PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Friday, 10 October 2008

(Extract from book 13)

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By authority of the Victorian Government Printer

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FIFTY-SIXTH PARLIAMENT — FIRST SESSION

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Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Theophanous, Hon. Theo Charles	Northern Metropolitan	ALP
Kavanagh, Mr Peter Damian	Western Victoria	DLP	Thornley, Mr Evan William	Southern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP
Leane, Mr Shaun Leo	Eastern Metropolitan	ALP	Vogels, Mr John Adrian	Western Victoria	LP

CONTENTS

FRIDAY, 10 OCTOBER 2008

Friday, 10 October 2008

The PRESIDENT (Hon. R. F. Smith) took the chair at 9.35 a.m. and read the prayer.

PETITION

Following petition presented to house:

Abortion: legislation

To the Legislative Council of Victoria:

The petition of the undersigned residents of Victoria draws the attention of the Council to proposed amendments to the Crimes Act which will ensure that no abortion can be criminal when performed by a legally qualified medical practitioner at the request of the woman concerned.

The implementation of this legislation will allow abortions to be legal in Victoria right up to birth. This will only increase the thousands of children who die needlessly each year through abortion and will add to the existing social problems in Victoria resulting from such a high abortion rate.

The petitioners therefore request that the Legislative Council of Victoria vote against amendments to the Crimes Act that will decriminalise abortion in the state of Victoria.

By Ms LOVELL (Northern Victoria) (22 signatures)

Laid on table.

DISTINGUISHED VISITOR

The PRESIDENT — Order! I wish to draw to the attention of the house the presence in the gallery of a former Premier, the Honourable Joan Kirner.

BUSINESS OF THE HOUSE

General business

Mr D. DAVIS (Southern Metropolitan) — I move, by leave:

That precedence be given to the following general business on Wednesday, 15 October 2008:

(1) notice of motion 54 standing in the name of Mr Hall relating to the commercial fishing industry;

(2) notice of motion 60 standing in the name of Mr O'Donohue relating to the timber industry;

(3) notice of motion 46 standing in the name of Mr Barber relating to the production of certain Department of Transport documents;

(4) notice of motion 58 standing in my name relating to the production of certain public health documents;

(5) notice of motion 49 standing in the name of Mr P. R. Davis relating to challenges facing country communities; and

(6) notice of motion 37 standing in the name of Mr Kavanagh relating to the quality of services available to Victorians.

Motion agreed to.

RESEARCH INVOLVING HUMAN EMBRYOS BILL

Statement of compatibility

Mr JENNINGS (Minister for Environment and Climate Change) 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 Research Involving Human Embryos Bill 2008.

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

Overview of bill

In April 2002, the Council of Australian Governments (COAG) agreed that the commonwealth, states and territories would introduce nationally consistent legislation to regulate the use of certain human embryos created by assisted reproductive technology or by other means in the conduct of research. The commonwealth developed legislation, Research Involving Human Embryos Act 2002.

In March 2007, provisions that mirrored the commonwealth legislation for the regulation of research involving human embryos were included in an amendment to part 2A of the Infertility Treatment Act 1995 (IT act) to fulfil the COAG undertaking. At that time, the Victorian Law Reform Commission (VLRC) was undertaking a review of the IT act. The Victorian government committed to excising part 2A from the IT act once the VLRC review was completed to present this part as a separate, stand-alone bill for Parliament's consideration. The VLRC reported to Parliament in June 2007.

The bill re-enacts the provisions contained within part 2A of the IT act. Its purpose is to provide a suitable regulatory framework to address concerns about scientific developments in relation to human reproduction and the use of certain human embryos created by assisted reproductive technology (ART) or by other means.

The three main functions of the bill are to detail the offences and associated penalties for particular uses of human embryos; to set out the functions and powers of the National Health and Medical Research Council (NHMRC) Licensing Committee and describe the licensing system for embryo research, which is administered by the NHMRC Licensing

Committee; and set out the powers available to inspectors who monitor compliance with this bill.

Part 2 creates an offence for the intentional use of a human embryo which was created for use in an ART treatment of a woman and is not an excess ART embryo. It also provides an offence for the intentional use of a human embryo unless authorised by a licence, or where the use is an exempt use. (An exempt use includes use by an accredited ART centre and the embryo used is unsuitable for implantation or the use forms part of diagnostic investigations conducted in connection with the ART treatment of the woman for whom the embryo was created.) The intentional use, without a licence, of other embryos, such as those human embryos created by a process other than the fertilisation of a human egg by a human sperm, and hybrid embryos, are also offences. The conduct of research or training involving human eggs requires that the research or training must be authorised by a licence and may only proceed up to, but not including, the first mitotic division.

Part 3 sets out the functions and powers of the NHMRC Licensing Committee. This part provides for the licensing of a narrow range of medical experimentation on human embryos for the purposes of trialling new medical or scientific research. A licence may be applied for, issued with or without conditions for a specified period, varied, suspended, revoked or surrendered. The NHMRC Licensing Committee must maintain a database with prescribed information pertaining to the licence and must make this database publicly available. Part 3 also describes the review provisions, which apply to licensing decisions made by the NHMRC Licensing Committee, available from the Administrative Appeals Tribunal.

Part 4 sets out the monitoring powers available to inspectors. An inspector is a person appointed under section 33(1) of the Commonwealth Research Involving Human Embryos Act 2002, for the purposes of monitoring compliance with this bill.

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

Relevance of charter rights

In his second-reading speech on the charter, the Attorney-General noted that whether or not any of the charter rights are relevant before birth will depend on the circumstances. In this way, the charter is clear that it does not affect any law applicable to abortion or child destruction. However, in relation to research involving human embryos, the threshold issue of whether an embryo is a 'person' for the purposes of the charter arises for Parliament to consider.

The common-law position in Victoria is that a human being is not a legal person until he or she is born alive (see *Yunghanns v. Candoora No 19 Pty Ltd* [1999] VSC 524 at [75–76]). The common law is consistent with decisions made by courts in the United Kingdom, Canada, New Zealand and South Africa which have held that a person becomes a rights-holder after birth (see *Christian Lawyers Association of SA and Others v. Minister of Health and Others* 1998 (11) BCL 1434 (T), *Tremblay v. Daigle* [1989] 2 SCR 530 and *Evans v. Amicus Healthcare Ltd* [2004] 2 WLR 681). The NHMRC definition of a human embryo, which is nationally applied, is 'a discrete entity arising from the first mitotic division when fertilisation of a human oocyte by a human sperm is complete and has not reached 8 weeks of development since the mitotic division'. At this stage the human embryo does not have legal personhood and therefore the charter rights are not engaged.

Section 10: right to protection from medical or scientific experimentation or treatment without consent

Section 10(c) of the charter protects a person's right not to be subjected to medical treatment unless the person has given their full, free and informed consent. In this context 'medical treatment' encompasses all forms of medical treatment and medical intervention, including acquiring human gametes for research, training or diagnostic purposes.

Clause 15 provides that before a licence may be issued the NHMRC licensing committee must be satisfied that the applicant for a licence has appropriate protocols in place to ensure 'proper consent' is obtained before undertaking the research activity nominated on the licence application. The bill provides that 'proper consent' means consent obtained in accordance with guidelines issued by the chief executive officer of the NHMRC. The relevant NHMRC National Statement on Ethical Conduct in Human Research (2007) and the NHMRC Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research (June 2007) provide extensive requirements for the conduct of human and ART research. These guidelines place obligations on researchers to ensure the anticipated benefits of the research justify the risk; to ensure that donors are sufficiently and independently informed of all known and potential risks of the procedure or research; to minimise risks; and to obtain participants' informed consent. The guidelines also address ethical considerations specific to participants, including people who are in dependent or unequal relationships, and provide that clinics must provide information in a way that avoids any coercion or direct or indirect inducements. One of the purposes of research involving human embryos is to improve the effectiveness of assisted reproductive treatments. Women who donate eggs for research purposes may personally benefit from the results of the research as well as altruistically benefit other women and families. In the case where the research activity involves the medical treatment to obtain a human egg, the bill's provisions require that ART providers must have in place protocols which ensure that the full, free and informed consent of participants is obtained before research is undertaken. Clause 18(2) makes the licence subject to the condition that the use of these eggs must be in accordance with the restrictions to which proper consent is subject. Therefore the provisions of the bill are consistent with the rights protected by section 10 of the charter.

Section 13: privacy and reputation

Section 13(a) of the charter recognises a person's right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The explanatory memorandum to the charter explains that 'the right to privacy is to be interpreted consistently with the existing information and health records framework to the extent that it protects against arbitrary interferences'. The right to privacy recognised by section 13 of the charter goes beyond the right to information privacy, and embraces a right to bodily privacy and territorial privacy.

The requirement that any interference with a person's privacy must not be 'unlawful' imports a requirement that the scope of any legislative provision that allows an interference with privacy must specify the precise circumstances in which

interference may be permitted. The requirement that an interference with privacy must not be arbitrary requires that any limitation on a person's privacy must be reasonable in the circumstances and should be in accordance with the provisions, aims and objectives of the charter.

Clause 14 requires the provision of information in a licence application in accordance with the requirements specified in writing by the NHMRC licensing committee. This information includes personal contact details and the curriculum vitae for each staff member involved in the proposed research. While the provision of this information engages the right to privacy, the information that is sought is appropriate for determining whether the applicant is suitable to hold a licence to undertake the research. This clause does not unlawfully or arbitrarily interfere with a person's right to privacy.

Clause 15(3)(b) requires that the NHMRC licensing committee must not issue a licence unless it is satisfied that a research activity or project proposed in a licence application has been assessed and approved by an appropriately constituted Human Research Ethics Committee (HREC). The applicant for the licence must ensure that the application includes the HREC evaluation and approval clearance of the research proposal prior to submitting it to the NHMRC licensing committee. The purpose of the HREC clearance is to ensure that the ethical implications of the activity or project are fully considered and approved prior to a person submitting the application for a licence. The sensitivity of conducting research on human eggs or human embryos warrants the involvement of this expert group and while the clause engages the right to privacy, it does not unlawfully or arbitrarily interfere with a person's right in this regard.

Clause 23 engages the right to privacy because it imposes an obligation on the NHMRC licensing committee to maintain a licensing database, which contains prescribed information, and to make this database publicly available. The type of information that is collected includes the name of the person to whom the licence is issued, a statement about the uses and numbers of excess ART embryos or human eggs and the creation or use and numbers of any other embryos authorised by the licence and the period for which the licence is in force. The database includes 'personal information' within the meaning of the Information Privacy Act 2000 but it is questionable whether there would be any real expectation as to the privacy of that information.

Clause 28(1) engages the right not to have one's privacy or home unlawfully or arbitrarily interfered with because it permits inspectors to enter any premises for the purpose of assessing compliance with the bill. However, in practice, research of this kind must be undertaken in accredited laboratories, which would not be residential premises. Provisions for the conduct of inspections, consistent with standards for monitoring licensed activity, are also provided for in the bill.

Clause 28 also allows entry if it is made under a warrant issued under clause 30 in relation to the premises to ascertain compliance with the bill. If a warrant is issued the inspector must comply with various procedures that are designed to ameliorate the intrusiveness of the powers (such as announcing who they are and providing a copy of the warrant to the occupier (clause 31); announcing that as an inspector he or she is authorised to enter the premises (clause 32) and allowing the occupier to observe the search (clause 33)). While this clause engages the right to privacy, it is not arbitrary or unlawful and is therefore consistent with the right to privacy.

An inspector who enters any premises under a warrant (clause 30) can also direct a person at the premises to do certain things, including producing documents or records (clause 28(1)(g)(ii)). The requirement to provide this information engages but does not unlawfully or arbitrarily interfere with a person's right to privacy. In accepting a licence, a person is presumed to know, and to have accepted the terms and conditions associated with the licence, including the provision of information to monitor compliance with those terms and conditions.

Clause 28 sets out the powers inspectors may exercise where they have entered premises under the powers conferred by the bill. These include the power to search, inspect, examine, photograph, conduct tests, take samples and operate equipment at the premises. These clauses enable inspectors to monitor whether research conducted at certain premises is being conducted in accordance with requirements imposed by the bill and the regulations made under it. The conferral of these powers on inspectors is reasonable in the circumstances and does not arbitrarily interfere with an individual's rights protected by section 13(1) of the charter.

Clause 34 engages the right to privacy because it requires inspectors to produce their identity cards for inspection if required by the occupier of the premises that is being inspected. The card will display the photograph of the inspector and the date of issue and period of validity of the card. This requirement does not arbitrarily interfere with the privacy of inspectors because the identity card does not disclose personal information. However, it does communicate to the occupier that the inspector in attendance is operating under current powers.

Section 15: freedom of expression

Section 15 of the charter recognises a qualified right to freedom of expression. The right protects an individual's right to express information and ideas, as well as the right of the community as a whole to receive all types of information and opinions. Section 15(2) of the charter provides that every person has the right to freedom of expression. This includes the right not to express. Section 15(3) of the charter provides that the right may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons; or for the protection of national security, public order, public health or public morality.

Clause 23(2) engages the right to freedom of expression because it requires the NHMRC licensing committee to make public a database containing prescribed information about licences it issues. The purpose of this provision is to ensure the broader community has access to information that relates to the numbers of and ways in which human embryos and human gametes are being used in research. Research involving human embryos is conducted to improve the effectiveness of assisted reproductive treatment procedures and to address the causes of infertility, thus protecting and promoting public health. Disclosure of information about licences issued in this sensitive area of research is reasonable to ensure continued community confidence in the contribution it is making to public health, and therefore falls within the exception contained within section 15(3) of the charter.

Where an inspector enters a premises under the authority of a warrant, clause 28(1)(g) provides the power to require any person in or on the premises to answer any questions put by the inspector and covered under the purpose for which the warrant is issued. This power is provided in order to assist in the detection and investigation of persons who commit serious offences in relation to research involving human eggs or embryos. It is reasonably necessary for the protection of public health that inspectors have the power to require people at regulated premises to assist them when they are monitoring compliance with the bill or possible contraventions of the bill. This restriction on the right to freedom of expression is therefore consistent with the rights protected by section 15 of the charter.

Section 20: property rights

Section 20 of the charter recognises a person's right not to be deprived of his or her property other than in accordance with law. The requirement that a permissible deprivation can only be carried out 'in accordance with law' imports a requirement that the law not be arbitrary. A provision that confers a discretionary power to deprive a person of their property will be consistent with the charter if the limits of the power are defined and the criteria that govern the exercise of the discretion are specified.

Clause 29 extends the monitoring powers provided for in the bill to secure a human egg, embryo (human or other) or a thing that may afford evidence of the commission of an offence during a search of premises pending the obtaining of a warrant. The provision is not arbitrary because the power may only be exercised by inspectors authorised to enter the premises by a warrant. Seizing a thing that may be evidence of the commission of an offence would be in accordance with a lawful exercise of statutory power and for a specified purpose and is compatible with section 20 of the charter.

Section 25: rights in criminal proceedings

Section 25(2)(k) of the charter protects the right to be free from compulsory self-incrimination. This means a person must not be compelled to confess guilt and includes the right to remain silent. The right against self-incrimination is an important aspect of the right to a fair trial.

Clause 28(1)(g)(i) requires any person on the premises to answer any questions put by the inspector who has entered the premises by a warrant under clause 30. While the purpose of the questions may be to determine compliance with the bill, the person to whom the questions are being put has not been charged with a criminal offence. Therefore, the right in section 25(2)(k) does not apply and there is no limitation on the right.

Conclusion

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

GAVIN JENNINGS, MLC
Minister for Environment and Climate Change
Minister for Innovation

Second reading

Ordered that second-reading speech be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Research Involving Human Embryos Bill 2008, in conjunction with the Prohibition of Human Cloning for Reproduction Bill 2008, seeks to fulfil the commitment made by the government last year to separate the medical research provisions from the clinical treatment aspects of the Infertility Treatment Act 1995.

This bill precisely excises part 2A of the Infertility Treatment Act — Regulation of certain uses involving excess ART embryos, other embryos and human eggs — and re-enacts these provisions into a stand-alone piece of legislation.

Consistent with the commonwealth Research Involving Human Embryos Act 2002, the bill enables the continuation of certain types of research involving embryos to be permitted, provided that the research is approved by the National Health and Medical Research Council (NHMRC) Licensing Committee, in accordance with legislated criteria, and that the activity is undertaken in accordance with a licence issued by this committee.

The bill retains the definition of human embryos to match the NHMRC definition and the definition in the current commonwealth legislation.

This bill provides the important protections to allow research on stem cells created by nuclear transfer to continue to develop in Victoria. The advances in this field are already significant; regenerated cells derived from adult stem cells are already being used to treat leukaemia, lymphoma and several inherited blood diseases.

I believe that this bill strikes the right balance, as it prohibits practices that are abhorrent to the overwhelming majority of Australians and it allows research to proceed in an area that receives strong community support and which, it is hoped, may one day lead to advancements in our ability to combat diseases that currently cause a great deal of suffering to many Australians.

I commend the bill to the house.

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

Debate adjourned until Friday, 24 October.

PROHIBITION OF HUMAN CLONING FOR REPRODUCTION BILL

Statement of compatibility

Mr JENNINGS (Minister for Environment and Climate Change) 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 Prohibition of Human Cloning for Reproduction Bill 2008.

In my opinion, the Prohibition of Human Cloning for Reproduction Bill 2008, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

In April 2002, the Council of Australian Governments agreed that the commonwealth, states and territories would introduce nationally consistent legislation to ban human cloning and other unacceptable practices arising from reproductive technologies. The commonwealth developed legislation, Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research (Amendment) Act 2006, which was assented to on 12 December 2006.

In March 2007, provisions that mirrored the commonwealth legislation for the prohibition of cloning for human reproduction (part 4A) were included in an amendment to the Infertility Treatment Act 1995 (IT act) to fulfil the intergovernmental undertaking. On 18 April 2007, the Victorian government committed to excising part 4A from the IT act and presenting it as a separate, stand-alone bill for Parliament's consideration.

The Prohibition of Human Cloning for Reproduction Bill 2008 continues the existing legislative coverage by replicating part 4A of the IT act.

Part 2 details practices that are completely prohibited, for which indictable offences apply. These practices are placing a human embryo clone in the human body or the body of an animal (clause 5); importing or exporting a human embryo clone (clause 6); creating a human embryo for a purpose other than achieving pregnancy in a woman (clause 8); creating or developing a human embryo by fertilisation that contains genetic material provided by more than two persons (clause 9); developing a human embryo outside the body of a woman for more than 14 days (clause 10); making heritable alterations to genome (clause 11); creating a chimeric embryo (clause 13) or hybrid embryo (clause 14); placing a human embryo in an animal, or an animal embryo in a human, or a human embryo in a human other than in a woman's reproductive tract (clause 15); and participating in commercial trading in human gametes or human embryos (clause 17).

Part 3 of the bill includes clauses that identify practices that are prohibited unless authorised by a licence issued by the National Health and Medical Research Council (NHMRC) Licensing Committee. However, the licensing requirements are identified in other legislation.

The bill's purpose is to prohibit human cloning for reproduction and other unacceptable practices associated with reproductive technology and for related purposes.

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

The 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 rights, 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 2006 because it does not raise human rights issues.

GAVIN JENNINGS, MLC
Minister for Environment and Climate Change
Minister for Innovation

Second reading

Ordered that second-reading speech be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Last year amendments to the Infertility Treatment Act 1995 were considered and passed by this Parliament. At the time the government committed to separating the medical research provisions from the clinical treatment aspects of the Infertility Treatment Act 1995.

The Prohibition of Human Cloning for Reproduction Bill 2008, accompanied by the Research Involving Human Embryos Bill 2008, will fulfil this commitment.

The bill excises part 4A of the Infertility Treatment Act 1995 — Prohibited practices including prohibition on human cloning for reproduction — and re-enacts these provisions into a stand-alone piece of legislation.

The bill also corrects the erroneous part of a note currently in section 38OD of the Infertility Treatment Act 1995, clarifying that research involving hybrid embryos is prohibited.

Consistent with the Commonwealth Regulation of Human Embryo Research Act 2002, the bill provides for the continued prohibition of human cloning for reproduction and other unacceptable practices associated with reproductive technology, and for related purposes. It also identifies practices that are prohibited unless authorised by a licence issued by the National Health and Medical Research Council.

The passage of this bill is essential, as it continues to prohibit practices that are abhorrent to the overwhelming majority of Australians and it allows research activities to proceed, under licence, in a narrow range of areas for the purposes of improving the effectiveness of assisted reproductive treatments.

I commend the bill to the house.

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

Debate adjourned until Friday, 24 October.

POLICE REGULATION AMENDMENT BILL

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Police Regulation Amendment Bill 2008.

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

Overview of the bill

The purpose of the bill is to amend

1. (a) the Police Regulation Act 2008 in relation to:

   (i) the constitution of Victoria Police;

   (ii) remedial procedures under the act;

   (iii) the professional development of members of Victoria Police;

   (iv) civil proceedings against members of Victoria Police;

   (v) the role of protective services officers;

   (vi) other minor matters; and

   (b) to make consequential amendments to other acts.

The bill also makes consequential amendments to the Evidence Act 1958, Melbourne City Link Act 1995, Police Integrity Act 2008, and Whistleblower Protection Act 2001.

The bill extends the power and discretion of the chief commissioner to make a direction against a member of the force — including transfer, suspension or dismissal — if that member has engaged in certain conduct the chief commissioner considers inappropriate or incompatible with that member's statutory appointment and the reputation, integrity and community responsibility of Victoria Police, or the member has underperformed and failed to comply with the requirements of their professional development plan.

Human rights issues

Misconduct (clause 19)

Clause 19 replaces the breach of discipline provisions in the Police Regulation Act 1958 with misconduct and underperformance provisions. The definition of misconduct incorporates conduct classified in the current Police Regulation Act 1958 as breaches of discipline and introduces other conduct by members that is to be classified as misconduct.

The misconduct provisions encompass the existing definition of breach of discipline, and apply to conduct that would undermine the integrity of police members, undermine their ability to undertake law enforcement functions, and diminish public confidence in the police. Some of the misconduct definitions engage human rights in the charter. However, they either do not limit the right or, where they do, the limitations are reasonable and justified under s 7(2) of the charter.

Restrictions upon activities of members

The proposed s 69(1)(f) classifies as misconduct a member engaging in conduct that is likely to bring the force into disrepute or diminish public confidence in it and includes conduct 'in his or her official capacity or otherwise'.

The proposed s 69(1)(i) introduces restrictions on members' ability to work outside of their appointment at Victoria Police. Specifically, approval of the chief commissioner is required where the member (i) applies for or holds a licence or permit to conduct any trade, business or profession; or (ii) conducts any trade business or profession; or (iii) accepts any other employment. Engaging in such activities without the approval of the chief commissioner constitutes misconduct.

Limiting the non-official conduct of members potentially engages the rights to privacy (s 13), freedom of expression (s 15) and freedom of association (s 16).

Right to privacy

The restrictions on the conduct of a member can result in interference in the member's 'private sphere' of life and their right to privacy, family, home and correspondence. However, any interference is neither unlawful nor arbitrary, as it occurs in accordance with the aims and objectives of the charter. The purposes of the provisions are to preserve the independence and integrity of individual members and the integrity and reputation of the force generally.

Freedom of expression

The right to freedom of expression has attached to it special rights and responsibilities and may be subject to lawful restrictions reasonably necessary for the protection of public order (s 15(3) of the charter). The concept of public order has a broad meaning in international law as including those 'universally accepted fundamental principles, consistent with respect for human rights, on which a democratic society is based'. In my view, these restrictions are necessary to preserve the independence and integrity of individual members and the integrity and reputation of the force generally which comes within the broad definition of public

order (see Nowak, UN Covenant on Civil and Political Rights CCPR Commentary 2nd ed, p 465).

Freedom of association

These provisions do not substantially change the definition of misconduct from the definition of breach of discipline used in the existing act, however, these provisions (as existing or new as amended) either limit or have the potential to result in limits being placed upon police members' right to freedom of association. However, having regard to the factors set out in s 7(2) of the charter I consider that any such limits are reasonable and justified.

The nature of the right being limited

Comparative jurisprudence on the right to freedom of association envisages that restrictions on this right will be necessary, particularly in relation to persons employed in or appointed to positions of public service and responsibility as in these scenarios there is an important public interest and duty to the public that must be balanced against the right. Article 22 of the ICCPR, upon which s 16(2) is based, expressly recognises that lawful restrictions may be imposed upon the exercise of this right by police.

The importance and purpose of the limitation

The purpose of the limitation is the paramount interest of the public in being assured that it has a neutral and impartial police force free from conflicts of interest. Members of the force are required to act in the best interests of the community. Their non-official activities should not affect their ability to do so. Police have an obligation not to act in a way that would give rise to a conflict of interest or to undermine the reputation or effectiveness of the force, in their official or unofficial capacity.

The nature and extent of the limitation

The limit imposed by proposed s 69(1)(f) is only in respect of such conduct that is likely to bring the force into disrepute or diminish public confidence in it. Such conduct under the current act is already within the definition of 'breach of discipline'.

Proposed s 69(1)(i) requires that a member obtain the chief commissioner's approval to undertake certain activities. It envisages that such requests may be refused. However, in the exercise of her discretion, the chief commissioner will be required to consider any relevant human rights, including whether refusal would unreasonably limit the member's right to freedom of association.

Relationship between the limitation and the purpose

The limitations imposed are directly and rationally connected with their purpose.

Any less restrictive means of achieving the purpose

I consider there are no less restrictive means reasonably available to achieve the purpose of the provisions.

Drug and alcohol testing

The proposed s 69(1)(l) provides that a refusal by the member to consent to the use of evidence derived from a sample in the circumstances referred to in s 85D(2) (testing of members for alcohol or drugs of dependence) will amount to misconduct. This provision complements the provisions of the act in relation to alcohol and drug testing of police officers that were introduced by the Police Regulation Amendment Act 2007. The statement of compatibility in respect of that act sets out the potential limits on the rights of individual police officers and the reasons why any limits on those rights are reasonable and justifiable under s 7(2) of the charter. The addition of the misconduct provision in proposed s 69(1)(l) raises the same issues in respect of limits upon the rights of individual police officers but, for the same reasons as set out in that statement of compatibility, any such limits are reasonable and justifiable under section 7(2) of the charter.

Investigation powers (clause 19: inserting a new division 2 and 2A in part IV, clause 21: prescribing information gathering powers in a new division IV in part IV, clause 23)

Proposed sections 70 and 75 (clause 19) enable the chief commissioner, for the purposes of an investigation relating to misconduct or underperformance of a member, to interview the member; collect statements or other information from any person; and inform himself or herself of any matter he or she considers relevant.

Proposed section 82 (with consequential amendments to s 86Q — the power to require answers et cetera from a member of the force) (clause 21) gives the chief commissioner power to require answers and information from members and may direct any member to give him or her any relevant information, produce any relevant document or answer any relevant question necessary for the purposes of an investigation of a member or determining whether to dismiss or take remedial action against a member.

A refusal to follow a direction given under s 82 would amount to misconduct under proposed s 69(1)(a).

The s 82 power to require answers and information engages the rights to privacy and reputation (s 13); freedom of expression (s 15); fair hearing (s 24(1)); and the right not to be compelled to testify against oneself or to confess guilt (s 25(2)(k)).

Privacy and reputation

Compliance with the direction of the chief commissioner may involve an interference in the privacy of a member and possible attacks on his or her reputation that results from any disclosures he or she might make. Any potential interference would be neither unlawful nor arbitrary and is necessary in order to achieve the important purpose of maintaining the integrity of the police force and preventing corruption and misconduct.

Right not to be compelled to testify against oneself or to confess guilt

Section 25(2)(k) of the charter provides that a person charged with a criminal offence is entitled 'not to be compelled to testify against himself or herself or to confess guilt'. The right to a fair hearing in s 24(1) of the charter has also been interpreted in the United Kingdom and European Court of Human Rights to incorporate a privilege against self-incrimination.

This right is considerably narrower than the common-law privilege against self-incrimination. It applies only to persons charged with an offence. Disciplinary action taken against

police officers has been held in other jurisdictions not to amount to a criminal charge so as to directly engage the criminal process rights in s 25. However, the investigation powers of the chief commissioner could be used in respect of a member who is charged with an offence (see clause 20). Accordingly, it is possible that the compulsory questioning powers may be used to require a person who has been charged with an offence to answer questions, in which case s 25(2)(k) of the charter would be engaged.

In other jurisdictions equivalent rights to s 25(2)(k) have been interpreted as being limited to 'testimonial disclosures'. It does not apply to the production of real evidence; for example, fingerprinting, compulsory breath testing, or compulsory production of documents.

While the right may preclude the use of such questioning powers for an improper purpose of obtaining incriminating material for use in the criminal proceedings, and could result in the exclusion of evidence obtained for improper purposes, it does not preclude the use of compulsory questioning powers for legitimate purposes in separate proceedings provided there is a use immunity: see particularly the decision of the Court of Final Appeal of Hong Kong (including Sir Anthony Mason) in *HKSAR v. Lee Ming Tee* [2001] HKFCA 14. I note that one jurisdiction, the United States, requires both a direct and a derivative use immunity, but not a transactional immunity (one that protects against any prosecution whatsoever). However, that approach has not been followed in other jurisdictions with similarly worded rights to s 25(2)(k), most notably Canada, South Africa and Hong Kong. In those jurisdictions, the right clearly makes the accused a non-compellable witness in the criminal proceedings against him, and reflects the rule that confessions are admissible only if they are voluntary. However, the right does not preclude compelling an accused to be a witness in other proceedings provided there is an immunity protecting against the use of statements made in those proceedings in respect of the criminal proceedings relating to the accused. The use immunity is sufficient to ensure that the accused is not indirectly made a witness against himself.

I consider the provisions are compatible with and do not limit the right in s 25(2)(k) of the charter because:

1. proposed s 82 makes clear that the chief commissioner's questioning powers may only be used for the purposes of determining whether to dismiss a member who is unsuitable under s 68; an investigation or assessment of a member who is believed to have engaged in misconduct or for underperformance; or in determining whether to dismiss or take other remedial action in respect of a member for misconduct or underperformance. The chief commissioner is not able to use those powers for the purpose of gathering evidence for a criminal charge. In the event that he or she were to use the powers for an improper purpose any evidence derived as a result could be excluded in the criminal trial.

2. the provisions in relation to admissibility include the use immunity required by s 25(2)(k). Indeed, the immunity goes beyond that required by the right as it applies irrespective of whether the member has been charged with an offence, and extends to documentary and other evidence.

Even if the right were to be interpreted as broadly as the United States, I consider that any limit imposed would be reasonable and justifiable pursuant to s 7(2) of the charter. Here, the failure to answer questions merely attracts a civil sanction, rather than a criminal one. The appropriateness of such an immunity for police officers has been questioned by the Office of Police Integrity (see report pp 69–70), particularly when it does not apply in other employment settings. Further there are significant difficulties associated with a derivative use immunity, and identifying whether evidence is truly derivative.

Freedom of expression

The requirements to answer questions and provide information engage the right to freedom of expression protected in s 15 of the charter. This right has been interpreted in some jurisdictions as including a right not to express. However, the provisions are necessary for the purpose of maintaining the integrity of the police force through the investigation of improper conduct and underperformance of its members. These are important objects and would come within the meaning of public order in s 15(3).

Accordingly, I consider that the provisions are compatible with the right to free expression in s 15 of the charter.

Dismissal powers where member facing criminal charges (clause 20)

The bill enables the chief commissioner to reach a conclusion after the investigation and show cause notice procedure that he or she 'is satisfied' the member has engaged in misconduct, and take actions under the dismissal or remedial provisions. The bill envisages a scenario where a member is found internally as having engaged in disgraceful or improper conduct under the misconduct provisions and externally charged with a criminal offence. The proposed s 80 (clause 20) enables the chief commissioner to take action under division 1, 2 or 2A in relation to a member 'in respect of whom a charge for an offence (whether under the law of Victoria or of another jurisdiction) is pending, before that charge is finally determined'.

There is a question of compatibility with the right to be presumed innocent (s 25(1)).

Presumption of innocence

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

The right principally applies in criminal proceedings with the effect that the prosecution is required to prove all elements of the offence beyond reasonable doubt. As the disciplinary proceeding is not a criminal charge, the right does not directly apply the determination of whether a member has engaged in misconduct or is underperforming.

However, the right can indirectly apply to the disciplinary proceedings. The right has been interpreted in other jurisdictions as imposing a duty upon public authorities, particularly those involved in the prosecution of the criminal charge, from prejudging the outcome of a trial for example by making public statements affirming the guilt of the accused (see, for example, United Nations Human Rights Committee General Comment 32).

While the criminal charge and disciplinary proceedings may relate to the same conduct, the test for misconduct is different from the criminal offence. This is not simply an issue of the standard of proof, but of the elements of the criminal offence compared with the misconduct. For example, intentional conduct may be necessary to a finding of guilt in relation to a criminal offence, whereas negligent conduct may be sufficient to amount to misconduct. A finding of misconduct founded directly upon having committed a criminal offence is limited to circumstances where the offence has been found proven (s 69(1)(h)).

Accordingly a finding of misconduct (other than misconduct based upon a conviction) is different from and does not amount to a statement of guilt in relation to the criminal charge. In *Jakumas v. Lithuania* [2006] ECHR 6924/02, the European Court of Human Rights held that the presumption of innocence had no application to police disciplinary proceedings where the officer was also charged with a criminal offence. The court reasoned that the presumption is not affected unless the dismissal in itself is a judgement of guilt that would prejudice the separate criminal proceedings on the charges facing the applicant.

In exercising the power to dismiss in circumstances where a person has also been charged with a criminal offence, the chief commissioner will be required to act compatibly with the right to be presumed innocent in s 25(1) of the charter and avoid making public statements that affirm guilt in respect of the criminal charge. However, neither the finding of misconduct nor the dismissal would of themselves amount to a prejudgment of the outcome of the trial such as to breach the right to be presumed innocent.

Accordingly, I consider that the provisions are compatible with the right to be presumed innocent in s 25(2)(k) of the charter.

Dismissal based upon a conviction

Proposed section 69(1)(h) (clause 19) defines misconduct as including 'commission by the member of an offence … and the offence has been found proven'. Accordingly, a member may be subjected to a punishment imposed upon sentencing for the criminal offence as well as a dismissal, or other remedial action, based upon the conviction.

This raises an issue in relation to the right against double jeopardy in s 26 of the charter.

However, courts in other jurisdictions have consistently held that the right does not preclude the imposition of both criminal and civil sanctions for the same conduct. In determining whether a sanction is truly civil or amounts to a punishment for an offence, courts have regarded the statutory classification of the proceedings (here disciplinary rather than criminal) as relevant but not determinative. They have also looked at the nature, purpose and severity of the sanction. Police disciplinary proceedings have been held by the Supreme Court of Canada not to engage the double jeopardy right (*R v. Wigglesworth* [1987] 2 SCR 541).

The purpose of the disciplinary measure is not to punish the member for the criminal offence, but to maintain the integrity and reputation of Victoria Police and to protect the public. I consider that the ability to take disciplinary action based upon a conviction for a criminal offence does not engage and is therefore compatible with the right against double jeopardy in s 26 of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because:

to the extent that some provisions do raise human rights issues, these provisions do not limit human rights; or

to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

Hon. Justin Madden, MP
Minister for Planning

Second reading

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

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Victorians are proud of their police and the vast majority of police members serve their community extremely well. For police members to be able to do their job it is essential that they are respected in the community, and can rely on community support and partnership.

To be respected requires that police consistently demonstrate the highest level of ethical and professional standards, and are deployed in the manner which best serves the community.

To operate to the highest possible professional standards requires that police members be supported, trained, and instructed to carry out a difficult and at times life-threatening role in protecting our community.

This bill contains three key elements:

it creates a new misconduct and performance management model based on recommendations by the director, police integrity;

it implements enterprise bargaining commitments for a more flexible police workforce; and

it creates a new clearer regime to better support police members subject to civil action arising out of the course of their duties.

I will now deal with the detail of the bill.

New streamlined misconduct and performance process

In 2007, the director, police integrity, conducted an 'own motion' review into the administration of discipline in Victoria Police. He found that the current police discipline system was slow, overly formalised, adversarial, punitive, did not assist in determining causes of problematic conduct or improving performance, and had no clear objectives. He

therefore recommended that a new system be introduced, based on the following key principles:

> police discipline systems should as far as possible be brought within the general employment relationship context, and particularly the public sector context;
>
> the focus of the new system should shift from punitive, to providing remedial assistance for misconduct and poor performance under a performance management process;
>
> the system should be streamlined and simplified to remove current interim sanctions, with a straightforward dismissal process for dishonest or criminal conduct, or where performance measures have failed to be achieved; and
>
> review rights should also be streamlined and simplified, but a review of dismissals that are harsh, unjust or unreasonable (comparable to other employee and public servants entitlements) should be provided.

The proposed amendments implement the recommendations of the director based on the above principles, and will improve the capacity and powers of the Chief Commissioner of Police to manage the relationship with Victoria Police members, their performance and conduct.

The bill includes a new misconduct model. The current overly formalised and slow process is substituted with a new investigation and show cause process. A key difference from the current system is that it can generally be conducted without a formal hearing at first instance, whilst maintaining fairness to members and applying natural justice.

The bill also provides a new performance management model within a professional development framework. To help police members do their best at their job, they need to be supported by proper training, instruction and remedial assistance where necessary. The new framework encapsulates this by providing for a professional development process aimed at educating police members and facilitating their development, and provides for remedial plans and measures to address conduct and performance issues.

Similar streamlined processes are available under the bill for investigating and dealing with misconduct or underperformance. The chief commissioner will be enabled at an early stage to consider whether a member's conduct is likely to warrant dismissal or should be addressed by remedial action under the performance management process. Most other existing intermediate sanctions are removed.

A significant initiative under the new model is the clear capacity to proceed with investigations, performance, confidence or misconduct issues, relating to a member in respect of whom a charge is under consideration or pending, before that charge is finally determined. At present, the practice has been to await the outcome of these criminal matters, with the result that members may be suspended from duty but remain police members for lengthy periods of time, sometimes years. The revised process will clarify the situation of these members, but also ensure that any criminal proceedings are not prejudiced, by making the conduct of those internal matters inadmissible in criminal charges against the member, thereby protecting the right to a fair trial under the charter of human rights.

The DPI report recommended that reinstatement for police members be removed and the remedy available be limited to compensation payments where a member is dismissed in harsh, unjust or unreasonable circumstances where reinstatement is unsuitable for reasons of serious or criminal misconduct. On the other hand, the report commented that depriving police members of an entitlement held by other employees, and police members in some other jurisdictions, seemed unjustified and unfair. The position taken in the bill is to retain reinstatement as a possible remedy for police members, otherwise than where dismissed under the confidence power, or where dismissed following convictions for criminal offences.

The Police Appeals Board's jurisdiction in relation to reviewing discipline decisions is altered: it will no longer review intermediate sanctions, as these have been mostly removed. It will review dismissal decisions and an internal review process is provided for other matters. When reviewing a dismissal decision, the board will be required to consider whether the dismissal was harsh, unjust or unreasonable, in line with similar protections given to other employees under the commonwealth Workplace Relations Act 1996. Similar remedies are provided to those under commonwealth law such as reinstatement or payment of up to six months remuneration in compensation.

However, reinstatement will not be available for members dismissed using the chief commissioner's confidence power. Those members will be able to be compensated by up to 12 months pay if they can establish that their dismissal was not sound defensible or well-founded. This special case is justified based on the special nature of the dismissal under s 68 for public confidence reasons.

The bill will highlight the importance of the 'public interest' as considered by the Police Appeals Board. The bill will provide that upon a dismissal review, the board must not reinstate a member unless it is satisfied that reinstatement is not contrary to the public interest. The public interest test will also be extended to try and reflect the impact and damage to the morale and self-esteem of police members, caused by any perception that other members are retained despite being seen to be underperforming, or guilty of misconduct, corruption or criminal conduct.

Employment flexibility

The amendments support a more diverse employment model for the Chief Commissioner of Police to cover short-term and seasonal requirements for policing in Victoria, by providing for part-time and fixed-term appointments.

The chief commissioner's powers in relation to members 'as if' she was their employer are clarified in the bill but without derogating from her 'command and control' functions, without limiting the independence of the office of constable exercised by members and without altering the status of members who are not employees at law.

The chief commissioner is also given new powers to suspend the powers and privileges of recruits and police members in certain circumstances, such as when a member is on secondment to another body, or on unpaid leave for lengthy periods. If a member's powers are suspended, the authority of the chief commissioner is also limited in giving the member directions or instructions in that period. This power resolves certain conflict of interest issues and implements a

recommendation of the Ombudsman in his report *Investigation into a Disclosure about WorkSafe's and Victoria Police's Handling of a Bullying and Harassment Complaint*, tabled in April 2007, by clarifying the position and powers of members on secondment to external agencies. The changes do not impact on superannuation entitlements of members.

Civil liability changes

The bill clarifies the position of police members who are subject to civil suit arising out of the course of their duties and functions. It is to some extent modelled on a NSW scheme. The better protection for police members reflects the high risk of litigation inherent in carrying out a policing role, having to regularly deal with criminals and other persons acting in an aggressive and dangerous fashion.

These changes will clarify the legal position of police members subject to civil proceedings arising out of carrying out their duties and functions. The new provisions specify that, although police members are not employees of the state, the Crown can be vicariously liable for a tort committed by them in the performance of their functions (a police tort claim). Any person bringing legal action in respect of a police tort claim must initially bring the action against the Crown. The police members will be joined to the proceedings only if the Crown denies vicarious liability for the alleged tort. The Crown is able to join police members as a party to the action and seek contribution and indemnity from them in respect of the damages in certain circumstances.

The changes are aimed at releasing police members who have acted properly from the stress of being named personally in civil proceedings, with the risk to family and property that those proceedings can entail. However, this is not a message to police members that they can operate outside the law or outside their professional ethics, standards and instructions. Unlike at common law, vicarious liability for a tort will not extend to conduct by a police member that was:

serious and wilful misconduct; or

not committed by the member in the performance of his or her duties as a member of the police force.

I commend the bill to the house.

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

Debate adjourned until Friday, 17 October.

ASSISTED REPRODUCTIVE TREATMENT BILL

Statement of compatibility

Mr JENNINGS (Minister for Environment and Climate Change) 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 Assisted Reproductive Treatment Bill 2008.

In my opinion, the Assisted Reproductive Treatment (ART) Bill 2008 (the bill) as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill will:

(a) update Victoria's laws on ART and surrogacy to clarify and remove existing anomalies and inconsistencies, to recognise the realities of Victorian families and reflect new technologies;

(b) remove the current statutory requirement that women be married or in a de facto relationship with a male to access ART treatment in Victoria;

(c) strengthen the protections for children born through ART by implementing enhanced screening for treatment, expanding donor-conceived children's access to information about their genetic history and clarifying parentage laws;

(d) provide that complex treatment decisions are made by an independent expert Patient Review Panel, with provision for review of decisions by the Victorian Civil and Administrative Tribunal;

(e) expand the opportunity for altruistic surrogacy and posthumous use of gametes in treatment procedures, in the context of rigorously assessed applications;

(f) provide that prescribed ART records are held by the registry of births, deaths and marriages; and

(g) reduce the regulatory burden on ART providers by introducing a deemed registration system.

The bill repeals the current Infertility Treatment Act 1995 and replaces it with the Assisted Reproductive Treatment Act 2008. The bill amends the Status of Children Act 1974 and the Births, Deaths and Marriages Registration Act 1996.

The principles underpinning the charter of respect, equality, freedom and dignity tie closely to the objectives of the bill. These principles include human rights that:

are essential in a democratic and inclusive society that respects the rule of law, human dignity and equality and freedom;

belong to all people without discrimination, and the diversity of the people of Victoria enhances our community.

Human rights issues

The provision and regulation of ART involves a balancing of a number of rights and interests, including those of donor-conceived children, potential parents, donors of gametes, as well as the broader interests of society.

The bill aims to enhance rights protection and achieve an appropriate balance between those interests.

Section 8: recognition and equality before the law

Section 8 of the charter establishes a series of equality rights. The right to recognition as a person before the law means that the law must recognise that all people have legal rights. The right of every person to equality before the law and to the equal protection of the law without discrimination means that the government ought not discriminate against any person, and the content of all legislation ought not be discriminatory.

Guiding principle of non-discrimination

Clause 5 of the bill sets out the guiding principles, including that persons seeking to undergo reproductive treatment must not be discriminated against on the basis of their sexual orientation, marital status, race or religion. The right in section 8 of the charter therefore underpins the objectives of the bill in promoting equality and non-discrimination.

Discrimination on the grounds of age

Numerous clauses of the bill make provision for differential treatment of persons on the basis of age. These provisions amount to discrimination and constitute reasonable limitations on section 8 of the charter, for the reasons set out below. The provisions which discriminate on the basis of age are:

gametes or embryos produced from a child cannot be used in treatment other than for the treatment of the child (clause 26);

where a donor or a parent of a person born as a result of a donor treatment procedure applies for information on the central register which relates to a child, the registrar must only disclose the information if the child's parent or guardian has consented and the registrar must also take into account whether or not the child has indicated that it does not want the information disclosed (clause 58);

where a child born as a result of a donor treatment procedure applies for information on the central register, the registrar must only disclose information if the child's parent or guardian has consented to the making of the application and a counsellor has provided advice that the child is sufficiently mature to understand the consequences of the disclosure (clause 59); and

a person may enter into a surrogacy arrangement for a woman only if the surrogate mother is at least 25 years of age (clause 40).

(a) the nature of the right being limited

The prohibition of discrimination is one of the cornerstones of human rights instruments and this is reflected in the preamble to the charter. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(b) the importance of the purpose of the limitation

The purpose of the differential treatment of children in clause 26 is to protect the child from undergoing treatment procedures except where the procedure is for the child's future benefit. This protects the child from inappropriate or unnecessary procedures.

The purpose of the differential treatment of children in clause 59 is to ensure that children may only access information on a register under the supervision and guidance of a parent or guardian, or where the child is assessed by a counsellor as being sufficiently mature to understand the consequences of the disclosure. The purpose of the differential treatment of children in clause 58 is to ensure that the disclosure of information is appropriate, in the best interests of the child and that whether the child has indicated that he or she does not want the information disclosed is taken into account by the registrar.

In each case, the differential treatment is for the important purpose of protecting the child's best interest, consistent with section 17 of the charter (protection of families and children).

The purpose of clause 40 is an important one: to protect the surrogate mother from possible coercion, exploitation and psychosocial difficulties potentially arising from entering into a surrogacy arrangement.

(c) the nature and extent of the limitation

Clause 26 provides a prohibition on procedures involving gametes produced by children except in limited circumstances where the procedure is for the child's future benefit.

Clause 58 provides that the registrar must only disclose the information about a donor-conceived child if the child's parent or guardian has consented and the registrar must take into account the child's wishes.

Clause 59 provides that the registrar must only disclose information if a counsellor has provided advice that the child is sufficiently mature to understand the consequences of the disclosure.

Clause 40 precludes clinics providing treatment to a surrogate mother who is less than 25 years old. Part 14 of the bill inserts a new part IV into the Status of Children Act 1974, section 18 of which also precludes the County and Supreme courts in most cases making a substitute parentage order transferring parentage from a surrogate mother who is less than 25 years old to the commissioning parents. There is provision for the approval of non-complying surrogacy arrangements in clause 41, but this can only be approved in exceptional circumstances and only if it is reasonable to approve the arrangement in the circumstances.

In the case of the limitations imposed by clauses 58, 59 and 40 the restrictions are limited in time and last only until the child or young person reaches the prescribed age.

(d) the relationship between the limitation and its purpose

In relation to clauses 26, 58 and 59 there is a direct relationship between the age discrimination and the protection of the best interests of the child.

In relation to clause 40, the Victorian Law Reform Commission (VLRC) stated that '[A] woman acting as a surrogate requires a sufficient level of maturity to be able to understand the implications of entering into the arrangement. Becoming a surrogate should not be seen as the mere exercise of a legal right attained on turning 18, but rather a decision that requires a level of maturity that most people have not developed at that age. It is worth noting in this context that although people become legal adults at 18, the United Nations' definition of youth extends to anyone under 25. Requiring the surrogate to be at least 25 years old may also

act as an additional protection against any unequal bargaining power between her and the commissioning parents' (VLRC, Assisted Reproductive Technology and Adoption: Final Report, March 2007, page 176). There is a direct and rational connection between protecting young women from exploitation and the age restriction imposed.

(e) any less restrictive means reasonably available to achieve its purpose

In relation to clause 26, 58 and 59 there is no less restrictive means available to achieve the purpose of the provisions.

In relation to clause 40, a less restrictive means would have been a broader test than the exceptional circumstances test in clause 41, one that enables assessment of the maturity of the potential surrogate on a case-by-case basis. However, it was determined that this would not ensure sufficient protection of young women from possible coercion, exploitation and psychosocial difficulties potentially arising from entering into a surrogacy arrangement.

(f) any other relevant factors

Victorian courts may follow European courts in affording a 'wide margin of appreciation' when interpreting legislation of sensitive moral and ethical matters, as is certainly the case with this bill (see *Evans v. UK*, ECHR, application no 6339/05, 10 April 2007).

Section 10(c): right not to be subject to medical or scientific treatment without full, free and informed consent

Section 10(c) provides that a person has the right not to be subjected to medical or scientific treatment without full, free and informed consent.

Divisions 2 and 3 of part 2 set out the pre-treatment requirements for persons who may undergo treatment and persons who are contemplating gamete or embryo donation. Before consent to treatment is obtained these persons must undertake counselling on prescribed matters, which ensures they have all relevant information and fully understand the implications of the treatment. This is consistent with and gives effect to the requirements of section 10(c) of the charter.

Section 13: right to privacy

Section 13(a) of the charter recognises a person's right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The right to privacy encompasses the right to information privacy and bodily privacy. The requirement that any interference with a person's privacy must not be 'unlawful' imports a requirement that the scope of any legislative provision that allows an interference with privacy must specify the precise circumstances in which interference may be permitted. The requirement that an interference with privacy must not be arbitrary requires that any interference with a person's privacy must be reasonable in the circumstances and should be in accordance with the provisions, aims and objectives of the charter.

