Medicare-funded abortion is readily available to women in all Australian jurisdictions. In some States, the criminal law on abortion has been developed by the judges. It is known as common law. The majority of Australian parliaments have now changed or at least clarified the common law, ensuring the legality of widespread abortion practices. Victoria is about to follow this trend, debating the Abortion Law Reform Bill this week in the Legislative Council. But the pro-abortion lobby has decided to take things three steps further than other jurisdictions like Western Australia, the ACT and the Northern Territory have in recent years. It is quite a try on, under cover of the claim that the Victorian bill “acknowledges and reflects community attitudes and current clinical practice”.

The Victorian bill seeks to break new ground by

1. Permitting abortion, regardless of the interests of the foetus, up to 24 weeks, rather than (say) 20 weeks as applies in Western Australia
2. Dispensing with the need for informed consent provisions which would give all women the opportunity to consider their decision, and which would protect vulnerable young women being pressured into having an abortion by relatives or those who have abused them
3. Requiring health professionals with a conscientious objection to abortion to participate in abortion in some circumstances; and requiring doctors with a conscientious objection always to refer a woman seeking an abortion to another doctor known not to have a conscientious objection.

This third and most novel item of the trifecta is to be enacted in the new rights jurisdiction of Victoria with its Charter of Rights and Responsibilities which boasts that “A person must not be coerced in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.”

I will offer a comment on each item of the Victorian trifecta before considering in depth the right to freedom of conscience.

(1) 94.6% of all abortions occur before 13 weeks. Only 0.7% occur after 20 weeks. The Victorian Government’s Department of Human Services publishes a detailed manual for dealing with road trauma. When emergency staff are dealing with a pregnant woman in a traffic accident, they have to consider if the foetus is viable. The manual advises: “Foetus is not viable pre-22 weeks (probably 24 weeks). If the foetus is beyond 24 weeks gestation, obstetric backup at a Major Trauma Service is mandatory.” It is now commonplace for 23 week foetuses to be born and nurtured in
Melbourne hospitals. Peter Costello is not alone in his recent quandary: “I can't believe that there is a proposal to make abortion legal as a matter of course up to 24 weeks, when babies are born at less than 24 weeks. We will have a situation in this country when in one part of a hospital babies will be in humidicribs being kept alive and in some other part it will be legal to be aborting them.” Deregulated abortion services which have no regard for the interest of the foetus should be restricted once the foetus is viable.

(2) In Western Australia, informed consent is defined by statute for the good of the woman and for the good of the doctor, requiring that “a medical practitioner has properly, appropriately and adequately provided her with counselling about the medical risk of termination of pregnancy and of carrying a pregnancy to term”; “a medical practitioner has offered her the opportunity of referral to appropriate and adequate counselling about matters relating to termination of pregnancy and carrying a pregnancy to term”; and “a medical practitioner has informed her that appropriate and adequate counselling will be available to her should she wish it upon termination of pregnancy or after carrying the pregnancy to term.” The Victorian Law Reform Commission saw no need for such provisions, viewing abortion as if it were simply an elective surgical procedure.

(3) The ACT is the Australian jurisdiction with laws most like those being proposed in Victoria. The ACT amendments were carried in 2002 with a majority of only one vote after various safeguards for health professionals were written in to the Medical Practitioners (Maternal Health) Amendment Act. Those safeguards are maintained in the ACT Health Act, including provisions that “No-one is under a duty (by contract or by statutory or other legal requirement) to carry out or assist in carrying out an abortion”; and “A person is entitled to refuse to assist in carrying out an abortion.”

One would have thought that the right to freedom of thought, conscience and belief in the Victorian Charter of Rights and Responsibilities would have counted for something when the legislators were considering the plight of those doctors and nurses who in good faith regard the abortion of a viable foetus as the moral equivalent of murder. Ms Maxine Morand, the Victorian Minister for Women’s Affairs, has taken the view that all Charter rights and freedoms of all individuals are irrelevant when it comes to abortion because s.48 provides: “Nothing in this Charter affects any law applicable to abortion or child destruction”. Presumably the Victorian Parliament could also pass a law prohibiting discussion about abortion if it so wished, without need for any assessment of the freedom of expression, given that such a prohibition would be contained in a law applicable to abortion. This makes a mockery of the Charter.

