to warrant human studies. This should be a minimum requirement if the urgency of work on human embryonic stem cells is to be accepted in the face of the ethical barrier.

Listening to the contributions to the debate by fellow members in this chamber I noted that many people who spoke in support of this bill drew upon accounts of the suffering of family and friends — loved ones, people they hold dear — over generations, over years or currently. They have been able to empathise with that suffering. I respect the fact that they want to provide a miracle cure to alleviate that suffering and perhaps reduce that which could be passed on to future generations. I share the concern. It is a very human concern, and they are certainly not alone in that. I was touched by those accounts. I have relatives who have died of cancer and who are currently suffering Parkinson's disease and multiple sclerosis, so I share that pain in being witness to their suffering.

It is important to recognise that adult stem cell research is forging ahead, and in some areas it has been recommended that it be worked on in parallel with any embryonic stem cell research. We should be encouraging vast amounts of research endeavour into adult stem cell research in an unstinting way to make sure that we have exhausted all alternative means before we face ethical dilemmas.

After deep consideration of the issues before the house I find I am unable to support this legislation in its present form. I encourage all members to look deeply into their souls as they consider the amendments that are put forward by Mr Finn and Ms Hartland and the call for referral of the bill to the Legislation Committee by Mr Kavanagh to develop a stand-alone bill that has been properly constructed to reflect the momentous nature of what we are here to debate today.

This present bill seems to have been drafted for expediency. It gives me great pain to use that term, because I am sure there are people who have been involved with the drafting who would not want it to be labelled in that way. I feel this bill has been drafted for expediency to be the first of the states of Australia to follow the lead of the federal legislation. I do not think to be the first is enough reason. We are talking about watershed legislation, a major turning point in the history of humanity, and we should give it our very best shot and intense consideration line by line, point by point.

To reiterate, this legislation seems to have been developed in an expedient fashion rather than with the due process it deserves to provide a rigorous and fitting regulatory framework to rein in any potential excesses in the future. Given the far-reaching consequences this bill has for humanity and the ethical basis for all of us, in saying I cannot support this bill I feel I will be able to look everybody I encounter hereafter in the eye.

Mr THORNLEY (Southern Metropolitan) — As with all members of this chamber, I have taken a lot of time and consulted widely in forming my opinion on this bill. In addition to speaking with faith leaders and scientists and reading a wide variety of the literature and substantial constituents correspondence, I have reviewed the debates thus far not just in this chamber but in the other place and indeed in the federal Parliament, as I am speaking quite late in this process.

In every major religious and philosophical tradition I am aware of there is a common and universal set of

values calling for the observation and protection of the dignity of every human being. In these great traditions we specifically value and protect the dignity of all human beings above those of all other life forms, perhaps with the exception of some of the Buddhist community who view all life as equally valuable. All these traditions understand the universal truth that that which diminishes any of us, diminishes us all.

I therefore have concluded that there is a series of central moral questions which I have to answer which pre-empt all other issues in considering this bill. Those questions are: why is it that we value the dignity of every human being with greater force than we do any other life form? What is it about us as humans that makes us different and worthy of that special status? What constitutes a human being and when in the biological process does a person come into existence?

Before seeking to answer these essential questions to the best of my ability, I want to briefly review many of the arguments I have heard in prior debate that I did not find compelling or those which I believe are not answerable until we have answered the central questions I outlined a moment ago. It is only when you answer the questions above according to your conscience that as a legislator you can move towards a voting decision. I believe you must vote against the bill if you believe these embryos are human beings. If you believe they are not, then and only then can you turn your attention, as with any other piece of legislation, to whether allowing the research to proceed as outlined is on balance in the public interest.

The proponents of this bill have advanced a wide number of arguments in favour that I have not found compelling. Perhaps the most common argument put forward by proponents of the bill is a utilitarian one — that greater good will come from the medical research success that they hope it will bring, and this outweighs any downsides from proceeding with the process. We have heard heart-wrenching stories of human suffering. Actually I have heard them from both sides used to argue both cases. We have been given long lists of serious illnesses and conditions and the hope that they may be treated with the results of this research. That may be true, but until you have answered the fundamental questions I outlined a minute ago I do not think the utilitarian equation comes into it.

If the embryos in question are human beings in the way that all of our traditions afford protection, then I cannot see how violating the dignity of any person can be justified to stop the suffering of another. This has always been our morality and our law. So to argue the utilitarian case you must first be convinced that these embryos are not human beings or at least are not human in the way our traditions tell us means that they are entitled to untrammelled dignity.

Perhaps in response, some proponents of the bill have therefore argued that there is no place for religion in politics and that private religious beliefs should not be brought to bear or imposed upon a public policy debate. I reject that view absolutely. I do not believe people of faith should be excluded from the process, nor do I believe they can or should separate those portions of their values and beliefs that come from their faith from those values or beliefs that arose elsewhere.

In considering my own position on the bill, I have thought deeply about the values of my own faith and consulted widely with the views of faith leaders from a range of traditions. Particularly when we are considering questions so central to the human condition as this bill requires us to do, I think it is offensive and bizarre that people should be asked to set aside their faith or fail to consult or rely on the wisdom of these traditions, many of which go back thousands of years.

I note, for example, that people whom I deeply respect and who have, to my knowledge, a similar orientation to faith and politics as my own — people like Mr Rudd and Mr Garrett in the federal Parliament, for example — have felt compelled to vote against the corresponding legislation. This debate is in my view, at heart, a moral and ethical debate more than it is a scientific debate. There is no way of avoiding that, and to exclude people from consulting their faith and considering those questions is impossible and wrong.

I think my colleague Mr Burke in the federal Parliament put it best when he said:

> I think we are in an ethical debate. That is where we are at. I think we should all be up front that that is the debate we are in and either make the ethical case or not make the ethical case.
>
> The logic of that leads me to say that the question is not the science that is being argued back and forth. We are not the experts on the science. That is not our job. It never has been and never will be. Whatever the best course of action for science, I am quite happy for the scientists to do that bit. Our job is to determine where the boundaries ought to be drawn. To draw a boundary for the scientists is a big step to take, and it is a step you do not take lightly. But, no matter what the rhetoric in this chamber has been, it is uncontested that there are times when we draw ethical lines, and it is appropriate for the Parliament to do that.

Thirdly, from some proponents of the bill, I have heard it argued, as I often did in Silicon Valley, that we here in Victoria have a first or early-mover advantage in this new technology and that our urgent attention is required to ensure that we stay in front, lead the research and

presumably capture the greater economic gains that might flow from such leadership. I reject this argument absolutely.

I believe the economics of any situation follows the morality, and not the other way around. If you have some activity that causes human suffering and your economists tell you that it is creating economic value, then I guarantee they are not measuring it correctly. I have heard it said, for example, that every motor vehicle accident adds to gross domestic product. In as much as we are concluding such a thing, we are wrong. Economics is, or at least good economics is, the measurement of human utility flowing from various activities, and if we were to undertake some activity that was harmful to humans and our accountants and economists told us that we were creating economic value, then they are measuring it wrongly. Our morality follows what is respectful of human dignity and what adds to the quality of people's lives and opposes things which do the opposite. The economics is simply a measurement of our success in achieving these life-enhancing and dignity-enhancing human activities, and any purported economics that sees value in human suffering is a perverse form indeed. Indeed I think some of the proponents of the bill, in focusing on the potential economic benefits, give some credence to the otherwise exaggerated claims that opponents of this bill make: that there is some simple commercial gain driving the passage of this bill.

Even less credibly, some have argued that, because one or two opinion polls show that a majority of a relatively uninformed public apparently answers yes to a pollster interrupting their dinner one night, this should guide how we see the issue. Well, the obvious response to that is that if you do an opinion poll on capital punishment, depending on how you frame the question, you can often find a majority in favour of it as well. That does not make it right. I will never vote in favour of capital punishment, no matter what the polling numbers show. Our criminals should be punished and held safe away from the community they have harmed, but I will never support taking their lives. It offends the very values that we hold most dear, not to mention the many tragic incidents now frequently being uncovered in the United States of America of lives taken after what turned out to be wrongful convictions. I do not support an opinion poll approach to central values and moral issues.

If I understood the Lockhart review position correctly, and I confess that I am not sure that I do, it appears to argue that the motives for those creating these embryos and the purposes for which they were created, whether for reproduction or experimentation, change how we should consider the question of how these embryos should be treated. I simply fail to understand this argument. I do not understand why our view about how we deal with this life form would be impacted by the motives or intentions of those who created it.

Let me now turn to some of the arguments against the bill which I have also found not to be compelling. Firstly, there is the rather disingenuous argument that there are no proven positive results yet from this type of research. Some who have argued this simultaneously argue that the proponents of the research are doing so in search of commercial gain. Both of these cannot be true. If you do not believe the research will drive successful treatments, it is hard to see how anyone will get a commercial gain. But more simply, to argue against the form of research proceeding because it has not yet succeeded seems to be an effort primarily to ensure that it never gets the chance to succeed.

I do not claim to be in any way expert in the complexities of the science involved in this research, but I do understand that those proposing the research have such expertise. As a longstanding member of the council of the University of Melbourne, I have gotten to know many scientists and academics over many years. I have never met one who is pursuing research that they think is unlikely to achieve any positive good. It seems to me that the researchers proposing this research are also those closest to the science involved, and it simply makes no sense that they would be pursuing a line of research if they believed it had no potential for success. Those who oppose this bill by arguing that all these researchers are — and it is the unfortunate and hyperbolic language that this debate has created — frauds are to me putting an offensive and unnecessary argument. To hear total non-experts with a few hours effort to understand the science lecturing scientists with decades of experience about the likely success of their research is, I think, ridiculous.

Similarly, we have heard a range of comparisons with other forms of research using amniotic stem cells or adult stem cells and so on. I believe research funding bodies are in a better place to determine the relative merits of these types of research than we here in the chamber who lack that expertise or experience. I do not know if this research will be successful or not, but I fail to see how that question, unanswerable as it is even by experts, gives any weight to the moral questions we are seeking to resolve which I outlined at the beginning.

One of the most difficult and complex sets of issues raised in opposition to this bill are those relating to the source of the egg cells. I have several friends who have undergone IVF (in-vitro fertilisation), and therefore a

process fairly similar, as I understand it, to that contemplated in this bill. While the process was certainly invasive and can have unintended and sometimes serious consequences, it was a process that they chose to undertake, being reasonably well informed of the possible benefits and risks of doing so.

Some of those opposing this bill seem to be arguing that there are no circumstances under which a woman could donate an egg that would constitute informed and uncoerced consent. I have not been able to understand why they hold this view. Some argue that the long-term consequences and therefore the risks are not yet known, and therefore any consent cannot by definition be informed consent. I do not agree. Most of what one seeks information about is indeed uncertainty, it is risk. That includes the risk that there may be additional risks of which one is not yet aware. That is not uncommon in deciding on consent or otherwise on a wide range of medical procedures. Where risks are known and quantified you are usually given access to the data to help inform your decision. But of course you also understand, as with any invasive medical procedure, that there may be additional unknowns — that is part of what you weigh up when you decide to consent or otherwise to the procedure.

Others in this debate have quoted at length some of the many health risks women may face in this procedure. I will not recount those details here, but I accept that they are serious and challenging. But I do know that the women considering donation will be informed of that data, as we in this house have been informed of it, and that is the point. Each woman should be free to make her own decisions about consent or otherwise, informed by the risks, including the many that have been outlined in this chamber, and coerced by no-one. I do not believe I or anyone else in this Parliament is better placed to make that decision than the women in question. No-one makes these sorts of decisions lightly, and this bill and the operational procedures from the IVF program over many years have worked fairly well through the processes of informing patients' decisions about consent.

This bill is probably not perfect. The safeguards in the bill are probably not perfect. Indeed I am sure we will have proposed amendments to some of them and will consider such amendments accordingly. To argue that the remaining uncertainties prevent anyone from ever making informed consent in the way that such consent often attaches to uncertain medical procedures seems to me to be drawing a very long bow.

Similarly, some have argued that the demand for eggs will quickly outstrip supply and therefore that the bill is flawed or that we will be forced to amend the bill. Such arguments are often made again by the selfsame people who argue that nothing positive will ever come from the research. That seems to me another disingenuous and contradictory composition of arguments. Similarly it is argued on the one hand that the supply of eggs will be small because few women, given the appropriate and available information such as we have heard in this chamber, would consent to providing eggs, while simultaneously it is argued that the safeguards are too lax.

I suspect that if the research turns out to be highly successful, there may indeed be a greater demand for eggs than is available under the — in my view quite correctly — fairly stringent guidelines that we are contemplating here, given the impact that these guidelines will have on the informed consent of potential donors. If that is the case, there may be a push to review those guidelines, but if there is, that will be done in light of whatever research success is driving the demand and will enable us to refresh our view of this portion of the debate accordingly.

That is the incremental nature of the legislative process, particularly in new and difficult areas. It is hardly an argument against the bill in principle. Similarly I always treat slippery slope arguments with some caution. This is an old debating tactic that is often used when the arguments against the specifics are not strong enough. Given that these issues will always be the subject of vigorous debate in this Parliament, I find it difficult to believe that we will inadvertently slip down any slippery slope by starting a process and not maintaining eternal vigilance and spirited and passionate debate in this and the other chamber over how such things will develop over time. I suspect we will continue to do that. I am confident that any future changes or issues will be debated in this and the other chamber with passion and vigour, as this one has been, and so I will confine my decision to the specifics of this bill and not what may happen in future bills, which apparently lurk at the bottom of the alleged slope.

To resolve the central issues I outlined at the beginning, I have had cause to contemplate the very basis of the faith and traditions from which I seek guidance. What is it about humans that we believe conveys a unique set of rights and protections? At the most basic level most of us separate animal life from plant life, in part because of the obvious capacity for animals to incur suffering and indeed for their capacity, in some cases and in some forms, such as the average household pet, to have some limited capacity to form a relationship. Most animals can think and feel, albeit in more limited ways than we can. Their reactions are largely

instinctive — much like some of the unconscious functions of the human brain.

So what separates us as humans? I think it is things like an advanced capacity to think and feel, our capacity to love and be loved, our capacity to make moral judgements and perhaps therefore to be judged. How do these capacities fit with a view of what is human is clearly debatable. For example, in the *Age* of 16 April Archbishop Philip Freier put it this way:

> … what does it mean to be made in the image of God? Are we made in this image simply through our DNA and biological distinctiveness, or does it depend on our becoming human people in relationship with God?

In answering such questions I would say that to me the existence of a human being is the existence of a being who has those characteristics, however partially or imperfectly they exist, as we are all imperfect. It is difficult to know what biological elements are required for someone to have these personal characteristics. That is a very difficult issue that has no simple answer. I find it curious that while every faith leader I talked with spoke in depth about the complexity of that question and the impossibility of answering it with certainty, we often hear members of this and other chambers confidently asserting that their answer is the obvious one, that it is self-evident, and in some cases — Mr Abbott in the federal Parliament and Mr Finn in this chamber — somewhat arrogantly asserting that anyone who does not agree with their view is morally and judgementally inferior.

Mr Finn — When did I say that?

Debate interrupted.

SUSPENSION OF MEMBER

The PRESIDENT — Order! I consider Mr Finn's interjection to be disorderly. Under the standing orders, I ask that he vacate the chamber for 30 minutes.

Mr Finn withdrew from chamber.

Debate resumed.

Mr THORNLEY (Southern Metropolitan) — I did not hear such certain-minded, arrogant and self-righteous views from the faith leaders I spoke to — people who have spent their entire lives devoted to such understandings and in the service of others. I did not hear that view from the member for Pascoe Vale in the other place, Ms Campbell. We discussed the issue at length and were, at the end, unable to fully agree, but we did so in a spirit of mutual respect and dignity and with a humility that attends the apprehension that our own understandings are partial at best and that greater forces than us will make the final judgement. I have found the contrast between these approaches more than a bit curious The degree of tolerance for uncertainty, curiosity, humility and mutual respect I received from those wise and compassionate souls seems to be directly proportional to their efforts of spiritual contemplation and not inversely so, as our certain-minded and self-righteous colleagues might suggest.

Indeed history and contemporary inquiry reveal that people of faith can have a significant range of views in trying to answer the threshold question: what is a human being and when does one exist? As Mr Hunt, the member for Flinders, noted in the federal debate, there is a divergence within faiths, and that was witnessed by his examples of the view of St Thomas Aquinas about the quickening of the foetus versus the later papal doctrine of conception from 1887 onwards. Indeed there are divergent views within faiths at the current time. I found a range of answers within the diversity of views in the Jewish tradition. I found levels of uncertainty ranging from the clarity of doctrine held by some of my Catholic friends to the entertainment of a range of uncertainties among those of the Catholic and other faiths.

So we confront our own moral responses to these difficult questions, as each of us ultimately will do in this debate. I have done so without the resolution of a precise answer but with one adequate for dealing with this bill. I have also done so without a certainty of rightness — certainly not the certainty of rightness so aggressively portrayed by some others in this debate — but with no less comfort that I have sought the wisest and most compassionate answer that I can find. While I have no desire to force my answer upon anyone else, I will share it to add to our collective deliberations.

For most of human history the question of what is a person was fairly simple — you were born and then you died. There was some understanding that there was a developing foetus in the womb, particularly in the later stages, but little was known about the early processes of life. Over the last few centuries, but particularly lately, we have developed a much more detailed understanding of the beginning and end of life, and indeed the capacity to change and have an impact on both of those processes. We can prolong life greatly. We can even prolong many bodily functions and cell operations after a person is technically dead. We can create new life forms in test tubes and Petri dishes. It is from these edges of the living process that medical science and scientific knowledge now call on us to

make more detailed judgements about when a person begins to exist and if that person is to be accorded the rights and protections that we have for millennia viewed as inalienable to all people.

Right now I am a person. When my brain dies I will no longer be a person, even though I will still look like a person, I will still have 46 chromosomes and indeed parts of my body — at least for a time — could go on to help other persons through organ donation. Even though modern science can keep the rest of my body functioning without any remaining brain activity, in everything I have understood it is widely accepted by most religions, scientists and the law that this special thing we call a person ceases to exist when their brain is dead. That does not mean that there are not rights and protections or dignities afforded to the dead body and, of course, the people who loved the departed. However, it does mean that the very special status that we hold legally enforceable and that many people of faith hold spiritually sacred no longer pertains to a being who is brain dead.

So if my DNA exists — even if I look like a person — but I am no longer a person because my brain is dead, why is it so self-evident that if no brain exists I am nevertheless a person? To me that is not as self-evident or axiomatic as it is for some opponents of this bill. For while I accept that any dichotomy between mind and body is unhelpful and simply an incorrect way of viewing the human condition, we only have to look at the physical manifestation of our emotions — we call them feelings for a reason — to understand that our mind and body are intimately entwined. I believe that you need both to be a human being.

I believe that a person consists of a mind and a body, and that it is that combination which gives us all of those things that are recognisably human — the capacity to think and feel, to love and be loved, to make moral judgements and thus, perhaps, to be judged. When the brain is dead, that person no longer exists. I believe it is therefore a viable and entirely moral view to say that when a brain does not yet exist, a person therefore does not yet exist. There is a life form, and like all life forms it must be treated with caution and respect, but it is not that form of life which we know to be a person in the sense in which the word is ordinarily understood. It may indeed be one of the higher forms of life to which we accord a range of careful and special protections, but it is not that highest form of life — a person — to which we accord the highest forms of protections and rights.

At this stage I want to make one point absolutely crystal clear. The distinction I draw between brain activity and brain death, between brain existence and non-existence, is precisely that: an existential distinction. It is not and should not in any way be less misunderstood as any form of relative or qualitative distinction. I do not believe and will never support any notion that those with lesser or incomplete functioning of their minds or bodies are in any way separated from the full rights and sanctity that we accord every person. There have been those in history who have regarded some people — those with less functioning in parts of their brain or body, those with a different racial background and those with other differences in the quality or capacity of their human characteristics — as somehow of lesser status or as entitled to lesser rights. Some terrible things have flowed from such a view. I reject that view absolutely and hold passionately to the view I expressed at the beginning of this discussion — that every person is entitled to the full dignity and mutual respect of every other person.

The distinction I am making is an existential one. At what point does a person exist and at what point do they not? I will never be associated with anybody who takes the view that when a person does exist, one is more worthy than another. This raises a range of obvious and difficult questions about what level of brain or nervous system development would constitute a person. After all, our brains keep developing until about the age of 25 and need to be intimately connected to our nervous system if they are to give effect to anything much of their function. I have thought a lot about this in my preparation for the debate on this question, and I have not been able to reach a decisive conclusion, but nor do I believe that it is necessary to do so to take a view about this bill in its current form.

By taking up the Lockhart review's milestone of the formation of the primitive streak at the 14-day point, this bill does not require us to take a final view about when there is sufficient brain and nervous system development such that a person exists, according to the view that I have expressed. For that reason I will not go through the extensive arguments that one could make for various markers along the developmental path from the primitive streak to a more developed brain. If, as some have suggested, we come back to debate amendments to this bill at a later date that seek to extend the 14-day deadline, then such a debate will, in my view, be necessary and important. I am not a champion for the 14-day deadline. I am simply someone who is comfortable that wherever the line is at which we can say a person exists, it occurs at some stage after that milestone. That is all that is required in my mind to vote on this bill in its current form.

It should be obvious from what I have said that my view about the specifics of this bill should not therefore be taken as an indicator of how I might vote on a different bill or on a range of other possible related bills that may contemplate this set of issues; the elephants in this room — debates like those around abortion or euthanasia, which I sometimes feel are being debated by proxy in this debate. I share the view of some colleagues on both sides in that I do not understand how you can oppose this bill on the basis of the belief that a person exists from the moment of conception but not also oppose the IVF (in-vitro fertilisation) process. I do not recall hearing many of those who do so being willing to voice such a view.

I am particularly grateful to the many colleagues and experts who have taken the time to personally share their views with me and to listen and discuss mine. In particular I want to thank Anglican Archbishop, Philip Freier, and the leader of the Rabbinical Council of Victoria, Rabbi Kluwgant, who kindly offered to introduce me to Rabbi Levin, the world expert in this field within the Jewish tradition. Unfortunately, because I was moved forward in the speaking order for this debate I have not had the opportunity to meet him. I hope that when I do speak to Rabbi Levin I am not led to a different view from that which I have expressed here. In particular I want to thank my colleague Ms Campbell, the member for Pascoe Vale in the other place, for spending time with me in contemplating these issues. Naturally I do not claim for a moment that any of these people are endorsing my views, but I have benefited greatly from their willingness to discuss the issues in a mutually respectful way.

Having found answers, however incomplete and imperfect, to what I believe are the central moral questions of this debate and having therefore arrived at a position of comfort about the use of these embryos in research treatment within the constraints that are outlined in the bill, the personal conscience part of my vote is now settled. If another bill or amendments to this bill were brought forward at another time, I would review afresh the vital moral issues that I have addressed earlier in this debate against the facts of those bills, and my vote on the current bill should not be taken as indicative of how I may vote on a different bill.

Having applied my conscience to the veto issue that I outlined earlier, I therefore turn to the parts of our responsibilities that my colleague Mr Scheffer so eloquently laid out. The question that as representatives of our constituents we must all ask about every piece of legislation is: is this research, as enabled under this bill, in the public interest on the balance of all the remaining issues? It is only at this stage, having made a moral judgement about the potential veto issue of when a person exists, that some of the arguments advanced by others in this debate make sense and should now be considered. In contemplating these issues I will be brief. For the reasons I have outlined above, I have no reason to suspect that there is any more or less likelihood of success in this as yet unproven research stream than in any other. Given the scale of the possible benefits in the event of success, the limitations on the downside provided by the safeguards and in particular the informed and non-coerced consent of egg donors, I conclude that on balance it is in the public interest that the bill proceed. I will be voting to support the bill.

Mr VOGELS (Western Victoria) — I take the opportunity to share my thoughts and make some comment on the Infertility Treatment Amendment Bill. Let me say right at the outset that I will not be supporting this bill.

Like every other member of Parliament I could give a list of family members, friends and acquaintances who have suffered or who are presently suffering from all sorts of diseases. Some have passed away and some are still with us and are still suffering; there is an enormous number of people that I know and some are very close to me. But the end does not always justify the means.

I have no doubt that stem cell research offers enormous potential for the treatment of longstanding human diseases and will help alleviate suffering. That is why I support research and development into stem cells harvested ethically from adult tissue, from the placenta, from umbilical cord blood and from stem cells derived from amniotic fluid. I thank Peter Kavanagh for sending me a very interesting article from msnbc.msn.com on amniotic fluid which has shown great promise in the laboratory and which may one day end this divisive ethical debate once and for all.

I am informed that about 700 000 patients in Australia have already had successful treatment for over 72 different diseases through the use of adult stem cells. I believe the major driver of heading down the path of somatic cell nuclear transfer (SCNT), or cloning, is based on a cost-benefit analysis rather than what I believe are ethical reasons. Stem cell research is divided into two major camps: one focused on cells from adults or cells which can be harvested, the other on the controversial technique that destroys embryos.

There are fantastic opportunities out there for scientists to do research and develop stem cells, which do not conquer and divide the population. There is absolutely no guarantee that SCNT, which is also known as therapeutic cloning or reproductive cloning, will deliver

cures for any diseases. We are creating an embryo solely for research with its destruction clearly intended after 14 days. As the sex of an embryo is decided at conception — so it is not even one day old — it is logical that we are destroying a male or a female human being. If we can already determine its sex at day one, then in my opinion if everything goes well that embryo will become a male or a female baby.

The other thing that really concerns me is the harvesting of hundreds of eggs from women who are prepared to go into an egg donor scheme. Alternatively, we are talking about using animal eggs to make a human-animal hybrid. As a dairy farmer for many years I have witnessed on many occasions cows being injected with drugs, hormones et cetera to maximise egg production. The eggs are flushed out to be impregnated into donor cows at a later date. It saddens me to think that we have got to the stage where we are about to treat women as cattle, using them as donors to harvest their eggs.

I was walking from St Vincent's hospital yesterday because during the luncheon break I went over and saw a family friend who is in hospital. On the way back I was asked for some money by a young girl who was obviously in trouble. She said it was for food or something. I felt very sorry for her so I gave her some money. I thought to myself that that girl would be a prime candidate to go somewhere and donate her eggs when money becomes involved in these things, which it always does. It will be the poor and the helpless who will be used. That is where most of the donor eggs will eventually come from.

Despite the rhetoric there are no guarantees that SCNT will deliver any benefits to mankind. It is my belief that if we were prepared to spend the hundreds of millions of dollars on scientific research into the use of adult stem cells, cord blood as well as the other things I mentioned, that would be research we could all support in this Parliament.

The bill proposes to amend Victoria's Infertility Treatment Act 1995 to mirror recent amendments made to corresponding commonwealth legislation. The main changes proposed by the bill are to permit specific types of research involving embryos under a licence issued by the NHMRC (National Health and Medical Research Council) and subject to legislative criteria.

Legislative criteria is another one of my concerns. The very fact that therapeutic cloning was banned in the 2003 legislation but is now considered as being okay clearly shows that researchers will not stop until we have reproductive cloning. The Southern Cross Bioethics Institute has said that:

> Research on cloning human embryos is inextricably connected to bringing clones to birth. Regardless of the legislative restrictions on 'reproductive cloning', the groundwork will be laid for those in other settings who will implant cloned embryos for development to birth.

If this legislation is passed, government-funded research that results in the refinement of procedures for producing cloned human embryos will be taken up by others who are intent on producing human clones. This needs to be acknowledged as a real consequence of such legislative permission. Even though we are now saying as legislators that the NHMRC would not permit or authorise the use of an embryo that would result in its development to more than 14 days, or allow that embryo to be implanted into the body of a woman, that is only under this legislative criteria. Any future government under pressure from the same sources that produced this bill can act again.

I clearly remember standing in this Parliament approximately four years ago debating the very same issue. I said at that time that I believed now we had started down this track we would be here again in the next Parliament, because the 14 days would become 28 days and then, as we have heard other speakers say, it would become one month, two months or three months. I do not believe we will be satisfied until we have a perfectly formed clone of ourselves kept in liquid nitrogen so we can remove bits of it when needed. If we have got to that stage, then God help us! Is this where we have got to? I cannot support the bill.

Hon. T. C. THEOPHANOUS (Minister for Industry and State Development) — I wish to begin my contribution by making it clear that I will be casting my vote on the basis of conscience, and I will be casting that vote on the basis of conscience on all of the substantive issues that the bill deals with. I know there are people who are trying to debase the importance of this conscience vote by reference to procedural issues which we may or may not agree on. But the issue really is about the substantive question. I believe that on the substantive question members should vote on the basis of their conscience, and I certainly intend to do so.

I also think that people should not be influenced in their vote on this debate by various parties, persons or groups; it should be a vote made for no other reason than what their conscience dictates. From my own perspective let me say that I believe no-one in this place should make the decision to support or oppose the bill on anything but their conscience. I also make it clear

that I have searched my conscience and that I have taken considerable time to try to come to a conclusion.

Like some other members, I may not finally decide until the actual vote, although at this point I must say that I am leaning towards supporting the legislation. What I do reject is the highly emotive, sometimes hysterical, argument from both sides. Whether these arguments be in relation to denying the sick a cure for intractable diseases or in relation to research on embryos being murder, those kinds of emotive arguments I reject.

Therefore, before I go on to discuss this legislation, I want to set out the reasons that I voted against the 2003 legislation. When the 2003 legislation to allow research on unused excess human embryos and prohibit cloning came before the house, I voted against it not because it prohibited cloning but because it allowed the use of excess human embryos created during IVF (in-vitro fertilisation) treatment to be used for stem cell research. My argument in voting against that legislation was partly based on the argument of the great moral philosopher Immanuel Kant, who argued that we should never treat humanity simply as a means but always as an end. Within the definition of humanity Kant included potential human agents as well as fully developed human beings.

At that time, and using Kant's moral framework, I posed the following question: should we enact laws to give society the right to destroy the life potentiality of some early life forms for the benefit of advanced human life? My answer then was no, and I believe Kant's answer would also have been no. I also argued in opposition to the 2003 legislation on the basis that it may have led to our intentionally creating human embryos for the purpose of research and not just using excess embryos where the original intention was to create a human life through IVF.

This issue of intent is critical because, as I argued then, it is morally inappropriate to create a unique human life with the intention of destroying it for the purpose of extending or making easier our own lives. This to me was clearly treating our humanity as a means. Admittedly the previous legislation ruled out deliberately creating human embryos for the purpose of research; rather, these embryos were the discarded products of another intention — the intention to create a human life through IVF. Nevertheless I voted against that legislation based on the precautionary principle and to some extent on the slippery slope principle. As industry minister I have no difficulty, however, in overseeing research made possible by that 2003 legislation. A democratic decision was made by our Parliament, and I see my role as implementing those decisions and making sure we do not go down the slippery slope and that illegal or inappropriate research practices do not take place.

In coming to a decision on the 2007 legislation I have to consider a central axiom in Kantian philosophy and in my own beliefs. It was in the argument I put in 2003. That axiom is that a unique human life should be treated as an end and not as a means. To treat a unique human life as a means is also to debase our own humanity. I used the ancient Greek term 'anthropos' to capture this, as that term is used to describe the uniqueness of human life in both its singularity and its plurality. I argued that the embryo had the quality of anthropotita, or humanness, and is therefore part of our collective humanity.

But the aspect I have to consider carefully in this legislation is an aspect which forms a part of our collective humanity and which was emphasised by Kantian moral philosophy — it is our uniqueness. We are human in this sense because we are unique, and we are unique because we are human. That is why Kant used the term 'unique human life'. The present bill does not seek to create unique human embryos or unique human life. It seeks to do something different altogether: to allow the creation of cloned human embryos.

Let me make this clear: I do not support the creation of cloned human embryos for the purpose of allowing such embryos to develop into human beings. This is morally reprehensible and illegal and will continue to be illegal under this legislation. On the other hand, the creation of life in a test tube by mixing a male sperm with a female egg, through IVF, with the intention to create a unique human embryo for implanting in a woman to create a unique human life is, I believe, morally appropriate. It is because of the magic and mystery of the creation of our uniqueness by this process that we support IVF. It creates a unique human person by taking what is unique in one person and mixing it with what is unique in another person to create a third unique person who has never been on this planet before. In this sense we all support creating an embryo for the purposes of creating human life through IVF. What we do not support, and would never support, is creating a cloned embryo and allowing that embryo to become a human life. I certainly would never support that.