Presumption against treatment

Clause 14 of the bill provides that a clinic cannot treat a woman where the woman or her partner have had charges proven against them for a sexual offence, been convicted of a violent offence or had a child protection order made in respect of a child in their care unless the Patient Review Panel determines that there is no barrier to the person undergoing treatment.

In practice this will be brought to effect by a woman and her partner, if any, each producing a criminal record check for consideration by an ART clinic counsellor and providing consent for the counsellor to obtain a child protection order check from the Department of Human Services (pursuant to the requirements as to consent in clause 11). If either of the checks is positive, that is, there are relevant charges or offences or orders disclosed, the clinic will not be able to provide treatment and the woman and her partner may seek a decision from the Patient Review Panel to determine if there is a barrier to the clinic providing treatment.

The requirement to provide a criminal record check and consent to a child protection order check engage the right of the woman or her partner to information privacy. The child protection order check will only produce a statement indicating whether relevant orders have been made under the Children, Youth and Families Act 2005. The requirement to provide a full criminal history may disclose personal and sensitive information not relevant to the eligibility requirements for ART. However, a criminal record check is the only available objective mechanism to identify the existence of offences pertinent to determining potential risk of abuse or harm to the child to be born from ART. While the counsellor will sight the criminal record check(s) as part of the counselling process, he or she will only have regard to the relevant offences for the purposes of establishing whether a presumption against treatment applies. The bill seeks to limit the extent of the disclosure of the contents of the criminal record check by ensuring that it is available in the pre-treatment counselling only and that the consent to treatment records evidence that the check was considered by the counsellor. Further, the information disclosed in counselling is protected by professional confidentiality provisions. The requirements to provide a criminal records check and consent to a child protection order are reasonable given the important purpose of protecting the child to be born from ART. The interference with privacy is proportionate to the purpose, and is not arbitrary or unlawful.

The presumption against treatment also engages the right not to have one's family unlawfully or arbitrarily interfered with, because it may bar certain persons from constituting or enlarging their family. However, the right in section 13 of the charter does not extend to requiring the state to permit unconditional access to ART. The presumption against treatment does not amount to discrimination under the Equal Opportunity Act 1995 (EO act) and is therefore not discriminatory, arbitrary or unlawful. The purpose of the presumption is to protect children born through ART, which is a clear and reasonable purpose consistent with the principles of the charter, in particular, the best interests of the child protected in section 17 of the charter. The presumption against treatment therefore does not amount to an unlawful or arbitrary interference with the family.

Requirements to undergo counselling

The bill makes numerous provisions for persons to undergo counselling, such as:

a person who wishes to undergo a treatment procedure and her partner, if any (clause 13);

donors (clause 18);

persons wishing to enter into a surrogacy arrangement and her partner, if any (clause 43);

a woman wishing to undergo a treatment procedure involving posthumous use of gametes or embryos (clause 48);

a donor-conceived child who wishes to access information on the central register which may identify another person (clause 59);

all applicants to the central register (clause 61) or voluntary register (clause 73) prior to release of identifying information.

The requirements to undergo counselling are to ensure that the person understands the full implications of their decision, including the social, psychological and legal implications, so that full and informed consent may be provided. The requirement is therefore for an important purpose and is reasonable. Further, the requirement to undergo counselling occurs in a context where a person has volunteered for a particular procedure or applied to obtain certain information. All information disclosed in the counselling process is confidential. The counselling requirements therefore do not constitute an arbitrary or unlawful interference with a person's privacy.

Accessing information on ART provider registers and the central register

The regulation of access to information on ART provider registers and the central register engages the right to privacy in a number of respects. It affects the interests of the donor-conceived person in obtaining information regarding their identity and genetic history, as well as their interests in not having their personal information disclosed. It also affects the interests of a donor in respect of accessing information regarding their genetic offspring and their interests in keeping personal information confidential.

The bill seeks to achieve an appropriate balance between those competing interests.

Part 6 of the bill makes provision for ART providers to maintain a register of prescribed information including information about donors and treatment procedures, and for the registrar of births, deaths and marriages to keep a central register of prescribed information. The central register is comprised of records from two distinct periods: 1 July 1988 to 31 December 1997 when identifying information was recorded about donors who donated gametes in this period and could specify whether their identity could be released; and 1 January 1998 to the current day where donors consented to the donation of gametes knowing that their identity may be revealed to the donor-conceived child. Prior to 1 July 1988 donations were anonymous and records were not kept centrally. However, a voluntary register applies in respect of such donations.

Part 6 carefully regulates how information from the central register may be accessed and when information which discloses personal information about another person may be disclosed. Consent is required in relation to the disclosure of information to donors (clause 55 and clause 58). The circumstances in which disclosure of information will occur to persons born as a result of a donor treatment procedure are provided for in clause 59.

The different rules for disclosure of information depending upon the date of the donation, reflects the different conditions under which donations were given. While it is recognised that refusing access to donor information prior to 1 January 1998 may involve an interference with the right of a donor-conceived child to access information regarding their identity and genetic history, this reflects the fact that donations prior to this time could be or were made anonymously and to change those conditions would amount to an unreasonable interference with the donors' rights to privacy.

To the extent that a donor's personal information is disclosed, the disclosure of information is not arbitrary as it is for the purpose of giving effect to the right of the donor-conceived person to access information about their identity and will occur in accordance with the understanding of the donor at the time the donation was made.

The bill enhances the rights of children to obtain such information through enabling access either with parental or guardian consent or the advice of a counsellor that the child is sufficiently mature to understand the consequences of the disclosure. To the extent that access is limited where a person is not certified as sufficiently mature, this is to ensure the best interests of the child are protected and does not amount to an unlawful or arbitrary interference.

Part 7 of the bill provides that the registrar of births, deaths and marriages must keep a voluntary register that contains information about donor treatment procedures. However, the information that is recorded on the voluntary register is not prescribed and is given voluntarily. The registrar may only release information from the voluntary register in accordance with the wishes of the person entered in this register therefore the disclosure of information is not arbitrary. There is therefore no interference with the right in section 13 of the charter.

Right to be told

The information in relation to donor conception will not be recorded on the birth certificate and there is no mandatory requirement on parents to tell donor-conceived children of the manner in which they were conceived. On the one hand, recording such information on the birth certificate would interfere with privacy rights because it would involve public disclosure of personal information. On the other hand, it may be argued to be a reasonable interference as it gives effect to a child's right to access information about their identity — genetic information.

While there is no requirement to tell a child they are donor conceived, where the donation was made after 1 January 1998, once the child turns 18 it is possible for Victorian Assisted Reproductive Treatment Authority (VARTA) to write directly to the child at a donor's request and advise that the donor wishes to make contact. This provides a strong incentive for parents to tell a donor-conceived child about the manner in which they were conceived. In addition, VARTA provides significant support and encouragement for parents to tell, through the 'Time to tell' campaign.

Placing such information in a public document such as a birth certificate is a significant interference with the right to privacy and does not have the same protections for ensuring that children have access to such information only when they are

sufficiently mature to deal with it. In the circumstances, it is considered that it is not appropriate to record such information on a birth certificate or mandate telling children of the manner of their conception. This is better achieved through non-legislative means.

Surrogate must be 25 years old

It is arguable that the right to privacy also encompasses a right to autonomy with regard to decisions made by a person about their own body. In *Pretty v. UK* (ECHR, 29 March 2002), the court accepted that preventing a terminally ill woman from obtaining assistance from a third party to commit suicide — by refusing to guarantee immunity from prosecution for that third party — could constitute an interference with her right to respect for private life, as protected by article 8 of the European Convention on Human Rights. The court went on to consider whether the possible limitation of article 8 rights was justified and decided this question in the affirmative on the basis that the limitation was 'necessary in a democratic society'. Thus, the court undertook a balancing of competing interests similar to the one which arises with respect to this proposed bill.

It is arguable that clause 40, which imposes an age restraint of 25 years on surrogate mothers, could be construed as limiting a woman's autonomy to decide when she is ready to participate in a surrogacy arrangement. However, any interference with the woman's privacy on this basis is reasonable for the same reasons as set out above in relation to section 8 of the charter, namely, to protect the surrogate mother from possible coercion, exploitation and psychosocial difficulties potentially arising from entering into a surrogacy arrangement.

Withdrawal of consent

Clause 17 requires that embryos be used only if each of the persons who donated gametes has consented to their use. Pursuant to clause 20, such consent can be withdrawn at any time prior to the use of the embryo. This achieves an appropriate balance between the rights of each donor to privacy, including the ability to choose when to become and when not to become a parent. While withdrawal of consent can result in a person not being able use the embryo, this possibility is best dealt with through the counselling procedure, rather than any ability to override the consent requirement which would be a significant interference with the rights of non-consenting donors.

Section 17: protection of families and children

Section 17(1) of the charter provides that families are the fundamental unit of society and are entitled to be protected by society and the state. Section 17(2) provides that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child. The promotion of these rights underpins the objectives of the bill to recognise the realities of Victorian families and to ensure that the best interests of children born through ART continue to be protected through measures including enhanced screening provisions and the clarification of parentage laws.

A number of provisions in the bill which engage the right in section 17 of the charter are discussed below.

Recognition of non-birth mothers

Clause 147 of the bill inserts a new part III into the Status of Children Act 1974 which provides that if a woman conceives following a procedure of assisted reproductive treatment or artificial insemination, the woman's female partner is presumed for all purposes to be a legal parent of the child born if certain criteria are met. This affords to non-birth mothers the same status currently afforded to male partners of women who give birth following a treatment procedure for the purpose of Victorian laws. This amendment recognises the realities of Victorian families, ensures that the best interests of children born through ART are protected, and clarifies parentage laws and the status of donors. These provisions therefore promote the rights in section 17 of the charter.

Child conceived posthumously to be regarded as child of the deceased for the purpose of birth registration but not for any other purpose under Victorian law

Clause 147 of the bill inserts a new part V into the Status of Children Act 1974 which provides that any child conceived posthumously should be regarded as the child of the deceased for the purpose of birth registration, but not for any other purpose under Victorian law. This limits the right under section 17 of the charter of the posthumously conceived child because the child will not have all of the benefits which would normally flow from the identification of a parent on a birth registration.

(a) the nature of the right

The protection of families and children is an important right which may be subject only to reasonable limitations under section 7 of the charter.

(b) the importance of the purpose of the limitation

New part V of the Status of Children Act 1974 implements the recommendation of the VLRC that the deceased should be recorded as the child's parent on his or her birth certificate, however, the legal consequences flowing from the deceased's parental status should be limited in order to provide certainty for the administration of deceased estates. (VLRC, *Assisted Reproductive Technology and Adoption: Final Report*, March 2007, page 102). There is no time limitation on the posthumous storage of gametes, and it is important to ensure that the estate of the deceased can be finalised and that the estate can be administered according to the deceased's intentions expressed prior to death within a reasonable time after death.

(c) the nature and extent of the limitation

The effect of the new part V of the Status of Children Act 1974 is that the posthumously conceived child will only be regarded as the child of the deceased for the purpose of birth registration, but for no other purpose under Victorian law. However, a person would still be able to make provision for a posthumously conceived child in his or her will under the new part V.

(d) the relationship between the limitation and its purpose

The restriction on the purposes for which a child is to be regarded as the child of a deceased recognises the rights of the posthumously conceived child to the accurate recording of their biological identity and strikes an appropriate balance

between the rights of the posthumously conceived child and the rights of other family members and other children to legal certainty in the administration of the estate.

(e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

There is no less restrictive means reasonably available to achieve the purpose of the limitation.

Section 24: right to a fair hearing

Section 24 guarantees the right to a fair and public hearing. The right to a fair hearing applies in both civil and criminal proceedings and in courts and tribunals.

Clause 147 of the bill inserts a new part IV into the Status of Children Act 1974, sections 30 and 32 of which provide that appeal proceedings in the Court of Appeal against an order of the Supreme Court or County Court must be heard in a closed court, and publication of such proceedings is to be restricted. Sections 24(2) and (3) of the charter enable a court or tribunal to exclude persons or the general public from a hearing if permitted to do so by a law other than the charter, and to prohibit the publication of judgements or decisions made by a court if that is in the best interests of a child or a law other than the charter permits it. Therefore, these provisions fall within a lawful restriction on the right to a public hearing in sections 24(2) and (3) of the charter and do not limit the right.

Conclusion

I consider that the bill is compatible with the charter because to the extent that some provisions may limit human rights those limitations are reasonable and justified in the circumstances.

HON. JUSTIN MADDEN, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

In 1980, the first Australian IVF baby was born in Victoria. Victoria was the first Australian jurisdiction to provide legislative safeguards for the women undertaking these assisted reproductive treatments through the Infertility (Medical Procedures) Act 1984. This legislation was based on the recommendations and report of the Waller committee, established to investigate the social, ethical and legal implications of in-vitro fertilisation. The 1984 legislation was updated in 1995 to reflect the advances in IVF treatment procedures and the resulting Infertility Treatment Act 1995 was introduced into this house on 4 May 1995 by the Honourable Marie Tehan, MP. The 1984 and the 1995 acts were passed by both houses of Parliament with bipartisan support.

We are now facing a new stage in the development of legislation to match the needs and challenges presented by Victoria's pluralistic society. In 2001, the Federal Court of Australia found that the requirement that a woman be married or in a heterosexual de-facto relationship to access assisted reproductive treatment, or ART, in a Victorian clinic was invalid because it was inconsistent with the Commonwealth Sex Discrimination Act 1986. In addition, the current legislation has not kept pace with rapid developments in reproductive technology.

Victorian Law Reform Commission Review

In 2002, the government provided a reference to the Victorian Law Reform Commission (VLRC) to:

> inquire into the desirability and feasibility of changes to the Infertility Treatment Act 1995 and the Adoption Act 1984 to expand eligibility criteria in respect of all or any forms of ART and adoption;
>
> make recommendations for any consequential amendment to relevant Victorian legislation;
>
> consider whether amendments should be made to reflect rapidly changing technology in the area of assisted reproduction; and
>
> consider how certain provisions of the Infertility Treatment Act apply to the practice of altruistic surrogacy and make recommendations for clarification of the legal status of any child born of such an arrangement.

After an extensive process of consultation and research conducted over four and a half years, the VLRC report was tabled in the Victorian Parliament in June 2007. The VLRC made 130 recommendations for reform, designed to meet the needs of all children born through ART, and to provide a robust framework capable of accommodating future social and technological change.

Overview of the commission's findings in relation to the limitations of the current law

Before outlining the provisions of this bill, it is worth reviewing the limitations of the current legislation as identified by VLRC.

Limitations of previous act

As previously stated the current law contains invalid eligibility requirements for access to treatment. The requirement that a woman be "unlikely to become pregnant" is currently applied inconsistently. If a woman has a male partner, her inability to become pregnant may be the result of a number of factors, including her partner's infertility or an unidentifiable cause. If she does not have a male partner, she must be clinically infertile to be eligible for treatment.

The VLRC reviewed relevant research and was satisfied that parents' sexuality or marital status are not key determinants of children's best interests. Rather, it is the quality of relationships and processes within families that determine outcomes for children.

Restrictions in the legislation also prevent people from pursuing surrogacy arrangements in Victoria. Altruistic

surrogacy is legal, but potential surrogate mothers must be infertile in order to be eligible for treatment in a clinic.

Some people who cannot access treatment in Victoria choose to travel interstate or overseas to places where the law does not prevent them obtaining treatment in a clinic. This leads to unnecessary expense and inconvenience for the parents concerned and may affect the child's opportunity to make contact with their donor in the future. Others elect to self-inseminate. This means that they do not have access to the benefits of medical checks and mandatory counselling that the clinic system provides.

The current legislation specifies that the welfare and interests of the child to be born should be the paramount consideration in the delivery of ART. However, the legislation does not give doctors and counsellors any guidance about how to deal with cases where they are concerned that a future child may be at risk of harm. Decisions about whether to provide treatment in such cases are made privately and are not transparent. Decisions have not been consistently open for review.

The current laws fail to recognise as parents all people who have children in their care.

In surrogacy arrangements, the surrogate mother and her partner (if any) are the legal parents of the child even if the child is being raised by the commissioning parents. The female partner of a woman who gives birth is not recognised as the legal parent of those children, even though she takes joint responsibility for raising the child. Children raised in these families lack many of the rights and protections afforded to other children.

Although for many years treatments have been provided using gametes donated by men and women, the legal status of donors is uncertain in some circumstances.

Overview of bill

The bill's name, the Assisted Reproductive Treatment Bill, reflects the change in focus from treatment of infertility to a broader purpose of regulating assisted human fertilisation procedures. The bill seeks to repeal the Infertility Treatment Act and create a legislative framework that provides access and security for many Victorians who, for a variety of reasons, need assisted reproductive treatment procedures to create a family.

The ART bill proposes guiding principles that will direct the administration of the act and the functions carried out or regulated by the act. These include that the welfare and interests of persons born, or to be born as a result of ART, are paramount; that children born as the result of the use of donated gametes have a right to information about their genetic parents and the health and wellbeing of persons undergoing ART must be protected at all times. At no time should the use of ART be for exploiting the reproductive capabilities of men, women or children and persons seeking to undergo ART must not be discriminated against on the basis of their sexual orientation, marital status, race or religion.

I would now like to provide an overview of the parts of the bill.

Treatment procedures

ART is defined as a medical treatment or procedure that procures or attempts to procure pregnancy in a woman by means other than sexual intercourse. It is an offence for a person to carry out ART unless the person is a doctor performing the treatment on behalf of a registered ART provider, or a doctor performing artificial insemination.

The treatment eligibility provisions provide that a woman may undergo a treatment procedure if, in the woman's circumstances, she is unlikely to become pregnant, or carry a pregnancy, or give birth to a child, other than by a treatment procedure, or she is at risk of producing a child with a genetic abnormality or disease without a treatment procedure. There is no reference to the relationship status of the woman. This means that a woman without a male partner will be eligible for treatment.

A new provision has been added to the treatment eligibility requirements. A presumption against treatment applies to a woman when a criminal record check provided by the woman, or her partner, if any, shows charges have been proven for a sexual offence or convictions for a violent offence. The presumption also applies if a child protection order check reveals that a relevant order has been made to remove a child from the care or the woman or her partner. An ART clinic must not treat a woman to whom a presumption against treatment applies.

Where a presumption against treatment applies, or in circumstances where the ART clinic is concerned about a risk of abuse or neglect of the prospective child, the application for treatment may be considered by the newly established patient review panel. I will outline the functions and the process of the patient review panel shortly. The patient review panel may decide, on reviewing the matter, there is no barrier to treatment, or no barrier if particular conditions are met, and the ART provider may then provide the treatment. If the patient review panel decides that there is a barrier to treatment, the ART provider cannot treat the woman. The decision of the patient review panel can be reviewed by VCAT.

The presumption against treatment provides a system whereby the background of persons seeking ART can be carefully investigated before treatment is provided. It establishes a fair, transparent and consistent process that enables a clinic to investigate concerns about risks to children on a case-by-case basis and according to identifiable and established risk factors.

Other established pre-treatment procedures for the woman and her partner, if any, and the donor continue to apply. These include provision of prescribed pre-treatment information, pre-treatment counselling conducted by ART counsellors and recording of informed consent. Consistent with the National Health and Medical Research *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research* (2007), donors will now explicitly provide consent for the maximum number of women by whom their gametes may be used in a treatment procedure.

The VLRC recommended that donors should not be permitted to specify the qualities or characteristics of the unknown recipients of their donated gametes or embryos. This is referred to as providing a 'directed donation'. The NHMRC ethical guidelines require ART clinics to respect the wishes of gamete donors. The practice of gamete donation will be evaluated.

The VLRC noted that self insemination is a highly personal matter and recommended that it be distinguished from other

artificial insemination and that a woman, or friend or relative assisting with a self-insemination not be subject to legal penalty. The bill clarifies that it is not an offence for a woman to carry out self insemination using sperm from a donor or for the woman's partner, or a relative or friend of the woman assisting the woman to carry out the self-insemination.

Patient review panel

The bill provides for the establishment of a patient review panel, a state-wide panel appointed by the Minister for Health, with the primary role being to determine particular applications for ART. These applications include:

where a presumption against treatment applies to one or both of the prospective parents, or where the doctor or counsellor in the clinic is concerned that there may be a risk of abuse or neglect of the prospective child to be born through ART;

applications for surrogacy arrangements or to use the gametes of a deceased person;

applications for ART that fall outside the standard eligibility requirements, such as using ART to create a 'saviour sibling' to provide compatible tissue for an existing child or relative who is seriously ill; and

determine periods of storage for gametes and embryos, when the maximum storage time has been met or when there is a dispute about the storage.

The patient review panel will consist of five members, with the chairperson and deputy chairperson participating in each hearing and three other members appointed by the chairperson, from a list of Governor in Council appointed persons. The three members will be chosen on the basis of their expertise in relation to the matters to be heard by the panel and will always include a person with expertise in child protection matters.

Within 14 days after hearing the application the patient review panel must give written reasons for its decisions. All decisions of the panel are reviewable by VCAT.

This panel provides for an expert mechanism for complex decision making that is independent of the operation of any ART provider. A single panel will ensure the consistency of decision-making and if the decision is to exclude a person from treatment, then that decision is subject to independent administrative review.

Offences

Continuing offences

The ART bill continues its ban on prohibited procedures. These include:

sex selection except where this is to prevent transmission of a severe genetic abnormality,

treatment procedures where the genetic material from more than two people used; and

the conduct of any destructive research on ART embryos created for treatment purposes.

Use of gametes from a child

Also included within the bill are the requirements attaching to the circumstances under which a gamete may be obtained from a child. The current regulations provide that this is not an offence if a doctor certifies there is a reasonable risk that the child will become infertile before becoming an adult. The bill elevates this matter into the legislation and adds the extra requirement that gametes obtained from a child may only be used in a treatment procedure involving the child once the child becomes an adult — not for research and not for donation to another person and not at all if the child subsequently dies. This is consistent with the purpose of obtaining the gamete in the first place which was to preserve the fertility of that child.

Limiting the number of families from one donor

This bill elevates a current condition of licence into legislation and creates a new offence for an ART provider to carry out a treatment procedure using gametes or an embryo formed from gametes produced by a donor if the person knows the treatment procedure may result in more than ten women having children who are genetic siblings. This includes the donor and any current or former partner of the donor. This provision is important from both the perspective of the child to be born who may have to negotiate relationships with siblings and half-siblings in many other families and the donor who may be sought out by his or her donor-conceived offspring. It aims to limit the pool of people who are closely related to each other and the bewilderment that donor-conceived persons experience in trying to come to grips with multiple, genetically linked siblings in a number of different families. This provision will be monitored by the Victorian Assisted Reproductive Treatment Authority (VARTA), the renamed Infertility Treatment Authority.

No offence will apply, however, where an ART clinic provides treatment to create a genetic sibling for the children in one of those families already created.

Storage

This bill includes a provision which limits the ART provider to storing embryos for a period of five years with the consent of both persons who provided the gametes which formed the embryo, or a lesser period as defined in their consents. There is provision to extend this period for a further five years with the consent of both parties who provided the gametes. This provision is consistent with the NHMRC ethical guidelines, which state it is not desirable to leave embryos in storage indefinitely.

The bill provides for extension of storage past this time upon the approval of the patient review panel. Also, where there is a dispute between the persons whose gametes formed the embryo about how long it should be stored, the patient review panel will determine whether it should continue to remain in storage or not.

Surrogacy

While altruistic surrogacy is currently legal in Victoria, the law applies to surrogate mothers as if they are women seeking treatment on their own behalf. This means that the surrogate must be unlikely to become pregnant to have treatment, or if she is to gestate an embryo produced by the commissioning couple, both the surrogate and her partner must be infertile. In

addition, the surrogate mother is presumed to be the legal mother of any child born.

The bill removes the requirement that the surrogate mother must be unlikely to become pregnant or be able to carry a pregnancy. Instead, the commissioning parent or couple must be unlikely to become pregnant, be able to carry a pregnancy or give birth.

All parties involved in any surrogacy arrangement, including the surrogate mother and her partner if any, will be subject to the standard access to treatment process and must provide a police check and consent to a child protection check. This is because the surrogate mother will carry the child during the pregnancy and may have some role in the parenting of the child.

The bill will provide protections for the woman commissioned to become a surrogate mother, for the child to be born and the commissioning parents.

The bill provides that the patient review panel must approve all surrogate arrangements. In considering the approval, the panel must give consideration to a number of facts: the surrogate mother must be at least 25 years of age, and with her partner, if any, have undertaken prescribed counselling and received prescribed information including information about the legal consequences of entering the surrogacy arrangement. These prescribed matters will be included in regulations to be made after this bill has passed.

The minimum age restriction for a woman to act as a surrogate mother is included to remove the capacity for very young women to be approached to participate in such an arrangement and to reduce the risk of coercion. No limitation is placed on the surrogate mother using her own egg as part of the treatment procedures, though she must be specifically counselled in relation to issues arising from relinquishing a child to whom she is genetically related. The patient review panel will need to ensure that these matters have been addressed before approving the surrogacy arrangement. After counselling and information provision is completed the counsellor must prepare a report for the consideration of the patient review panel before treatment may commence.

Surrogacy will be available regardless of a person's marital or relationship status or sexual orientation.

While surrogacy will remain altruistic in Victoria, the bill provides that the costs actually incurred by the surrogate mother in participating in a surrogacy arrangement may be reimbursed. These costs will be prescribed in regulations. Commercial surrogacy will be a prohibited offence.

Posthumous use of gametes

The current legislation is inconsistent in relation to the conduct of treatment procedures where the person who has provided the gametes has died. For example, gametes of a deceased man may not be used in an insemination procedure, but the embryo created by the gametes produced by this man may be implanted. Further it is possible under other legislation (Human Tissue Act) to retrieve gametes from a person who has died, without them providing prior consent to do this.

The potential impact on a child who is born in the circumstances of posthumous use of gametes or embryos must be the highest consideration. The bill, therefore, proposes a number of stringent controls:

First, the person must have consented to the use of their gametes and this use may only be by the deceased person's partner in the context of a pre-existing relationship. In all cases, applications for posthumous use are to be approved by the patient review panel and a woman receiving the gamete or embryo created from the gamete of a person who has died must receive counselling in the prescribed matters. Before approving such use the patient review panel must have regard to any research on outcomes for a child conceived after the death of one of the child's parents.

In the case where a woman has consented to an ART provider using her egg posthumously, her male partner may use it to create an embryo for use in a surrogacy arrangement, only if approved by the patient review panel.

Records and access to information

Victoria was the first jurisdiction in the country to recognise and address the needs of donor conceived persons to have access to information regarding their genetic heritage. The 1984 and 1995 acts required that prescribed information in relation to treatment procedures using donor gametes be recorded on a central register. This register was established and maintained by the Department of Health under the 1984 act and the Infertility Treatment Authority under the 1995 legislation. The authority has been diligent in ensuring the accuracy and completeness of the information on the registers and their commitment and assistance in ensuring the smooth transfer of the registers to births, deaths and marriages is much appreciated.

All Australian ART providers are required as a condition of the Reproductive Technology Accreditation Committee (RTAC) registration to maintain a comprehensive register of information within the clinic regarding treatment procedures, donors, recipients and the outcomes of treatment procedures, including pregnancies and births of children.

A 2001 amendment to the 1995 legislation established the voluntary register, which records information about donors and donor-conceived children who voluntarily submit their information and any wishes in relation to contact. The voluntary register is the only vehicle available to persons conceived with gametes donated before 1 July 1988 to exchange information with donors who were permitted to remain anonymous before this date.

The VLRC recommended moving the management of the central and voluntary registers to a service with specialist expertise in information management. This bill provides that the registrar of births deaths and marriages will be responsible for these registers. Counselling associated with applications to the registers will be provided by adoption family records services or by ART clinic counsellors. This expands the number of counsellors available to provide the counselling, thus providing greater choice and access.

The movement of responsibility for the registers to the registrar of births deaths and marriages is consistent with government policy of wherever possible, centralising records that relate to parentage with one agency. The registry has extensive expertise in data collection and records management. In this way, any person seeking information about their identity will approach births, deaths and marriages

thus normalising the process for donor conceived persons and separating their genetic identity from the treatments received by their parents.

Both ART providers and doctors performing artificial insemination services will be obliged to submit the prescribed information to the registrar annually. This information includes births resulting from treatment procedures. As all birth registrations are already recorded by the registry this will allow data to be matched internally, thus resulting in further efficiencies in the management of the central register and enhanced protection of privacy for those persons named in the registers.

The donor registers play an important role in capturing information for the benefit of donor-conceived persons. For persons who donated gametes before 1 January 1998, information may only be released from the registers in line with their wishes. Since the current legislation took effect on 1 January 1998, donors have not been permitted to be anonymous. This is very important in meeting the needs of donor-conceived persons to know about their genetic history. This bill enhances the current system of access to information by enabling a donor conceived child to obtain information about their donor before the child turns 18 years of age, if assessed by an ART counsellor as being sufficiently mature. Women who self-inseminate have an avenue to record the details of the sperm donor on the registers. This will enable those children born of a self insemination procedure to gain information about their genetic background.

Deemed registration

The government is committed to reducing regulatory duplication and the burdens imposed on Victorian businesses.

Currently ART in Victoria is highly regulated. All ART clinics must:

be registered as a private hospital or day procedure centre under the Victorian Health Services Act 1988;

be accredited by the Reproductive Technology Accreditation Committee of the Fertility Society of Australia (RTAC) and the Australian Council on Healthcare Standards;

comply with NHMRC ethical guidelines, which I have referred to several times; and

have laboratory facilities which must be accredited by the National Association of Testing Authorities.

The bill before the house seeks to reduce regulatory burden on ART providers where appropriate.

The current situation of applying separately to the authority for a licence to operate will no longer apply. ART clinics wishing to provide treatments will need to submit proof of RTAC accreditation status to achieve deemed registration from the authority. If RTAC accreditation is lost or withdrawn, then deemed registration ceases. Deemed registration has been provided for within new NSW legislation — Assisted Reproductive Technology Act 2007 — and is consistent with ART practice across Australia.

The authority will retain the power to impose conditions on the registration or suspend operation of the registered ART provider where it is of the opinion that there is an overriding public interest to do so.

A regulated clinic system offers important safeguards both for persons participating in treatment (medical screening and registration of donor details; mandatory pre-treatment counselling for all parties) and the children who may be born of treatment (assessment of parental risk factors; access to records providing genetic history; access to counselling as an adult).

VARTA

The Infertility Treatment Authority will be renamed the Victorian Assisted Reproductive Treatment Authority (VARTA). The new authority will take on a more focused role that expands its responsibility for community consultation and community education on matters relevant to assisted reproductive treatments. This will include the continued development of resources that support parents who have children born through the use of donated gametes to tell their children of their genetic origins. It will also include information resources for people who use self-insemination to conceive.

VARTA will continue to regulate the import or export of donated gametes, or embryos formed from donated gametes to ensure protections for the child to be born. This includes ensuring the gametes or embryos will be used in a way that is consistent with the Victorian legislation and that prescribed information about the donor and the child arising from the ART treatment is provided to the central register.

VARTA will also have an expanded role in promoting research into the causes and prevention of infertility. Explicit provision has been made in the bill for the release of information from the registers maintained by births, deaths and marriages to VARTA so that it may continue to meet its reporting and research functions as prescribed by the bill.

Status of Children Act amendments

The Status of Children Act 1974 abolished the previous law that children born outside marriage were illegitimate and unable to inherit from their parents. The act was subsequently amended to include a new part II which outlines the status of children born through donor-conception procedures.

The bill adds three new parts to the Status of Children Act to clarify the status of children born as a result of the use of donated gametes. The first contains provisions in relation to the status of children born to women with a female partner or without a male partner. The next establishes a scheme to transfer the parentage of children from a surrogate mother to the commissioning parents in surrogacy arrangements and the third part clarifies the status of children born through the posthumous use of gametes.

Status of children born to women with a female partner or without a male partner

Recognition of female partner of woman who gives birth

Part II of the Status of Children Act currently provides that a married or heterosexual de facto couple who have a child through ART are the legal parents of the child, even if the child was conceived with the use of donor sperm or eggs.

The Status of Children Act does not currently contain any provisions that recognise a woman as the legal parent of a

child born to her female partner. The woman's female partner can seek a parenting order in the Family Court of Australia but this will only give her limited rights and responsibilities in respect of the child. The Family Court cannot order that the woman be recognised as the child's legal parent.

This creates legal, practical and social difficulties. The non-birth mother cannot be named on the child's birth certificate. If the non-birth mother dies without a will, any children born to her female partner are not automatically entitled to a share of her estate even if she has been responsible for their care. Non-birth mothers cannot always consent to medical treatment for the child. This lack of recognition may diminish the non-birth mother's role as a parent in the eyes of the community, create uncertainty within their families and means that children raised in these families do not have the legal protections available to other children.

The Status of Children Act will now provide that the woman who gives birth is presumed to be the mother of any child born as a result of the pregnancy. Her partner will be presumed to be a legal parent of any child born as a result of the pregnancy if she and the woman who gave birth were living together as a couple on a genuine domestic basis when the woman underwent the procedure as a result of which she became pregnant. She must have consented to the procedure as a result of which her partner became pregnant. The consent of the woman's partner is presumed but rebuttable.

The presumption will apply whether or not the woman conceived the child with the assistance of an ART clinic. If the woman conceived the child with clinic assistance, the signed consent form required will be clear evidence that the non-birth mother consented to the treatment procedure. If she conceived the child without clinic assistance, evidence that the non-birth mother consented could be provided in different ways, including registration as a parent of the child on the register of births.

The presumption will apply retrospectively to children born in Victoria to a woman with a female partner before the act commenced. The retrospective operation of these provisions will not affect the vesting in possession or in interest of any property that occurred before the commencement of the act.

This is consistent with the approach to these matters in the past. When the presumption that applies to the non-biological parent of a donor-conceived child born to a heterosexual couple was introduced in 1984, it applied in respect of all children born before the commencement of the new provisions.

These new provisions will mean that the female partners of women who give birth are treated no differently to the male partners of women who give birth using ART for the purpose of Victorian law. However, the presumption in favour of female partners will not be directly recognised for the purposes of federal law, in particular the Child Support (Assessment) Act 1989. This is because the definition of parent in that act does not recognise the statutory recognition of non-birth mothers in any state legislation. The commonwealth Parliament is currently considering amendments to the Family Law Act 1975 to recognise the female partners of women who give birth under federal law, including the Child Support (Assessment) Act.

Consequential amendments will be made to other Victorian legislation in a subsequent bill to recognise that children may have two parents of the same sex.

Status of donor

Currently, the Status of Children Act is clear that a person who donates sperm or eggs to a married or de facto heterosexual couple is presumed not to be a parent of the child. The donor's parental status is extinguished.

However, the status of a donor whose sperm is used to help a woman without a male partner conceive is unclear in the current Status of Children Act. Section 10F currently provides that where a man donates sperm to a woman without a male partner he has no rights and incurs no liabilities in respect of any child born to that woman but is silent as to whether he is the child's father. The current legislation does not extinguish the donor's parental status.

This leads to confusion and uncertainty for donors, recipients and their families.

The bill rectifies this situation by repealing current section 10F of the Status of Children Act. The bill includes new provisions to clarify that a man who produces semen used by a woman without a male partner is presumed for all purposes not to be the father of any child born as a result of the pregnancy, whether or not the man is known to the woman or her female partner.

Similarly, the bill provides that if a woman with a female partner uses a donor ovum to conceive a child, the woman who produced the ovum is presumed not to be the mother of any child born as a result of the pregnancy.

These changes are an important complement to the changes to the eligibility criteria in the ART act. They reflect the realities of Victorian families and ensure that the best interests of the child are protected, regardless of their family structure. Children, donors and their parents will have security in their relationships and entitlements under Victorian law.

Status of children born through surrogacy arrangements

The bill adds a new part to the Status of Children Act in relation to the status of children born through surrogacy arrangements.

Currently in Victoria, a surrogate mother and her partner are the legal parents of a child born through a surrogacy arrangement, even if the child is living with the commissioning parents.

This leads to problems. The people who care for the child do not have legal responsibility and do not have many of the powers necessary to make decisions for the benefit of the child. For example, the commissioning parents cannot obtain a passport without the surrogate mother's consent. A surrogate mother and her partner, but not the commissioning parents, can claim social security and taxation allowances.

The commissioning parents could apply to the Family Court for a parenting order but this only gives limited parenting responsibilities. The Family Court cannot confer full legal parental status on the commissioning parents.

The new part introduces a scheme to transfer parentage in surrogacy arrangements similar to those operating in the ACT and the UK.

Commissioning parents will be able to apply to the Supreme or County court for a substitute parentage order which will

transfer legal parentage from the surrogate mother and her partner (if she has one) to the commissioning parents. The court must be satisfied of various matters before making a substitute parentage order. These include that the order is in the best interests of the child, the surrogate mother received no material advantage as a result of the arrangement, the child is living with the commissioning parents at the time of the application and the surrogate mother freely consents to the making of the order.

The bill provides that the court must consider whether the surrogate mother's partner at the time of conception consents to the making of the substitute parentage order. The consent of the surrogate mother to the order is critical, but in some exceptional circumstances as outlined in the bill, the court may dispense with the requirement that the surrogate mother must consent to the making of the order, including where the applicants cannot find the surrogate mother or if she has died.

The court will be able to make substitute parentage orders retrospectively if certain criteria are met including that the commissioning parents are ordinarily resident in Victoria. These provisions will allow people who had children through surrogacy before the act commences to apply to be the child's legal parents.

Once the order has been made, a new birth certificate will be issued showing the commissioning parents as the parents of the child.

These new provisions represent a considered and sensible approach to the transfer of parentage in surrogacy arrangements. It ensures that the best interests of the child, the surrogate mother and the commissioning parents are considered and protected.

Status of children born through the posthumous use of gametes

The bill inserts a new part to clarify the status of children born through the posthumous use of gametes and complements the new provisions in the ART act which clarify Victoria's laws in this area.

The new provisions in the Status of Children Act provide that where the gametes of a deceased person are used posthumously, the deceased person will be named on the child's birth certificate but the child will not be regarded as the child of the deceased for any other purpose under Victorian law, in particular in relation to the laws of succession. This will allow recognition of the deceased as the child's parent, in accordance with their express consent. It will also provide certainty in the administration of estates. This is particularly important because it could be some years after a person's death that their gametes are used to conceive a child.

A person will be able to make provision for a posthumously conceived child in his or her will. If no such disposition is made, the child should have no claim to the deceased's estate. Counsellors at the ART providers will advise people contemplating using their gametes posthumously to seek legal advice about making appropriate provision for any children conceived posthumously in their wills.

Births, Deaths and Marriages Registration Act

Amendments are made to the Births, Deaths and Marriages Registration Act to reflect changes to the ART and Status of Children legislation. As I have already mentioned, registers containing information about donors in ART which are currently held by the Infertility Treatment Authority will be transferred to the registry of births, deaths and marriages and managed by it. The securities and privacy provisions applied to adoption records which are retained by the registry will also be attached to the donor registers. Access to such information will only be available to eligible parties such as the child and his/her parents.

Provision is also made for the registry to release information from the donor registers to the Adoption and Family Record Service for the purpose of counselling the children born as a result of ART and their families.

Provision is made for same-sex couples to be recorded on the birth certificate of their donor-conceived child. The woman who gave birth will be named 'mother' and her partner will appear as 'parent'. In addition provision is made for the retrospective amendment of birth certificates to capture information about the female partner of a woman who has given birth.

Consequential amendments will be made to the Births, Deaths and Marriages Act to allow for the original birth certificates recording a child's surrogate mother to be released to relevant parties after a substitute parentage order has been made.

Birth certificates issued to children born as a result of donor conception or surrogacy will be identical to the certificates issued to any other child. However, by maintaining details of donors and surrogate mothers at the registry, a child will be able to access information about his/her biological origins when they are sufficiently mature and prepared.

Conclusion

The revision of the law in this area has been a major task. Monitoring and controlling the provision of ART is challenged by rapid technological change and diversity of community opinion. Such law-making involves making choices and balancing the interests of children born as a result of such procedures, women who undergo the procedures, donors, doctors engaged in treatment procedures and the expectations of the general community.

Assisted reproductive treatment facilitates the conception of children in circumstances which, not long ago, were unimaginable. It is time for the law to be modernised to reflect the current social realities, in much the same way as the law was reformed in the 1970s to recognise the parentage of 'illegitimate' children. Allowing equal access to ART services regardless of relationship status and sexual orientation will contribute to making Victoria a fairer place to live. Legal recognition of social parenting arrangements will strengthen families and provide equal protections for all Victorian children.

I commend the bill to the house.

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

Debate adjourned until Friday, 17 October.

ABORTION LAW REFORM BILL

Second reading

Debate resumed from 9 October; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr SCHEFFER (Eastern Victoria) — Along with other members of this chamber I have received many hundreds of emails and letters from individuals and organisations pressing me to vote one way or the other on this bill. The print media, radio and television have carried many persuasive and sometimes passionate arguments that have strengthened community understanding of the complex issues involved. And I have met with and talked to a number of constituents of Eastern Victoria Region. I thank all those who have taken the time to let me know their views.

I will be supporting the Abortion Law Reform Bill and will be opposing the amendments that have so far been circulated because I support the central objective of the bill — which is, to decriminalise abortion. I also support the specific provisions of the bill because they go to protecting the right of a woman to control her body and to providing greater certainty to medical practitioners when they perform an abortion.

But before I go any further I need to say that as a man I am deeply conscious of the fact that my role in this debate is problematic. I think the best way to illustrate my diffidence is to quote from an article by Dr Leslie Cannold entitled 'Men, abortion and the sin of moral arrogance'. She said:

> Imagine a woman-led and dominated group that sought to deny men access to safe and legal vasectomies on the grounds that the procedure is dangerous, that men might come to regret their decision and that vasectomies reduce the number of babies being born that infertile couples would be more than happy to raise.

She continued:

> Do we think such a group is legitimate? That its views should hold sway on the laws passed by Parliament? Or do the demands of such an organisation with regard to a procedure so intimately bound up with men's bodies and lives strike you as inappropriate, patronising and domineeringly presumptive?

Like other members, I have listened to many of the contributions made in the Legislative Assembly. In my opinion the member for Box Hill, Robert Clark, most cogently put the argument against the view that this is fundamentally an issue of a woman's control over her body. Mr Clark's contribution stands as a good test against which the validity of the moral or philosophical basis of the bill can be assessed. Mr Clark said that we should first consider whether there are one or two interests at stake.

He argued for the view that there are two separate interests: the pregnant woman and the foetus or the unborn child. Having decided this, Mr Clark concluded that the unborn child has the same moral equality as the rest of us. He said he appreciated that the more developed a foetus becomes the greater its interest becomes, and this is why he cannot understand how anyone could support legislation that permits the destruction of children right up to the moment of birth.

Mr Clark argued that, as there is a second interest involved, a woman's right to control her body is not the sole consideration and that because of this the law has a duty to protect the unborn child as though it had been born. I pondered Mr Clark's words. A number of previous speakers have also wrestled with this. I do not think this is a hard-edged 'either/or' issue. I think this is a 'both/and' situation. The relationship between a foetus and the pregnant woman is dynamic. The relationship between a woman and the new life within her is dyadic, and can best be pictured as an image of two intersecting circles. A zygote, an embryo, a foetus are at once part of a woman's body and not part of a woman's body. Their destinies are intertwined.

I do not minimise the emotional complexity of this issue. Many members have shared their personal experiences of pregnancies and their families, and they have drawn attention to the love that newly pregnant women have for the life within them. There is no denying this. The difficulty is that from time to time the interest of the woman diverges from the interest of the foetus and a decision must be made about which interest prevails. A decision about whether or not to terminate a pregnancy is an absolute action; either an abortion is performed or it is not. In the end someone makes the decision, and I believe the responsibility is the woman's because pregnancy is her physical experience and she bears the consequences of the outcome more than anybody else. This is why I think most people judge that the pregnant woman has the final right and responsibility to determine the matter.

The more viable the foetus is, the stronger is its interest and the more difficult it is to justify an abortion. We find that medical practice has generally been guided by this principle, so late-term abortions tend to occur in very exceptional and extreme circumstances. Advice from one medical practitioner I spoke to indicates that the viability of a foetus has a natural limit of around about 24 weeks, and the Victorian Law Reform Commission report confirms that the House of Commons Science and Technology Committee found

no evidence that survival rates before 24 weeks gestation had significantly improved since 1990. This is why the bill provides that before 24 weeks, before a foetus is usually viable, that decision must rest with the pregnant woman because the foetus is more 'of her body' than it will be after that time. I do not believe anyone else is competent to remove that authority from a legally responsible woman or to replace her judgement. I trust women to take into account the important considerations so well put in Mr Clark's contribution. Decisions should not be separated from responsibility. In principle, the woman is responsible for the longer term particular consequences of the birth or of the abortion; because she bears this responsibility she should make the decisions.

Where gestation has reached 24 weeks the situation is, as I have suggested, more complex. Clause 5 effectively removes the woman's autonomy and requires two medical doctors to determine whether or not an abortion should be permitted. I am not entirely comfortable with this because like some other speakers in this debate I would have preferred option C. In my view that would have been the better alternative, but I accept the 24-week limit. I accept the bill as it stands, as I said at the outset, and I think that in general the community accepts that for late-term abortions this regime is acceptable. It is justifiable. We know that we are talking about a small number of very complex and highly distressing instances. The Law Reform Commission says late-term abortions represent 0.7 per cent of all abortions. These abortions are performed in the interests of women's health and the reasons either relate to foetal abnormality or to matters of a psychosocial nature.

I do not think it is in the public interest to compel a woman to give birth to a child with severe abnormalities that in many cases dies shortly after birth. I do not think it is in the public interest for a baby to be born to suffer for a short time before he or she dies, especially when there is no prospect of survival. How does this make the world better? I think these very extreme and sad cases demand a legal provision that will enable the situation to be resolved, and this is what this legislation does. I think the vast majority of Victorians support this measure, and the evidence that the Law Reform Commission gathered supports this view. The commission says that it heard that forcing a woman to proceed with an unwanted pregnancy has a greater negative impact than abortion, even at later gestation. It goes on to say that, even though there is little research on the subject, some studies have found that such women have poorer psychological outcomes than those able to have an abortion.

In general terms the bill does not alter current clinical practice regarding abortion in Victoria, and it is consistent with the opinion of the vast majority of Victorians. The objective of the reforms is to clarify and modernise the regulation of abortion.

A number of people who came to see me were, I believe, misinformed on aspects of the bill, and they believed it would bring about an increase in the number of abortions. They told me they thought decriminalisation would send a signal, to young people especially, that irresponsible sexual behaviours are acceptable and that abortion is what they called an easy option. This is incorrect, and it is alarming that this misinformation has gained such wide currency. The report from the Victorian Law Reform Commission states that the rate of abortion cannot be predicted by the restrictiveness or otherwise of legislation governing it. The two do not correspond.

The Guttmacher Institute-World Health Organisation report found that:

> … unrestrictive abortion laws do not predict a high incidence of abortion, and by the same token, highly restrictive abortion laws are not associated with low abortion incidence.

As other members have observed in this debate, what does make a difference is availability and information around the use of contraception. That is what makes a difference.

The public debate on this bill and the people who came to see me focused on a handful of important matters relating to counselling and consent, the rules regarding late-term abortions and the obligations of health practitioners who have a conscientious objection. I have already set out my view on the issues concerning late-term abortions, so I will confine my further remarks to issues relating to consent and counselling and the issue of conscientious objection on the part of medical practitioners. The Victorian Law Reform Commission looked at the issue of consent in some detail and came to the conclusion that:

> … there is no demonstrated need to consider any changes to this body of law in the context of abortion law reform.

The fact is that the common law covers consent to medical treatment for responsible adults and children, and provision is made through statute law to regulate consent to medical treatment by adults who do not have the capacity to give consent. Abortion is an exception, and the responsible person, in this instance, cannot make decisions relating to medical treatment for a person who lacks capacity. The commission was very clear that there is not and should not be any fixed age at which a young person or a child can give consent

around their own medical treatment. This decision needs to be made on a case-by-case basis. Parents only have the responsibility to make decisions for their child where the child is not capable of making such a decision themselves.

The commission also considered legal schemes that govern issues relating to consent, children and young people. The commission concluded that current practices and the law do not need to be altered.

The Victorian Law Reform Commission reported that many people expressed concern about counselling in relation to abortion. As I said earlier, the people who came to see me told me that they believe women who seek abortions do so because they do not fully understand the implications of what they are doing to the foetus and to themselves in the longer term. The commission reported, though, that counselling was also an issue raised during its consultations, and the report examines a range of matters relating to counselling, setting out the types of counselling, the regulation of counselling and a range of services available. It also canvasses the views that women have of counselling. Tellingly, the commission reports that there is consensus among counselling providers that the:

> … majority of women who seek an abortion are informed, have considered the decision thoughtfully and for some time, and are clear in their decision not to continue this particular pregnancy at this particular time in their life for a set of unique and individual reasons.

You cannot be clearer than that.

The last matter I want to raise relates to clause 8 and registered health practitioners who have a conscientious objection that they believe prevents them from referring women seeking an abortion to another doctor who will perform the procedure. This has apparently been a highly contentious subject that has been debated in the community. Professor Greg Craven, the vice-chancellor of the Australian Catholic University, responding to an article in the *Age* by Anne O'Rourke, vice-president of Liberty Victoria, described the concept underlying clause 8 as 'fascist' and 'one of the nastiest human rights abuses Victoria has ever contemplated'.

Professor Craven wrote that if a doctor with a moral or religious objection to abortion were to refer a patient to another doctor who would perform the procedure, the objecting doctor would be complicit in an action they regard as ethically and morally impossible. If a medical practitioner finds that he or she cannot, on the basis of their belief, make a referral, the practitioner needs to come to terms with the fact that their job is incompatible with their beliefs and they should find employment in a branch of medicine that will not require them to have to deal with women seeking abortions. If we follow through the logic of this so-called right to conscientious objection, medical practice would have to entertain a whole raft of special conditions imposed by doctors who may have objections to delivering a range of services.