Hopefully the novel Victorian trifecta will be struck down by Victorian legislators regardless of their views on the liberty of women to exercise an untrammelled prerogative to terminate the life of a non-viable foetus with the cooperation of health professionals whose consciences are untroubled.

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1 The Weekend Australian, 6-7 September 2008
In a pluralistic democratic society, the law should still have some work to do in protecting vulnerable women, concerned, conscientious health professionals and viable unborn children.

The Right to Freedom of Thought, Conscience, Religion and Belief

Article 18 of the UNDHR passed by the UN General Assembly 60 years ago provides that everyone has the right to freedom of thought, conscience and religion.

Australia is a signatory to the International Covenant on Civil and Political Rights (ICCPR) which provides in Article 18:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Some rights including this right are regarded as so sacrosanct in the Covenant that they cannot be overridden during a state of emergency. These are known as non-derogable rights and include the prohibitions on torture and slavery.

Section 14 of the new Victorian Charter mirrors the international instruments providing:

(1) Every person has the right to freedom of thought, conscience, religion and belief, including—

(a) the freedom to have or to adopt a religion or belief of his or her choice; and

(b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.

(2) A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Of course, limits on rights are permissible particularly so as to accommodate conflicting rights and the public good and common morality. Section 7(2) of the Victorian Charter provides:

A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—

(a) the nature of the right; and

(b) the importance of the purpose of the limitation; and

(c) the nature and extent of the limitation; and

(d) the relationship between the limitation and its purpose; and
The abortion debate has produced a standoff in Victoria over church-state relations and freedom of conscience. It is time to seek a resolution which respects the long held conscientious beliefs of some health providers within the context of the proposed state regime approving abortion on demand.

The lower house of the Victorian parliament has passed a bill which treats abortion of a foetus up to 24 weeks as an elective surgical procedure. There is no legal requirement ensuring a woman has had sufficient time and opportunity to make an informed and free choice to have an abortion. Any doctor can perform the procedure.

Even a viable child can be aborted post-24 weeks at the mother’s request provided only that the doctor has received endorsement from a colleague that the killing of the child is appropriate having regard to “all relevant medical circumstances and the woman's current and future physical, psychological and social circumstances” – whatever that means.

Usually, doctors considering the performance of an elective surgical procedure are free to decline to perform the procedure. Declining doctors asked to perform an abortion will be required by law to refer the patient to another doctor known not to have any conscientious objection to abortion. Some doctors think abortion is almost always wrong; others think it is almost never wrong. Some hold the conscientious belief that the abortion of a viable foetus is the deliberate killing of a child. This is not a matter of mere prejudice. It is a deeply held belief and understanding of the reality of the matter. They think they will be asked to refer a patient to another doctor just for the purpose of killing a child. Such doctors would regard this as being legally required to cooperate in an act that they consider immoral.

The Victorian bill also proposes that doctors and nurses, regardless of their conscientious objections, be required to perform an abortion “in an emergency where the abortion is necessary to preserve the life of the pregnant woman”.

One third of all births presently occur in Catholic hospitals. The Catholic Archbishop of Melbourne, Denis Hart, has said, “Catholic hospitals will not perform abortions and will not provide referrals for the purpose of abortion. If this provision is passed it will be an outrageous attack on our service to the community and contrary to Catholic ethical codes. It will leave Catholic hospitals and doctors with a conscientious objection to abortion in a position where they will be acting contrary to the law if they act in accordance with their deeply held moral convictions.”

If Victoria is to legislate abortion on demand (pre and post-viability), there is a need to consider whether all health professionals ought to be conscripted into such a regime. Has the Victorian legislature got the balance right here? Presumably the legislators are banking on the majority of health professionals not having ethical or moral objections to abortion on demand. The issue is whether the minority of health professionals who do have such objections should be forced by law to act against their conscience.

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2 Pastoral Letter of the Archbishop of Melbourne, 19 September 2008
One would have thought that the Victorian Parliament armed with its freshly minted *Charter of Rights and Responsibilities* would have the appropriate machinery at hand to find that balance. Afterall, the Charter guarantees freedom of thought, conscience, religion and belief. The Charter does permit parliament to override prescribed freedoms in rare circumstances. However Professor George Williams and his fellow proponents of the Charter were “strongly of the view that it would be inappropriate to use the override clause to sanction a breach of important rights such as freedom of conscience, thought and religion”3. They did not tell us that such rights could be overridden without need for the statutory override procedure or even without need for parliament to consider the impact of proposed legislation when those rights could “interfere” with the right to abortion on demand.