To sum up, it is morally appropriate to allow a unique human embryo to grow into a unique human life, but it would be morally reprehensible to allow a cloned human embryo to grow into a human being. Let us

assume that somehow somebody had cloned some embryos that we were not aware of. Insofar as they existed, we would actually demand the destruction of those cloned human embryos rather than allow them to become human lives. We would say that that was morally the most appropriate thing to do. However, we would demand the protection and, if possible, development of unique human embryos that had been created by a natural process. A cloned human embryo does not therefore have the same moral standing, the same human rights as a unique human embryo created for the purpose of developing its potential to become a human being.

This is an important and central moral issue — the moral standing of the two types of embryo. I have referred to one as the cloned human embryo and the other as the unique human embryo. If there were two types of embryos in imaginary test tubes, I would have no hesitation in saying that it is morally more appropriate to conduct research for the purposes of curing diseases on the cloned variety rather than on the unique variety. This is a further important moral step. If for whatever reason we had before us these two test tubes, one which contained a cloned human embryo and another which contained a unique human embryo, and we were told by somebody that we had to choose which of these two we should conduct research on, I do not think anyone in the house would choose the unique human embryo. I believe nearly everyone would choose the cloned human embryo. That is a further important moral consideration in trying to understand and work our way through this issue.

I think this position is consistent with Kantian moral philosophy, as well as with my own religious convictions about God's gift to us as unique but equally valued human beings. The gift of our uniqueness is part of our very creation, whether it be in a test tube through IVF or by natural means. In a very real sense it is God's gift to us. For me the moral issue therefore turns on the question of whether it is appropriate to create cloned human embryos in the first place, rather than the potential uses of these embryos once created. Once created they should never be allowed to develop into human beings. Before I address this question I want to make clear why I think the issues in this legislation are essentially ethical rather than scientific.

I am not a scientist. I do not know whether research based on stem cells derived from cloned human embryos will work or not work. It may work, it may not. Of course it would be a very easy moral choice for all of us if we knew with absolute certainty that it would not work. We would not be having this debate. Everyone would know it would not work, so there would be no point in having the debate. People who want to enter into this debate have to ask themselves the question: if this technology actually did work, should we still not use it? Would it still be morally unethical to use it? Would the people who have talked about their family members in this debate still say, 'I would deny my family member access to existing technology to cure them of a debilitating disease on ethical grounds'? There are people who do this on religious grounds — for example, there are people who deny blood transfusions on religious grounds. So you have to put yourself into that moral and ethical position and ask yourself the question: what if it worked? What would I do in that circumstance?

We have to make this choice. If therapy based on cloning and this technology developed new frontiers and could cure intractable diseases, would we use it? I think we have to accept that there are some promising developments. I think we also have to say that maybe the jury is still out on whether they will develop into reality. This is why I think ultimately the question is not a scientific one. I believe the question is an ethical one. The question is whether it would be unethical to proceed down this path even if the science would work. That is the question.

To try to answer this question in my own mind — that is, the moral appropriateness of creating cloned human embryos for therapeutic purposes — I had to go back to some basics. As I have said before, one would have to object to the very creation of an embryo using somatic cell nuclear transfer or cloning techniques. The objection would have to be that it so offends our sensibilities about the fundamental building blocks of our unique humanity that we should never contemplate it, even to cure the most debilitating of diseases. That is the conclusion one would have to reach. When I looked at this issue in relation to other ethical questions, I conceded that there are two ethical questions. One relates to the most appropriate ethical direction for our society as a whole. The other relates to the right of individuals to make their own decisions in circumstances of competing ethical choices.

In my contribution to the 2003 debate I spoke about my religious conviction that only a mother could decide, in prayer with her god, on a life-and-death issue of, for example, having an abortion in circumstances where she was told by doctors that both she and the baby would otherwise die. That was my moral and religious conviction: that this was a choice for the mother. Even if she had two living children the mother may still decide to not have the abortion and risk both her own life and that of her unborn baby. The central and important point here is whether the mother has the right

to make that choice. In the 2003 debate I expressed the view that the mother has that right. I also believe if she decided to do otherwise — that is, to have the abortion for the sake of her living children — society should not force her to carry that child and risk both their lives. This was an important consideration for me on the question of individual choice as well as the more general question of what society should do.

In the present situation consider the following example. What if a woman has a child suffering from an intractable and debilitating disease and that the technology actually did exist, was proven to exist, to allow the mother through SCNT (somatic cell nuclear transfer) to donate eggs. What if the egg could be implanted, from nuclei of her own child, in order to create a clone to harvest the stem cells and to provide the therapy which cures the disease. If a mother was in those circumstances, where the technology existed and where she wanted to donate her own egg in order to save her own child, could society reasonably say no to this woman? The answer for me after long reflection is no.

In both of those examples I believe there is a moral conviction — and I certainly have a moral and a religious conviction that the mother should be able to choose. After all, God also gave us this ability to choose, and in choosing we sometimes make wrong choices as well. But in those examples, the case of the woman with the abortion and the case of the woman seeking to cure her child, I could not, in all conscience, deny the mother's right to choose, even if in similar circumstances I might choose differently; or my own partner might choose differently. Trying to take a logical route through the maze of this moral question I have reached this point.

However, what if the causal chain is not so direct? What if the SCNT embryos are to be used for research with stem cells from her children in order to provide a potential but not an available cure as in the example I gave? What if there are no guarantees and the research could take years? Does the mother still have the right to decide to pursue the creation of SCNT embryos for this research? My answer to this part of the question is, 'Probably yes'. The mother is deciding to allow the use of her eggs and her children's nuclei for research that has the potential to help her living children. Of course some would argue that she leaves herself open in such a situation to exploitation by unscrupulous scientists who will use her motherly desire to cure her children, to conduct research and even for potential commercial gain. That is a possibility.

But this issue is more about creating or ensuring that effective safeguards exist and that those safeguards are so well constructed that this kind of situation does not develop. If it is the case that significant and appropriate safeguards exist, then the above objection becomes less powerful. It in fact becomes a practical, regulatory issue. I believe the legislation has got safeguards in it, and I indicate to the house that as Minister for Industry and State Development I would be very keen to seek to enforce those safeguards, were this legislation to pass.

What of the next step in this argument? What if a mother who feels for the pain of others decides altruistically that she wishes to donate her eggs, not for use in IVF (in-vitro fertilisation) to assist her own children, but to assist other people's children with intractable diseases in therapeutic healing of the sick? She knows that the embryo is to be created for this purpose. She knows that it is illegal and against all her morals for the resultant clone to be allowed to become human so she will not make the donation unless that is actually made clear, which the legislation does. But she also knows that through research or directly through assisting individual patients her donation may be able to cure the sick. Is this morally in a different category to the original example of the mother's right to make a moral choice to use her egg to fertilise that egg from the nucleus of a cell from her sick child and harvest the stem cells to cure her own child? Is it in a morally different space? I am not sure, but I say this: how can we morally agree to the mother's right to make that choice on an individual basis for her own child, but not agree to the altruist's right to try to help cure diseases in perfect strangers? It is a difficult argument to make in opposition.

I will try to sum up. As I have said, I generally subscribe to the Kantian view that all human life is unique and is of equal moral worth. As such it should not be treated as a means, but rather as an end. This is why I support principles of access to the things that enhance our humanity for all members of our society. It is in fact one of the reasons that I am in the Labor Party. In particular, I believe in access to education, health services and respect for human rights. I have said that I believe strongly that as unique human beings we have a right to decide to sacrifice ourselves for others. Indeed sacrifice is the most Christian of all values and the most human too. When an emergency services officer risks his own life to save another it is not because he does not value his own life, it is because he values the lives of others. It is not because he does not value humanity, but rather because he values humanity that he makes the sacrifice.

Similarly, I cannot in all conscience deny a desperate mother and perhaps even an altruist the right to express human charity and sacrifice, whether Christian or otherwise, for the benefit of other humans. The question for me is whether, in expressing such charity or sacrifice, another unique human life or even potential unique human life is harmed. I do not believe that a cloned human embryo is a unique human life, nor do I believe that it has the same moral standing as a unique human life or a unique human embryo.

I will of course wait for the completion of the entire debate, including consideration of the proposed amendments, but after careful consideration and searching my conscience I must say that on balance I am more inclined towards supporting this bill. I might also say that, if the legislation is passed, as Minister for Industry and State Development I will ensure that the research is conducted respectfully. I make this observation, and I express this hope: I hope that if this legislation does come into play it indeed delivers on the hopes of thousands of our fellow humans who may be suffering from difficult and debilitating diseases.

Ms PENNICUIK (Southern Metropolitan) — I rise with pleasure today to speak on this bill. First I thank my colleague Colleen Hartland and our temporary electorate officer, who have conducted the bulk of the research on this bill on behalf of the Greens. In the relatively short time that has been available to us we have worked hard to inform ourselves about this bill and to take into account the diverse range of views about its content. Like all other members, I have received a large number of letters and emails about the bill. I thank all those members of the public who have taken the time to contact me. I have responded to almost all of them but not to those that I have received in the past day or so. I will also respond to them after Parliament rises.

The excellent parliamentary library brief states that, while the new sciences are a global activity moving forward at a rapid pace, a global ethic has yet to properly emerge. The brief details the different approaches taken in many countries around the world, which illustrate that there is no consensus on the approach to the issues before us. I have listened carefully to the debate over the past 24 hours. I commend members for their thoughtful, passionate and respectful contributions. The debate has been very good.

I believe the bill is not faultless and that its introduction and debate has probably been unnecessarily rushed. Perhaps there could have been a process that allowed a better airing of the issues, both in the Parliament and in the wider community, before the bill was to be finalised, because while there has been the Lockhart review and the debate on the commonwealth legislation, it cannot be assumed that the issues are familiar to many people. Indeed the correspondence I have received indicates that that is the case.

I support those who have said that this legislation should have been introduced as two bills: one to amend the existing Infertility Treatment Act and another to regulate therapeutic cloning. Previous speakers have outlined the background of the bill and what it provides for and prohibits. Also well discussed already have been the potential benefits of therapeutic cloning and of research involving adult stem cells and amniotic stem cells. I do not propose to go over those issues. I do not believe this is an either/or situation. All types of research should be pursued if it shows promise in the treatment of fatal, chronic or debilitating diseases and the relief of suffering in thousands or millions of people now and in the future. I support therapeutic cloning for these reasons. I do not consider a cloned embryo which is created by somatic cell nuclear transfer as a potential human being. I consider that cloning for reproductive purposes is rightly prohibited.

Some well-warranted concerns have been raised about the best use of public research funding and health dollars. As parliamentarians we must ensure that public money is spent where it is most needed and we must keep a watchful eye on that with regard to therapeutic cloning. Scientists admit that the benefits of therapeutic cloning are uncertain and that it may be years before the public begins to see any results. However, as many members have noted, this has been the case with many other medical breakthroughs in the past and some of those breakthroughs have saved millions of lives.

It is claimed that the vast majority of eggs will come from women who are undergoing IVF (in-vitro fertilisation) treatment. The report of the Lockhart review noted that women undergoing IVF treatment may be invited to donate eggs for research to allow therapeutic cloning. I fully support the right of women to choose to donate excess oocytes from IVF treatment for use in therapeutic cloning and for other women to choose to donate their ova specifically for use in therapeutic cloning. I consider this to be an ethical, moral and compassionate thing to do. However, I do pay heed to the potential health risks involved, even though those risks may be low. It must be kept in mind that all medical procedures carry a certain risk. If the risk is low, the approach taken is usually to make sure that patients are informed of the risk rather than to prohibit the treatment. The consent guidelines issued by the NHMRC (National Health and Medical Research

Council) stipulate that in order to give consent women must be fully informed of the long and short-term health risks of the IVF procedure. I will make it my business, as should the Parliament, to keep watch on these health risks for women.

The act permits the use of animal eggs only for the purposes of testing human sperm. Eggs may come from rabbits, frogs, or, I have been informed, hamsters. The intent of using animal eggs is to reduce the need for human eggs which is considered by many to be highly unethical. It is also considered that it would be difficult to find a woman willing to donate eggs for testing male fertility.

In my inaugural speech I said that animals are unable to speak for themselves and that it is up to us to look after their interests and ensure that they do not suffer cruel or inhumane treatment. All scientists undertaking testing on animals are bound to comply with the three Rs: reduce, refine and ultimately replace animal testing with non-animal testing methodologies. This is the standard devised by the NHMRC. Scientists must justify why they need to use animals, explain why they cannot use non-animal testing methodologies, and show that they are using the most humane methods with the minimum number of animals.

We should not just assume that this will become the method for testing sperm motility by passivity. Scientists need to prove it is necessary and that alternatives are not available. I will be monitoring this issue if the bill passes.

Mrs PEULICH (South Eastern Metropolitan) — I rise to speak on the Infertility Treatment Amendment Bill. I place on record up front that I consider this piece of legislation to be flawed in many ways and would benefit from members in this chamber utilising the opportunities available to us.

First and foremost, I consider that the consultation on this legislation has been very narrow indeed and that many members of the community have been caught a little by surprise. Certainly the number of emails and other communications each and every one of us has no doubt received point up that to date there has not been full and proper consultation and consideration of this very complex legislation. Therefore I indicate up front that I will be supporting Mr Kavanagh's foreshadowed procedural motion to ensure that as members of Parliament we are better equipped to discharge our duties to our respective communities, even if members agree with the legislation.

What has impressed me about most about the contributions to date has been their respectful nature, even when people have disagreed with others. I guess that is the strength of our Western democracies — that just because we have deeply held differences we do not resort to violent means of settling those differences, as perhaps occurred in previous decades in my country of birth. Some contributions have been a little less respectful. Some have been exercises in intellectual gymnastics rather than anything else, as we heard from Mr Thornley. His was a very academic presentation, but at the end he wimped it and showed that perhaps his aspirations were far greater than the moral values and ethics he espoused in the earlier part of his contribution.

I commend the Minister for Industry and State Development, Mr Theophanous, on his contribution. I thought it was a very carefully constructed contribution with glimpses of real insight, but I was a little disappointed because he spoke about us sacrificing ourselves for others. I just hope the minister, who says he has not made up his mind and will consider all the substantive motions before this house, does not sacrifice his morals for any other considerations.

As I said, the emails and communications I have received have been very passionate, and many members in this chamber have tried to convey those various views, many very deeply held, even those members who disagree with them, including David Davis, who is handling the legislation on the part of the opposition. But when it comes to deeply divisive issues in the community there is often an opportunity to come together to perhaps bridge the differences a little. I do not believe they can ever be fully bridged, but I think there are significant improvements that could be made to the legislation by closer scrutiny and certain amendments. I certainly hope each and every member in this chamber exercises the opportunity of improving it so that those differences of point of view, of conviction, are perhaps allowed to sit a little more comfortably within the framework of this legislation.

I believe the framework of the legislation is also flawed. The title of the bill is the Infertility Treatment Amendment Bill, but what we have here before us is really, in effect, non-therapeutic cloning. The Minister for Sport, Recreation and Youth Affairs in another place, Mr James Merlino, commented that he felt that the amendments we are now considering were predominantly in conflict with the principal objectives of that principal legislation and therefore that placing them into separate pieces of legislation should have been looked at so that that inconsistency, that direct conflict, was resolved.

Perhaps the title of the bill could easily be changed. Maybe there should be separate legislation or it could be called the infertility treatment and non-therapeutic cloning bill to resolve that inconsistency. But I do not believe that would be as effective as placing those pieces of legislation in two separate frameworks. It may have been okay when there was only the use of surplus embryos to deal with, but now that we are actually going into extending that to donations of eggs I believe the framework of the legislation is no longer appropriate.

The substance of the legislation could be much improved. That is conceded in the minister's closing comments in another place. Certainly comments have been made to me by other ministers that it is a messy piece of legislation, to say the least, and that it would certainly benefit from a wholesale clean-up. As evidence of that we can point to the amendments that were introduced into the Assembly, some by the member for Pascoe Vale, Ms Campbell, some by the member for Box Hill, Mr Clark, and some by the member for Burwood, Mr Stensholt. That shows the desire of people who have very deep convictions and are who uncomfortable with the legislation to clean it up and improve it so that perhaps they and the people they represent can sit a little more comfortably with the legislative framework of this particular bill.

I am a member of the Scrutiny of Acts and Regulations Committee. That committee has existed for a long time and very rarely has it brought down adverse reports until this bill. The focus of that was largely the inappropriately signed human rights charter — human rights being an initiative of the Bracks Labor government and something it trumpeted. We now see it as a compatibility statement presented with every bill before both chambers, yet the minister responsible for this particular legislation routinely signed this compatibility statement without really considering the issues that the Scrutiny of Acts and Regulations Committee identified, and I will refer to that a little later.

Another area I believe is flawed is what Minister Theophanous referred to as the safeguards and the implementation. Referred to in the legislation are the draft guidelines from the NHMRC (National Health and Medical Research Council), which many members may not have even received when the bill was first introduced. They are draft guidelines, and I believe it is the responsibility of every single legislator to be comfortable with the set of guidelines before being asked to vote on this legislation. They are in draft form, and I understand the period of consultation has not yet ended. I would feel much more comfortable if I were able to peruse the content of those guidelines before voting on the bill and before consideration is given to any amendments that I might later move. I would like to flag that I will move some amendments should Mr Kavanagh's procedural motion not succeed.

The role of this chamber is that it is a house of review. It performs the role of scrutinising and improving legislation. To that effect we also have the Legislation Committee, and I cannot, for the life of me, see what other type of legislation would be better suited to referral to the Legislation Committee than this. It is a messy piece of legislation, flawed in its consultation process. Anyone who believes in consultation, irrespective of the issue, should consider supporting this process, because next time when you stand up in the chamber on an issue that you and your community are passionate about, criticising consultation periods made available by the government of the day as being too narrow, you want to be taken seriously.

This is one of those issues where consultation should have been greater and more comprehensive, and this could be made more possible by agreeing to the procedural motion Mr Kavanagh has put forward. It would allow many of the bill's inconsistencies and flaws to be removed. Even if a member agrees with the bill — even if they have no concerns whatsoever — they would be able to say to a constituent, 'I was happy to support the referral to the Legislation Committee because I believe your views, which I do not share but have some respect for, deserve full consideration'. If they do not support this motion, one might well ask whether they are effectively representing the full range of views in their community, given the divisions on and depth of this issue.

For me, as for many others, the bill is essentially about ethics and integrity. I am delighted to hear that the Premier has allowed Labor members to have a conscience vote. Unlike the Labor Party, the Liberal Party actually has a conscience vote enshrined in its constitution. I was very impressed that the Premier was so magnanimous as to allow the free or conscience vote. I also understand those who are a little ambitious to get onto the front bench may have pressure exerted on them to support the legislation in view of the fact that the Premier has voted for it. I certainly hope they resist that. The bottom line is that Steve Bracks is not going to punish a member for the views they hold; he will assess them for the person they are, what they bring to the table and the strength of their convictions. Any person who is prepared to trade off their morals and ethics for some other consideration does not merit being on the front bench. I hope the ability to have a free and unfettered vote extends to all processes of the

debate on this bill, and we will see whether that is the case.

In the lead-up to the state election the Australian Christian Lobby — an amalgam of various groups — created forums to give candidates from all political parties an opportunity to share their views on contentious issues with those in attendance, to whom issues of morality and conscience were very important. What was impressive was that those members of Parliament — including some from the Labor side of Parliament — who said, 'I hold a different view, and these are the reasons' were accorded every respect. Each and every one of the Labor members said they had the ability to vote according to their conscience on these issues. Next time, if party discipline is enforced on processes affecting the passage of or debate on this legislation, they will not be in a position to say that. They will not be able to say with any credibility that the Labor Party respects the conscience of the individual.

My concerns about broadening the scope to conduct medical research stems from an ethical base and a question about the sort of world we wish to live in and leave not only to future generations but also to future civilisations. I do not want to go into an academic treatise or philosophical dissertation, but whenever I think about reproductive technology I think of the very first novel that moved me and developed my social conscience as a student. That was in year 10, when I read a novel called *Brave New World* by Aldous Huxley, which was printed in 1932. It is set in London in the year 2540, and it anticipates developments in reproductive technology and biological engineering. It frightened the daylights out of me. It seemed to me to be a fantastical projection into the future.

I know that members of this chamber and others have derided the slippery slope argument, but we must make sure we protect the moral base, the ethics on which we base our legislative framework. I do not want to live in what Miranda described in Shakespeare's *The Tempest* as a 'brave new world' with such people in it — people of perfection, perhaps people who are ageless until the time of death, who are size 8 despite having borne four children or who have designer babies. That is not to say that I am not compassionate and that I do not wish people with genuine diseases, including degenerative diseases, to be assisted through scientific research and the ability to treat these diseases. The bottom line for me is that we should support scientific research which advances our ability to improve people's quality of life, but at the same time we should protect the integrity of the egg. That is the basic principle I have used to decide how to vote on this legislation, and I will be voting against it.

With the mechanisation of reproduction in *Brave New World* the citizens of the world state did not reproduce naturally and were taught to view natural reproduction as a primitive act. Society was very rigidly divided into various classes — alpha, beta, gamma and epsilon — and they were subdivided further into categories such as the pluses, minuses and morons. All children were created from embryos grown in factories. Production of embryos was planned according to the economic capacity of society and the like. The womb was replaced by the artificial life support mechanism referred to as a bottle. Significantly each individual's destiny was determined long before he or she was decanted.

I do not want a brave new world that we as a society and humanity will regret. I support IVF (in-vitro fertilisation) and organ transplantation which support and enhance life. Support of IVF treatment in the community is high. I want scientific research to advance the treatment of prevalent and degenerative diseases. Who would not? For me it is a question of protecting the ethics and advancing the needs for scientific research to assist and improve the quality of life of man. I have been concerned pretty much all my life about scientific research dictating ethics rather than the other way around.

To hark back to the book, *Brave New World*, the world controller, Mustapha Mond, said:

> that all our science is just a cookery book, with an orthodox theory of cooking that nobody's allowed to question, and a list of recipes that mustn't be added to except by special permission from the head cook.

I am a supporter of knowledge, science and technology, but I am also a strong supporter of making sure we protect our humanity, however flawed it may be. Creation of life for any other purpose than to achieve pregnancy is to me ethically unacceptable. There have been regimes in the history of our civilisation that place the intrinsic value of human life below that of other considerations. We have heard Mrs Kronberg allude to some of those. As a person whose own family members suffered in various concentration camps, I will not revisit those examples any more vividly. Human sacrifice in pagan religion was an extreme example as were the horrendous experiments that Mrs Kronberg referred to.

It is interesting, however, how the moral framework becomes relative and how moral arguments shift. Listening to Mr Thornley I was hopeful that I would agree with him for the first time and he was going to be consistent. I really struggled to appreciate the quality of the argument, which was predominantly academic

rather than one based on his ethics or his appreciation of an ethical or moral framework.

It is a slippery slope. In 2002 the federal Parliament voted against cloning. The Prime Minister decided not to go forward with legislation following the Lockhart review, but, as we know, Kay Patterson, the former health minister, introduced a private members bill and a majority of members in the House of Representatives and the Senate agreed with that legislation. Here in the Victorian Parliament we are making further inroads into the ethical safeguards of the previous legislation which restricted research to the use of surplus embryos from IVF treatments.

The in-vitro fertilisation program has been successful in allowing childless couples to enjoy raising children of their own. I acknowledge the need for appropriate experimentation to develop cures for a number of degenerative diseases. But I am not sure that this legislation is something I can support in view of my strong ethical and moral concerns about how far we go in allowing what is known as therapeutic cloning. That is a misnomer because 'therapeutic' implies a direct benefit of such research. It is unlike organ donation where perhaps a member of the family can donate something that will enhance the quality or save the life of a loved one and is a direct benefit.

The legislation certainly allows greater scope for researchers to experiment and to have the opportunity to develop knowledge that may or may not ultimately enable the development of treatments for a range of diseases. To create life for the explicit purpose of scientific research is a line I am not prepared to cross. I certainly hope that members in this house will respect that line by at least supporting the referral of the bill to the Legislation Committee if not by voting against the bill. I have already canvassed the substance of the issue being in conflict with the principal objectives of the bill. I believe in actual fact this must be addressed by the government, and had it been subjected to the usual consultation processes that could have been easily resolved.

Proponents argue that SCNT (somatic cell nuclear transfer) creations are mere human tissue. I understand that SCNT technologies are permitted in the United Kingdom, the United States of America, Sweden, Singapore, Japan, India, Israel and China. SCNT involves merging an unfertilised egg with a patient's somatic cell, which is any body cell other than sperm or an egg. Proponents argue that SCNT is not about the creation of an embryo to become a new human being. There is no fertilisation or merging of an egg with a sperm. Amendments to the act prohibit the implantation of such an egg into a uterus, or reproductive cloning. However, in evidence presented to the Scrutiny of Acts and Regulations Committee, Professor Skene, a proponent of the legislation, conceded that after day 14 there is potential for that embryo to grow to full development. She certainly did not rule that out as a possibility. Embryos are not just human tissue. SCNT procedures do not preserve the integrity of the egg as they involve the implanting of nuclear material of one cell into an egg whose nucleus has been removed. If it were not destroyed after day 14, it could develop into a clone, as was the case with Dolly the sheep.

I do not believe there are sufficient legislative safeguards and regulation applying to researchers nor that their rights to accessing licensing conditions are well structured and have a history of effective operation elsewhere. The recently released ethical guidelines are still in draft form. This house and members of Parliament have not had the opportunity of assessing them. I have concerns in relation to the draft guidelines. We have not had the opportunity to ensure that those safeguards exist, and that what is in the draft guidelines will translate into the final version.

There have been other arguments in support of this legislation based around minimising the rate of rejection of transplants and regarding treatments. I do not profess to be a scientist, but, from other information that I have read that has been widely circulated by members of Parliament and by experts, there appear to be few guarantees that this relatively new science of somatic cell nuclear transfer will deliver the cures and it seems that the rejection of tissue still remains an unproven benefit, although I accept that may change in the future.

I turn to the concerns raised by the Scrutiny of Acts and Regulations Committee. An *Alert Digest* usually covers the investigation of a bill that has been undertaken by the committee and the people who support that committee. In this case there were a number of committee hearings held and submissions taken, including from Professor Skene and other experts. The content and comment on the bill provided in the *Alert Digest* report gives an overview of the legislation and generally comes to a conclusion about the policy of the government and whether the legislation meets the guidelines set down. Generally the concluding comment is that the committee has no comment to make. However, in the case of this legislation the committee went further. I support the actions taken by the committee and its comments, specifically the comments about the bill's effect on the Charter of Human Rights and Responsibilities. This is one of the major concerns I have.

I shall quote a couple of paragraphs from the report of almost four pages that was prepared by the committee. It states:

> The committee considered the difficult question of providing a definition of 'human being' for the purposes of the charter right and concluded that as this area of law involved fundamental questions of ethics and personal conscience the committee would instead, refer for Parliament's consideration the question of whether any of the provisions of the Infertility Treatment Amendment Bill 2007 tests or infringes upon the 'right to life' within the meaning of the charter.

The report goes on to refer to section 10(c) of the charter, and one paragraph states:

> An egg donor for stem cell research is subject to the same treatment as an egg donor for IVF treatment. However, the reason for the donation is quite different, SCNT is to advance medical knowledge rather than reproduction. Egg donation after induced ovulation presents certain risks to the donor and the aim is non-therapeutic scientific research.

This report expresses serious concerns that need to be addressed. The committee considered that there were human rights concerns regarding issues of consent and relationships of dependency. The report goes on to say:

> The committee resolved to write to the health minister outlining these concerns and seeking further information concerning the following matters …

We still have not received those responses from the minister. If members of this chamber were given adequate time to consider all of those issues, maybe that information would be forthcoming. Basically there were six issues the committee listed for referral to the minister. I again quote from the report:

> … the statement of compatibility ('statement') provided by the minister introducing the bill states that no human rights issue is raised by the bill.

That is clearly wrong. In the last part of the report the committee indicated that it would write to the minister raising issues. I seem not to have printed out those issues, but they are the issues I have alluded to earlier in my contribution.

In her concluding remarks in the second-reading debate in the Legislative Assembly the minister also said:

> Real life for me is about reaching our full potential, about engaging in meaningful relationships with each other, about giving and receiving love and about enjoying family and human relationships.

Mr Thornley said in his contribution that a human being exists when there is a body and a brain, and that when the brain is no longer active the person no longer exists. As a person who nursed her own father in the lead-up to his death — he was receiving palliative care at the age of 63 — let me say that his brain may not have been there but he was indeed a human being. I reject that argument outright. Real life is related to the potential for life, and there is irrefutable evidence that if the destruction of the SCNT embryo does not occur on day 14 the potential for life has the capacity to develop.

The reasoned amendment moved by Mr Finn has merit. This issue should be separate from the infertility legislation, and perhaps the government should have thought of that before bringing the bill before the Parliament. The amendment is reasonable, and I intend to support it. Should that amendment not receive a majority of votes in the house, I look forward to Mr Kavanagh moving his amendment that the legislation be referred to the Legislation Committee.

Further information will be forthcoming, including the NHMRC (National Health and Medical Research Council) guidelines that have been brought to attention, the answers from the minister to concerns raised by the Scrutiny of Acts and Regulations Committee and basically efforts to move a series of amendments that would improve their legislation. The issues would include eliminating the inconsistencies in the definition of an embryo, the consideration of amendments that would prevent the use of eggs from aborted embryos or foetuses, the creation and use of hybrid embryos; issues pertaining to full and proper consent and the need to establish an adverse events register.

We should be putting into legislation the principle that if there is anything other than a low-risk involvement in non-therapeutic procedures there should not be a dependent relationship between the person making the donation of a gamete and the person or body conducting the research. The Legislation Committee can deal with a whole range of anomalies to improve the legislation to ensure that safeguards are in place so that even people like me, Mr Kavanagh and Mr Finn can feel more comfortable about it.

I also understand that a federal review is under way. I have referred to a whole range of issues that I think would merit deeper consideration. They include the ethical framework, including the capacity to preserve the integrity of the egg with no destruction of the embryo; definitions; the legislative framework regarding the need to separate the one bill into two; the regulation delegated to the NHMRC; and oversight, including the risks of harvesting and donation of eggs with evidence suggesting that the risks to fertility among young women being fairly notable. In fact Professor Skene, in an answer to a question, stated that the advice she would give her daughter if she were

considering altruistic donations of her eggs before she had completed her family would be not to do it.

There are issues of consent and the risks of harvesting which have been referred to at length beforehand. We have received huge volumes of communication — emails, handwritten letters, form letters and telephone calls — representing the genuine concerns that have been raised by a lot of people in our communities.

There is a lack of time and expertise to canvass all of the issues in this forum, but those issues mandate the closer scrutiny that would be made possible by a reference of the bill to the Legislation Committee, which in turn has been made possible by reforms made to this house by the government. If that is ruled out, then we will have lost the moral high ground. If there is a piece of legislation that better warrants the use of the democratic forms of this house, then someone should point to it, because I do not believe that it exists.

Dr Samuel Johnson said:

> He is no wise man that will quit a certainty for an uncertainty.

For me, there are many uncertainties. I wish to be wise, and I hope other members will respect that many of us have many concerns that need to be addressed, and the best way to do that is by supporting a move to the Legislation Committee or through amendments.

In conclusion, I was taken by the story of Glen Sheppard highlighted by Neil Mitchell on 3AW. Glenn is a young man with Down syndrome and autism. He only started communicating at the age of 16. Most people in his life, including his mother, did not believe there was any sort of functioning happening. In fact he describes in the two books he has written since that his mind was like soup. Miraculously things happened. Things do happen miraculously in life, and this young man has written two books of poetry and is studying creative writing at university. Who is to say that the SCNT embryo does not have the potential for life, however flawed or imperfect?

The greater a man's talents, the greater his power to lead astray. I urge the Bracks Labor government to make sure that they do not lead the community astray.

Sitting suspended 12.54 p.m. until 2.03 p.m.

Business interrupted pursuant to standing orders.

ABSENCE OF MINISTER

Mr LENDERS (Minister for Education) — I rise to advise the house that my colleague the Minister for Community Services is running about 15 minutes late. He is at a medical appointment. He will be here during question time, so I urge any members wishing to ask him a question to wait until later in question time.

QUESTIONS WITHOUT NOTICE

Tiger Airways: head office

Mr D. DAVIS (Southern Metropolitan) — My question is to the Minister for Industry and State Development. The Liberal Party welcomes the announcement that Tiger Airways will be based in Melbourne and has met with Tiger to indicate its support for a Melbourne base. I ask the minister: did the government offer to waive or reduce the international insurance stamp duty levied on Singapore Airlines as an incentive to secure the Tiger Airways base for Melbourne?

Hon. T. C. THEOPHANOUS (Minister for Industry and State Development) — I thank the member for his question. Perhaps I should respond by saying that I will be happy to answer a serious question about Tiger Airways if I am asked about the actual delivery of this very important initiative for investment in Victoria. What I can say, though, in relation to what has been asked of me by the member, is that he seeks somehow to gain some credit for himself in relation to this important decision of Tiger Airways to come into Victoria. We understand how David Davis operates on these issues and as shadow minister in his portfolio.