Professor Julian Savulescu, in a piece written for the *British Medical Journal* in July last year, says that the phenomenon of doctors claiming a right to conscientious objection to offering certain medical services has emerged in recent years. Professor Savulescu writes that besides abortion, medical practitioners have raised conscientious objections to providing reproductive advice to same-sex couples or single women. Professor Savulescu quotes from a piece written in 2005 by R. Alta Charo in the *New England Journal of Medicine*, on legislation being considered at the time in Wisconsin. The extract states:

> The privilege of abstaining from counselling or referring would extend to such situations as emergency contraception rape victims, in vitro fertilisation for infertile couples, patients' requests that painful and futile treatment be withheld or withdrawn, and therapies developed with the use of foetal tissue or embryonic stem cells. This last provision could mean, for example, that paediatricians … could refuse to tell parents about the availability of varicella vaccine for their children, because it was developed with the use of tissue from aborted foetuses.

Professor Savulescu states, and I agree with him, that constraints must be placed on conscientious objection when such objections compromise the quality, efficiency and equitable delivery of a health service. Professor Savulescu says that medical professionals have an obligation to ensure that all patients are aware of the full range of services to which they are entitled. Interestingly, he says that the appropriate place for the expression of values is in the policy arena, not in the clinic.

The argument that has been advanced against clause 8 of the bill is that a referral by a doctor who has a conscientious objection to another doctor who does not have such an objection makes the first doctor a party to any procedure carried out by the non-objecting doctor. It is hard to escape the view put very strongly by Professor Savulescu that doctors with a conscientious objection are in effect using this justification to compel their patients to comply involuntarily with beliefs and values they do not share.

I also found the article by neonatologist Dr Andrew Watkins printed in Wednesday's *Age* especially instructive. Dr Watkins reminded me of the power imbalance between a pregnant woman seeking an abortion and a doctor, and how much of the airspace

has been taken up in consideration of the rights of the medical professional and that the rights of the patient have received far less defence and explanation. Dr Watkins reminds me that medical professionals have a responsibility to ensure that their advice and treatments are based on their particular expertise, not on their personal beliefs. They need to ensure that in tendering advice they act inside, not outside, their professional role.

Clause 8 provides protection to medical professionals and medical practitioners who may be pressured by their employer to act on the basis of philosophical views that are inconsistent with well-tested professional standards.

A number of opponents of clause 8 have said that they resent the fact that we, as members of Parliament, are exercising a conscience vote when we are denying the same right to doctors. I have been thinking about this, and it seems to me that MPs are exercising what is better called a non-party-binding vote. We are not walking away from something that we find difficult; to the contrary, we are all dealing with this bill head on, as our job requires. I think the analogy is nonsense. However, there is a useful parallel in the tabling of petitions. MPs table petitions from citizens they represent, irrespective of whether they agree with the subject matter, provided the petitions are respectfully worded. I have tabled petitions in this house that I have disagreed with because it is my job. The fact that Mr Finn and Mr Kavanagh have tabled so many petitions opposing abortion law reform has nothing necessarily to do with whether or not they agree with the view the petitions put. They are simply doing their job, and I am absolutely sure that on the basis of their beliefs they would not refuse to table a petition supporting the Abortion Law Reform Bill from residents in the regions they represent.

Finally, it is important to note that if this bill does not pass, the common law will remain. The Menhennitt ruling and the clinical practice that has developed over the last 40 years will continue to give protection to women and medical practitioners. Not one of the hundreds of people who have contacted me have said that they want the common law overridden and the criminal sanctions strengthened, even though I must say that that view is implied in what they say. Not one wanted to return to the time before 1969. I cannot see that a return to the pre-Menhennitt days of arrests, raids and backyard abortionists and interstate and international travel for the rich is in the public interest, and I know that no-one in this chamber would think that would be in the public interest.

I believe the experience of the last 40 years has shown us that, while every abortion is one too many, we have developed a way of managing the situation, even though there is room to improve, and that the professional people who, in the best interests of women, provide abortions should not be threatened with criminal sanctions.

Finally, I wish to pay deep tribute to the generations of women from all walks of life and of all political views who have worked to see this legislation through. I acknowledge former parliamentarians Joan Kirner, Kay Setches and Carolyn Hirsh, who have joined us in the house during this debate, and I pay deep tribute to their inspiration and to their powerful advocacy, as I do to all the women who surround them from all sides of the political divide.

Before I resume my seat, I take this opportunity to respond to what I think are some provocative remarks made during the debate by a few members opposite, who asserted that some members of the parliamentary Labor Party were prevented from exercising a conscience vote in this debate. Let me say that the assertion is totally wrong. Every ALP member in this Parliament has a conscience vote on the substantive questions contained in this bill. No coercion or external restriction has been placed on any member of the Victorian parliamentary Labor Party for this debate or for any other debates in this Parliament. As is well known, the parliamentary Labor Party caucus, through processes of open and collegiate debate, determines a collective position on all questions before the Parliament, except those which our party has designated as being subject to a conscience vote, and that is the case for the present bill.

Mr JENNINGS (Minister for Environment and Climate Change) — Sisters and brothers of the Legislative Council, men and women of the Legislative Council — aunties, uncles and grandparents — one of the things that unites us in this debate is our commitment to the human spirit and to try and show our best sides in our demonstration of compassion and consideration. Whilst I think virtually every contribution that I have listened to in this debate can be framed in that way, it is extraordinary that, because of the way we have been led as individuals and the way we distil our philosophies, our frameworks and our understanding of how the world works and our aspirations for the way we as a global community should relate to one another, we end up in different positions in relation to how we deal with particular legal frameworks. The extraordinary thing about this is that on occasions such as this, when we exercise a freedom of expression through the conscience vote,

which is not necessarily a feature of normal debates and normal voting arrangements, we have the ability to show our true colours. It is a pretty good thing if we can rise up and demonstrate our true colours, because it shows a certain confidence and a reconciliation of what is expected of us as human beings and our ability to make balanced, informed decisions about the way we relate to one another and, in today's context, the way that we establish legal frameworks.

One interesting thing about this debate — and I have reflected quite a bit about it — is the demonstration of freethinking and faith-based thinking that has been on display time and again. The extraordinary thing about it is that probably all of us would believe that we are exercising freethinking. Some of us would argue that you cannot have one without the other and that they are absolutely binding, and some of us would say that they are mutually exclusive propositions. In terms of exercising freethinking or faith-based thinking in the way we respond to this issue, ultimately there has been, from my vantage point, in every contribution a demonstration of love, regard and respect for human beings, and that is something I want to recognise and celebrate. Whilst we might have extremely divergent views about the legal framework that we are currently contemplating, we all have demonstrated that, as individuals, we are worthy of love and respect because of the positions that we hold, and I hope we can maintain that regard for one another.

Mr Koch in his contribution last night indicated that he had some very unlikely fellow travellers, to use his expression. Because members on this side of the chamber are exercising their consciences and will have a free vote, unusual collectives have been established during the debate and the voting arrangements that will be exercising our minds shortly.

A number of people have demonstrated that they have tried to create a framework in which to address their role as human beings through the division of being a man or a woman, and what sovereignty or rights they may have to be able to exercise their opinion in this debate, and I will comment in a variety of ways on that aspect. I thought it was very appropriate that the leading contributions in this debate, from a variety of vantage points, came from women in this chamber. Wendy Lovell had the onerous responsibility of commencing the second-reading debate in this place. I think she showed courage in being prepared to embark upon that discussion. I certainly know my colleague Candy Broad has time and again shown courage in relation to this issue, particularly in relation to the delivery last year of a private members bill, so that in a very tangible way we commenced our journey that has led to this debate today and consideration of this government-sponsored bill.

But they are not alone, and in fact I will reflect on other members, but certainly Colleen Hartland entered into this debate from its commencement; at a very early stage Andrea Coote did, and demonstrated a great appreciation of the gravity and importance of the issues, and the history of the issues that have led us to this place, and I congratulate them for the leadership role they have played.

I have listened very intently to a division of the different levels of contribution between men and women in this debate, because whilst we have a great coincidence of understanding, appreciation and values, we have different perspectives. Ultimately biology has determined the gravity and the degree of engagement, understanding and appreciation of this issue, particularly as it relates to sexual reproduction — which is at the commencement of this division — but ultimately in relation to the question of empowerment, and the appropriate legal framework which implies the empowerment of citizens in the way that would actually apply to this.

So in a converse way, I will start by talking about men first. What I heard men in this debate talk about time and again was the wonderment of the way the human reproductive system works. They talked about the joy they experienced through the birth of children and the excitement that was generated as they plotted the development path in the womb. It is an experience they cannot understand in a tangible way — one they cannot feel — but they quite rightly, through technology, through ultrasounds, through evidence, through touching a mum's tummy have come to understand the joy of human development. They cherish it and have been very excited by it.

They certainly have demonstrated time and again from a variety of vantage points in relation to this debate the importance of men appropriately engaging in the creation and development of human life and the decisions that surround it.

On a number of occasions we have heard men say that they do not want to be disempowered; they want to be engaged. They want to find better ways of men being involved in a supportive, appropriate fashion in a whole range of decisions that affect the quality of life and the nature of relationships that form and create a nurturing environment for children. In fact, there has been an assertion from a variety of vantage points that men need an increasing role in these issues, and ultimately I accept and support that proposition, but I fall short of

the concern that has been expressed a number of times in this debate that this bill is disempowering men and abstracting men from decision making. I think that is a most unhelpful and inappropriate extrapolation of the desire of men to be involved in this debate.

I counter this in terms of the basket of issues that I think women have brought and the level of understanding that women can bring to this debate, because there is absolutely no doubt that women have shown time and again in this debate, inside and outside this chamber, that they share wonderment and joy about how the human reproductive system works.

Time and again women from firsthand in a tangible way in this debate have demonstrated their overwhelming joy at being associated, either directly or through their relationships with other women, with the birthing process and the development of the foetus, the development of babies and the development of human beings that reach their full potential.

We have also heard in many contributions from women about the nature of pain and suffering, which has been derived from a variety of aspects of their circumstances and their dealings with the issue of abortion. Time and again, that pain and suffering — it may be physical, mental or it may be under a whole variety of circumstances — has been a palpable and recurring aspect of abortion for millennia.

Time and again women have carried the burden, not only of the biological responsibility but the burden of responsibility of dealing with the consequences of that pain and suffering, either in their individual circumstances or in the selective circumstance. So whether it be through injustice, bad practice or negligence, there have been a variety of profound stories that have been told to us from women in the course of this debate about the pain and suffering they and countless other women have had to endure in relation to abortion.

They have talked about the guilt and shame imposed upon them from a whole variety of circumstances which should not be ignored in relation to the basket of pain and suffering that women have been forced to endure in relation to abortion.

How do we distil in this context, as men and women in the Victorian Parliament, the way we frame our individual experiences, put them into a collective experience and make decisions in this context as a collective, as unpalatable as that may be to members on the other side of the chamber to think they might participate in a collective, sometimes just by the nature of what you have to do and who you have to work with to become part of one? We are one today because this collective is going to make a decision about the legal framework that goes forward.

The way I would like to couch that debate and that consideration is to just take it directly — and this will be about the only time I will do it during the course of the day — and it is a direct quote from the report of the Victorian Law Reform Commission. I do it only in the context of providing a frame, not to do all my work, but to say what is the frame in which we currently arrive here to consider how we should take our decisions today and move forward as the legislature representing the interests of the people of Victoria and the way we should have an appropriate legislative framework.

With the indulgence of the chamber I will briefly refer to page 16 of the Victorian Law Reform Commission report, which all members of this chamber and members of the Victorian community would be aware of, and its description of abortion law. This is a selective piece of text, but nonetheless it creates a narrative that sets the frame.

The very first words in the introduction of the Victorian Law Reform Commission report are:

> The law of abortion in Victoria is unclear.
>
> …
>
> Laws that make abortion a serious criminal offence have been in operation since Victoria became a self-governing colony. Those laws did not set out the circumstances in which abortion was lawful. It has been left to the judiciary, in Victoria and elsewhere, to describe the circumstances in which an abortion may lawfully be performed. This happened in the late 1960s when … several medical practitioners were charged with performing unlawful abortions.
>
> During the trial of one of those doctors, the presiding Supreme Court judge, Justice Menhennitt, directed the jury about the circumstances in which an abortion was lawful. That ruling effectively changed the law in Victoria. Since that time, successive governments have permitted the 'Menhennitt rules' to become the law of abortion in Victoria by taking no action to repeal or revise the relevant provisions in the Crimes Act 1958.
>
> …
>
> The relevant provisions in the Crimes Act have not been considered by the Victorian Supreme Court since the Menhennitt rules were formulated nearly 40 years ago. The rules have been considered and developed, however, by courts in other states which have similar laws to those in Victoria. Because of these developments, and the passage of time since the Menhennitt ruling, it is not possible to describe the current state of Victorian abortion law with reasonable precision.

I turn to pain and suffering. There is a lot of pain and suffering exhibited through the contributions and the

moral consternation that members of this chamber have had to go through when trying to provide that precision. We are reflective in a whole variety of ways in terms of the mental anguish, pain and suffering that is exhibited in our community. We have demonstrated in this place the way we try to deal with finding a degree of precision and consistency and a legal framework that creates a very clear message to all members of our community that an act that is being considered unlawful will be lawful, and the circumstances by which it will be lawful.

It also means that we have the pain and suffering of talking about things that perhaps are not discussed as often as they should be or with the appropriate breadth of understanding and appreciation of one another. It has been painful for many people to embark upon that. I appreciate how painful it is.

In a moment I will join other people in talking about very distressing things. I will do it, hopefully, in a way that is relatively dispassionate in the name of making sure that the issue is covered. I do not want to inflame or upset anybody, but there are some very upsetting things that relate to the practices of abortions and the circumstances that lead to abortion.

I have not heard one contribution in this debate that argued other than that abortion is an issue that has profound, immediate and lasting consequences for anybody who contemplates it or who deals with it. I have not heard anybody dismiss its significance and its profound implications.

One of the dividers that has occurred during the course of this debate is the pain and angst that people have demonstrated in the name of prospective concern about the potential life that may be lost through abortion. I can understand that, but equally I think it is very important in terms of the history of pain and suffering which is evident, palpable and real for generations — thousands, millions — of women who have had to deal in their conscious lifetime with the consequences of abortion, that the people who have concern about those matters that have led us historically to today's determination have a sense of relief and a sense that great injustices have been corrected in some small way by amending the legal framework that applies in Victoria.

If we are worried about the potential of human life, the actualisation of that potential, there is a lot of work that we can collectively do on that subject. There are about 6.5 billion people on the planet, and in my assessment probably the vast majority of them will not reach their potential. The vast majority of them deal with a whole variety of circumstances such as poverty and lack of opportunity in terms of education, good health care and economic development which will mean they will never reach their full potential. These people have been born and are alive today, so there is a lot of scope for us to find common ground in supporting our global community to reach its full potential. I would like us to be able to find a way in which we can be united, galvanised and focused in the future.

In relation to some of the difficulties that are created for us in terms of the pain and suffering and the angst we have had to confront in framing this legislation, we have had to consider — and various members of the chamber have considered at great length for different reasons — the various stages of development of the human foetus in utero. They have, quite rightly, expressed wonder and joy about the time that development occurs and when the milestones are reached successfully and there is neither distress nor duress for the foetus or the mother.

We can all celebrate that, but it is very interesting that those who focused most crucially on those developmental stages have, I think, not given due consideration to or description of cases when that development is not at its optimum, when there are profound abnormalities and delayed development or a whole variety of stresses that may occur and the only conclusion is that it will lead to great misery for everyone concerned if that foetus goes full term and is born.

This is not something that I draw to the attention of the house so as to be glib or dismissive or to assume any predetermined position about the level of disability that may be acceptable or unacceptable. I say in full sincerity that this is an area in which I found virtually total agreement with the contribution by Mr Finn — which was relatively brief, in the scheme of his contributions. This is a point I wholeheartedly agree with him on — that we as a community should join together to make sure that those with disabilities are supported to the maximum to reach their full potential.

Certainly in my support of this bill, in support of the legal framework that will be attached to it, I join him and any number of other people in the community in saying I will do whatever I can within whatever framework is available to me to support those with a disability in our community to lead rich and fulfilling lives.

But I think we have to understand — and this is an issue that Mr Hall has challenged me and the government to deal with — those circumstances due to which decision making may occur in what has been understood to be a relatively late stage of development of the foetus, the 24-week period. What are the

circumstances, in terms of the assessments that are available, the abnormalities and development concerns that may be evident which justify that as an appropriate time frame? I think that is a very legitimate question.

As Mr Hall and other members of this chamber would know, a range of tests are undertaken at various stages of foetal development, which would give indications of the degree of distress or abnormality or lack of development potential within the foetus and the potential medical consequences of those conditions.

The coincidence of when those screening tests can be undertaken — the appropriate time to take those tests, at what stage they are proven to be effective markers of development — with a time frame to consider the results of those tests and to possibly take action is one of the key important drivers of the 24-week period, which is in fact a very important benchmark within the structure of this legislation and current clinical practice in the state of Victoria, and indeed will be the clinical practice supported in the years to come under the legislation if it is successful.

Whether they be for conditions such as anencephaly, spina bifida, hydrocephalus, missing limbs, heart defects, gastric or renal tract abnormalities — any of the very significant issues which will either contribute to or diminish the quality of life for the foetus if it is to proceed to be born — these tests occur within a critical time frame leading up to and around 20 weeks. That is because of both the services available and also, most importantly, the development stage of the foetus, which cannot be tested appropriately until this time.

Then we actually have the overlay of an appropriate time frame for the woman in question and those she relies upon to make decisions — in what time frame can it be reasonably expected she make profound decisions about the prospects of a viable and happy and fulfilling life? Twenty-four weeks has been determined as a reasonable time frame in which to make those decisions based on the evidence.

There also happens to be a coincidence — and this is very important in relation to the 24 weeks — in terms of viability. Notwithstanding some arguments that have been put to contest this — and I am happy in the committee stage to go through testing this — if you look at the statistics that relate to the viability of a foetus being born and its viability in its own right, on the evidence that is available to us statistically it is very clear that 24 weeks is the benchmark of viability in terms of the quality of life and the realistic expectation that a foetus would survive if born and living outside the mother. There will be evidence that I will be taking, too, in relation to that, I am very sure, but they are two drivers of the 24-week proposition in the bill.

My colleague Jenny Mikakos quite rightly identified a range of concerns, driven partly by a faith-based perspective, in terms of being concerned about issues of conscience but also very clearly articulated a concern about the provision of services in a timely way to validate the evidence on which the decision would be made. She quite rightly has very high expectations of the availability of those services and wants to make sure that we as a community improve access and the availability and cost structures that underpin them to women, so that in fact we can all have greater confidence that there has not been a lack of access or availability to those services.

I have certainly had discussions with the Minister for Health in relation to this important issue. He has given me undertakings, which I pass on to Ms Mikakos and others who are concerned about this very important issue, that he will evaluate the appropriate provisions of these services and look to improve the availability of these services over time in terms of both their timeliness and geographic spread, to try to make sure that women who need this degree of support are provided with the support at the time they need it.

In terms of the mental anguish with which a number of people have come to this debate: they have been very concerned about issues of conscientious objection; they have been very concerned about their freedom of mind and association in terms of making sure that they do not have to give up value systems that are important to them, that are part of their internal understanding of who they are and how they relate to the rest of the community, how they relate to whole-of-life issues.

I understand the importance of this. In fact I would much prefer to deal with anybody who has a solid base of a conscientious appreciation of where they stand in life and can articulate it and live by it. That does not necessarily mean that I will always agree with it, but at least I know where they are coming from. At least I have an appreciation of who they are and I know that they know who they are. I think that is a very important concept.

In relation to duty of care, I think a lot of people have been very confused about what that means. It is all good and well to have a faith-based, philosophical approach to life that holds you in good stead, but you should not confuse it with your professional relationship. In the context of professional relationship, we are talking about medical care and medical advice. This should not prevent you from being able to provide the breadth of professional responsibility that you are

obliged, either by statute or by a code of ethics of your profession, to provide. A health professional cannot actually say, 'I am not able to deal with your issue — full stop', because in fact there is an expectation on all of us that the duty of care is broad.

They cannot limit what your duty of care brings you to. It does not mean that they have to embark upon any procedure that they do not want to provide, but in terms of general practice, in terms of the expectations of health professionals in accordance with this act, the code of ethics that apply to those professions is very clear. Good clinical practice, the ethics that underpin that good clinical practice compel them to provide a duty of care which takes them beyond their conscience in terms of saying, 'No, there is a dividing line that I cannot cross'. If they cannot cross it in relation to providing that duty of care, they have an obligation under this legislation to make sure that there is an effective referral so that service or that consideration can be provided.

I understand that these are vexing issues and create a great deal of difficulty for a number of people in this debate, but I will briefly run through the frame in which we consider these matters and deal with these matters as legislators, and in fact we can reconcile what are very reasonable, very appropriate considerations and arrive at a conclusion. The first frame is whether we believe it is appropriate in this year and in the years going forward that there be a crime on the statute book in Victoria to say a woman is a criminal if she procures an abortion.

There are a million ways in which you could enter into this debate, but let me rely on a man to help me frame it. The man in question is sitting opposite: he made what I thought was a pretty good speech at 2.30 in the morning. Mr Philip Davis nailed this issue for me very simply. He mentioned a number of women who were near to him, whom he loved, whom he had very strong relationships with, and very high regard for. Then he said, 'There are no circumstances that I could ever consider them to be a criminal for dealing with an abortion, if and when it actually became part of their lives and their consideration'.

I think in a very pithy, personal way it is very compelling. Certainly in terms of the framing of my thoughts and the thoughts of people who support this bill and see this as an essential driver of this bill, it is a very simple, very clear proposition. This cannot be a state that has a crime on the statute books that says a woman is a criminal if she procures an abortion. That is the first frame.

The second frame is the brief that the Victorian government gave the Victorian Law Reform Commission, which was to say, 'Because of the diversity of public opinion, because this is a very painful, contentious issue to think through, the Victorian Law Reform Commission should go away and try to think about how it can frame what is current clinical practice which has been derived through a combination of the law and practice both in terms of legal practice but very importantly in terms of medical practice, and come back with a recommendation for how we can frame that within a piece of legislation and the things that follow from it in relation to professional standards, protocols and arrangements in Victoria'.

On that basis you apply that test. People on either end of the equation will argue in relation to the models that the law reform commission offered. But in terms of current clinical practice, in my assessment, and regardless of my personal preferences, the model that has been recommended and adopted in this bill comes the closest to delivering current clinical practice.

In regard to the circumstances that may be taken into consideration to make an appropriate professional assessment and provide professional advice, guidance and support to a woman during the decision-making process, I give some credit to Mr Gordon Rich-Phillips, even though he is not indicating that he will support the bill. I thought he gave due credit to Justice Menhennitt, who exercised some wisdom in relation to the legal framework at the time of his ruling. He might not be quite as famous as Solomon and may never be, but in terms of the legal frameworks that were available to His Honour at that time he actually created a space, which might be construed by some people as a legal artifice but nonetheless by which current clinical practice could occur.

Over time there has been a broader appreciation of the circumstances which it is reasonable to consider would lead to a decision that abortion is appropriate in the circumstances that confront a woman and the development of the foetus she is carrying. The framework is a driver. It is intended to make sure that we have the appropriate frame in legislation, not through a legal construction in the courts or through practice that builds up in a clinic, but one that is set in law. That is what we are framing today.

I have already indicated how clinical practice will be undertaken. In my assessment, it is very clear that health practitioners have a duty of care. In the transaction between them and the advice and service they provide, not only does that duty of care call into question their professional standing and the ethics that

apply to that profession, but also they have a moral obligation not to place limits that would guarantee, by their action, that that support and service would not be provided. In my view the duty of care is very clear. In terms of the requirements in pre-existing legislation and the whole variety of things that are mirrored here, informed consent is an essential part of the building of that relationship and the mutual understanding — if not obligation — in that professional relationship between the health provider and the woman in question. Informed consent needs to be absolutely embedded in the decision-making process. The duty of care ultimately depends upon that mature and appropriate degree of professional engagement. In my view it is a compelling argument.

Mr Viney and Mr Pakula in particular have mentioned their concerns about this issue. In the committee stage, if it is all right with Mr Viney, I might talk through the way in which that duty of care could be exercised and regulated in terms of the professional standing of the health providers in question, because I understand there need to be some protections and transparency in the ways in which these issues will be dealt with in practice. I am happy to go through go that in the committee stage of the bill.

The last element I would like to refer to in terms of framing is the consistency with other law that applies in Victoria. There are a variety of laws currently in alignment in relation to property and personal injury, which is probably the most important in this context, that apply to children once they are born. The framing of this legislation is totally consistent with those pieces of legislation. That means that for the first time we in Victoria have a cogent and consistent legal framework that applies to the law that regulates abortion practices in Victoria and to other laws that protect the rights and opportunities of Victorian children now and into the future.

As you would understand, President, in my summation of these issues I have touched on various contributions and considerations of a whole variety of members in this chamber. It is not a pre-emptive strike to say, 'Don't give me a hard time in the committee stage of the bill'. Notwithstanding the length and the challenging nature of the debate up until now, I congratulate members of the chamber on their very considered positions. I am sure my colleagues in the chamber have done their best to inform themselves of the various health and legal matters that permeate this issue. They have responded to inordinate amounts of scrutiny and lobbying from the community; they have done their best to deal with that. I am sure it has been stressful and has created some duress for any number of my colleagues in the chamber. I appreciate that they have had the wherewithal to deal with that and to come into this place to present passionate, cogent and committed arguments in support of their position.

I am disappointed that we cannot naturally reach a reconciled position in terms of how this bill should proceed. But nonetheless, for the reasons I have outlined, the government is of the view that this bill satisfies the framing and appropriate legislative regime that would apply to abortion in the future. It will, for the first time in Victoria, decriminalise abortion, so women will not have to endure the guilt, the shame, the persecution that has been embedded in Victorian law since this Parliament was established. For those very powerful, cogent reasons the government, and certainly I, supports the passage of the legislation.

The PRESIDENT — Order! Before I proceed with the formalities I want to make two points. The first is to the photographers, the official press. It has been brought to my attention that some people are concerned about some of the photos that have been published in the press. The fact is the press are more than welcome here. All politicians are fair game on the floor. However, people in the gallery have privacy rights and ought not be photographed and have those photos used by the media. I ask for the cooperation of the press.

The second point I would make is this: this bill is clearly a very emotive issue for particular groups in the gallery. There are very strongly held views on both sides. I understand human nature to a degree. There will in all likelihood be some sort of spontaneous response to the outcome of this vote. That will be tolerated. However, I ask that if there is, it be measured and quick.

House divided on motion:

Ayes, 23

Barber, Mr	Lovell, Ms
Broad, Ms (*Teller*)	Madden, Mr
Coote, Mrs	Mikakos, Ms
Darveniza, Ms	Pakula, Mr
Davis, Mr D.	Pennicuik, Ms
Davis, Mr P.	Pulford, Ms
Eideh, Mr	Scheffer, Mr
Hall, Mr	Tee, Mr
Hartland, Ms	Thornley, Mr
Jennings, Mr	Tierney, Ms (*Teller*)
Koch, Mr	Viney, Mr
Leane, Mr	

Noes, 17

Atkinson, Mr	O'Donohue, Mr
Dalla-Riva, Mr	Petrovich, Mrs
Drum, Mr	Peulich, Mrs
Elasmar, Mr	Rich-Phillips, Mr
Finn, Mr (*Teller*)	Smith, Mr

Guy, Mr
Kavanagh, Mr (*Teller*)
Kronberg, Mrs
Lenders, Mr
Somyurek, Mr
Theophanous, Mr
Vogels, Mr

Motion agreed to.

Read second time.

Committed.

Interjections from gallery.

Persons escorted from gallery.

Committee

The DEPUTY PRESIDENT — Order! Members of the committee, we are to consider amendments to the Abortion Law Reform Bill 2008, a bill for an act to reform the law relating to abortion, to amend the Crimes Act 1958 and for other purposes. We have had a fulsome debate in the second-reading debate, including quite a comprehensive overview by the minister ahead of the second-reading vote.

It is my intention in chairing the committee that we will not revisit second-reading speeches as part of the committee process; we will be focusing very clearly on the amendments proposed. I have amendments from a number of members, and we have established an order for consideration of those amendments after discussion with parliamentary counsel and with the clerks preparing the amendments in the context of how the legislation would be amended properly without contradictions arising at law going forward.

I will advise you on one area where there are conflicting amendments at a subsequent point in the debate. This is likely to be a fairly lengthy process, so I seek the goodwill of all members in proceeding through the committee process and dealing with the amendments.

Clause 1

Mr DALLA-RIVA (Eastern Metropolitan) — I think it is important, following on from the second-reading debate last night and in respect of the bill and the main purpose of it, that I make comment at this stage. For the record, I have thought long and hard about the decision I just made in opposing the bill. It was difficult, I must say — very, very difficult — to come to that decision. It is also going to be difficult for me to consider the amendments.

On balance, I have made that decision. It is a decision that I need to follow through into the third reading. On that basis, in terms of any amendments that are moved in the chamber I will not be voting because my view is that the bill will be opposed by me at the third reading. I thought it was important that I put that on the record.

Clause agreed to; clauses 2 and 3 agreed to.

Clause 4

The DEPUTY PRESIDENT — Order! There is a series of amendments affecting both clause 4 and clause 5, so they will very much be the workload of the committee today. In the first instance I call on Mr Finn to move his amendment 1, which I also regard as a test for his amendment 2. I have determined that his is the amendment that should have priority in terms of its content and implications for the bill. I call on Mr Finn to formally move his amendment and to make pertinent remarks in support of it.

Mr FINN (Western Metropolitan) — I move:

1. Clause 4, line 4, omit "**24**" and insert "**12**".

This amendment is a very clear one. It will basically wind back the point where the approval of two doctors will be necessary for an abortion, from 24 to 12 weeks.

I move this amendment for a very good reason. Firstly, the overwhelming majority of abortions are performed before 12 weeks, so it will not affect very many women or very many babies at all. In terms of the development of the baby, at 12 weeks the baby is fully developed and has everything that he or she will ever need in life to progress through, and only needs nutrition and the nurturing of a mother — and, I suppose, a father later on as well — to ensure he or she reaches full maturation.

We are talking about implementing a scenario where the approval of two doctors would be necessary for an abortion after the 12-week mark. I think we are looking at a situation under the current bill where the first trimester is open slather up until 24 weeks. That will not affect the overwhelming majority of women who seek abortions.

It is my view that in the interests of fairness and a fair go for children who are advanced and well developed in the womb, we most certainly should consider, if not pass, this amendment to the bill. I believe this is fair. This amendment is fair to all involved, and I ask members of the house to give it their favourable consideration and their support.

The DEPUTY PRESIDENT — Order! I am aware that the amendments are only just being circulated to members. I thank Mr Finn for his explanation of the amendment, which is quite crucial at the moment,

because quite a lot of the amendments have come in fairly late. Whilst the substance of the amendments is understood, the actual wording of those amendments is only just being circulated. We will do what we can.

Mr JENNINGS (Minister for Environment and Climate Change) — Thank you for the opportunity to respond to Mr Finn. Noting the amendments before us, I indicate to the chair and the committee that my response to Mr Finn's amendments and the amendments foreshadowed by Mrs Peulich will be substantially the same. That is not to deny anybody the right to move amendments or to see whether the committee accepts the propositions they put, but I indicate that if I give a substantive answer to Mr Finn, my answer to his amendment will be very similar to my response to the amendment to be moved by Mrs Peulich. I say this because as members of the committee would be aware, 10 minutes or so ago I concluded my contribution to the second-reading debate by outlining the variety of reasons why the government has proposed 24 weeks as the threshold in this bill. I am happy for that to be tested in committee, but I believe that this morning I have already significantly outlined the factors that led to the government's determination that this was the appropriate trigger within clause 4 of the bill. I will outline to the house why that is the case.

The government's proposition is that the clause is fundamentally a recognition that clinical practice relating to abortion says that somewhere around the time of 24 weeks a number of things come together, taking into account evidence that relates to the health status of the foetus and the ability to scientifically validate the likely viability of the foetus — both in terms of the medical conditions that the foetus may have developed on the one hand, and the likelihood of the baby surviving outside the mother once born on the other hand. Those two things currently dictate clinical practice in Victoria and in other jurisdictions, and the Victorian government's intention is to put that into legislation to regulate this field.

What does that mean in terms of the complexity of the situations that may drive this time frame? There are a number of important tests that usually are undertaken during the course of a pregnancy to ascertain the health status of the foetus in development. In the main those services are provided in an effective fashion in Victoria. We would always want to improve the availability of services; that is very important to us.

The critical tests are conducted in the second trimester and that goes beyond the scope of the amendments of both Mr Finn and Mrs Peulich. I draw this to the attention of members for that reason. From 15 weeks onwards tests such as the second trimester maternal serum screening are offered. There is also a blood test that is done at approximately 15 to 20 weeks to indicate risk of Down syndrome, Edward syndrome, neural tube defects, anencephaly and spina bifida — conditions which would profoundly affect the quality of life and the viability of a foetus if born.

Additional tests are performed through an ultrasound method at somewhere around the 18 to 20-week mark — and sometimes later — to identify structural abnormalities such as missing limbs, heart defects, gastrointestinal and renal tract abnormalities. Up to that point in time it would be evident if the foetus has developed hydrocephalus. This is a swelling caused by fluid around the brain which leads to swelling of the head of the foetus, which creates some difficulty for the foetus in question.

Mr Finn interjected.

Mr JENNINGS — Before I was interrupted for a variety of legitimate and illegitimate reasons, I was covering the conditions that may be evident within the development of the foetus. There are also medical conditions that may be affecting the health of the woman in question such as pre-eclampsia and other conditions that may be adversely impacting upon not only the viability of the foetus but the viability of the mother. Other health conditions may occur during this period of time that require medical intervention that may deem an abortion an appropriate clinical outcome in that variety of circumstances.

Clearly that basket of issues — the test results, the viability and the likelihood of a healthy baby — is the driver of those making a decision. Other evidence has been compiled which relates to the viability of the child. There has been extensive work undertaken in the United Kingdom which has created the scientific basis on which they have considered the appropriate statute that covers the field of abortion. The most recent inquiry commissioned by the House of Commons in 2007 demonstrated that at 24 weeks the level of viability and survival of the foetus is extremely high whereas below that the likelihood of success or survival outside the womb decreases significantly in statistical terms.

I think that is very important for us to understand. That has led to the considerations in clinical practice and its reflection by the major providers of care in Victoria. Evidence for that is that the Royal Women's Hospital and Monash Medical Centre provide consideration of these issues that drive their clinical practice. Indeed that has led those services to undertake an additional

consideration of circumstances that may be relevant to decision making around abortions from 23 weeks at the women's hospital and 24 weeks at Monash.

That framework, which reflects current clinical practice, has been one of the issues the government has considered in terms of trying to make sure that on balance we consider the variety of issues I have outlined and codify them within statute. They are the reasons why we have determined 24 weeks to be the appropriate benchmark in this clause and other elements of the bill. The government opposes the amendment, but individuals may exercise their own minds about how they respond to this issue. I certainly, for the reasons I have outlined, will oppose Mr Finn's amendment, and, I foreshadow — and the reason I foreshadow it early is that I do not want to cover the same ground again if it is tested — my opposition to Mrs Peulich's amendment for exactly the same reasons.

The DEPUTY PRESIDENT — Order! Minister Jennings has clarified the remarks in respect of amendments proposed to be moved to this clause by two members. Can I understand for the benefit of the committee, and particularly for Mr Theophanous, if the remarks he addressed to both the Finn and Peulich amendments are also relevant to Mr Theophanous's amendments, or does he expect to have a different response to Mr Theophanous?

Mr JENNINGS — In relation to the issue about the trigger points — in relation to the number of weeks — it will be exactly the same argument. However, Mr Theophanous's amendment has other elements he may want to tease out with me.

Mr GUY (Northern Metropolitan) — I want to make a couple of comments in support of Mr Finn's amendment. I acknowledge the fact, as we have said all through this debate, that this is a very serious issue. Abortion is a procedure that is not a decision that people take lightly. In any case I think it is important to acknowledge that from when the in-utero baby reaches 12 weeks, scans are conducted obviously to determine the health of the child. More to the point the chance of miscarriage and the chance of the loss of the baby is greatly reduced once it reaches this week and is indeed healthy. Therefore what we are dealing with in the vast majority of cases from here on is a healthy pregnancy.

I think the amendment moved in Mr Finn's name is certainly changing the parameters of the model B option that have been proposed by the government in relation to the wording which accompanies the model B option in the VLRC (Victorian Law Reform Commission) report — a two-stage approach to the regulation of abortion: early pregnancy and, later, pregnancy. This amendment is in my view an acceptable shift to what I believe is a term of early pregnancy; then what you are dealing with from 12 weeks on is a healthy pregnancy.

I believe the amendment is certainly worthwhile in terms of the magnitude of the decision that is being made in giving couples and women in particular the ability to seek advice from two doctors to ensure the procedure they then go ahead with follows their seeing two doctors beforehand. I do not believe that is an unreasonable proposition.

Ms PENNICUIK (Southern Metropolitan) — The Greens will not be supporting this amendment. As has been canvassed by the minister and by others during the second-reading debate, the government chose to implement a model which required a two-stage approach. It had to pick a number or a stage during the pregnancy; and there had to be a dividing line between the first and second stage. That dividing line requires evidence, and the evidence put forward by the Victorian Law Reform Commission and the evidence from around the world is that 24 weeks gestation is an appropriate line if you are going to draw a line. The Greens believed that model C, which did not have a line, would have been preferable because any line is arbitrary. Every pregnancy is different; every woman is different; and the circumstances around each pregnancy are different.

I do not agree with Mr Guy when he says you can assume that a pregnancy after the first 12 weeks is a healthy pregnancy. You cannot assume that. Diagnostic tests occur routinely between 18 weeks and 20 weeks. The Victorian Law Reform Commission found that women using the public system often do not get access to tests until 22 weeks and that some very severe abnormalities may not be detected until after that time. That is the evidence that strongly suggests this is the appropriate cut-off period, if you are going to use a cut-off period.

The other issue relates to health issues and other problems experienced by women. The minister mentioned pre-eclampsia, which is a highly dangerous condition that can develop in women much later in their pregnancy than 24 weeks and which could require a termination. By definition, as I said in my second-reading speech, if a woman is experiencing those sorts of problems in her pregnancy, health practitioners will need to be involved. We know the current practice at the Monash Medical Centre and at the Royal Women's Hospital routinely involves a multidisciplinary team. By definition it does so as to

detect the problems in the first place. The Greens will not be supporting an amendment that reduces the period of 24 weeks.

Mrs KRONBERG (Eastern Metropolitan) — I rise to support Mr Finn's amendment. It is important because part of the reason we have been torn asunder in the debate in the chamber this week is our responding to community reaction. One section of the population cannot accommodate the concept of abortion at all, and another section of the population stand vehemently in opposition to this legislation because they feel the 24-week period is a bridge too far. That is where we see the seismic shock that has rippled through the community with the introduction of this bill in addition to some of the other very worrying clauses, and the point that 24 weeks seems to provide a sanction for wiping out people who may or may not have a potential life-threatening or huge disability to face in life, of course, is conditional on the accuracy of the diagnostic regime available.

I look at the 12 weeks in terms of my understanding of what is safe for women. My contribution to this debate has always been on the basis of what is best and safest for women. It is my understanding that if a woman is going to have an abortion, then at 12 weeks is the optimum time to have it. I cannot explain the technical side, but I have been convinced that that is the case.

The other thing I have been concerned about — and I have spoken about it in the public domain — is the whole question about whether, if you bring in legislation of this order, you are providing an opportunity for governments both in the present and in the future to be off the hook in terms of their funding regimes and their priorities. I have taken notice of the people who have supported this bill. They have said that women in rural and regional areas need to be considered because the infrastructure, the support and the services are not available which allow them to access abortions in a safe and proper clinical setting. I do not want this legislation to become a means for this government especially to get a tick in all the boxes; that it is a quick and easy solution for the government rather than it having to see how it can properly look after women in this state.

A case in point is the overlooking of the needs of women right now, and the pressures on the Royal Women's Hospital. The short-sightedness in terms of the construction of the hospital and the pressures that are being put not only on patients but on staff goes to the heart of why — —

Ms Pulford — On a point of order, Deputy President, I have been listening to Mrs Kronberg's contribution for a while, and I am not sure that the construction time lines for the Royal Women's Hospital have much to do with the subject at hand.

The DEPUTY PRESIDENT — Order! I am inclined to agree with the point of order that has been raised. I think Mr Finn set a very good example to all members with a very succinct explanation of his amendment. It was concise, it was to the point and it set out the context in which the matter was to be determined by the committee. I think it is important that as speeches progress we do not revisit matters or canvass the amendments in a way that would have been appropriate in the second-reading debate, but that we confine ourselves to the amendments at hand. I accept that talking about government policy in respect of hospitals is a fair way from the amendments that have been proposed by Mr Finn, and I ask the speaker to return to the amendment.

Mrs KRONBERG (Eastern Metropolitan) — I have no intention of dwelling on that aspect of it, but I do think that point was worthy of reinforcement, because central to this whole argument about having abortions available to women across the state at 24 weeks gestation is access to proper clinical settings for women in rural and regional areas, and I am very fixed on that point. That is the end of my contribution.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I rise to indicate that I cannot support this amendment moved by Mr Finn, nor can I support the subsequent amendment in relation to 14 weeks. I have indicated to the house that I have a balanced view of this. I do think the legislation needs to be moderated, but not to the extent that is being proposed in these amendments.

I also want to make the point that this is a conscience vote, so I was a bit surprised to hear Ms Pennicuik remark that the Greens would not be supporting this amendment. I would have thought she would speak for herself and allow other members who have a particular view to speak for themselves as well, as is the case with everyone else in this debate. However, I cannot support the amendment that Mr Finn has moved; it moves the bill too far in the opposite direction, and certainly not to where I sit.

Debate interrupted.

DISTINGUISHED VISITOR

The DEPUTY PRESIDENT — Order! In accordance with the procedures of the house I draw attention to the presence of a former member of this house who is in the gallery, Mr Ron Best. Welcome!

Debate resumed.

Mrs PETROVICH (Northern Victoria) — I rise to support the amendment. The Victorian Law Reform Commission's report very clearly details the number of abortions conducted in the first trimester. The vast majority of abortions occur before the 13-week mark. The empirical data clearly states that late-term abortions performed on women who are having difficulties with their pregnancies or when gross abnormalities are detected are in the minority. I think 0.7 per cent of pregnancies fall into this category. I would be much more comfortable if we were using the term 'children' or 'babies' rather than 'foetuses' at 24 weeks, and I would support the amendment on that basis. I think it would better reflect what occurs currently, as detailed in the VLRC's report.

I would also like to cite an example from my own family. My nephew, Kai Sheppard, was born at 24 weeks. He is a tough little character who spent the first part of his life in a humidicrib, but I am happy to say he is well and strong, has gained weight rapidly and is approaching 12 months old. He is a credit to his parents, who have been through a tough time, but I think the analogy of his birth weight, which was incredibly low, and his determination to survive should be used in considering when a child becomes a child. Twenty-four weeks is more than definite for me, so I support the amendment.

Mrs COOTE (Southern Metropolitan) — I will be opposing this amendment, but I would also like to put on record that in 2006, which is the year covered by the latest figures available for abortions beyond 20 weeks in Victoria, 148 terminations beyond 20 weeks were done for congenital abnormalities, while 150 were done for psychosocial reasons. Briefly, my point is that we in this chamber are not the experts; the experts are the members of the Australian Medical Association and the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, the experts at the Royal Women's Hospital and Monash Medical Centre and a host of others. They are the clinicians who are dealing with this issue, and they have made a recommendation; therefore I will be opposing this amendment.

Mr FINN (Western Metropolitan) — I was somewhat disturbed to hear the minister speaking against this amendment and confirming a fear that I have had for some time — that is, that the government regards abortion as a treatment for disability, and that if a child proves positive in a test for a disability, then that child is doomed as far as the government is concerned.

I have to wonder if that has anything to do with financial issues the government takes into consideration about saving money. Obviously a dead baby with a disability is not going to cost anywhere near as much as a live baby with a disability, and I hate to think that is what comes into the mind of the government. I honestly do not believe this particular minister would take that into consideration, but I have to wonder if there are not some sections of the government who would do so. The view that once a child is diagnosed with a disability it be killed is very dangerous, because we have already seen that seep over after they are born through people like Professor Peter Singer, for example. Some 27 years ago I had dealings with doctors in Sydney at the time my first son was born. He was born with spina bifida and they wanted to kill him.

Mrs Peulich — Doctor knows best?

Mr FINN — That doctor, unfortunately, thought he knew otherwise. Doctors thought they knew best; they were the ones who told us that, if my son lived past a week, he would be a vegetable for the rest of his life. Earlier this year, a couple of months ago, he celebrated his 27th birthday.

Mrs Peulich interjected.

Mr FINN — Yes, doctor really knows best! I express my deep concern at the attitude of society and the government toward children with disabilities and the fact that abortion is regarded as a treatment for disability. Hydrocephalus, as the minister pointed out, is a problem, but it can be easily treated. It is not a death sentence; it should not be a death sentence either before or after birth. A lot of these things we are talking about sound shocking, but they can be relatively easily treated these days.

I go back a long time ago, nearly three decades, when it was pretty tough, no doubt about that, but these days the level of treatment for children with disabilities makes life much easier for all concerned, and it should not be a death sentence to be diagnosed with some sort of disability. Legislators, the government and the community should have some degree of respect for people with disabilities. To use abortion as some form of treatment for disability generally dishonours people with disabilities.

I was fascinated to hear Ms Pennicuik talk about pre-eclampsia, because my wife in her three pregnancies suffered dreadfully from pre-eclampsia. We fortunately have four beautiful little children. They have all caused enormous problems for my wife during, before and after pregnancy. I am concerned to hear Ms Pennicuik talk about the need for an abortion to cure pre-eclampsia. If you get to the stage where pre-eclampsia is kicking in, I would have thought a caesarean section might be better, where you — —

Mr Scheffer — On a point of order, Deputy President, I appreciate the sensitive matters that Mr Finn is raising. They are important, but it seems to me he is rehashing the material that was discussed during the second-reading debate. I request that you bring him back to the clause that we are dealing with.

Mr FINN — On the point of order, Deputy President, I do not recall pre-eclampsia being discussed at all. I certainly did not discuss it during the second-reading debate. I am responding directly to the point made by Ms Pennicuik during the discussion of this amendment.

Mr Guy — If you are going to take points of order, they had better be right.

The DEPUTY PRESIDENT — Order! Let me decide that. In this instance I think Mr Finn is responding to a matter that was raised in the debate. The minister ranged over quite a number of conditions also that were tested at fairly late stages in a pregnancy in the context of what we are debating here. Mr Finn is quite in order in addressing those matters. I am concerned, though, that members should restrict their remarks to the specifics rather than ranging over a number of personal experiences as well, which to some extent were given some airing in the second-reading debate. I am not keen to have members expanding in that sense, but there is no doubt that Mr Finn's remarks are in response to a specific condition that was raised as part of testing regimes and complications of a pregnancy. I invite Mr Finn to continue but to be mindful of my constraints.

Mr FINN — Certainly. I wanted to point out to Ms Pennicuik, and indeed to the committee as a whole, that to use abortion as a treatment for pre-eclampsia would pretty much shock any obstetrician doing the rounds because that is clearly not the case. If a baby has got to the stage where pre-eclampsia takes hold, and it almost invariably takes hold where it is affecting the mother very badly late in the pregnancy — in my own case it was beyond 30 weeks; our twins were born at 34 weeks and the other two were born at somewhere around 36 or 37 weeks, but certainly at that point the baby can be born alive — there is absolutely no need for any consideration of abortion. To use pre-eclampsia as a reason to advance the argument against this amendment is a nonsense.

We had some discussion also during debate on this amendment about where we draw the line. It was put that 24 weeks was the ideal spot to draw the line. I am at a total loss to know why the number of weeks is 24. What happens at 24 weeks? Apparently we have the technology at around about that time, but there is nothing that happens in the development of a baby at 24 weeks that distinguishes it much from what it was at 23 or what it will be at 25.

Twelve weeks, on the other hand, at the end of the first trimester, if we are going to draw a line, as Ms Pennicuik put it, makes sense and is logical. I have to say — and I am sure most people would understand — that if I had my way, we would be drawing a line much, much earlier, if indeed there was a line to be drawn at it all; but I think if we are going to draw a line, 12 weeks is a logical place to draw the line.

It is a place that affects very few women who are seeking abortions, because the overwhelming majority of abortions are performed on women prior to 12 weeks and, as Mrs Kronberg pointed out, beyond 12 weeks there is an added degree of danger also to the woman involved. You have to take the interests of the child, the interests of the woman, mix them together and, when you do that, I have absolutely no doubt you come up with a recipe for supporting this amendment — that we draw the line at 12 weeks.

Members have to remember that this amendment is not about banning abortion after 12 weeks; that is not what it is about at all. It is about ensuring that after 12 weeks, the woman has the appropriate medical supervision from the two doctors that is mentioned in the legislation. That is what this is about, so if members are concerned about the welfare of women in this particular regard, they will most certainly be voting for this amendment, as obviously I will be. I urge all other members of the committee to do likewise.

Mr BARBER (Northern Metropolitan) — 'Permission' might have been a better word than 'supervision' in what Mr Finn just said, but for the benefit of the committee I point out that I will vote against this amendment. For the information of the chamber, when Ms Pennicuik says 'the Greens' or 'Colleen, Greg and I', members can be assured that is accurate information, because the constitution of my party guarantees me a conscience vote on all issues, not

just those that other parties put in the too-hard basket when it comes to making policy.

As a matter of conscience, as a matter of policy and as a matter of what I believe are the best interests of my electorate, I will vote no on this amendment.

Mr VOGELS (Western Victoria) — I have just been listening to the contributions made by members. We are talking about congenital abnormalities before 24 weeks and the fact that one doctor or one medical professional can terminate a baby's life. In my experience — and it has happened in our family — doctors are not always right. What happens if tests on the ultrasound, the scan, or whatever tests are being done, show that the baby has some diagnostic problems? It may show Down syndrome or something like that, but actually when the baby is aborted it might prove that there is nothing wrong with the baby at all. What are the medical ramifications for the profession, or for the government, or whoever? As I said, in our family we had a diagnosis of Down syndrome, but the mother continued the pregnancy and the baby was perfectly normal; there was absolutely nothing wrong with it.