When introducing legislation into the Victorian parliament, a minister is required to provide a compatibility statement outlining how the proposed law is consistent with the rights and freedoms set down in the Charter. Introducing the abortion bill, Ms Maxine Morand, the Victorian Minister for Women's Affairs told Parliament: “In accordance with section 48 of the *Charter of Human Rights and Responsibilities*, a statement of compatibility for the *Abortion Law Reform Bill 2008* is not required. The effect of section 48 is that none of the provisions of the charter affect the bill. This includes the requirement under section 28 of the charter to prepare and table a compatibility statement and the obligation under section 32 of the charter to interpret statutory provisions compatibly with human rights under the charter.”4

Section 48 provides that “Nothing in this Charter affects any law applicable to abortion or child destruction”. It was included in the Charter to accommodate the concerns of Professor Williams and his colleagues that the Charter not purport to resolve the question of when life begins for the purposes of defining the right to life. The Williams committee did not seek the inclusion of section 48 in its present wording. Their concern was only that the Charter was “not intended to make a statement on when life begins. That question has significant moral and scientific aspects and is not a question that the Charter seeks to answer. Indeed, the key reason for including this clause is to ensure that an outcome is not imposed by the Charter, but is left to political debate and individual judgement.”5 They made what must now be seen by their political masters to be a remarkably misconceived observation: “In coming to this view, we emphasise that the Charter will expressly preserve all other rights, including any rights that the law gives to the unborn child in other statutes and the common law.”6 Unless the Victorian upper house acts to amend those provisions of the bill which presently negate the freedom of thought, conscience, religion and belief of health professionals (without explanation to Parliament and without following the usual override procedure), the matter will need to be resolved by the courts. Meanwhile the Catholic hospitals and conscientious health professionals opposed to abortion on demand are well justified in taking their stand against an unjust law which carries the hallmarks of totalitarianism. Any self respecting civil libertarian should support them, regardless of their views on the morality of abortion on demand.

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3 The Report of the Human Rights Consultation Committee, *Rights, Responsibilities and Respect*, p.75:  
4 Victoria Parliament, 2008 Hansard, Legislative Assembly, 2950; 19 August 2008  
6 Ibid.
The Background to Clause 8

The conscience clause debate has arisen because of the sloppy reasoning adopted initially by the Victorian Law Reform Commission and the slight of hand of the legislative draftsman. The Commission accurately quoted from the AMA’s Code of Ethics which provides:7

> [W]hen a personal moral judgement or religious belief alone prevents you from recommending some form of therapy, inform your patient so that they may seek care elsewhere ...  
> Recognise that you may decline to enter into a therapeutic relationship where an alternative health care provider is available, and the situation is not an emergency one.  
> Recognise that you may decline to continue a therapeutic relationship. Under such circumstances, you can discontinue the relationship only if an alternative health care provider is available and the situation is not an emergency one. You must inform your patient so that they may seek care elsewhere.

The Commission then went on to state:8

> Our terms of reference require us to ensure the maintenance of current clinical practice standards. If legislative provision is made for people who have a conscientious objection to providing abortion services, the content of any new law is best guided by the principles contained in the AMA Code of Ethics. That code requires medical practitioners to inform patients of their refusal. The code also requires practitioners to provide women with sufficient information so they may seek and find treatment elsewhere. This simple rule provides an appropriate balance between the needs of the practitioner and the patient.

Then in the next paragraph, with no additional reasoning provided, they made a quantum leap to recommend a novel step which is not consistent with “current clinical practice standards” and which is completely at odds with the AMA Code of Ethics, namely that a conscientious objector be compelled by law to “make an effective referral to another provider”9. The AMA Code simply provides that a conscientious objector may decline to enter into a therapeutic relationship in the first place. Even if the conscientious objector has already entered a therapeutic relationship, he or she may make a dignified withdrawal leaving the patient free to seek out another doctor. There is absolutely no obligation in the AMA Code for the conscientious objector to do anything further. The Code does not require the medical practitioner actually to make a referral. It is for the informed, self-determining, autonomous patient to “seek care elsewhere”.