Mr P. Davis — On a point of order, President, before the minister gets too carried away with his own rhetoric, I remind him that he is answering a question about airlines in Victoria, and it is not appropriate for him to be reflecting on another member of the house.

Hon. T. C. THEOPHANOUS — On the point of order, President, the member specifically mentioned in his question to me his role in meeting Tony Davis — —

The PRESIDENT — Order! I am prepared to rule. I am satisfied that the minister is in order in answering the question. I do not see any personal attack to the extent that would concern me. There is certainly nothing overt about his comments with regard to David Davis's question. I again say to Philip Davis that I do not find anything, to date, that is out of order.

Hon. T. C. THEOPHANOUS — Thank you, President. The member has asked me a question, and in that question he referred to his meeting with Tony Davis. Can I just say that it was when David Davis heard on the grapevine that the government was getting

close to getting Tiger Airways to come to Melbourne that he decided to take this action. He did not ring me or anyone in the government to offer any assistance. He did not do any of those things. Instead, he desperately jumped in to get a meeting with Tony Davis so that he could somehow claim credit for this initiative.

I know Tony Davis very well. He is a very courteous man, and he met with David Davis on this issue. He met him here in Parliament House. I do not think David Davis even offered him a cup of tea, let alone a Tigers football jumper. How pathetic! I wonder whether David Davis would have tried to get a meeting if he thought that the government was going to miss out on this. There is no way he would have tried to get a meeting, because he was not trying to help. He has never tried to help the government. Instead what he was trying to do was undermine it, and find out whether there may be some reason why we would not get this deal. He was trying to find out whether he was able to position himself to bag the government if the deal did not come through.

Let me say this in answer to the honourable member's question: in my view it was a selling point when I told Tiger Airways that David Davis was not likely to be in government to have to implement any of the initiatives. I think what got Tony Davis over the line was not the football jumper I gave him, but rather it was telling him that David Davis was not likely to be the minister any time soon. That probably helped. So I want to thank David Davis for his contribution in — —

Mr Atkinson — On a point of order, President, I think Mr Theophanous is skirting some of your earlier rulings because he has resorted to ridicule. It is also very clear that he is misleading the house because there is absolutely no way that he entertained this line of commentary with Tiger Airways; it would be absurd to suggest that he had. I suggest that he is trivialising this matter and flouting some of your earlier rulings.

Mr D. Davis interjected.

The PRESIDENT — Order! Thank you for that, Mr Davis. I do not agree with Mr Atkinson. Given the precursor to the question in terms of Mr Davis referring to the fact that he had meetings with the airline, the minister is allowed to expand on all sorts of issues with regard to the meeting he had. So I am comfortable with where we are at the moment.

Hon. T. C. THEOPHANOUS — Of course the honourable member went on, as he always will, to ask me a further question in relation to the taxation issue on which he has consistently misled the house by calling it a new tax when he knows it is an existing tax that applies right across Australia — —

Mr D. Davis — On a point of order, President, the minister suggests that I have misled the house and that is false. I have not misled the house. It is a tax that the government did not levy until last year.

The PRESIDENT — Order! Mr Davis knows full well that he cannot debate his point of order, although he may get points from some of his colleagues for trying. The fact is that he did raise the matter with regard to taxes in reference to Singapore Airlines. Mr Davis asked the question. He may not like the answer, but the minister is able to expand his answer in the way that he is.

Hon. T. C. THEOPHANOUS — I thank you for your ruling, President. The line that David Davis continues to push in relation to taxation is not true. It is in fact the case that this is not a new tax. David Davis knows it is not a new tax, but he continues to say that it is somehow a new tax. It is simply the implementation of an existing set of arrangements.

Beyond that, he asked me about Tiger Airways and its application to this tax. It just shows how much David Davis knows. I do not know whether he picked this up in his meeting with Tony Davis, but for his information Tiger Airways is going to come here as a domestic airline. It is going to be flying around Australia. It is going to be a new third domestic airline. Whether Mr Davis wants to call it a new tax or an old tax, it does not apply to domestic airlines. In fact the same question was asked of Tony Davis this morning by a journalist, and he gave the same answer as I am giving, which was, 'It does not apply to us'. So it is not an issue from the point of view of Tiger Airways. This is the level of research that the opposition member does. He gets up and asks me a question. First he says something which is obviously a lie, that the — —

Mr D. Davis — On a point of order, President, the minister has accused me of telling a lie, and that is false.

The PRESIDENT — Order! Consistent with my previous statements on the issue of accusing people of lying, being liars or telling lies, I have to ask the minister to withdraw his comment about the member telling a lie.

Hon. T. C. THEOPHANOUS — I am happy to withdraw and to say what the member keeps coming into the house and saying is not true; the comment is not true. Not only is that comment untrue in the context of the question he has asked me, it is not only untrue for

that, but it does not even apply. How stupid is that, President?

Mr Drum — On a point of order, President, I am just waiting for the answer. The question quite clearly asks whether this applies to Singapore Airlines.

The PRESIDENT — Order! There is no point of order.

Hon. T. C. THEOPHANOUS — The member must be very confused because he asked about something to do with Singapore Airlines, and then asked about Tiger Airways. For Mr Davis's information Singapore Airlines is a different airline to Tiger Airways. It is completely independent of, and in fact competes with, Singapore Airlines. The two have nothing to do with each other in relation to this bid. So the basis of his question is not true.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — The minister has failed to acknowledge that this tax is an impediment to international airlines operating in Victoria. Is the minister aware of concerns expressed by the board of Airline Representatives of Australia that this tax is undermining Victoria's international competitiveness?

Hon. T. C. THEOPHANOUS (Minister for Industry and State Development) — Tiger Airways will be flying around Australia as an Australian airline. It will be flying all over Australia. Initially it will come in with five planes and it will expand to more than that. It may well even fly internationally; in fact I think it probably will finish up flying internationally. It has not expressed a view that there is any impediment, and in fact the tax which the honourable member keeps talking about as a Victorian tax is not even a Victorian tax only. What it is is an agreement by all of the states that they would apply this particular charge — —

Mr D. Davis interjected.

The PRESIDENT — Order! Mr Davis has asked his question. Let us hear the answer.

Hon. T. C. THEOPHANOUS — What David Davis knows very well is that this is in no way, shape or form an impediment to what happens in the airline industry in this country. His party, and especially the national Liberal Party, is the major impediment because the national Liberal Party continues to support a position of non-liberalisation of the skies. That is the real impediment. If we want to talk about impediments to airlines coming into Victoria there is only one major impediment, and that is that they are not allowed to because of Mr Davis's federal government colleagues who keep with a policy of supporting a closed-sky approach. We do not support a closed-sky approach. We support an open-sky approach, and Mr Davis should too.

Tiger Airways: head office

Mr LEANE (Eastern Metropolitan) — Like David Davis, I am also a big fan of the Minister for Industry and State Development in his work in and support of the aviation sector. I would ask the minister to inform the house of any recent developments that will see Melbourne benefit from new investment in the aviation sector.

Hon. T. C. THEOPHANOUS (Minister for Industry and State Development) — I want to answer this question by first of all saying that over the last few months I have answered questions in the house in relation to the aviation industry in Victoria, and I have been pleased to announce good news in the aviation sector, not just in relation to Tiger Airways. I have announced important decisions such as the Indian Airlines recent decision to also fly into Melbourne internationally. So we are working very hard with the airline industry in order to increase the number of flights that come into Melbourne and to make Melbourne — —

The PRESIDENT — Order! I am a little reluctant to disrupt the minister's answer to a very important question, but the prop that he has on the front of his desk — while I am a Tigers supporter, and we all know that — is not on. I ask the minister to remove it.

Hon. T. C. THEOPHANOUS — President, does that also mean that the scarf is not acceptable? In deference to you, President, I am not going to use the Tigers— —

The PRESIDENT — Order! The minister tempts me so.

Hon. T. C. THEOPHANOUS — But I could come over and hand it to you, President. Would that be acceptable? Having had the Tigers football club scarf confiscated, I am now able to actually talk about Tiger Airways. Of course it was a bit difficult for me to have the Richmond Tigers brand, because as a Bulldogs supporter I am only prepared to be a tiger for a day.

On a serious note I want to inform the house of the importance of this decision that has been made by Tiger Airways. Tiger Airways is the fastest growing low-cost

carrier in Asia, and it has decided to make Melbourne its home.

An honourable member interjected.

Hon. T. C. THEOPHANOUS — That is right, it has decided to make Melbourne its home after having considered the bids of a number of other places, a number of other cities, and I might say that the competition was very stiff in trying to achieve this. Also I believe that at the beginning of this process Melbourne was not the favoured or the favourite city. We had to do a lot of work with Tiger Airways in order to get it over the line and get it to ultimately decide to come to Melbourne.

As the minister responsible for putting forward Victoria's bid, I am pleased to be able to inform the house that this decision will create in the order of 1000 local jobs and provide extra air services to Victorians and visitors to the state. This is what competition is about. This is how it helps Victorians.

It will result in Victorians getting unprecedented access to low-cost flights connecting them across Australia and potentially, I believe, across the world. It will mean much greater affordability. The estimates of Tiger Airways are that somewhere between an extra 1 million and 2 million travellers will use the airline's badge to travel around Australia. That is a lot of extra flights — 2 million extra flights! That means that a lot more people are going to be travelling, because the estimates are that these 2 million flights will not be simply taking up the flights that would have occurred on other airlines. What it actually means is that many people will take the opportunity to travel interstate in a way that they did not travel before.

The truth about domestic airlines is that even though we had some low-cost carriers come in, prices tended to drift upwards, and it is now the case that it is not cheap to travel throughout Australia even using lower cost airlines like Virgin or Jetstar. The costs are still significant. Many people from other states make the decision not to travel interstate, within Australia, and spend their money within Australia. They make the decision to go into Asia and to other parts of the world partly because the airfares are comparably, in terms of distance, significantly cheaper than what they are to travel within Australia. It is very important to understand how important this will be to our tourism industry.

When Tiger Airways starts flying here later this year, more than 60 per cent of all available seats in and out of Melbourne will be on low-cost carriers. This is the highest proportion of low-cost seats of any city in Australia. The city that will benefit the most by this is very clearly and squarely Melbourne. Melbourne will have access to the largest proportion of the low-cost airfares; Melbourne will get 1000 extra jobs arising out of this decision. Beyond that, the business case and the commercial way in which this airline is going to run is such that it will fly its planes out of Melbourne and bring them back into Melbourne at night. It will very much be 'Melbourne is the hub'. Melbourne will be the place from which this airline will be running throughout Australia.

I believe there is a lot of potential for this airline. For those who do not understand the airline industry, one of the critical factors is that domestic airlines are able to get into the international competition free of the constraints the federal government has imposed in relation to overseas travel. If you are a domestically based airline, you are able to fly to international destinations without suffering the constraints of the closed skies policy of the federal government. That is a very important consideration. If Tiger Airways manages to build its operation successfully, centres itself in Melbourne, manages to build from its 5 initial aircraft to 20 or more and then decides to go international, it will offer absolutely the best possible competition on those international routes. It will be competing with Qantas, other international carriers and Virgin Blue.

This is an exciting day for aviation in this state. It is an exciting day because this means we will have what we hope will ultimately become Melbourne's own airline, an airline which will be recognised as being Melbourne's own and one which will not only take Melburnians all over Australia and bring people into this state but will also take us all over the world.

Planning: complaint investigations

Mr BARBER (Northern Metropolitan) — My question is to the Minister for Planning. It relates to a matter raised by a constituent in a letter sent to me and the minister. The matter, as it happens, is in regard to the approval of a planning permit for a motorcycle path on a property. At least one of my constituent's concerns was that that application was treated as buildings and works associated with a dwelling. I do not want to ask the minister about the particulars of the matter, which is on its way to the Victorian Civil and Administrative Tribunal in any case, but about the department's response to my constituent's letter. The department basically said my constituent should either deal with the matter at VCAT or take it up with the Ombudsman. My question to the minister is: in light of some of the

problems we have had with breakdowns in the planning system with a couple of councils lately, is it really the case that the department never takes on a matter that is referred to it directly by a constituent? Does the department treat VCAT and the Ombudsman as its only integrity mechanisms or will it investigate matters in some cases to ensure that proper processes have been followed?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Barber's question. He raises a number of interesting issues in terms of not only planning outcomes but also the planning process. As I have mentioned on a number of occasions in this chamber, the implementation of the planning regime across Victoria is predominantly delivered by local government, and that is a good thing. I think local government has a good handle on these issues. As I have said on a number of occasions, some local governments do that much better than other local governments. We understand why that might be the case, and we are trying to work collaboratively to assist some of those councils. I will be making some other announcements to assist local government in the way it may or may not deal with respective matters.

Where matters are dealt with by local government, the mechanism is to allow local government to deal with those matters. If there are objectors or if the council fails to make a decision and it ends up at the Victorian Civil and Administrative Tribunal, then VCAT is normally the best location for determining that matter. VCAT is the independent umpire in many of these matters.

However, Mr Barber raises an interesting issue about the role of the department in some of these issues at a local level. It is not for me to determine implementation at a local level or how much interference by the department at a local level should or should not take place. I would expect it would be the role of the departmental secretary to work through how that may or may not take place. However, I have encouraged the department to work collaboratively across the planning system. I have encouraged officers to try where there is an opportunity to seek a resolution without having matters exacerbated or inflamed, because where that happens within the planning system it is of great disadvantage to all parties.

I am conscious of the matter the member has raised today because he has provided me with the letter signed by an acting manager in one of the regions. I am happy to follow up and inquire about that. As I mentioned before, I am very keen that all stakeholders within the planning process, including local government, try to seek resolution collaboratively in relation to many matters, as opposed to saying no first and asking questions later. I have encouraged the departmental secretary to have the departmental culture be one where we actively engage to seek resolution proactively and collaboratively within the community rather than heightening people's anxieties by having a planning process that is potentially confrontational instead of collaborative.

Supplementary question

Mr BARBER (Northern Metropolitan) — The other role of the minister's department is that of a referral authority. According to the account of this person, the Department of Sustainability and Environment did not visit the site and may not have had the correct plans. Does the minister carry out any audit or quality assurance with respect to DSE's role as a referral authority where it is directly involved in a large number of planning matters?

Hon. J. M. MADDEN (Minister for Planning) — I again welcome Mr Barber's question in relation to these matters. Basically the technical implementation of many of the roles within the department is overseen by the departmental secretary. I am happy to make inquiries in relation to the technical matters Mr Barber has raised. If there is insufficient involvement or engagement, I am sure the departmental secretary will be eager to improve quality control. I am happy to ask questions of the department and the officers involved in the context of the letter the member put on my desk today.

Budget: schools

Ms DARVENIZA (Northern Victoria) — My question is to the Minister for Education, John Lenders. I know the Bracks government is meeting future challenges and investing in services in rural Victoria. Could the minister please outline how this year's budget initiatives are supporting schools in regional and rural Victoria to deliver excellence in Victorian school education?

Mr LENDERS (Minister for Education) — I thank Ms Darveniza for her question. I will share with the house the note Mr Jennings passed to me asking where the Molonglo is. For one moment I thought he did not know, and then I realised he was provoking me.

Ms Darveniza asked a question about what we are doing for resources in rural Victoria. I am delighted to be able to say that as part of the budget delivered by the Treasurer on Tuesday there is an enormous injection of

resources into regional Victoria. In fact, $123 million has been allocated in this budget to replace, modernise and rebuild schools in regional and rural Victoria. Members of this house who either represent constituencies in regional Victoria or have grown up in regional Victoria will know the importance in regional Victoria, more so than in Melbourne, of the local school, not just as a place of educational learning but as a community centre. It is an investment in that community and a statement of faith by the state that that community has a place. We know that most of the 300 schools closed by the Kennett government between 1992 and 1999 were in rural Victoria. That caused devastation to communities. We are restoring resources to regional Victoria.

Some $58 million of that will go to modernising 18 schools in regional Victoria, with $8.3 million to build replacement schools at Grevillea Park Primary School in Ballarat, stage 2, and Skene Street Special School in Stawell. Those are just two of the schools. There is also $13.5 million to secure the future of six regional schools and replace relocatable facilities with new permanent buildings. We should reflect back to those years 1992 to 1999. What happened was that because the state was not prepared to invest in regional small schools, as a temporary measure often a group of portables were lobbed there. Now this program in these six schools, which are Harcourt Valley, Lethbridge, Drouin West, Toora, Trentham and particularly Mooroopna North, which would be very near and dear to the heart of Ms Darveniza — —

Ms Lovell interjected.

The PRESIDENT — Order! Ms Lovell!

Mr LENDERS — I will take up Ms Lovell's interjection: what about the next school? We have committed $1.9 billion to reinvest in our schools and we will roll out that investment for every school in Victoria in the next 10 years — if we are re-elected after four years we will complete it. But in this four years we will do 500 schools. We will invest in schools. These particular schools are but the first six of these clusters of relocatable classrooms that are being converted into permanent schools in Victoria. Ms Darveniza will be rejoicing for all schools in regional Victoria but particularly for Mooroopna North, because I know she is a Shepparton girl at heart — has always been and always will be.

Also $43 million will be made available to commence regeneration projects in Bendigo — Mr Drum will rejoice in that because he has a fantastic school, Bendigo Senior Secondary School, that with regeneration will be supporting the four junior secondaries and some of the primaries in Bendigo — in Wangaratta, which I am sure will please Ms Lovell; at Western Heights Secondary College in Geelong; and at Colac College. Mr Vogels will be very pleased about Colac, but I must declare a conflict of interest because the principal of Colac High School was my geography teacher at Trafalgar High School; I am somewhat intimidated by Mike Holland, the principal there.

Hon. J. M. Madden interjected.

Mr LENDERS — He taught me well, Mr Madden. What we have is $43 million for those revitalisations. I could go on about other issues, but I am conscious that if I cannot succinctly say it in 4 minutes I should not say it. I invite every member of the house to look at the budget papers. It is a great story. There is more to be done, but this is the biggest investment in regional schools in the history of this state.

Budget: debt

Mr RICH-PHILLIPS (South Eastern Metropolitan) — My question is to the Minister for Education in his capacity in this house as the representative of the Treasurer. I refer to the minister's statement yesterday in relation to the budget that it would be an absolute disgrace if this government were to commit beyond the four-year estimates period and bind governments into the future. Given the minister's statement, why has the government rejected the Public Accounts and Estimates Committee's recommendation that time frames for concession deeds on new PPPs (public-private partnerships) should be reduced to limit the impact of debt repayments on future governments?

Mr LENDERS (Minister for Education) — I thank Mr Rich-Phillips for his question. It is a technical question on a particular part of the Treasurer's portfolio which I will take on notice. I will be delighted to assist him and the house with some of the more general areas of the government on economic management. But I restate that if we are talking about accountability — and it goes to Mr Rich-Phillips's question — this government has, firstly, invested the Auditor-General with powers unparalleled in the Western world. We are in fact a beacon for the Western world. On to the question of accountability and how we report on these matters, we have also empowered the Public Accounts and Estimates Committee, of which Mr Rich-Phillips is a member, with the capacity to interview every minister in this government.

Again, I contrast that with the previous government, where it was a spasmodic attendance; in fact the then

Premier did not attend and his parliamentary secretary at the time, Mr Forwood, actually chaired the Public Accounts and Estimates Committee. Going to Mr Rich-Phillips's point, we have a Public Accounts and Estimates Committee where Mr Rich-Phillips will have the option to actually ask the Treasurer these questions, face to face, person to person, for a full 3 hours, if that is what the committee wants. It is a level of accountability we have not had before.

Also, I remind the house that on the issue of accountability — and new members of the house may not be familiar with this, but I have addressed the house on it in the previous Parliament — the *Australian Financial Review* of 15 February 2003 in its editorial said that the Bracks government was 'too transparent' because we put out too much information.

I am delighted to take on notice Mr Rich-Phillips's question to the Treasurer. I assure him that he will get a prompt reply; but if he does not, he can ask the Treasurer either tomorrow, if that is when the hearing is, or at whatever time the Public Accounts and Estimates Committee meets the Treasurer. The member can ask the Treasurer himself and he will get an answer from the Treasurer. It will be an answer that puts into perspective a budget that is in the black, is consistently in the black; that is a model for the rest of the country; that is delivering infrastructure and delivering services in a prudent way — and again I can hear the voice of Mr Eren, now the member for Lara in the other place, saying, 'AAA, here to stay', because that is where we are.

Supplementary question

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I thank the minister for his response and his referral to the Treasurer for the substantive answer, but I note that the minister has not responded in relation to his comments yesterday, and I seek his confirmation as to whether he stands behind those comments that 'it is an issue, an absolute basic constitutional law, that a government not bind a future government beyond the estimates period'.

Mr LENDERS (Minister for Education) — I love talking accounts with Mr Rich-Phillips. I miss my days as finance minister. I enjoyed the four years when we sparred across the chamber, but I am conscious that I need to remember I am Minister for Education and only representing the issue here — and I represent the Treasurer with great delight. What I would say to Mr Rich-Phillips is this: on the issue of whether a Parliament can appropriate to bind its successors it is a fundamental principle of constitutional law that a parliament does not bind its successors in the appropriation.

In matters of contract law, I will see if I can recall an example in Victoria. Let me scratch my head and remember a man called Alan Stockdale. If I recall, before he became a lobbyist he actually signed contracts on behalf of the state of Victoria for CityLink for, if I can refresh my mind — through you, President; was it 35 years, Mr Jennings? — 35 years. And if I can recall, on the issue of binding the state, the same Mr Stockdale, who had an acolyte called Mr Rich-Phillips, leased the railway system for — let me recall — 99 years?

This government is very conscious that, if we are going to sign contracts for 99 years — particularly dud contracts that do the state down the line — and if we are going to sign contracts for tunnels for 35 years without actually checking some of the financials, the accountability of this government to an Auditor-General or to a Public Accounts and Estimates Committee (PAEC) or to the Parliament on these issues, let alone to the broader public, is unprecedented. There is always more to be done. The government welcomes dialogue with the PAEC as to whether we can do this better. I look forward to Mr Rich-Phillips's contribution. This is an important policy area, but I cannot but contrast the present with the dim, dark, gloomy past of the Stockdale years.

Budget: rural planning strategies

Ms PULFORD (Western Victoria) — My question is to the Minister for Planning. Can the minister advise the house how the $500 000 budget allocation for rural strategies will assist rural councils to protect productive agricultural land and tackle some of the challenges facing councils, such as drought, fire and reduced water supplies?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Ms Pulford's question. I know that she has a specific interest in this matter and that, being a representative of a quite substantial rural electorate, she has had this matter raised with her on a number of occasions on her travels around the local councils in her region, because she has raised the matter with me. It is very pleasing to be able to complement her question with the answer that we are delivering resources to municipal governments right across rural Victoria. Planning controls in rural Victoria are just as important as planning controls in metropolitan Melbourne or even suburban Melbourne.

I know local government in rural Victoria is as conscious as metropolitan councils are about having planning controls that respond to the changes in farming and investment practices in rural areas but, as well as that, protect the productive agricultural land and safeguard the security of our food supplies.

I have been very pleased in the implementation of reform packages over the last few years by councils cooperatively undertaking changes to their planning controls, and 80 per cent of rural councils have taken up that opportunity freely and cooperatively. But there is still a group of councils that are yet to implement the changes, and that is for a number of reasons. For some of those smaller councils we acknowledge there are challenges because of their resource base, and this is a great opportunity to work in partnership with those councils. There will be $500 000 allocated through the budget for strategic planning for rural land use, and this will assist those councils to do the strategic work they need to do. We are looking forward to doing that in partnership with those local councils, potentially through the Municipal Association of Victoria. This is a great opportunity for those councils to come on board with some of the more technical, strategic work they have to do at this point in time.

That funding is on top of another $500 000 that was allocated in the budget to provincial Victoria — Geelong, Ballarat, Bendigo, the Latrobe Valley and Wodonga — to focus on planning for their future growth. As I have mentioned in this chamber before, we have a great challenge with the enormous growth in this state, not only in metropolitan Melbourne but in rural and provincial towns where the growth is even greater than in metropolitan Melbourne. That is a great challenge to have, and as you would appreciate, President, we have the policy and the resources to make sure the plans are implemented and delivered going into the future. That is in contrast to the alternative. I will tell a very short story, President, because I know you will enjoy this one.

The PRESIDENT — Order! I hope it is relevant.

Hon. J. M. MADDEN — It is very relevant. It might take me a moment to get to the relevance, but you will gather that as I go through it, President. In my previous portfolio — —

Mr Finn — Tell us about the Sunshine pool.

Hon. J. M. MADDEN — Mr Finn will appreciate this. In my previous portfolio experience I heard about what a particular rural football club would do as a fundraiser. Its land-use activities in terms of fundraising were very clever. What members of the club would do is mark a series of grid lines across the football ground, and they would send a cow out onto the football field, onto the grid. They would number each of the grids, and eventually that cow would leave a cow pat in one of those numbered grids. The great challenge was to predict where that cow pat was going to land. I understand some of the people at that football club would punt; they would put a little bit of money on where the cow pat would land.

Honourable members interjecting.

Hon. J. M. MADDEN — I am getting to the point here, President.

Mr D. Davis — On a point of order, President, the question seemed to be about rural land use and allocations for that. It did not seem to have very much to do with gaming on football fields.

The PRESIDENT — Order! On the point of order, the member does have some argument. I have been very lenient with the minister to date, and I would ask him to get to the point he wants to make.

Hon. J. M. MADDEN — I am getting to the pointy end, President. The issue is the unpredictable nature of where the content was going to land and where it was going to end up. That is very much like the opposition's land-use policy. We know what the quality of the content is going to be, we just do not know where and when it is going to land.

Mr D. Davis — On a point of order, President, you have repeatedly made rulings about ministers attacking the opposition. The minister has continued to do that, and I ask that you prevent him flouting your rulings.

The PRESIDENT — Order! On the point of order, I am not sure that attacking an opposition member with a cow pat is that damaging; however, the point is correct. I have ruled on ministers, particularly in their answers, overtly attacking and being critical of the opposition or other members asking questions. We have not got there yet, as we have not got to the answer, but I ask the minister to wind it up.

Hon. J. M. MADDEN — I reinforce my last comment: we know what the quality of the content is going to be, we just do not know when it is going to land and where it will end up, very much like Liberal Party policy on land use.

Budget: debt

Mr RICH-PHILLIPS (South Eastern Metropolitan) — My question is to the Minister for Education in his capacity representing the Treasurer. I refer to the minister's theatrical claim yesterday that net debt, which the minister defined as state debt plus unfunded superannuation liabilities, is the lowest as a proportion of gross state product for 50 years. I ask: is the minister aware that the government's own budget papers — budget paper 2 at page 12 — clearly show that net debt as measured by the minister's own definition was lower as recently as 2004?

Mr LENDERS (Minister for Education) — I love the budget papers. They are great documents from the Bracks government — open, transparent, accountable and full of information that the *Australian Financial Review* says we give too much of. I guess I did not express myself in a way that Mr Rich-Phillips felt comfortable with yesterday. What the budget papers show, and what I was saying yesterday, is that over the last 50 years — no, I will confine it to the 48 years I have been on this planet rather than 50 years — we have seen from the days of the Bolte government, when net debt was equal to approximately 60 per cent of gross state product and unfunded superannuation liabilities — and in fairness to the Bolte government it was like most governments of its era, and this was nothing particularly unique to the Bolte government — —

Mr Thornley interjected.

Mr LENDERS — As Mr Thornley says, it treated superannuation like a credit card: somehow or other in the future people would pay for it. When I entered the workforce there were five people in the workforce for every person who was a retiree. When I leave the workforce — assuming it is at a time of my choosing — there will be three people in the workforce for every person who is a retiree. I would speculate that in the 20 years before I entered the workforce the ratio was probably even higher. During the Bolte years, the Hamer years, the Cain years, the Kirner years and the start of the Kennett years what we had was governments just continuing to fund superannuation on the never-never. They made an assumption and were confident that the economy would grow, the workforce would grow and you could fund it that way.

Ms Lovell interjected.

Mr LENDERS — Ms Lovell says it is still funded out of the never-never. I urge her to read the budget papers and look back several years to a process started by Ian Smith, a Liberal finance minister — I give him credit for that — continued by Roger Hallam, a National Party finance minister, and carried on with enthusiasm since by four Labor finance ministers. What happened was that every bit of public sector superannuation was paid off on a monthly basis and there was a catch-up. What this government has done is accelerate the payments out of superannuation. Net debt and superannuation have gone from something like 10 per cent of gross state product (GSP) when we came into government to 6 per cent. Under any definition going from about 60 per cent in the Bolte years down to 6 per cent is a decline.

I would also say through you, President, to Mr Rich-Phillips and Ms Lovell that the other thing we have seen that is quite amazing is that if your debt as a percentage of GSP has gone down from 60 per cent to 6 per cent that actually frees up $1.3 billion or $1.4 billion a year that we are not paying in debt servicing or superannuation payments but can use on capital infrastructure, schools, nurses, police, teachers — all the other things this government is passionate about.

I say to Mr Rich-Phillips that we can have a discussion over the budget papers. If he feels I misled him or the house, I am certainly happy to reiterate as many times as I can to be helpful. During my lifetime the state has gone from having debt at a high level to having debt at a lower level. Debt has followed a downward trajectory to where we are now, with net debt and unfunded superannuation liabilities at 6 per cent of gross state product, whereas in the Bolte years it was up to 60 per cent. That is sound financial management. Sound financial management makes the dollar work for the community, delivers services, delivers capital and is such a big part of making Victoria a better place to live, work and raise a family.

Supplementary question

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I thank the minister for his answer and history lesson on the superannuation scheme, but of course it does not address the substance of the question, which regarded the figures the minister quoted yesterday. I ask the minister: is it not a fact that in making that reference yesterday he was referring to the outdated accounting standards and not the same measure under the Australian equivalent to the international financial reporting standards?

Mr LENDERS (Minister for Education) — The Australian accounting standard (AAS) 32 is supplemented by the international financial reporting standards (IFRS), as Mr Rich-Phillips well knows. It

came into place approximately two years ago, and he spent quality hours on the Public Accounts and Estimates Committee with me discussing the issue of the transition from AAS 32 to the new system. The previous Auditor-General signed off on it.
Mr Rich-Phillips well knows about the transition from one to the other. What he also knows is that regarding the transition from AAS 32 to the new IFRS system there is a continuum in the output lines in the budget papers. If you looked at the graph — and I cannot refer to the page number, but I can visualise the graph the Treasurer presented — you would see that it shows a continuum. It shows debt and unfunded superannuation from then to now under both the old system and the new in a very attractively colour-coded graph.

I say to Mr Rich-Phillips that if he wishes to ask further questions on this, I would be happy to take them in the chamber. My only regret is that I invited Philip Davis to ask me every question on education, so I guess I will need to move into the adjournment debate and take questions on accounting from Mr Rich-Phillips. I look forward to his questions, and assure him and the house that Victoria is a model for the globe. We were the fifth economy on the globe to go to international financial reporting standards in the general government sector. We were a bit behind Kenya and Malta and two others — their names escape me at the moment — but we were the fifth. We were ahead of New Zealand, and the commonwealth and the rest are still lagging. We are at the forefront.

I congratulate Mr Rich-Phillips on his interest in this area. We were part of a fantastic bipartisan Public Accounts and Estimates Committee. Mr Baxter and Mr Forwood, who are former members of this place, shared this passion with me and Mr Rich-Phillips. I am glad to talk accounting standards with Mr Rich-Phillips. May we bring it on after education every day.

Budget: disability services

Mr SOMYUREK (South Eastern Metropolitan) — My question is to the Minister for Community Services. Can the minister inform the house how the 2007 state budget continues the Bracks government's investment in services to support Victorians with a disability, their families and carers?

Mr JENNINGS (Minister for Community Services) — I thank Mr Somyurek for his question and for his concern about the wellbeing of Victorian citizens who either have disabilities or provide for the care and support of people with disabilities each and every day. I have answered a number of questions from both sides of this chamber this week about the disability budget or aspects of it through the prism of the significant support the Bracks government has given to the aids and equipment program, which will provide additional support to many families throughout Victoria in the years to come.

I am pleased to say this budget allocates $214 million through a suite of initiatives designed to support the independent living and quality of life of Victorian citizens with disabilities. These programs range from a $70 million initiative to provide individual support packages that allow for a flexible response to the provision of the accommodation and care needs of those members of our community who require a degree of support to make sure they can maintain active, independent and participatory lives. This will be based on a service configuration that is tailored to meet their individual needs. Significant resources and support are provided to the community, probably in a way that is not commensurate with the current attention span of the chamber — —

Hon. J. M. Madden interjected.