Ms PENNICUIK (Southern Metropolitan) — I am responding briefly to the comments by Mr Finn after I had mentioned pre-eclampsia. I am very glad to hear that Mr Finn's wife was able to survive and did not suffer from that condition to any great degree that would threaten her life. Unfortunately for some women that condition does threaten their lives and therefore a pregnancy needs to be terminated; that was what I said and that is a fact.

The DEPUTY PRESIDENT — Order! With respect to the amendment I propose to test Mr Finn's amendment 1 which I also regard as a test for his amendment 2.

Committee divided on amendment:

Ayes, 10

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

Noes, 25

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

Amendment negatived.

The DEPUTY PRESIDENT — Order! I invite Mrs Peulich to move amendment 1 standing in her name and to make any remarks in support of that amendment.

I advise the committee that the minister and a number of members effectively canvassed quite a few of the issues in this amendment, as they did on the 12-week amendment put by Mr Finn, so I am not keen to have the committee go over that ground again. Certainly there is an opportunity for any further matters to be canvassed.

Mrs PEULICH (South Eastern Metropolitan) — I move:

1. Clause 4, line 4, omit "**24**" and insert "**14**".

I move the amendment to insert 14 weeks in place of the 24 weeks currently in the bill. I was happy to support Mr Finn's amendment of 12 weeks because I believe 24 weeks is a problem. It is not a logical line in the sand.

In the short time I have been back in this Parliament, and certainly in this chamber, I have observed a number of people leading debates on various issues — people like Mr Hall, Mr Thornley, Mr Philip Davis and many others. They have often valued raw data, information, facts and evidence as the bases for the formulation of policy, which I endorse. Sometimes I have to constrain my emotion to appreciate the raw data, the facts and the evidence as the basis for good policy. For me it is inconceivable why the line in the sand has been drawn in this legislation allowing abortion on demand at 24 weeks, when the government's own report by the Victorian Law Reform Commission, commissioned by the Premier, clearly shows that 95 per cent of abortions occur within the first 13 weeks.

While I supported Mr Finn's earlier amendment because I felt that 24 weeks was illogical, was not sound and was not based on the informed evidence of the government's own commissioned report, 14 weeks is the better option. It is a better option because it captures the vast majority of abortions, and for the vast majority does not make abortion illegal. In relation to those who may be subsequently tested as part of routine screening, one of the failings of the system is not having more money invested in public hospitals to make those screenings available at earlier stages of

pregnancy, as they are in private hospitals. If that money were invested, the number of abortions would be reduced and abortions would be sought earlier, which would improve health outcomes for women — just by putting the money into it. Separate from that, only 5.4 per cent of abortions occur after 13 weeks, and those whose health may be put at risk — either the mother or, in relation to abnormalities, the unborn child — are provided for within the bill.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Goulburn Valley Water: former chair

Ms LOVELL (Northern Victoria) — My question without notice is for the Minister for Environment and Climate Change. I refer the minister to the decision by Labor mate Don Cummins to withdraw from the board of Goulburn Valley Water amid an investigation into travel expense irregularities, and I ask: will the minister now stand Mr Cummins aside from his board roles with the Mount Buller and Mount Stirling Alpine Resort Management Board and the Goulburn Broken Catchment Management Authority, both of which the minister is responsible for, and seek his standing aside from the Community Advisory Committee of the Murray-Darling Basin Ministerial Council, of which the minister is a member, until such time as the investigation into Mr Cummins is complete?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Ms Lovell for her question and any question that comes my way. I am acutely interested in proper accountability and the standards of behaviour of people on statutory and other boards appointed by the government. I am keen to ensure that those standards are complied with and well understood and that members of those boards are accountable. Part of that accountability framework means that if and when allegations are made, they need to be examined and tested and there needs to be a process of natural justice undertaken in the interests of all parties, including those against whom allegations have been made.

As far as I am concerned in relation to this matter, in complying with good governance, natural justice and evaluation and appreciation of those issues, I acknowledge there is some reason for these matters to be considered. Has there been a conclusion? No, I have not reached a conclusion about these things, but I am happy to exercise my responsibility and be appropriately accountable to the Parliament and the people in relation to these things.

Mr D. Davis interjected.

Mr JENNINGS — The matters Ms Lovell asked me about are not concluded.

Supplementary question

Ms LOVELL (Northern Victoria) — Will the minister undertake to make the report of the investigation into Mr Cummins public immediately upon its completion?

Mr JENNINGS (Minister for Environment and Climate Change) — I have nothing further to add, with the exception of saying that I am happy to be accountable for my actions and that I will ensure that any boards under my jurisdiction are responsible to the standards set. I am happy to account for those matters, and Ms Lovell can expect that I will account for them. I have indicated to her that I am not in a position to — —

Ms Lovell — And the report?

Mr JENNINGS — I have indicated to the member in my substantive answer, both in terms of the process being undertaken and where we are at in relation to these matters, that I will not give her any undertaking that she may seek beyond mentioning the deliberations I have entered into and the actions I will take in relation to the matter.

Manufacturing: water usage

Mr LEANE (Eastern Metropolitan) — My question is for the Minister for Industry and Trade. Can the minister please inform the house how the Brumby Labor government is working to make industry water use sustainable for Victoria's manufacturing industries?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I thank the member for his question. As we face the new reality of climate change and increasing pressure on our resources, particularly our water resources, there is a need for governments to come together with industry to find solutions and increase the ways in which we act sustainably. Finding and introducing measures to reduce water use and increase the use of recycled water by industry is absolutely critical.

In this context the government has introduced water-recycling projects by industrial customers over many years, and $16 million was allocated to that. Smart meters have been introduced to monitor the top 200 water users in the state, and those smart meters allow for much more accurate measurement of the water consumption by these top 200 users. Of course

the top 200 is a big group from a variety of industries and includes such things as the food manufacturing industry, which makes up around 20 per cent of the top 200 water users. They have completed the management plans as part of the Pathways to Sustainability program and have allocated significant funds to it.

The other area where the government is working towards reducing water consumption is the food bowl modernisation project, which provides more water for farmers, more water for rivers and more water for urban communities. The project will provide certainty for industry, which is an important component of the program, and it is certainly important to me as minister for industry.

This is a project which both sides of the house should support; it is a way of us managing our water supplies. It is a pity that the coalition has not been able to support this important project, which provides additional water for industry in regional Victoria. There are a range of additional projects and programs that have been put in place by this government — the Water for Industry initiative, a $10 million program; the Stormwater and Urban Water Conservation Fund, which is worth $10 million; and a host of others — to assist in reducing our water consumption, particularly in the industrial sectors of Victoria.

Manufacturing: government strategy

Mr DALLA-RIVA (Eastern Metropolitan) — My question without notice is to the Minister for Industry and Trade. I refer the minister to a 2006 invoice for $33 440 for a consultancy on inward investment attraction, which was to assist in the development of his manufacturing policy. Given that the expenditure of this public money was on research and advice, and it was completed before December 2006, when can we expect to see the much-delayed Victorian manufacturing strategy that should have flowed from this?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — This is similar to questions I have been asked by the member in the past. I have made it clear that the government — —

An honourable member interjected.

Hon. T. C. THEOPHANOUS — The fact is that we do ongoing research into all these various sectors to make sure we have the best policy we can get. The Victorian industry and manufacturing statement will include all of the information; it will be based on information that has been gathered by a range of these kinds of reports. I have already indicated to the house that the timing of this statement is dependent to some extent on a range of other reviews being carried out at the federal government level. We wanted to have the input of those reviews so that we could put together the most effective and the best Victorian industry and manufacturing statement that has ever been put in Victoria.

Supplementary question

Mr DALLA-RIVA (Eastern Metropolitan) — In relation to that expenditure, I also note that the national manufacturing forum was held on 4 August 2006 at Rydges Capital Hill Canberra Hotel. The document we have received, which has been suppressed under FOI, has hidden all the names of the attendees. Why have those names been suppressed, and what does the government have to hide in respect of who attended?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — There are independent FOI officers who evaluate what is allowed and what is not allowed in respect of what is released publicly upon an FOI request. Those decisions are not made by me, so the suggestion behind the member's statement about something to hide is completely and utterly off the mark. But beyond that, the decisions are obviously made bearing in mind the rights of people to levels of privacy, particularly officers in departments who may not want to have their names splashed around in Parliament by the member opposite.

In any case, what is released under FOI is not my decision; it is made by FOI officers, as the member is fully aware. The only point I would make is that there has never been a government that releases so much information as the present one. I experienced the Kennett government, and I can tell you that during the course of that government it was virtually impossible to get any information on anyone. I am sure that the FOI officer who made the decision did so in light of balancing all of the various considerations.

Planning: government initiatives

Mr ELASMAR (Northern Metropolitan) — My question is to the Minister for Planning, Mr Madden. I ask the minister to update the house on what recent action the Brumby Labor government has taken to streamline and cut red tape in planning.

Hon. J. M. MADDEN (Minister for Planning) — I very much welcome the member's question. We are doing as much as we possibly can to take the red tape out of planning because we are very conscious that the more red tape there is, the more pressure it places on

the planning system at a time of growth, particularly when planners are hard to find right across the community. If we can take the red tape out of it, that is a win-win result for everybody.

Recently I made a number of exemptions, and as a result on average 2000 planning applications will no longer be required for a number of areas we have given exemptions to. For example, planning permits for rainwater tanks in rural areas are no longer needed, regardless of size; planning permits for rainwater tanks in industrial areas are no longer needed provided they meet site and height requirements; planning permits for domestic sheds under 50 square metres in farming zones are no longer needed; and planning permits for minor domestic building works such as pergolas, decks and pools are no longer needed in most areas that are not flood-prone, heritage-listed or environmentally significant areas. They may not sound like major clarifications of red tape, but it is all those little bits and pieces — —

Mr Jennings — The one percenters!

Hon. J. M. MADDEN — The one percenters, exactly. They make a big difference at the end of the day, in tally, and they clear the workload for many in the planning system for the bigger issues that need to be dealt with right across the community.

As well as that, I am pleased to announce to the house today that I have recently appointed an expert panel to lead a review of the Planning and Environment Act. It is a five-member panel that will work with a project team to provide advice and ideas for the review of the act. It will be the first major review of the act in 20 years. In that 20 years many things have changed; particularly in the face of climate change there are many issues we need to look at and address. Importantly the panel's proposals would be the subject of wide-ranging consultation with the planning profession, local government, the development industry and the broader community prior to any adjustments to the bill in the future. These are very important issues to deal with. The expert panel includes Mark Dwyer, a deputy president of the Victorian Civil and Administrative Tribunal and a leading planning lawyer; Liz Johnstone, who holds a position with the Municipal Association of Victoria and is chair of the Central Coastal Board; Duncan Turner, a highly experienced local government planner; and Claire Sim, a senior planning consultant.

The panel will be chaired by the Department of Planning and Community Development, and there will be an additional reference group to assist, particularly with the technical work. It is important that we do this review, consider all options and work through a strategy following that to ensure that we continue to make Victoria the best place to live, work and raise a family.

Ballarat: councillors

Mr VOGELS (Western Victoria) — My question without notice is to the Minister for Planning, the Honourable Justin Madden, and it concerns investigations into Ballarat City Council by PricewaterhouseCoopers. This report was commissioned due to allegations made by former Ballarat city councillor, Wayne Rigg, of preferential treatment for planning permits to councillors. The question I ask is: will the minister order a review into the integrity of all planning permit applications dealt with by Ballarat City Council over the past five years following this damning report which was tabled in the house yesterday?

Hon. J. M. MADDEN (Minister for Planning) — I welcome the question from Mr Vogels. It is very important that we highlight to the community that the role of local government in terms of the planning system is a very significant one. Local government does the vast majority of planning application work throughout the system. It has a critical role in terms of the connection with the community, but it also has a specific and significant role in terms of the strategic work that needs to be in place before many of the controls are placed in the planning system.

Mr Vogels raised the issue of the Ballarat council report. It has been presented to the chamber, and I anticipate that the Minister for Local Government will respond to that accordingly. The vast majority of these issues lie with him. In relation to any matters that may or may not be contentious on the back of that, at this point in time I have no advice in front of me or requests, other than from Mr Vogels, of concern in relation to those. What I can say is I will await advice from my department in relation to these matters as to whether there needs to be a more detailed review or investigation from the department's point of view into any planning permits that have been issued in relation to these matters. At this point in time for me to make any comment on that is probably not appropriate, but I would look forward to receiving any advice from the department that would clarify these issues with me.

Supplementary question

Mr VOGELS (Western Victoria) — I thank the minister for his answer. The investigators, PricewaterhouseCoopers, received information about

councillors' expenses which showed that Cr Wayne Rigg claimed $29 566.18 over a three-year period compared to $23 903.40 by all other councillors combined. Given that the investigators sought the power to examine these claims and the minister's department refused that request, will the minister now investigate the impact of the granting of all planning permits on the conflicts of interests referred to in the Clements report and the massive $29 000 apparent double-dipping in expense claims by Cr Wayne Rigg?

Hon. J. M. MADDEN (Minister for Planning) — I welcome the member's question, although it does not seem particularly different to the first one he asked me, other than he has put a lot more information into this question than the first one. In a sense, if it was an opportunity for Mr Vogels to highlight the detail of the report, he has done that. But my answer to that remains the same: I await advice from the department in relation to these matters. No doubt significant clarification by the department will be required in relation to legal matters before it provides that advice to me, and I await that advice.

Marine parks: international promotion

Ms TIERNEY (Western Victoria) — My question is for the Minister for Environment and Climate Change, Gavin Jennings. Can the minister inform the house of how the Brumby Labor government is helping to promote Victoria's unique marine environment to the world?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Ms Tierney for the question and for the chance to talk about the opportunity we have taken in Victoria — Parks Victoria has led the way — to try to make sure that information about Victoria's fantastic marine national parks and sanctuaries is shared with the world. We hope many millions of people in the future will become better informed about and immerse themselves in what is the rich splendour of those marine national parks and sanctuaries, where we have created a habitat for more than 12 000 species — many of which have never been found in any other part of the world.

One way in which we are sharing that is by working through the International Union for Conservation of Nature (IUCN) and the ubiquitous Google organisation, which actually permeates all aspects of human endeavour and global knowledge. They have joined forces to create marine environment web-based opportunities for people around the globe. That partnership was cemented in Barcelona. If it were not for my very important ministerial responsibilities here, which I am hoping to demonstrate during the course of the day, I might have been in Barcelona as part of the IUCN World Conservation Congress at this moment — and been subject to ridicule about representing the interests of the state in an international forum. Nonetheless, that opportunity has not been afforded to me, but it does not matter, because most importantly members of the global community will be able to immerse themselves online in the rich splendour of our marine environment.

Victoria is one of the first jurisdictions in the world to participate in this program. We can be very grateful for the leadership and initiative shown by Parks Victoria as part of its management responsibilities for the rich marine national parks and sanctuaries in Victoria. We look forward to many opportunities to share that splendour and that glory with people throughout the world.

Brookland Greens estate, Cranbourne: landfill gas

Mrs PEULICH (South Eastern Metropolitan) — My question without notice is directed to the Treasurer, Mr John Lenders, and it relates to the correspondence that all members have received from Mrs Junelle Rhodes of Cranbourne, who noticed that rental properties in the Brookland Greens estate area affected by methane gas from the Stevensons Road landfill are still listed for lease. Given that there is real potential for Victorians to move into the affected Brookland Greens area against Country Fire Authority advice and despite the evacuation notices that have been issued, which may entitle them to government-funded emergency grants as well as the possible payment of future compensation should that be deemed appropriate, I ask the Treasurer: what action is he taking to address this matter?

Mr LENDERS (Treasurer) — I thank Mrs Peulich for her question. I would like to say a couple of things. Firstly, the government has a comprehensive response to the circumstances that are arising in Brookland Greens. That response has been one that my colleagues Mr Madden and Mr Jennings in this house have outlined on several occasions, and it is one that is being communicated directly from government and government agencies to the affected residents in these extremely unfortunate circumstances, which we as a government, and more particularly the community, are seeking to address by dealing with the important safety issues of the community through the immediate relocation of some members of the community and through mitigation. I have gone through a chronology before, as have both my ministerial colleagues in this house and also the Minister for Police and Emergency

Services, Mr Cameron, in the Assembly, as to how we are dealing with that.

Mrs Peulich asked for action on top of that. I think we need to keep this in context. We as a community are seeking to manage these issues without raising fear and without exaggerating things that are going on, by dealing on a case-by-case basis with individual people. Mrs Peulich raised the issue; she said advertising boards have gone up for rentals and houses for sale in the community. I will refer that to colleagues in government who are managing this hands-on, but I say to Mrs Peulich that if she actually believes Victorians are not aware there is an issue with Brookland Greens estate and she believes that is an issue, I am surprised. This is a member who has written to the entire area twice with the assistance of her electorate officer, who moved the motion at Casey City Council to approve the development. I do not take her bona fides on this issue on board at all, other than that this is a wrecking issue. Government will follow this through. She has put an issue on the table. We will follow it through, like we follow through all issues regarding Brookland Greens; we will do that.

But in times of crisis there are different ways in which people can respond. One is to collaboratively go forward and find solutions; another is to make mileage out of them. This is an economic issue that Mrs Peulich has raised with me. We talk about economic issues, and she raised the issue in an economic context. I will quote a commentator:

> In short, this is a time for cool heads, not for panic —

talking about Australia's economy —

> Australia's financial markets, whether we focus on stockbroking, banking or the provision of other products, are fundamentally sound.

That is the context of where we are in the financial market, and it applies to all these issues. The person I quoted — —

Mr D. Davis — On a point of order, President, I think the Treasurer is stretching his response. Clearly the serious economic situation we face is a long way from Brookland Greens and is not relevant to the question.

The PRESIDENT — Order! The Treasurer indicated that he sees this issue as being part of an issue in a broader context. It is a wide-ranging answer. I believe the minister is in order, and there is no point of order.

Mr LENDERS — I will conclude, but the reason for quoting this particular source was to say that in a time of crisis, cool heads are needed and people should not raise panic. I quoted Mr Gavin Powell, the managing director of EL and C Baillieu Stockbroking.

Supplementary question

Mrs PEULICH (South Eastern Metropolitan) — In my supplementary question, I would like to take up from where the Treasurer left off. I agree that cool heads are required and that a proactive approach is the best way of delivering the level of leadership required by the situation. I ask: given his comments, will he now ensure the establishment of a high-level committee or subcommittee of cabinet to provide effective leadership to a devastated community, which would address all the concerns as well as those emerging on a daily basis?

Mr LENDERS (Treasurer) — The establishment of cabinet committees is obviously an issue for the Premier and is not an issue for me. But if Mrs Peulich is serious about addressing the serious issue in Brookland Greens and she wants bipartisan support — she has put letters out to the entire community, alarming people — she would have picked up the phone when she had this idea and approached one of my colleagues such as Mr Jennings, Mr Madden, the Premier, the Minister for Police and Emergency Services, Mr Cameron, or any of the ministers dealing with this issue. She would not have come into this house and made a political point out of this issue as she constantly does. My answer in response to her — —

Mrs Peulich — On a point of order, President, I am raising the issues at the most appropriate and highest level — the Parliament of Victoria.

The PRESIDENT — Order! That is not a point of order.

Mr LENDERS — In conclusion, the Victorian government, led by the Country Fire Authority and a range of other agencies, is working collaboratively with Casey City Council in dealing with this local issue. It is working with the individuals affected. I say to any person in the community who genuinely wishes to assist in what is a difficult issue for the residents of Brookland Greens: go and speak to the people dealing with the management on the spot, and deal with it in a non-partisan sense.

The time for finding blame is after the issues of the residents have been addressed. My suggestion to Mrs Peulich is: calm down, present your issues to the people who can deal with them and do not politicise this issue.

Water: desalination plant

Mr VINEY (Eastern Victoria) — My question is to the Minister for Planning, Justin Madden. Can the minister update the house on the progress of the inquiry that is assessing any potential environmental impacts of the desalination plant near Wonthaggi?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Viney's interest in this matter. I know how conscious he is of this issue across his electorate, recognising that this is a critical piece of infrastructure for the state. Because of the need for confidence in the assessment process in relation to critical and major projects like this, last year I determined that an environment effects statement was needed for the desalination plant. The environment effects statement has been prepared by the Department of Sustainability and Environment and its consultants. It was released for public comment on 20 August 2008. That public comment period ended on 30 September 2008. A works approval application was exhibited jointly with that environment effects statement.

The environment effects statement examines the potential environmental effects of the desalination plant, including structures for seawater intake and saline discharge, as well as the pipeline to transfer water to the Melbourne water supply at the connection point at Berwick and the infrastructure options to supply power to operate the desalination plant. It is quite comprehensive. It is not just specific to the project but considers all those other implications as well.

I have been informed that 399 submissions have been received in response to the proposal. An inquiry with a public hearings process is the next stage. The inquiry will be conducted by a panel of five experts at public hearings over 15 days from 14 October to 7 November 2008. The hearings will be held at the Cardinia Cultural Centre in Pakenham. The reason for conducting the hearings in that location is to give locals in the area the opportunity to attend and not require them to travel all the way to Melbourne, and also to make sure the panel members and other experts in that area can meet in and around the area.

The terms of reference for the inquiry — —

Mr Hall interjected.

Hon. J. M. MADDEN — I take up Mr Hall's interjection in relation to Wonthaggi. I recognise there are some who would say it should be almost on the spot. However, you cannot just run these sorts of hearings out of a football pavilion, a changing room or the like. You have to have — —

Mr Drum interjected.

Hon. J. M. MADDEN — That might have been the only place available, Mr Drum. But when you have the choice — —

Mr Drum — You said they cannot do it.

Hon. J. M. MADDEN — Do you want to listen or not, Mr Drum? You are giving me too much material to work with.

The PRESIDENT — Order! Through the Chair!

Hon. J. M. MADDEN — What is important is that you have to have the ability to provide the services to the panel, to those reporting it and to the media. You have to provide a certain amount of amenity. But it is more important that the facility is available for a considerable number of days. Mr Drum would know that the football or cricket club might need to come in and use its facility. You have to have access to this facility for a long period. You need a location with suitable services in and around it and one that does justice not only to those who are submitting but also to those who are convening the hearing.

It is particularly important to have this sort of format so people can have confidence in the process, can have input into the inquiry and can ensure that all things are considered. The important thing is that the process provides a means of exploring ways to avoid, minimise and manage any potential adverse effects. It is critically important that members of the public are involved and that they have confidence in the process.

The government is conscious of the need to deliver critical infrastructure for the state. We need a process that the public has confidence in and that is transparent, and we are providing that in this instance to make sure we maintain Victoria as the best place to live, work and raise a family.

Health: pandemics

Mr KAVANAGH (Western Victoria) — My question is for the Minister for Health through the Minister for Environment and Climate Change, Mr Jennings. It was prompted by today being 10 October — double-10 day — the anniversary of the founding of the Republic of China. I note that the health of everybody depends on the health of their neighbours to some extent. The health of Victorians depends on the health of people in other states and other jurisdictions

around the world, particularly in relation to infectious diseases such as severe acute respiratory syndrome and bird flu. On that basis I ask about the unfair exclusion of Taiwan from the World Health Organisation. Have the Victorian government and the Minister for Health done anything to end that unfair exclusion of Taiwan from the World Health Organisation, and if not, will they do so?

The PRESIDENT — Order! I am not convinced that the question is within the power or authority of the minister to answer it, even on behalf of the other minister, nor whether it has anything to do with the Victorian government. I note that the member's question included, in part, the issue of whether or not Victoria could do anything about the situation. I am not convinced the question is in order, but I will give the minister the opportunity to decide whether or not he wants to answer it.

Mr JENNINGS (Minister for Environment and Climate Change) — President, I thank you for the opportunity to respond to the challenge that Mr Kavanagh has created for me. Not for the first time today, he and other members of the chamber have put me on notice of their expectations of my capacity to deal with public policy matters or see our obligations in an international context. I will certainly do that, because that is consistent with the frame that I have set for us all in relation to another matter we might be dealing with.

Beyond recognising the importance of trying to find mechanisms to deal with the world being a global community and trying to make sure all citizens across the globe participate in important endeavours such as the framework and the operations of the World Health Organisation, I am happy to learn what my ministerial colleague's view might be of our international obligations in relation to the mitigation of and preparedness to deal with pandemics, which is an issue that has been subjected to legislation in this chamber and a number of programs that the minister is responsible for. I am happy to respond seriously to the heart of the question in saying that we will make sure that, if the minister is able to, we account for the potential for illnesses to transmit across international boundaries and even into areas that may not be subject to or participants in World Health Organisation operations.

Water: Victorian plan

Ms BROAD (Northern Victoria) — My question today is to the Treasurer. Can the Treasurer outline to the house how the Brumby Labor government is investing in water projects that will benefit families, communities and business in Victoria, especially in northern Victoria, in light of the dire circumstances caused by the ongoing drought and in light of the importance of investment in the current international economic environment?

Mr LENDERS (Treasurer) — I thank Ms Broad for her question and her ongoing interest in water projects across the whole state, but particularly in the northern part of Victoria, as well as her interest in both the long term and the short term for these projects. The largest single water infrastructure project to my knowledge in our history in Australia has been the food bowl modernisation project — an extraordinarily large project that this government is investing in that will assist in northern Victoria. That is a significant project — —

Mr D. Davis — The Snowy scheme?

Mr LENDERS — I hear an interjection about the Snowy scheme — another great Labor scheme of the Chifley government. But returning to the largest water infrastructure scheme in Victoria, the material thing is that this government is investing now in the short-term and the long-term benefits of this project — an amazing and necessary contribution as we are in a time of climate change.

There is not just the food bowl project; there are other projects going on at the moment to assist communities in Victoria. There is the desalination plant at Wonthaggi, which will deliver long-term benefits for Victorians. These benefits are not just a reliable water supply; they are also jobs. At a time when the opposition is focusing on jobs in seeking to talk down the state, the desalination plant in Wonthaggi will create 3180 jobs during construction, and there will be 150 ongoing jobs coming through. Mr Ken Smith, the member for Bass in the Assembly, welcomed the jobs to Wonthaggi. What these projects are doing is not just providing long-term infrastructure; they are creating jobs.

Mr Drum interjected.

Mr LENDERS — Mr Drum is engaging in conversations across the chamber. He should reflect on the goldfields super-pipe, which he had massive issues with. The goldfields super-pipe created 194 jobs during construction as well as supplying water to the great cities of Ballarat and Bendigo, and Bendigo is in his electorate.

We also talk of the Sugarloaf pipeline. The Sugarloaf pipeline will create 1720 jobs during peak construction. I would urge opposition members along the Sugarloaf pipeline to give a view to what they think of local communities who want to take away some of the 1720 jobs being created during construction at a time of

global uncertainty, where the opposition is calling for jobs, jobs and more jobs.

What we need in water infrastructure investment are long-term projects for the future of the state. I will not — because I know, President, you will rule me out — go through the long series of showing how the opposition is awash and all over the place on this issue, but what I will say is that we need swan dives, not belly flops! What we need is long-term and serious policy that delivers infrastructure to the state of Victoria and in the process delivers jobs for Victorians. So it is long-term policy and it is short-term benefit for the state of Victoria. This government stands on its record.

Ms Lovell — Short-sighted policies.

Mr LENDERS — Ms Lovell says, 'Short-sighted policies'. With the short-sighted policies of changing from opposing the pipe, supporting the pipe, using the water, not using the water — all within six days — it is no wonder Paul Austin said the opposition had gone from a swan dive to a belly flop of monumental proportions. But if the opposition is seriously proposing that it is not going to use a pipe that runs from one side of the state to the other — there is $750 million in infrastructure investment in it, let alone the consideration of what will happen to the citizens of Melbourne, who will ask for their $300 million investment back — it would blast a hole through the credibility of any financial policy the opposition uses. But most significantly we have put the difficult infrastructure projects on the table, we are delivering with them and they will deliver long-term benefit for the state of Victoria and short-term support for Victorians in jobs. It is a win-win situation, and I call on the opposition to endorse it — and not flip-flop, belly flop and not make up its mind.

The PRESIDENT — Order! The time for questions has concluded.

QUESTIONS ON NOTICE

Answers

Mr LENDERS (Treasurer) — I have answers to the following questions on notice: 2831, 2911, 3127.

ABORTION LAW REFORM BILL

Committee

Resumed from earlier this day; further discussion of clause 4 and Mrs Peulich's amendment:

1. Clause 4, line 4, omit "**24**" and insert "**14**".

The DEPUTY PRESIDENT — Order! I ask Mrs Peulich to continue in respect of her amendment 1 to clause 4. She was proceeding with an explanation of the details of that amendment.

Mrs PEULICH (South Eastern Metropolitan) — It is very difficult when these discussions are cut in half. Before question time I was attempting to espouse the fact that good public policy is founded in fact, not emotion. A lot of the time in this debate people have ascribed emotion to those who have opposed this bill. The support for 24 weeks can only be attributed to some sort of emotional grander vision, grander agenda or stronger pressure that has been exerted to pass this bill. If it were only grounded in fact, and in particular in the sort of relationship of fact, good policy and legislative framework that people like Mr Hall, Mr Philip Davis and others respect, this bill would look at establishing 14 weeks as the time line that allows abortions without kicking in the special provisions that are still available following further screening for foetal abnormalities. If my amendment were adopted I believe this legislation would be much more acceptable, not only to members of this house but also to the whole community.

We have heard people citing various polls that have been taken over time. I concur that people do want to see some access to abortion, but they do not want it to be unfettered, and they do not want it to be up to nine months. In a sense this bill pretty much allows abortions to occur up to nine months. Mr Jennings, the minister who is managing this bill in the upper house, said he would have liked to see a more collaborative and united approach to this legislation. This is an opportunity to adopt such an approach.

In seeking the views of other people on this bill — young men and young women, older men and older women and everyone in between — and citing polls conducted on ninemsn and the *Herald Sun* websites, it becomes apparent that many people do not support 24 weeks as the cut-off line. They believe terminating an unborn baby up to six months is too late. It does not mean that we are required, where there are abnormalities or specific reasons that endanger the health and wellbeing of the woman and child, to say that abortion is not available beyond that, but people believe a more realistic time line needs to be adopted. If

we look at the Victorian Law Reform Commission report, we see the realistic cut-off line would be 14 weeks for routine abortions. That is grounded in the fact that 95 per cent of all abortions occur within the first 13 weeks, and 4.7 per cent or thereabouts occur later. There are no grounds or rational reasons for the 24 week cut-off line having been adopted as a key feature of this bill.

As I mentioned earlier, if we put more money into effective and earlier screening, which is available to private patients and private hospitals, those choices could be made earlier than they currently are in our public hospitals, and that is more a reflection on the funding that has not been available. As I said, if government members are really committed to taking the community forward — and I think a lot of goodwill can emerge out of bipartisan support for some of these amendments — they ought to consider that this would be much more acceptable to the community. Twenty-four weeks is not acceptable. At the end of the day you may get a safe period far enough away from the next election to deal with this issue, but it is not going to go away. Up to six months is just too late to be allowing unborn babies to be routinely on-demand aborted, and I believe this amendment provides a much more workable solution.

Ms PENNICUIK (Southern Metropolitan) — I begin by saying that my colleagues Mr Barber and Ms Hartland and I will not be supporting this amendment basically for the reasons already outlined in responses to Mr Finn's amendment. I will not repeat those.

Mr Drum interjected.

Ms PENNICUIK — You are welcome, Mr Drum. But I will speak just briefly to the comments made by Mrs Peulich about evidence. The minister and I and others have pointed to the evidence that underpins the 24-week cut-off. It is not based on emotion; it is based on evidence. It is based on the evidence of clinical practice and what it is possible to know about catastrophic abnormalities with a foetus. The actual evidence is that it is not possible to know until after 14 weeks gestation.

Mrs Peulich also went to the point of saying that most people in the community do not support the 24-week cut-off. She has no evidence for making that assertion. In fact the majority of Australians support a woman's right to choose whether to have an abortion, and a subset of those supporters regard the right as capable of some limitation with restriction of choice based on factors such as gestational age and women's reasons for seeking the abortion. However, there is insufficient evidence to estimate the size of that subset. Mrs Peulich has no basis on which to make those remarks. I thought they were worth responding to so they were not left on the record as some sort of statement of fact — which they are not.

Mr JENNINGS (Minister for Environment and Climate Change) — This is an opportunity for me to respond because Mrs Peulich indicated that she wants to have evidence drawn to her attention and in fact maybe — —

Mrs Peulich interjected.

Mr JENNINGS — No, the interesting thing about who is ignoring what is that in my second-reading contribution and again in my answer to Mr Finn I talked about the importance of 24 weeks coming from two vantage points. One is as an appropriate time to measure the reliability and the evidence about the development of the foetus. At no point, as Mr Finn and Mrs Peulich and anybody else should know, have I ignored various milestones in the development of a foetus or what might be the appropriate time to measure the development, health and viability of a foetus during that time. The tests that are undertaken are one of the drivers of the 24-week benchmark here and clinical practice in Victoria and in Australia.

The other matter that I want to remind the chamber about is the evidence that has been compiled in a significant piece of research commissioned by the British government in 2007. The House of Commons Science and Technology Committee released its report entitled *Scientific Developments Relating to the Abortion Act 1967*, and I draw this report to the attention of members who say that no reference has been referred to or relied upon. One of the specific terms of reference for the inquiry, and one of the specific items of evidence that was compiled within that report which the government and I are particularly mindful of, is that there is significant statistical evaluation of the viability of a foetus born at different times of its development and the likelihood of success of survival from that birth depending upon the time frame.

Statistically 24 weeks is an extremely significant period. Notwithstanding that at various times in the debate it has been asserted that scientific and technical capability may enable a foetus to survive if it is actually born prior to 24 weeks gestation — and I do not dispute that — if you look at it in terms of statistical reliability and certainty, it is clear that the success of viability is dramatically increased from 24 weeks onwards. That is why it is a valid consideration in terms of determining

clinical practice and a benchmark used not only in England but within Victorian law.

Mrs PEULICH (South Eastern Metropolitan) — I would like to make a couple of points. The minister spoke about statistical evidence or reliability. As anyone who has done Statistics 101 would know, a very basic concept is a normal curve. If you look at where all those abortions are taking place and you put them across a normal curve, you see they are way before 13 weeks. Presumably the hump on a normal curve would be before that. If you have a look at the statistical evidence that is there, it quite clearly shows that — —

An honourable member interjected.

Mrs PEULICH — Yes, that is right. A normal curve. The small percentage of abortions being conducted after the 13 weeks would be in the tail end of the normal curve. I know the minister is a social worker, so perhaps statistics may not have been very high up on the — —

The DEPUTY PRESIDENT — Order! Those sorts of remarks are really not helpful for the debate and reflect poorly on another member.

Mrs PEULICH — No, they are not helpful. Yet again, this blind claim that this bill reflects existing clinical practice clearly is disputed by the fact — that is where those abortions are taking place. That is the fact.

The other thing that has been brought to my attention, which I mentioned yesterday in the debate, is that clinical practice changes. It is not a formula that is set in concrete forever. Clinical practice 20 years ago was very different to what it is today, and clinical practice will be very different in the future. Just going back and deviating for 2 seconds, that is why the Menhennitt ruling was a very effective tool, because it allowed for and took into account the fact that clinical practice may change over time.

Nonetheless, coming back to the point, the clinical practice clearly is that most abortions are performed at or way before 13 weeks. A regime still exists for screening to pick up abnormalities, and the issues that still need to be addressed can be addressed by the mechanism in the bill — deficient as that mechanism is. I believe an expert panel in a major hospital is the best form of dealing with that. All the minister has said is that two doctors are required, and only one of those needs to consult — hopefully they are not both in the same clinic. If this chamber agreed to the amendment to 14 weeks, it would not mean that abortions or terminations would be prohibited under circumstances where the mother's health or the child's health is a factor, but it would certainly deliver much greater acceptability of this reform and a much more bipartisan culture on this important and socially divisive piece of legislation, which is clearly not grounded in fact.

Mr FINN (Western Metropolitan) — I would just like to ask the minister a question, if he would be kind enough to answer it. Under this clause does a woman need to have an adverse test result to secure an abortion prior to 24 weeks?

Mr JENNINGS (Minister for Environment and Climate Change) — In sequence, I will answer Mr Finn's question after responding to the proposition about my understanding of statistics and the normal curve. If you took a normal curve of members of this chamber who could understand statistical analysis and who would be able to work out what standard deviation from that normal curve would be, I reckon there would be very few of us who would be able to walk out of the chamber, get our calculators and do it. I would be one of them. I am happy to respond to that challenge.

Beyond that, the most significant issue about the normal curve that Mrs Peulich referred to and the statistical analysis I relied upon is that we are talking about two different concepts.

Mrs Peulich — I know that, but I wanted — —

Mr JENNINGS — That is quite an admission, given that I was being fitted up to say something I did not say in the name of not being able to understand the statistics, which I think was a pretty poor — —

Mrs Peulich interjected.

The DEPUTY PRESIDENT — Order! The minister did not intervene in the remarks Mrs Peulich made, and he is now giving an explanation in direct response to those remarks. I ask that he be able to do that without assistance.

Mr JENNINGS — Just for absolute certainty and clarity, what I was talking about in terms of statistical analysis that is valid in this context and responds to the challenge relates to the viability of a foetus, once it is born, at various stages of its development. That statistical analysis, in relation to Mrs Peulich's purported normal curve, could not possibly apply in the way Mrs Peulich purported to apply it — to foetuses that were born at any stage prior to 24 weeks. That is statistically impossible for the result that the member describes.

Beyond that and in relation to the test that Mr Finn has asked me to comment on, the circumstances are not described in terms of what is relied upon. Within the

relationship between a woman who is seeking assistance, guidance and support in terms of the decision-making process for the procurement of an abortion, with the exception of describing a basket of evidence and circumstances that is being considered that would be subject to the relationship between the health provider and the woman, they are not specified in terms of the arrival of the clinical decision and the relationship between those two individuals.

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

Mr FINN (Western Metropolitan) — As I was about to say before the break, I want to make a quick and, I hope, salient point about the issue of viability, because viability is something that the minister and many other members keep coming back to on this amendment at many points throughout the bill. It would seem that in this debate viability is being used as a test of the humanity of the unborn child. Viability can never be used in that way. Viability is a test of our medical know-how and technology for keeping these children alive. For example, not long ago the point of viability would have been 30 weeks. That is purely because we did not have the know-how or the technology, as we do now, to keep children alive if they are born at 21 weeks or sometimes even 20 weeks. I want to make the point that viability has nothing to do with the child. Viability is about medicine's ability to keep the child alive. I am sure that if we tie the humanity of a child to viability we are going to see a ridiculous situation in 2008 where a human life might be thought to start at 21 weeks and in 10 or 15 years time it might be thought to start at 18 weeks, whereas 20 years ago it was thought to start at 30 weeks, so I want to caution the minister and the committee that we must be very much aware that viability has nothing to do with a child; it is about our ability to keep that child alive.

Committee divided on amendment:

Ayes, 12

Atkinson, Mr	Kavanagh, Mr
Drum, Mr (*Teller*)	Kronberg, Mrs (*Teller*)
Elasmar, Mr	Petrovich, Mrs
Finn, Mr	Peulich, Mrs
Guy, Mr	Somyurek, Mr
Hall, Mr	Vogels, Mr

Noes, 23

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

Amendment negatived.

The DEPUTY PRESIDENT — Order! As Mr Finn is not in the chamber, I am afraid his amendment 3 will lapse. It is a conscience vote; I am not able to have somebody else sponsor it on his behalf.

Mrs Peulich interjected.

The DEPUTY PRESIDENT — Order! I am not able to, because it is a conscience vote. This is not a party position. Mr Finn's amendment 3 lapses.

Mr Drum — On a point of order, Deputy President, am I allowed to move the motion in my name?

The DEPUTY PRESIDENT — Order! No. I have just indicated that Mr Finn is the one who has circulated the amendment, and he is not here to move it.

An honourable member interjected.

The DEPUTY PRESIDENT — Order! That is right, and Mrs Peulich is prepared to do that too, but the point is that it is a conscience vote and I cannot have other members taking up amendments at different times.

Mr Drum — Deputy President, would I not be allowed to move an amendment at any time at any stage?

The DEPUTY PRESIDENT — Order! I would have thought Mr Finn has had time to get back to the chamber, frankly, while the member has been on his feet. The reality is that I have made the ruling: the amendment will lapse because Mr Finn is not here to move it. I will proceed to the first amendment standing in Mr Theophanous's name.

An honourable member — Mr Finn is here.

The DEPUTY PRESIDENT — Order! In the spirit of goodwill and for the benefit of the committee I will allow Mr Finn to proceed, but that was difficult. I call on Mr Finn to move amendment 3 standing in his name in respect of clause 4.

Mr FINN (Western Metropolitan) — Thank you, Deputy President. I appreciate your consideration. I was given misinformation as to who was next. I move:

3. Clause 4, line 7, after "pregnant" insert "provided the abortion is performed in a public hospital".

This amendment very much goes to the core of the welfare of women. We have heard from day one that this is about what is good for women. That is what we are told by the proponents of the bill — that their entire concern is what is good for women. My belief is that if we are concerned about the welfare of women and that is our entire concern, we also have to take into consideration that abortions are major operations. They can be very major operations. When I hear stories of women who are haemorrhaging being placed in taxis and sent off to major hospitals by proprietors of abortion clinics because they do not want ambulances seen at their clinics, it seems to me that we have a major problem.

My belief is that surely public hospitals are the place where women are best looked after in this regard, so I have moved the amendment that abortions only be performed in a public hospital. This is all about what is good for women. This amendment is a real test of how serious the proponents of the bill are about the welfare of women. I think we will know after the vote is taken on this exactly what the motives are behind this bill, and I would ask all members to take that into consideration, that I am doing this purely because of what is best for women, and that surely is something that the committee should hold as something very important indeed.

The DEPUTY PRESIDENT — Order! Just to help the debate, I ask Mr Finn to define 'public hospital'. Is he saying that under his amendment a hospital such as Knox Private, which is not a public hospital, is not able to do this procedure?

Mr FINN — Yes, Deputy President, that is what I am saying.

The DEPUTY PRESIDENT — Order! I thank Mr Finn for clarifying that.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I want to make a point about this amendment, because I cannot support it. What has been said by Mr Finn is incorrect. This is not about supporting women at all. The way you support women is to give them a maximum number of options and choices.

Mr Finn interjected.

Hon. T. C. THEOPHANOUS — I am not going to agree with everything Mr Finn has put up, and I do not agree with this, because women need to have the options. I cannot support something which restricts access to health services for women to public hospitals only.

Ms PENNICUIK (Southern Metropolitan) — The Greens will not be supporting this amendment either for the same reasons that Mr Theophanous has outlined — that it reduces options for women.

I want to take up one assertion made by Mr Finn that somehow there were women coming out of private hospitals and having to go to public hospitals, for which he has no evidence whatsoever. It is a mere assertion.

Mr JENNINGS (Minister for Environment and Climate Change) — The point Ms Pennicuik raised is a very salient one because Mr Finn, in moving his amendment, asserted a whole range of things about the standard of clinical care, the provision of services and the availability of services, and he impugned the motives behind the government's intention to regulate this field now and into the future. It is very important to know that the government's perspective, which is certainly the position that I am representing today, is mindful of the regulatory regime that applies in the state of Victoria, and there are a comprehensive set of interconnected regulatory situations, administrative arrangements and accountability frameworks that support good clinical practice and good outcomes for women in this state. To assert anything else in the face of any evidence and to impugn motives is not the appropriate way to describe these issues.

As a starting point I want to outline what those accountability frameworks mean. Abortion services in public hospitals are regulated by the Health Services Act in Victoria, and within that framework they are responsible for establishing protocols, benchmarks and the way in which clinical practice should be undertaken. Private clinics are regulated by the Department of Human Services (DHS) under the Health Services (Private Hospitals and Day Procedure Centres) Regulations. These regulations cover a variety of things, including staffing levels, registers and record keeping, care and management of patients, complaint procedures, suitability and upkeep of premises and equipment, and infection control. DHS may include additional requirements for individual clinics as part of the conditions of licence.

In terms of the way in which accountability is ensured across this range of services through funding mechanisms and the contractual arrangements that are provided by DHS, there are conditions of compliance with relevant standards that apply to public agencies through the conditions of funding. In relation to private services there is a mirroring set of arrangements that they need to comply with under the Health Services (Private Hospitals and Day Procedure Centres) Regulations. There are denominational hospitals and other clinics with the types of services about which the Deputy President indicated he wanted some clarification as to whether they

were covered or not. It is pretty unclear from the assertion by Mr Finn whether or not many of these well-recognised and established organisations and services will fall outside his provisions.

Mandatory reporting by private providers and the handling of outcomes occur under the Health Services (Private Hospitals and Day Procedure Centres) Regulations of 2002, and we believe that is an appropriate way to cover that field. Beyond that, in terms of the individual practices of the health practitioners themselves, it is important to know that the health standard and the performance of the quality of care are subject to the appropriate Health Professions Registration Act, which comes under the scrutiny of the Medical Practitioners Board of Victoria, and that professional standards, including codes of ethics, apply under those circumstances. Any person who believes they have not received appropriate care always has a remedy through the health services commissioner in Victoria.

It is very important to understand that whilst the prime driver of this bill has been the need to decriminalise the procurement of an abortion so that there would be no crime under the Crimes Act for a woman in this circumstance, criminal sanctions will continue to exist for those practitioners who are unqualified and unregistered and who undertake an abortion. Medical practitioners under this provision who wish to supply the services that Mr Finn is concerned about have to comply with the various standards and obligations that apply under the Health Records Act, the Information Privacy Act, the commonwealth Privacy Act of 1988, the Medical Practitioners Board of Victoria, the Nurses Board of Victoria, the Psychologists Registration Board of Victoria, the Pharmacy Board of Victoria et cetera, and several bodies established under the Health Professions Registration Act to ensure that practising health professionals are registered, maintain professional standards and practise ethically and competently.

These boards receive complaints about the health and wellbeing, the ability to practise and the conduct and performance of health practitioners. As any member of the committee would understand, there is a comprehensive set of regulatory environments that deal with the quality of service at the clinic level and at the practitioner level, as I have described, under existing statute and regulation in Victoria. The government is very confident of that framework in terms of covering the field, and sees no reason to support Mr Finn's amendment.

Mr FINN (Western Metropolitan) — I make the point once again that this amendment is for the welfare of women first and foremost. The argument has been put over the years that having an abortion is on much the same scale as getting a tooth out. This is something we have to overcome. We have to accept that it is an operation which has, even according to the Planned Parenthood of Australia informed consent form, significant and sizeable dangers for the woman involved. It is best if these operations are confined to public hospitals which can best handle anything that may go wrong. I urge the committee to support the amendment.

Ms PENNICUIK (Southern Metropolitan) — I challenge what Mr Finn has just said. It is not the case that abortion is a dangerous procedure; it is a safe procedure except in very rare circumstances where the woman already has complications and health issues.

Committee divided on amendment:

Ayes, 7

Drum, Mr	Kavanagh, Mr
Elasmar, Mr (*Teller*)	Kronberg, Mrs
Finn, Mr	Somyurek, Mr (*Teller*)
Guy, Mr	

Noes, 25

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

Amendment negatived.

The DEPUTY PRESIDENT — Order! I call on Mr Theophanous to move his amendment 1 in respect of clause 4, which is a test for his amendment 2.

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

1. Clause 4, after line 7, insert —

"(2) Subsection (1) does not apply to permit an abortion on a woman who is more than 20 weeks pregnant if the abortion is primarily because of the woman's own social or psychological circumstances.".

I want to make some points in moving this amendment. First of all, I would like to try to carefully explain to members the effect of this amendment, because there may be some who do not quite understand how it would operate. I heard Mrs Coote say earlier that in

relation to abortions conducted between 20 and 24 weeks for other reasons, there were approximately the same number — I cannot remember the exact numbers, but roughly 150 or slightly more — conducted for social and psychological reasons, so let us say that roughly half the abortions that are conducted between 20 and 24 weeks are for social or psychological reasons. My amendment relates only to those abortions that are carried out for social and psychological reasons.

I noted that Minister Jennings talked about the time needed to detect foetal abnormalities, the fact that between 20 and 24 weeks critical tests are made and the fact that that these tests include looking at what kind of quality of life the foetus would have, including the foetus's chances of survival, given what might be significant medical issues. He argued, I think convincingly, that 24 weeks was the appropriate cut-off point for those kinds of situations. I agree with that, but my amendment does not change that; it does not change that at all. What it does is bring back to 20 weeks the limit only on those abortions which involve a healthy foetus where the abortion is being proposed due to social or psychological factors. If the main argument that was put by the minister for 24 weeks is that a significant amount of the testing for foetal abnormality can only occur between 20 and 24 weeks, my amendment does not change that; it makes no difference to that. But, as I have indicated, at least half and possibly more of the abortions that take place at this stage are due to social or psychological circumstances.

This amendment would bring the limit for this element back to 20 weeks. Whilst I think the amendment will probably be lost, I think it is going to be lost for the wrong reasons, because I know that there are some people who feel some issues may arise through sending the legislation back to the lower house and reopening another series of debates there arising out of that action.

I assure those people that if the legislation actually goes back, even with one amendment, it is only that amendment which will be deliberated on in the lower house; it will only be that one amendment that will be considered. That action will not reopen the entire debate on abortion in the lower house.

I think it is very important for people to understand that, and to make a judgement on whether the amendments that are being proposed and this amendment in particular — which is a very slight adjustment, a moderation — is worth the additional trouble of sending a piece of legislation back for it to be accepted. I do not believe people who support the legislation are going to go to the wall on this amendment in the lower house either. I think people will take the view that it is a fairly sensible amendment. The main issue relating to 24 weeks is preserved, because where there are foetal abnormalities, or those kinds of issues, abortions will continue to be able to be done with a single doctor right up to 24 weeks.

I want members to think about this amendment. Why would you want to bring back from 24 weeks to 20 weeks the limit on social and psychological-factor abortions? That is an important question to consider in making up one's mind on this. I thought very carefully about why you would want to bring it back to that point. In the end it is for the same reason that there is a 24-week point in the legislation. The reason there is a 24-week point and why model C was not adopted is that people think that somehow at around 24 weeks the foetus has viability. That can be the only reason for choosing 24 weeks. I cannot see any other reason for saying, 'After 24 weeks we have some kind of a point'. It could be because all of the tests have been finished at 24 weeks. I suppose that is an argument as well, but my amendment does not affect that in any case. What I am hopefully getting across to some people is that this amendment would significantly improve the legislation.