It gets worse. The legislative draftsman then, without any recourse to the provisions of the Charter of Rights and Responsibilities, extends the VLRC recommendation or interprets an effective referral to be referral to another doctor “who the practitioner knows does not have a conscientious objection to abortion.” Presumably doctors

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7 Quoted in Victorian Law Reform Commission, Law of Abortion, Final Report, 2008, p. 113
9 Ibid. (Recommendation 3)
would be required to keep a register of their colleagues’ moral beliefs. Perhaps the government will need to provide them with a loose leaf service of regular updates.

The Age which has been constantly pro-abortion on demand. declared in its editorial of 24 September 2008: “If the Government sincerely wants the law to reflect community attitudes, it should omit that section (cl.8: “Obligations of registered health practitioner who has conscientious objection”) from the bill, or revise it appropriately.” Such an omission would ensure compliance with the AMA Code of Ethics as applied to all other elective surgery which the Victorian Parliament will now deem abortion to be.

The Unworkability of Clause 8(1)

In the light of the Victorian Charter, we need to consider the questions of process and substance relating to the bill’s application to a medical practitioner’s right not to provide a pregnant woman with a referral to an abortionist.

First: process. If a member of the Victorian Parliament were to introduce a health professionals’ bill which dealt with the circumstances in which medical treatment or referrals for same could be denied on conscientious grounds, the member would be required to provide a statement on the bill’s compliance with the right to freedom of thought, conscience and belief set out in the Charter of Rights and Responsibilities. If the measure were not compliant, the member would also be required to provide a statement as to how the measure could be justified in a free and democratic society. And Parliament would then be required formally to override the enjoyment of the right to the extent of the non-compliance. The Victorian minister on this occasion has said there is no need to do that because the right in question relates to abortion. Any self-respecting civil libertarian ought to support such a process in any jurisdiction which boasts a bill of rights, even one as weak and manipulable as the Victorian one.

Second: substance. If a medical practitioner has a conscientious objection to abortion and refuses to provide one, then the practitioner must “refer the woman to another registered health practitioner in the same regulated health profession who the practitioner knows does not have a conscientious objection to abortion”. What pray constitutes a conscientious objection to abortion?

Writing to The Age on 25 September 2008, Marilyn Beaumont, executive director, Women's Health Victoria, said that “a doctor or nurse who has an ethical or religious objection to abortion must provide the name and contact details of a doctor who does not have the same conscientious objection. These doctors are in the majority and not hard to find.” (emphasis added)

What of the health practitioner who would contemplate an abortion of a six week foetus but not a 23 week foetus? Does she have a conscientious objection to abortion? What of the health professional who would contemplate the abortion of a 20 week foetus but not of a 28 week foetus even if the child were known to have a severe disability? Does he have a conscientious objection to abortion? What of the

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10 “Law reform must not trample on rights of conscience” The Age, editorial, 24 September 2008
health professional who in some circumstances would abort a 23 week foetus but draws the line when the mother knows the child is healthy but she prefers one of the other gender? Does he have a conscientious objection to abortion? After all under this bill, the woman has a right to choose whatever she likes and for whatever reason up to 24 weeks.

Do the silent civil libertarians suggest that the clause applies only to those doctors who object to abortion in all circumstances, and from the moment of conception? And are those doctors obliged to refer the patient to another doctor known to have no conscientious objection to abortion in any circumstances, up to and including the child’s coming to full term? The clause is completely unworkable unless of course each medical practitioner is to be armed with a comprehensive listing of the views of all other practitioners as to what circumstances and when they would in good conscience contemplate performing an abortion. Presumably such a listing to pass muster would need to be drawn up, or at least approved, by some government regulatory authority. The moral calculus would be quite daunting, and the bureaucratic paperwork overwhelming. In the end, the courts may have no option than to interpret the clause as applying only to those general practitioners who conscientiously object to all abortions and imposing an obligation on them to refer patients to private abortion providers known to have no conscientious objection to abortion in any circumstances.

Why aren’t the self-respecting civil libertarians happy just to leave the matter to the due application of the AMA Code of Ethics? Why not just leave the law out of the murky area of referrals? Remember that the Victorian Health Services Commissioner remained opposed to the legal referral clause “on the basis that it duplicated existing ethical standards”. Why provide a legal obligation to refer to another health professional with a known propensity when this is not done for any other procedure, whether “elective” or not. Without legal intervention, abortion providers could provide and advertise their own listing of abortionists with ratings of those doctors least and most willing to provide abortion, up to full term if need be.