Mr JENNINGS — There are a number of people. Mr Drum is one of a number of members who are obviously demonstrating an interest in this. Very few members on the other side of the chamber tend to be interested in these issues, but Mr Drum is one of them. I thank him for his ongoing consideration of the wellbeing of members of the community with disabilities. We as a chamber, as representatives of our community, should be well versed in the range of support services that we intend to provide.

In fact the government has introduced significant investments to provide for respite services. An amount of $13 million has been allocated to support families who need some rest and recuperation from the important roles and responsibilities they are charged with each and every day. Respite service growth is an important feature of this year's budget. Some $15 million has been allocated to provide for support, education advocacy and other mechanisms for carers beyond that allocation for respite. If it were not for that labour of love of carers for their loved ones with disabilities, there would be a very heavy cost that our community would bear. The community should provide that degree of support and encouragement.

We recognise there is a need to grow the program to deal with those in our community with acquired brain injury and particularly we will augment the Slow to Recover program with $12.3 million over the life of the forward estimates in this budget. It will see significant growth to provide rehabilitation and care for those in

our community who have suffered catastrophic injury and have acquired brain injury. We recognise there is a need to provide for life planning for those young people who come out of the education system. There is a significant $13 million investment to support life planning for those people when they come out of school to work out what is the appropriate path for them to go forward to have fulfilling lives and make sure that they tap into the type of support needs they might have.

We recognise that the community services sector plays an important role in the delivery of services to people with disabilities, and $26 million has been allocated for additional support for community service organisations in the important role they play. In partnership the Victorian government recognises that we have a significant investment and role to play in the wellbeing of and provision of support to members of our community with a disability. We recognise the contribution of the voluntary sector, or the community services sector, and we have provided some support in the budget. Very importantly, and most respectfully, we thank the carers and loved ones of people with disabilities in our community. There is a significant investment in this budget going forward to support them in the important role they play in the name of ensuring an independent, active and full participatory quality life for people in our community with disabilities.

Housing: third-pipe infrastructure

Mr GUY (Northern Metropolitan) — My question is to the Minister for Planning. Noting the government's commitment to sustainable housing in Melbourne 2030, will the minister inform the house how many of the 20 000 homes built in 2006 were third piped?

Hon. J. M. MADDEN (Minister for Planning) — I would like to be able to pick numbers off the top of my head in relation to any technical questions asked in this chamber. I do not have any specific figures that spring to mind at the moment. I am always happy to provide them to the member on notice. The question is worth acknowledging. I am pleased that Mr Guy has raised the issue about the need to make housing sustainable in stark contrast to the Liberal opposition's policy in this area. We know that the Liberal Party's policy in relation to housing is one of urban sprawl for as far as the eye can see. If Mr Guy is talking about third-pipe infrastructure and issues around housing affordability and urban sprawl, then it is nice to hear for the first time some acknowledgement in relation to sustainability issues.

It would appear to me that one of the things the opposition does not acknowledge in terms of its deficient land use and housing policies is that urban sprawl cannot go on forever. It might like it and wish it to occur. I suspect that members in the other chamber as recently as today have offered up an indication of what Liberal Party policy might be in terms of the urban growth boundary. If it is just to take it away, then you cannot seek to have sustainable housing, dwellings and development. If you are going to advocate that, as the Liberal opposition does, suburban sprawl will go on forever as far as the eye can see.

As I have said before, the opposition likes cow pats all over the place. It wants to exchange the cow-pat paddocks for housing. It wants to demolish the orchards and build housing which goes on forever. It wants to take away the dairy farms and build housing for ever and ever as far as the eye can see. It wants urban sprawl as far and wide as it can go.

We have plans. We acknowledge the need for sustainability and for a strategic plan. It is reflected in Melbourne 2030. I look forward to the opposition acknowledging sustainability and the environment as an issue as we go forward in providing housing into the future.

Supplementary question

Mr GUY (Northern Metropolitan) — I express surprise at the minister's answer. Given that the issue of third piping was given such prominence in *Melbourne 2030*, I am surprised he is not aware of the figures. I might inform him that less than 100 out of 20 000 homes built in 2006 were actually third-piped. I ask: does this not demonstrate that the government's commitment to *Melbourne 2030* and the whole document is a sham?

Hon. J. M. MADDEN (Minister for Planning) — It is intriguing that Mr Guy continues to seek to attach *Melbourne 2030* to everything that is flawed and deficient in the Liberal Party policy — —

Honourable members interjecting.

The DEPUTY PRESIDENT — Order! The minister without assistance. There is far too much background noise.

Hon. J. M. MADDEN — I will use another. The Liberal Party's position on urban land use policy is what I have heard referred to — and I think it is a legitimate analogy — as the blue velvet policy. If you are not aware of the blue velvet policy, it is very much aligned with the David Lynch movie, *Blue Velvet*. I

know there are not many art-house movie admirers on the other side of the chamber because they tend to go for the blockbusters, but if anybody has ever seen this David Lynch movie going back many years — and I think Mr Guy may have seen it in his time — the opening scene is a white picket fence, a rose garden, butterflies and sunshine. It is a beautiful — —

The DEPUTY PRESIDENT — Order! The minister is not being responsive to the question. I ask him to come back with an answer that is more responsive to the question.

Hon. J. M. MADDEN — I am trying to be as responsive as I can, and I will continue to try to provide a responsive answer. That scene really encompasses the Liberal Party's view of the world — white picket fences, rose gardens, butterflies and sunshine as far as the eye can see and as far as urban development can go. But just like the David Lynch movie, we have a sinister protagonist behind the scenes, a Dennis Hopper. If anybody has seen *Blue Velvet*, they will know exactly the sort of role Dennis Hopper plays.

The DEPUTY PRESIDENT — Order! The minister must come back to a relevant and responsive answer to the question or he will need to be sat down.

Hon. J. M. MADDEN — We have a plan, we have a vision, we have policy, and we are resourcing that. Opposition members have ideas, but they have no policy. Some would say that their few ideas are no ideas at all. I will not be that critical, but I will say that, until they come into this place with some policy, then they are just bell clanging, and they can rattle on for as long as they like.

Wind energy: Dollar

Mr HALL (Eastern Victoria) — With some trepidation I ask the Minister for Planning a question. It is with trepidation and hope that I do not get some fanciful, fairytale response to this. My question to the Minister for Planning concerns a planning panel's report on the proposed Dollar wind farm. In response to my question on this matter last sitting week the minister claimed that because the project had been temporarily suspended there was no point in releasing the planning panel's report. I now ask the minister the converse question: what is the point in keeping this report secret?

Hon. J. M. MADDEN (Minister for Planning) — I am impressed with Mr Hall's strategy in getting up the same question again but providing it in reverse. I am conscious that the Dollar wind farm is a matter of concern for local residents in that surrounding area and that they would like a resolution to this matter. I am keen to seek a resolution to this matter so that there is some clarity.

As I mentioned before, the current proponent of the project sought to have the process suspended, hence the panel report lies in waiting in a sense in terms of a response to what the proponent does or does not want to do in relation to the suspension of that process. I am eager to resolve that so that we can determine what extends beyond this point in time in relation to that process. I acknowledge Mr Hall's expression of interest in relation to his constituency, the people in the region, and I am very keen that we provide some future announcements in relation to that project and the panel report in the not-too-distant future.

Supplementary question

Mr HALL (Eastern Victoria) — By way of supplementary question I want to remind the minister that the proponent does not own the planning panel report, the minister actually owns the planning panel report. For the last time: will the minister do the right thing by the 1500 people who made submissions to this particular planning panel and release the report or do I have to go through freedom of information and potentially the Victorian Civil and Administrative Tribunal to get it released?

Hon. J. M. MADDEN (Minister for Planning) — Again I acknowledge Mr Hall's interest in the matter in relation to those members of the community who have made submissions to that panel. This is an unusual circumstance where the proponent has sought to have the process suspended. It is unusual in terms of process generally that a proponent would seek to do that. Because it is unusual, in terms of not only the proponent requesting that but the way in which the process has been suspended, then this is highly unusual in terms of what does or does not take place in relation to the whole process.

I have sought clarity from the department and the respective legal advisers on this matter, the status of that report and how and when that should or should not be released. I am eager — as eager as Mr Hall — to seek a resolution to this matter to determine whether the proponent wishes to continue the process at some time in the future or wishes to abandon it completely. If I can get clarity in relation to that matter from the proponent through the department, then I will be in a much better position to determine whether or not we release the panel report or whether we, in a sense, forget about the project completely in terms of consideration of the process.

I am eager get a resolution to that matter, and I am eager to relieve the anxiety of the people who made submissions to the panel, but it is a highly unusual circumstance. Because of that uniqueness, I have sought from the department additional advice so this matter can be resolved at the earliest opportunity.

INFERTILITY TREATMENT AMENDMENT BILL

Second reading

Debate resumed.

Amendments circulated by Mrs PEULICH (South Eastern Metropolitan) pursuant to sessional orders.

Ms MIKAKOS (Northern Metropolitan) — As this is a conscience vote for all members in this chamber, I feel that I owe my constituents and the people of Victoria an explanation of my position on this bill, a bill that I have agonised over greatly. Although I supported the 2003 legislation on embryonic stem cell research, I have to say that I am greatly troubled by the bill before us, especially as it relates to women's health. Before I get into that I want to, firstly, thank all the constituents, scientists, regulators, bureaucrats, staff, colleagues, family and friends who have provided me with their divergent views.

With respect to my religious convictions, I consider myself a Christian by upbringing and by conviction. My faith is important to me. It reinforces my pursuit of social justice, my interest in alleviating poverty and my respect for people of all backgrounds and faiths. My religious convictions are, however, not the reason why I have concerns about this bill. Personally I do not regard a14-day group of cells as a human being but as having the potential to be a human. Like many Christians I can support a woman's right to choose, IVF (in-vitro fertilisation) and dignity in death. I assure Mr Pakula that it is entirely possible to be pro-choice yet have concerns about this bill if your focus in both instances relates to the rights and protection of women. For example, Greens Senator Christine Milne supported the RU486 legislation in the federal Senate yet opposed the federal equivalent of this bill, having spoken passionately about the exploitation of women. Similarly, Labor leader Kevin Rudd supported RU486 and voted against the federal equivalent of this bill.

Abortion has nothing to do with this debate. This bill is too complex to make simplistic assessments on that basis. All the advocates of this bill have focused on the potential benefits of developing cures for debilitating diseases so as to alleviate human suffering. I supported the bill four years ago exactly for that reason. I still hope such cures will eventually materialise either from embryonic or adult stem cell research. All of us know people who are suffering terribly from debilitating and incurable diseases and conditions, and of course we all feel enormous compassion for these people and hope they can be cured and enjoy a higher quality of life than one which has been diminished or may even be nonexistent. I heard some very moving speeches from members of both chambers regarding their own family members and friends who they believe, with great conviction, could benefit from this legislation in the long term.

I respect and applaud our scientists who are motivated enough to want to find cures for such people. In fact as a schoolgirl my dream was to be a scientist and to find a cure for cancer. That ambition was probably dashed by year 11 chemistry. I have often remarked that our scientists are undervalued by all of us. As a nation we place a disproportionate value on sporting achievers. I do not want my contribution here to be seen as in any way denigrating our Victorian scientists and the remarkable achievements they have made to date. I understand scientists acknowledge that embryonic stem cell research has not led to anything tangible from the community's point of view, although I am sure that scientific knowledge and techniques have progressed. I accept also that scientific research takes time and money. Billions of dollars have been poured into the human genome project in the United States of America without any medical breakthroughs. I hope that stem cell research will have greater success than the human genome project.

The community is also entitled to query the progress made to date, particularly as a large amount of both state and federal funds have been involved. I do not know what progress has been made over the last four years, yet we as parliamentarians, and by implication on behalf of our community, are being asked to accept the science as a matter of faith and perhaps with religious fervour. I have some sympathy with Mr Atkinson when he said that scientists were being a touch arrogant by not making the case to the community as to why, four years after we put a sanction of 10 years imprisonment on human cloning, we should now allow it, albeit in limited circumstances.

Great promises have been made about potential cures, and I hope all of them eventuate, but we have to be careful about being seduced into providing scientists with a blank cheque, ethically or financially. We risk being both duped and extremely disappointed as a community if nothing eventuates. The process of

cloning has been described in an excellent way by my colleague Mr Scheffer in his contribution, so I am not going to go into that science. I do not normally accept slippery slope arguments, but in this case I am concerned about embryo cloning science making reproduction cloning an inevitability. The technology that will be finetuned for the purposes of embryonic cloning will no doubt be used to clone more Dolly the sheeps in the future, perhaps not in this country but in countries that have a more lax regulatory regime. If we let the genie out of the bottle now it will have future implications for the human species as we know it. I am concerned about what it might mean for humanity, as a species ethically and for our survival, if we have genetically improved and cloned human beings. That is all I want to say about cloning.

I accept the very tight limitations in the bill that will allow for embryonic cloning research. I prefer to use this term as it is a description of what is involved that is more readily understood than terms such as 'somatic cell nuclear transfer' or 'parthenogenesis', which are the techniques that are currently used for embryonic cloning. I accept that the bill builds on an existing licensing framework which is sound and which is enforced by both criminal sanctions and licence revocation. I understand that what is referred to as 'human reproduction cloning' will remain banned.

For me the logical starting point in this debate is to focus on where the eggs will come from. Cloning research is reliant on a continuous supply of fresh human eggs from young women. I am profoundly concerned that egg harvesting will involve serious health implications for women. Egg harvesting requires hormones known as superovulants to stimulate the release of multiple eggs from a woman's ovaries rather than the typical one or two eggs released during a typical menstrual cycle. I have looked at a range of research that refers to risks ranging from discomfort and hot flushes to infertility, ovarian cancer and ovarian hyperstimulation syndrome. Deaths have occurred on rare occasions due to ovarian hyperstimulation, which involves 30 or more eggs being released simultaneously and fluid leaking out of blood vessels and collecting in the abdomen. I do accept these have been rare occasions.

Research using mice has led to offspring abnormalities. Mr Drum referred in his contribution to the possible adverse effects of ovarian stimulation on human offspring. I also accept that the procedures are being continuously refined and are becoming less intrusive over time. I welcome these changes, and I hope they will continue. Nevertheless the provision of information about the potential health risks is critical in my mind to ensuring full, free and informed consent, which is the test we have set for ourselves under section 10(c) of the Victorian human rights charter. I accept that a woman is perfectly able to give such consent if she is presented with all the relevant facts about potential risks. However, unlike Mr Thornley, I cannot just ignore the unknown risks.

I am concerned at the absence of any research into the long-term health implications for women who have undertaken ART (assisted reproductive technology) after two decades of such technology being available. At present no information is publicly provided by each ART clinic to enable a choice to be made between them by a potential consumer as to which is safer. I acknowledge that a consumer is able to pursue that with each ART clinic, but I do not know how forthcoming they would be with that information.

While the NHMRC (National Health and Medical Research Council) can collect data when conducting inspections, and this may identify problems that may be rectified, I think it is a missed opportunity not to have conducted an independent long-term study of the result of women's health after 20 years of IVF (in-vitro fertilisation) technology. An adverse events register that would enable data to be systematically collected from patients or doctors could also lead to the minimisation of risks. I am certainly not seeking to undermine the public's confidence in ART; rather, I see these measures as ways of making it safer. Women would be able to be truly informed about risks and to give informed consent if they had a longer term picture of scientific data available.

The issue of consent is critical in my mind. The bill provides that it will be a condition of each licence that so-called proper consent be obtained from the donor. The concern I have is that the critical issue of consent is defined solely as consent obtained in accordance with the NHMRC guidelines and as prescribed in commonwealth regulations. It is regrettable that the guidelines have not yet been finalised and that this Parliament is having to consider guidelines that I understand will be finalised in time for the bill's commencement on 12 June. Other state and territory parliaments will, however, get the benefit of finalised guidelines. The NHMRC guidelines should say that consent must be in writing. At present they are silent on the issue. I am satisfied with the other aspects of the NHMRC guidelines that stipulate that written and verbal information must be provided to a donor about a range of issues, including information about potential risks.

Because we are so reliant on the guidelines in this regulatory framework I want to make a number of comments about them. I understand that the Department of Human Services is yet to make a submission to NHMRC, and I hope some of the concerns that I and others will raise might be picked up in the department's submission. Paragraph 17.21.11 of the NHMRC guidelines stipulates that the possible risks of long-term consequences for fertility of hormonal stimulation of the ovaries and surgical collection of eggs must be disclosed to potential donors. I welcome that and would suggest that ovarian cancer, the risk of which has been established by research, should also be explicitly referred to in this way in the guidelines as a risk that must be disclosed.

Paragraph 17.21.12 of the NHMRC guidelines stipulates that where donation involves risks to infertility regard should be made to whether a person has completed their family. Again, I strongly welcome that, although the transient nature of modern relationships, including remarriage or repartnering, makes this assessment more difficult. Knowing all the potential risks which exist and that there are some we do not yet know about, I wonder why women would want to donate their eggs at all, at least while they are alive. Some no doubt will, but I am sure not enough will. Cloning requires hundreds of eggs to produce a simple viable clone. In South Korea the now-discredited Dr Hwang, who fabricated his results, I understand used 2061 eggs from 169 women and failed to produce a single, cloned embryo.

This bill is predicated on altruistic non-patient donations, despite research which shows that few women are prepared to donate their eggs altruistically. Most of the eggs will come from women undertaking ART, with the paramount objective of achieving a successful pregnancy. Jock Findlay, chair of the Infertility Treatment Authority and chair of the NHMRC licensing committee agreed with me about this, and I am grateful to him for explaining to me the process used in ART, because the procedure used for altruistic egg donors and for women undertaking ART and donating some eggs is the same. He explained to me that after the eggs are extracted they are divided into two lots — those with a pro-nucleus and those without. About 30 per cent are considered not suitable for ART but could be used for research. They may be unsuitable because of a genetic abnormality or for other reasons.

In recent years ART clinics have been able to reduce the number of eggs produced during an ART cycle. I see this as a positive thing for women, because the hormonal levels administered are safer and the risks are minimised. It used to be the case that 16 to 18 eggs or more were produced per cycle. I understand that ART clinics now extract fewer eggs, in some clinics it is six to eight per cycle. Assuming for a moment that women who are desperate to achieve a pregnancy and undertaking ART are prepared to regard any of their eggs as surplus to their needs — and I seriously question this — then 30 per cent of six to eight eggs per cycle could potentially be donated to science. Depending on a woman's age and medical history she might undertake three to eight cycles during ART. That means anywhere between 6 and 24 eggs per woman, assuming she consents to all of her so-called surplus eggs being donated to science.

I have used these very rough maths to illustrate that if we are to take the discredited Dr Hwang's experiment of using 2000-plus eggs as a guide, this means that the eggs of hundreds of women would be required for just one project. I do not believe the framework will make this achievable or workable. The current prohibition on payment for egg donation is critical to the issue of free consent being given without inducement, and the NHMRC guidelines allow for reasonable out-of-pocket expenses, which need to be spelt out in further detail.

I have been alarmed to read about what is happening now in the United States, where poor, young women, many of whom are university students, are selling their eggs on the internet. I have also been alarmed to read about the United Kingdom experience, where insufficient egg donations have led to women being offered priority access or cheaper ART services. In my view this is clearly exploitation. Our bill makes it clear that this cannot happen in Victoria, and given that most ART procedures are Medicare-funded, it is probably unlikely that this would happen. Nevertheless we need to be careful that women do not feel pressured or exploited in any way.

United Kingdom clinics have also sourced eggs from eastern European nations, which, not being subject to their own legal limitations, have been able to offer women payment for eggs. Again this involves exploitation of women, and it does not matter where those women live. I will never support women being paid or offered services for their eggs. This reduces women's eggs to commodities and regards women as egg factories. I note that current Victorian law prohibits eggs being imported from overseas, which I strongly support, to ensure that Third World women cannot be exploited if eggs from local women are not forthcoming in the future.

I mentioned that the guidelines are critical because they are referred to in the definition of the term 'proper consent'. Guidelines, being guidelines, are intended to

be flexible and to be changed over time as circumstances change, perhaps as technology changes. The bill even allows the NHMRC to modify its own guidelines under specific licence conditions — for example, clause 12(7) of the bill provides that the NHMRC guidelines regarding consent can apply in a modified form in relation to the use of excess ART embryos that are unsuitable for implantation. Clauses 14 and 15 of the bill have similar provisions. This alarms me, because I consider the consent provisions in the bill to be critical in protecting women's health and wellbeing. They should not be negotiable. I cannot see how consent can be modified in this way. Although the bill certainly does not make this explicit, I was informed that this related to the cooling-off period that applies to ART embryos that are unsuitable for implantation, as I explained before, because of a serious genetic abnormality or other abnormality. Whilst the normal process in the guidelines is that a woman has 14 days to decide whether or not to consent to a donation, the provisions in clauses 12(7), 14 and 15 would enable the NHMRC to change this to another time period, not stipulated in the bill, or, as far as I could find, in the guidelines.

Like other members, I have to satisfy myself that appropriate checks, processes and safeguards have been put into this legislation to ensure that scientists would be appropriately regulated when conducting this research. I acknowledge the bill's provisions relating to inspectors and the hefty criminal penalties that would apply for certain offences. However, I regard it as critical that minimum standards be contained in the bill regarding the consent procedures, and they are not present.

I also need to be certain that the benefits of allowing this research to proceed outweigh the risks to women and to society. We have all been informed about the potential of this research. Scientists cannot say if or when, if ever, the benefits will eventuate. We are asked to accept this as a matter of faith. In the case of women undertaking ART, they are pursuing it with the hope of achieving a pregnancy and because they will derive a direct and personal benefit. Because of this they are prepared to accept all the risks. In contrast, I cannot comprehend how a doctor could ethically allow a woman to make an altruistic donation, in view of the possible risks involved, except perhaps where a woman was suffering from a degenerative disease herself, which she hoped human cloning research could cure. In other words, she would derive a personal and direct benefit from that research.

The NHMRC itself recognises the ethical distinction that must be made between altruistic donors and those of ART donors in paragraph 17.21.13 of the draft guidelines. I hope that this paragraph is retained in the final guidelines. However, I cannot see how any woman could be accepted as an altruistic donor, in light of the inclusion of that paragraph in the guidelines. The same concerns would apply where an altruistic, non-patient donor sought to make an egg donation in the hope of benefiting a loved one suffering from a degenerative disease. The donor is not going to derive a direct and personal benefit, and I should indicate that at this point in the evolution of this science neither is the relative, so care must be taken to ensure that women are not pressured into donations by family members.

Some feminists have expressed concerns that women will be seen as walking egg factories or incubators and as selfish if they resist making their eggs available. This would see women reduced to commodities. Mr Theophanous raised the issue of Christian charity, something I also endorse. But I do not recall the good Samaritan exposing himself to the loss of his health or of his life.

In the light of preference researchers will have for using the eggs of young women, other older eggs being harder to clone, I remain concerned that there will not be enough donors or enough eggs harvested to make this whole undertaking worthwhile. I accept that this will be a problem for the scientists to worry about. It is important to understand, however, that recommendation 24 of the Lockhart review is that animal eggs be used to minimise human egg harvesting. Thankfully that particular recommendation was rejected in the Senate by the Bartlett amendment, yet it reinforces my view that the scientists accepted that they would not obtain sufficient human eggs, which is why that recommendation was included in the report.

Apart from our Victorian human rights charter, there is an aspect of international law that I want to touch upon and this issue was also considered by the Scrutiny of Acts and Regulations Committee. The Declaration of Helsinki contains a section relating to non-therapeutic biomedical research involving human subjects. Some mention was made by other members of the horrors perpetrated by the Nazi regime, and I certainly do not see any analogy between that and this bill. I point out merely that the declaration was adopted by the international community after the war because of the horrific experiments conducted on prisoners in concentration camps. It was drafted to protect vulnerable people, especially where the person subject to the research is not going to benefit from the research themselves.

The declaration is an important document in my mind, and I want to read the relevant section for the benefit of the house:

1. In the purely scientific application of medical research carried out on a human being, it is the duty of the physician to remain the protector of the life and health of that person on whom biomedical research is being carried out.

2. The subjects should be volunteers — either healthy persons or patients for whom the experimental design is not related to the patient's illness.

3. The investigator or the investigating team should discontinue the research if in his/her or their judgement it may, if continued, be harmful to the individual.

And most importantly:

4. In research on man —

they did not use gender-neutral language back then —

> the interest of science and society should never take precedence over considerations related to the wellbeing of the subject.

Under the Helsinki declaration the researcher has an obligation to do no harm to the human subject of the research. It also suggests that we should not put the potential benefit for humanity over the interests of the individual. Yet that is what we are being asked to do here.

I expect most eggs will be harvested from women undertaking assisted reproductive technology rather than from altruistic donations. I mentioned earlier that Jock Findlay conceded this in my discussion with him. For this reason it is critical that I feel confident that there will be a separation between the doctors or clinicians providing the ART treatment and the research scientists. In my view doctors should not raise the issue of egg donation with a patient or seek consent. This could make women feel pressured into egg donation by feeling that the ART clinic will try to look after them better or charge them less money if they consent to the egg donation.

The bill is silent on these issues. The draft guidelines provide at paragraph 17.21.1 that there must be a separation of clinical and research roles when a donor is receiving treatment, which I think is important. It spells out that wherever possible members of the research team should obtain the relevant consent, but the guidelines do not spell out who should seek consent, and even acknowledges that researchers may be able to do so. I also find the requirement in the draft guidelines that there be a separation between clinicians and researchers irreconcilable with the reality that many ART clinics will also engage in this type of research. In fact three of the four current licence-holders in Victoria who are approved to conduct embryonic stem cell research are ART clinics. Melbourne IVF has two licences and Monash IVF has one. The other licence is held by Melbourne University. In my view all research licences should be held by bodies other than ART clinics, preferably by universities with a strictly cost-recovery basis payment to be made to ART clinics for egg supply. This would mean that ART clinics would have as their sole objective achieving healthy pregnancies and would ensure that there would be no conflict of interest or perception of a conflict of interest in the minds of their patients or in the minds of the community.

If this research eventually leads to an important scientific discovery, then the research by ART clinics will be commercially lucrative. Donors will need to be assured that they will not be subject to high levels of ovarian stimulation or more cycles than are necessary because the eggs have become highly sought-after commodities. Having a separation of clinician and researcher would overcome my concerns about this.

I note that many of my concerns were acknowledged in the Lockhart review itself, and I want to quote from the introduction on page xviii, which states:

> A significant argument against the use of somatic cell nuclear transfer was that it requires the use of donated human eggs. The difficulties associated with attracting women to donate oocytes for research and with obtaining meaningful consent were seen as a major problem by many participants in the reviews. In this regard the donation of eggs is riskier for the donor than the donation of other tissues, and the healthiest eggs would be those from young women. Therefore, the potential exists for coercion of young women to donate eggs (such as through social disadvantage, family or workplace pressures). Women in ART treatment programs may also be requested to donate eggs for research and, therefore, to avoid coercion of women in this situation, there needs to be clear separation between the obtaining of eggs for ART practice and research.

The report goes on to recommend that the way this issue could be resolved is through strict ethical guidelines, but as I have already indicated in my contribution to the debate, I do not think the guidelines have resolved these issues, certainly not in my mind.

Until now I have been genuinely undecided about how I would vote on this bill. I want to stress that I have not felt pressured to vote in any particular way by anyone. In fact I came to this bill with the inclination of supporting it, as I did the last bill. My position on this bill should not be seen as an indication of how I might vote on a future stem cell bill. I note that at page 176 the Lockhart review considered other ways in which

eggs could be obtained and suggested things such as the surgical removal of ovaries for conditions such as cancer or polycystic ovary disease or cadaveric donations, which Ms Hartland referred to in her contribution. These potential sources of eggs may well obviate the need for egg harvesting in the future and would certainly alleviate many of the concerns I have.

Unlike the last bill that came before the Parliament the key problem with this bill in my mind is that it raises serious issues regarding women's health. There are problems with the bill and the guidelines regarding the issue of free and informed consent. I find that the bill has raised in my mind far too many unresolved problems and issues. Some of my concerns may be addressed in the final NHMRC guidelines, and I will be making a submission to it in that hope. Some of my concerns might even be resolved by amendments in this house. I am genuinely open-minded and prepared to seriously consider amendments that could address my concerns.

The reason why I decided on my position on this bill during this debate is that I was hoping for some positive amendments. For example, I was prepared to entertain amendments similar to those moved by the member for Box Hill in the other place, Mr Clark, which would have codified the list of information to be given to a person donating a gamete or other cell. I would very much prefer that that list of information be codified in the legislation rather than being contained in guidelines that could be varied at will in the future. However, in my view the fundamental flaws in the bill cannot be rectified because it is predicated on a massive egg harvesting program, and I have already indicated my concerns about that issue. I have really struggled to find a way to support this bill. I have searched my conscience, and on the basis of the information I have before me, my concerns about the flaws with the bill and the draft guidelines, I will be opposing the bill.

Mr GUY (Northern Metropolitan) — I do not intend to speak on this bill for a long period of time given that I understand almost the entire chamber wishes to make a contribution, and I am respectful of the fact that other people want to do so. As other members have put the scientific arguments, if you like, I certainly do not intend to repeat most of those. I am not a scientist, so I do not feel it is appropriate for me to engage in a deep scientific debate.

At the outset of my contribution to the debate I want to thank my party for the maturity all my colleagues have shown towards each other on this bill. As a new member it is a profound and amazing experience to come into a parliament and see a bill as important as this so early on in my parliamentary career and to see how it is managed in our party. The way my colleagues have been respectful of each other is very heartening, and I am genuinely thankful to all of them.

I also want to thank all the members of the Parliament who have made a contribution to this debate so far. It is fair to say that all of them have been generally respectful of everyone else's opinion, and that is entirely appropriate. I want to place on record my thanks for the work done by the shadow Minister for Health, Helen Shardey, and the member for Pascoe Vale, Christine Campbell, both in the other place, and to Peter Kavanagh of this chamber. Those members may have differing points of view, but they have a deep commitment to the issues involved in this debate. They have gone out of their way to provide a large amount of information to all members to enable them to make an informed decision on what is an exceptionally important piece of legislation.

I also place on record my appreciation to the many people from all over Victoria who have been good enough to send me an email or a piece of mailed correspondence expressing their point of view on this bill. Again, being a new member, the amount of correspondence I have received has quite astounded me. People have obviously regarded this issue with such importance and seriousness that they have gone out of their way to do that. I thank them all for it. I still have not replied to all of them — there were so many — but it is quite useful for a new parliamentarian like myself to receive such feedback from so many different people.

I also place on record my appreciation for the feedback I have had from a number of churches, including the Catholic Church, the Orthodox Church and my own strong faith, the Presbyterian Church. It is my view that the churches have a very important role to play in this debate, and I thank them sincerely, and in particular those people in the Presbyterian Church who have given me feedback on this bill and who have provided me with a large amount of information.

Like most members of this chamber I too have had personal experience with the struggles and eventual death of a family member from a terrible disease — in my family's case it was the onset of dementia. My paternal grandmother passed away in November last year after a long illness. Towards the end of her life the onset of dementia was obvious, and it became tough, even very confusing, for my family to deal with. Like any family member in such a position, we would have done anything to make my grandmother's life just a little bit better even for a short time and to help her

through. We wanted to do whatever we could do to save her.

But I am not a person who believes in false hope. I am not a person who believes in being told what you want to hear. I am not a person who believes in being told anything but the upfront truth. I prefer to deal in the truth and in the facts. It is my view that the bill represents false hope, a false dawn for many people, and as such I cannot support the legislation and will not be voting for it. I go further to say that I think the bill is exceptionally bad legislation. It is hastily drawn up and puts economics first; human and social consequences are placed a very distant second.

It is incredibly wrong to make the bill an amendment to the Infertility Treatment Act. As has been correctly pointed out by other speakers, that act seeks to create life, to give people a chance at having a new life in their family — something to love and something to care about. The bill we are considering today does not. Cells either used and/or discarded are destroyed after 14 days, and they are cells that, if they were placed in a woman's womb, would grow. They would grow into a life that may not be 6 feet 1 inch and 85 kilograms, but it would be a life nonetheless. That is how we all began. It is easy to look at a cell and think that this could not possibly be on the same par as a newborn, as a 10-year-old or a 50-year-old, but in my view a life is a life, and it is not for us to decide to take it, whatever our views may be. And this is a key reason why I vehemently oppose capital punishment.