I want to say also, because I have been asked before about moving amendments, that I am not one of those who would move a series of amendments — in this case, four substantive ones — seek to have this committee agree to those amendments, and then, when and if the committee actually did agree to the amendments, proceed to vote against the legislation. I would not do that. I would vote for the legislation because my amendments were considered appropriately by the committee and it agreed to my amendments. At least from my point of view — I do not know about any of the other people moving amendments, but I want to put it on the record now — I can assure the committee that I would vote for the legislation in the event that my amendments were successful.

They are very moderate amendments which seek to improve the legislation. They are not based on trying to stop abortion per se. As I have said, I support decriminalisation of abortion; I support providing women with a range of choices in both private and public hospitals. But I also support one other thing, and that is women being given adequate support. I am not doing this from the point of view that I do not think women have the capacity to make up their own minds. They do. All the women I know are very smart; most of them are smarter than me. They can make up their own minds. But all of us are in situations sometimes where we need help. I certainly have been in those situations. It might not be about abortion, it can be about other things that you face in your life, and the responsibility

of the rest of society is to provide access to that help and support.

I am sure people will say that that access is already available if the woman requests it. What I would suggest is that a woman who is in a desperate situation and in circumstances where she is 20 weeks pregnant, or even up to 24 weeks, is carrying a viable, healthy foetus and is consulting a single doctor should get more than just that single doctor to talk to her. I hope, irrespective of whether my amendment gets through, that those services are available to women so that they can get that kind of help. It is incumbent on members and the rest of the community to make sure that help is available.

What I am suggesting — and it will come up in my second amendment before the committee — is that if we are going to do this and talk about abortions which are based on social and psychological circumstances, if we think that is the reason, surely we need a professional who is related to those reasons to give that support to women.

I am moving this amendment because I think that 20 weeks, for those situations, is a reasonable time frame. It is also because of the nature of that kind of request for an abortion. Where there is a viable, healthy foetus being carried, the woman should have a higher level of support than a single doctor.

Mr HALL (Eastern Victoria) — I rise to support this amendment. During the course of my second-reading speech some three days ago I flagged some concern with the 24-week period which divided the two-stage approach to the regulation of abortion in Victoria, and I questioned that 24-week period.

Previous amendments and now this one have provided us with a choice of making that period 12 weeks, 14 weeks or 20 weeks. Some good, solid arguments could be made for each of those. We have seen those arguments presented by Mr Finn and by Mrs Peulich in respect of the 12 weeks and the 14 weeks. In response to some of the issues I raised in the second-reading speech, I appreciate the minister's explanation of the government's reason for choosing that 24-week period. He elaborated on some of the comments the minister made in the second-reading speech that was made here a couple of weeks ago.

As I said, you could make an argument for any one of those periods — 12 weeks, 14 weeks, 20 weeks or 24 weeks. Twenty weeks is a halfway period of the duration of a pregnancy. It was interesting the minister himself in the second-reading speech quoted the figures around the 20-week period and informed us in that speech that 99.3 per cent of abortions performed in Victoria occur before that 20-week period. Only 0.7 per cent of abortions are performed after that 20-week period. The minister himself has chosen to give us 20 weeks as a figure for further statistics around this argument.

My understanding also is that a foetus aborted after that 20-week period is required by the coroner to have a death certificate. All I am saying in mentioning those is that there are reasons why one could validly argue for 20 weeks, 24 weeks, 14 weeks or 12 weeks.

One of the main criticisms that came back from my constituency about this bill was their uneasiness with the 24-week period. They felt that it should be 20 weeks, and one person even suggested the lower figure of 16 weeks. I am convinced that my electorate and I would feel far more comfortable if that 24 weeks were moved to a 20-week period. That is why I am strongly supporting this amendment.

The DEPUTY PRESIDENT — Order! I point out to the committee that a number of members spoke on the previous two amendments in regard of 12 weeks and 14 weeks. Most of the comments they made in respect of those matters, including most of the comments the minister made in respect of those two amendments, also apply at least in part to the amendment moved now by Mr Theophanous. I do not wish to retread that ground in terms of further remarks that are made, and I appreciate that Mr Hall did not.

Mr DRUM (Northern Victoria) — I, too, have been holding back on this issue until we got to Mr Theophanous's amendment due to the fact that I would like the minister to touch on the issue that I raised in the second-reading speech in relation to the status of life post 20 weeks. It seems that in Victoria the law is not overly clear on what the status of a foetus is up until that 20 weeks. Once the pregnancy reaches that 20 weeks it is crystal clear that that foetus is afforded the status of a human being. Any destruction to that foetus is a criminal offence. Should that foetus die from natural causes it needs a death certificate and it needs a proper burial. Mothers would receive a maternal payment. In effect we have in Victoria a non-ambivalent, hard and cold fact that this state regards those babies as human beings.

Mr Theophanous's amendment splits the regulation of abortions between those foetuses with abnormalities and serious defects and so forth from the perfectly healthy babies that simply have a mother who has social and psychiatric issues. Therefore I would like the minister to clarify how the government can in one

instance afford the unborn child full status as a human being and then, in another breath, not afford that unborn child that same status.

Mr JENNINGS (Minister for Environment and Climate Change) — I thank members of the committee for the consideration of the issues that have outlined their contributions and their concerns about these matters. As Mr Hall has indicated, in terms of how people will act in relation to this amendment, I understand they will vote in accordance with what sits comfortably within their appreciation of the breadth of issues. I take that as a fundamental building block of what we are engaging in here today. If neither other speakers nor I mount a compelling case in relation to the 24-week proposition and that is where Mr Hall has arrived at, that is a matter for him, as is his right; so I understand that.

I appreciate the point that Mr Theophanous made in support of his amendment. I thank him for being, so far, the only proponent of an amendment who has indicated that if in fact his amendment were successful, he would support the third reading of the bill, which I think is a very different position from the level of understanding that we have reached so far. It may be something on which other members may not be able to give an undertaking, but I appreciate the fact that he has.

I also think Mr Theophanous has tried to call on the appropriate evidence that I have actually brought to bear in relation to the importance of 24 weeks, which is a building block of the structure of this piece of legislation and the way in which the regulation would work in this state. He acknowledges, in fact, the medical evidence on which I have relied in terms of the cumulation of the health and wellbeing of the foetus that has been derived from the examination; and also, very importantly, he has actually not disputed the statistical evidence that I have called upon in relation to the viability of the foetus if it was born from 24 weeks onwards, in terms of being statistically significant. I appreciate that.

He invites, and in fact Mr Drum invites me also, to comment on their concerns about why there are what they perceive as inconsistencies or openings for a different outcome for this aspect of the bill in terms of the 20 weeks. I can say first of all to Mr Drum in relation to his proposition about the rights that are afforded children in the state of Victoria in terms of the consistency with other legislative frameworks: that consistency derives from rights that accrue to babies who are born and then their lives from that moment. In fact that unites the pieces of legislation in this state. But whether that be in terms of applications of the Charter of Human Rights and Responsibilities, whether it relates to property rights or whether it relates to remedy for serious injury, that derives from the fact that a child is born.

The apparent anomaly that Mr Drum draws attention to is the circumstance by which under the registration of births, deaths and marriages — which is derived for a different purpose — a stillbirth is recorded on that register from 20 weeks. That is on the basis of historical precedents that deal with that particular circumstance, and the registration of stillbirth from 20 weeks is the only element of inconsistency with the model that is otherwise in alignment with the statutes in Victoria.

On the last issue, which goes to the heart of his amendment in a sense, Mr Theophanous invites me to comment on and to ascribe a different regime that applies from 20 weeks in the circumstances where the primary reasons for the provision or the consideration of an abortion service are a woman's own social and psychological circumstances.

There are a couple of reasons why the government and I have the view that this would narrow and perhaps be intrusive in the duty of care relationship between a health provider and the woman in question; this issue could be read down to a narrow understanding of what the woman's own social and psychological circumstances might be, because in the context of the relationships that the woman is party to and engaged in, that may vary significantly. So that is significant in its own right.

For instance — and I do not necessarily want to amplify this issue — the pregnancy may be because of a sexual assault or a rape, and that may be a palpable reason that has led to the consideration of the social or psychological consequences of the pregnancy. It is important that we actually understand and be mindful of the fact we are talking about issues which may have great moment and a lasting significance on the life of the woman in question.

I also think we have to be mindful of the derivation of the word 'primarily'. The limiting factor in the relationship between the professional health care provider and the woman in question may primarily be overly prescriptive. It may be a narrow cast, the consideration that they may be undertaking in the relationship between the provider and the woman in question. It is the government's view in this legislation that all of the circumstances have to be considered in their totality to provide the appropriate advice and actions that come from it.

This is an issue that has not been discussed up until now. I have not gone into the area of the relative merits or the isolation of elements that might be within the total circumstances. But the construction of this bill — the mindset that underpins it, the philosophy that underpins it and the guidance that it gives practitioners — is that they should be mindful of all of the circumstances. That means the government and I would be very uncomfortable with the notion of applying a limit to primarily social and psychological circumstances.

Mr DRUM (Northern Victoria) — I just have a few issues that the minister touched on: did the minister say there is an inconsistency in relation to what happens between a miscarriage and an abortion of a 20-week-old foetus? Did the minister acknowledge that that is an inconsistency in the law? Is that what the minister said?

The DEPUTY PRESIDENT — Order! The minister said that stillbirths are recorded at 20 weeks. To that extent there is an inconsistency between that recording process and this legislation, but in all other respects this legislation is consistent with other legislation.

Mr DRUM — I also want to check on the minister's wording around the rights that are afforded to an unborn child in the instance of an attack. The minister says that the rights are only afforded to the baby once he or she is born, but surely the crime is not against the woman in this context. If there is a crime perpetrated on a pregnant lady in this context, the crime is against the child — the crime is child destruction. Surely that means the unborn child has those rights?

Mr JENNINGS (Minister for Environment and Climate Change) — We are effectively going back to clause 1 in relation to this matter, because in relation to that clause, there has been an addition to 'serious injury' provisions within the Crimes Act, which cover foetal destruction as a specific crime under that act. Mr Drum's question is half right, from my understanding of it. It is half right in that foetal destruction is now incorporated within the Crimes Act and is a stand-alone crime. In relation to the serious injury provision, under the existing circumstances within that act and within case law across this jurisdiction and others, it is well recognised that any rights that are ascribed to the form of serious injury that has been caused to the foetus, accrue to the child once the child is born and the test that applies to its wellbeing from the time of its birth.

Mr DRUM (Northern Victoria) — Another aspect the minister mentioned in his last explanation — —

The DEPUTY PRESIDENT — Order! I ask Mr Finn to leave the chamber. I am not ordering him out; I am simply saying that if he is going to talk on the phone, he should do that outside the chamber.

Mr Finn — I am not speaking on the phone, I am listening to a message.

The DEPUTY PRESIDENT — Order! I do not care whether the member is speaking or not. The fact is it is discourteous to the house. If members want to listen to their telephones or their iPods or anything else, I ask them to do so outside the chamber.

Mr DRUM — In his last explanation the minister mentioned that an example which may force his government to not allow Mr Theophanous's amendment in relation to abortion post 20 weeks and up to 24 weeks is the concept of a potential victim of a rape. We are talking about a healthy child who is the product of a rape. In that instance would the lady not know for the first 20 weeks of the pregnancy that she had been raped and have ample opportunity to make that decision prior to the 20 weeks and up to that 24-week period, as opposed to that being a valid reason for someone making a decision in that five-month period after the event?

The DEPUTY PRESIDENT — Order! Could Mr Drum repeat the last part of the question he asked? The minister was engaged in receiving information.

Mr DRUM — The minister said one of the reasons he will not allow Mr Theophanous's amendment to proceed is the concept of the victim of a rape. Mr Theophanous's amendment goes solely to that 20 to 24-week bracket. Surely the minister's argument cannot stack up when you think that a woman has known for five months that rape is the genesis of her problem. I cannot understand how the minister's argument can stack up and how that can be a valid reason for a woman making a decision at 24 weeks and not 20 weeks when the whole thing started with a rape.

Mr JENNINGS (Minister for Environment and Climate Change) — I can understand, firstly, why Mr Drum might take my answer in a literal fashion and, secondly, how he has concertinaed a number of concepts together to come to that construction. I can understand how he arrived at that construction but that is not the construction I put in answer to Mr Theophanous. I described two things. I described the factors that may underpin the social and psychological conditions that may lead to such a

decision. I wanted to give an example of how profound they might be rather than just being whimsical notions. I drew attention to that.

I also wanted to draw attention to a potential narrow casting of Mr Theophanous's amendment. The phrase 'the woman's own social or psychological circumstances' may prevent an appraisal of the circumstances she finds herself in.

Maybe she has a vantage point in those circumstances, as part of a series of relationships that form a social and psychological network, but in fact it may well be that the nature of the relationship with somebody who may have imposed themselves or asserted themselves inappropriately upon a woman's life is the driver of the psychological and social drama and the situation that she is in, rather than her own condition. That is very important to understand and it could broaden the concept.

The last issue that is important is the notion of 'primarily'. It works for a relationship between the health provider, the practitioner, and the woman in question in this circumstance. The government has created the legislative framework that says there needs to be a well-rounded appraisal of all the situations, all the circumstances that are relevant to this decision and the advice the health provider provides.
Mr Theophanous's position could potentially narrowcast this by giving primary status to one element as distinct from its role within the broader circumstance. That is why I gave some examples of how that may work in practice.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I want to say a couple of things. First of all, with respect to the Minister for Environment and Climate Change at the table, this is a bit of a furphy. Already it is the case that these statistics are gathered. I have referred to them before, and Mrs Coote has referred to them. The statistics are gathered as to the primary cause or reason for abortions. That is how we create those statistics. That is how we know that there were 150 in one category that involved medical and other types of issues and another 150 which involved social and psychological reasons. There is no secret or difficulty in understanding the category in which each of these abortions is conducted. I think it is not appropriate to pull out the notion that it is the woman's own social and psychological circumstances that are involved: I do not know who else's psychological and social circumstances we are talking about here!

I do not understand at all the argument of the minister if he is talking about the social and psychological circumstances of the rapist. I would have thought that had absolutely nothing to do with this issue; this is all about the woman. I did not even get why there is a difficulty in the measurement or in understanding by health professionals that the primary reason for the request for an abortion is a social and psychological one relating to the woman. I do not think there is any difficulty with that at all.

A significant point that was made, incidentally, by the minister was that it could be rape; it could be incest; it could be a whole range of those very difficult areas. I do not disagree with the view that in those difficult social or psychological circumstances it may well not come to light until after 20 weeks. I accept that. I am not arguing about that prospect; it is possible that the woman for one reason or another does not make it clear before the 20 weeks.

But the amendment is seeking to provide the woman with the maximum level of support in those circumstances — which would include the involvement of a psychologist and a psychiatrist. I do not know — and the minister might usefully help in the debate by telling me what happens after 20 weeks — whether, in circumstances where there is a significant social and psychological issue, the woman will be offered assistance by a qualified psychologist, psychiatrist, social worker and so on as a matter of course, and whether that will, for example, be in the licensing conditions of the various agencies that will be licensed to carry out these abortions. That would at least go some way to addressing the issues which I am trying to address about how women get help and support in the dire circumstances that we are talking about, rather than be talking about whether the use of the word 'own' in the amendment narrows the amendment somehow to only the woman. I just do not think that is the central point, but I would be interested in what the minister has to say about licensing arrangements and services being provided to women.

Mrs PEULICH (South Eastern Metropolitan) — I presented in my arguments earlier why I thought the 14-week line was appropriate, because it captured the greatest number of abortions within that. But we have moved on. I am trying to understand the imperatives that the government is operating on and whether indeed it is motivated by this notion that somehow it is to do with the viability of a foetus. Of course we know that that is subject to the changing medical practice and scientific advancements which will probably bring viability forward rather than back. But I am also trying to understand whether this may be more motivated by

the pressure from the medical fraternity to provide doctors with greater legal protection.

I have a question of the minister relating to the time line of 20 or 24 weeks. Clearly the government seems to be hell-bent on maintaining the 24 weeks; although the mention of 20 weeks in this amendment is an improvement. If a doctor performed an abortion on a woman whose pregnancy was of more than the allowable number of weeks, or in stage 1 of this two-tiered concept, after unreasonably having formed the belief that an abortion was appropriate in the circumstance — that is, that there was no reasonable belief, and it is obviously a legal concept — I am interested in knowing whether the doctor may be liable to prosecution under one of the 'causing serious injury' offences in the Crimes Act and as a result of the extended meaning of 'serious injury' introduced into the act by this bill.

Ms PENNICUIK (Southern Metropolitan) — The Greens will not be supporting this amendment to clause 4. The substance of the amendment, if it is looked at blandly as it is now, basically says that under clause 4 a registered practitioner would not perform an abortion on a woman who is more than 20 weeks pregnant if she has psychosocial reasons for wanting that abortion. I presume it is supposed to work in with the following amendment to clause 5.

Mr Theophanous, in his opening remarks, talked about that 24 weeks being about abnormalities. But what the 24 weeks brings into play is that a woman loses control of making that decision and she has to have the imprimatur of two doctors to make that decision. In effect this amendment would lower that, in the case of a woman's psychosocial circumstances, to 20 weeks. So it takes away her decision-making power between 20 and 24 weeks and involves two other people in that decision.

Personally, I have a big problem with that because it harks back to an issue that women have been fighting for years and decades. I would even go so far as to say that there is a patronising attitude towards women who present and request an abortion for psychosocial reasons, and that whatever those psychosocial reasons are, they are somehow not as valid as health reasons. That is where I am very uncomfortable with this amendment. Mr Theophanous has talked very much about bringing in psychiatrists and psychologists to help the woman who obviously has a psychological problem.

As I said, I see a whole history of subjecting and controlling women as underlying this. There is no reason whatsoever why psychosocial reasons cannot be just as serious as or entangled with health reasons. The minister talked about rape. There are other worse things: incest, pack rape. People will be denying and hiding that they are pregnant. What Mr Drum said, with all due respect to him, just shows that he has not put himself into the shoes of somebody in that position. I will not be supporting the amendment. My colleagues will not be supporting the amendment. There is no reason to be lowering the threshold and introducing other people into the decision-making process.

The DEPUTY PRESIDENT — Order! If there are no further contributions, I ask the minister to answer essentially two key questions. One was from Mr Theophanous in relation to licensing regimes that might apply, and I think the minister is across that question. The other question was from Mrs Peulich in regard to legal protection or the legal situation that might apply where a doctor might be at risk of being sued in the event where he completed an abortion based on a diagnosis that was later held to be a questionable diagnosis or a misjudgement.

Mrs Peulich — Unreasonably based.

The DEPUTY PRESIDENT — Order! An unreasonably based judgement. The question is whether or not the government's position in developing this clause is partly premised on the legal status aspects that we have just outlined.

Mr JENNINGS (Minister for Environment and Climate Change) — Let me deal with that. Through Mrs Peulich's assistance in encapsulating the question and reminding the committee of it, she volunteered the very important phrase which is what the practitioner 'reasonably believes'. In relation to the existing regulations and codes and compliance issues for health professionals in Victoria which I outlined at length previously, part of those arrangements is that in circumstances where there may be accusations of malpractice or inappropriate practice — they are beyond the health services commissioner, who has his own jurisdiction — there are considerations by the Medical Practitioners Board, which is charged under the Health Regulations Act with dispensing standards across the sector and can review the performance and the practice issues of practitioners in Victoria.

In relation to practitioners whose actions may be called into question in accordance with the types of scenario that Mrs Peulich has indicated, they would have to satisfy the board, to retain their ongoing registration, that they acted on the basis of applying the reasonable belief test. That is how that would work in practice.

In terms of the issues that Mr Theophanous has raised, it has not been my intention to take us off on a tangent. I am very mindful of trying to do this appropriately to account for the difference between what might be the government's position and the position that he may prefer through his amendment.

In terms of matters of law and interpretation, I think it is appropriate for us to understand that quite often these things hinge upon what might seem to be abstract and quite semantic points, but they can become issues of law. From my vantage point it is important for us to acquit them.

In terms of the duty of care issues in relation to providing quality services — whether it be counselling or information services — a clear obligation and expectation has been established already within the various codes of practice and legislation that occur in Victoria. There is a well-established practice in terms of informed consent and what that might mean, and there is an expectation by government that information should be available about any relevant issues relating to medical care, after care and ancillary care, and all the consequences of actions, procedures and support services. Whether they are furnished by a specific profession is an issue that Mr Theophanous will later test in one of his amendments.

At the moment the government does not require that that be professionally based, but it is a requirement that it occurs in a variety of ways. The most formal way that occurs is in the licensing arrangement that applies to a private clinic in Victoria. I believe there is a fair chance that Mr Theophanous actually knows about the provisions of that registration placed on that clinic by the health minister from October 2006, and the clinic would be expected to comply with them today in relation to the provision of counselling and other advice which is specified in terms of that licence. If he wishes, I can provide him with a list of those things. They are in place. Beyond that there is the expectation that advice and information are the hallmark of the duty of care relationship between the health provider and the woman in question.

Mrs PEULICH (South Eastern Metropolitan) — Does the reasonable belief test apply only to the doctor performing the abortion, or does it apply to the two doctors who are required in stage 2? Given that under the bill one of them is not required to consult, how would that reasonable belief be formed? And is the minister able to comment on or say whether, by having it set at 24 weeks, there is less protection for women because there is a lesser period under which the reasonable belief test is used to apply to the abortions that are performed in Victoria?

Mr JENNINGS (Minister for Environment and Climate Change) — I would think that the answer to the member's first question is that the notion of potential malpractice at any level would apply to anybody within the chain. I think that under most circumstances it would occur in relation to the person who undertakes the abortion, so I would have thought that would be the most likely entry point to consideration of these issues. But in relation to the quality of the consideration and the justification of those opinions, I believe both would be tested through the appropriate registration mechanisms.

The DEPUTY PRESIDENT — Order! I propose to put amendment 1 moved by Mr Theophanous, which I regard as being a test for his amendment 2.

Committee divided on amendment:

Ayes, 17

Atkinson, Mr	Kronberg, Mrs
Dalla-Riva, Mr	Petrovich, Mrs
Drum, Mr	Peulich, Mrs
Elasmar, Mr	Rich-Phillips, Mr
Finn, Mr	Smith, Mr
Guy, Mr	Somyurek, Mr
Hall, Mr (*Teller*)	Theophanous, Mr
Kavanagh, Mr	Vogels, Mr
Koch, Mr (*Teller*)	

Noes, 21

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

Amendment negatived.

Committee divided on clause:

Ayes, 24

Atkinson, Mr	Leane, Mr
Barber, Mr	Lovell, Ms
Broad, Ms	Madden, Mr
Coote, Mrs	Mikakos, Ms
Darveniza, Ms	Pakula, Mr
Davis, Mr D.	Pennicuik, Ms
Davis, Mr P.	Pulford, Ms
Eideh, Mr	Scheffer, Mr
Hall, Mr	Tee, Mr
Hartland, Ms (*Teller*)	Thornley, Mr
Jennings, Mr	Tierney, Ms (*Teller*)
Koch, Mr	Viney, Mr

Noes, 10

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

Clause agreed to.

The DEPUTY PRESIDENT — Order! I confirm that Mr Finn has indicated to me — and I have just clarified this with him for the sake of the committee — that he has decided not to proceed with his amendments 4 and 5, which he feels are consequent on previous amendments that he moved. I understand Mrs Peulich is not proceeding with her remaining amendments 3 and 4 because they were also contingent upon her earlier propositions. I am also of the view that Mr Theophanous's amendment 2 has already been tested, so we will not proceed with that.

Clause 5

Mr FINN (Western Metropolitan) — I move:

6. Clause 5, line 16, after "practitioner" insert "who must not be employed in the same medical practice or at the same hospital or clinic as the first-mentioned medical practitioner and".

This amendment is a real test of this legislation because we are told that the 24-week cut-off actually means something, and from that point, the opinion of two doctors is necessary for an abortion to occur. It is my very great concern that we are going to see very quickly established a system whereby private clinics in particular will have two doctors working at a clinic that will approve women without too much scrutiny at all — in fact without any scrutiny. They will rubber stamp approvals, and the clinic will become an abortion conveyor belt whereby a woman goes in and says, 'I want an abortion', the doctor stamps the form, and the abortion takes place.

An honourable member interjected.

Mr FINN — From reading the legislation I would imagine that is not its intention. If, however, this amendment is defeated, clearly that is the intention of the legislation. If the amendment is defeated, I think it backs up the view of many that this is all about abortion on demand up until birth — 40 weeks. I do not think there is any doubt about that at all; I do not think anybody can dispute it. That is what we are voting on here.

If we vote against this amendment, we will be voting for abortion on demand right up until birth because we will have a scenario where this loophole in the law will allow two doctors working together to move women through, as we have seen in a number of abortion facilities under the Menhennitt ruling over many years.

I ask members to consider this very seriously. As I said, this is a big test of the legislation, and I ask members to give the amendment their approval.

Ms PENNICUIK (Southern Metropolitan) — The Greens will not be supporting this amendment basically for two reasons: firstly, because this decision is best left to clinical practice; and secondly, because it just adds another hurdle in terms of women's access to care whereby they would have to attend two venues to get assistance. For those reasons we will not be supporting the amendment.

Mr JENNINGS (Minister for Environment and Climate Change) — For quickness let me confirm that the two valid reasons Ms Pennicuik outlined underpin the position I will be supporting and which the government believes.

Beyond that, Mrs Peulich asked me a question previously about the standards and expectations required of health practitioners to make sure they maintain a good quality of care in order to satisfy their duty of care. Their obligation to satisfy their ongoing registration as health practitioners depends upon their ability to continue to demonstrate that they have acted in accordance with the obligations they have under the code and which have been established through their registration. That would be an additional argument that the government would rely on to say that we should not prevent the provision applying in a way that Mr Finn is trying to restrict.

Mrs PEULICH (South Eastern Metropolitan) — Actually the minister was in part putting words into my mouth.

Mr Jennings interjected.

Mrs PEULICH — It was to dispel the myth that this reform decriminalises abortion because it makes it quite clear that potentially the Crimes Act can still be invoked under certain conditions. That was the real intent, but I thank the minister very much for speaking on my behalf.

Mr DRUM (Northern Victoria) — I ask the minister for an opinion on the appropriateness of medical practitioners having a financial interest in this procedure and the appropriateness of a woman with a psychosocial problem seeing two practitioners who may have a financial interest in the advice they give, as

opposed to what I understand to be the current practice, where an independent panel judges what is best for the woman without having any financial interest in offering their advice.

Mr JENNINGS (Minister for Environment and Climate Change) — I welcome Mr Drum's question. It is a fine question to ask what confidence we can have about the very issue he has raised. We have to think of why, in October 2006, the Minister for Health applied certain requirements of registration on a private clinic in Victoria. In public policy terms, ultimately it was for the reasons that he has distributed — that is, the government believed an additional framework was appropriate to validate and provide for the appropriate dissemination and engagement of relevant information and advice and to provide some rigour around that, and in part to mitigate the potential of profit that may be driving that clinic. In part that has been addressed in public policy terms.

Beyond that, more broadly, he has also satisfied some examples of how the public system has grappled with this issue. The hospitals themselves have determined a mechanism to provide for certainty and confidence beyond the scope of one practitioner for the very reason that he has outlined.

Mr DRUM (Northern Victoria) — Can the minister build on the concept of the issue having been addressed through public policy? I do not quite understand how that gives me any comfort in passing this law here today. Is the minister telling me that it has been addressed in public policy? Is that what he said?

Mr JENNINGS (Minister for Environment and Climate Change) — Yes. It is covered in the public policy that underpins the registration requirements that are provided in the state of Victoria for private clinics. I was addressing specifically Mr Drum's proposition to me that there need to be public policy considerations, either through statute or through some regulatory environment, that give Mr Drum and other members of the community confidence that the advice is on the basis of duty-of-care obligations and the professional standards that would be expected of those providing advice and support in circumstances where a woman comes to a clinic. Those are the public policy reasons than underpin the conditions of the licence that were determined as long ago as October 2006 in relation to the practice in Croydon.

Mrs PEULICH (South Eastern Metropolitan) — I would imagine that one of the motives for Mr Finn's amendment is to make sure, as the minister intimated, that people do not collude for convenience and commercial gain and cut corners on the requirement for both — according to the minister's response — medical opinions to form the reasonable belief that a later term abortion is required. But in addition to that, can the minister confirm that provisions remain under the Crimes Act relating to section 16, 'causing serious injury intentionally', and section 17, 'causing serious injury recklessly', as well as section 24, 'negligently causing serious injury', which may apply if an abortion were performed without practitioners meeting the reasonable belief test?

Mr JENNINGS (Minister for Environment and Climate Change) — Technically that is the most challenging question I have been asked today — and a good one — and my answer to that question will be that it relies on the chain that we have already established in terms of the consideration of professional standards and the reasonable belief test.

In the first instance, that chain may lead to provisions of the Crimes Act being invoked and whether in fact there possibly consideration of whether professional standards are being complied with in relation to the assessment of the appropriate registration mechanism and the consideration of the Medical Practices Board. If the practitioners in question fall foul of that test either on its own right or in conjunction with a lack of consent in relation to this matter, it could ultimately end up in terms of its invoking the provisions of the Crimes Act.

Mrs PEULICH (South Eastern Metropolitan) — Therefore we could confirm that this bill in total does not fully decriminalise all the possibilities under the act?

Mr JENNINGS (Minister for Environment and Climate Change) — I volunteered that earlier in my contribution by indicating that the primary driver in terms of the decriminalisation element of this bill is to decriminalise the crime against the woman who procures an abortion. That is what has been deleted from the Crimes Act. The provisions of the Crimes Act relate to unqualified unregistered behaviour or the provision of an abortion by someone who is not registered and complying with professional standards in the circumstances that the member outlined.

Mr VOGELS (Western Victoria) — If, for example, one month before a baby is born a woman's psychological or social circumstances have changed and she wants an abortion, can the minister outline what the guidelines are to determine the term 'social circumstances'? Is it just a case of her saying, for example, 'My partner has left' or 'I have changed my mind'? What are the criteria for social circumstances?

Mr JENNINGS (Minister for Environment and Climate Change) — The last time I went into this terrain Mr Drum was concerned that I might have been melodramatic or mistimed or misplaced in relation to it.

Mr Vogels is a person who has experience of community life, of a whole range of people's circumstances that would affect their ability, their capability and their ongoing confidence, and of the stresses and strains that they may be subjected to, including situations about economic and personal security. Those baskets of issues, which I am sure he is well versed in, could either in their own right or in combination with other factors in the consideration of all circumstances in relation to this decision have an effect on the nature of the consideration and the advice that is accepted and acted upon.

Mr VOGELS (Western Victoria) — I will give an example of what can happen. One month before a baby is to be born, a woman is very concerned. She cannot sleep at night, so she has had some advice as to whether she should or should not have an abortion, but she is dwelling on the situation. Then the baby is born prematurely — one week, two weeks, three weeks early — and she decides to discard the baby herself, whereas if she had taken up the option of having an abortion everything would have been okay. But this woman is mentally challenged, and the baby is born prematurely. It is nobody's fault, but the baby is born. She then decides to discard the body or live baby. She will be charged with infanticide, I believe, under our present laws; yet if she had had an abortion she would not be. Can the minister indicate whether she will be charged under the Crimes Act? Is this still a criminal act? As a result of being in a state of depression or whatever the woman has been advised, 'Yes, you are entitled to an abortion; yes, you can have an abortion', but if she decides to wait a couple more days while she is thinking about it and she then has this live baby prematurely and discards it, what happens to her?

Mr JENNINGS (Minister for Environment and Climate Change) — The reason I am a bit troubled about jumping to my feet to answer the question is that I was not absolutely clear what the ultimate circumstance was in relation to the death of the child in question as distinct from whether it might be a stillbirth or whether subsequently — —

Mr Vogels — Born live and premature.

Mr JENNINGS — The great difficulty that I have in relation to whether there is any criminal aspect here is that within what Mr Vogels has described it is not clear to me what the actions of the woman in question were in relation to this — or anybody else for that matter. I think, just as Mr Vogels suggests, if we were ultimately on a jury considering what the appropriate determination would be, unfortunately, relating to the hypothetical question that he has raised, we would not be able to make an assessment of where this falls within the criminal code.

Mr FINN (Western Metropolitan) — I would like to make a few closing remarks. We must be aware and keep in mind that we are talking about post-24-week abortions here, so we are talking about late-term abortions. There are clearly two people involved — there is the child and, of course, the mother — and in late-term abortions the degree of danger to the mother is greatly increased. I think that is something we really have to keep in mind. If my earlier amendment to restrict abortions to public hospitals had succeeded, this amendment may well have not been necessary, but given that the private abortion industry has had a record of some 35 years of ignoring the law here in Victoria, there is absolutely no guarantee that it would not — and every indication that it would — continue to do that with regard to this law. I find it impossible to believe abortion clinics would not set up a situation where a woman could walk in and see two doctors, have the signatures on the appropriate pieces of paper and have the abortion there and then if need be.

If we are fair dinkum about the integrity of this legislation — and I think integrity is a very important thing — and if we are serious about ensuring that this law actually does what it says it will do, this amendment is necessary in pushing it through.

Committee divided on amendment:

Ayes, 11

Atkinson, Mr	Kavanagh, Mr (*Teller*)
Drum, Mr	Kronberg, Mrs
Elasmar, Mr	Rich-Phillips, Mr (*Teller*)
Finn, Mr	Somyurek, Mr
Guy, Mr	Vogels, Mr
Hall, Mr	

Noes, 22

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

Amendment negatived.

Progress reported.

Business interrupted pursuant to standing orders.

Sitting continued on motion of Mr LENDERS (Treasurer).

Committee

Resumed from earlier this day; further discussion of clause 5.

The DEPUTY PRESIDENT — Order! I invite Minister Theophanous to move his amendment 3 and make any remarks in support of it. I am of the view that it is also a test for his amendment 4.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I understand amendment 3, which aims to amend clause 5, and amendment 4 would need to be discussed together because the substantive change is in amendment 4.

The DEPUTY PRESIDENT — Order! I am happy for Mr Theophanous to talk to both of them, given that amendment 4 is consequent on amendment 3. I invite him to formally move amendment 3 as he moves into his remarks.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — Deputy President, I thank you for your invitation to move amendment 3. However, I have given this matter some consideration and have decided that, given that my first amendment in relation to the 20 weeks, which dealt with the woman's social and psychological circumstances, was not successful, this amendment, which simply adds a social worker, psychologist or psychiatrist but would in this circumstance do so after 24 weeks, has in a sense been tested by my original amendment. One of the reasons I asked the question of the minister about whether access was available to those professionals was to enable me to form a view about this, and on reflection I have decided to withdraw these two amendments.

The DEPUTY PRESIDENT — Order! Mr Theophanous has advised the committee that he will not proceed with his amendments 3 and 4. As indicated earlier, it is not up to somebody else to take up those amendments, given that they were circulated by him. I now call on Mr Theophanous to move his amendment 5, which concerns partial-birth abortions. I advise the committee at the outset that Mr Kavanagh has foreshadowed an amendment in relation to partial-birth abortions in the form of the new clause, the subject of his amendment 1. Unlike Mr Theophanous's proposed amendment, Mr Kavanagh's amendment includes a total prohibition on partial-birth abortions and imposes a penalty if a medical practitioner conducts such a procedure.

As these two amendments are inconsistent it would not be possible for the committee to vote in favour of both propositions. As debate on Mr Theophanous's amendment proceeds, members ought to be aware that, if his amendment were to succeed, that would also be considered a test of Mr Kavanagh's alternative proposition. In effect we are dealing with a total prohibition on partial-birth abortions proposed by Mr Kavanagh, which is subject to a subsequent amendment with a more modified approach in Mr Theophanous's amendment. I invite Mr Theophanous to formally move his amendment and make his remarks to support that proposition.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — Just a point of clarification, Deputy President, because from my point of view my amendment does not go as far as Mr Kavanagh's. I just want to understand whether my amendment is being put first.

The DEPUTY PRESIDENT — Order! That is correct, and my proposition is that if that amendment succeeds, I would advise the committee that I would not be prepared to proceed with Mr Kavanagh's subsequent amendment, because we have been advised by Crown counsel that there would be an obvious inconsistency. We will proceed with the minister's amendment first.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I thank you for that clarification, Deputy President.

I move:

5. Clause 5, after line 24 insert —

"(3) Despite subsection (1), a registered medical practitioner must not perform a partial birth abortion on a woman if the abortion is primarily because of the woman's own social or psychological circumstances and there is no significant risk to the life or health of the woman.

(4) In subsection (3) ***partial birth abortion*** means the intentional termination of a foetus during vaginal delivery.".

Perhaps I should indicate that the difference between my proposed amendment and that of Mr Kavanagh is that my proposed amendment is essentially limited to those 150 cases which are based on social and psychological circumstances, whereas Mr Kavanagh's is broader and would apply in all circumstances. I guess

the point I would make is that whether it applied in only the social and psychological circumstances or the broader ones, there are many people in the community who feel uncomfortable about this procedure.

I have to say I grappled with putting up this amendment — not because I condone the procedure; I actually do not; I think in most cases it is an unnecessary procedure. But I am not a doctor, and it is difficult as a lawmaker to put up propositions which seek to give medical advice as to the best procedure to be adhered to in a particular set of circumstances.

That is why I decided, perhaps somewhat arbitrarily, to make the distinction between social and psychological, and medical, reasons. I can envisage medical circumstances where this procedure might be necessary in order to preserve the life or health of the woman, or might be necessary in the context that there may be some gross deformities in the foetus or some other medical reason this procedure might need to be undertaken.

I found it difficult to understand why the procedure would need to be undertaken on a normal, healthy 24-week-plus foetus, which in the absence of this procedure being administered would probably come out of the process alive. What happens after that, as we all know, is that it would then have legal status and would be dealt with through our legal system in a variety of ways, through counselling and other mechanisms. In effect that would be an early birth.

The issue that I had, and that I continue to have from a principled point of view is that, especially in those circumstances where there is a healthy, viable foetus, although I accept the woman has a right to have the abortion and even accept that she may have that right post 24 weeks — it is her body and she does not want to have this foetus, viable or otherwise, in her body, and so she is seeking the right to do that — the question that comes to my mind and with which I am uncomfortable, which is the reason I moved this amendment, is: does she also have the right, and perhaps further, does the doctor have the right to make a decision along those lines — to adopt a procedure that makes sure that during the abortion or partial-birth abortion the healthy viable foetus does not come out alive?

That is an extra ethical step in the process. This is very much an ethical question. It is not an attempt to take away any rights from the woman, it is not an attempt to interfere in medical procedures. I have distinguished only those cases which are social and psychological.

I have decided to move this amendment and if it is not successful, I do not believe I can go on then to support Mr Kavanagh's amendment, which I do not think would be successful in any case.

Mr FINN (Western Metropolitan) — I just want some clarification. I understand that if Mr Theophanous's amendment is carried, that will negate Mr Kavanagh's amendment. Is that correct?

The DEPUTY PRESIDENT — That is correct.

Mr FINN — In that case I will be opposing Mr Theophanous's amendment in the hope that Mr Kavanagh's amendment will get up. I have to say that sitting in this Parliament listening to a minister of the Crown talking about why we need to kill a baby before it is fully born makes me wonder what sort of society we are living in.

This is barbaric; it is cruel. We are talking about a baby; it is not an embryo; it is not a foetus. Partial-birth abortion is about a baby being born with its head still inside its mum. The abortionist then gets scissors, punctures the baby's skull, sticks a vacuum machine in, sucks the baby's brains out and then crushes the skull and takes the rest of the body out. God Almighty, how can we support that? How can this Parliament possibly give any consideration to supporting anything as barbaric as that. It is not medically necessary; it is barbarism beyond words. Fair dinkum, if we do not support Mr Kavanagh's amendment we might as well all just give it away.

Mr KAVANAGH (Western Victoria) — Deputy President, would it be possible to put Mr Theophanous's amendment and, if it is passed, to then consider my proposed amendment on the basis that the later passage of an amendment should overcome a previous amendment in any case?

The DEPUTY PRESIDENT — Order! I have taken advice on this and there is an inconsistency in the two amendments. The committee is fully informed that there are basically three propositions available to it. Proposition 1 is Mr Theophanous's amendment before us now, which is the modified proposition in terms of partial-birth abortion. Proposition 2 is Mr Kavanagh's amendment, which is a total prohibition on it. Proposition 3 is the clause as it stands in the bill. Members have full information on that and are entitled to vote on the amendments that proceed, recognising, as I said, that if Mr Theophanous's succeeds, then that is the option the committee has taken and it is not possible to revisit that matter.

Mr KAVANAGH — At the moment the procedure the Deputy President has suggested would mean that everyone who is in favour of partial-birth

abortions would simply vote against both proposed amendments. However, those who are opposed to partial-birth abortions are faced with the dilemma of having to vote against a measure which is preferable to no measure at all. I suggest it would make more sense and be more logical for my proposal to be put first, which would allow everyone who is against partial-birth abortion to vote for that measure and in the event that it is not passed, to then vote for Mr Theophanous's measure.

Mrs PEULICH (South Eastern Metropolitan) — I agree with Mr Kavanagh's point. His position is more comprehensive and wider. It therefore makes sense to put that first rather than invalidate it, and to then place Mr Theophanous's amendment before the house.

The DEPUTY PRESIDENT — Order! In my ruling on this I am going against some advice I had earlier. In the interests of the fairness of the debate, I will take what I consider to be the logical position on this matter, and that is to test the more extreme position. I use the word advisedly, and it is not to be taken in a pejorative context in terms of the amendment proposed by Mr Kavanagh. I accept that his is the more wide-sweeping amendment. and it might well relieve members of a dilemma in terms of their approach to Mr Theophanous's amendment if they were to resolve Mr Kavanagh's broader proposition first. On that basis I will proceed to allow Mr Kavanagh's amendment to be put to the vote ahead of Mr Theophanous's. What I would suggest for the proper running of the committee is that we continue to debate Mr Theophanous's amendment as it has been drafted and in fact that debate encompass remarks that people have on total prohibition as well.

To clarify, the reason we were to proceed on the earlier course of action — and I am, as I said, moving away from that on the basis of what has been put to me by members, and I accept it — is because the standing orders actually set down that where a new clause is to be added, that is to be voted on after we have dealt with other amendments. The procedure that we were following was the procedure that is set down in our standing orders.

My ruling is actually at variance with those, but I am taking that position. I guess I should seek leave of the committee to take that position on the basis of balance in the debate.

Can I formally seek leave of the committee to allow me to proceed — and I am not truncating the debate now — and when it comes to the voting process, for me to put Mr Kavanagh's broader proposition to the test first? If that does not succeed, I will then come back to Mr Theophanous's proposition. I seek leave of the committee to formally do that.

Leave granted.

The DEPUTY PRESIDENT — Order! I thank the committee. I invite debate to continue effectively on both of the propositions. In that context I invite Mr Kavanagh to formally move his amendment. I ask the committee to understand that that means we will have two amendments on the table at the one time, but it is in the context of the process I have put to the committee. I ask Mr Kavanagh to formally move his amendment and to make any remarks to it. We will then continue with the debate, with his agreement, on both propositions.

New clause A

Mr KAVANAGH (Western Victoria) — I thank the Deputy President for using his discretion in that way. I move:

1. Insert the following new clause to follow clause 5 —

"A Prohibition on partial birth abortion

(1) A registered medical practitioner must not perform a partial birth abortion.

Penalty: 500 penalty units.

(2) In this section ***partial birth abortion*** means the intentional killing of a foetus during vaginal delivery.".

The DEPUTY PRESIDENT — Order! Does Mr Kavanagh wish to make some remarks on his amendment?

Mr KAVANAGH — Do I address Mr Theophanous's amendment or my amendment?

The DEPUTY PRESIDENT — Order! What I suggest is that Mr Kavanagh put any supporting remarks for his own amendment. He may discuss Mr Theophanous's proposition in the same way.

Mr KAVANAGH — I am surprised a member has just asked me about partial-birth abortion; he does not know what it is. It is a procedure also called, I believe, dilation and extraction, but in the amendment it is defined as the killing of a foetus during vaginal delivery. Partial-birth abortion refers to removing an unborn baby from the womb by its feet with forceps so that only its head is still in the birth canal.

Ms Broad — On a point of order, Deputy President, I draw your attention to the guidance you gave at the

commencement of this committee stage in relation to coverage of matters covered in detail during the second-reading debate. I believe during the second-reading debate we had not just one but a number of detailed descriptions of this procedure, and I therefore ask for your guidance, as Chair, as to whether we require another detailed and lengthy description of a medical procedure.

Mrs Peulich — Deputy President, on the point of order — —

The DEPUTY PRESIDENT — Order! I am in a position to deal with this point of order at this time, but I thank Mrs Peulich for her assistance.

This is a quite significant amendment. It is one of two proposals now before the Chair. I believe Mr Kavanagh has only just got to his feet and has been making some remarks, as I have invited him to do, in support of his amendment. I believe all members have contributed very effectively to this debate today and have been mindful of my initial position or advice that we should not backtrack over second-reading material.

I think at this stage the extent to which Mr Kavanagh has relied or is relying on matters that he might previously have discussed remains pertinent to his amendment. At this point I am happy for him to proceed. He is aware of my original guidelines, and I am sure he will show discretion and balance in the extent to which he proceeds with this debating content. But I thank the member for her point of order.

Mr KAVANAGH — Thank you, Deputy Speaker. 'Partial-birth abortion' means removing the body, the torso and limbs of a foetus by his or her feet and pulling it from the womb with forceps so that only the head remains in the birth canal; then using a scissor-like instrument to pierce the skull of the baby through the upper neck and vacuuming the baby's brain out so that it collapses; and then the rest of the body, including the head, is withdrawn from the woman.

It is surprising that some people do not know what 'partial-birth abortion' is. It has attracted huge controversy in the United States. In spite of the ban on abortion that was contained in the decision of *Roe v. Wade* in 1973 by the United States Supreme Court, this procedure was outlawed throughout the entire United States of America by the United States Congress in 2003 or 2004. In spite of *Roe v. Wade*, the validity of the laws, the constitutionality of the laws against partial-birth abortion were upheld by the Supreme Court of the United States in 2007 in a case called *Gonzales v. Carhart*.

Partial-birth abortion is done only very late in the pregnancy, in the last trimester. It is excruciatingly painful to the foetus. We know that from the work that shows that foetuses feel pain from at least 20 weeks of gestation. It has been held by the United States Congress as a statement of fact, a statement of determination, that partial-birth abortion is never medically justified. There is never medical justification for partial-birth abortion, because indeed it would be the same thing as letting the baby be born and then killing it. There is no advantage medically to the mother or to anyone else in partial-birth abortion. It is an horrendously cruel and barbaric act.

I know Mr Finn just got upset about it. I think it is something that we should get upset about: it is a horrible thing. It is done in Croydon, Victoria, already; and it is done in Queensland. I ask everybody to support the amendment and prohibit it in Victoria.

The DEPUTY PRESIDENT — Order!
Mr Theophanous moved his amendment earlier but has not had a chance to establish the relative position of the two, given that I have now brought another amendment onto the floor.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — Deputy Speaker, I have made the comments I wanted to make in relation to this. The only additional comment I would make is, obviously, that if the amendment moved by Mr Kavanagh is successful, I will not continue with mine.

Mrs PEULICH (South Eastern Metropolitan) — I have heard the expression on a number of occasions — and I hope this is more than public relations spin — that this bill reflects clinical practice. If this bill allows partial-birth abortions, I would like to have an informed answer and would like to know, given Mr Kavanagh's contention that there are no medical grounds for performing them, why they are performed. I understand that a partial-birth abortion may be performed by doctors because in a live birth it would be a crime to destroy that foetus or that child and it would then become child homicide or infanticide. It is obviously something that may protect the interests of abortionists or doctors performing abortions. But is the minister able to tell the chamber what medical purposes it serves and what the alternatives may be?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank the members who are trying to deal with a very stressful series of issues and the circumstances by which abortions occur. The concerns they express are consistent with either their philosophy or their sense of compassion, which have

been evident in many ways during the course of the debate.

Having said that, it is important to say there have been a number of assertions made by members in this aspect of the discussion that are not correct in fact. We may have a debate about a number of those things. I will not necessarily pre-empt the conclusion of that debate, because there are a number of elements in those assertions that are subject to subsequent amendments.

It is very important to start couching this issue in terms of my frame that I have referred to on a number of occasions today — I have actually considered this in a variety of ways. You have to start from the difference between what has clearly been political momentum that has been established by discussion and commentary about partial-birth abortions as distinct from clinical practice. Mr Kavanagh in his discussion talked about the method of dilation and extraction. He is equating that in all circumstances with partial-birth abortions, which has been the nature of a political consideration in the United States. It is not necessarily underpinned by an assessment of clinical practice or alive to some of the circumstances that my colleague Mr Theophanous referred to in terms of either the medical condition of the mother or the foetus in the circumstances of a late-term pregnancy which may warrant some form of intervention and ultimately lead to a termination — an abortion — taking place.

All of us understand that whatever the method, there is potential for all of us to be particularly disturbed by the loss of potential life. We all start from that vantage point. Nobody, I believe, underestimates the trauma associated with abortion. Any method has the potential to be distressing. In relation to this it is important to appreciate the answer to this question: why did the law reform commission not discuss this issue? The commission did not believe the term 'partial-birth abortion' was relevant and contemporary to what happens in Victoria. Why does it believe this?

Despite the assertion of Mr Kavanagh in his introduction, to the best knowledge of health authorities in Victoria the method he has described does not occur in practice in Victoria. This has been verified by the investigations of senior health officials of the Victorian government during the time of the passage of this legislation from the Legislative Assembly to the Legislative Council. Whilst dilation and extraction as a method may continue to take place in late-term abortions, the clinical practice, as distressing as it may be, that leads to that form of ultimate extraction has been preceded by a lethal injection and intervention that means the foetus has died prior to the extraction taking place.