Some civil libertarians have raised another issue. They suggest that without this law women will be left to die in Catholic maternity hospitals in circumstances when the removal of the foetus or child would save the life of the mother. Do they seriously suggest this is happening at the moment in Catholic hospitals throughout Australia? Do they seriously think women will remain at risk in Catholic hospitals in jurisdictions outside Victoria without this new law? A Catholic doctor acting in good conscience to save the life of a woman and acting professionally with the requisite specialist skills and certification could reach a decision with the mother to remove a foetus or child in utero if the failure to remove the foetus or child would necessarily result in the woman’s death. The Victorian bill changes nothing in that regard. Insofar as the Victorian bill imposes a duty beyond that, it violates the professional relationship between doctor and patient. The Doctors in Conscience against Abortion Bill have stated in their letter to the Victorian politicians:

The concept of an ‘emergency abortion’ is a clinical fiction. Almost always the management of complicated and life-threatening pregnancies need not necessitate an abortion.
What is the purpose of the compulsory referral clause (cl. 8 of the bill)?

It is already very easy for a woman in Victoria seeking an abortion to go straight to a provider. A Google search and a phone call is all that’s required for a woman to obtain the necessary information. Why bring the conscientiously objecting GP into it at all?

A law which simply left in place the long established protocol of the AMA Code of Ethics would, to quote the words of s. 7(2)(e) of the Charter of Rights and Responsibilities, be a "less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve". Otherwise the purpose is undisclosed and unjustified, and the means unworkable or disproportionately demanding.

So what then is the purpose of cl. 8? Is it simply part of a legislative package aimed at creating the public perception that routine abortion up to 24 weeks is an acceptable social practice? That provides no basis for interference with the right to freedom of conscience. The bill will leave the law out of counselling, cooling off periods, mandatory reporting etc., but it intervenes here in a manner which is completely unworkable and unprincipled.

What is wrong with living in a society where some local doctors will say if asked: "I appreciate that you want to abort now at 23 weeks. I regard the abortion of a viable foetus as an unjustified killing of a human person. You don't. The State doesn't. But I do. So please do not ask me to have any part of this. You can contact a provider directly. My being involved neither helps nor hastens your access. But according to my conscience, it implicates me. Let's each exercise our choice with dignity."

What is achieved by prescribing in law that this doctor provide a referral to a provider known not to have the same conscientious objection, or indeed any conscientious objection?

Only once we have some sense of the purpose of cl. 8 can civil libertarians assess the proportionality of the proposed diminution of the right, which is one of the non-derogable rights in the International Covenant on Civil and Political Rights.

By requiring a compulsory referral, cl. 8 works interference on the right to freedom of thought, conscience and belief of a medical practitioner with a conscientious objection to abortion. The minister introducing the bill has provided no assessment of this clause in light of the Charter of Rights and Responsibilities. No fair minded assessment of the clause renders a decision that the interference with the right to freedom of thought, conscience and belief has been worked so as to provide the least “restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve”. Thus the right is not subject under law only “to such reasonable limits as can be demonstrably justified in a free and democratic society”. Furthermore, the clause is not only more intrusive on the right than need be, it is unworkable.

On 9 September 2008, Liberty Victoria issued its only press release on the bill stating, “The Abortion Law Reform Bill should be passed without amendment.” Then writing
in *The Age* on 24 September 2008, Anne O’Rourke, the vice president who has had the public carriage of the issue for Liberty Victoria claimed that the conscientious objection clause was “consistent with the Australian Medical Association's code of ethics”. She went on to say, “To claim the *Abortion Law Reform Bill* breaks new ground or imposes unprecedented obligations on hospitals or medical staff is wrong and misleading. The bill does not do so.”

*Liberty Victoria’s* public position is in stark contrast to the position taken by the AMA. In his letter to the Victorian Premier, Dr Doug Travers, the President of the AMA (Victoria Branch) pointed out that doctors are “not currently forced to provide a service they believe to be unethical or immoral”. He acknowledged that “the existing common law and existing codes of conduct require that a doctor with a conscientious objection to a particular service inform the patient of that conscientious objection and … ensure that the service is available elsewhere”. But he pointed out that the proposed legislation goes beyond this: it “infringes the rights of doctors with a conscientious objection by inserting an active compulsion for a doctor to refer to another doctor who they know does not have a conscientious objection. Respect for a conscientious objection is a fundamental principle in our democratic country, and doctors expect that their rights in this regard will be respected, as for any other citizen”.