Further, I believe the bill is very anti medical research. Its passage will simply detract from the good work being done on other cell research over the world, particularly in this city and in this country. While I will not repeat what has been said in relation to adult stem research, I want to make a couple of comments about it. As has been said by other people, huge breakthroughs are being made in adult stem cell research. There have been more than 70 documented medical breakthroughs using adult stem cell research. Breakthroughs have included findings to help combat heart disease — a huge killer in this country — diabetes, testicular cancer, breast cancer and non-Hodgkin's lymphoma. It is exceptionally promising research, and more of its like should be encouraged.

I also make reference to amniotic stem cell research. It is producing, as is adult stem cell research, very promising results. This research involves taking fluids from around the womb or the placenta of a pregnant woman. So far it has been credited with breakthroughs in Parkinson's disease and Alzheimer's disease — two awful diseases on which research must continue to be of paramount importance.

I am advised that the cells contained in the umbilical cord are some of the richest and most productive of any that have been researched. The possibility for breakthroughs here is high and the importance of further study into these cells is exceptional. When noting the promising work being done with amniotic, adult and umbilical cord cell research, the dangers and lack of progress associated with embryonic research should also be noted. These cells are carcinogenic. Due to their nature embryonic cells multiply rapidly and uncontrollably and thus, in every instance, result in cancer forming. Further, embryonic research has produced not one medical breakthrough — not one. We have the option of talking up research that is working or talking up untried and potentially dangerous research that is not.

I say again, as has every member of this chamber who has spoken against this bill, that I do not oppose medical research. On the contrary, I believe medical research is vitally important. Like all of us, I wish life expectancy could be greatly enhanced, not just for us in this country but for people all over the world and particularly those in disadvantaged nations. Medical research can achieve things like that, and we need to encourage it. Everyone should benefit from what our scientists are able to do. Medical advances are coming all the time. Nowadays they are coming more quickly and with much more promising results than ever before — and not a single one of them so far has been attributable to embryonic research. Surely we should be doing more and using our minds and our breath, as we have been doing today and over the last number of weeks, to talk up the science that is working, not to talk up the science that is not.

I am concerned that many people spruiking for this bill, not in this chamber I might point out but outside the Parliament, have cited economics as a key reason Victoria needs to pass this legislation and, further, pass it now simply to be ahead of Queensland in the medical research stakes. I like Victoria to do well. I like the fact that sometimes — less so nowadays — we outpace other states in business and development. However, I am very sure that this is not the bill with which to be making a statement in that regard. It confounds belief that this important bill has been rushed into the Parliament. I am also concerned about some statements made outside the Parliament that this bill is a certainty to pass. Nothing about the conscience vote of every member of this Parliament should be presumed.

In closing I want to state again that I dream of the day when humans can have a cure for all of our ills. I support the exceptional work of our medical researchers, who are making such fantastic breakthroughs on diseases and illnesses that may one day claim many of us here. But we should look at the facts and, importantly, we should look at the record of achievement and not at false hope. With no progress in embryonic research and so much progress in adult, umbilical and amniotic cell research, it is obvious to me where our attention should be focused. I state again that I will be opposing this bill.

Mr ELASMAR (Northern Metropolitan) — Like Mr Guy I will not be long. I rise with a troubled heart to speak in the debate before the house today. This crucially important issue has been constantly on my mind for several weeks now. I have spoken to many people — scientific and religious people, lay people and ordinary Australians — who all have a strong view either for or against embryonic stem cells and the cloning of human tissue for scientific and medical research purposes. For all the reasons stated for or against I wish to thank those people for their input. I have sought information from all sections of our community. I have received many letters, emails and faxes, as no doubt has everyone sitting in the chamber today. I would again like to thank those people for their input.

I know this issue is highly emotional. When I read some of the correspondence from families with severely disabled children and when I heard similar accounts from speakers before me in the debate, I had tears in my heart for their suffering and anguish. From my experience in life I can understand how people would grasp at any offered remedy, no matter how slim or elusive the chance to resolve their suffering might be. But the reality is that this type of scientific experimentation is too gruesome to contemplate. Of all the intelligent people I have spoken to, not one has been able to clearly demonstrate or quantify from the trials being conducted overseas the success rate of embryonic stem cell and cloning research. I understand that adult cloning and stem cell harvesting has shown proof of wonderful medical cures. I am happy for those people who can now live their lives to their full potential.

As a practising and committed Christian, I can vote on religious lines, but it is not enough to say that my faith forbids and loathes this type of interference with God's will. I wanted to fully understand the issues facing the medical profession and the arguments being put forward for such a radical medical research program. I can say that I find the prospect of hybrid cloning repulsive in the extreme. One thing I know for certain is that a fertilised egg becomes an embryo. Who knows what potential that embryo may have if allowed to become a human being in its own right; maybe by passing this bill we would be sanctioning the extinction of a future Einstein or Mozart.

Medical science has its own agenda and timetable and progress is inevitable. However, many amazing medical cures found by medical researchers did not begin by creating the potential for human life and then destroying it to improve the quality or potential of an already living human being. I can truthfully say that I have not been pressured by any of my parliamentary colleagues in the Victorian Labor Party. However, I sincerely believe that human life, at whatever stage, is sacred. Accordingly I am voting against this bill.

Mrs PETROVICH (Northern Victoria) — Over the past few months I have received large amounts of information from both sides of the debate on this most complex issue. Listening to all the views expressed in this debate it is very clear to me that all of those involved are passionate advocates for their view. Some of those in opposition to this bill walked from Koondrook to Melbourne in protest, which took them over eight days. Others from the scientific community have provided detailed briefings and documents. From an advocacy and information perspective, these opposing views have been very well presented.

I will not today venture too far into the biology aspect of this debate as I know that we have all heard in detail much of that over the last number of weeks and in full detail in recent days. I will say from the outset that the concept of human cloning is abhorrent to me. Thankfully we have the reassurance of the banning of human cloning through federal legislation with the passage of the Prohibition of Human Cloning Bill in 2002. That bill, which involved research involving the Human Embryos Bill in 2002, was supported by both houses of federal Parliament. It is unfortunate that in many ways the somatic cell nuclear transfer (SCNT) issue has become caught up in the cloning debate. There is a level of confusion and distress about the use of SCNT. For me this is not a slippery slope, but an opportunity to assist humanity, ease suffering and offer hope.

As part of the federal legislation it was a requirement that a review be conducted every three years. A committee was appointed and chaired by the Honourable John Lockhart. As a result of that review it was clear that there should be a continued ban on and prohibition of certain activities. It recommended that human nuclear transfer should be permitted under licence to create and use human embryo clones for

research, training and clinical application, including production of human embryonic stem cells.

Strict limitations prevent these embryos from being implanted into a woman or allowed to develop for more than 14 days. It also prevents these embryos from being implanted into an animal. The time frame of 14 days and the prohibition of human or animal implantation are significant in my decision. I would issue a message of prudence with the interpretation and implementation of the legislation that we are viewing today. I see this issue not only as a moral and ethical issue for the Parliament and the community, but also an issue of particular interest to women and families. I cannot, as a mother, honestly answer the question that if medicine achieved as a result of this research was to assist an ill child or member of my family I would be able to refuse hope and recovery to one of my own. Any parent who says they would not use scientific and medical outcomes delivered through this work to assist a family member I do not believe is being truly honest.

I heard it said earlier today that women had been left out of this debate. I would like to refute that. Women not only in Victoria but Australia wide and in other countries are prepared to commit to this technology because after all women are the only ones that can. They do so in an informed and unselfish way. These woman are providing the opportunity for themselves and others to become parents through the IVF (in-vitro fertilisation) program and in the hope that this excess material will be of assistance to others. It is offensive to suggest that women who participate in these programs are somehow duped into doing so. What greater possibility and gift to the world is there than to go willingly and knowledgeably into the commitment to provide this genetic material to assist others? I believe it is patronising to woman to imply that an informed decision cannot be made by them.

My family has been touched by the great opportunity provided by advances in medical science through organ transplant. I cite the instance of my beautiful aunt, Janice Thomas, who through a lung transplant gave us as a family the great gift of her company for an additional eight years. This would not have been possible without the advantage of medical science. She was committed to her family, and the additional time that this operation gave her with them was extremely important. She did that although she was a deeply religious and committed person.

Our support today for the scientific community will, I hope, enable breakthroughs in cures for serious diseases, and if only one individual suffering from diseases such as leukaemia, diabetes, Parkinson's or Huntington's is assisted then I today will feel vindicated in my commitment to my decision to support this bill.

I am comfortable that the issue for me to overcome is an ethical question of when life commences. As far as I am concerned life begins in the womb, and any pregnant woman can tell you of the great joy experienced with that first tiny butterfly fluttering of the 'quickening' as it used to be called, at around 12 weeks. A therapeutically cloned embryo is very different to a normal embryo. In contrast to an embryo created by in-vitro fertilisation, a cloned embryo, as it has been explained to me, has very little possibility of developing into a normal human being. It then follows that a cloned human embryo used to make embryonic stem cells has little chance of developing in the normal way. If we can create embryos for use in IVF knowing that many will be destroyed then the ethical question, whilst not addressed for many in this debate, is more acceptable to me.

I am pleased to say that we in Victoria have a fantastic track record of scientific achievement. In 2003 the Australian and Victorian governments funded the establishment of the Australian Stem Cell Centre located at Monash University in Melbourne, Victoria. This includes a variety of businesses and achievements renowned throughout Victoria, Australia and the world. It has developed fantastic biotechnological precincts. The Parkville precinct is involved in medical and bioscientific research, education and clinical practice and produces pharmaceutical and biotechnology goods. We also have the Alfred medical research and educational precinct and biomedical research development and the Monash health research precinct and biomedical and other biotechnological research centre.

In addition to this argument, which is clearly based on ethics, religion and science, there is also the consideration — although it is not high on the list it is a consideration for me — of the economic loss and the potential loss of the intelligence and skills of the scientists who contribute so much to Victoria's capacity to other markets, which would be of great detriment to Victoria.

Having said all this, I will be considering all the amendments, but I will be voting in the affirmative on this bill. I would like to congratulate all those who have contributed in a considered and respectful manner, in particular Mr Kavanagh, Ms Hartland and Mr Viney, who come from a very different political place from me. But from a community perspective all these views, although diverse, are valuable to be heard and are

representative from a community standpoint. Clearly today we are facing one of the most complex issues we will face in our time in this place, and I feel honoured to have participated in this most significant process with my Liberal colleagues and others represented in this place.

Mr SOMYUREK (South Eastern Metropolitan) — I am concerned that this debate is perceived to be between a fundamentalist Catholic Church and rabid feminists on one side and pro-science, secular rationalists on the other. That is a very unhelpful perception which I believe might potentially influence a lot of members to vote a particular way. At this point I would like to take the opportunity to commend the leadership of all political parties for allowing their MPs a conscience vote on this legislation. This is not just any piece of legislation. This legislation has the potential to change the nature of human reproduction and humanity as we know it. I therefore ask my fellow MPs to take advantage of the latitude granted to them, to think about what is being proposed and to ask themselves if there has been sufficient discussion on what is being proposed in this bill.

What is being proposed in this bill is to give permission to scientists to perfect the science of embryonic cloning, which has the potential to clone a human-animal hybrid. It is claimed that this research has the potential to save millions of lives. Promoters of embryonic cloning claim that type 1 diabetes is one disease that this research will cure. My wife has type 1 diabetes, and I know firsthand the insidious nature of this disease. Watching my wife give herself insulin injections four times a day for the past 14 years has been distressing. Type 1 diabetes is hereditary. I have two children aged 10 and 6, and we are terrified that they too will develop type 1 diabetes. Every time our children look a little pale, drink more than usual or go to the toilet more than usual we get anxious. The prospect of my 6-year-old daughter and 10-year-old son being injected with insulin four times a day really frightens the hell out of us, and I can say we will do anything in our power to make sure that does not happen.

Embryonic cloning offers hope for type 1 diabetics, so why am I opposing this legislation and not enthusiastically embracing it? For a start, as I said, my wife was diagnosed with diabetes 14 years ago, and since then we have been on an emotional roller-coaster ride at every report of a breakthrough in the search for a cure for diabetes. It seems that every month there is a report of a breakthrough, but nothing seems to come of it, so we become rather cynical when scientists start talking about a cure for this disease. Just because we have been disappointed for the past 14 years does not mean that we have given up hope; we have just become more cautious.

I do not totally reject this legislation. I recognise that should the expected cures for disease be achieved from this science a significant number of lives will be saved and improved around the world. However, I find it difficult to support in haste a bill that crosses so many lines and goes so far into the unknown. This legislation is based on the bill passed by the federal Parliament late last year, which was itself based on the report by the federal Parliament's Legislation Review Committee known as the Lockhart report after the chair of the committee, John Lockhart, QC.

When I have inquired about the community consultation and discussion around this legislation people have referred to the Lockhart report, yet after looking at the Lockhart report I have significant questions with respect to the report itself. The amount of consultation conducted is certainly an issue. The Lockhart report itself recognised that time constraints precluded the committee being able to maximise its consultation. In section 3.1 on page 17 the report states:

> Time constraints placed a practical limit on the consultation mechanisms available to the committee.

Here we have a piece of legislation that gives scientists the imprimatur to experiment with cloning human embryos, a technique that has the potential to change the nature of human creation and indeed has the potential to create a hybrid species, yet we are effectively basing this legislation on a report that recognised that time constraints precluded it from maximising the consultation process. I say that is not good enough. Nothing short of a wide-ranging public discussion and lengthy community consultation process should be had before this radical piece of legislation is passed.

Furthermore, the Lockhart review took place from June to December 2005 at a time when the world was duped into believing that Korean scientists led by Professor Hwang Woo Suk had achieved major breakthroughs in human cloning. The Lockhart report recommendations were strongly influenced by submissions received from stem cell scientists who were no doubt eager to make sure they were not left behind by their counterparts in South Korea. It should be noted that only four days after the Lockhart report was handed down Hwang was found by an academic panel at Seoul National University to be a fraud.

Reviews such as these should be carried out by a panel of independent experts. According to information I have, at least half of the experts on the panel were not

independent, in that they were on record as supporting embryonic cloning. I have quotes from three of the expert committee members which demonstrate that they were committed to a position when coming to this review. One of the experts, Associate Professor Ian Kerridge, made the following statement in June 2001:

> Therapeutic cloning has massive potential. Animal work has shown promising insights into how it can be used to repair tissues that can't normally repair themselves or for which there is a shortage. There are strong moral imperatives to do stem cell and cloning research.

They do not sound like the words of an objective expert coming in to the Lockhart review.

Professor Loane Skene, who was also a member of the review committee, made these comments on 1 March:

> Even if one regards reproductive cloning as contravening human dignity, surely the same is not true of therapeutic cloning. A person's 'dignity' is best respected by trying to save the person's health and life. Even if embryonic cells are used, I do not believe that any 'dignity' interest of the embryo outweighs the interests of a dying or diseased person.

She was obviously committed coming in to the inquiry.

Professor Peter Schofield made these comments on 9 October 2001:

> Parts 4 and 5 of the [Human Reproductive Cloning and Trans-Species Fertilisation] Bill [NSW] will allow research on human stem cells, including embryonic stem cells and their use in human therapeutic cloning. This is to be commended as it provides both a regulatory basis by which exciting and significant new developments in medical research can be progressed while providing clarity and simplicity about lines of investigation that will not be permitted because of overwhelming ethical concerns.

Members can see that there was no committee of objective experts; members of the committee had already made up their minds even before the review process started. The work that was done in the six months or so that were spent on preparing this report was used to justify the conclusions that those people had obviously come to prior to the review. They obviously cherry picked some of the evidence, arguments and submissions that were presented by witnesses according to their preconceived views. This in itself puts a great dent in the credibility of the Lockhart review.

At page 18 the Lockhart report indicates that 1035 submissions were received by the committee. The report breaks that number down into the following statistics: 921 submissions were from individuals, 98 from representatives of organisations, 8 from government agencies and 8 from individual parliamentarians. Such a breakdown can be useful, and I commend the committee for stating these statistics. But those statistics are absolutely meaningless; they are useless without an indication of their position. We are told that 1035 submissions were received and a breakdown is given, but we are not told their position, whether they are pro or against. As far as I am concerned, that is not good enough. A document on the internet headed 'Do no harm' states that it is estimated that 80 per cent of the submissions were opposed to relaxing the prohibition on human cloning.

One of the things that I would like to see in this debate is a comprehensive public survey of people's attitudes to embryonic cloning. I am afraid that not many comprehensive in-depth surveys have been done. The closest we got to that was one done in 2004. It is widely acknowledged to be the most in-depth research on Australian attitudes to human cloning. The research showed that 63 per cent of Australians were not comfortable with human cloning, yet this survey did not appear in the Lockhart review.

In conclusion, this is a difficult piece of legislation for a member of Parliament to deal with. As parliamentarians we must grapple with the moral, ethical and complex scientific issues presented by this bill. One thing we must understand is that scientists will always push the boundaries in pursuing their individual areas of research. As legislators our duty is to set the parameters in which they operate. Before I sit down, I finish my contribution with a quote from a canon of epistemology, D. H. Rumsfeld:

> There are things we know that we know. There are known unknowns — that is to say, there are things that we now know we don't know. But there are also unknown unknowns. There are things we do not know we don't know.

Admittedly he was referring to weapons of mass destruction in Iraq. Nevertheless, his tongue-twisting epistemology is a useful analytical tool to use in evaluating this piece of legislation. There are so many unknowns in this bill that I cannot possibly support it without further research and discussion and therefore, dare I say, knowledge.

Mr P. DAVIS (Eastern Victoria) — The great issues of creation and evolution have been matters that man has considered at length for thousands of years. At the outset of my contribution I would like to read something that can set a context far more eruditely than I can in my own words:

> From the war of nature, from famine and death, the most exalted object which we are capable of conceiving, namely, the production of the higher animals, directly follows. There is grandeur in this view of life, with its several powers, having been originally breathed by the Creator into a few forms or

> into one, and that whilst this planet has gone cycling on according to the fixed law of gravity, from so simple a beginning endless forms most beautiful and most wonderful have been and are being evolved.

That is from *On the Origin of Species* by Charles Darwin. I refer to that only to highlight the point that the questions that have been before this place over the past two days in the debate on the Infertility Treatment Amendment Bill have been vexing mankind and causing us to ponder our origins and the meaning of those things in which we profoundly believe for hundreds and indeed thousands of years.

First I acknowledge the contributions made by members of this place. I have been personally profoundly moved by many of the contributions to the debate, irrespective of the positions ultimately argued by those who have made those contributions. I think it is fair to say that debate has been at a new level. I suggest that many members of this place have not enjoyed such a substantial and informed debate during all their parliamentary experience. I have to say that in my earlier time in this place I did have a bit of a glimpse of it. I hope that this debate sets a new benchmark for us all — and it is a very high benchmark indeed. I also initially note the many, many representations that have been made to me, not just by my own constituents but also by many other people across Victoria who feel very strongly about the issues that are addressed by the proposals in this bill.

I think it is clear that Parliament works best when confronted with questions of values which force members to consider their own ethical positions. As we have heard from members during the course of the past two days, this bill has indeed been the catalyst for a good deal of soul-searching. This debate has ensured that members have evaluated the principles of the bill against their own belief system. One of the reasons is that the government and other parties in this place have made it clear that the matters of principle will be resolved according to the conscience of each individual member. However, I reaffirm that as far as the opposition is concerned all questions on this bill will be resolved on the basis of a free or conscience vote, including those concerning matters of procedure.

It is not my intention to prosecute a case incorporating a journeyman's analysis of the science that is the basis of this proposal. However, I have spent my adult life involved in both private business and public policy relying on the advice of others much more technically qualified to interpret science and recommend the application of advances in scientific endeavour. My own life experience informs me that the progress of humankind in all forms depends on the ongoing pursuit of knowledge and the subsequent application of new understandings. However, there is an innate conservatism in us all which presents to various degrees as caution or resistance to change. This is evidenced by the range of acceptance and adoption by individuals of non-controversial technologies, a phenomenon which marketers use to identify different cohorts in our society such as early adopters, who are targeted in their marketing campaigns as distinct from others. On my own part I am willing to embrace scientific endeavours that may lead to improvements in the human condition. I accept that research that will occur within the framework of this bill has significant potential to provide advances in medical treatment; however, these advances are likely to be in the distant future, rather than being available on even the medium-term horizon.

I am also a practising Christian, and as such I have considered this bill within the context of my faith. I do not find in respect of my faith any ethical or moral doubt or hesitation about the issues I must consider in relation to this bill. In fact I have certitude in my convictions. I do not regard the artificial creation of a cell or group of cells through somatic cell nuclear transfer, or therapeutic cloning, as the creation of a human life, whereas the fertilisation, although assisted, of a human egg with a human sperm and the implantation of the embryo in a woman's reproductive tract consistent with achieving a pregnancy is the starting point of human reproduction. Scientific developments have allowed thousands of families to enjoy the human miracle of the most wonderful gift of children through medical intervention, including in-vitro fertilisation, yet the procedures that have supported this advance in fertility treatment were introduced despite what were then strongly held ethical concerns.

In relation to this bill there are, as foreshadowed, a number of questions to be resolved. These go to the detail of the bill as well as to its principles. Members have indicated that they will variously move amendments to clauses, provide a reference to the Legislation Committee and move a reasoned amendment to the motion for a second reading. Therefore, to assist in the detailed scrutiny of the bill and the further consideration of its detail and operation as well as the consideration of potential amendments I believe it would be desirable to allow this bill to proceed to the second-reading stage. However, I will reflect on and consider the detailed examination of the bill in the committee of the whole and/or the Legislation Committee, however resolved. I advise that I intend to determine my final position on the bill at the third-reading stage. Therefore, I support the bill's second reading.

Mr LENDERS (Minister for Education) — I rise to speak on this bill as a person who has lost more sleep over the past few weeks than I probably have in my entire political career, who has been tormented — to put it mildly — by issues of conscience, and who has agonised through this debate.

The other morning I got up because I could not sleep, as is not unusual. I got onto the treadmill at home, and being on that treadmill seemed almost as futile as my thought process. In order to get some sense and not think I put on a video, *Fiddler on the Roof*, which was the worst thing to do because it had Tevye saying, 'On the one hand this, on the one hand that'. That has been my journey for the last three weeks — to try to reconcile what I think are two unbelievably powerful arguments as to why this bill should be either rejected or passed. For the last several weeks I have been swaying between 51-49 or 52-48 both ways, if you can measure such a thing on an actuarial basis — which I do not think you can.

I voted for the stem cell bill in 2003. I will be quite frank — I did not give it that much thought; there was not much debate in the place on it. I fundamentally did it because the embryos were fertilised for a purpose — to create life through in-vitro fertilisation. They were not being used, and therefore it seemed an appropriate balance that they be made available for appropriate scientific research. This one is not as clear cut. I listened to Mr Kavanagh yesterday. He had me over the line on the issue of thinking with your mind, not your eyes, and the cross-ethical threshold. He mentioned the contribution to this debate federally by a great hero of mine, Kevin Rudd, the federal opposition leader, and I must admit I have read that carefully a number of times. He also mentioned the alternatives — cord blood cells, amniotic cells and a range of other things. Then my friend Mr Viney spoke, and I was back over the line the other way.

It is a flattering thing for me to say, but I must admit that today I heard what I think is the best speech I have heard in my parliamentary career from Evan Thornley. I am just stating the obvious; everyone here has been agonising over it. He succinctly put the ethical or moral case.

I am absolutely torn. I would rather crawl under a rock than vote, but I think frankly no MP can hide from the obligation to vote. I wish I had the conviction of my ministerial colleagues, of a John Brumby or a James Merlino, who can go out there with passion and seek to convince people on this. I wish I had that conviction. I do not, but I have a troubled conscience. Every cell in my body — no pun intended — wants me to vote for this bill because it offers extraordinary hope. I do not accept Mr Kavanagh's arguments that cures will come eventually; we have to do what we can to hurry hope up. While every cell in my body wants to support the bill, this whole issue of where we draw a line and the slippery slope disturbs me.

Mr Thornley almost had me over the line when he said that we as legislators have to sit up and take a stand and it is in our hands. Mr Thornley is absolutely right, but there is just that troubling aspect in my mind of whether we will be vigilant enough. On something as feeble as that I feel quite embarrassed to say I think we should have more substance than that. It is a conscience vote; it pricks my conscience. We have to draw a line somewhere, and I very reluctantly oppose the second reading of the bill.

Mr JENNINGS (Minister for Community Services) — I understand there is a high degree of emotion in the chamber and concern across the community about what this chamber will do during the course of this afternoon and how we respond to the profound issues that are before us. There are any number of members of our community who will choose to see, because of the nature of their conviction, that this debate is bringing out the worst in some members of Parliament, because members will be advocating positions they find abhorrent. I want to say that I think this debate has brought out the best in members of this chamber, almost without exception. It has brought out the best in my time of being in this chamber and part of this Parliament.

People have dug deep within their hearts, souls and minds. They have taken the time and consideration to become well versed in scientific matters probably well beyond the normal expectation of becoming familiar with the scientific evidence and issues that underpin a bill. They have revisited the value systems they have established over the course of their lifetimes. I am a person who will be voting in this debate — I am very pleased to say from my perspective — without my moral compass being dragged from pillar to post. I am in fact relatively comfortable with where my moral compass takes me in relation to these issues. But I feel a great degree of empathy and sympathy for those who feel profoundly conflicted, including my leader, who spoke before me. I feel greatly for those who have had to agonise over the evidence and the considerations they have had to bring to bear before they are called upon to vote.

I also wish to say that there are people in this chamber who will vote differently to me, and I have already indicated to a number of them that I have profound

respect and regard for the positions they have advocated so passionately, articulately and intelligently in pursuit of the outcome they seek. I congratulate my colleagues in the Legislative Council for the value of their contributions to public policy and public consideration and for putting on the record their heartfelt considerations in relation to these matters. We are charged with the responsibility of acting, but sometimes that responsibility comes at personal cost to other relationships or standing in the community. I would hope none of us is diminished in the eyes of the community because of the position we hold, although I understand that, because of the vantage point and philosophical and ethical considerations of some in our community, they may find it very hard to come to terms with some of the contributions to the debate and voting intentions that will be evidenced in the second-reading debate and beyond.

On behalf of the government, as the minister who is responsible for the second reading of this bill and who will be dealing with it if it proceeds to the committee stage, I say that I will to the best of my ability respond to any of the issues raised either in the second-reading debate or the committee stage. I will use my best endeavours to respond to them fulsomely and respectfully, and as much as I am able I will respond to the legitimate issues people have about the nature, scope and implementation of this bill.

In that spirit I want to draw to the attention of the chamber on behalf of my colleague the Minister for Health in the other place, Bronwyn Pike, that I volunteer that this legislative framework is indeed cumbersome. The minister has already volunteered in her contribution to the debate and reiterated in writing today that the legislative mechanism we are voting on today is in fact a very imperfect vehicle, regardless of the content and implementation. This bill is placed in a very cumbersome legislative and regulatory environment.

The reason I say this is that for the last five years in Australia there has been an agreed approach between the commonwealth and state jurisdictions about how these matters will be dealt with. Going back to the COAG (Council of Australian Governments) agreement of 2002, various pieces of commonwealth legislation have been enacted to provide for the scope of the issues that we have been debating and considering today. Those important building blocks of the commonwealth framework are the Research Involving Human Embryos Act 2002 and the Prohibition of Human Cloning Act 2002. The Research Involving Human Embryos Act 2002 contains provisions, particularly in sections 42 and 43, where the commonwealth does not claim exclusive jurisdiction to regulate this area. In fact many of the conundrums and difficulties members of this chamber have experienced would have been alleviated if in fact there were one standard commonwealth regulatory regime. But that is clearly not the case. In accordance with our COAG commitments the Victorian Parliament passed in 2003 the Health Legislation (Research Involving Human Embryos and Prohibition of Human Cloning) Act.

That act, while it was clear in its name and its intention, amended the Infertility Treatment Act 1995. One of the difficulties we are confronting in the nature of the debate today — the provisions we are talking about — is that many people think we are gilding the lily in relation to how these matters are going to be dealt with, because they are being dealt with through an amendment to the Infertility Treatment Act. In relation to the history of this issue, the amending act that came through this house in 2003 was very clear in its scope and intent in amending the principal act, the Infertility Treatment Act 1995. If we are erring as a legislature today, we are erring on the side of repeating that and amending that principle act.

My colleague the Minister for Health recognised that in her contribution to the debate in the Legislative Assembly. Indeed I believe she has also written to members of this chamber today to indicate that this is not the government's preferred way of dealing with these matters into the future and has foreshadowed to all of us her and the government's intention to amend the legislative regime in the near future to appropriately address some of the concerns that have been raised in the context that there should be a clear separation of matters involved in the Infertility Treatment Act and matters that relate to research involving human embryos and the prohibition of human cloning. In fact some members' concerns would be allayed if that were the case today.

The Minister for Health wrote to members on 3 May. Her letter is headed 'Re: Infertility Treatment Amendment Bill' and states:

> I would like to take this opportunity to confirm my statements to the lower house on 18 April 2007 regarding separation of the medical research provisions from the clinical treatment aspects of the legislation. In my address I advised the house …
>
> > The government recognises that there is a significant difference between assisted reproductive technology treatment and medical research. I want to make it very clear for the house that it is the government's intention to excise the medical research provisions in the Infertility Treatment Act that relate to stem cell research for consideration in Parliament as separate legislation.

> I trust that this clarifies the situation regarding the separation of the medical research provisions from the clinical treatment aspects of the legislation.

The Minister for Health also tried to convey to members of this chamber today other undertakings relating to the provisions of this bill and foreshadowed amendments to the accountability mechanisms in the principal act. I have not sought the approval of Ms Hartland, but I hope she will not be offended by the fact that I will read from a letter that was sent to her specifically on behalf of the minister this afternoon. It states:

> I write to provide my assurance that I will cause the tabling of a copy of the report prepared by the commonwealth Minister for Health under section 47(b)(1) of the Research Involving Human Embryos Act 2002 of the commonwealth to be tabled in each Victorian house of the Parliament as soon as practicable after the report is first tabled in a house of the commonwealth Parliament under section 47(b)(3) of that act.

The reason the Minister for Health has volunteered that, although the report itself would be a public document once it is tabled in the commonwealth jurisdiction, is to allow for discussion to take place on that commonwealth report once it has been tabled in the Victorian Parliament. Clearly that will allow members of this chamber and the other chamber and the people of Victoria to have access to a debate on and a consideration of the accountability mechanisms in the commonwealth act.

In response to issues that have been raised during the second-reading debate and in anticipation of matters that will be raised at a later stage, it is important for us to understand that there is a regime for dealing with the appropriate reporting and with information that is made available. There are two concepts. One is the reporting of and the accountability for the research activities that are undertaken within this field, and very importantly, and perhaps most importantly, the other is the provision of information, advice and support to those who may be donors within the regime covered by the scope of the bill.

For the consideration of the chamber, and I apologise in advance for reading about four or five paragraphs, I shall outline to the house those provisions which exist within the NHMRC (National Health and Medical Research Council) guidelines that have been published. Those guidelines are currently under review, but it is the clear understanding and expectation of the Victorian government that these provisions will be preserved and protected. Under the heading 'Research on embryos created by means other than by fertilisation of a human egg and human sperm' the guidelines state:

> The PHCR and RIHE acts allow, under certain prescribed circumstances, the creation of human embryos other than by fertilisation of a human egg by human sperm (e.g. human embryo cloning), and the use of such embryos for the purposes authorised by a licence.
>
> Accordingly, women are able to donate excess eggs from ART treatment to research. Further, women and men who are not involved in an ART program for the purpose of reproduction may choose to donate gametes for purposes unrelated to reproduction, or to the treatment on infertility.
>
> Important ethical considerations in the use of human gametes and embryos in research include:
>
> > the empowerment of potential donors to make informed decisions on whether to participate; and
> >
> > the significance to many members of the community of the formation of an embryo using gametes, gonadal tissue or cells for research purposes.

At paragraph 17.21, 'Respect the donors of gametes or cells for forming embryos other than by fertilisation', it states:

> 17.21.1 When obtaining gametes or cells from a donor involves the donor receiving treatment, there must be separation of clinical and research roles.
>
> The clinician treating the donor should not be an investigator in the intended research …
>
> 17.21.2 There should be no payment for gametes, gonadal tissue or cells donated for research that is subject to these guidelines.
>
> …
>
> 17.21.5 Protocols for recruitment must ensure that donation of gametes, gonadal tissue or cells is voluntary and free from exploitation or coercion …
>
> 17.21.6 For the purposes of consent, the potential donor should be provided with the following information in written and oral form:
>
> A brief description of the project in lay language and its contribution to the potential benefits of the overall research program.
>
> A clear statement that the provision of gametes, gonadal tissue or cells to the project is voluntary.
>
> …
>
> A description of the retrieval process for gametes, gonadal tissue or cells, including what will be done, where the procedures will be done and by whom.
>
> A statement of the potential risks of retrieving and donating gametes, gonadal tissue or cells.
>
> A description of how to withdraw from gamete, gonadal or tissue or cell donation.
>
> The right of a donor to refuse donation for a specific project but agree to donation for another.