In terms of what Mr Theophanous described as the medical circumstances that may lead to procedures that may in their worst construction be portrayed in the way Mr Kavanagh and Mr Finn and others have described, ultimately in relation to some of the decisions about the appropriateness of this clinical practice members of this chamber would be aware that it was contested in the other chamber that decisions of this magnitude are not best established by statute but rather by the appropriate clinical practice guidelines and determinations made by the relevant health regulation bodies. In this case that would be the Medical Practitioners Board of Victoria and the various colleges that govern this practice. The Royal Australian and New Zealand College of Obstetricians and Gynaecologists is a critical player in relation to making sure its members are mindful of these matters.

The registration requirements and professional standards would be the most appropriate way in which these practices would be regulated. That is the framework the government believes is appropriate to deal with these matters. The government takes these matters extremely seriously; hence the inquiries and the examination of current clinical practice and the confidence with which I can advise the committee that this practice does not occur as described by Mr Kavanagh and Mr Finn in the jurisdiction of Victoria.

Mr FINN (Western Metropolitan) — I take note of what the minister has just told us. However, given Dr David Grundmann's assurances of two or three years ago that partial-birth abortions occurs and that he performs them, as described by Mr Kavanagh and me, here in Melbourne at the Croydon Day Centre, as I think it is called, on what grounds does the minister base his claim that this particular vile operation does not occur in favour of a more pleasant way of killing babies?

Debate interrupted.

DISTINGUISHED VISITOR

The DEPUTY PRESIDENT — Order! I welcome into the gallery Graham Gunn, the member for Stuart in the South Australian Parliament. He is currently the longest serving lower house member in South Australia, vying for — —

Mr Guy interjected.

The DEPUTY PRESIDENT — Order! In Australia? So he has eclipsed our icon George Seitz, the member for Keilor in the Assembly. Mr Gunn has 38 years on the clock and is a former Speaker of the

House of Assembly in the South Australian Parliament. Welcome.

Debate resumed.

Mr GUY (Northern Metropolitan) — I will take the minister's assurance when he said before that this procedure is not taking place in Victoria. I ask: if the procedure is not taking place in Victoria, why is there an objection from the government to supporting either of the two amendments which would rule it out?

Mr JENNINGS (Minister for Environment and Climate Change) — That is a reasonable question. In light of what I have been advised is the current clinical practice in Victoria and the assurance I have been provided, Mr Finn seeks assurances from me, just as I would seek assurances from those who have advised me directly.

Mrs Peulich — Good idea.

Mr JENNINGS — I have already taken that advice. The investigation has been commissioned, the advice has been obtained and provided to me, and I am providing it to the committee in exactly the form that it was provided to me.

The real answer to Mr Guy's question relates to the last element I spoke about before I sat down, which is a combination of the most appropriate clinical practice we believe is undertaken in Victoria, the way it is regulated — through the regulatory environments that relate to clinical care — and the way in which clinical care is undertaken by the appropriate professional bodies, rather than by statute.

Mrs KRONBERG (Eastern Metropolitan) — I am interested to know if we see the Victorian Law Reform Commission's report being handed down or put together in March of this year and then the government working to develop this legislation based on the recommendations. What preparedness did the government adopt to accommodate new information that was coming in as the result of research and findings that might have been released since the handing down of the recommendations by the Victorian Law Reform Commission?

I am referring to a document that I have here, dated 25 May, that talks with great authority about new information that is being released about neonatal pain and suffering. In a general sense of the impact of pain, having the baby being recognised as a sentient being, what accommodation was there from the government between the time of handing down the report and bringing the legislation forward, with the dynamic nature of ongoing research in this area?

Mr JENNINGS (Minister for Environment and Climate Change) — My immediate response to Mrs Kronberg's question is that it is consistent with what I have just described as the way best clinical practice can be continually modified, improved, in accordance with information about that best practice and the appropriateness of practice. In fact you are quite right, in my view — that needs to be a process that is indeed a dynamic one that builds on knowledge and quality improvement within best practice.

What does that mean in terms of your supporting this amendment, which I make the assumption that you might be? What does that mean in terms of what would be set down in statutes today — is that the best way to describe that arrangement? I would attest no, because in fact legislation is not the best way in which we can establish clinical practice in a whole variety of areas, of which this potentially is the most distressing, I acknowledge.

But it is the view of the government, on the basis of the best advice that it has about how you regulate the health profession, that you actually guarantee that you respond to best practice and the evidence you have compiled, that the method that is currently embarked upon is the appropriate way to scope the clinical practice going forward.

Mrs PEULICH (South Eastern Metropolitan) — In relation to the minister's assurance to the house that partial-birth abortion is not practised in Victoria and his allusion to report he has received in relation to that advice, could I ask firstly whether he could make that advice available to the house? Secondly, in view of the fact that he has assurances that partial-birth abortion is not practised, then presumably there should be no difficulty with the government supporting this amendment?

The DEPUTY PRESIDENT — Order! The question is: is it possible to make the report available to the house?

Mr JENNINGS (Minister for Environment and Climate Change) — In the first instance I will have to take advice about whether that information and evidence has been collated or disseminated in any other way than directly to me. It has been conveyed personally and directly to me as I am directly conveying it to the committee. I might take some advice about in what other form it might exist. Beyond that, in relation to the second part of the question, my

answers to both Mr Guy and Mrs Kronberg indicates the reasons why the government and I do not believe it is an appropriate way to include such a prescription in legislation.

Mr GUY (Northern Metropolitan) — I just want to, if I can — and I do not want to labour the point — quote one line for the minister from model B of the Victorian Law Reform Commission report, which says:

> It is current clinical practice in Victoria for the decision-making processes about abortion to change once a woman's pregnancy reaches a stage around 24 weeks gestation.

I want to ask what is in his mind, or in the government's mind, as to the difference between the clinical practice of defining a gestational age as opposed to clinical practice in relation to partial-birth abortion? Why is he legislating one clinical practice and saying another one cannot be legislated or solved by statute?

Mrs Peulich — It is not a bad question, Mr Guy.

Mr JENNINGS (Minister for Environment and Climate Change) — It is not a bad question, but in fact they are very fundamentally different types of clinical practice, in terms of we are talking about a medical procedure in one — —

Mr Guy — It is the age that the medical procedure occurred.

Mr JENNINGS — No, we are talking about a medical procedure, a technique of professional care that is beyond the scope of decision making and accountability within the consultation framework in consideration of those matters.

Mr Guy — But not legally.

Mr JENNINGS — No, in fact I think there is a very clear difference in terms of what medical standards would apply to the scenario that he has invited me to comment on.

Mr FINN (Western Metropolitan) — Given the assurance that the minister has given the committee, that partial-birth abortion does not occur in Victoria, can he give a further assurance that under this legislation there is no chance that it will be practised in the future?

Mr Jennings — What assurance?

Mr FINN — Yes, that it will not be practised.

Mr JENNINGS (Minister for Environment and Climate Change) — I am advised that it is currently being considered in what form a review of clinical arrangements may be appropriate, in light of these arrangements. I believe there have been understandings entered into in relation to not only the assertion that this practice does not occur today, but it will not actually occur as a standard procedure or a procedure for late-term abortions, and that indeed if the dilation and extraction method is employed it would be predicated by earlier interventions to ensure that the foetus is dead prior to the extraction.

Mr FINN (Western Metropolitan) — Which part of this legislation actually governs the killing of the child before the procedure begins, so that that assurance can mean something to us? The minister has just given us an assurance that the child will be killed before the procedure begins. I am just wondering what part of the legislation guarantees that.

Mr JENNINGS (Minister for Environment and Climate Change) — It is the fundamental building blocks. We did not actually spend any time in committee on the early clauses, but this is the second time we have gone back to the definitions in clause 3, where in fact the circumstances by which an abortion will be undertaken, understood and regulated will be determined in accordance with those early clauses of the bill.

Ms PENNICUIK (Southern Metropolitan) — I just want to say that the Greens will not be supporting the amendment for the reasons outlined by the minister, which accord with our own investigations into this issue. Therefore there is no need for the amendment.

Mr KAVANAGH (Western Victoria) — Yesterday in my second-reading debate speech I spent a long time detailing evidence that was ignored by the Victorian Law Reform Commission. I did not go into detail but I read a list, and it took almost an hour to read that list of studies and scientific evidence that was ignored by the VLRC in making its report.

This gives me no confidence, and it should not give anybody confidence, in determinations of fact contained in the VLRC report on abortion. This process involves killing a baby seconds before birth, seconds before it would be classed as a crime of murder, while the baby's head is still in the birth canal. It is a horrendous process. It is obviously painful to the unborn baby.

I would like to make the further point that if the process is not being carried out in Victoria, then it is probably a good indication for there never being a reason to do it, and that it should never be done.

Far from suggesting that this motion should not be passed, I think what the minister has said confirms the

necessity for it. I urge every member to vote for this amendment.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I seek a clarification from the minister. Putting aside the descriptions used by Mr Kavanagh and Mr Finn, can the minister confirm or clarify, in relation to the definition of partial-birth abortion as applied in both sets of amendments, whether there are currently any abortions performed in Victoria that would be covered by the definition as applied in the amendment rather than the description from the two members?

Mr JENNINGS (Minister for Environment and Climate Change) — I believe that the answer is no, and I am advised that the answer is no.

The DEPUTY PRESIDENT — Order! It is time to test these amendments. For those who might have recently entered the chamber, I sought leave of the committee earlier to proceed with Mr Kavanagh's amendment ahead of Mr Theophanous's amendment. It is an unusual circumstance in that there are two amendments on the table. I have done that with leave from the committee on the basis that Mr Kavanagh's amendment is a broader amendment.

I propose to test that first because it will give members an opportunity to support it without being put into the dilemma of deciding whether or not they should be supporting Mr Theophanous's more moderate proposition first in the event that Mr Kavanagh's might founder or not be an option to them. The committee will therefore test Mr Kavanagh's amendment first. In the event that Mr Kavanagh's amendment fails, we will proceed straight to a vote on Mr Theophanous's amendment. The variance is with the standing orders but is based on testing the broader proposition first.

Committee divided on new clause:

Ayes, 14

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

Noes, 22

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

New clause negatived.

Committee divided on Mr Theophanous's amendment:

Ayes, 16

Atkinson, Mr	Kronberg, Mrs (*Teller*)
Dalla-Riva, Mr	Petrovich, Mrs
Drum, Mr (*Teller*)	Peulich, Mrs
Elasmar, Mr	Rich-Phillips, Mr
Finn, Mr	Smith, Mr
Guy, Mr	Somyurek, Mr
Hall, Mr	Theophanous, Mr
Kavanagh, Mr	Vogels, Mr

Noes, 22

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

Amendment negatived.

The DEPUTY PRESIDENT — Order! It is my view that Mr Finn's amendment 6 has been tested, and Mr Finn concurs. Therefore, we will not proceed with that amendment.

Committee divided on clause:

Ayes, 24

Atkinson, Mr	Leane, Mr
Barber, Mr	Lovell, Ms
Broad, Ms	Madden, Mr
Coote, Mrs (*Teller*)	Mikakos, Ms
Darveniza, Ms	Pakula, Mr
Davis, Mr D.	Pennicuik, Ms
Davis, Mr P.	Pulford, Ms
Eideh, Mr (*Teller*)	Scheffer, Mr
Hall, Mr	Tee, Mr
Hartland, Ms	Thornley, Mr
Jennings, Mr	Tierney, Ms
Koch, Mr	Viney, Mr

Noes, 10

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

Clause agreed to.

Clauses 6 and 7 agreed to.

Clause 8

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — Given that this is probably going to be my last contribution to this debate, I would like to make some comment in moving this amendment. I move:

6. Clause 8, lines 11 to 18, omit all words and expressions on these lines and insert "practitioner must inform the woman that —

   (a) it is not illegal in Victoria for an abortion to be performed in certain circumstances; and

   (b) the practitioner is unable to assist the woman as the practitioner has a conscientious objection to abortion.".

In so doing I again want to make these comments. This has been a difficult debate. It has been very difficult for me personally, but I have tried to make judgements with respect to every part of it. I can say that no individual other than my family and nothing apart from my beliefs and ethics and my belief in my religion and why and how I am here, has formed part of the reasons for my taking the positions I have taken.

I want to make sure people understand that I was not moving the amendments I moved to make some kind of point. After careful reflection and looking at the bill I thought the amendments would improve it. Whether or not they would have improved it is a matter of judgement, ultimately, but I did not think I could continue with the position of saying I was going to move amendments and if my amendments were successful I would not support the bill. I made it clear in another context that that is what I would do. My amendments were not successful so I cannot support the bill.

However, this particular amendment, if no others, is worth considering by this house from a number of perspectives. First of all, in my view it certainly does not take away from the overall objective of the bill to decriminalise abortion. In fact it has no impact on the decriminalisation of abortion. The decriminalisation of abortion is part of this legislation. It has been dealt with, and decisions have been made in this house about that element. What remains is a simple question about conscience.

This bill is about affording everybody in this house today the opportunity to do something in accordance with their conscience; the whole bill is about us dealing with our conscience and trying to do what is right. If we are to give ourselves the right to act in accordance with our conscience, surely it is a very difficult thing to then put to other people, as this bill does, that they cannot act in accordance with their conscience. I think that is a fundamental element of looking at this particular clause. This decision will be difficult for doctors, medical practitioners and nurses or whoever has to make it. As we saw today, there are people who have very strong and passionate views about this; should we tell those people that they are able to conscientiously object but that they will have to take a further action?

I used the example of conscientious objection, and I will use the example of the Vietnam War. I was around during the time of conscription and the Vietnam War, so I know what it was like back then. In fact I was eligible for the final draft, and some of my friends were drafted; I was not. But some of my friends who were drafted then conscientiously objected to the Vietnam War. I can tell members that they would have been able to find any number of people whose names were not pulled out in the draw to whom they could have said, 'How about substituting your name for my name so that I do not have to go to war or into the army?'. Most of the people I know from back then who were conscientious objectors would have conscientiously objected to that as well. They would not have been prepared to say, 'I will nominate somebody else who does not have a conscientious objection to war to go to war in my place'. They just would not have done that.

There is an analogy with what we are asking doctors to do. I know that people will say that doctors have an obligation to make a referral and to look after the health of the woman concerned. That is why when I thought about this amendment and tried to come up with some way the woman could at least be informed of what she could do, it seemed to me that the woman had to be informed that what she wanted was not illegal and was available. Sure, it does mean that the woman has to take one more step to find the service that she needs, but with the internet and the amount of information that is around at the moment, I do not think it would take any woman very long at all to identify somewhere she could go to seek an abortion if she so desired.

The important thing is that she not be misled by being told somehow that she does not have this right and that these facilities are not available to her. That is why in the amendment I have moved the practitioner would have to explicitly say that abortion is not illegal in the state of Victoria. He also has to be explicit about the fact that the reason he is not helping the woman is because of a conscientious objection. I think those two things taken together do empower a woman

sufficiently to go elsewhere to find the service she wants.

In fact, perversely, if we go with the existing wording in the legislation, it might be the case that the woman finishes up being manipulated in an even worse way than with the form of words that I have put up, because there are all sorts of ways of dealing with the letter of the law, as it were. For example, the woman could be in Mildura. She could approach a local doctor in Mildura who had a conscientious objection, and he could say to her, 'The only person I know who will do this for you is down in Gippsland'. He refers her to some doctor who is so far away and so difficult to reach that the woman ultimately is far worse off than if she had been told that what she wanted was not illegal, that it was available, but the doctor could not help her because he had a conscientious objection. That would allow the woman to then go and find the sorts of services or help, advice or assistance that she needed.

Another thing I find amazing is that we have just in effect decriminalised abortion in this state, which means that a whole lot of people will not come under the cloak of some kind of criminal activity, and then we want to put a clause in the legislation which is close to criminalising the activity of medical practitioners who conscientiously object. People will say it is not really criminalising the activity because medical practitioners will be able to refer women to other practitioners. If a doctor refuses or fails to do that, it will be taken up administratively somehow.

I put it to members that it is not so simple, because the doctors get their licences through health agencies, and they would be subject to those licences. Their capacity to practise will be in jeopardy if they refuse to refer in a way which the legislation asks of them or requires of them. The idea is that it is not a criminal punishment, but it is a fairly severe punishment on a doctor to remove his licence to be able to practise, and that is ultimately the only sanction. There could be warnings, there could be all sorts of other things, but the sanction in the end is the removal of the doctor's right or capacity to be able to practise.

I do not think anybody really wants to go down that path. I do not think people want to do that to doctors. Some people might do it out of wanting to make martyrs of themselves. They might put up a sign in their window saying, 'I have a conscientious objection to abortion and I will not refer', and flout this legislation and force authorities to then have to deal with them in some way or other.

All of this is possible if we allow this clause to stand as it is. Members should think very carefully about this. It is a small change and it will not make any substantial difference to the legislation. I know some members are carefully reflecting on it, and I would urge them to put to one side the issue about whether this has to go back to the lower house.I think it would be welcomed by a whole lot of people. I am assured, for example, that all of the Catholic hospitals and many other private hospitals would welcome this amendment. It would take a lot of the angst that has built up, a lot of concerns people have, out of this equation.

I have moved this amendment in an attempt to see whether there is enough support amongst members to provide us with a way out from what could become an ongoing campaign and an ongoing set of issues in the community that really we do not need in politics: the community does not need it, society does not need it and women themselves certainly do not need it.

The DEPUTY PRESIDENT — Order! I thank Mr Theophanous. That question was canvassed by Mr Theophanous in a way that repeated some of the second-reading matters. I did not intervene because Mr Theophanous was moving the amendment. I know this is one of the areas on which members have strong views. The issues are very well defined and the amendment is fairly clear. Therefore we ought to be able to keep this matter fairly tight in the remarks to follow in committee.

Mr VINEY (Eastern Victoria) — From my perspective, this clause is a clash of two pretty important principles. The first principle is the right of someone to hold a conscientious objection. I am only a touch younger than Mr Theophanous; I was due to go into the next draft before Gough Whitlam was elected. I had already made up my mind that I held a conscientious objection to that war and on reflection perhaps I have a slightly different perspective to Mr Theophanous.

Two of my friends held conscientious objections when they were in earlier drafts than I was scheduled for. It had been put to them that perhaps they could join the army and become medics, which they refused because that would be participating in the process. I understand the principle of conscientious objection. However, there is another important principle here which is the right of a woman to be effectively referred to someone who will help them. In that exchange between the health practitioner and a woman seeking termination of pregnancy, it would be reasonable for all of us to assess that in the vast majority of cases the practitioner holds the more powerful position in that exchange.

In this clause the Victorian Law Reform Commission has perhaps not assisted the Parliament all that well, because in my research on this the medical practitioners, health boards and professional associations have already come down, in almost all cases in any of the research that I have done, on the side of the right of the patient in question to be effectively referred, whether it be the Australian Medical Association or the Royal Australian and New Zealand College of Obstetricians and Gynaecologists.

In almost all cases that I have seen, the balance has gone in favour of the patient. From what I have been able to glean I think it has become an ethical issue for each of the professions: in other words, it would have been better left to the professions to manage this issue rather than dealing with it in legislation. However, the Victorian Law Reform Commission recommended that it become legislation. I am not sure that has been particularly helpful. It seems that it has put an unnecessary imposition on the Parliament to make provisions in this regard whereas it could have sat comfortably with management by the professions themselves.

That is clearly set out in an opinion by Julian Burnside, QC, which indicates that, essentially, the Australian Medical Association's guidelines, when put together, mean that an effective referral is required of members of the AMA. I would have preferred that this clash of two important principles were dealt with through the health boards. In effect the legislation does that and that is where it takes it to; therefore on balance I am heading in the direction of supporting this clause. I seek some clarification from the minister in relation to how — and it touches on some of the questions that Minister Theophanous raised — it is expected that health boards might deal with this issue and what sorts of guidelines there are to provide clarity.

I do not think anyone in the house wants to see people AMA members being struck off the roll on a single conscientious objection. Perhaps if there is a continual and deliberate resistance to it within their own professions, that is a matter for the professions. I am seeking some guidance from the minister to enable me to feel a sense of security that, while the Parliament is deliberating on this clause, there is a sense of reasonableness, fairness and balance as to how it will be managed in practice.

Mrs PEULICH (South Eastern Metropolitan) — Notwithstanding your comments, Deputy President, there are comprehensive issues that need to be covered with the specific opportunity to discuss the amendment. I take heed of your instructions, but would hate to see the limitations of speech being used in a debate of this importance. For me this is one of the most important debates. The rights to life and safety are obviously paramount, but the rights to liberty and freedom are crucial to the history and make-up of this society. They are crucial to the future of this society, which is made up of people who have come to Australia to make this country their home because it believes in the future it has to offer, the equality and the rights to freedom — freedom of speech, freedom of religion and freedom to practise their faith.

Many people have come to Australia because of their firm belief that ours is the best system that anyone has to offer. Any chipping away of that right is chipping away at the past, the history and the future of Australia and Victoria, and the traditions of this Parliament.

It is sad that the minister and the government saw fit not to have a statement of compatibility in relation to the Charter of Human Rights and Responsibilities Act 2006, which the government campaigned on and thought was one of its highest priorities.

An honourable member interjected.

Mrs PEULICH — I certainly support many of the principles of the bill, but how are they to be achieved? The government's failure to practise commitment to it shows it to be not worth the paper that it is written on, if the member has a bit of paper. In this instance we do not even have that. It is derived from only one of two reasons: the government and the Minister for Children and Early Childhood Development, Maxine Morand, in justifying the failure to provide a statement of compatibility, believe either that, because the bill is not yet an act, somehow you are not obliged to consider how its provisions impact on the Charter of Human Rights and Responsibilities, or that the foetus is not yet a human. In either case it does not measure up, and it reflects very poorly on one of the crucial ingredients of our democratic society.

I would like to remind members of the preamble to the Charter of Human Rights and Responsibilities Act. It says:

> This Charter is founded on the following principles —
>
> > human rights are essential in a democratic and inclusive society that respects the rule of law, human dignity, equality and freedom …

It is because of those that many immigrants have sought to make Australia their home, including me. I came out here as a 10-year-old girl with my parents in flight from communism. My father stood up in the face of threat, hardship and imprisonment for his right to make a

decision according to his conscience. I have a very strong tradition to live up to, and I certainly hope every member of this house also has a strong tradition to live up to in considering passing this amendment. The charter goes on to say:

> human rights belong to all people without discrimination, and the diversity of the people of Victoria enhances our community …

I agree with the preamble. It continues:

> human rights come with responsibilities and must be exercised in a way that respects the human rights of others —

whether we agree or disagree with them. Many of us may have been really annoyed by Mr Finn and his very long contribution, but we should defend his right to exercise that freedom of speech, especially when it comes to the discussion and debate of issues that are so pertinent to the make-up and future of our society, our rights as individuals and our obligations as members of Parliament. Section 5 of the Charter of Human Rights and Responsibilities Act says:

> A right or freedom not included in this Charter that arises or is recognised under any other law (including international law, the common law, the Constitution of the Commonwealth and a law of the Commonwealth) must not be taken to be abrogated or limited only because the right or freedom is not included in this Charter or is only partly included.

From my memory of the federal constitution there is explicit reference to the right to freedoms, including the freedom to think, speak and exercise or practise one's religion. There are many authoritarian regimes around the world, left-wing, communist and socialist regimes and right-wing dictatorships that do not place a high emphasis at all on that freedom and routinely deny the right of people to speak and to practise their religion. That is the reason why those regimes are crucibles of discontent. I agree with Mr Theophanous that this could be the first seed that fuels discontent in this society, because it is a very serious message to be sending to our constituencies and to Victorians.

I hope the denial of the right of people to make decisions according to their conscience does not become a feature of Australia and Victoria. We as parliamentarians believe so strongly in these rights that a number of books have been published about parliamentary practice and traditions that enshrine those rights for all of us to enjoy so that we can have the freedom of debating these issues, on which we sometimes agree but often disagree markedly. But we resolve this by democratic votes, without resorting to guns and the spilling of blood. This is breaking the tradition. There are a range of provisions referred to in the 23rd and most recent edition of *Erskine May Parliamentary Practice*, and there are many others, but I will not go through them. As committed and dedicated parliamentarians we all know what they are. There is the right not to be subjected to improper influence or coercion. That is why we have standing orders that prevent galleries interjecting, participating in debate or even using their physical presence to intimidate the deliberations in this chamber. It is very important that the deliberations in this chamber are not subject to coercion or undue influence. If we believe that is important to us, why should other people who have such strong beliefs be denied their right to exercise their conscience on issues that are pertinent to their essential being?

These issues are well canvassed by the *Alert Digest* of 9 September 2008, published and tabled by the Scrutiny of Acts and Regulations Committee. Specifically in relation to this I would like to quote briefly from the committee's comment on this particular provision, which this committee has an opportunity to amend. It is headed:

> Freedom of belief — registered health practitioners who hold a conscientious objection to abortion — requirement to refer patients requesting an abortion to practitioners with no conscientious objection to abortion — whether reasonable limit

I hope everyone in this chamber would have thought the Charter of Human Rights and Responsibilities — maybe not so much the charter itself but the preamble, the principles on which our democracy is founded — is uncompromisingly at the pinnacle of rights. That does not mean that by using some other instrument to achieve the same outcome women will or should be denied an abortion within the appropriate legislative framework. The government knows that will not mean that abortion will not be available to women. You have to find some way, some means of resolving this conflict. The report further states:

> The committee notes that clause 8 sets out the obligations of health practitioners who hold a conscientious objection to abortion, including (in clause 8(1)(a)) an obligation to refer women who request an abortion to another practitioner who has no conscientious objection. The committee observes that some practitioners may hold a belief that abortion is murder and may regard a referral to a doctor who will perform an abortion as complicity in murder.

You may not agree with that view but it is a view that 10 or 15 per cent — who knows, maybe more — hold. That would not necessarily translate into the number of medical practitioners that exist, be they pharmacists,

doctors or nurses, but if it is a view that they hold, to force them to do something which they cannot do, according to their conscience, I think is manifestly unfair and in breach of our understanding of freedom and liberty in a modern democratic society.

The second-reading speech remarks — and I will continue to quote from the Scrutiny of Acts and Regulations Committee report — —

The DEPUTY PRESIDENT — Order! I am concerned that this is very much like a second-reading speech, especially when Mrs Peulich is relying on other documents and quoting extensively. That document was available to her during the second-reading debate, and indeed other members referred to the SARC deliberations as part of that debate. I think the committee is informed on that. I am not going to stop Mrs Peulich from proceeding with her contribution, but I simply ask her to perhaps be a little bit — —

Mrs PEULICH — More specific.

The DEPUTY PRESIDENT — I would appreciate that.

Mrs PEULICH — I will not read through all of it, but I would not mind reading a bit of it, if I may. It was for that reason that I did not speak at enormous length yesterday, because I felt there would be opportunities to focus on specific issues through these amendments.

The SARC report continues:

> The committee therefore considers that clause 8(1)(a) may engage the charter right of such practitioners to freedom of belief.
>
> The second-reading speech remarks:
>
> > The purpose of requiring the health practitioner to refer the woman to another comparable registered health practitioner promotes the woman's right to make decisions about her own health care, and to receive the highest attainable standards of health care.
>
> While the committee accepts that providing appropriate care to women is a very important purpose (and one that justifies the other measures in clause 8), the committee considers that the compatibility of clause 8(1)(a) with the charter depends on its satisfaction of the test in charter section 7(2), including whether or not —

and this is crucial —

> there are less restrictive means available to achieve the purpose of the clause.

It is not rocket science. There have got to be other ways of achieving that objective without compromising the highest order principles our society is based on.

The UK Parliament's joint committee on human rights, in discussing a similar referral requirement in proposed legislation on euthanasia, remarked:

> We consider that imposing such a duty on a physician who invokes the right to conscientiously object is an interference with that physician's right to freedom of conscience … because it requires the physician to participate in a process to which he or she has a conscientious objection …
>
> We consider that this problem with the bill could be remedied, for example, by recasting it in terms of a right vested in the patient to have access to a physician who does not have a conscientious objection, or an obligation on the relevant public authority to make such a physician available.

I will stop reading there because I think there are easy ways of getting around that. No doubt the minister can come up with all sorts of excuses as to why it cannot be done.

One of the motives for trying to truncate this and for not resolving a very important problem here is that the government may want to get this bill through and end the ferment, the discontent, the controversy, the emails and the larger turnouts in the gallery than would otherwise be the case. Ordinarily we might have a couple of people and certainly not too many babies.

This bill has received an awful lot of attention. I know that the government and government members are very sensitive to the fact that it may continue to have another three weeks of attention, or maybe six weeks of attention, should any amendments be made which force this bill back to the lower house for adoption. But not to do so would be of much greater detriment to government members as individuals and as parliamentarians, to the Labor Party and, I hope, to any Liberal who does not support this amendment. The Liberal Party is founded on a number of key principles. One of those principles is the right to observe one's conscience in a conscience vote. I hope there is not a single Liberal who votes down this amendment, and I certainly hope there is not a member of the government who votes down this amendment.

If government members are passionate about their politics, they will use this opportunity to implement their policies and programs. Not to use the opportunity to fix this problem will destabilise their government further and — Mr Theophanous is right — launch a very sustained, concerted and coordinated attack and campaign against the government which will track government members right to the 2010 election. It will be a little bit of pain for a lot of gain. With those few words, I urge every single person in this chamber to support this amendment.

The DEPUTY PRESIDENT — Order! I will call Ms Broad, and that will probably be enough for the minister to take on board in terms of an initial response. In some ways I think I might have erred in not calling the minister ahead of Mrs Peulich because, given Mr Viney's comments, in his response he might well have allayed some of the fears expressed. I do not know whether he would have or not, but I might have given him that opportunity, and I regret that I did not.

Ms BROAD (Northern Victoria) — I addressed clause 8 in my remarks on the second reading of the bill, and I will endeavour not to go over the same ground.

The report of the VLRC (Victorian Law Reform Commission) sets out at length, starting at page 112, the reasons for its recommendations on effective referral, and the bill reflects those recommendations which were accepted by the government. Members need to be very clear that if they support this amendment, some women in Victoria will continue to not receive the benefit of effective referral, particularly women in country and regional Victoria and particularly women in single-doctor towns where doctors are under no obligation to provide a declaration of their objection or to provide effective referral. This is despite the obligations they have to their professional bodies, be it international bodies like FIGO (International Federation of Gynaecology and Obstetrics), whether it be the AMA and its code of ethics or whether it be RANZCOG (Royal Australian and New Zealand College of Obstetricians and Gynaecologists), and I covered those in my second-reading remarks.

Clearly women have plenty of experience to show that some doctors — and not only doctors but some health practitioners — feel that it is their right not to provide women with effective referral. In situations like pregnancy where time is of the essence and where time has an impact on the woman's health and the options open to her, this is a very serious matter.

Since the second-reading debate I believe there have been some excellent public contributions on this subject, which were not available at the time I spoke and with which I agree. I do not intend to read them but I want to make reference to them. I particularly want to refer to a published opinion by a very senior medical practitioner, Andrew Watkins, who is a consultant neonatologist who has dealt with the issues in relation to professions. He made the point very clearly that doctors are certainly experts in their specialities and we are all fortunate that we have high standards in Victoria and Australia, but they do not have any special training when it comes to resolving ethical and moral dilemmas any more completely or competently than their patients. Patients have rights. The responsibility of a professional in very difficult situations is to provide a process in which all information and choices are provided, second opinions are found as necessary, and professional expertise is used to help the patient or family process the information and make an informed choice.

Unless people are seriously talking about going back to the 1950s, where doctors told patients what was good for them and what they could and could not do and patients were not allowed to make informed choices for themselves, then we do need to ensure that patients are provided with all of the information and are able to make decisions for themselves. If this amendment is carried we cannot expect that that will happen.

Reference has been made by other speakers to the question of civil and political rights. I want to make just a very brief but important reference to the International Covenant on Civil and Political Rights, which allows for the limitation of a person's freedom to manifest their religion or beliefs in order to protect the fundamental rights and freedoms of others. We know that we live in a society where this is a common situation that we have to face, where rights and responsibilities and political freedoms and beliefs have to be balanced and where there is no absolute right for one individual to impose their political, religious and other beliefs on another person.

In closing, there is one other point that I would like to make, and that is that the VLRC considered going further in its recommendations than it finally recommended, and further than the government has determined in clause 8. The commission considered — and this is outlined in its report — requiring a more overt declaration by a health practitioner, for example, by way of a poster or prominent written statement in the health practitioner's waiting rooms. This is a requirement in some jurisdictions. That would have the advantage of providing notice to a woman who might be seeking abortion services or advice about her options to leave the practice without incurring the cost of a consultation. That might not be a serious consideration for members of Parliament, but I can assure you that for many of my constituents in small rural communities who are not well off and where there are not bulk-billing practitioners, these costs are very significant indeed.

The VLRC considered that option but decided not to recommend it. It believed it would be an unreasonable disclosure of the health practitioner's personal beliefs because it would communicate to the whole community their beliefs rather than only to the woman whose request was relevant to the conscientious objection.

However, it did recommend effective referral. I believe clause 8 as it stands very adequately provides for the rights of health practitioners and women, and it should not be amended.

The DEPUTY PRESIDENT — Order! I draw the minister's attention most specifically to queries raised by Mr Viney in regard to the likely approach of medical boards in implementing a regime that would allow medical practitioners to maintain their conscientious objection without infringing upon the opportunity of women to have access to these services.

Mr JENNINGS (Minister for Environment and Climate Change) — Thank you, Deputy Speaker, and I give you and also Mr Viney my undertaking that I will conclude on those matters before I sit down, because in fact they were extremely important.

I just want to follow a line of logic and a narrative that is actually consistent with all the contributions that have preceded mine before I make comment on Mr Theophanous's amendment. There is one clear, shining principle that has been consistent through the contributions of the four speakers — that is, recognition of the importance of people to act in accordance with conscience and the freedoms they should be afforded to act in their lives in accordance with that principle.

Everyone has attested to that as a primary objective of the way legislation is designed, by which community members relate to each other and by which we can show regard and respect for one another. I think every member has actually asserted, quite rightly, that principle. I join them in saying that from my vantage point, they are extremely important principles and rights for us to protect and preserve.

To lift a remark from Mr Theophanous's contribution, it is just not that easy in relation to the obligations and opportunities that should be afforded within the Victorian statute in relation to this provision. I say that because what the Victorian government has tried to achieve is an appropriate balance between rights and opportunities, quality of care and duty of care obligations to be able to ensure there is appropriate delivery of support and assistance to those in our community who need it — in this case, women who seek advice in relation to an abortion.

The Victorian Law Reform Commission, the various colleges and associations that are relevant to the field recognise the importance of people being able to receive the appropriate advice and the way you subsequently deal with convictions held by medical practitioners who may feel unable to deal with certain aspects of that service that is expected of them in the general community. Because of the scope of practice and because of the guidelines and the ethics that underpin those practices, it would be the expectation of any woman in the state of Victoria that it would be the normal code of behaviour and practice that in fact the advice would be given upon request. That would be their expectation, and indeed this legislation asserts throughout that it is their right to actually have advice on this matter.

The difficulty that comes for those who have that objection is then what they do about it: whether in fact they sit on their hands and say, 'For a very valid reason, for a deep-seated personal reason, I am unable to satisfy that legislative requirement, community expectation or fundamental human rights issue in accordance with the duty of care'. That is the place where this debate is being undertaken.

You could say that the logic says at one level that if you are only concerned with the rights of the conscientious objector, they could just put up a shingle in the way that Mr Theophanous has described and that would actually acquit the responsibilities we would expect through law.

The Victorian government's position, and the position I accept, is that that is not the totality of our obligations here. The totality of our obligations is to account for everybody's interest in this regard. The only way that you can do that is by simultaneously allowing the person who holds a conscientious objection to say, 'I cannot provide this service, this support and this advice at the time you have requested it from me in accordance with community standards and expectations which are consistent with codes of ethical behaviour as is determined by my profession. If I cannot do it myself, I will refer you to somebody who will be able to deal with those issues'. That does not mean, as has been asserted by a number of people, that that guarantees, as a default position, an abortion will be obtained. It does not. It is a referral to someone who is prepared to consider the appropriateness of an abortion in the circumstances as presented.

Mr Drum — It's a bit naive, isn't it?

Mr JENNINGS — That is the critical defining line that makes it clear to me about the way in which this provision would be enacted and how it would achieve the mutual obligation, through the legislation, of satisfying the interests of everyone in this case. It is the only way to do it. I can understand that people may reach another conclusion. Mr Drum has spontaneously reached that conclusion and his gut instinct may tell

him of a certain outcome, but he does not do it by law or logic.

Mr Drum — By logic it does, but not by law.

Mr JENNINGS — It does not by either. That is the critical thing. At the end of the day, in terms of exercising our view we are trying to make a balanced and reasonable decision on the basis of law, logic and goodwill about how these provisions will be enacted. We rely on that. In fact in all walks of life we rely on that.

As challenging as that may be, this is the reason why, for me, it becomes clear when you consider the obligations of law-makers to everyone in the professional relationship, both client and practitioner. Beyond that in terms of what would happen to that practitioner if they are in fact confronted with these circumstances and have a great deal of difficulty in exercising what would be a statutory requirement as outlined by the law, at the moment there clearly are guidelines, practices and codes of ethics which have been established by the relevant colleges. There are registration guidelines of medical registration boards; there are processes that are clearly outlined in terms of dealing with issues of appropriate professional behaviour. It is envisaged in this context that those would be the mechanisms that would be adopted here.

Beyond outlining that logical framework, I will take the opportunity to draw a distinction between the provisions of this bill which will rely on such a mechanism and a review and assessment by the appropriate board structure on the meeting of professional standards, which underpins this issue, and contrast them with a provision of the Medical Treatment (Physician Assisted Dying) Bill, which was recently before this Parliament. As members would remember, that was a bill I supported at the second-reading stage. I am not having a gratuitous go at this piece of legislation, but there is a difference in the way in which these provisions are constructed. In this bill the review and the sanction — whatever may be imposed in relation to ongoing registration, the ability to practise and the way in which that practice would be regulated by the appropriate professional body — is different from the provision that applied under the previous bill. Ultimately those sanctions and that determination would be established in the Magistrates Court and a penalty, which would be described by statute, would be attached to it. Beyond that there is the additional difference in relation to what is the test of appropriate professional practice.

In the physician assisted dying bill there was a convergence of two things relating to advice and consideration and the supply of drugs and guidance about the way the act would work. In fact the provision was drafted in a way which merged the two concepts beyond advice, consideration and information to the act of providing the service that ultimately delivered the result. In this bill the issue of referral relates to the procurement of advice and nothing more. It is not based on the treatment and the ultimate clinical intervention in relation to the advice that is being sought. There are fundamental differences in the way the sanction is delivered, where it takes place, the penalties that would apply and the test that relates to these different aspects.

Mr Viney and others are interested in this basket of issues. They are quite rightly interested in the appropriate way these things should be protected. Issues of conscience should be protected, professional standards should be protected. The environment in which they will be measured and monitored will be delivered through the appropriate registration mechanisms that are intended to attach to this bill.

Ms PENNICUIK (Southern Metropolitan) — I agree that this is an important issue. As such, Mr Barber, Ms Hartland and I have discussed the issue quite a lot and consulted on it. I will not repeat at length what I said in the second-reading debate except to say that no right held by anyone to have a conscientious objection, or any other right, is an absolute right. Mrs Peulich talked about the Charter of Human Rights and Responsibilities, and the charter is clear on that point.

Mr Viney and Mr Theophanous talked about conscientious objectors during the Vietnam War. I fully support conscientious objectors against any war, be it the Vietnam War, the First World War or the Second World War for that matter. However, I do not believe that is an entirely relevant analogy. As the minister has said, you cannot put a provision in a statute that protects the rights of just one set of persons. The exercise of that right without the exercise of the appropriate duty or responsibility must be balanced against the right of the person upon whom their exercising of that conscientious objection may impact. People who are conscientious objectors to war may or may not be doctors, but in the context of this bill we are talking about a medical practitioner who is more than a person who has a religious belief or other such belief that prevents them from performing or assisting in an abortion. They are also a medical practitioner. As a medical practitioner they have a duty of care to a patient, and that duty of care to a patient cannot be abrogated just because they also have a conscientious objection.

I mentioned in my contribution to the second-reading debate that we talked about whether this provision

should be included in the bill. This goes somewhat to Mr Viney's question about whether the existence of a duty of care of health practitioners to their patients is outlined in the Australian Medical Association code of practice. In the Royal Australian College of Obstetricians and Gynaecologists code of practice, for example, a health practitioner can have a conscientious objection but must also fulfil their duty of care.

The reason we support the inclusion of the clause in the bill as it stands is that it protects all parties, for the reasons that Ms Broad outlined. We know of instances where that duty has not been fulfilled, even though it does exist in codes of practice. We know there are certain institutions where pressure is brought to bear on medical practitioners to not fulfil their duty of care, and there are some institutions which may in fact bring in different codes that conflict with the Australian Medical Association code or another code. Without this provision in the law it would leave patients unprotected. so it is important. I do not agree with Mrs Peulich that it is a denial of rights, because a right is not absolute. She talked about freedom, and I agree with her about freedom.

Mrs Peulich — Freedom to practise one's religion — —

Ms PENNICUIK — You can practise your religion but if you have a position as a health-care practitioner, you also have a duty of care to patients. You have to exercise that as well. Ms Broad made the point that you cannot have your absolute right to a conscientious objection if that could have very serious consequences. That has had serious consequences for some women who have had their health practitioner not fulfil that duty.

If Mr Theophanous will indulge me for a moment, I also wanted to throw some of his words back at him in relation to his saying that the amendments will help women. There is nothing in this amendment about helping women. This amendment will leave some women unassisted and unhelped, and that is why it cannot be supported.

Mr DRUM (Northern Victoria) — I have a question of the minister. If a doctor does not act in the interests of the patient, it is obviously an abrogation of his responsibilities. But if the doctor is giving advice and in his opinion it is in the best interests of the patient in front of him that he not even talk about abortion because in his opinion it would be the worst thing he could possibly discuss with that patient, surely he has the right to not discuss the concept of abortion. How does that fit with the current law and the provisions of this bill?

Mr JENNINGS (Minister for Environment and Climate Change) — Rather than having a debate with Mr Drum about this matter, I can say that on what he just put to me the only obligation that would be on the medical practitioner in the circumstances he has described is to make referral to somebody who will be able to have a conversation about the matter, which the practitioner in question was unable to do. That is what is going to be required.

Mr Drum — Can you define 'referral'?

Mr JENNINGS — The effective referral that is being required is to an equivalent medical practitioner, which is very consistent with what has been discussed in connection with this bill and is consistent with the college and the Australian Medical Association's guidelines and ethical framework that covers this field, and so those concepts are not new. The difference is between the recommendation, which is clear and unequivocal in terms of the code of ethics that says you should do something, and this legislation which says you must do something.

I have realised that whilst I have made a commitment to conclude on Mr Viney's matter I may have been inadvertently short in regard to some of his expectations in terms of the notion of the way in which the medical boards support practitioners. It is acknowledged that to give best effect to what will be, in some circumstances, a perplexing situation for practitioners, assistance would be required and the difficulties assessed over time. There will be a request made of the boards to ensure that in establishing the practical application of this legislation and what it means for practice, what it means for how those pressures are dealt with and what support and guidance is required to assist those practitioners in exercising their responsibility, the boards will work through those issues collaboratively with the field and provide that support.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I want to briefly respond to a couple of the points that have been made, but then I want to ask the minister a more specific question.

The point was made by Candy Broad that some women have not actually been assisted as a result of the current situation where women might go to a practitioner who has a conscientious objection and not be properly referred. A similar point — not exactly the same point, but a similar point — was made by Ms Pennicuik that my amendment would have the effect of leaving women unassisted. I want to address both of those issues.

In fact, in relation to Candy Broad's position, my amendment is a huge improvement on current practice. It is a huge improvement because current practice does not require the objecting practitioner to say anything. Current practice can simply mean that the objecting practitioner can refer the woman to a social worker who they know also has a conscientious objection, or do all sorts of things to avoid the abortion.

My amendment introduces a huge improvement on the current practice, because it says that the medical practitioner must actually inform the woman that it is legal to have abortions in the state of Victoria. The woman is immediately told she can have an abortion. That has got to be, in anybody's language, a huge improvement on current practice. The second thing is that the medical practitioner has to be up-front about his conscientious objection; he cannot hide it. He — or she — has to tell the patient that they have this conscientious objection. He has to be honest and he has to tell the woman that she has a legal right to an abortion. I would have thought, considering what the current practice is, that this is a huge improvement.

Secondly, in relation to what Ms Pennicuik said, I have already said to Ms Pennicuik and to the house that it is possible that the bill as it stands would leave women with less assistance, and I have given some examples of where that could be the case. The current wording does not require, for example, the practitioner to tell the woman that it is legal to have an abortion. They do not have to say that to them. In fact all they have to do is refer them to somebody who they know does not have a conscientious objection. That is all they have to do. They do not have to explain to the woman that they have legal rights to an abortion in this state. I have given examples of how that can be manipulated by a person who does not want to give that assistance to a woman. So I would strongly disagree with Ms Pennicuik; my form of wording actually gives more assistance to women than the one that is currently in the bill. I think we could argue about this ad infinitum, and we will probably have to agree to disagree; that will be reflected in the vote.

I want to try to come to the point and ask the minister some direct questions about what I understand he is saying about the health boards. My question to him is a direct one: will there be guidelines issued for the health boards in relation to dealing with medical practitioners who refuse to do referrals? That is my first question. It is a very simple one. The second question is: if a medical practitioner ultimately decides he or she will not refer under any circumstances and continues the practice of non-referral, will they be deregistered by the health boards?

Mr JENNINGS (Minister for Environment and Climate Change) — I can tell that Mr Theophanous was practising where he was going to take his argument, because I addressed the first question just before I sat down and he stood up.

In terms of the basket of issues that the boards would be required to consider, I indicate there will be some assistance and structure provided by the boards. It is very important for us to understand they are the ones who monitor and set professional standards. I am not going to be overly prescriptive by saying exactly what form that support and those guidelines would take. I think that is a matter for them to work through with the clear direction and expectation of the government through the statute that that work would be done. I think that is very important.

In terms of what that means for the sanctions that apply within the regime, it is the expectation of the government at this time that the law is to be complied with for a variety of reasons that we have talked about in terms of the combination of 'by law, by logic, by goodwill' which I described a few minutes ago — I quite like it as a concept. That would prevail and determine the outcome of the professional relationship. This means that, depending upon the one-off circumstances which might apply to the relationship or the circumstances between a health practitioner and a patient, it may be determined to the satisfaction of the boards that a non-effective referral was a reasonable act under the circumstances. That would be a matter for the boards to determine and enforce.

At this point in time, it is the hope of the government that we would not have people flagrantly adopting a regime in their practices that was not consistent with the law and may lead to those circumstances, but you would assume that the boards would have to consider the sanction and whether that should lead to deregistration. But that is for them to consider.

Mr GUY (Northern Metropolitan) — I find it amazing that we seem to admire people in other nations who either suffer hardships or go to jail for their beliefs, while in Victoria we are seeking to oppress this. I want to get on the record quickly and ask a question to the minister regarding the AMA's point of view on this clause. The AMA said that it was still concerned about the conscientious objection clause and would like to see it amended.

The Victorian Law Reform Commission stated that the AMA code of ethics provided a sensible balance between the needs of practitioners and patients and that

it had asked the Parliament to amend the legislation to reflect the existing law.

Further, I ask the minister to consider some information I have from a doctor's insurers. In relation to this law passing without this clause being amended, the insurers say to the doctor that:

> I would note that given the wording of clause 22 of our … policy, a deliberate refusal by a medical practitioner to refer a patient in the knowledge that doing so would be in breach of the relevant provisions of the bill (once enacted) may well amount to circumstances which would involve consideration … of clause 22 and a potential denial of the claim (whether for indemnity for a patient, demand for compensation or for legal fees and expenses in respect of defending a complaint).

We have insurers who are saying that they may not cover doctors for indemnity if the bill is passed as it stands. The Australian Medical Association is saying it has some significant concerns with it; and I note Mr Viney mentioned a legal point of view before from Julian Burnside, QC.

I put on record some advice from Timothy Ginnane, SC, a senior counsel who represented the Medical Practitioners Board of Victoria in the first test involving medical law in relation to the Charter of Human Rights and Responsibilities. In relation to Julian Burnside's advice, he said:

> … in my opinion, the opinion proposes a reading of clause 8(1)(b) which is inconsistent with its clear wording: —

in particular —

> clause 8(1)(b) requires a health practitioner to refer the woman to another health practitioner who the first practitioner knows does not have a conscientious objection to abortion. Referral to a public hospital or a family planning service would not meet this obligation.

I put that to the minister and ask for a response.

Mr JENNINGS (Minister for Environment and Climate Change) — I was seeking advice from my friends, the advisers, in relation to the question that Mr Guy raised around insurance cover. Whilst this is a hypothetical circumstance, we might speculate the motivation of any insurer in terms of trying to find any way in which they might be able to reduce their liability under any circumstances as a general principle. It would not surprise me that maybe some discussion or consideration might have been given to this. Whether it is well informed or whether it is consistent with legal obligations, I think, is seriously questioned and would need to be asserted in a more comprehensive fashion than the alleged interaction between the insurer and doctor in question.

I would think that it is a very long bow to suggest that a practitioner would incur a huge liability through the circumstances described but that is perhaps something that would be tested by the field.

In relation to the view of the consistency with the charter, the various marrying up of obligations under Victorian law, the government is very comfortable about the appropriate marriage of these pieces of legislation and the way in which they fit cogently together. They will enable the appropriate opportunities for practitioners to exercise their freedom of conscience but also give specific guidance in relation to how they acquit their professional obligations.

Mr GUY (Northern Metropolitan) — I do not want to labour the point, but this is exceptionally important. I want to know from the minister if the government has considered the loss of insurance at all in its deliberations on this bill or whether this is the first time it has been put to it. Secondly, is the minister willing to go on the record to say there will be no problems with insurance and indemnity insurance should this bill go through unamended?

Mr JENNINGS (Minister for Environment and Climate Change) — I stick to the answer I have given the committee and Mr Guy. There will be people who will assert all sorts of things. They will make up things on the spot.

Mr Guy — So you don't know.

Mr JENNINGS — They will test their arm under all laws all the time, and Mr Guy knows that.