A statement about the availability of counselling resources.

How donor privacy will be protected.

…

A statement that the donation will not be used for any other purpose.

…

17.21.11 The possible risks of long-term consequences for fertility of hormonal stimulation of the ovaries and surgical collection of eggs must be disclosed to potential donors.

…

17.21.16 The number of ovarian stimulation cycles should be limited because the long-term effects are unknown.

17.21.17 Given the risks to donors, clinicians and clinical centres engaged in gamete or gonadal tissue retrieval should encourage studies on the medical and psychological effects of gametes or gonadal tissue donation on the donors with a view to achieving a more accurate evaluation of risks and benefits.

Those requirements are clearly aspects of the licensing arrangements and attach to the implementation of the scope of this bill. Many people who have heard me refer to those matters will say, 'Well surely that reiterates the very nature of our profound concerns, that we may be embarking upon research activities that may have profound and unintended adverse consequences on those who provide for donations'.

As part of the government that is a proponent of the bill, I recognise those profound concerns, and I am extremely sympathetic and responsive to those issues. On behalf of the Minister for Health in the other place, I volunteer that it is the intention of the government to be vigilant in that matter — to be rigorous in ensuring that those procedures and licensing arrangements are adhered to and that we ward off the potential adverse effects of this piece of legislation.

I have indulged the house in terms of the substantive issues that people have either raised during the second-reading debate or in anticipation of where they may wish to travel in the committee stage of the bill, regardless of the nature of the committee stage of the bill and assuming the house agrees to the second reading of this bill. I look forward to the passage of this legislation. I do so recognising the real depth of feeling and commitment that has been demonstrated by members of this chamber, and the real and profound concerns that must be addressed now and in the future in terms of implementing this legislation. I assure all members of this community that the government takes these matters extremely seriously and will not act in a disrespectful way to members of this community, but will act in the highest regard in the interests of all Victorian citizens and potential Victorian citizens in the years to come.

House divided on amendment:

Ayes, 12

Atkinson, Mr	Kavanagh, Mr (*Teller*)
Dalla-Riva, Mr	Kronberg, Mrs
Drum, Mr (*Teller*)	O'Donohue, Mr
Finn, Mr	Peulich, Mrs
Guy, Mr	Rich-Phillips, Mr
Hall, Mr	Vogels, Mr

Noes, 27

Barber, Mr	Mikakos, Ms
Broad, Ms	Pakula, Mr
Coote, Mrs	Pennicuik, Ms
Darveniza, Ms	Petrovich, Mrs
Davis, Mr D.	Pulford, Ms
Davis, Mr P.	Scheffer, Mr
Eideh, Mr	Smith, Mr
Elasmar, Mr	Somyurek, Mr
Hartland, Ms	Tee, Mr
Jennings, Mr	Theophanous, Mr
Leane, Mr	Thornley, Mr
Lenders, Mr	Tierney, Ms (*Teller*)
Lovell, Ms	Viney, Mr (*Teller*)
Madden, Mr	

Amendment negatived.

The PRESIDENT — Order! The question is:

That the bill be now read a second time.

All those in favour say aye, against nay. I think the noes have it.

Honourable members — The ayes have it.

The PRESIDENT — Order! A division is required. Ring the bells for 1 minute.

Bells rung.

Mr Viney — On a point of order, President, in regard to the ringing of the bells for 1 minute, I wonder if we can extend that to 3 minutes given the importance of the conscience vote.

The PRESIDENT — Order! I am satisfied that 1 minute is sufficient.

House divided on motion:

Ayes, 23

Barber, Mr	Pakula, Mr
Broad, Ms (*Teller*)	Pennicuik, Ms

Coote, Mrs
Darveniza, Ms (*Teller*)
Davis, Mr D.
Davis, Mr P.
Eideh, Mr
Hartland, Ms
Jennings, Mr
Leane, Mr
Lovell, Ms
Madden, Mr
Petrovich, Mrs
Pulford, Ms
Rich-Phillips, Mr
Scheffer, Mr
Tee, Mr
Theophanous, Mr
Thornley, Mr
Tierney, Ms
Viney, Mr

Noes, 16

Atkinson, Mr
Dalla-Riva, Mr
Drum, Mr
Elasmar, Mr
Finn, Mr
Guy, Mr
Hall, Mr
Kavanagh, Mr
Kronberg, Mrs (*Teller*)
Lenders, Mr
Mikakos, Ms
O'Donohue, Mr
Peulich, Mrs
Smith, Mr
Somyurek, Mr (*Teller*)
Vogels, Mr

Motion agreed to.

Read second time.

Legislation Committee

Mr KAVANAGH (Western Victoria) — I move:

That the bill be referred to the Legislation Committee.

This is, firstly, because the bill is very complex, and secondly, as has been admitted today, because it contains flaws in terms of normal legislative practice. There are many amendments proposed to the bill. If we are to embark on the path proposed by the bill — and judging by the last vote, we are to do that — there are safeguards and procedures which should be put into place. Many people have made the comment to me that, if any bill were suitable for referral to the Legislation Committee, then it would be this one.

The Legislation Committee was only created recently in accordance with our proper purpose in this house of review and scrutiny. In his opening address to this Parliament the Governor referred to the Legislation Committee in terms of building a stronger democracy. He said:

> During its third term, the government will present initiatives designed to further strengthen democracy in Victoria.

The first point under that heading says:

> A new Legislative Council Legislation Committee will enable more detailed consideration of new bills by the Legislative Council …

Referring this bill to the Legislation Committee is consistent with, if not demanded by, the government's publicly stated agenda. The Governor's statement also shows that such a referral is not a procedural matter. The public has been told that we will be voting according to our consciences. I believe the people of Victoria would expect that members would also be applying that freedom to referring this bill to the Legislation Committee.

Mr LENDERS (Minister for Education) — I rise to oppose the motion for this bill to be referred to the Legislation Committee, and I do that for a couple of reasons. Firstly, I note in opening that government members have a conscience vote on all clauses of the bill. They have a conscience vote on the second and third reading of the bill, one which I exercised on the second reading. It is also worth noting that all government members on a conscience vote opposed the reasoned amendment which effectively would have achieved the same outcome as Mr Kavanagh is proposing.

The Legislation Committee itself — and this committee is something I hold near and dear to my heart, along with Philip Davis, Mr Viney and others in the chamber — was one of the hallmark reforms, I believe, of the standing orders review by the last Parliament.

We need to reflect on why the Legislation Committee was created. It was created for bills in which there was a lack of interest. That is my recollection. Philip Davis may have a different one, but my recollection and certainly why I was the architect of it, is that in this place you often have a situation where there is a technical bill. It may be a bill such as the WorkCover bill that I had carriage of previously where there might be many, many hours of debate, clause by clause, and most members of the house, to be frank, are not interested.

One of the purposes of the Legislation Committee was to provide another vehicle for those sorts of bills that were technical and in which there was not a lot of interest. On this occasion I put to the house that I have never seen so much interest in a bill. I have never seen so much technical interest in a bill. I have never before seen a report like that of the Lockhart committee read by as many people or seen debates in the House of Representatives, in the Senate and in the Legislative Assembly so perused. I have never before seen the dining room in this place full of knots of people arguing on the issue and talking about the technical clauses.

So, firstly, I think the purpose of a committee dealing with a bill in a technical nature, clause by clause, does not apply to the Legislation Committee. The second thing is the nature of the Legislation Committee itself. We have 39 members of the chamber — because Mr Koch is not with us and not well — who have spent

two days here listening to debate on the bill, clause by clause. I have a concern that if it goes to the Legislation Committee we will have a technical committee — and what it does is in the hands of the Legislation Committee; we have not even appointed a chair or had any practice on it yet — potentially sitting behind closed doors dealing with the bill clause by clause, when we are here in open public debate, with all warts and all emotions exposed, dealing with the bill.

I respect Mr Kavanagh's desire to have greater scrutiny of this bill. I respect his desire to have a public debate on it, but from the government's viewpoint we cannot support the bill going to the Legislation Committee. From our perspective there has been a second-reading debate and, depending on the outcome of this and assuming that Mr Kavanagh's motion is defeated, then there will be a committee stage where the clauses will be dealt with one by one. It is in the hands of the members how long they deal with the clauses.

I think for those reasons, while the Legislation Committee is a good committee and is admirable for what it was designed for, for the purposes of a bill on which every member has a view — I have not kept a tally of how many people have spoken, but I expect that about 30 or more members have spoken — it will postpone the debate. The crux, when we have to exercise our consciences in this place on the amendments and the third reading, will be postponed. I contend it will not give us any more information; it will not change a single person's point of view. It will simply prolong the debate.

I was on the losing side in the second-reading debate, but I think we need to move on with this. The Legislation Committee will not assist us; all it will do is delay a vote that I think most members of this house would like to exercise.

Mr P. DAVIS (Eastern Victoria) — I rise to support Mr Kavanagh's motion, and in doing so I indicate that I certainly do not recall the context of the establishment of the Legislation Committee in the same terms as the Leader of the Government. Indeed the Legislation Committee was specifically established, in my view, to deal with bills which would be better dealt with through a detailed examination by a representative group of this house that was able to bring a great deal more scrutiny to bear and do more justice to them than perhaps it was possible to do dealing with them in other ways.

I make the point that I do not see in the standing orders any reference to the hypothesis of the Leader of the Government about dealing with non-controversial and controversial but lightweight bills — I think that is the inference of what I was hearing. This is a very substantive bill. It could well do with further examination. The nature of the Legislation Committee is that it is designed to enable a non-partisan forum to be established to deal with the machinery issues of legislation which may be complex and for which there is potential to achieve consensus or, in effect, an outcome of a report being brought back to this house for further consideration.

I do not agree with the Leader of the Government that Mr Finn's reasoned amendment would have achieved the same purpose as a reference to the Legislation Committee. In fact the reasoned amendment was substantially different in purpose from what is proposed by Mr Kavanagh. Mr Kavanagh proposes to refer the bill to the Legislation Committee for the purpose of providing a more detailed scrutiny, an opportunity to obtain further evidence and, indeed, an opportunity to invite the minister from the other place — if that is agreeable — to make a contribution to the Legislation Committee. In that way all members may be better informed. Indeed all members could be better informed, because all members would be able to participate in the proceedings of the Legislation Committee to a greater or lesser degree.

The reason that I support Mr Kavanagh's motion is substantially because of the issues that have been raised during the course of debate by many members who, on behalf of their respective communities, have made it clear that so far as they are concerned these are matters of great weight, not just in the principles of the bill but in some of the detail. It may be that the government could argue that the detail can be looked at during the next stage, if we go into consideration by the committee of the whole. But I have no doubt that these matters would be given a great deal more scrutiny by the Legislation Committee over an extended period than in what will inevitably be an abridged process of dealing with this bill as a committee of the whole. For that reason I strongly support the motion moved by Mr Kavanagh.

The PRESIDENT — Order! I draw to the attention of the house and to the attention of the gallery that I am disturbed in the extreme to hear that one member of this chamber has been personally abused as a result of their vote on the bill. I remind the gallery in particular that members in this chamber are free to speak as they choose on any bill. They are free from intimidation by anyone. Unfortunately I am unable to identify the individual, but I make it very clear that if I can, they will be removed and dealt with to the full extent that is available. If others want to engage in the same behaviour, they will be removed. I will clear the whole

gallery if necessary. If I clear the gallery or throw someone out, then they have a right of reply to this house. But I make it clear that I will not tolerate any intimidation towards any member in this house.

Hon. T. C. THEOPHANOUS (Minister for Industry and State Development) — This is another example of how difficult this debate has been for so many people. It is a debate which has been held in this place by all of us; we have all been involved in this debate. I cannot think of anything less appropriate than to now send this legislation to a smaller committee. I cannot think of anything more inappropriate than to do that. The whole purpose was to have a broad debate and to include everyone in this house in it. Members in this house know very well that the Legislation Committee is like a subcommittee of this place. It is like sending the bill to a subcommittee and saying to it, 'You sort it out, because we in this house do not have the ability to go through it clause by clause and debate it ourselves'.

The fact is that when this bill goes into the committee stage it is in an identical setting to the setting you would get in a subcommittee. There will be the minister sitting at the table who will answer all and any questions in front of everyone and in full public gaze. Surely for a bill like this, which tests all of us, a bill where there are very strong emotions on both sides, the best and most appropriate forum in which to have this full debate is to have it right here and right now, and to have it in front of everyone in this place. I urge members not to support the motion that has been moved by Mr Kavanagh but instead to support the idea that we continue to the committee stage.

Might I say that there are no time limits on the committee stage. There is no capacity for the government to shut down debate. People will be able to put and argue every single point of view. I know the minister who will be at the table might be a bit tested by it, but that is the situation, and it is no different to when the minister — the same minister I think — went to a subcommittee, went to the Legislation Committee, and sat before that Legislation Committee for a period of 10 hours and was questioned on a previous bill. The only one difference is that there will be fewer people; the rest of us will not be there.

That is an abrogation of responsibility of all members of this place for a bill that is so important, a bill that has tested all of us to such an extent and a bill that so many people have tried to work their way through and have put their point of view on. It is an inappropriate process to then say to all those people, 'We don't want you involved in the detail of the bill. We are going to send it to this little committee. We are going to let a little committee of a few people, not everyone who is here, ask the minister questions'. It is appropriate in some circumstances for technical bills. The appropriate way to proceed on this bill is with all of us. We started this together, and we should finish it together.

Mr D. DAVIS (Southern Metropolitan) — I rise to speak against the motion of my friend Mr Kavanagh. I understand the reasons that he has brought this motion. They are fine reasons of great public debate and scrutiny, and they are justified reasons. But I find on this occasion I have the same opinion as my friend the Minister for Industry and State Development, Mr Theophanous, and that is unusual in this chamber, as people will know. As people in this chamber will also know, I have never been a fan of this Legislation Committee, and in the case of this important bill in which everyone in this chamber has legitimate, diverse and strongly felt views it is a case in point as to why that committee is problematic. Let me explain in further detail than Mr Theophanous did.

If the bill is referred to the Legislation Committee, a small, unrepresentative group of this chamber will make the decisions, and it will come back. It is true to say that there is a vote to accept or not accept the report of that committee, but at the same time that committee report will have some weight and persuasiveness for some people. Those decisions should be made in this chamber, in full committee, in full public gaze. There are certainly a range of strong views on this, as we have just heard. The decisions should be made here, where it is transparent to the whole community why the arguments are put in a certain way, including the minister's responses to arguments — one by one, clause by clause. I firmly believe that this committee of the whole is the only way, short of having a subcommittee of 40 people, that you can have the fairest and most representative way of seeing the chamber's views fully, openly and transparently expressed with a difficult bill like this.

Mrs PEULICH (South Eastern Metropolitan) — I rise in support of Mr Kavanagh's motion as well as the arguments put forward by the Leader of the Liberal Party for a number of reasons. First and foremost the depth of difference on this legislation represents the depth of differences that exist in the upper house. It is desirable often to try to identify those points of greatest difference, especially when we are pursuing some sort of divisive reform, and to massage it, change it, improve it so that all of those who have to live with the legislation, even those on the losing side, sit more comfortably in that legislative framework.

We have heard right throughout the debate that the bill is very flawed. It is flawed in terms of its title, flawed in terms of its principal objectives now being in conflict with the more extended purpose which includes cloning, not just infertility treatment, and flawed in terms of the safeguards.

The Scrutiny of Acts and Regulations Committee, on which I sit with other members of this house, has also written to the minister with a series of concerns to which we have not yet received a response. In addition the draft guidelines of the National Health and Medical Research Council are just that — they are draft. All members of this house deserve the opportunity to know exactly whether those safeguards are in place and whether they are more comfortable with the legislation.

It is a messy piece of legislation. It is usual practice anywhere, I would imagine even in this place, that when something needs a little bit more intensive work to fix it up so that it will come back and be a more workable framework that it makes sense to take that course of action. Of course it comes back here, where members are not disenfranchised in terms of the consideration of that range of issues. I would certainly not envisage a piece of legislation that is perhaps more technical in nature. Reproductive technology — scientific technology — is highly technical for many of us, most of us in this chamber not being scientists, so it is very appropriate that a legislation committee be used for this purpose.

Hon. T. C. Theophanous — Are you on that committee?

Mrs PEULICH — I certainly would look forward to having an input into that committee.

The PRESIDENT — Order! Minister! Mrs Peulich will continue.

Mrs PEULICH — Members of the committee do not usurp the rights of the entire chamber, because it comes back to the chamber for consideration. I completely support Mr Kavanagh and could not envisage a more appropriate piece of legislation suited to the considerations of that particular committee.

Mr VINEY (Eastern Victoria) — I rise to oppose the motion of Mr Kavanagh, and I do so with some degree of experience in the area of the Legislation Committee. I was one of the early members of this place who advocated for the establishment of a legislation committee right back to presenting a paper on it at a conference in the United Kingdom. I was privileged to be appointed as chair of the committee during the three-month trial.

Mr P. Davis — A very good chair.

Mr VINEY — Thank you, Mr Davis. I took the role of the Legislation Committee very seriously during that three-month trial. I researched and understood its role as thoroughly as I could. We looked at two bills in the that committee. One was the rewrite of the disability act and the other was the rewrite of the education act. There was a need to spend more than would normally be the available time in this house on such omprehensive bills with hundreds of pages. As Mr Theophanous said, Mr Jennings, as the minister representing the minister responsible for one of those bills, appeared before the committee for a considerable length of time to help members of this house go through that legislation clause by clause. That opportunity probably would not have been afforded to this house in any other forum.

However, the same cannot be said for this legislation. In fact the circumstances of this legislation are entirely different. Firstly, there is nowhere near the number of clauses or number of pages in this bill, and the detail is nowhere near the level of detail of those previous bills. Secondly, this legislation has had enormous interest from all members of the house, so providing all members of the house with the opportunity to go through the bill in a comprehensive way, with all members present for the committee of the whole stage, is a more appropriate way to go.

Mr ATKINSON (Eastern Metropolitan) — I will first deal with the arguments of my colleague David Davis. I suggest to him that if in fact the Legislation Committee is an unrepresentative committee of this house, why do we appoint select committees? Why did the member vote so enthusiastically for a select committee yesterday? That process passes on a body of work on behalf of this house which has merit, which is reported back to the house and which is subject to scrutiny by the house; so too does the Legislation Committee. I hope other members do not share his view.

No matter what the magnitude of the vote one way or the other, this is a house divided — this is a Parliament divided — on this issue. This is consciences divided on this issue. In the course of this debate many people have indicated that they have been deeply torn on these issues. They have looked at a position where they have needed to strike a final decision but have had many questions as part of making that decision. The value of the referral to the Legislation Committee that is offered to us by Mr Kavanagh through his motion is that it will enable many of the questions that have been raised in the course of the debate to be properly tested — to be

considered. It will enable us to receive information that might well satisfy a number of members. Indeed this process might well result in legislation that is more broadly supported in this house.

I personally believe that we have as a matter of courtesy to think of other members of both this and the other place in relation to the amendments they proposed to this legislation. I think we need to do justice to the amendments that have been prepared as part of this debate. It has been suggested that this bill is relatively straightforward, but that does not seem to me to be in accord with any of the speeches I heard given by members of this chamber. Indeed I think members had some very serious questions about many of the clauses. It is complex legislation. What concerns me most in this is the prospect of the Labor Party members turning off their consciences on this one.

Hon. T. C. Theophanous — That's disgraceful.

Mr ATKINSON — The fact is you either have a conscience vote or you do not have a conscience vote. In reply to Mr Theophanous's interjection, I think it will be disgraceful if Labor Party members are forced to take a particular position. I note that many of them are not here because they feel they have been whipped to a particular position.

The PRESIDENT — Order! We have already had a very broad-ranging debate on the bill, which Mr Kavanagh has moved should be referred to the Legislation Committee. That is what we are discussing. There should be no more about the debate.

Mr ATKINSON — Thank you for your guidance, President. I suggest that the Legislation Committee gives us an opportunity to test — —

Hon. T. C. Theophanous — Are you on it?

Mr ATKINSON — As a matter of fact, I am, Mr Theophanous.

The PRESIDENT — Order! Mr Theophanous!

Mr ATKINSON — The Legislation Committee gives us a chance to test the premises on which the bill is predicated. It gives us an opportunity to consider the guidelines and whether the guidelines that have formed part of the deliberations in this debate are in fact the guidelines that will go forward, because at this point in time they have not been finalised. It will give us an opportunity to consider the federal government's position — —

Hon. T. C. Theophanous — Gives you.

Debate interrupted.

SUSPENSION OF MEMBER

The PRESIDENT — Order! Earlier in the day I made it clear to a particular member that it was intolerable to me to have interjections because of the very nature of this debate. We are still discussing that particular issue. I suspended that member for 30 minutes for interjecting and disrupting the house. Mr Theophanous is disrupting the house, and I ask him to leave the chamber for 30 minutes.

Hon. T. C. Theophanous — You know, President, there is — —

The PRESIDENT — Order! There is to be no debate from Mr Theophanous.

Hon. T. C. Theophanous — I am giving you a debate.

The PRESIDENT — Order! We will deal with that later.

Mr Theophanous withdrew from chamber.

Debate resumed.

Mr ATKINSON (Eastern Metropolitan) — There are also matters regarding the federal government's administration of its principal legislation at a federal level which have not been touched upon in this debate but which I think need to be considered in the context of the Victorian response to this debate. We need to ensure that the various amendments which have been suggested by members and which are likely to be suggested by members are properly tested and properly evaluated. We need to ensure that we do not have technical hitches with the legislation before us, which we are likely to adopt as a house, because this is very important legislation. As I have said in previous debates, and as many members have said in the course of this debate, we cannot get it wrong.

I do not see the Legislation Committee as a delaying process. I think it is a very fit and proper process for this Parliament. However, I remind members that 21 members out of the 40 are required to vote to adopt the report of the Legislation Committee to change the bill. I think adequate safeguards are in place. The Legislation Committee is a process — —

The PRESIDENT — Order! The member's time has expired.

Mr KAVANAGH (Western Victoria) — I note some of the comments made in opposition to the motion, including the suggestion by Mr Theophanous that the bill has already been debated, which indeed it has been. As he noted, it is an emotional debate. However, the debate was generally on principles and the Legislation Committee is really about looking at details. I do not accept that his is really a relevant comment. The bill may not be as quite as detailed as it should be, as Mr Viney suggested. That is a point that should be considered by the Legislation Committee. Questions about safeguards were raised by many members in the course of the debate, and this is one way to address those concerns. I would like to think that the government will allow its members to vote according to their consciences in accordance with the public commitments it has made.

House divided on motion:

Ayes, 10

Atkinson, Mr (*Teller*)	Kavanagh, Mr
Davis, Mr P.	Kronberg, Mrs
Drum, Mr	Peulich, Mrs
Finn, Mr	Rich-Phillips, Mr
Guy, Mr (*Teller*)	Vogels, Mr

Noes, 29

Barber, Mr	Mikakos, Ms
Broad, Ms	O'Donohue, Mr
Coote, Mrs	Pakula, Mr
Dalla-Riva, Mr	Pennicuik, Ms
Darveniza, Ms	Petrovich, Mrs
Davis, Mr D.	Pulford, Ms
Eideh, Mr	Scheffer, Mr (*Teller*)
Elasmar, Mr	Smith, Mr
Hall, Mr	Somyurek, Mr
Hartland, Ms	Tee, Mr
Jennings, Mr	Theophanous, Mr (*Teller*)
Leane, Mr	Thornley, Mr
Lenders, Mr	Tierney, Ms
Lovell, Ms	Viney, Mr
Madden, Mr	

Motion negatived.

Committed.

Committee

Clauses 1 to 3 agreed to.

Clause 4

Mrs PEULICH (South Eastern Metropolitan) — I move:

1. Clause 4, lines 9 to 11, omit all words and expressions on these lines and insert the following —

"(a) the creation of a single cell containing 2 pro-nuclei following the fertilisation of a human oocyte by a human sperm; or".

2. Clause 4, lines 17 and 18, omit "the primitive streak appears" and insert "it forms a blastocyst".

These amendments change the definition of human embryo in the bill in two ways so that it applies to all human embryos. An embryo created by the fertilisation of an egg by a sperm is recognised as an embryo from the time it has two pronuclei, rather than from the later time when the first mitotic division occurs. An embryo created by somatic cell nuclear transfer or other process is recognised as an embryo provided it has the potential to develop to the stage where it forms a blastocyst, rather than the later time when the primitive streak would appear.

These amendments are intended to ensure that fertilised eggs are not excluded from regulation under the legislation in their early stages and that there is no risk of legal interpretation that would see all somatic cell nuclear transfer embryos excluded from regulation because they are not intended to be allowed to develop to the point where a primitive streak would appear.

Mr JENNINGS (Minister for Community Services) — I understand the change to the definition the member is seeking is consistent with arguments that she and other members have put in the second-reading debate, and there have been debates in another place and across the community about the appropriate scope of this piece of legislation. Can I say to the member and others who may be supporting this amendment that I, and I assume members who have voted in support of the second reading of this bill, will not accept the amendments, as they would have the effect of taking this piece of legislation out of alignment with commonwealth legislative arrangements and the clear undertaking of the Victorian government with the commonwealth and other jurisdictions as part of the Council of Australian Governments (COAG).

It would clearly be inconsistent with the bill as it has been adopted by the Legislative Assembly and indeed would be inconsistent with the bill that has passed the second-reading stage in this chamber. I also take it that members of this chamber would support the third reading. I may be proven incorrect in that, and in fact Mrs Peulich's contribution may rewind the COAG process and the commonwealth jurisdictional arrangements. But I do not have the opportunity to support the amendments because I am part of a government that wants to maintain the consistency of those regulatory regimes.

Amendment 1 negatived.

The DEPUTY PRESIDENT — Order! I call on Mrs Peulich to formally move her amendment 2 and make any remarks she wishes to make on that amendment.

Mrs PEULICH (South Eastern Metropolitan) — I spoke to amendments 1 and 2 because they are related. But in response to the minister, could I say that in relation to embryos created by the fertilisation of an egg by a sperm, the amendment being moved simply retains the current position under the Infertility Treatment Act 1995. The new definition in the bill is said to be based on the work of the Biological Definition of Embryo Working Party established by the National Health and Medical Research Council. However, the NHMRC testified in evidence to the Senate Standing Committee on Community Affairs that this is not the NHMRC's definition. I understand the hearing was held on 20 October 2006, and this can be found at page 19 of the transcript.

In its recently released April 2007 consultation paper *Draft Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research* the NHMRC proposes that in applying the commonwealth definition of the human embryo it will treat an embryo as an entity formed when two gametes combine to form a single cell, and if a cell or group of cells is capable of forming a blastocyst, the entity will be treated as having the potential to develop to the stage of primitive streak. Thus it is far preferable to incorporate the NHMRC's proposed approach into the legislation itself, which this amendment attempts to do.

Mr JENNINGS (Minister for Community Services) — I thank the member for the supplementary advice and a reminder of some of the debates and considerations of the NHMRC (National Health and Medical Research Council) that have been incorporated in the decision of the Lockhart committee, subject to Council of Australian Governments consideration and subject to the consideration of the commonwealth Parliament and now the Victorian Parliament. Though I can understand that if we were at the beginning of that process we might go back and revisit those, we are not at the beginning. From my vantage point we are hopefully close to the end. So I will not be supporting it, and I would attest that the majority of members in the chamber it would not support the variation.

Amendment negatived.

Committee divided on clause:

Ayes, 31

Atkinson, Mr	Madden, Mr (*Teller*)
Barber, Mr	Mikakos, Ms
Broad, Ms	Pakula, Mr
Coote, Mrs	Pennicuik, Ms
Dalla-Riva, Mr	Petrovich, Mrs
Darveniza, Ms	Pulford, Ms
Davis, Mr D.	Rich-Phillips, Mr
Davis, Mr P.	Scheffer, Mr (*Teller*)
Eideh, Mr	Smith, Mr
Elasmar, Mr	Somyurek, Mr
Hall, Mr	Tee, Mr
Hartland, Ms	Theophanous, Mr
Jennings, Mr	Thornley, Mr
Leane, Mr	Tierney, Ms
Lenders, Mr	Viney, Mr
Lovell, Ms	

Noes, 8

Drum, Mr	Kronberg, Mrs
Finn, Mr (*Teller*)	O'Donohue, Mr
Guy, Mr	Peulich, Mrs
Kavanagh, Mr	Vogels, Mr (*Teller*)

Clause agreed to.

The DEPUTY PRESIDENT — Order! Is Ms Hartland still proposing to move the amendment she circulated in the chamber earlier?

Ms HARTLAND (Western Metropolitan) — We will be withdrawing that amendment on the basis that the minister has given a guarantee that that will actually occur.

Clauses 5 and 6 agreed to.

Clause 7

Mrs PEULICH (South Eastern Metropolitan) — I move:

3. Clause 7, line 34, omit "or" and insert "and".

4. Clause 7, page 6, lines 1 to 5, omit all words and expressions on these lines.

These amendments impact upon amendments 5, 6, 8 and 12, so people who are concerned that we may be dividing on every single amendment need not be, because many of these amendments are dependent on the first. The intention of the first amendment — —

The DEPUTY PRESIDENT — Order! I interrupt Mrs Peulich for one moment to clarify this for the committee. Amendment 4 is tested by amendment 3, and subsequently other amendments 5, 6, 7, 8, 12, 13, 14, 15 and 16 are all effectively tested by those two amendments. So amendment 3 is the critical

amendment that is under consideration by the committee. I think Mrs Peulich was putting that position, but it is important to clarify that for the committee.

Mrs PEULICH — Thank you, Deputy President. You are always very helpful in ushering and guiding those of us who are perhaps a little greener about the procedures of the chamber.

Basically the focus of these amendments is to ensure that no eggs from aborted embryos or foetuses are used. These amendments make it an offence — whether or not licensed — to create, use or develop an embryo using precursor cells from a human embryo or foetus, and remove the ability for a licence to authorise this. Regardless of one's views on the issue of abortion — and I am sure that there are varying views on this — the seeking of a woman's consent to the use of such precursor cells in the context of a termination of pregnancy would create unreasonable emotional pressure and potential conflicts of interest.

Further, these amendments make it an offence to create, use or develop a hybrid embryo, whether or not licensed, and remove the ability for a licence to authorise this. The bill proposes to allow the creation of hybrid animal-human embryos up to but not including the first mitotic division. Such an embryo is a living individual, part human and part animal. It is an abuse of human dignity to create and destroy such an individual. Removing the ability to create hybrid embryos was the subject of an amendment moved in the Senate by Senator Andrew Bartlett and agreed to by the Senate. However, this amendment will not remove all of the provisions allowing for the creation of hybrid embryos.

Mr JENNINGS (Minister for Community Services) — I understand the profound nature of what is intended by Mrs Peulich's amendment. In fact it goes to the heart of many people's concerns about the appropriateness of using embryos and, in particular, hybrid embryos, which is a very vexing question over which many people have agonised over a great deal of time in the considerations of the Lockhart inquiry and the subsequent Council of Australian Governments agreement, and the considerations of the scope of these pieces of legislation. So I understand that many people have profound concerns about whether foetal material should be available for the research practices that are provided for under the scope of the bill. In fact it goes to the heart, as Mrs Peulich herself said, of people's concerns, as these issues relate to abortion and foetal development. They are very deeply felt positions that people have.

Can I say that the regime that is provided for within this legislation is very narrow in terms of its application and very prescriptive in terms of the law itself, the guidelines, the licensing arrangements and responsibilities of the National Health and Medical Research Council. The accountability provisions that relate to these matters are very tight. That is a general comment about the two cases in question. In the specific case of the hybrid embryos, as the member would be well aware, very restrictive practice applies to the use of hybrid embryos. Indeed she would be aware that the only scope of activity that is provided for within this regulatory regime is to test the potency of sperm in relation to hybrid embryos. They cannot be used by any other purpose. It is clearly the intention of this regulatory regime for them to be used for that purpose alone and for no other purpose. Given the very tight reining in of the practice and licensing issues that relate to these matters, the member's amendment is not consistent with the regulatory regime that the government is seeking to adhere to.

Mr KAVANAGH (Western Victoria) — I would like to talk about the possible donation of eggs from aborted foetuses. The foetus from which eggs could possibly be taken has no-one to speak for her. Therefore I believe that no-one is in a position to give away her eggs. Normally we require next of kin or people who have a special relationship with the deceased to give permission for any cells, organs or parts of a deceased body to be given away. In the case of an aborted foetus, who in her short life did not have a hand in her destruction?