The DEPUTY PRESIDENT — Order! This is an appropriate time to rise for the dinner break. I will resume the chair at 8.00 p.m. It was suggested to me that we might have attempted to come back from the break earlier. However, I am mindful of staff who were here very late last night and who have been here again today — particularly the Hansard and recording staff, the clerks and so forth. Therefore I will maintain the dinner break.

In vacating the chair I express my appreciation to members of the gallery, a great many of whom have been here all day. You have shown remarkable resilience. More importantly, your decorum has been superb, and you are to be congratulated on your participation in the events — without participation!

Sitting suspended 6.31 p.m. until 8.04 p.m.

Mr GUY (Northern Metropolitan) — I want to get the minister's opinion in relation to what we were

talking about before the suspension of the sitting, which was the extent to which the bill breaches the Charter of Human Rights and Responsibilities. I have obtained an opinion from barristers Neil Young, QC, and Peter Willis, SC, about the extent to which it breaches the charter. I will quote that opinion for the minister's benefit, and I then want to get his opinion on it. It states:

> Clauses 7 and 8 of the bill potentially affect human rights in three areas: freedom of thought, conscience, religion and belief … the right to hold an opinion without interference (section 15(1) of the charter); and freedom from forced or compulsory labour …

It states further:

> Clause 8(1)(b) cannot be interpreted or applied consistently with the human right set out in section 14 of the charter. The imposition of a mandatory statutory obligation to refer a woman to another health practitioner who does not have a conscientious objection to abortion interferes with the practitioner's right to freedom of conscience. This is because it requires the objector to participate in a process to which he or she has a conscientious objection.

Further:

> Compulsory referral is incompatible with section 14(2) of the charter. The objector is being coerced in a way that limits his or her rights; it does so by requiring the health practitioner to provide a referral for purposes to which he or she conscientiously objects on religious or moral grounds.

I refer again to the fact that this is from Neil Young, QC, who is a former Federal Court judge. It is a joint opinion from him and Peter Willis. Lastly, the opinion indicates that through the binding treaty obligation that Australia has with the International Covenant on Civil and Political Rights the compulsory referral breaches articles 18.1 and 18.2, and I would like the minister's opinion on that.

Mr JENNINGS (Minister for Environment and Climate Change) — I appreciate that this has been a recurring consideration not only of Mr Guy but of other people in the community. It has been a feature of discussion in the Legislative Council on a number of occasions, and I am sure our friends on the other side of the Parliament would have been equally concerned about it. As you would expect, my ministerial colleagues in preparing the second-reading speech and the statement of compatibility for the Charter of Human Rights and Responsibilities Act 2006 were particularly mindful of these issues. I can assure the member that those issues exercised their minds. I know this because I was involved in discussions about the various permutations and considerations about the form the second-reading speech and statement might take. Ultimately the way the second-reading speech accounts for these issues demonstrates that the government was mindful of it, and there are a number of provisions in the second-reading speech itself which indicate some of the matters that Mr Guy has spoken about. Other members of this chamber have tried to introduce legal opinion. The other day Mr Kavanagh relied on the advice of Phillips Fox in relation to this matter.

While I do not have advice specifically about the advice Mr Guy has just given the chamber, I do have a piece of general advice that covers the scope of issues to which he alludes, and the government in seeking that opinion and relying on it is of a different view to the one he has tabled.

Mr Guy — Will the minister table it?

Mr JENNINGS — No, not at this point in time. I do not have authority to table it.

Mr GUY (Northern Metropolitan) — I do not want to labour the point, but it is not just a recurring concern of mine. With respect, it is a recurring concern of two QCs; one being a QC who represented the Victorian Medical Practitioners Board in relation to the first test against the charter; and the second is a former Federal Court judge.

On another issue, I put it to the minister that I notice there are no penalties in the bill for medical practitioners who fail to refer, and I ask: if the government is not willing to enforce the law, why is it so opposed to removing the need to object.

Mr JENNINGS (Minister for Environment and Climate Change) — The cumulative effect of many of my contributions across the day would indicate why, on balance, the government believes it is appropriate to have it included. I do not really want to go back over that matter. The government is confident of its legal standing in relation to — —

Mr Guy — How can the public be confident?

The DEPUTY PRESIDENT — Order! It is not helpful for Mr Guy to continually interject. He has had a pretty fair stretch on it. The minister is endeavouring to answer, and Mr Guy is not being helpful.

Mr JENNINGS — Mr Guy has been able to pace himself and have something to eat, and he is back full of energy and enthusiasm. I understand that. But ultimately the government has confidence and has relied upon a series of pieces of advice that it has sought. This line of questioning could apply to any

number of pieces of legislation that arrive in this place and in all parliaments in all jurisdictions.

Why do we have a High Court of Australia, if not to allow some people to ultimately reserve their right to exercise their position in these cases? The government is confident about this legislation and the way it harmonises with the Charter of Human Rights and Responsibilities.

Mr THORNLEY (Southern Metropolitan) — I know people are keen to get out of here, and I will try to be very quick, but this is a really important clause. The dilemma that we find ourselves in is that, as has been stated, there are two very important principles at stake, and this clause seeks to find comfort for both of those principles. The challenge that we have is that the clause, as it is currently written, depending on how you interpret it, may struggle to effectively represent the principle of conscientious objection, but the amendment, as it has been moved, in my mind struggles to give you confidence in the principle of duty of care. Therein lies our challenge.

I have been directed by various authorities to many of the medical profession's own clauses, and all three of the ones I have found seem to be in the middle of the two. Probably closest to the clause in the bill is the one from the Royal Australian and New Zealand Obstetrics and Gynaecology Bioethics Working Group, which has been circulated widely. Then you have the Medical Practitioners Board's comments, which Ms Hartland tabled. They state 'where appropriate, refer', so they leave some discretion in the hands of the doctor.

Then you have the Australian Medical Association code of ethics, which at least — as it has been explained to me, and I certainly am no expert — contemplates a duty of care and the importance of a continuity of duty of care, but what seems to be open to interpretation is whether or not that duty of care is severed when a doctor indicates to a patient that the doctor is able to serve the patient's other needs but is not willing to contemplate an abortion and may not refer. That is difficult. If we are meant to be codifying existing practice, I feel we have probably gone a little further than that, but then the amendment goes in the opposition direction. That leaves us with some challenges.

The final thing I want to say — it is the last time I will speak in this debate — is that we are nearly through this process, and there are people of goodwill on both sides of this debate. My fervent hope is that when the war is over — because I think the war is about to be over — we will be able to unite the people of goodwill on both sides to focus on ways of reducing the number of abortions. Last night I gave my version of where I think that attention should flow, but my fervent hope is that when we are through this process we will have that opportunity. I certainly have had the privilege of dealing with people of goodwill on both sides of this debate and will try to help in playing some small part in bringing them together.

Debate interrupted.

DISTINGUISHED VISITOR

The DEPUTY PRESIDENT — Order! I advise the house that one of the new Victorian federal senators, Senator Scott Ryan, is in the public gallery this evening.

Debate resumed.

Mr KAVANAGH (Western Victoria) — I would like to make some points in support of this proposed amendment. Firstly, contrary to the suggestion made by Mr Viney that the AMA (Australian Medical Association) supports this aspect of the bill, what Mr Guy said about it is confirmed by a note I have that says:

> We are still concerned about the conscientious objection clause, and would like to see it amended … the AMA code of ethics provided a sensible balance … and we have asked Parliament to amend the legislation to reflect the existing law.

The NHMRC (National Health and Medical Research Council) ethical guidelines for the clinical practice of ART (assisted reproductive technology) specifically provides that if any member of staff or a student expresses a conscientious objection to the treatment of any individual patient, the clinic must allow him or her to withdraw from involvement in the procedure or program to which he or she objects.

Mr Guy has already referred to the legal opinion provided by Neil Young, QC, and Peter Willis, which indeed suggests that the Victorian Charter of Human Rights and Responsibilities provides protection against the kind of requirement that is contained in section 8 of the abortion bill.

Doctors in Conscience Against Abortion Bill have asked the Rudd government to intervene because they regard this clause of the bill to be an infringement of Australia's responsibilities under the International Covenant on Civil and Political Rights. In a media release of 7 October, the doctors' spokesperson wrote:

> This bill is unprecedented in the Western world, in imposing laws that would force doctors to act in violation of their

> conscientious beliefs by actively assisting patients to obtain an abortion.

Doug Travis, the president of the AMA, wrote:

> The bill infringes the rights of doctors with a conscientious objection by inserting an active compulsion for a doctor …

An open letter to Victorian parliamentarians from 220 medical practitioners around Australia says:

> Conscientious objection — an essential human right
>
> … we will not participate in the directly intended killing of an unborn child who is capable of being born alive.

And they note that partial-birth abortion is so cruel it could not be used on animals without prosecution. The letter is signed by 220 medical practitioners from around Australia.

Doctors in Conscience Against Abortion say:

> Clause 8 of the bill is unconscionable and unprecedented in this country.
>
> We believe it to be an attack on the basic human rights of health — —

The DEPUTY PRESIDENT — Order! As far as I am aware the member has presented and relied on all of this material in the second-reading debate.

Mr KAVANAGH — No, I did not.

The DEPUTY PRESIDENT — Order! As far as I know Mr Kavanagh read from a lot of documents. Irrespective of that, the other aspect that concerns me is that the committee process is not a process whereby members can simply read out other people's opinions. I am quite happy to have reference made to opinions, as indeed a number of members have done, and certainly what Mr Kavanagh has put on record to date has been relevant, but I would be concerned if his contribution continued to rely on information in documents that, in some cases, were relied on if not by him then certainly by other members in the second-reading debate.

Mr KAVANAGH — In some cases. If I am not permitted to read them, am I permitted to express concern about them?

The DEPUTY PRESIDENT — Order! I am prepared to allow the member to continue with some judicious use of those; however, I want to make sure that it is his contribution and that he is not drawing on references from other people to support his point. We have had a pretty good working over of this issue. Whilst for me it is an extraordinarily contentious issue, it is an easy-to-understand issue, and I think that people have fairly clear views on it. Irrespective of what lawyers think, I think a lot of us have made up our own minds on this issue. I think it is important to bring this to some sort of succinct appraisal. Mr Kavanagh, within those guidelines, to continue.

Mr KAVANAGH — There are objections from leading nurses. Legal academics have objected in the press, including the vice-chancellor of a university, who called this provision 'fascist'.

The Australian Catholic University has provided an explanation of what it finds so objectionable about the bill, which relates to this particular section. The managers of eight leading hospitals in Victoria have signed a letter to object very strenuously to this provision and regard it as a breach of their rights.

The Egyptian doctors and the Coptic doctors group have expressed similar concerns about this bill — they regard it as a breach of their right of conscientious objection — as have leading commentator Frank Brennan and the *Age* itself in an editorial. I have a long list of protections for conscientious objection in 47 American states; in other words, 47 states have explicit rights to conscientious objection for health care rights of conscience. Two states — Illinois and Mississippi — have general broad protections, and 45 others have specific protections for doctors in this particular type of situation.

A letter from the Minister of Health, dated 12 September, makes it quite clear that under this provision nurses also will be required to participate in abortions, not only in so-called emergency situations either. This letter makes it quite clear that any right to refuse will be based on the Equal Opportunity Act, and the provisions for refusing will be very limited under the act. It was said early in the press that this was not so extreme, because it is catered for in Britain, for example, where there are similar provisions in the law. However, the British Medical Association discussed conscientious objection and strongly endorsed the established legal right for doctors to object to participating in abortions. At its 2008 meeting it reiterated that objection.

More than 100 members of the group Doctors in Conscience Against Abortion have said they will leave the state or take early retirement if this clause is included in the bill. Also there have been individuals in the newspaper, including a woman doctor from Dandenong, who says, 'They can come and get me. I will not do this'. I also have anecdotal evidence of doctors from western Victoria and northern Victoria, in addition to those who have come out publicly, who

have said they will take early retirement if this bill goes through. Doctors in Conscience Against Abortion have described this provision as unconscionable.

The DEPUTY PRESIDENT — Order! I think I have been fairly tolerant of this line of debate. Could I perhaps ask Mr Kavanagh, he having referred already to a great many sources that have also written to members individually and have been quoted in the context of both the second-reading debate and to a lesser extent this debate tonight, to move on to drawing on those sources to explain his concern specifically about this provision?

Mr KAVANAGH — Specific concerns in terms of consequences would include great damage to our health system, because, as I have said, more than 100 doctors have said they will take early retirement or leave the state if this provision goes through. We know that there is critical pressure on medical facilities and services in many parts of this state, and if this provision were to be included in the final bill, that would be a severe blow to the standard of medicine in Victoria.

In addition, we have seen the Catholic Archdiocese of Melbourne say it may close the maternity wards and emergency wards of its hospitals if this bill goes through. Of course the irony is that the removal of conscience would be done by a conscience vote in this house. It would be a bitter irony indeed.

Furthermore, the bill, if it retains clause 8 in its present form, would offend against Victoria's Charter of Rights and Responsibilities, and there is significant legal opinion that it would also offend against Australia's international obligations and that this would be likely to result in international litigation involving Australia.

In addition it would damage Australia's international reputation. If we were to imagine forcing doctors to participate in a similar situation in an American state which has the death penalty, we would surely regard it as outrageous. This is along those lines, except for the fact that the victim in this case would be innocent.

Also, although we have discussed the requirement to refer a patient in terms of a conscientious objection, in my opinion from reading the section it could override a doctor's professional judgement as well. In the case of a doctor who knows a particular patient, knows she is emotionally or psychologically fragile and knows that an abortion would harm her and exacerbate her existing problems, that doctor is nevertheless required under this bill to contradict his own judgement and do what he regards would be harmful to that woman.

Ms MIKAKOS (Northern Metropolitan) — Mr Thornley expressed in a very succinct way my views on this clause and this issue, and that is the enormous challenge we face as parliamentarians in striking an appropriate balance between very real and strongly held moral and faith-based views and concerns about the morality of abortion, and the rights of the patient to expect advice and assistance from their medical practitioner. Certainly striking that appropriate balance is a very real and difficult challenge for all of us. As I indicated in my second-reading contribution it was an issue that I thought very long and hard about in terms of how I should vote on this particular issue.

I do not want to canvass again the reasons why, on balance, I decided to support clause 8, but as I said in my contribution, I felt compelled to support clause 8 in the absence of a sensible alternative that I was prepared to support. I have given very serious consideration to the amendment before us. I would have preferred a less invasive approach to this clause — to use the words of the Scrutiny of Acts and Regulations Committee — perhaps codifying a mixture of the Australian Medical Association (AMA) guidelines and the interpretation that Julian Burnside has come to on how this clause will operate in practice; I will come to that shortly. I also mentioned in my contribution to the second-reading debate that I had been attracted to Mr Stensholt's amendment in the other place, but I do not want to canvass old — probably ancient — history now because that was not supported by either side of the debate in relation to the development by the Department of Human Services of a list of practitioners or clinics, or hospitals for that matter, which would be prepared to offer advice to women.

On striking this appropriate balance I have had regard to what the current obligations are for health practitioners, particularly in relation to medical practitioners under the AMA guidelines. I have considered the position of vulnerable women, such as young women. I had an article forwarded to me that was published in the *Age* of 8 October about a 19-year-old woman who had great difficulty consulting her local GP and then, as a result of a consultation with a doctor who clearly had conscientious objections, spent a month wondering what her options were before she finally ended up at the Fertility Control Clinic. I have had regard to another incident where a family undertook genetic screening and the doctor did not inform the pregnant woman of the result of that genetic screening for fear that she would then decide to terminate the pregnancy.

Those types of cases — the situation of vulnerable women, in particular migrant refugee women, who

might be told that their family doctor cannot assist them and then take several weeks to present at another doctor or a clinic for advice — are all things that weighed very much in my mind about a practitioner's duty of care to their patient, as did also the undesirable outcome of having more women ultimately presenting for late-term abortions. Having had regard to the current obligations that doctors have under the AMA guidelines I find that I cannot support Minister Theophanous's amendment because it is much weaker than the current AMA guidelines and therefore I believe it would not protect these types of vulnerable women.

One thing I want to say in relation to this clause is that there is misunderstanding about how it will operate. I want to ask the minister certain questions about this and refer to some interpretations of the clause because it is important that we put some information into the public arena to give comfort to some medical practitioners or health practitioners who have concerns about its operation.

For example, I received a letter dated 3 October from Chris Andrews, president of the Melbourne Catholic Lawyers Association, who said:

> Despite any conscientious objection to abortions, doctors are required to refer a woman who has requested an abortion to someone who will perform it.

It is my understanding that a GP is obliged under this clause to make a referral to another GP, and that second GP, after having consultation with the patient, may discuss a range of things and ultimately the patient might choose not to proceed with a termination. I am concerned that this organisation is suggesting, through its correspondence, that its interpretation of this clause is that a doctor with a conscientious objection has to refer the patient to an abortion clinic. I understand that is clearly incorrect, but I certainly think it is important that the minister clarify the issue so that hopefully some practitioners can take comfort from that.

The other issue I want to refer to is in terms of process and how this clause will work. Mr Viney previously referred to a letter that a number of members received from Julian Burnside, QC, a respected human rights lawyer, for whom I have a great deal of time. I received this letter dated 8 October from Mr Burnside, in which he said, referring to clause 8:

> In my view, the clause may be complied with if a doctor with a conscientious objection simply refers his or her patient to a public hospital or to a recognised independent pregnancy advice service. It is not a requirement that the practitioner name another doctor with whom they know they have a conscientious disagreement.

If that is the case, it probably reflects what is happening at the moment. We cannot pretend doctors are not being confronted with these issues at the moment. I spoke to one Catholic doctor of a non-English-speaking background who said that he frequently has patients who are of a similar ethnicity to him and he knows that these women do not speak English very well and so, whilst he has a moral objection to abortion, he tells them they should ring the Royal Women's Hospital. He certainly hopes those women will not proceed with an abortion, but he knows that at the Royal Women's Hospital they will receive counselling and a range of other support services that may or may not lead to an abortion.

I am asking the minister for some clarification about these issues because, as I said, there is misunderstanding among some practitioners about how this clause will operate. I ask the minister to clarify these issues as a way of giving some comfort to these individuals.

Mr JENNINGS (Minister for Environment and Climate Change) — I do not want to sound grumpy in my response to Ms Mikakos, because it is a very fair dinkum question and a very fair dinkum expectation. My grumpiness is because in effect I gave this answer 3 hours ago, and that is my disappointment. Three hours ago I had quite an encounter with Mr Drum over this matter, and I challenged his view that the effective referral was going beyond seeking advice from an equivalent practitioner. Mr Drum's assumption and other people's assumptions were that it was an automatic referral to have an abortion undertaken. That is an incorrect assumption, and on the public record close to 3 hours ago I did say that to Mr Drum. It is a significant issue. I do not want people to be misinformed, but one of the downsides of having a dinner break and of not having continuity is that I traversed this material at length 3 hours ago.

Mr VINEY (Eastern Victoria) — I want to make one quick point of clarification. In debate Ms Pennicuik made reference to my contribution, and I want to reiterate and initially thank the minister for clarifying the issues that I raised with him. They gave me the confidence I needed to support the provisions in the bill. As I said in my contribution, this is a conflict between two principles: the principle of conscientious objection and the rights that accrue to that; and the principle of the rights of a woman to get effective referral. I believe the proposed amendment of Mr Theophanous and the contributions of some members in the debate are suggesting that the principle of conscientious objection, which is in fact the principle held by the more powerful person in the relationship between the medical practitioner and the woman

seeking termination, takes precedence over the rights of the woman to get an effective referral.

Even though I said I did not think the provision was necessary in the context that health boards, medical practitioners and other supervisory boards could oversee this without this provision, given that the provision is there, I come onside with the view that on balance one has to, in this legislation, look after the interests and rights of the person who is the less powerful in the relationship.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — When I look around and listen to what people are saying, it seems unlikely that my amendment will get up. When people make judgements later they look to the debates in the Parliament and their legal standing, so it is absolutely imperative that specific questions be answered in a specific way so that people understand them. I am going to ask the minister to answer some questions which will help people understand what their legal obligations are, or at least what the minister's interpretation is, and I would like answers to some of these questions. One question asked by Ms Mikakos, which was not answered — —

Mr Jennings — It was answered.

Hon. T. C. THEOPHANOUS — The minister answered one question she put but did not answer the other one. The question that I want the answer to is: can a medical practitioner who has a conscientious objection refer to a hospital rather than to another medical practitioner who they know does not have a conscientious objection? That is the first question.

The second question I have is: what happens if the medical practitioner wants to refer to another medical practitioner but does not have knowledge of whether that medical practitioner has a conscientious objection to abortion or not? How does that person make the referral and how will the standing of medical practitioners, in terms of whether they have conscientious objections, actually be known?

I have three questions, one of which I think is important, and I would like them answered. The minister indicated that the government would put out guidelines for the health boards, which I think is a good thing. He also indicated that ultimately the sanction against doctors was that it could lead to their deregistration but that it was a matter for the health boards. What I am not clear about, though, is what the sanction is — not for individual doctors who do not do the referral, but for hospitals which direct their own doctors or take up a policy position of their own that there will be no referrals from that particular hospital to other medical practitioners who do not have a conscientious objection. So my three specific questions — —

The DEPUTY PRESIDENT — Order! I think the minister has the questions. The minister will seek advice on this. If Mr Pakula's contribution is not dependent on the minister listening, I am quite happy to call him.

Mr PAKULA (Western Metropolitan) — In those circumstances, Deputy President, I will make a brief contribution. I, like Ms Mikakos, Mr Viney and Mr Thornley, have agonised over this provision, and I have told a number of individuals that I would listen to the debate on this clause and make a decision, which I have been doing, both in the chamber and in my office.

I have been encouraged by a number of things I have heard tonight. I have been encouraged by the answers that the minister has given to questions raised by Mr Viney, and I have been enlightened by the minister's description of the dual obligations, the dual responsibilities of providing doctors with the ability to conscientiously object and also providing some support and some certainty for the patient.

I have also been encouraged by the advice by Mr Burnside, which has been referred to by Ms Mikakos. I also indicate that with regard to the amendment itself I am not at all convinced that a doctor who has a problem saying to a patient, 'I have a conscientious objection to assisting you and I am going to refer you to someone else' would necessarily be any more comfortable saying, 'I have a conscientious objection but I have to tell you that abortion is legal'.

I am not convinced that a doctor who has a problem with that provision in clause 8 would necessarily be much more comfortable dealing with the matter in the way foreshadowed by the minister's proposed amendment. On the basis of all that, it is my intention not to support the amendment.

Mr JENNINGS (Minister for Environment and Climate Change) — I thank the Deputy President and I thank Mr Pakula for making his timely contribution to enable me to seek advice specifically in response to the three propositions that Mr Theophanous has put to me.

Despite what might be my preferred answer in terms of expediency and in terms of truncating the committee stage, I am not in a position to answer in the affirmative that it is sufficient for a doctor to make a referral to a hospital to satisfy the provision of the clause; it is not.

Mr Drum — It's not?

Mr JENNINGS — It is not, in the view of the government. In our view that is not the way in which the bill has been drafted and not how it would operate.

In terms of the mechanism about which Mr Theophanous quite appropriately asked the question, 'By what means can an informed referral take place?', this is something that will require some degree of personal engagement by the doctor who chooses to make referrals. They would have to seek out that information in the first instance on their own behalf. But given that this is a systemic issue — we are creating the circumstances — it would be very wise within the procedures and protocols and arrangements that the boards monitor the effective delivery of the provisions of this bill. It is common sense and appropriate for them to exercise their minds about the way in which those who will be able to provide this service so that information is collated and distributed in a timely way to enable people to make an effective referral if they cannot generate one on their own behalf. So I, in a sense, take it on notice that it is an appropriate consideration to support that informed and effective referral taking place.

I think it makes sense that this would be an arrangement that members of the board themselves can take responsibility for, but they would certainly be encouraged to undertake that activity to facilitate informed decision making by the health practitioner in question.

On the last issue that relates to what sanctions, leverage, contractual arrangements or regulatory environments the government may have in relation to hospitals or other health services to ensure that there is an alignment between the services that are provided within that health service and the ability of their staff to deliver that service and the complete range of that service, this is an issue that the boards of these health services will need to take responsibility for and be mindful of within their own operation. Within the service they provide they will need to ensure that if they are providing services that relate to advice on matters such as a range of medical procedures which may include the provision of abortion services or advice on abortion or general practice-type activities within that health board and there is an expectation that referral may be an aspect of that service they will need to make sure they have a staffing profile that is capable of dealing with this issue.

Hon. T. C. Theophanous — But what is the sanction?

Mr JENNINGS — There is no sanction on the organisation because the organisation in question, the board that controls this health service, makes the determination about the range of services it provides. It would be totally inappropriate if it could not account for its staffing profile to acquit the range of services it purports to deliver to the community.

Mrs COOTE (Southern Metropolitan) — I would hate to make the minister grumpy, but I have a point for clarification. Some time ago, when Mr Kavanagh was making his presentation, he spoke about a letter he had received from the Catholic Archdiocese of Melbourne and from Archbishop Hart in particular, about the withdrawal from Catholic health services in Victoria of their services in a gynaecological sense if this bill and this particular clause went through. My point of clarification is: what proportion of funding do the Catholic hospitals get in this state, and is the contract conditional in any way that is going to be relevant to this particular issue?

Mr JENNINGS (Minister for Environment and Climate Change) — My adviser has woven his magic in relation to what I can convey to the committee. I am advised that up to approximately 5 per cent of the health budget that is distributed through the state of Victoria goes to Catholic hospitals in this state. As part of those funding arrangements there is no contractual obligation for any specific service that covers the field in question. In fact it is not a feature of those arrangements.

From the state's perspective this is a matter — and this is consistent with my answer to Mr Theophanous — for the boards to make a determination of the appropriate services that they provide and to account for the staffing profile to deliver on that range of services.

Mr KAVANAGH (Western Victoria) — In respect of the Burnside opinion that has been referred to by many members tonight, it is my opinion that his opinion is of very low quality — for example, at page 2 Mr Burnside presumes the provisions of the new bill:

> … resemble the existing position at common law. That is, an abortion may be permitted without any gestational time limit so long as the Menhennitt criteria are met.

This bill has nothing to do with the Menhennitt criteria. It explicitly seeks to do away with the Menhennitt criteria. Mr Burnside's opinion is not really of value in this debate.

This particular provision will cause more ongoing trouble than all the rest of the provisions put together. It may be brave of the government, but it may come to rue its decision about this provision which will make people act against their own consciences.

I would like to ask a question of the minister. In the scenario I outlined, where a medical practitioner's professional judgement is that it would harm the patient to refer them to a person who does not have a conscientious objection to an abortion, is he nevertheless required to do so under this bill?

Mr JENNINGS (Minister for Environment and Climate Change) — I did not get the call in relation to this, because this is the point that Mr Kavanagh made at the end of his last contribution. It is quite an extraordinary contribution, because what he is clearly saying here is that the practitioner in question has been able to separate in their own mind the issue of their conscientious objection from the issue of the best advice and support that they can provide to the patient. In those circumstances there should be no impediment to that practitioner giving that best advice, because in fact they are very clear about it and very clear about the frame in which it is being made.

Mr KAVANAGH (Western Victoria) — The practitioner has no conscientious objection. If it is the practitioner's medical judgement that referring the patient to a medical practitioner who has no conscientious objection to abortion would harm her, is that medical practitioner nevertheless required under the bill to do so?

Mr JENNINGS (Minister for Environment and Climate Change) — I think Mr Kavanagh and I now have a problem of logic, because under the circumstances that he has just described to me, why would that practitioner not exercise their best medical opinion and convey it to the patient?

Mrs COOTE (Southern Metropolitan) — Further to the point of clarification over Mr Kavanagh's statement about the Catholic Church withdrawing its gynaecological services, if this clause goes through, could the minister clarify for me whether it is hundreds of millions of dollars that the Catholic Church receives in funding from the state? If so, is it the Mercy maternity hospital that gets that the second largest amount of that money? Could he clarify that for me?

Mr JENNINGS (Minister for Environment and Climate Change) — Yes, I was of that view.

Mrs Peulich — The minister's running away — he hasn't got the answers.

Mr JENNINGS — No, there are a number of ministers in the chamber, because we are very committed as a government to respond and be accountable. Yes, it is $100 million — that is, 5 per cent of the health budget is hundreds of millions of dollars, somewhere in the order of $300 million to $350 million, of which a significant amount goes to the Catholic Church.

Mr KAVANAGH (Western Victoria) — Are those hospitals profit-making institutions or non-profit-making institutions?

The DEPUTY PRESIDENT — Order! I fail to see the relevance of Mr Kavanagh's question. At this stage of the debate, frankly, I cannot accept questions like that which just do not have some foundation in the clause before us.

Mr KAVANAGH — Could I explain the relevance?

The DEPUTY PRESIDENT — Please do.

Mr KAVANAGH — The suggestion, I think, is that the institution we are talking about has a lot of money to make by retaining its services, by keeping them operating. If it is a non-profit institution, then it is using the funds it is getting from the government and not profiting from them, so there is not that economic motive to keep it going that is being suggested in other questions.

The DEPUTY PRESIDENT — Order! Mr Kavanagh's question is far too tortuous. The fact is that the minister has already responded, to the effect that the contracts struck between the Victorian health department and the government and the hospitals have no conditions regarding the services they must offer. Therefore, there is no situation where they are under some onerous position to go against what might be their mission statement or their clinical position to provide services that they do not wish to provide. I think the minister has been crystal clear in that throughout the debate.

Mr DRUM (Northern Victoria) — I just want the minister again to be crystal clear on this last question: I think he has already answered it, but the issue — —

The DEPUTY PRESIDENT — Order! If he has, I will rule the question out of order.

Mr DRUM — In relation to the issue over which Mr Viney, Mr Pakula, Ms Mikakos and Mr Thornley all suggested they were agonising, they have barely come on board because of the comfort they received from reading the opinion of Julian Burnside, QC. The minister is clearly saying that that opinion by Burnside is not going to be relevant to this bill.

Mr Viney — On a point of order, Deputy President — —

The DEPUTY PRESIDENT — Order! I do not need a point of order, Mr Viney. I point out to Mr Drum that that is an extraordinary extrapolation of what each of those speakers said in their contribution to the debate. Each one of them did refer to that legal opinion, as indeed speakers right across the chamber have referred to a range of documents. None of those speakers that Mr Drum named based their entire position on the Burnside document or indeed placed any more store in that document than that it had been one of the factors that had informed them. Each of them, in fact, took more solace from the fact that the minister provided answers to a range of questions today.

I think Mr Drum has taken each of those speakers dramatically out of context — and several were leaping to their feet trying to raise points of order to that effect. If there are no further questions, I will call Mr Theophanous.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — Thank you, Deputy President. In summing up to allow a vote to take place on this important amendment, this is obviously the last of the most substantive issues in the bill to be dealt with. I want, firstly, to thank the Minister for Environment and Climate Change for providing honest answers to a range of questions that have been put to him, which I think will help to clarify some of the issues.

I am grateful to him for saying sanctions would not apply against the hospitals. I am also grateful to him for indicating that in some way it would be useful — without giving direction to the health boards to this effect — to have lists of doctors who do not have a conscientious objection to abortion. Beyond that, I am grateful for his honesty in saying that referral to a hospital may not constitute an adequate referral.

I suggest to him that if the clause is passed, which I expect it will be, that it may well be that in providing lists, this issue may possibly be overcome in some way; if a woman were referred to the Royal Women's Hospital in this context, it may be an appropriate place to refer a woman. The minister and the government might look at ways of overcoming this particular issue. I think from all of those points of view, this has been a useful discussion about my amendment.

I want to make a point also that I heard the balanced contributions from our side by Martin Pakula, Evan Thornley, Jenny Mikakos and Matt Viney and also some members from the other side who have struggled with this issue. One of the concerns on this side of the house is that ultimately the way this is going to be brought into play and implemented will be a matter which the government has to take responsibility for.

In taking responsibility for that, clearly the government ultimately may come under attack from people who do not want to accept the law that will be passed and who may continue to oppose the legislation. It is their right to do that, depending on how they do it.

One of the reasons I moved this amendment is that I have always taken the view that the government would be better placed in dealing with complex issues that we will have to deal with by having an amendment of this type, because it would mean that the whole issue of conscientious objection would not be able to be used by those people who actually have a fundamental objection to abortion and would be able to use this clause to continue a campaign which ultimately might damage the government.

One of the reasons I moved this amendment, quite apart from the principle that was involved, is that I do not think it will be useful or helpful in our community for ongoing campaigns to be taken up by those who do not support this clause. Notwithstanding the fact that I have moved this amendment to try to allay that, I hope people do not engage in that ongoing type of activity.

I have spoken to the Catholic hospitals, and I hope they are able to find a way to work with the government to make this legislation work. I think the minister has given a steer as to how that may be possible within a set of guidelines which, he has indicated, may be developed and also by the comfort he has given to the hospitals that sanctions will not be brought to bear against them.

I ask members as a last position to consider the amendment I have moved, which I think has, at least, resulted in some of these issues being discussed and perhaps will be addressed better than they otherwise would be. But on balance, unlike my colleagues who have taken a different view, I am of the view that this amendment would deal with the issues of genuine concern that some people have about proper referral. It would also deal with the conscience issue. I am happy to have that tested by way of a vote.

Committee divided on amendment:

Ayes, 15

Atkinson, Mr	Petrovich, Mrs
Drum, Mr	Peulich, Mrs
Elasmar, Mr	Rich-Phillips, Mr
Finn, Mr	Smith, Mr

Guy, Mr (*Teller*)
Hall, Mr
Kavanagh, Mr
Kronberg, Mrs (*Teller*)
Somyurek, Mr
Theophanous, Mr
Vogels, Mr

Noes, 21

Barber, Mr (*Teller*)
Broad, Ms
Coote, Mrs
Darveniza, Ms
Davis, Mr D.
Davis, Mr P.
Eideh, Mr
Hartland, Ms
Jennings, Mr
Koch, Mr
Leane, Mr
Lovell, Ms
Madden, Mr (*Teller*)
Mikakos, Ms
Pakula, Mr
Pennicuik, Ms
Pulford, Ms
Scheffer, Mr
Tee, Mr
Tierney, Ms
Viney, Mr

Amendment negatived.

The DEPUTY PRESIDENT — Order! I advise that the committee is to be invited next by Mr Somyurek to vote against clause 8. That is in anticipation of a new clause to follow clause 7, a clause he would move if the committee agreed to the deletion of the current clause 8. The new clause that he would insert in its place is covered by his amendment 2, but in fact that is the only amendment he effectively has. He is simply inviting the committee to vote against the clause.

Mr SOMYUREK (South Eastern Metropolitan) — Clause 8 violates the freedom of conscience of medical professionals. This legislation will require them to refer women who have requested an abortion to someone who will perform it, thereby forcing them to be complicit, in their view, to murder. Furthermore, nurses and pharmacists can actually be directed by doctors to participate in abortions. So as it stands this bill undermines the moral integrity of doctors, nurses and pharmacists.

For parliamentarians who have been given a conscience vote it is hypocrisy of the highest level to expect health professionals, doctors, nurses and pharmacists not to also be given a conscience on this matter.

I invite the committee to vote against clause 8.

The DEPUTY PRESIDENT — Order! Mr Somyurek obviously reflects on the fact that the previous debate has also canvassed many of the issues in respect of clause 8. I thank him for his comments in that vein. I advise that Mr Kavanagh also depends on this clause not standing to proceed with his amendment 4.

Committee divided on clause:

Ayes, 21

Barber, Mr
Broad, Ms
Coote, Mrs
Darveniza, Ms
Davis, Mr D.
Davis, Mr P.
Eideh, Mr
Hartland, Ms
Jennings, Mr
Koch, Mr (*Teller*)
Leane, Mr
Lovell, Ms
Madden, Mr
Mikakos, Ms
Pakula, Mr
Pennicuik, Ms
Pulford, Ms
Scheffer, Mr (*Teller*)
Tee, Mr
Tierney, Ms
Viney, Mr

Noes, 13

Atkinson, Mr
Drum, Mr
Elasmar, Mr (*Teller*)
Finn, Mr
Guy, Mr
Hall, Mr (*Teller*)
Kavanagh, Mr
Kronberg, Mrs
Petrovich, Mrs
Peulich, Mrs
Rich-Phillips, Mr
Somyurek, Mr
Vogels, Mr

Clause agreed to.

The DEPUTY PRESIDENT — Order! Members may be aware that Mr Guy also circulated some amendments that he was proposing for this bill. The first one would come into effect now; that was amendment 1. I am advised by Mr Guy that he does not wish to proceed with those amendments.

Clauses 9 to 12 agreed to.

The DEPUTY PRESIDENT — Order! That completes the clauses that are part of the government's proposition, but there are some further amendments to be proposed by Mr Kavanagh that would insert new clauses.

New clauses B and C

Mr KAVANAGH (Western Victoria) — I move:

2. Insert the following new clauses to precede clause 6 —

"B Care for foetus

A foetus that is born alive has all the rights of a child regardless of whether the foetus was born during or after an attempted abortion.

C Pain relief for foetus

A medical practitioner who performs an abortion, or who gives a direction to perform an abortion, must ensure that all reasonable steps are taken to ensure that the abortion is conducted without causing pain to the foetus.".

There are two limbs to this amendment — that is, B and C. New clause B is entitled 'Care for foetus' and is a clarification in this bill that any foetus born alive after an attempted abortion has all the rights of any other baby that is born, any other human being. This would suggest of course that it is entitled to medical treatment

and to the best efforts of any medical personnel in the vicinity of where the child is born.

Before going on, however, I would like to ask a question of the minister. I refer the minister to comments made by the Minister for Health in the other place. He said that of any child born alive, there is an expectation that he or she will be treated as any other patient. I ask the minister to confirm that statement of the Minister for Health.

Mr JENNINGS (Minister for Environment and Climate Change) — I am certainly very happy to support my colleague the Minister for Health in undertakings that he has given. In terms of rights and opportunities for any child who is born in Victoria, I will be happy to go on to describe the legal standing which is in accordance with the rights and opportunities that every citizen of this state should receive.

Mr KAVANAGH (Western Victoria) — I have included this limb in the amendment because there are at least two cases in Australia that have been reported of children being born alive after so-called failed abortions. In both cases the children were neglected to the point of death. We also know that it happens because a few weeks ago in Queen's Hall, Gianna Jessen from the United States of America came to speak to members of this Parliament. She is the survivor of a so-called unsuccessful abortion. She attributes the saving of her life to the fact only that she was born in the early hours of the morning before the abortionist had returned to the clinic and a nurse called an ambulance to take her to a hospital where she was treated. She is nevertheless damaged from the attempted abortion by saline solution that was injected into her before birth.

The situation of an abortion is that in the abortion there is no advocate for the unborn person. The only people present at an abortion are intent on the destruction of the unborn. No doubt it is a very embarrassing situation for the whole clinic when a baby is born alive. The facts as we know them suggest that people at that clinic normally do precisely what we expect: they allow the baby to die.

This amendment is intended to explicitly tell all medical personnel at an abortion clinic that any person born alive after an attempted failed abortion is entitled to all the rights of any other person, any other baby. The little that we know suggests that this is quite necessary. Although there are only two cases that we know of, we can be confident that for each case we know of there are many, many more that we never hear about.

The second limb of this amendment is a requirement that all reasonable steps are taken to ensure that an abortion is conducted without causing pain to the foetus. In 2004 there was an inquiry into abortion in New York and Judge Casey interviewed abortionists. In the course of that inquiry it became quite clear that first, the abortionists know the unborn baby feels pain during the abortion, and second, the abortionists regularly mislead the women about that. Judge Casey put to them that they lied about it. Their response was that they were not quite as forthcoming as they could have been, or words to that effect.

The National Health and Medical Research Council guidelines require anaesthesia to be given to an animal foetus. It requires people who are doing research to presume that the animal foetus is capable of feeling pain, and it directs them that this is particularly likely from about midway in the normal gestation period. There is an abundance of evidence about the ability of the foetus to feel pain. This was confirmed also by Professor Graeme Clark, who I think is probably one of the greatest Australians, in an address in Queens Hall only a few weeks ago.

I went through a lot of this material yesterday, so I will not go through it again. But the overwhelming bulk of scientific evidence is that at least from 20 weeks, and possibly much earlier, the foetus does feel pain. It is cruel to kill a foetus in a way that precludes anaesthesia or analgesia when it is possible to do so. Therefore I recommend this proposed amendment to the house.

Mr JENNINGS (Minister for Environment and Climate Change) — In the first instance, as I volunteered, I would be very happy to comment on the legal status of a child born in Victoria and to replicate the undertakings and description of these matters that my colleague the Minister for Health in the other place referred to. If a foetus is born alive, in our opinion it is a live birth and it ought to be treated as such at law and as a matter of clinical practice. There is no need to make any further provision for this instance in the bill before the house and this is therefore a redundant amendment.

The common law in Victoria as we know it has always taken the view that legal personhood, possession of the legal rights and protections held by all people, does not arise until the foetus becomes a person by being born alive. A foetus cannot be the victim of any form of homicide. Over 50 years ago Justice Barry observed in a murder trial that legally a person is not a being until he or she is fully born in a living state and this occurs when the child is fully extruded from the mother's body and is living by virtue of the functioning of its own organs. This rule was recently confirmed by the New

South Wales Court of Criminal Appeal in *R v. Iby* when Chief Justice Spigelman stated that the common-law born-alive rule is satisfied by any indicia of independent life. That is the view of the Minister for Health. That is the view of the government. The common law asserts that right and is consistent with the care the Minister for Health has described.

Whilst I can provide some satisfaction perhaps to Mr Kavanagh in relation to this matter, the issue of management of pain relief for a foetus is a contested issue between us. On a number of occasions earlier and in his contribution Mr Kavanagh has asserted an understanding and awareness of some evidence on material that indicating that pain is being experienced by a foetus at an earlier stage of development than the government has been advised of in being mindful of and reflecting on two critical pieces of work which it believes create a significant body of evidence and on which it relies.

That includes a piece of work by the Royal College of Obstetricians and Gynaecologists in the United Kingdom, which, following a detailed review of evidence, argued that there is no possibility of foetal awareness before 26 weeks. It was the view of that review that it is possible by direct means to identify the minimal stage of structural development that is necessary, but not that which is sufficient, to confer awareness upon the developing foetus, and that this minimum stage of development, with structural integration of peripheral nerves, spinal cord, brain stem, thalamus and the cerebral cortex has not begun before 26 weeks' gestation.

A very important piece of work published in the *Journal of the American Medical Association* in 2005, volume 294, no. 8, reported that neither withdrawal reflexes nor hormonal stress responses prove the existence of foetal pain, because they can be elicited by non-painful stimuli and occur without conscious cortical processing; that foetal awareness of noxious stimuli requires functioning thalamacortical connections; that thalamacortical fibres begin appearing between 23 and 30 weeks gestational age; and that electroencephalography suggests the capacity for functional pain perception in preterm neonates probably does not exist before 29 or 30 weeks.

On the basis of those important pieces of research and findings, the government is of the view — and has drafted this legislation accordingly — that whilst in all circumstances there should be appropriate care and consideration of health, wellbeing and pain minimisation, in terms of a regularised intervention established by statute, treating foetal pain in the absence of such evidence and in the circumstances described in the bill may jeopardise the health of the woman or the ability to undertake procedures in accordance with the bill. The government does not support the amendment.

Mr KAVANAGH (Western Victoria) — In response to that, although legally the situation is no doubt that a child born after a failed abortion is entitled to legal rights and medical treatment, the practice at present, I believe, is that such a child does not get the medical treatment to which they are legally entitled. Therefore the necessity is not based on the present state of the law but on present practice. Present practice suggests to us that it is rare for a child who is born alive after an attempted abortion to receive the medical treatment that the child deserves. Therefore there is indeed a need for the provision I have suggested.

In respect of the pain of the foetus, there is contradictory scientific information about this. Certain people have no doubts that there is pain, including the person who is regarded as the world expert, a neurologist, Dr Anand, in the United States of America. He is sure, based on his scientific research, that a foetus feels pain from abortion and from other things from at least the 20th week. I quoted him yesterday, for example, saying this is a political issue — that those who do not see it will not see it; that there are none so blind as those who will not see.

The point is that I would like to refer the minister to the Unborn Child Pain Awareness and Prevention Act of Arkansas, which does in much greater detail what I have suggested be done by this amendment. It mandates pain relief for the foetus during an abortion. The main point I would like to make is that if there is any doubt, would not the prudent and compassionate cause of action be to assume that a 20-week-old foetus or baby, like a 20-day chicken hatched from an egg, feels pain and take the appropriate action to do what we can to minimise the pain of abortion to that foetus?

Mr DRUM (Northern Victoria) — I refer to a paper from the Emory University school of medicine, department of paediatrics, Atlanta, Georgia, and a statement from Jean Wright, who appeared before the United States Subcommittee on the Constitution. Her second conclusion was that:

> It is likely that the threshold for such pain perception —

in an abortion —

> is lower than that of older preterm newborns, full-term newborns, and older age groups. Thus, the pain experienced during 'partial-birth abortions' by the human foetus would have a much greater intensity than any similar procedures performed in older age groups.

It is stark black and white and is something that is directly contrary to the statements of the minister relating to his United Kingdom references.

Mr FINN (Western Metropolitan) — My very great concern is that the refusal to accept that unborn babies can suffer or feel pain is very much an ideologically driven point. My feeling is those who refuse to accept that unborn babies can feel pain are doing so because they accept if unborn babies can feel pain then the odds are that humanises them more and people start to think of the unborn child as a human being and that lessens their chance of promoting the particular agenda they are pushing at a given time. There is a good deal of scientific evidence to show that unborn children suffer pain from 20 weeks. I have seen evidence to suggest that unborn children suffer pain from 16 weeks. I think one of the great nightmares of anybody is of a child put in a position of being aborted and feeling all the pain that would be associated with that. I ask the committee to give it serious consideration and to vote for this amendment.

The DEPUTY PRESIDENT — Order! I indicate that the varying evidence put by members is unlikely to be reconciled by the committee this evening. The proposition that Mr Kavanagh is really putting to the committee is that where members believe there is doubt they ought to support his amendment on the basis that that doubt accords the greatest protection in respect of evidence he has led. His proposition is one of where there is doubt, go with the doubt and provide the insurance, if you like. As I said, we will not reconcile the different scientific aspects that no doubt are exercising greater minds than ours.

Mr JENNINGS (Minister for Environment and Climate Change) — I appreciate the spirit in which you, Deputy President, have assisted me and members of the committee greatly, and even on occasions where it supports my argument or sometimes runs counter to it. I appreciate that you are attempting to give clarity to members in exercising their decisions in relation to this matter.

In responding to the suggestion that I may have given an impression by my answer as to what might seem to be the wrong precautionary principle in this exercise at first blush, I remind the committee of a number of things. Firstly, it is very important to understand that clinical practice is based on the clinicians' view of the best evidence that is available to them, and ultimately they will rely on the evidence they find compelling and persuasive; and secondly, in the circumstances of an abortion a woman would receive an anaesthetic and as a consequence so would the foetus.

Mr KAVANAGH (Western Victoria) — Referring again to the case in 2004 in New York before Judge Casey, the evidence was quite clear when he was interviewing those abortionists that they knew that abortion is terribly painful to the foetus yet they did not give pain relief. One of the reasons was there are some difficulties presented by the placenta which, I understand, tends to filter out a lot of the anaesthesia. But it is not impossible; it is possible to do. I believe that if there is any doubt at all, we really should do it.

Some of the films of abortions being done that are shown on the internet, if members care to look at them, make it quite clear that the baby is going through agony as it is being aborted. I think there is no doubt of that to any observer of these films.

Committee divided on new clauses:

Ayes, 12

Atkinson, Mr	Kavanagh, Mr
Drum, Mr	Kronberg, Mrs
Elasmar, Mr	Petrovich, Mrs
Finn, Mr	Peulich, Mrs (*Teller*)
Guy, Mr	Somyurek, Mr (*Teller*)
Hall, Mr	Vogels, Mr

Noes, 22

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

New clauses negatived.

New clause D

Mr KAVANAGH (Western Victoria) — I move:

3. Insert the following new clause to follow clause 7 —

"D Termination Review Panels

(1) A registered medical practitioner must not perform an abortion on a woman who is more than 24 weeks pregnant unless —

(a) the abortion is performed in a prescribed public hospital; and

(b) the medical practitioner has received written approval to perform the abortion from the termination review panel of the approved hospital.

(2) The termination review panel of a prescribed public hospital must consist of —

(a) the registered medical practitioner who is to perform the abortion; and

(b) the senior obstetrician of the hospital or his or her nominee; and

(c) a neonatologist; and

(d) a senior midwife; and

(e) a foetal monitoring expert; and

(f) a specialist in foetal ultrasound; and

(g) a geneticist.

(3) A termination review panel may co-opt other registered medical practitioners with the skills and expertise necessary to assist the panel in making assessments and giving approvals under this section.

(4) The Minister for Health may approve a public hospital, within the meaning of the **Health Services Act 1988**, as a prescribed public hospital for the purposes of this section.".

The amendment refers to termination review panels. The reason for this amendment is to require review panels, the reason being that ever since this bill was proposed, the government has consistently argued that the bill and its provisions reflect and are consistent with current clinical practice. This has been the mantra repeated continuously over recent months in Victoria. This was what was mentioned at the press conference in the Legislative Council committee room when the Victorian Law Reform Commission's report was presented. It was claimed over and over again that this bill complies with current clinical practice.

The current clinical practice is to have a review panel at public hospitals that consists of a registered medical practitioner who is to perform an abortion, the senior obstetrician of the hospital or his or her nominee, a neonatologist, a senior midwife, a foetal monitoring expert, a specialist in foetal ultrasound and a geneticist. The permission of that panel is required under current clinical practice in order to approve a late-term abortion at a public hospital. If the government is serious about somehow codifying current clinical practice, then it should accept the need for this proposed amendment.

Mr FINN (Western Metropolitan) — It is painfully obvious after a number of votes here this evening that the majority of the committee do not particularly care for the unborn child, but I ask them to give some consideration to the woman involved in the abortion. We are talking here about a post-24-week abortion — that is, a late abortion, after a pregnancy of six months. That in itself provides an array of dangers and threats to the mother that must be addressed. It is not good enough to say, 'You have a right to an abortion; go out and do it'; we have to ensure that the mother's health and wellbeing is protected. I believe the amendments proposed by Mr Kavanagh go some considerable way towards doing that.