Mr JENNINGS (Minister for Community Services) — As I indicated in my answer to the first contribution of the member, this is a very vexing and troubling issue that relates to the philosophical position that Mr Kavanagh and others bring to this debate. I can understand why it causes a great degree of distress to people coming from a philosophical position consistent with that of the member. My only substantive answer is the answer that I have already given in relation to the environment and the legislative regulation that has been considered and adopted within this framework, the limitations of practice that relate to the use of any material that is obtained in this fashion, and the controls that are contained within the regime. I know that whilst I rely on that answer, it will not satisfy the profound concerns of the member and other members of the community who agree with his position.

The DEPUTY PRESIDENT — Order! I propose to put Mrs Peulich's amendment 3, which is a test for 4, as I have advised the committee. Mrs Peulich's amendment 4 is the more substantive of those two

amendments and it relates to the issue of what constitutes an offence, particularly with reference to a human embryo created using precursor cells taken from a human embryo or human foetus, or a human hybrid embryo. I have also indicated to the committee that the amendment is a test for subsequent amendments.

Committee divided on amendment:

Ayes, 7

Drum, Mr	Kronberg, Mrs (*Teller*)
Finn, Mr	Peulich, Mrs
Guy, Mr	Vogels, Mr
Kavanagh, Mr (*Teller*)	

Noes, 32

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

Amendment negatived.

Clause agreed to; clauses 8 to 11 agreed to.

Clause 12

The DEPUTY PRESIDENT — Order! I call on Mrs Peulich to move her amendment 9, which also relates to her amendments 10 and 11, which indicate an intention to oppose clauses 14 and 15.

Mrs PEULICH (South Eastern Metropolitan) — I move:

9. Clause 12, page 10, lines 15 to 33, omit all words and expressions on these lines.

This amendment is basically to do with full and proper consent always being required. The amendment removes the capacity for a licence to be issued that dispenses with the requirement of proper consents specified in NHMRC (National Health and Medical Research Council) guidelines as defined at page 3 of the bill. It is important to ensure that the requirement of obtaining full, free and informed consent is protected in all circumstances, given the serious potential for abuse and conflict of interest.

Many members commented on their concerns in relation to this important safeguard. If any modifications to the normal procedures for obtaining proper consent are to be allowed, this should be done through the provisions included in the NHMRC guidelines after full and thorough consideration rather than being allowed on a case-by-case basis behind closed doors by the licensing committee.

Ms MIKAKOS (Northern Metropolitan) — I would also like to express my support for this particular amendment. In relation to this particular issue, it was a matter that I raised in my contribution. I am concerned that in relation to excess ART embryos that are considered unsuitable for implementation due to a possible genetic abnormality or other reason where the embryo is not able to be implanted, that the provision allows the NHMRC to modify the licence condition in a way that would provide a different type of consent being obtained in this particular instance to the other types of donations and other provisions that apply under this bill.

There should be consistency; the provisions for proper consent should be thorough; they should relate to things such as the proper provision of information to donors; and that proper counselling and other processes are followed. I understand a lot of these issues are addressed in a very comprehensive manner in the NHMRC guidelines. However, I am concerned by the fact that in this particular instance the consent is able to be modified. I indicate my support for the amendment.

Mr JENNINGS (Minister for Community Services) — I thank both members for raising an issue that warrants some examination and explanation. It is important to know that any variation or modification from the consent provisions are in our view extremely narrow. In fact the extent to which those provisions may be varied have been extrapolated. For good reasons people would be concerned about what any potential variation may be, but in practice, as I have been advised, there will be a very narrow variation.

An example of the very narrow variation that has been described to me relates to the embryos that have been determined to be unsuitable for implementation. These are embryos that in the analysis by an examination of the appropriate agency of the treatment centre there is the consideration that it would be inappropriate for these embryos to proceed in their reproductive capacity to be implanted and then proceed to human life. It is a clear understanding that the embryo is deficient to be able to take that path, but may be of use in terms of other research and activity that is consistent and

provided for within the scope of the bill but narrow in its utility to those issues.

Only in those contexts would the bill allow for the variation to the cooling-off period. Effectively this relates to whether the donor may wish to use this embryo for implanting for reproductive purposes to give life to a child. In those circumstances where the embryo is not suitable for that purpose the arrangement that is provided for here will allow for the research facility to use that embryo for other purposes, certainly not for reproductive purposes. The reason why the cooling-off period would not be relevant is because at no point would the donor come back and wish to use that embryo for reproductive purposes.

That is the scope of this variation of consent that has been described to me. Because the scope of the regulatory regime allows for those embryos that are deemed to be unsuited for implantation to be used for those purposes, and given the limited time that is available to use those embryos for those purposes, the bill and the regulatory regime allow for them to be used exclusively for that purpose within a limited time frame and in the knowledge that these embryos would never be subject to decisions by the donor for them to proceed for reproductive implantation.

Amendment negatived; clause agreed to; clauses 13 to 41 agreed to.

New clauses A to E

Mrs PEULICH (South Eastern Metropolitan) — I move:

17. Insert the following new clauses to follow clause 20—

'A Research

(1) In section 22(1)(f) of the Principal Act for "Division 2" **substitute** "Divisions 2 and 4A".

(2) In section 22(3) of the Principal Act after "sperm" **insert** "or the use of another cell for the creation of a human embryo".

(3) In section 22(3) of the Principal Act for "Division 4" **substitute** "Divisions 4 and 4A".

B Division 4 of Part 3 heading

In the heading to Division 4 of Part 3 of the Principal Act after "**gametes**" **insert** "**or other cells**".

C Consent to research

(1) In the heading to section 34 of the Principal Act after "**gametes**" **insert** "**or other cells**".

(2) In section 34 of the Principal Act after "use of a gamete" **insert** ", or another cell for the creation of a human embryo,".

(3) In section 34(a) of the Principal Act after "gamete" (wherever occurring) **insert** "or other cell".

D Requirements as to consent

In section 35(1)(b) and (c) of the Principal Act after "gamete" (wherever occurring) **insert** "or other cell".

E Additional requirements for certain research

After Division 4 of Part 3 of the Principal Act **insert** the following—

"Division 4A— Additional requirements for research involving gametes and other cells

35AA Definitions

In this Division—

dependent relationship means a relationship where unequal power exists between the persons in the relationship including a relationship between—

(a) students and teachers; and

(b) employees and their employers or supervisors; and

(c) persons with chronic conditions or disabilities and their carers; and

(d) patients and health care professionals;

National Statement means the NHMRC National Statement on Ethical Conduct in Research Involving Humans, as in force from time to time.

35AB Obtaining a gamete for research

(1) A gamete may be obtained for research only in accordance with the National Statement.

(2) If the obtaining of a gamete for research requires the person donating the gamete to undergo a medical procedure, the person carrying out the medical procedure must not be a person involved in conducting the research.

(3) Donation of a gamete for research must be voluntary and free from exploitation and coercion.

(4) If the donation by a person of a gamete for research involves more than low risk from non-therapeutic procedures, the person

donating the gamete must not be in a dependent relationship with the person or other body conducting the research.

(5) For the purposes of subsection (4), research involves low risk only if the only foreseeable risk is one of discomfort.

35AC Information to be given to person donating a gamete or other cell

A person must be given the following information before consenting, or being asked to consent, to the obtaining or use of a gamete, or the obtaining or use of any other cell for the creation of a human embryo, for research—

(a) a statement that consent to the obtaining or use of the gamete or other cell for research is voluntary;

(b) a description of the research for which the gamete or other cell and any products derived from it will be used and any likely benefits from the research, including an estimate of when the benefits might be realised;

(c) a statement of the potential risks of obtaining and donating the gamete or other cell, including details of any risks to the future fertility of the person;

(d) a description of the procedures for obtaining the gamete or other cell from the person;

(e) a statement about how the person may withdraw from the obtaining or the use of the gamete or other cell, including details of any risks that may arise or additional procedures that may be required as a result of the withdrawal;

(f) information about counselling services available to the person;

(g) a statement about how the person's privacy will be protected;

(h) a statement about the potential financial interests of researchers in the outcome of the research program, including any future financial gains the researchers may receive if the research gives rise to a commercial product;

(i) any other information the National Statement requires the person to be given.".'.

Amendment 17 is intended to ensure fully informed consent to obtaining the use of eggs and other gametes and cells. This amendment inserts a series of protections to attempt to ensure that the potential donors of eggs and other gametes and cells are fully informed of what is involved and are free from potential exploitation or coercion through inappropriate use of a dependent relationship, as for example in the Korean experiment. These amendments reflect some of the provisions set out at 17.21 on the National Health and Medical Research Council's April 2007 consultation draft *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research.*

It is appropriate that key requirements necessary to ensure properly informed consent free of coercion and undue influence are set out in legislation rather than again being left to guidelines. This is particularly important given the highly intrusive nature of donation processes, their side effects on health and their risks to future fertility, especially when they involve young women. Further, or more detailed, requirements of the guidelines can then supplement the requirements of the legislation.

Mr JENNINGS (Minister for Community Services) — In fact I have some sympathy for the notion that legislative provisions may be more enforceable or may be a more appropriate path for provisions such as the provisions that the member's amendment allows for. If I and other members of the government, and other members of the legislative community generally, had the scientific knowledge and capacity to ensure that our legislation reflects best knowledge and practice within science, then I might be in a position to agree with the proposition that the member has put.

The government and I are of the view that because of the circumstances and the conditions of the licensing requirements, the appropriate regulation of these scientific endeavours and how they cross over to the rights and obligations that the licensing arrangements and treatments, as far as possible, should enable appropriate and informed consent, the appropriate scrutiny of the scientific community and the parliamentary institutions which provide the standing guidelines which have been established and maintained by the NHMRC (National Health and Medical Research Council). This complete set — the legislation, the regulatory regime and the appropriate licensing arrangements — on balance best satisfies the range of needs and obligations.

As members would be aware, and as I am sure every member of the committee recalls, within the last 2 hours, during my summary of the second-reading debate I have outlined to members of the house the extensive conditions of informed consent and the knowledge, advice and support which will be provided to donors in this regime. If the committee wants me to

repeat those prescriptions as they are outlined within the guidelines, I will, otherwise I draw the attention of members to the second-reading debate.

Ms MIKAKOS (Northern Metropolitan) — I do not think it is necessary for the minister to repeat the provisions in the NHMRC (National Health and Medical Research Council) draft guidelines. I have read them closely. I am comfortable with a lot of the content of the draft guidelines, although I think some aspects could be strengthened.

I want to put on record my strong support for division 4A which has been proposed by Mrs Peulich. I indicated a major concern during my contribution to the second-reading debate which relates to the issue of free and informed consent. The concern I have about the definition of proper consent in relation to the bill is that it is only a defined reference to the NHMRC guidelines. My strong preference is for consent provisions to be contained in the legislation to ensure we can have a rigorous test which would apply to every instance, so that I can be satisfied that the NHMRC would not change, soften or water down the consent provisions in the future.

I want to thank Mrs Peulich for moving that particular amendment, which addresses the whole issue of a dependent relationship. Members are very aware of a scenario which occurred in South Korea. A discredited scientist in South Korea took eggs from female members of his staff. It transpired that it was a fabrication that those members of staff willingly provided eggs for research. Members may or may not be aware that a large proportion of those young women have commenced legal action against the South Korean government because of their infertility and other health problems which have arisen as a result of the overstimulation of their ovaries.

I think it is important that this particular issue is addressed. I know that there are some references to this issue in the draft guidelines. I would like to see the draft guidelines strengthened at the very least to address my particular concern about dependent relationships. As I said, my preference would be that the whole issue of proper consent would be strengthened and dealt with in a more adequate fashion in the bill.

Furthermore, during my contribution to the second-reading debate I referred to the Declaration of Helsinki. This is international law and is a recognition that the health of donors should be paramount in the minds of medical practitioners. This recognition should override any possible interest to the society that medical practitioners are serving by undertaking medical research.

Patients are in a particularly dependent relationship. I have already indicated that I have some very serious concerns about the need for separation between the assisted reproductive technology clinicians and those undertaking this research. This is to ensure that patients do not have any perception of a conflict of interest in relation to the type of treatment they might be provided with and to ensure that the community can have that confidence as well. I note that proposed new clause 35AB(2) specifically provides that the person carrying out the medical procedure must not be a person involved in conducting the research. That gives me some comfort that if this bill were to be passed it would address one of the very serious concerns I have. That is why I am indicating my support.

Proposed new clause 35AC again addresses some of my concerns, in that it would provide within the bill, rather than in the draft guidelines, a very detailed statement of the information that would have to be provided to all egg donors, rather than leaving it to guidelines that may be watered down in the future. I am indicating my support for, in particular, proposed new division 4A, as contained in this amendment.

Mr FINN (Western Metropolitan) — I am going to be very brief. I want to support the new clauses moved by Mrs Peulich on the basis that they go some way towards preventing the exploitation of women, which I regard as an extremely important issue. Also I believe that informed consent can, hopefully, prevent serious litigation down the track. Whilst that might not thrill our friends down at Slater and Gordon, I think it is something we should be taking into consideration now. I can certainly see a circumstance not too far down the track where somebody will claim they did not give informed consent, something goes wrong, and there we are in the courts with massive payouts and massive legal fees. These new clauses go some way towards avoiding that scenario.

Mr JENNINGS (Minister for Community Services) — I am very pleased to indicate to the committee and the three members in question who have supported this amendment that we are not in a different philosophical place on this particular amendment. The fundamental principle that all members have advocated for relates to rights and responsibilities in terms of the licensing arrangements for treatment facilities and research facilities, the researchers and clinicians and their obligations to ensure there is the appropriate degree of information and disclosure to potential donors

and their clear obligations relating to the provision of that information and that support.

So we are entirely on the same page in that that should be a feature of the connection between the legislative regime and the regulatory environment and the practice. We are absolutely 100 per cent in agreement about those issues. That is the good news.

The bad news is that I am not in a position to be able to support them being incorporated at this time into the legislative environment, for the reason that I answered in the first instance when Mrs Peulich raised these issues, on the basis that the government is of the view that there is an interlocking relationship between the commonwealth legislation, the Victorian legislation, the licensing arrangements and the National Health and Medical Research Council guidelines, which come together as a cogent set of obligations and responsibilities and legislative arrangements, and we are confident that that is the appropriate way to move forward.

That is the reason why we are of the view at this point in time that the arrangements should be as envisaged within the scope of the bill. But I do volunteer that the substantive issues that have been raised in relation to the disclosure and consent requirements and remedies that the members are seeking are not inappropriate or inconsistent with the objectives of the government.

New clauses negatived.

New clause F

Mrs PEULICH (South Eastern Metropolitan) — I move:

18. Insert the following new clause to follow clause 38 —

'F Adverse events register

After section 62 of the Principal Act insert the following—

"62A Adverse Events Register

(1) The designated officer of a licensed centre must keep an Adverse Events Register for that centre at the centre or at another place that is specified in the licence for the centre.

Penalty: 50 penalty units.

(2) The designated officer must ensure that there is recorded in the Adverse Events Register information, as required by subsection (3), about adverse events arising from the donation of gametes and embryos for research including data about, and a description of the outcomes of, the donation of gametes and embryos and the procedures involved in the donation.

Penalty: 50 penalty units.

(3) The information must be recorded in the Adverse Events Register in a way that will allow it to be used—

(a) by the licensed centre to provide information to persons who are donors or prospective donors of gametes and embryos to assist the persons in making decisions about consenting to donations and inform the persons about the possible side-effects of making donations; and

(b) to facilitate long term studies by the licensed centre of donors of gametes or embryos, including long term adverse outcomes and subsequent effects on fertility; and

(c) to facilitate long term studies by the Authority and the NHMRC of the health of donors and persons who have undergone treatment procedures.

(4) The designated officer must, by 31 July in each year, forward a copy of the Adverse Events Register for the previous year to the Authority for inclusion in the Authority's report to the Minister under section 137."'.

I am sure that all members would be relieved that we come to the conclusion of this debate, which has been drawn out, emotional and has certainly tested the patience of the handful of us who have insisted on some divisions as a way of trying to draw a line in the sand. Whether you support this legislation or not, the importance of establishing an adverse events register is absolutely critical. You may have no doubts whatsoever about the effectiveness of this proposed legislation, you may have some doubts, or you may be opposed. But you will never be able to fully review the effectiveness of it if you do not have an adverse events register. Establishing such a register would certainly not be contrary to the spirit of the commonwealth and Victorian agreements. I think we as policy-makers are obligated to ensure that we set up and capture this sort of information which enables the review of this legislation further down the track.

I was quite moved by the comments of the member for Pascoe Vale in the other place, Ms Campbell, in relation to this. I would like to make reference to her comments. It might be disorderly to quote from *Hansard* from the same session. I will just refer in passing to the fact that she said without a register women will become faceless and irrelevant in this research. And indeed they will, because ultimately if

you do not seek to capture information about the adverse effects of many of the contents of this legislation you will never know.

Victoria and Victorians deserve an adverse events register, and this amendment is intended to establish that. It is quite self-explanatory. It proposes that there be a designated officer of a licensed centre to keep these adverse events registers, that there be a clear recording of the information provided, and that it be provided in a form that this house understands.

Whether you support it, oppose it, or perhaps have had lots of doubts and have been forced by your own party to vote against a process that could have allowed much greater and more effective scrutiny and the cleaning up of very messy legislation, do not vote this down to get yourself off the hook. It will enable better public policy development in the future.

Ms MIKAKOS (Northern Metropolitan) — I may as well jump in now because I want to indicate my support and reiterate that, as I said in my earlier contribution in the chamber, I think an adverse events register could add a great deal to this legislation.

In my mind, informed consent is only able to be given by a donor who is provided with full information about the risks involved. Unless we have a body able to collect data about adverse events, that the donor is able to contact themselves rather than having to rely on ART clinics to raise these matters with the regulator, then we are not able to obtain that information.

If this register was put in place, it would ensure that procedures in ART clinics could be improved over time, thereby reducing risks for donors and also providing for safer treatment for women undergoing ART more generally, not just donors. I support the amendment.

Mr DRUM (Northern Victoria) — I wish to add my support to this amendment. I think it really does add a greater level of security to the bill. While some may or may not be in favour of the legislation, everybody has handled themselves with the utmost sincerity. But this amendment seems to be very hard to argue against. It seems to add another level of security on a range of issues surrounding what has been in some respects a very blurred debate. With so much uncertainty on some of the procedures involved, to have an adverse events register seems to be something that it is very difficult to argue against, and I urge members to support the amendment.

Mr THORNLEY (Southern Metropolitan) — I have not yet heard from the minister and so I am not sure how I will vote on this amendment, but from everything I have heard I am very sympathetic to the views that have been put forward. I spoke at some length about the importance of safeguards and of fully-informed consent in this process, and it seems to me that this may help add to that process.

I am vaguely aware that there may be some arguments about either completely pulling apart the whole regulatory regime at the commonwealth-state level or that there may be some other bodies that already do this, and I am open to hearing those arguments. But unless I hear something compelling along those lines, I also will be supporting the amendment.

Mr JENNINGS (Minister for Community Services) — I thank all members for their appropriate concern about this issue. I have been leafing through the provisions of the current act in order to provide some comfort to members that the regime that applies currently in the licensing regime that is attached to the existing act does in practice account for the requirement to have an adverse events register.

I am advised that that condition is already attached to the licensing regime under the existing act, so we are not at cross-purposes in relation to the requirement to ensure that there is an appropriate enforcement of a rigour to account for the outcomes, and particularly adverse outcomes. I am advised that ART (assisted reproductive technology) providers are required to report adverse events to the Infertility Treatment Authority (ITA) on a six-monthly basis, as well as reporting on what actions have been taken to remedy the cause of adverse events.

As part of the inspection process, ITA sights and discusses this documentation with the ART provider. This Victorian requirement is in addition to the national requirements of the Reproductive Technology Accreditation Committee which requires as a condition of accreditation that details and processes for recording adverse events such as infection and ovarian hyperstimulation syndrome, are provided prior to any consideration of accreditation. This compulsory and written evidence of compliance must be provided in the RTAC requirements. The Reproductive Technology Accreditation Committee accreditation is vital, as access to Medicare is dependent on it for ART providers.

Therefore, there are a number of interlocutory aspects to this, and of course I realise that Ms Mikakos perhaps did not highlight this matter in terms of the individual rights of a donor or a client of the services, and what patients may have recourse in terms of remedies to

adverse events they are affected by, but it is important to know that these protections are available as general protections under medical care and health complaint processes within the state of Victoria; but there are also specific remedies that relate to this regime.

In terms of an adverse event that may impact upon the quality of life for an individual patient, they will have access through the ART clinic to independent counsellors, to patient service managers, to clinical review committees that are established under the Infertility Treatment Authority, and indeed ultimate recourse to the health services commissioner as a general safety net provision.

There are specific remedies that are accounted for within the bill, within the regime that applies, and I would think it is incumbent upon the state of Victoria to ensure that any patient or donor or person who receives this service or comes into the scope of the practices the bill allows for should be well informed about their rights and opportunities for remedy, and it is incumbent upon us to ensure that there is better knowledge and understanding of those remedies, and indeed ultimately — going back to the heart of the proposition before us — that we have a degree of rigour and scrutiny applied both in terms of the public consideration of adverse events and the register, and very importantly, that they become a pivotal issue in relation to the ongoing licensing arrangement.

I understand that I may be outstaying my welcome, but can I say to all members of the committee that these are important matters, and we should stay here for as long as we need to so as to receive some degree of satisfaction. So I am sorry that I may be delaying some members on one level, but on another level I am not sorry because these are very, very important matters.

Mr DRUM (Northern Victoria) — Was the minister reading then from the existing Infertility Treatment Act. Does that provision exist within the existing act?

Mr JENNINGS (Minister for Community Services) — Yes.

Mr DRUM (Northern Victoria) — And that register is currently available for people in Victoria to access?

Mr JENNINGS (Minister for Community Services) — I advise Mr Drum that I am pausing because I want to be careful about how I answer the question. I do not want to mislead the committee or the community. I stand by what I have said. The context in which the regime works at the moment is that it is a regime that relates to the licensing arrangements and the quality assurance processes within the regulatory environment of ART facilities and is used by the Infertility Treatment Authority in that way.

If Mr Drum or other members of the community have an expectation that it will be a publicly available document, that is a different question. The important aspect of this very sensitive, very important material — material that should not be swept under the carpet but should be acted upon, the way in which the reporting is compiled and is used — relates to ensuring that there is appropriate compliance with the licensing arrangements and practice procedures of the facilities in question, and that there are appropriate remedies that are available to either the donors or to the patients of these services, and to providing for them to the individual satisfaction of their concerns. But the regime is not intended to be a public disclosure of the field and public discussions about what is compiled through the reports.

Mr DRUM (Northern Victoria) — In light of some of the statistics that have come out of South Korea — where more than 35 women are suing the government and there are issues in relation to sterilisation, women having problems with conception afterwards, problems with rib deformities and all those issues — if we were to have any of those adverse effects here in Victoria with this type of hyperstimulation and ovarian suppression and so forth, are we going to be in a situation where that will become public knowledge via a register of this type so that the suitable and appropriate warnings can be handed out to future donors?

Mr JENNINGS (Minister for Community Services) — There are two absolutely related matters. The first is that if there is poor, inappropriate practice and there are adverse events, my reading of the situation is that there is a requirement of the Infertility Treatment Authority to either suspend or revoke the licence of the operator. That is one dimension. The second dimension is that there needs to be confidence in what I have just described as the individual remedies that a patient donor may be able to pursue through the rights and entitlements that I have previously outlined to the house.

There is a third matter, and it relates to what we were talking about before — that is, informed consent. We discussed that issue earlier in relation to a previous clause of this bill. My understanding is that there is a very onerous requirement to include in the informed consent the relevant information about the performance of the providers and the nature of the potential adverse threat. It is very specific. There is an obligation to inform of the current practice and the risks that may be

involved with these procedures, and that is a licensing obligation outlined within the guidelines.

Mrs PEULICH (South Eastern Metropolitan) — Could the minister clarify something for me: there is a regime that captures the information which is predominantly for internal use enforcement, but in my understanding there is no public disclosure component. In effect, perceptions about the success of these processes will continue to be positive because we will never get to hear the adverse effects if there is no public disclosure component. It is wonderful spin doctoring to protect a program. What are we afraid of? This is an opportunity for each and every one of us to capture information. We need to ensure that there is a public disclosure element so that what we are doing can be reviewed and so that we can be certain that it is good policy and does not need tweaking rather than that happening behind closed doors. Is there a public disclosure component in that reporting?

Mr JENNINGS (Minister for Community Services) — I can absolutely understand where the member for South Eastern Metropolitan Region and other members are coming from in relation to this issue. I had the good fortune to be able to stand before the committee and suggest that it would be easier for me to say that full public disclosure of anything that is found in these circumstances would be the way in which the regime should operate. However, I go back to my substantial contribution in relation to this matter. We need to understand who should be empowered with this knowledge and how it should — —

Mrs Peulich — We should be.

Mr JENNINGS — I understand that is the proposition that is being put to me and to the members of the committee. Within this regime there are three related matters that concern the ongoing licensing arrangement. I would tend to think that all of these three related provisions have the capacity to achieve public disclosure of relevant matters.

Firstly, if licensing provisions are not adhered to — that is, if there are adverse events that lead to licences being revoked — that would be an extremely public matter. The second issue would be in terms of the reporting requirements of the various bodies I have outlined, including the Health Services Commissioner — that is, if there is a proliferation of adverse events that have been reported to the Health Services Commissioner. A feature of this sector that emerges in the reports is that the Health Services Commissioner informs the Parliament of Victoria about the range of adverse events and circumstances that it has been sought to support remedies for, and that would be a form of public disclosure. As to the individual empowerment of patients or donors — which, ultimately, is the most important information flow — they would hopefully, through the regime and the rigour we intend to bring to this, be fully informed of the practice and the risks they may be subjected to in making themselves available for involvement in the processes outlined in the bill.

Mr THORNLEY (Southern Metropolitan) — I appreciate the minister taking the time to go through this. I am getting a bit of a sense — and I apologise for not being closer to the details — that the current regime is a little provider-specific. Is there a feedback loop in the current regime which would ensure, if there are adverse events occurring at various providers, that a potential donor, when being given information to enable her to have informed consent, would have access to the adverse event information — in whatever disguised form it needs to be — from someone other than the particular provide she is going to? Or is it siloed within the provider?

Mr JENNINGS (Minister for Community Services) — Again, I thought this was a very good question which warranted some further examination and teasing out of these issues. We should be mindful of two things. Firstly, as a systems issue, there is the opportunity for the Infertility Treatment Authority to provide advice to the minister, who would then be charged with the responsibility for taking some action in relation to public disclosure of these matters. Given my mindful response to ministerial responsibility, I think that is a very significant and profound obligation.

Mrs Peulich — It would be a good question without notice, wouldn't it?

Mr JENNINGS — It could be. I would do my best to give a fulsome answer if it was a question on notice and I was responsible for it.

However, the second and more important aspect of this issue relates to Mr Thornley's question about whether the information for the informed consent, which I propose is the most empowering way this information should be used, comes to the donor through the provider or through the research facility. The answer, I am very pleased to say, is no. The source of that advice is the independent counsellor established under the authority of the Infertility Treatment Act. While the provider must make sure the donor connects with the independent counsellor, the counsellor operates independently and is obliged under the licensing regime to ensure this information is provided in an appropriate, and hopefully empowering, fashion.

Mr DRUM (Northern Victoria) — From the minister's answer, every potential donor would have contact with an independent counsellor?

Mr JENNINGS (Minister for Community Services) — Yes.

Committee divided on new clause:

Ayes, 10

Atkinson, Mr	Hall, Mr
Dalla-Riva, Mr	Kavanagh, Mr
Drum, Mr (*Teller*)	Peulich, Mrs
Finn, Mr	Rich-Phillips, Mr (*Teller*)
Guy, Mr	Vogels, Mr

Noes, 29

Barber, Mr	Mikakos, Ms
Broad, Ms	O'Donohue, Mr
Coote, Mrs	Pakula, Mr
Darveniza, Ms	Pennicuik, Ms
Davis, Mr D. (*Teller*)	Petrovich, Mrs
Davis, Mr P.	Pulford, Ms
Eideh, Mr	Scheffer, Mr (*Teller*)
Elasmar, Mr	Smith, Mr
Hartland, Ms	Somyurek, Mr
Jennings, Mr	Tee, Mr
Kronberg, Mrs	Theophanous, Mr
Leane, Mr	Thornley, Mr
Lenders, Mr	Tierney, Ms
Lovell, Ms	Viney, Mr
Madden, Mr	

New clause negatived.

The DEPUTY PRESIDENT — Order! Ms Hartland previously circulated an amendment to members, and I understand she has a comment she wishes to put before the committee.

Ms HARTLAND (Western Metropolitan) — As Minister Jennings said in his summation, we have been given a written guarantee from the minister that what was proposed in our amendment will be carried out. We have accepted that, and I am happy to circulate that letter to other members.

The DEPUTY PRESIDENT — Order! That amendment will not be proceeded with on this occasion due to the assurances given. That concludes the committee's consideration of the bill.

Reported to house without amendment.

Report adopted.

Third reading

Mr JENNINGS (Minister for Community Services) — I move:

That the bill be now read a third time.

In so doing I would like to thank the house for the very respectful way in which this debate and the proceedings have been undertaken. I convey to all members that my hope is that their loftiest hopes for the outcome of this bill will be achieved and that their fears — their profound fears — will not be realised through the effect of the bill. I hope there is some optimism that all members can find through this bill.

The PRESIDENT — Order! The question is:

That the bill be now read a third time and that the bill do pass.

House divided on question:

Ayes, 23

Barber, Mr	Pakula, Mr
Broad, Ms	Pennicuik, Ms
Coote, Mrs	Petrovich, Mrs
Darveniza, Ms	Pulford, Ms
Davis, Mr D.	Rich-Phillips, Mr
Davis, Mr P.	Scheffer, Mr
Eideh, Mr (*Teller*)	Tee, Mr
Hartland, Ms	Theophanous, Mr
Jennings, Mr	Thornley, Mr
Leane, Mr (*Teller*)	Tierney, Ms
Lovell, Ms	Viney, Mr
Madden, Mr	

Noes, 16

Atkinson, Mr	Kronberg, Mrs
Dalla-Riva, Mr	Lenders, Mr
Drum, Mr	Mikakos, Ms (*Teller*)
Elasmar, Mr	O'Donohue, Mr
Finn, Mr	Peulich, Mrs (*Teller*)
Guy, Mr	Smith, Mr
Hall, Mr	Somyurek, Mr
Kavanagh, Mr	Vogels, Mr

Question agreed to.

Read third time.

Remaining stages

Passed remaining stages.

FAIR TRADING AND CONSUMER ACTS AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. J. M. MADDEN (Minister for Planning).

EQUAL OPPORTUNITY AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. J. M. MADDEN (Minister for Planning).

HOWARD FLOREY INSTITUTE OF EXPERIMENTAL PHYSIOLOGY AND MEDICINE (REPEAL) BILL

Statement of compatibility

Hon. T. C. THEOPHANOUS (Minister for Industry and State Development) 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 Howard Florey Institute of Experimental Physiology and Medicine Act (Repeal) Bill 2007.

In my opinion, the Howard Florey Institute of Experimental Physiology and Medicine Act (Repeal) Bill 2007, 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 Howard Florey Institute of Experimental Physiology and Medicine Act (1971) in order to facilitate a commitment under the Healthy Futures Statement to create a major Neuroscience and Mental Health Research Centre.

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.

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.

Theo Theophanous
Minister for Industry and State Development

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. T. C. THEOPHANOUS (Minister for Industry and State Development).

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

That the bill be now read a second time.

Incorporated speech as follows:

The bill calls for the repeal of the Howard Florey Institute of Experimental Physiology and Medicine Act 1971 and for the transfer to another entity of all property, rights, liabilities and staff of the Howard Florey Institute of Experimental Physiology and Medicine.

The Howard Florey Institute of Experimental Physiology and Medicine Act 1971 was enacted to establish a body corporate known as the Howard Florey Institute of Experimental Physiology and Medicine.

In *Healthy Futures*, the Victorian life sciences statement, a $53 million commitment was made to facilitate the creation of the Australian Centre for Neuroscience and Mental Health Research ('the centre'). The creation of the centre requires the amalgamation of three institutes that will form a new entity to be known as the Florey Neuroscience Institutes.

The centre will create critical mass in neurosciences, reinforce Victoria's growing international reputation in neurosciences and deliver an increased focus on translating research into practical benefits for people suffering from degenerative conditions.