I ask the committee to put aside the abortion-or-bust policy that it seems to have tonight and to give some consideration, if not to the child, then at least to the mother. As I mentioned earlier, abortion is not like getting a tooth out. This is a major operation, and the bigger and the older the child, the bigger the operation and the greater the dangers and risks. This amendment is an attempt to ensure that the risks and dangers are alleviated for the mother, and I ask the committee to support the amendment.

Mr DRUM (Northern Victoria) — I too would like to add my weight to the amendment concerning termination review panels. With the absence now of Mr Guy's third amendment, it would seem that with no review panel in the process we will have a whole range of medical practitioners throughout the state in effect with the control of the abortion industry in their hands. Review panels constituted in the way Mr Kavanagh has proposed would provide checks and balances. All of us are uneasy about these 20 000 deaths every year. At least such panels could properly review more serious and later term abortions, and panel members could report on any trends that may worry them. The smallest check and balance that we can have is that these late pregnancies are referred to termination review panels in the future.

Mrs KRONBERG (Eastern Metropolitan) — My comments go to the heart of the fact that we are sitting here in a house of review. The people of Victoria elect their representatives to sit here in this house of review. We have a house of review for people who have been allowed to be born, and I think this proposal of a termination review panel should be looked at as nothing less than a form of review, a house of review, an upper house, an overriding presiding body that will give strength to any decision to abort a late-term baby. I ask members who have voted against the amendments to look deeply into their hearts and souls and have a look at where their moral compasses are set. I ask them to stand up for what is right and decent.

Mr KAVANAGH (Western Victoria) — The proposed amendment follows current clinical practice as is carried out at the Monash Medical Centre at present and the Royal Women's Hospital by requiring a

panel to review a decision for a late-term abortion — a panel that would bring a variety of skills and experience to the question.

At present under the bill all that is required for a late-term abortion is a statement that the abortion is appropriate in all the circumstances. It is not necessary that the abortion be appropriate in all the circumstances — merely that a statement be made to that effect by two people, one of whom, as far as I can tell, may not even have seen the patient. In practice it would amount to two people, two abortionists, in one clinic: one probably seeing the patient, the other one merely putting his signature to a piece of paper.

As I have said, the government has repeated time and again ad nauseam that this bill is merely a codification legislating to put into practice current clinical practice. That is false. The bill does not codify a current clinical practice. It departs from current clinical practice in many respects, one of which is a departure from a panel and a replacement with two abortionists, and also a replacement of the criteria which those decision-makers use in the course of coming to their conclusions. This amendment is only about late-term abortions and, if it were accepted, it would give some credibility or veracity to the government's claim that this bill reflects in at least some ways current clinical practice.

Mrs PETROVICH (Northern Victoria) — I would like to comment on chapter 3 of the Victorian Law Reform Commission's report. We have heard about a lot of items from this over the last number of days. Item 3.41 states:

> The panels at both hospitals do not always approve abortions that are supported by the foetal management units. When considering requests for late abortions, hospital panels consider the views of the nursing and medical staff who care for the women. If an abnormality is minor or the psychosocial reasons are considered less than compelling staff may be distressed if an abortion was to be undertaken.

I think it is very clear that with a panel of experts everything is taken into consideration. It is there for the protection of the woman, it is there for the protection of the child, and I think it is there for the protection of our community at large.

This is the thin edge of the wedge. It is a serious issue when you are talking about taking a life, taking away the opportunity to enjoy a moment in the sun. It is pathetic that we cannot take the time to care for our mothers and our children by putting some effort into running a panel which will assist in the process so that when it is not appropriate that termination will not be approved. That is a form of protection and I would beseech everyone who has voted against all of our amendments today to consider this one in particular. It is very important.

The DEPUTY PRESIDENT — Order! For the clarification of the committee, I ask Mr Kavanagh whether the composition of the termination review panel that he has prescribed in his amendment reflects the composition of the existing panels at the hospitals or is this a composition that he has arrived at separately.

Mr KAVANAGH (Western Victoria) — To be honest, Deputy President, what I have been told by people who do know about these things is that it is an average really of the two main panels. There may be some small departure in one respect or another, but basically this is what the present panels at the hospitals that I mentioned comprise.

Mrs PEULICH (South Eastern Metropolitan) — I would like to make a very brief contribution to support and extend Mrs Petrovich's contribution. I believe it is most appropriate to have expert panels consider late-term abortions. For a whole range of reasons I think just having two practitioners, only one of whom requires to be consulting, is inadequate supervision and inadequate care for the woman involved.

Expert panels are appropriate and will not only safeguard, as Ms Petrovich said, the female and the child but also the doctors themselves. That harks back to the minister's previous answers to me about whether there were possibilities for the doctors who performed abortions being grounded in reasonable belief that indeed it met the psychosocial provisions in that bill, that action could be taken against them not only just in terms of their professional associations in meeting professional standards but also under the Crimes Act.

The minister's response was that this was possible. I believe this expert panel would also provide the appropriate level of protection to the medical profession involved. I urge the establishment of such panels to deal with those complex matters.

Ms PENNICUIK (Southern Metropolitan) — Briefly, I feel that Mr Kavanagh, in raising and making the point that the Monash Medical Centre and the Royal Women's Hospital, when they are dealing with late-term abortions, involve multidisciplinary teams. That is already clinical practice, and the passing of this bill will not alter clinical practice at those institutions; therefore I feel that the amendment is entirely redundant.

Mr KAVANAGH (Western Victoria) — May I ask Ms Pennicuik what evidence she has that the

introduction of this bill will not change clinical practice from the panel system?

Mr BARBER (Northern Metropolitan) — It is out of order to ask a question of another member in this process, but let me say: we have had a considered and considerable debate where members have discussed one doctor versus two doctors at different times, and it should be obvious by this stage what the will and the view of both houses of Parliament is, and yet a proposal has come forward which now requires that for the approval of a late abortion, seven persons are to approve that abortion, plus any other person or persons they decide to coopt.

If the concern is for the woman as a patient, members would reflect that in other serious procedures, let us say a heart-lung transplant, there is not yet any statute that governs exactly who can tick off on that or any other serious medical procedure. This amendment, therefore, having been brought forward at this time in the debate, shows itself quite clearly for what it is.

Mr JENNINGS (Minister for Environment and Climate Change) — There are a number of things I take this opportunity to reflect on, to confirm and to tease out because from the contributions that have preceded mine, Ms Petrovich used the phrase that I would like to think and talk about, which is 'time, care and consideration' to make sure that we do have some confidence in the practice and the way in which abortions are going to take place in Victoria, and the support provided to women who undergo abortion procedures to make sure that we have quality clinical practice. It is a very fair expectation the member has that we can demonstrate through our collective wherewithal that we as a community can move forward with confidence in relation to this.

We are having a slight debate in relation to Mr Kavanagh's amendment, about whether it assists by being as prescriptive as it is — and it is prescriptive in a variety of ways. Earlier one of the amendments the committee considered related to whether the only location where late-term abortions could take place was in a public hospital. We defeated that amendment, yet it is back as part of this clause.

It is important for us to remember that, in the continuum of the debates we have had, that element has been addressed by the committee in today's debate. That element is revisiting a decision we have made. Beyond that, it reminds us that there are in existence panels at the Royal Women's Hospital and Monash Medical Centre, and that those panels arrived following community concerns and high-profile cases that led to consideration in the public domain about ways in which we as a community could have greater confidence in the quality of care and the decision-making process.

Those two very important institutions decided that this was a way of starting to address that clinical practice issue and to make sure there was a well-rounded appreciation of what the science was saying in terms of the approach. I have relied on the science that these panels would rely on on a number of occasions during the course of my contribution. In fact the proponents of this model have not accepted my view — or perhaps the panel's view — about what appropriate clinical practice may be, but now in the context of this amendment they are defending their decisions, actions and judgements and the evidence on which they rely.

There is a slight inconsistency in approach, but nonetheless it is a demonstration by the proponents of this amendment that there needs to be proper consideration and a capacity to reflect on these issues. I am pleased to say that within the regime we have introduced within the scope of the bill — this is one of the reasons Mr Barber wanted to revisit some of the decisions, because there is an internal logic and construction in the way in which service, decision-making and accountability frameworks are in place, which we have been debating all day — we now have a cogent framework in place.

I know it continues to be contested by those who are proponents of this amendment, but now we have a structure, a process, arrangements and referral mechanisms in place to validate decisions and confidence going forward in a broader context than would apply under the narrow casting of the prescription of this amendment.

In terms of trying to give some degree of comfort to those who are proponents, there is nothing within the provisions of the government's bill and the model we are adopting and recommending to cover this field. There is nothing to prevent the Royal Women's Hospital and the Monash Medical Centre maintaining their panels to work through processes that relate to clinical practice. There is nothing that would prevent those or other services from adopting such a model to augment, assist and guide clinical practice — nothing. In fact it would be our expectation that there would be an ongoing presence of such an arrangement.

We do not have mutually exclusive propositions in relation to quality of care. In addressing Ms Petrovich's challenge to me, we do have mutually exclusive propositions in relation to the technical and prescriptive

nature of this amendment, and the government and I will not support it.

Mrs PEULICH (South Eastern Metropolitan) — Given the minister's answer, I want to get further clarification. What advice can the minister, or Mr Jennings on her behalf, give to medical practitioners who may find themselves referring, or indeed consulting, as per the provisions in the bill where two medical practitioners are required and need to form a reasonable belief? What mechanisms can the minister suggest they could adopt to make sure they are protected from any future possible action under the Crimes Act and any allegations that they may or may not have undertaken an abortion on the grounds of inadequate reasonable belief?

Mr JENNINGS (Minister for Environment and Climate Change) — I congratulate Mrs Peulich on being continually vigilant in relation to this issue. She has raised the potential connection between what would be poor practice, if not malpractice, not being able to satisfy a reasonable belief test within the professional standards and codes of practice that would be provided as an accountability framework for clinical practice to be assessed and which they are accountable for. If people fall foul of those professional obligations and tests, they may find themselves falling foul of the Crimes Act, as I have confirmed. But in fact that has not been the first port of call in relation to the accountability framework or the government's expectation in establishing this bill about the way in which we would seek to ensure best clinical practice.

The government continues to be alive to the discussion we were having up until the member's question in relation to this amendment to make sure — through the auspices of the colleges, the various relevant associations, the professional registration bodies under the health regulations legislation, supplemented by the best assessment of what science and best practice is indicating might be developed in the form of guidelines and directions that would be provided from time to time, we understand, because of the gravity of this issue and the very firm, profound and lasting beliefs that have been demonstrated not only in the debate but also all through the community and all over Victoria — that there will be very high expectations of the best clinical practice being promoted and adopted in Victoria.

That expectation will not diminish, and from our vantage point we are very keen to try to ensure that that is supported. But I remind the committee of the prescriptive nature of this amendment. We have dealt with many of its provisions earlier and rejected them, and it is inconsistent with the structure and logic of the bill.

Mr KAVANAGH (Western Victoria) — The minister has answered that what is contained in the bill does not make mandatory the doing away with current clinical practice. However, that is not what the government has been saying. It has not been telling the people of Victoria that it will not mandate the doing away with current clinical practice. It has been saying that this bill which it has introduced will retain, codify and maintain current clinical practice.

The most important section of the bill in terms of late-term abortions is that instead of a panel, legally the requirement will simply be that one abortionist says it is appropriate and gets another abortionist to agree with that declaration, not necessarily the meaning of the declaration; it does not actually have to be appropriate in all the circumstances. The abortionist merely needs to say that it is appropriate in all the circumstances.

The proposal I have made with this amendment suggests several experts with varying experience and skills partake in the decision. That is consistent with a maxim with which we should all be familiar: 'In the multitude of counsellors there is safety, but where no counsel is, the people fall'. All of us should understand that.

Mrs PETROVICH (Northern Victoria) — I was very interested in the minister's response to my earlier question. What we have debated over the last three days clearly articulates to me that there is a change — and it has been passionately espoused in this chamber — that we are now talking about one doctor needing to refer and one further doctor to be involved. If the government is alive, as the minister has said tonight, to the possibility of a continuation of the panel system in various institutions, why would articulating that do anything but guarantee the protection which I talked about earlier?

Mr JENNINGS (Minister for Environment and Climate Change) — I will simply repeat that there are a number of aspects of this amendment that are overly prescriptive by nature and reintroduce concepts that the committee has already rejected. The reason for our objection is the nature of its structure and its inconsistency with the act and its inconsistency with the decisions of the committee. There are elements of this amendment that have already been tested today. I am not asking for a debate with parliamentary counsel, but we have already rejected something that is contained within this amendment.

Mr KAVANAGH (Western Victoria) — I suggest to the minister that the question is not whether we rejected it earlier but whether we should have rejected it

earlier, and if we should not have, then this is an opportunity to rectify our mistake.

Committee divided on new clause:

Ayes, 12

Atkinson, Mr	Kavanagh, Mr
Drum, Mr	Kronberg, Mrs
Elasmar, Mr	Petrovich, Mrs
Finn, Mr (*Teller*)	Peulich, Mrs
Guy, Mr	Somyurek, Mr
Hall, Mr	Vogels, Mr (*Teller*)

Noes, 22

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

New clause negatived.

The DEPUTY PRESIDENT — Order! I indicate to members of the committee that Mr Kavanagh's amendment 4, proposing the insertion of new clause E, will not proceed because it was tested by the retention of clause 8 in the government's bill. Mr Guy, as I advised the committee earlier, has decided not to proceed with his amendment 2. That deals with the new clauses that had been proposed.

Before I conclude the committee I again express thanks to the gallery and also to Hansard staff, the attendants and other staff for their work not just this day but over a number of days — over a couple of weeks, really, because I know that they have been working quite long hours. I ask them to convey to their colleagues our appreciation for the work they have done. We really appreciate it. The same thanks go to the attendants and other staff of the Parliament.

Reported to house without amendment.

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the report be now adopted.

House divided on motion:

Ayes, 26

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

Noes, 14

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

Motion agreed to.

Report adopted.

Third reading

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a third time.

In moving the third reading I would like to echo the sentiments of Mr Atkinson in terms of those who have contributed to not only the committee stage of the debate in this matter but the community consultation and the consideration of all the public policy issues, on which there have been profound contributions from thousands of people from all vantage points in relation to this debate. I thank them. I thank Mr Atkinson for his contribution to the committee stage. It is ironic that he voted to reject the report, given the high calibre of his contribution to it. I put that on notice. I congratulate my ministerial colleagues and my friends the Minister for Health and the Minister for Women's Affairs in the other place, and everyone who has worked on their behalf to bring this bill to the Parliament and to the conclusion today.

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	Lovell, Ms (*Teller*)
Broad, Ms (*Teller*)	Madden, Mr
Coote, Mrs	Mikakos, Ms
Darveniza, Ms	Pakula, Mr
Davis, Mr D.	Pennicuik, Ms
Davis, Mr P.	Pulford, Ms
Eideh, Mr	Scheffer, Mr
Hall, Mr	Tee, Mr

Hartland, Ms
Jennings, Mr
Koch, Mr
Leane, Mr
Thornley, Mr
Tierney, Ms
Viney, Mr

Noes, 17

Atkinson, Mr
Dalla-Riva, Mr
Drum, Mr
Elasmar, Mr (*Teller*)
Finn, Mr
Guy, Mr
Kavanagh, Mr
Kronberg, Mrs
Lenders, Mr
O'Donohue, Mr
Petrovich, Mrs
Peulich, Mrs
Rich-Phillips, Mr (*Teller*)
Smith, Mr
Somyurek, Mr
Theophanous, Mr
Vogels, Mr

Question agreed to.

Read third time.

LOCAL GOVERNMENT AMENDMENT (COUNCILLOR CONDUCT AND OTHER MATTERS) 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 Local Government Amendment (Councillor Conduct and Other Matters) Bill 2008.

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

Overview of bill

The purpose of the Local Government (Councillor Conduct and Other Matters) Bill 2008 ('the bill') is to amend the Local Government Act 1989 ('the LG act') and the City of Melbourne Act 2001 to improve the effective governance of local councils.

Specifically, the bill proposes to:

provide for new arrangements for dealing with the conduct of elected councillors;

establish a new framework and extend the application of conflict of interest;

provide for the adjustment of councillor and mayoral allowances, and resourcing of councillors; and

make other miscellaneous amendments, including a consequential amendment to the Victorian Civil and Administrative Tribunal Act 1998.

Human rights issues

The bill engages six of the human rights provided for in the Charter of Human Rights and Responsibilities ('the charter').

Section 12: freedom of movement

Section 12 establishes a right for an individual in Victoria to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

The right to move freely within Victoria is not dependent on any particular purpose or reason for a person wanting to move or to stay in a particular place. It encompasses a right not to be forced to move to, or from, a particular location.

Clause 18 of the bill inserts new section 81H into the LG act, which provides that a councillor conduct panel ('panel') may request a person to attend a panel hearing.

The right to freedom of movement is not limited under this clause as a person requested to attend a panel hearing is not compelled to do so, and there are no legal ramifications for refusing. The importance of the panel to be able to request a person attend a panel hearing ensures a panel can obtain all relevant information and determine a matter fairly and in accordance with the principles of natural justice.

Clause 18 also inserts new section 81J into the LG act, which provides that if a panel makes a determination that remedial action is required, the panel may direct councillors to attend mediation, training or counselling. This provision has the potential to limit the freedom of movement of councillors subject to the determination of a panel. The limitation is reasonable for the reasons set out below:

(a) the nature of the right being limited

The right to freedom of movement is an important right which nevertheless may be subject to reasonable limitations.

(b) the importance of the purpose of the limitation

It is important that panels have the authority to require councillors attend mediation, training or counselling, as this ensures there is an effective improvement in the governance of a council.

(c) the nature and extent of the limitation

The right may be limited only to the extent that the councillor will have to be present at training, counselling or mediation. The panel may also set reasonable conditions in respect of how and when remedial action is to be undertaken, taking into account the particular circumstances of the councillor and the type of misconduct engaged in by the councillor, which may lessen the extent of any limitation on movement.

(d) the relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose of ensuring proper local governance.

(e) any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the intended purposes.

(f) any other relevant factors

There are no other relevant factors to be considered.

Section 13: privacy and reputation

Section 13 establishes a right for an individual not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have his or her reputation unlawfully attacked.

The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter.

In the bill, there are certain provisions which engage the right to privacy. However, in each instance, the interference with privacy is neither unlawful nor arbitrary for the reasons set out below:

Clause 18 of the bill, which inserts new section 81H into the LG act, provides that a panel may request information from an applicant, respondent or council involved in a hearing, including confidential information held by the council.

The interference with privacy is not unlawful and is reasonable under the circumstances, since it is in the interest of the parties to provide all relevant information so that a panel can make its determination in accordance with the principles of natural justice. Further, the bill provides that members of a panel are prohibited from releasing any confidential information it receives to the public.

Clause 19 of the bill, which inserts new clause 8 in new schedule 5 to the LG act, provides that the chief executive officer ('CEO') of a council must comply with a request by VCAT ('Victorian Civil and Administrative Tribunal'), a court or an inspector of municipal administration ('an inspector') for sealed records of the panel.

The interference with privacy is lawful and not arbitrary, since the information may only be requested by VCAT, a court or an inspector exercising his or her powers under the LG act, for the purpose of a criminal or civil hearing, or an investigation under the LG act.

Clause 22 of the bill, which inserts new sections 79 and 79B into the LG act, provides that if a councillor or member of a special committee has a conflict of interest or considers to have a personal interest that conflicts with their public duty in a matter to be considered at a meeting of the council or special committee, the councillor or member must disclose the conflict of interest. Similarly, clause 24, which inserts new sections 80A, 80B and 80C, provides that if a councillor attending an assembly of councillors knows that a matter being considered by the assembly is a matter that the councillor would have to disclose a conflict of interest were it a matter for the council, the councillor must disclose the conflict of interest to the assembly. Council staff delegated a power, duty or function of the council and persons engaged under a contract to provide advice or services to the council that have a conflict of interest in a matter to which the function or service relates, are also required to disclose that conflict of interest.

In all cases, the interference with the right to privacy is both lawful and reasonable since it removes any possibility that councillors, council staff or persons contracted by the council that have a conflict of interest improperly influence the decisions of the council, and ensures a level of transparency within the council and that the council acts in the best interests of the community.

Further, a councillor or member of a committee that has a conflict of interest has the option to disclose the type and nature of the interest to the CEO in writing, and only disclose the type of interest and not the nature and details of the interest to the council or committee. The CEO is required to keep the written disclosure in a secure place for three years after the councillor or member ceases to hold office, and the nature of the interest is not at any stage made available for public inspection.

A councillor who considers that they have a personal interest that conflicts with their public duty, may request to be exempted from voting and simply need to give reasons in support of an application to be exempted from voting, without having to disclose the nature or details of their personal interest.

Pursuant to clause 24 of the bill, in circumstances of councillors attending an assembly, although written records of any conflict of interest disclosures may be made available for public inspection, a councillor must only disclose the type of interest to the assembly, without having to disclose the nature and details of their interest.

For delegated council staff under clause 24 of the bill, although they are required to disclose the type and nature of their interest, the disclosure must be made to the CEO only, and in the case of the CEO, to the mayor. For those persons engaged under a contract to provide advice or services to the council, although the type of interest will be recorded in the minutes of the council committee meeting, the nature of their interest may be discussed at the meeting but not recorded in the minutes and therefore not made publicly available.

Clause 24 of the bill also provides that at an assembly of councillors a written record must be kept by the CEO of the councillors and council staff attending, which is made available for public inspection.

Given that matters before an assembly of councillors are matters that often engage a level of public interest and scrutiny, it is reasonable that the list of councillors or council staff considering the matters should become public knowledge.

Under clause 25 of the bill, a person that becomes a councillor or member of a special committee is required to lodge a primary return to the CEO of the council, and then lodge an ordinary return twice a year during their term of office. The lodged returns must disclose the councillor's interests including any interests in a corporation, land within the municipality or trusts in which he or she holds a beneficiary. The CEO maintains a register of the interests, which can be inspected at the council office by any person.

This does not amount to an arbitrary interference with the councillor's privacy, especially given councillors' obligations relating to conflict of interest and duties of disclosure under the council's code of conduct and the LG act. The purpose of such a disclosure and the maintaining of a register are important to ensure transparency and accountability in local government.

Clause 74 of the bill provides that a council must ensure that a prescribed document, detailing, for instance, councillor and mayoral allowances, details of interstate or overseas travel undertaken by councillors, or agendas and minutes of council meetings, is available for public inspection at all reasonable times.

This requirement of the council is reasonable since it ensures that the council's business and affairs are transparent and open to public question and scrutiny.

Clause 77 of the bill provides that an inspector appointed under the LG act may take possession of any document that the inspector requires the person to produce, by notice in writing.

The interference with the privacy right is both lawful and reasonable under the circumstances since the inspector is exercising his or her existing powers under the LG act, and the use of the documentation is confined to and critical to the carrying out of an investigation of an alleged breach of the LG act.

Accordingly, the bill does not provide for the unlawful or arbitrary interference with privacy and therefore there is no limitation on the right to privacy.

Section 15: freedom of expression

Section 15 establishes a right for an individual to seek, receive and impart information and ideas of all kinds, whether orally, in writing, in way of art, in print or other medium. The right to freedom of expression also encompasses the right not to express.

Clause 18 of the bill, which inserts new section 81H into the LG act, provides that a panel may request a person at a hearing to answer questions, and request information from an applicant, respondent or council that are parties to a hearing. Also, under new sections 81J and 81K, where the panel or VCAT make a finding of misconduct against a councillor, the panel or VCAT may direct the councillor to make an apology in a form and manner it determines. Where the panel makes a finding that remedial action is required, the panel may direct the councillor to attend mediation or counselling. To the extent that these provisions may compel a person to express, they limit section 15 of the charter. However, the limitation is reasonable for the following reasons:

(a) the nature of the right being limited

Freedom of expression is an important right central to a democratic society.

(b) the importance of the purpose of the limitation

The purpose of compelling persons to express is important to ensure that the panel can effectively undertake its functions of investigating complaints and improving the governance of councils.

(c) the nature and extent of the limitation

The right will be limited only to the extent that a person is compelled to express against their will or face the consequences of non-compliance with a request by the panel.

(d) the relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose of empowering the panel to properly perform its functions.

(e) any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the intended purposes.

(f) any other relevant factors

Nil.

Section 18: taking part in public life

Section 18 establishes a right for an individual to participate in the conduct of public affairs, to vote and be elected at state and municipal elections, and to have access to the Victorian public service and public office, without discrimination. The right to participate in public affairs is a broad concept, which embraces the exercise of governmental power by all arms of government at all levels.

Clauses 11 and 30, and clause 18, which inserts new sections 81J and 81K into the LG act, provide that councillors are required to take leave of absence, be suspended or disqualified from the office of councillor, or be ineligible to hold office of mayor or vacate their position as mayor where proceedings against them are on foot in respect of charges for certain offences under the LG act, or where a panel or VCAT have made findings of misconduct, serious misconduct or gross misconduct against the councillor.

Clause 19 of the bill, which inserts new clauses 3 and 4 in new schedule 5 to the LG act, provides that for the purposes of establishing the list of eligible panel members, a person must meet certain prerequisites. Further, if the MAV considers that a person on the list of panel members is no longer a fit and proper person to be on that list, the MAV may apply to the Minister for Local Government ('the minister') to remove the person, for which the minister may consent.

Clause 19, which also inserts new clause 10 in schedule 5, provides that a person selected to be a member of a panel, must excuse themself if they have

conflict of interest of a kind set out in the LG act or any other kind.

Under clause 22, which inserts new sections 79 and 79B into the LG act, a councillor or member of a special committee that has a conflict of interest in any matter which is to be considered at a meeting or special committee, must leave the room and cannot vote on the matter. Pursuant to clause 24, which inserts new sections 80A, 80B and 80C, a councillor attending an assembly of councillors who has a conflict of interest is required to leave the assembly whilst the matter is being considered. Similarly, council staff that have been delegated a power, duty or function of the council relating to a matter the staff member has a conflict of interest in must not exercise the power or discharge the duty or function.

Clause 26 of the bill provides that where the only entitlement a person has to be qualified to be a candidate for the office of councillor is an entitlement to be enrolled as a resident of the municipal district, that person ceases to be qualified to be a councillor if the person's principal place of residence is no longer within the municipal district.

Clause 73 amends an existing provision of the LG act, to allow for the reinstatement of councillors in certain circumstances following their suspension or dismissal under the LG act.

Clause 75 of the bill, although substantially restating an existing provision, increases the time for making a submission about a matter to the council from 14 days to 28 days.

Clause 75 promotes the right to take part in public life as it should offer members of the public a better opportunity to be heard, and participate in the consideration of council matters that impact on them personally or the community as a whole.

Clauses 11, 18, 19, 22, 24, 26, 30 and 73 as stated above, have the potential to limit the right to take part in public life. However, the limitations are reasonable for the reasons set out below:

(a) the nature of the right being limited

The right to take part in public life protects the right to participate in public affairs, the right to vote in genuine, periodic and free elections and the right to have access to the public service and office. However, the right to take part in public life is not absolute and may be subject to reasonable limitations.

(b) the importance of the purpose of the limitation

Clauses 11, 18 and 30: the ability to prevent a person that has engaged in a level of misconduct from undertaking their duties and functions and holding their position of office, recognises that there are standards that are required of people who hold public office and that the community is entitled to be represented by people who are capable of performing their duties as councillor. It also ensures that appropriate disciplinary measures are taken against councillors depending on the seriousness and nature of their conduct.

Clause 19: panel members should be persons with the requisite background and qualifications, who are fit and proper and who don't have conflicting interests, as they are better suited to make decisions that are competent, fair, impartial and in accordance with the principles of natural justice.

Clauses 22 and 24: it is expected that persons with a conflict of interest do not participate or vote on council matters as it ensures council's functions and duties are not unduly compromised and that its decisions are made in the interest of the community.

Clause 26: it is important that persons entitled to undertake the duties of a councillor for a particular council do in fact have a continuous connection with the affairs of that municipality.

Clause 73: the minister's decision to suspend a council is done in the interests of the community following an investigation which has identified serious governance issues within the council. Similarly, a bill to dismiss a council is the subject of considerable parliamentary scrutiny and is made on the basis that the councillors are no longer suitable to hold office and effectively govern the municipality.

(c) the nature and extent of the limitation

In clause 11 of the bill, a councillor is required to take leave of absence where a councillor is charged for offences that amount to disqualification under the LG act, and VCAT, following an application by the Secretary of the Department of Planning and Community Development ('the secretary'), has made an order requiring the councillor to take leave of absence, having considered the nature and seriousness of the offence. Such an order ceases to have effect if charges are withdrawn or the councillor is not convicted. If a councillor is convicted of the offence, and lodges an appeal in respect of the conviction, he or she is also taken to be on leave of absence until the appeal is determined.

In clause 18, where a panel or VCAT makes a finding of misconduct against a councillor, that councillor may be directed to take leave of absence for a period not exceeding two months. Where a panel makes a finding of serious misconduct, the panel may direct the councillor be suspended from office for a period not exceeding six months, or that the councillor be ineligible to hold the office of mayor for a period not exceeding four years.

Where VCAT makes a finding of gross misconduct, it may order that the councillor be suspended from office for a period not exceeding six months, be disqualified for a period not exceeding four years, or be ineligible to hold office of mayor for a period not exceeding four years. Further, where VCAT makes a finding of serious misconduct or gross misconduct against a councillor, the councillor automatically becomes ineligible to hold the office of mayor for the remainder of the council's term, and where the councillor holds the office of mayor, the councillor must vacate that office unless VCAT otherwise orders.

Under clause 11 and clause 30 of the bill, if a councillor is required to take leave of absence, the councillor may still continue to hold office as a councillor, so that his or her position does not become vacant, but must not perform the duties or functions of a councillor during the period of leave. Where a councillor is suspended, the councillor ceases to be a councillor only for the term of the suspension. If the councillor is disqualified, that person is not capable of becoming or continuing to be a councillor or nominating as a candidate at a council election for the period of their disqualification. Under clause 12 of the bill, a person disqualified for being convicted of an offence under the LG act, may apply to VCAT for relief from that disqualification after a period of four years from the date of the conviction.

Clause 19 of the bill provides that for the purposes of establishing the list of eligible panel members a person must be a local legal practitioner and have a local practising certificate for at least five years or must have relevant experience in municipal governance, but not be a person who has been convicted of certain offences under the LG act, an undischarged bankrupt, has property that is subject to control under bankruptcy laws, or has been in the last three years an employee, contractor or member of the board of management of the Municipal Association of Victoria ('MAV') or other body that represents the interest of councils, councillors or council staff.

Also, a person selected to be a member of a panel, must excuse themself if the member has been a councillor, employee, consultant or contractor of the council in the preceding five years to which the matter relates, has a close association with any councillor of the council, becomes ineligible pursuant to the LG act, or has a conflict of interest of any other kind.

Although, clause 22 prevents a person with a conflict of interest from voting on council matters or undertaking their ordinary duties or functions in regard to a council matter, new section 79C of the LG act provides exemptions to the conflict of interest provisions so that councillors can vote on certain matters, including where the matter relates to the nomination or appointment to a position for which the councillor will not be paid, the election of the mayor, and the payment of allowances to the mayor or councillors. Also, under clause 22 of the bill, a councillor or member of a special committee with a conflict of interest in a matter may make a written submission under the LG act in respect of the matter and present it before the council or committee so that his or her voice may be heard. Finally, where the transaction of any council or special committee business would be impeded because of the number of councillors having declared a conflict of interest, a council may apply to the minister so that those councillors are exempted from the conflict of interest provisions.

Under clause 26, the extent to which a person ceases to be qualified to hold office as a councillor is if their principal place of residence is no longer within the municipal district in which they hold office.

Under clause 73 and existing section 219 of the LG act, the minister may recommend to the Governor in Council to make an order suspending all councillors of a council where the minister is satisfied there has been a serious failure to provide good government or the council has acted unlawfully. At the expiry of an order in council to suspend all the councillors of a council, the councillors automatically resume office, unless the minister fixes a date on which a general election for the council is to be held or a bill to dismiss the council has been introduced into the Parliament. Further, if the bill to dismiss the council has not become an act within 100 days after the expiry of the order in council, the councillors will resume office.

(d) the relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose of ensuring that elected councillors properly undertake the duties of office and act in a manner appropriate to a community leader.

(e) any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the intended purposes.

(f) any other relevant factors

There are no other relevant factors to be considered.

Section 20: property rights

Section 20 establishes a right for an individual not to be deprived of his or her property other than in accordance with law. The right only prohibits a deprivation of property that is carried out other than in accordance with law. This requires that the powers which authorise the deprivation of property are conferred by legislation or common law, are confined and structured rather than arbitrary or unclear, and are accessible to the public and formulated precisely.

In the bill, there are a number of provisions which engage the right to property. However, in each instance, the deprivation is in accordance with law and there is no limitation on the right, as discussed below:

Clauses 4 and 90 of the bill provide that the minister must review at least once every year, councillor and mayoral allowance categories for each council, and the allowance limits and ranges within each category. Depending on the review findings, the minister must alter the allowance categories, limits and ranges by notice in the *Government Gazette*.

Clauses 5, 6 and 91 provide that a council may also review, determine and vary the level of the councillor and mayoral allowances in certain circumstances, and that a council must pay the specified councillor allowance or mayoral allowance.

Clause 8 provides that a council can make a submission to a local government panel requesting a change of its allowance category. The minister may request a local government panel to review the category, which, following a review, may recommend to the minister that a change be made. The minister is required to give effect to that recommendation.

The ability to review and vary councillor and mayoral allowances does not in any way limit the property rights of individuals, but in fact ensures that councillors and

mayors are appropriately remunerated for their duties in accordance with current standards.

Clause 9 of the bill provides that a council must reimburse councillors for bona fide out-of-pocket expenses incurred while performing duties as a councillor, and may reimburse members of council committees for necessary out-of-pocket expenses incurred while performing duties as a committee member.

Each council is required to adopt and maintain a policy in relation to the reimbursement of out-of-pocket expenses, ensuring that bona fide expenses are reimbursed, and providing clarity and certainty for councillors and committee members about their entitlements.

Clause 11 and clause 30, which inserts new section 66B into the LG act, provide that if an order is made by VCAT requiring a councillor to take leave of absence, or where a councillor is required to take leave of absence under the LG act, the councillor may continue to receive an allowance but is not entitled to be reimbursed for out-of-pocket expenses during the period of leave and must, at the council's request, return all council equipment and materials to the council for that period. Further, if the councillor lodges an appeal in respect of a conviction, which if upheld will disqualify the councillor under the LG act, the councillor is taken to be on leave of absence and their allowance must be withheld until the appeal is determined.

A councillor that is required to take leave of absence cannot incur out-of-pocket expenses for the period of leave, and therefore not being entitled to reimbursement cannot constitute an interference of property rights. Similarly, since council equipment belongs to the council, councils should be entitled to request its return. Further, the withholding of allowance is for the specified period of leave and therefore does not amount to a permanent deprivation of property.

Clause 30, which inserts new section 66A of the LG act, also provides that a councillor suspended under the LG act is not entitled to receive a councillor allowance for the term of the suspension unless the LG act otherwise provides, and must return all council equipment and materials to the council at the beginning of the term of suspension.

There is no deprivation of property in either case, since a councillor that has been suspended ceases to be a councillor and is therefore not entitled to a councillor allowance for the period of the suspension. Also, all council equipment belongs to the council and should therefore be returned.

Clause 56 of the bill provides that where councils may declare a special rate or charge for defraying expenses, it cannot do so in relation to expenses incurred or anticipated to be incurred which relate to proceedings before VCAT.

This clause ensures that ratepayers cannot be required by the council to pay the council's legal costs in relation to a VCAT appeal. VCAT has the power to award costs if it chooses.

Clause 77 of the bill provides that an inspector appointed under the LG act may take possession of any document that the inspector requires the person to produce in their custody or control.

Requiring a person to provide an inspector with documents within their possession does not amount to a permanent deprivation of property, and is therefore compatible with the charter.

Section 24: fair hearing

Section 24 establishes a right for an individual charged with a criminal offence or a party to a civil proceeding to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This right is concerned with procedural fairness rather than the substantive fairness of a decision or judgement of a court or tribunal determined on the merits of the case. Hearings should be held in public and judgement and decisions should be pronounced in public. However, a court or tribunal may exclude members of media organisations or other persons or the general public from all or part of a hearing if permitted to do so by a law.

Certain provisions of the bill engage but do not limit the right to a fair hearing, for the reasons discussed below:

Clause 18 of the bill, which inserts new section 81I into the LG act, provides that there is no right to representation at a hearing of a panel except if the panel considers a party requires representation to ensure that the hearing is conducted fairly, that the panel is not bound by the rules of evidence and that the procedure of the panel is otherwise in its discretion.

The panel's ability to hear a matter with as little formality and at the panel's discretion does not interfere with the right to a fair hearing, since the panel is bound by the rules of natural justice. It simply ensures that the hearing is 'user-friendly', and that parties are not disadvantaged for having limited legal expertise or access to legal representation. It also provides a cheaper and quicker means of resolving disputes. A councillor subject to an application of the panel may still apply for referral of the matter to VCAT, and parties that are dissatisfied with a panel decision can apply to VCAT for review of the decision.

Clause 19, which inserts new clause 2 in new schedule 5 to the LG act, provides that a panel is to consist of two persons selected and appointed by the MAV or a person appointed by the minister in accordance with the LG act.

Panel members must consist of a legal practitioner who has held a local practising certificate for at least five years and a person with relevant experience in municipal governance. This ensures panel members are competent and have a high level of expertise in local government governance and legislation, and that there is a greater likelihood that decisions are made competently, fairly, impartially and in accordance with the principles of natural justice.

Section 25: rights in criminal proceedings and section 26: right not to be tried or punished more than once

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

The right to be presumed innocent until proven guilty is a well-recognised civil and political right and a fundamental principle of common law. It requires that a prosecution has the burden of proving that the accused committed the charged offence.

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

While certain provisions of the bill may seem to engage the right to be presumed innocent and the right not to be tried or punished more than once, there is no interference with these rights for the reasons set out below:

Clause 11 of the bill allows VCAT to make an order requiring a councillor, charged with a criminal offence under the LG act that could disqualify the councillor, to take leave of absence having considered the nature and circumstances of the charges. Further, clause 18 of the bill, which inserts new section 81E into the LG act, allows the secretary to make an application to VCAT to hear a matter that alleges gross misconduct by a councillor, which involves behaviour that contravenes certain offences under the LG act.

VCAT provides Victorians with access to a civil justice system, whose role and jurisdiction is separate to that of the criminal jurisdiction of courts and other tribunals. VCAT's power to make orders and impose civil liabilities under clauses 11 and 18 of the bill is intended to address local governance issues and ensure that elected councillors undertake their public duty in accordance with community expectations. It does not in any way interfere with or prejudice an individual's right to be presumed innocent or the right not to be tried or punished more than once for a criminal offence by the Victorian criminal justice system. Furthermore, the scope of the right not to be tried or punished more than once does not apply to civil trials that may result in a form of civil liability.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because, although it does limit three human rights, the limitations are reasonable and proportionate. The limitations strike the correct balance by providing persons with the right to take part in public life and serving the interests of the local community.

JUSTIN MADDEN, MLC
Minister for Planning

Second reading

Hon. J. M. MADDEN (Minister for Planning) — Predominantly this bill relates to a number of technical amendments, particularly in relation to penalty units. Minor technical amendments were made in the Assembly. I move:

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

Motion agreed to.

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill continues the government's process of reform in local government to support and enhance the democratic and accountable nature of the sector.

It includes important changes to the Local Government Act 1989 relating to the conduct of elected councillors as well as other reforms to enhance transparency and accountability in local government.

Most of the reforms presented in this bill follow the publication of a discussion paper in November 2007 entitled *Better Local Governance* and reflect the outcomes of the consultation process in response to that paper.

Part 1 of the bill describes the purpose of the bill and provides for its provisions to come into operation on the day after it receives royal assent.

The bill is being introduced in the period leading up to the November 2008 elections, when all Victorian councillors will be elected concurrently for the first time, with the aim of coming into effect for the newly elected councils.

Part 2 of the bill includes amendments to provisions dealing with councillor allowances and resources. These changes reflect the government's policy statement on mayoral and councillor allowances and resources — recognition and support, which was adopted after the final report of the Local Government (Councillor Remuneration Review) Panel in January 2008.

The bill includes a requirement that the minister review annually the limits and ranges of councillor allowances, having regard to the movements in the level of remuneration for executives, as defined in the Public Administration Act 2004, which includes holders of statutory offices.

The minister will also be required to review annually the allowance category of each council, referencing movements in population and council recurrent income.

The bill amends provisions relating to the reimbursement of councillor out-of-pocket expenses to require reasonable bona fide expenses to be reimbursed. Councils will be required to adopt expenses policies that include prescribed matters and are available for public inspection.

Part 3 of the bill includes amendments to specify standards of conduct for elected councillors and to provide for processes to support and enforce good conduct by elected councillors.

The bill inserts principles of councillor conduct in the act that describe the standards of conduct that councillors are required

to uphold. These principles will become part of every council's councillor code of conduct and be a point of reference for councillor conduct panels and VCAT.

Councillor conduct panels will be able to be established, when required, to help councils to enforce their councillor codes of conduct. Two-member panels, combining legal and local government governance experience, will be formed from lists maintained by the Municipal Association of Victoria. It is expected that the MAV will consult the Victorian Local Governance Association when preparing the lists.

A panel may be established for a council on application from a councillor or councillors, after a resolution of the council. A panel may dismiss an application that is frivolous, vexatious, misconceived, lacking in substance or where council's internal dispute resolution processes have not been followed.

A councillor conduct panel will be able to:

> discipline a councillor by reprimand, demand an apology or require the councillor to take up to two months leave of absence;
>
> require remedial action, including mediation, training or counselling, or
>
> refer a matter to VCAT if a councillor's behaviour appears to be serious misconduct.

Decisions of a panel regarding a finding of misconduct may be appealed to VCAT.

The bill will give VCAT new powers in relation to councillor conduct.

VCAT will be empowered to discipline a councillor for serious misconduct, after a referral from a councillor conduct panel, by:

> suspending the councillor for up to six months;
>
> prohibiting the councillor from being the mayor or the chair of a special committee of a council for a period of up to four years.

Serious misconduct includes a failure to comply with an instruction of a councillor conduct panel after a finding of misconduct or where a councillor is a repeat offender. It also includes a breach of the principles of councillor conduct that involves a breach of the confidentiality or improper direction provisions of the act.

VCAT may also hear an application for a finding of gross misconduct from the department. If VCAT makes a finding of gross misconduct it may disqualify a councillor for up to four years, suspend the councillor for up to six months or disqualify the councillor from being mayor for up to four years.

A finding of gross misconduct may be made if a councillor has breached the principles of councillor conduct and also breached a provision of the Local Government Act for which a penalty of at least 10 penalty units is prescribed. It may also be made if a councillor is not of good character or otherwise not a fit and proper person to hold the office of councillor.

The bill also establishes new arrangements that apply if a councillor is charged or convicted of an offence that will have the effect of disqualifying them from being a councillor under section 29(2) of the Local Government Act. This includes serious criminal offences, electoral offences and serious offences as a councillor.

If a councillor is charged with such an offence, the department may apply to VCAT for the councillor to be required to take leave of absence until the matter is heard. If a councillor is convicted of one of these offences and appeals the decision to a higher court, he or she will be automatically on leave of absence until the appeal is decided.

The existing provision that allows a councillor convicted of a disqualifying offence to seek relief within 30 days to the court, possibly after having gone through an appeal process already, will be repealed. It will be replaced with a provision allowing a person to seek relief from the disqualification at VCAT after a period of four years has past.

Part 4 of the act makes extensive changes to the conflict of interest requirements of the Local Government Act. This includes new definitions, revised procedures and a wider application of the provisions.

The new definitions completely replace existing provisions of the act defining 'interests' and 'conflicts of interest'. A conflict of interest will be considered to exist where a person has a direct interest or one of five types of indirect interest.

While financial interests continue to be conflicts of interest, the definitions are no longer constructed around the concepts of 'pecuniary' and 'non-pecuniary' interests. This is because some types of interests are not easily described as being one or other of these types.

A 'direct interest' exists if the benefits, obligations, opportunities or circumstances of the relevant person would be directly altered if the relevant matter is decided in a particular way. This includes where there would be direct financial gain or loss.

The five types of 'indirect interest' are:

> an indirect interest because of a close association, such as when a member of the relevant person's family has a direct or indirect interest;
>
> an indirect financial interest when a benefit of loss to another person affected by the decision would be likely to result in a financial gain or loss to the relevant person;
>
> an indirect interest because of a conflicting duty where the relevant person has a duty to another person or body that has a direct interest in the matter;
>
> an indirect interest because the relevant person has received an applicable gift, being a gift, including an election donation, valued at $200 or more; and
>
> an indirect interest because the relevant person has become a party to the matter by lodging an appeal, objection or submission, or by undertaking civil proceedings, in relation to the matter.

Where a councillor or a member of a special committee of council has a conflict of interest, they will no longer be able to

participate in the discussion of the matter. They must leave the meeting for the entire debate and not vote.

The application of conflicts of interest will be extended to cover wider aspects of council decisions and the exercise of council powers, duties and functions.

> Councillors will be required to disclose conflicts of interest in other meetings, defined as assemblies of councillors, including advisory committees and councillor briefings.
>
> Council officers delegated council powers or duties will be prohibited from exercising those powers, duties or functions if they have conflicts of interest.
>
> Council officers and contractors providing reports or advice to a council or a special committee will be required to disclose conflicts of interest.

The new provisions contain some clear exemptions that are necessary for the practical operation of the council, such as the ability of councillors to vote on certain matters affecting themselves, such as the election of the mayor, councillor appointments, councillor allowances and applications for councillor conduct panels.

The bill also changes the exemption threshold for shares. A councillor will not be considered to have a conflict of interest if the combined value of shares that they and members of their family hold in a company does not exceed $10 000 and if the total value of issued shares of the company exceeds $10 million.

The bill also includes changes to the lodgement of interest returns by councillors, nominated officers and members of special committees. Ordinary returns will, in future be required to be lodged twice yearly to ensure more up-to-date records of interests are available.

Part 5 of the bill includes various amendments to improve transparency, accountability and functioning of councils.

Amendments supporting transparency and accountability include:

> requiring councils to give at least seven days public notice of council and special committee meetings or, if urgent or extraordinary circumstances make this impossible, specify the reasons in the minutes of the meeting;
>
> requiring all councils to publish local laws, public notices and lists of documents available for public inspection on the council's Internet website;
>
> increasing the time that must be allowed for people to make submissions under the act from 14 days to 28 days; and
>
> requiring all councils to adopt procurement policies including any prescribed matters and make them available for public inspection.

The bill also provides that any committee that is delegated a power, duty or function of the council under any act is subject to the same requirements as a special committee under the Local Government Act. This includes giving notice of meetings, keeping minutes and disclosing conflicts of interest. This amendment will apply to planning committees under section 188 of the Planning and Environment Act 1987.

In addition, members of council audit committees will be subject to provisions relating to misuse of position and conflicts of interest as if they were members of a special committee.

A number of new provisions aim to clarify and enhance the operation of councils. This includes a provision that will allow a council to elect a mayor for a two-year term of office instead of the normal one-year term. In addition, if a councillor's primary place of residence ceases to be in the municipality and the councillor is not entitled to be enrolled on the rolls as a ratepayer, he or she will cease to be a councillor after 50 days.

The bill clarifies arrangements when all the councillors of a council have been suspended under section 219 of the act. It states that the councillors must be reinstated after one year (or a lesser period specified in the suspension order) if the minister has not set an election date or presented a bill to the Parliament to dismiss the council. It also clarifies the arrangements that apply when an individual councillor is suspended or required to take leave of absence by a councillor conduct panel or VCAT.

Chief executive officers will be required to adopt and disseminate codes of conduct for council staff that include any prescribed matters. This will support the implementation of new conflict of interest requirements for council staff as well as informing staff of other obligations under the act.

The bill makes changes to arrangements for the levying of special rates and special charges, including:

> specifying that VCAT costs may not be included in the expenses that a council may recover as part of a special rate or charge;
>
> providing that a person who is required to pay a special rate or charge that is mainly for capital works must have the option of paying by instalments over at least four years.

Part 6 amends the City of Melbourne Act 2001 to address matters affecting the Melbourne City Council in association with changes instituted under parts 2 and 3 in relation to other councils.

Provision is made for the allowances of the Lord Mayor, the Deputy Lord Mayor and councillors at the City of Melbourne to be reviewed annually in a similar manner to other councils. Provision is also made for an acting mayor, Lord Mayor or acting Deputy Lord Mayor to receive the allowance applicable to their temporary duties in certain circumstances.

Part 7 of the bill amends the Victorian Civil and Administrative Tribunal Act 1998 in regard to VCAT hearings in regard to the councillor conduct matters under part 3.

It provides that, for the purposes of a hearing in regard to an allegation of misconduct, serious misconduct or gross misconduct by a councillor, VCAT shall comprise two members. One must be a senior VCAT member who has been admitted to legal practice and the other must be a person with at least five years experience in local government governance matters. For a review of a decision of a councillor

conduct panel, VCAT will consist of a single senior member who has been admitted to legal practice.

The costs of VCAT hearings are to be borne by the relevant council unless the secretary of the department is the applicant or VCAT orders otherwise.

This part also amends the Relationships Act 2008 as a consequence of amendments to conflict of interest provisions in part 4.

The key reforms in this bill, relating to councillor conduct, represent a significant watershed for local government in Victoria. They will enhance the ability of councils to act cohesively and in the best interests of their local communities.

The local government sector has widely supported these reforms and is to be commended for the responsible approach it has taken in such sensitive matters.

I commend the bill to the house.

Debate adjourned for Mr HALL (Eastern Victoria) on motion of Ms Lovell.

Debate adjourned until Thursday, 16 October.

BUSINESS OF THE HOUSE

Adjournment

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

That the house, at its rising, adjourn until 9.30 a.m. on Wednesday, 15 October, at Bellevue on the Lakes in Lakes Entrance.

Motion agreed to.

ADJOURNMENT

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

That the house do now adjourn.

Motion agreed to.

House adjourned 10.38 p.m. until Wednesday, 15 October.