The Howard Florey Institute of Experimental Physiology and Medicine is one of three institutes to be amalgamated. Accordingly, it is necessary to repeal the Howard Florey Institute of Experimental Physiology and Medicine Act 1971 and to provide for the transfer of all property, rights and liabilities held, and staff employed, by the Howard Florey Institute of Experimental Physiology and Medicine to a company, limited by guarantee, incorporated under the Corporations Act that is to be the successor in law of that institute.

The Howard Florey Institute will become a wholly owned subsidiary of the Florey Neuroscience Institutes. It is proposed that each of the three Florey Neuroscience Institutes subsidiary companies (that is, the Howard Florey Institute, the Brain Research Institute and the National Stroke Research Institute) would ultimately be wound up in a few years time leaving the Florey Neuroscience Institutes as the sole operating entity.

The Howard Florey Institute of Experimental Physiology and Medicine is one of three Victorian research institutes governed by acts which include: the Baker Medical Research Institute Act 1980; and the Prince Henry's Institute of Medical Research Act 1988.

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

The Howard Florey Institute of Experimental Physiology and Medicine (Repeal) Bill 2007 will enable the amalgamation of the three institutes to create the Australian Centre for Neuroscience and Mental Health Research.

I commend the bill to the house.

Debated adjourned on motion of Mr D. DAVIS (Southern Metropolitan).

Debate adjourned until Thursday, 10 May.

GAMBLING AND RACING LEGISLATION AMENDMENT (SPORTS BETTING) BILL

Statement of compatibility

Hon. J. M. MADDEN (Minister for Planning) 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 Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007.

In my opinion, the Gambling and Racing Legislation Amendment (Sports Betting) Bill 2007, 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 has two objectives:

To strengthen public confidence in the integrity of sport from a betting perspective.

To ensure that sporting bodies receive a share of the proceeds from betting that takes place on their respective sports.

Legislation is required to meet these objectives because market forces have failed to deliver satisfactory outcomes in these two respects.

Under the proposed legislation, it is an offence for a sports betting provider to offer bets on events held in Victoria without having a betting agreement in place with the relevant sports controlling body or else a determination of the Victorian Commission for Gambling Regulation (commission). The betting agreement is to cover the payment of fees (if any) and the sharing of information.

Human rights issues

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

Section 13: privacy and reputation

A person has the right:

(a) Not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and

(b) Not to have his or her reputation unlawfully attacked.

The following proposed new sections of the Gambling Regulation Act 2003 being inserted by clause 3 of the bill will have an impact on that human right:

4.5.14 Matters to be considered in determining applications

In determining whether to approve a sporting body as the sports controlling body for a sporting event, the commission must have regard to whether the body has clear policies on the provision of information that may be relevant to the betting market.

The commission must also have regard to whether the sporting body has clear policies on the sharing of information with sports betting providers for the purpose of investigating suspicious betting activity.

4.5.23 Agreement of sports controlling body

A betting agreement between a sports controlling body and a betting provider must provide for the sharing of information between the parties for the purposes of protecting and supporting integrity in sports and sports betting.

4.5.26 Determination of commission

In resolving a dispute between a sports controlling body and a betting provider over the terms of their betting agreement, the commission must make a decision on the sharing of information between the parties for the purposes of protecting and supporting integrity in sports and sports betting.

In making this decision, the commission must have regard to the existing legislative rights and liabilities of the parties with respect to the use and provision of information.

Each of these new sections may have implications for the privacy of gamblers, sports players and officials. However, none of the sections unlawfully or arbitrarily interfere with their right to privacy. In developing information policies and information-sharing arrangements, sporting bodies and sports betting providers must still comply with their obligations under privacy legislation. The new sections in no way limit or interfere with these obligations.

Consequently, the bill is compatible with the right to privacy.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it raises human rights issues but does not limit human rights.

HON. JUSTIN MADDEN, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. J. M. MADDEN (Minister for Planning).

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

That the bill be now read a second time.

Incorporated speech as follows:

I am proud to present this bill to the house today. This bill contains measures that will make important and groundbreaking improvements to the way sports betting is regulated in this state.

The measures have been designed to strengthen public confidence in the integrity of sporting events and the betting that takes place on those events. In addition, the measures will enable sporting bodies to receive their fair share of the revenues from betting that takes place on their sports. This recognises that the sporting product itself is a valuable input into the betting product from which betting providers ultimately benefit. It also recognises the integrity-related costs that sporting bodies incur as a result of bets being wagered on their sports.

The Bracks government recognises the important contribution that sport makes to the social and cultural fabric of the Victorian community and economy. It is vitally important that Australia's favourite sports are not compromised by the betting that takes place on them. This bill is an attempt to reduce that risk. Indeed, the bill provides sports with an opportunity to benefit from the growing sports betting market, by providing them with an additional revenue stream that can be ploughed back into the development of their sports at the grassroots level.

Key features of the bill

I now turn to some of the key features of this bill.

The bill contains the following key amendments to the regulation of sports betting:

The transfer of responsibility for approving sporting and other non-racing events, for betting purposes, from the ministers for gaming and racing to the Victorian Commission for Gambling Regulation.

The creation of a new offence that prohibits betting on specific contingencies that have been prohibited by the commission.

The creation of a mechanism that enables the commission to approve a sporting body as a sports controlling body for betting purposes.

The creation of a new offence that prohibits a sports betting provider, based either in Australia or overseas, from offering bets on Victorian events without either the written agreement of the sports controlling body or else a binding determination of the commission.

The creation of a dispute-resolution mechanism for circumstances in which a betting provider and a sports controlling body are unable to reach an agreement.

Transfer of responsibility for approving events

Under existing gambling legislation, the ministers for gaming and racing are responsible for approving sporting and other non-racing events for the purposes of betting. There are no stated criteria that the ministers must have regard to in making their decisions. Once an event is approved, betting providers licensed in Victoria may offer bets on it.

The bill transfers responsibility for approving these events to the commission. In addition, the bill specifies criteria that the commission must have regard to in making its decision. These criteria are designed to ensure that betting is only conducted on events that can be adequately managed from an integrity perspective.

Transferring responsibility to Victoria's independent gambling regulator is consistent with good regulatory practice. It will ensure the process for approving these events is entirely independent and transparent. It will also enhance public confidence that approvals are based squarely on integrity-related considerations.

New offence — offering bets on prohibited contingencies

Existing gambling legislation is clear on which sporting events are approved for betting purposes. However, the legislation is silent on the specific types of contingencies that can be bet on. For example, while cricket is approved for betting purposes, the legislation is silent on which types of bets can be placed on cricket, such as the winning team, the winning margin or the highest individual score.

Certain types of contingencies are more vulnerable to manipulation and fixing than others. Again using the example of cricket, betting on how many runs a particular player scores or on how many wides are bowled in the first over of a match may raise bigger integrity concerns than betting on the winning team. Sporting bodies have stressed the risks to the integrity of their sports caused by betting on particular types of contingencies.

As a response to these concerns, the bill empowers the commission to prohibit specific types of contingencies, in relation to events held in Victoria, that it considers inappropriate for betting purposes. The bill specifies integrity-related criteria that the commission must have regard to in making this decision.

In addition, the bill makes it an offence for a sports betting provider to offer or place bets on a contingency that has been prohibited by the commission.

This new offence is an important plank in the suite of measures designed to protect sporting and other non-racing events from match-fixing scandals and other inappropriate betting. As a result, betting providers, sporting bodies and the general public can have greater confidence that every

outcome within a match is determined in the spirit of the game and free of manipulation.

Approval of sporting bodies

Existing sports betting regulation does not encourage sporting bodies to put in place adequate systems to strengthen the integrity of their sports in a betting context. This bill seeks to fill that gap.

A sporting body will be able to apply to the commission to be approved as a sports controlling body of an approved sporting event. In making its decision, the commission must have regard to criteria that relate to the capacity of the sporting body to adequately manage the integrity of the sporting event.

As I shall explain, controlling body status will provide a sporting body with the legal right to negotiate fees and information-sharing arrangements with betting providers. This provides a strong incentive for sporting bodies to invest time and resources into developing appropriate integrity systems, including codes of conduct, monitoring and enforcement mechanisms, and policies on the provision of information that may be relevant to the betting market.

New offence — offering bets without a betting agreement

For sports for which a sports controlling body has been approved, the bill creates a new offence that prohibits a betting provider from offering bets without either the written agreement of the sports controlling body or else a binding determination of the commission. This offence applies to sporting events held in Victoria.

The written betting agreement between a controlling body and a betting provider must cover information-sharing arrangements and the payment of a fee, if any, to the controlling body.

A key feature of the bill is that the details of the betting agreement, including the type and level of fee, is to be determined by the parties to the agreement. The parties themselves, rather than the government, are in the best position to establish an efficient fee that reflects commercial realities.

The bill contains measures that actively bring the parties to the negotiating table but that, as far as possible, leave the outcome of those negotiations to the parties themselves.

Dispute resolution

An approach based on commercial negotiation can only work if supported by a binding mechanism for dispute resolution.

If a betting provider and controlling body are unable to negotiate a betting agreement, then the betting provider may apply to the commission for dispute resolution. The commission will be able to make a binding determination on the outstanding issues, having regard to criteria that guide the commission as to the appropriate terms and conditions.

Impacts of the bill

First and foremost, the measures contained in the bill are intended to strengthen public confidence in the integrity of both sport and of betting that takes place on sport.

This new sports betting regime does not, and indeed cannot, guarantee that Australian sports will remain entirely free from match-fixing scandals. No regime on earth can completely protect sports from the risk of betting-related corruption.

What this regime aims to do is strengthen the capacity of sporting bodies to recognise and manage these integrity risks.

Second, as a result of this package of reforms, sporting bodies will be in a better position to share in the revenues from betting that takes place on their sports — an outcome that is fair, reasonable and sustainable.

Precisely how sporting bodies spend these additional revenues is ultimately a commercial matter for the sporting bodies themselves. However, it is intended that some of the money will be invested in improved integrity systems that will further strengthen the integrity of sporting events in the context of a growing sports betting market. In addition, it is hoped that some of the money will be invested in the development and promotion of sport at the grassroots level. Sporting bodies will find it easier to maintain public support for their involvement in sports betting if there are demonstrable benefits flowing to grassroots sport.

Conclusion

In conclusion, the bill represents a bold and innovative approach to the regulation of sports betting in what is a rapidly evolving market. No other government in Australia, and to my knowledge in the world, has responded to the challenges and opportunities presented by sports betting as comprehensively as this government.

The Bracks government has already demonstrated its commitment to promote a viable, accountable and strong racing industry through its successful race fields legislation.

The measures contained in this bill demonstrate a similar commitment to sport.

I commend the bill to the house.

Debate adjourned on motion or Mr GUY (Northern Metropolitan).

Debate adjourned until Thursday, 10 May.

FAIR TRADING AND CONSUMER ACTS AMENDMENT BILL

Statement of compatibility

Hon. J. M. MADDEN (Minister for Planning) 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 Fair Trading and Consumer Acts Amendment Bill 2007.

In my opinion, the Fair Trading and Consumer Acts Amendment Bill 2007, as introduced to the Legislative Council, is compatible with the human rights protected by the

charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The bill amends the Fair Trading Act 1999 and a number of other consumer acts (as defined in schedule 1 of the Fair Trading Act). The amendments build on previous consumer protection initiatives aimed at enhancing Victoria's consumer protection legislation by streamlining availability of compliance and enforcement tools.

The focus of the bill is on increased access to civil remedies, such as injunctive relief, rather than focusing on criminal penalties, in order to provide more efficient and effective means of dealing with non-compliance with consumer protection legislation.

Human rights issues

The Fair Trading and Consumer Acts Amendment Bill 2007 provides for miscellaneous amendments to improve the operation of the relevant acts that it amends. The relevant rights under the Charter of Human Rights and Responsibilities which the bill will engage are:

Section 13: privacy and reputation

Clause 8 of the bill engages this right because it allows for a power of entry. This usually arises in cases of goods being stored on commercial property. However, this power could potentially allow entry to a person's home if an embargo notice has been issued in relation to a thing being stored in the person's home. The relevant thing may include, for example, goods that are dangerous if used by a member of the public. This power of entry can only be exercised if a warrant has been issued by the court. Importantly, the warrant can only be granted by a court in accordance with the rules relating to search warrants under the Magistrates' Court Act 1989. This does not limit the operation of the right to privacy or a person's right not to have his or her home arbitrarily interfered with.

The power is only available in a discretely defined circumstance, whereby the court determines that it is necessary to support the objectives of the Fair Trading Act 1999 to protect consumers. The exercise of this power is therefore lawful and there are safeguards in place to ensure that any interference with a person's rights under section 13 of the charter will not be arbitrary.

Therefore, this clause is compatible with section 13 of the charter.

Clause 27(3) of the bill also engages this right because it requires determinations made by the Business Licensing Authority (the authority) under the Conveyancers Act 2006 to be recorded on the conveyancers register, which may be made available to the public. This does not require the authority to make the determinations recorded available to the public. This remains a decision that the authority will make on a case-by-case basis, in accordance with the requirements relating to disclosure of personal information under the Information Privacy Act 2000. Furthermore, a person can apply to the authority under the Business Licensing Authority Act 1998 to restrict public access to some or all of the personal information recorded on the register. The exercise of this power is therefore not an unlawful or arbitrary interference with a person's privacy.

Therefore, this clause is compatible with the right to privacy and reputation provided for in the charter of human rights.

Section 15: freedom of expression

Clause 8 of the bill might be seen to engage the right to freedom of expression. A person can be required to answer questions by this provision. However, this can only occur if a court makes an order requiring the relevant person to do so. The court will only issue such an order if it is necessary for the purpose of monitoring compliance with an embargo notice issued under the Fair Trading Act 1999. Furthermore, this is not a wide power allowing an order requiring anyone to answer questions, it is restricted to the owner of the goods the subject of an embargo notice or the occupier of premises where the thing is kept or required to be kept under the embargo notice.

In addition, this power is subject to the protection against self-incrimination provided for under section 133 of the Fair Trading Act.

Therefore, this clause is compatible with the right to freedom of expression provided for in the charter. The bill does not limit the right to freedom of expression.

Section 20: property rights

A person must not be deprived of his or her property other than in accordance with law.

Clause 8 of the bill engages this right, because it allows for the seizure of goods named in a warrant. While it is relevant to consider the human right relating to property rights, the provision is not considered to unlawfully or arbitrarily interfere with this right. This is because the property can only be seized if named in a warrant issued by a court. The issue of warrants under this provision is limited to discrete circumstances where the court is satisfied by evidence that it is necessary to do so for the purpose of monitoring compliance with an embargo notice or in order to determine whether the goods comply with a prescribed safety standard, interim ban order or permanent ban order.

Therefore this clause is compatible with the property rights provided for under the charter of human rights.

Clause 9 of the bill engages this right because it allows for the destruction of goods that do not comply with a prescribed safety standard. Whilst it is relevant to consider the human right relating to property rights, the provision is not considered to unlawfully or arbitrarily interfere with the right. This is because an order for destruction of the goods can only be made by a court in the circumstances that it is appropriate to do so. An order for the destruction of goods will only be made where it is proven that the goods do not comply with a prescribed safety standard and therefore pose a danger to public safety if they are not destroyed.

Therefore this clause is compatible with the property rights provided for under the charter of human rights.

Clause 10 of the bill engages this right, because it allows for the deprivation of property through the freezing of assets held in a person's bank account. Whilst it is relevant to consider the human right relating to property rights, the provision is not considered to unlawfully or arbitrarily interfere with the right. This is because a freezing order can only be made by a court, and a court will only make such an order if the following is proven:

1. The plaintiff has a present legal or equitable right, or prima facie cause of action, in relation to the assets the subject of a freezing order application; and

2. The plaintiff has a sufficiently strong case in the main proceedings to justify the grant of the freezing order; and

3. There is a real risk or danger of the defendant's assets being dissipated or put beyond the reach of the court if the injunction is not granted; and

4. The balance of convenience requires the order to be made.

Therefore, this clause is compatible with the property rights provided for in the charter of human rights.

Section 24: right to a fair hearing

Clause 11 of the bill arguably engages this right because it provides for a fact proven in an earlier proceeding to be used as evidence of that fact in a later proceeding. However, the right to a fair hearing is not limited by this clause, because the issues relevant to and the manner of determining a finding of fact in the earlier proceeding (injunction proceedings) are the same or similar to issues relevant to the later proceeding in which the finding of fact can be evidence. The contravention is the same in both proceedings; only the remedies being sought differ. In addition, there are avenues of appeal on a finding of fact in earlier proceedings.

Therefore this clause is compatible with the right to a fair hearing provided for in the charter of human rights.

Consideration of reasonable limitations — section 7(2)

The bill 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 raises human rights issues but does not limit human rights.

HON. JUSTIN MARK MADDEN, MP
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. J. M. MADDEN (Minister for Planning).

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

That the bill be now read a second time.

Incorporated speech as follows:

One of the Bracks government's key priorities is to act to make markets work better by ensuring that Victorian consumers, particularly the vulnerable and disadvantaged, are well informed and protected.

To achieve this, enforcement mechanisms need to be effective so that consumer laws are supported. This enables consumers to participate effectively in transactions of goods and services and receive fair treatment.

The passage of the Fair Trading (Enhanced Compliance) Act in 2004 began the process of reorientation of enforcement of consumer protection legislation from a reliance on criminal prosecutions to a greater reliance on civil and administrative interventions.

This bill aims to build on the success of the 2004 amendments by further strengthening Victoria's consumer protection framework through amendments to the Fair Trading Act and other consumer acts.

For example, the bill strengthens the Fair Trading Act by enabling a court to order the destruction of dangerous goods that do not comply with a prescribed safety standard. The bill also allows a court to make an order that a consumer affairs inspector must have access to goods that are the subject of an embargo notice, so they can be tested for compliance with safety standards. These amendments will provide greater protection for consumers from goods that have the potential to cause serious injury or death.

The bill introduces a range of amendments to improve the operation of the Fair Trading Act. For example, the bill will enable the director of Consumer Affairs Victoria to delegate the existing power to require a person to appear and give evidence about a contravention of the act before the director. The bill will clarify that a court may order the freezing of an account held with a bank or other financial institution. The bill will clarify that a court may declare that a person has contravened a provision of the act. The bill will also allow all Victorian courts to make orders in relation to the existing prohibition on the use of unfair contract terms in consumer contracts. At present, only VCAT can make such orders.

Currently a court can order injunctions to cease trading in appropriate cases and order publicity about unlawful trading conduct under the Fair Trading Act. The bill builds on this, by allowing these orders to be made under other consumer acts.

One of these acts is the Consumer Credit (Victoria) Act. The bill will initiate the implementation of the government's response to the report of the Consumer Credit Review, one of the government's key election commitments. It will provide for the use of injunctions, enforceable undertakings and publicity orders that are vital tools for compliance and are currently available under the Fair Trading Act.

Another feature of the bill includes a number of amendments to the Conveyancers Act. The Conveyancers Act was passed by Parliament last year in recognition of the fact that buying a

home represents one of the most significant transactions that the average person or family will make in their lifetime.

These amendments are largely minor technical amendments which will provide for improvements to the practical operation of the act. These include simplifying the regulation-making power to set conveyancers qualification requirements, allowing for voluntary cancellation or surrender of a conveyancers licence and ensuring consistency with the Legal Profession Act as proposed to be amended by the Legal Profession Amendment Bill 2007. The bill will also enable the Business Licensing Authority to recover costs for certain types of applications and searches and to waive, reduce or refund fees in certain circumstances.

Finally, the bill will amend the Motor Car Traders Act to define the scope of compensable loss under the Motor Car Traders Guarantee Fund. Under the Motor Car Traders Act, a person can claim against the fund if they have incurred a loss that comes within the grounds set out in the act. This provides consumers with protection and confidence when entering into a contract with a motor car trader. The scope of the loss that can be claimed is not currently defined.

The bill will clarify that the policy intention in establishing the fund was to compensate actual loss already incurred. It should not extend to the compensation of potential loss or possible future loss nor to indirect or consequential loss, such as loss of income or interest, legal costs incurred whilst pursuing a trader and the costs of hiring a replacement car. This clarification will protect the financial viability of the fund, in line with its original and intended purposes.

The Motor Car Traders Guarantee Fund Claims Committee will also be able to require a person making an application for a claim on the fund to try and recover a loss by other means of legal redress, such as making an application to VCAT, before allowing a claim. This discretion is intended to be used by the committee in situations where the facts of a particular claim require a more detailed examination by VCAT or a court or if the committee is of the opinion that the applicant has the capacity to seek an alternative avenue of redress for their loss.

I commend the bill to the house.

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

Debate adjourned until Thursday, 10 May.

EQUAL OPPORTUNITY AMENDMENT BILL

Statement of compatibility

Hon. J. M. MADDEN (Minister for Planning) 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 (the Charter), I make this statement of compatibility with respect to the Equal Opportunity Amendment Bill 2007 (the bill).

In my opinion, the bill, as introduced in 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 amends the Equal Opportunity Act 1995 to include a new attribute of employment activity on the basis of which discrimination is prohibited. The new attribute aims to protect employees from discrimination where the employee, in their individual capacity:

makes a reasonable request to their employer for information regarding their employment entitlements

communicates to their employer a concern that they have not been, are not being or will not be given some or all of their employment entitlements.

The bill also inserts a definition of employment entitlements into the Equal Opportunity Act 1995 which means the rights and entitlements of an employee under an applicable:

contract of service, which includes a workplace agreement, employment agreement or award within the meaning of the commonwealth Workplace Relations Act 1996

contract for services

Victorian act (for example the Long Service Leave Act 1992) or an enactment (which is defined in section 4(1) of the Equal Opportunity Act 1995 to mean a subordinate instrument, such as regulations)

law of the commonwealth, which includes employment entitlements that arise under the Workplace Relations Act 1996 such as the Australian fair pay and conditions standard.

Human rights issues

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

Section 3(1) of the charter defines discrimination, in relation to a person, to mean discrimination within the meaning of the Equal Opportunity Act 1995 on the basis of an attribute set out in section 6 of that act.

The effect of adding the attribute of employment activity into the Equal Opportunity Act 1995 will mean that discrimination under the charter will now include a new ground on the basis of which discrimination is prohibited, namely a person's employment activity.

For example, section 8(2) of the charter provides that everyone has the right to enjoy his or her human rights without discrimination. This will now be taken to mean that everyone has the right to enjoy his or her human rights without discrimination on the basis of employment activity (as inserted by the bill).

The bill therefore enhances human rights without limiting them.

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

The bill 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, and does not limit, the human rights protected by the charter.

JUSTIN MADDEN, MLC

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. J. M. MADDEN (Minister for Planning).

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

That the bill be now read a second time.

Incorporated speech as follows:

In March this year, we marked the first anniversary of the commencement of the commonwealth's WorkChoices legislation. This legislation has severely undermined the conditions and security of working families across Australia and has radically shifted the balance of the employer-employee relationship away from Victorian working families.

The Howard government's changes to workplace relations laws have caused confusion for many working Victorians. The refusal of institutions such as the Australian Fair Pay Commission to publish wage scales, for example, has meant that no commonwealth agency is prepared to take responsibility for publishing accurate information for Victorian workers about their entitlements.

This government has responded to WorkChoices by acting to protect the rights of Victorian workers wherever possible. We have established the Office of the Workplace Rights Advocate to ensure Victorian workers have access to information about their entitlements.

However, in the equal opportunity area, the government is concerned that employees are not adequately protected from discrimination if, in their individual capacity, they query or raise concerns with their employer about their wages and conditions.

An employee should be able to approach their employer about these issues without fear of recrimination or penalty. However, some employees are afraid to do so, feeling vulnerable and insecure even in these standard interactions.

In part this is a consequence of the retrograde changes to unfair dismissal laws by the Howard government. These changes have created a climate of fear and vulnerability for working Victorians. This makes some employees reluctant to raise issues about their entitlements at the workplace.

This is particularly the case for employees such as young workers with little workplace experience and limited knowledge of their entitlements, workers returning to the workplace after extended leave and workers for whom English is not their first language. Many employees with these backgrounds have considerable concerns about raising legitimate queries at their workplace about their entitlements.

While collective industrial activity is protected under the Victorian Equal Opportunity Act 1995 this does not protect employees acting in their individual capacity. Furthermore, federal industrial relations laws provide only limited redress. Unfair dismissal rights have been removed from many employees, including those who work at companies with less than 100 employees or those employed for less than six months. Federal unlawful termination provisions are narrow in their scope and are unlikely to be helpful to employees in this situation. Federal freedom of association provisions would only provide protection if the employee complained to an enforcement agency or their union but would not protect an employee who raised issues directly with their employer.

The government believes that no Victorian worker should be fearful when asking their employer about their employment entitlements.

This bill addresses the limitations by amending the Victorian Equal Opportunity Act, which is an act that provides an important means of ensuring fair treatment for all Victorians. The act prohibits discrimination on the basis of specified attributes in certain areas of public life, one of which is employment.

In amending the Equal Opportunity Act in this way the Bracks government is delivering on one of the commitments it made to Victorians in the 2006 election.

The bill inserts a new attribute into the act, that of employment activity, on the basis of which it will be unlawful for an employer to discriminate against an employee.

The attribute covers two types of activity by an employee acting in their individual capacity: making a reasonable request to their employer for information regarding their current employment entitlements, and communicating a concern to their employer that some or all of their employment entitlements have not been, are not being or will not be given to them.

The bill also includes a definition of employment entitlements: these are the employee's rights and entitlements under an applicable industrial instrument such as an award or workplace agreement, contract of service, contract for services, and under state and commonwealth legislation. This includes employment entitlements that arise under the commonwealth Workplace Relations Act 1996, such as those under the Australian fair pay and conditions standard.

The attribute is intended to cover standard workplace interactions. Requests for information will not extend to questions unrelated to an employee's employment entitlements but will cover questions about the source of the employee's entitlements, what those entitlements are and whether the employee is being given them. It is not intended that the attribute provide a mechanism for negotiating a pay rise or other new employment entitlements.

A request for information can be made verbally or in writing, but the request must be reasonable. This means that the nature of the information sought about the employment entitlements should be reasonable and that the request should be made in a reasonable manner and at a reasonable time. For example, it

would not be reasonable if a request were made in a violent or threatening manner or outside of the normal hours of work.

The attribute will operate within the current framework of the Equal Opportunity Act, and the Victorian Equal Opportunity and Human Rights Commission will receive complaints of discrimination on the basis of the new attribute.

In determining whether or not an employer has discriminated, it will not be relevant whether the employer intended to discriminate or treat the employee less favourably. This is consistent with the general principle under the Equal Opportunity Act that a person's motive is irrelevant to discrimination.

However, for a direct discrimination complaint to succeed, the employee's employment activity must be a substantial reason for the less favourable treatment.

This bill therefore promotes equal opportunity in the area of employment and extends protection to vulnerable employees who would otherwise be left without redress for harsh and discriminatory conduct. While the amendments cannot protect workers from all of these unbalanced laws, the Victorian government intends to do what it can to protect Victorian workers' hard-earned rights and entitlements from federal government attacks.

I commend the bill to the house.

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

Debate adjourned until Thursday, 10 May.

BUSINESS OF THE HOUSE

Adjournment

Mr LENDERS (Minister for Education) — I move:

That the Council, at its rising, adjourn until Tuesday, 22 May.

Motion agreed to.

ADJOURNMENT

Mr LENDERS (Minister for Education) — I move:

That the house do now adjourn.

Gaming: community benefit obligations

Mrs PETROVICH (Northern Victoria) — The matter I raise on the adjournment is for the Minister for Gaming in the other place. I rise to speak on the vexed issue of community benefit obligations. Poker machine venues are rorting their community benefit obligations by using many millions of dollars intended for public projects and directing them into general pub and club running expenses. They have been permitted by the Bracks government to claim operating expenses such as wages, gas, electricity and insurance as well as renovations and furniture, including plasma TVs.

A Monash University report shows that less then 3 per cent of $376 million claimed by Victorian pokies venues had been directed to philanthropic purposes. The decision to be able to claim these expenses under the community benefit obligation was made by the then Acting Minister for Gaming in the other place in 2003. An example of this is the community benefit statement for the Shire of Macedon Ranges.

The 30 June 2006 community benefit statements to the Victorian Commission for Gaming Regulation show that the total funds given under the categories of voluntary services provided to the community, sponsorship, gifts of goods and gifts of funds were: Kyneton RSL, with 20 machines, $150 467; Kyneton Bowling Club, with 25 machines, $50 000; and Gisborne Victoria Tavern, with 36 machines, $14 000. These amounts of money are insignificant in the big picture when we look at the economic impact on the community from social and business perspectives.

The action I seek is that the minister enhance the transparency of fund allocations, give some equity of distribution and ensure that funds are directed to maximise the benefit to the local community. I seek the minister's attention in setting up local, independently managed community trusts. These trusts should be managed by a board that is made up of a broad base of community representatives to ensure that the equity and transparency which are so lacking under the current Bracks Labor government arrangement are put in place.

Information and communications technology: subscriber trunk dialling

Mr DRUM (Northern Victoria) — My adjournment matter is directed to the Minister for Information and Communication Technology in the other place, Mr Holding, and is in regard to alleviating some of the inconsistencies that currently exist in the telecommunications sector in country Victoria. This issue was investigated in the last Parliament by the Rural and Regional Services and Development Committee, which looked at the various inconsistencies surrounding telecommunications and subscriber trunk dialling (STD) call zones. The committee's report was very clear. It recommended to the Victorian government that it lobby the federal government to review STD pricing and make sure that rural and regional customers were afforded local call rates to their nominated provincial city.

I have had quite a few constituents question me about why they have to pay STD rates for calls over short distances while people in other areas of Victoria pay local charge rates for calls over greater distances. The reason is simply historical; it has always been the case. Fifty years ago they set up these STD area zones, and we are still stuck with these historical zones, which means some unlucky people might pay STD rates for a 40-kilometre call while people in another area might pay local rates for a 70-kilometre call. With our modern technology there is no reason why we are still stuck with these STD area zones.

The Rural and Regional Services and Development Committee in the last Parliament, the chair of which was the member for Seymour in the other place, recommended that the government lobby Canberra. The reply which came back from Minister Holding was that he did not believe it was an issue and he was worried about possibly embedding a particular service. That was the terminology used. He thought other alternatives might be better.

I call on the minister to write to me and let me know exactly why he considers it okay that we put up with the existing service or whether he is able to give me a better explanation as to why this inconsistency within STD area zones should be allowed to continue into the future. I would also ask that I be made aware of any action intended to be taken by the Victorian government.

The PRESIDENT — Order! I am confused about the member's matter. I am of the view that he is asking the minister to give an opinion as to why certain things do not happen with regard to subscriber trunk dialling, which is a matter for the federal government. I am not convinced that it is a matter that the state government is responsible for or can respond to in a way that would satisfy the member's question. As I see it the member is simply asking for an opinion, and on that basis I rule his matter out of order.

Mr Drum — On a point of order, President, with full respect to your ruling I was in fact talking about a Victorian all-party parliamentary committee that actually investigated this very issue and made a recommendation to the minister involved. I am in fact questioning the minister's response to that committee. Effectively I am dealing with something that is very much within his portfolio. I am asking for further elucidation on that opinion, and why he considered it. I am asking for a greater explanation as to why he took the course of action he did in responding to the recommendation from the all-party parliamentary committee. If he believes that there is action that we can take in relation to lobbying Canberra, then I would like to be made aware of that as well.

The PRESIDENT — Order! I am advised that Mr Drum's request does not meet the test of specific action. Therefore my previous ruling, of ruling it out, stands.

Aged care: residential support

Ms BROAD (Northern Victoria) — Briefly, in view of the time, I wish to raise a matter for the attention of the Minister for Community Services. I call on the minister to take appropriate action to assist senior Victorians by ensuring that they do not miss out on the home and community care services available to them to live independently.

We know already that there are more than 930 000 Victorians aged 70 or over, and this number will grow to 1.6 million over the next 20 years. Initiatives to provide practical support to senior Victorians to give them the confidence to live independently and safely at home for as long as possible are more important now than ever before. I welcome the $166 million invested in the budget to assist senior Victorians to live independently, to redevelop residential aged-care services, including at Nathalia in my electorate, and to provide practical support such as dentures, spectacles and personal alarms.

Responses

Hon. J. M. MADDEN (Minister for Planning) — Ms Petrovich raised a matter of community benefits statements in relation to gaming. I will refer that to the Minister for Gaming in the other place, Mr Andrews.

The last matter was raised by Ms Broad and related to senior Victorians and their home and community care. I will refer that to the Minister for Community Services.

The PRESIDENT — Order! The house now stands adjourned.

House adjourned 7.33 p.m. until Tuesday, 22 May.