Some civil libertarians, including the Vice President of Liberty Victoria, claim cl. 8 does not go beyond the AMA Code of Ethics. Then why not agree to the omission of cl. 8? If it does go beyond the AMA Code, why conduct a campaign for cl. 8 on the basis that it effects no change?

Julian Burnside QC, President of Liberty Victoria has suggested the following purpose of cl. 8: “[S]ome patients may not have the sophistication or the resources to find a doctor who does not object on grounds of conscience, and this is more likely to be the case where the patient is young or lives in a remote or regional area with limited medical facilities.”

Could not the unsophisticated, unresourced young woman in a country town be equally assisted by a sympathetic family member, or if there not be one, a sympathetic friend who is able to make the one phone call to an abortion provider who will readily put in place all that the unwilling, conscience stricken GP, would be able to do under legal compulsion? By typing into Google, “I want to have an abortion in Victoria, what can I do?”, there is immediate access to the Better Health Channel which in one click lists all the providers, their phone numbers, addresses, fees, days of service, and special notes about same day service. Or you can go immediately to the Family Panning Centre website which gives all the details including the instruction in bold type: “You don’t need a referral to see our doctors.”

What of the country GP who is conscience stricken and concerned that the young woman, whether or not she is to have an abortion, be comforted and supported by family and friends? What is the situation if the young woman hysterically insists on being put in contact with an abortionist, no questions asked, without any previous discussion with family and friends?

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11 Letter to author, 6 October 2008
I am not taking issue with *Liberty Victoria’s* public support for abortion on demand. Given the weakness of the Victorian Charter, I would hope that Liberty Victoria would be able to assist in countering a government or parliament engaging in unwarranted and unexplained interference with human rights, especially non-derogable rights from the ICCPR such as the right to freedom of thought, conscience and belief.

**Does cl 8(4) ever have any application?**

Cl 8(4) provides:

Despite any conscientious objection to abortion, a registered nurse is under a duty to assist a registered medical practitioner in performing an abortion in an emergency where the abortion is necessary to preserve the life of the pregnant woman.

The Australian Nurses Federation sought advice from the Victorian Government and were told:

Nurses who are employed, for example, in operating theatres in hospitals will not have a direct relationship with the woman in question, therefore the conscientious objection clause will not apply. If they do not wish to be involved with abortion procedures, they should inform their employer of this, but they will not be covered by clause 8.

State equal opportunity legislation already protects such nurses from discrimination where they hold a conscientious objection based on religious belief. As a consequence, employers are already legally obliged to respect such beliefs, so there is no need for this Bill to make express provision to protect the employment status of those with a conscientious objection.

The VLRC Report states: “Within public hospitals, the moral decisions of staff members are respected and no person is forced to perform an abortion.”[^12] What about those whose conscientious objection is based not on religion but on other grounds? Is discrimination against them to be permitted? If not, should not cl. 8 if enacted be supplemented by amendments to anti-discrimination legislation?

**Conclusion**

Does Cl. 8 limit the right to freedom of thought, conscience and belief? YES

Is there a coherent purpose for wanting to limit the right of the medical practitioner with a conscientious objection to performing an abortion in this particular instance? YES. The most coherent expression of the purpose I have found is the statement by Julian Burnside QC, President of Liberty Victoria, who says there is “a real risk that the patient’s right (to have an abortion) will be defeated: (as) some patients may not have the sophistication or the resources to find a doctor who does not object on grounds of conscience, and this is more likely to be the case where the patient is young or lives in a remote or regional area with limited medical facilities.”[^13]

Is there a less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve? YES – the AMA Code of Ethics together with better...

[^13]: Letter to author, 6 October 2008
information in country towns about the working of the internet, and the existing availability of abortion services provided with maximum encouragement and minimal red tape.

Does cl 8 limit the right only to such limits as can be demonstrably justified in a free and democratic society? NO. It limits the right with a completely unworkable regime which overreaches the more practical alternative

Is cl 8(1) b workable? NO

Does cl 8(3) change any existing obligation on a doctor? Unlikely. Very rarely if ever is there both an EMERGENCY and a NECESSITY.

Does cl 8(4) change any existing obligation on a nurse? I would say YES but the government and the VLRC are adamant that it does not.

So why have cl. 8?

What should the Legislative Council do? It should OMIT Clause 8. If it fails to do so, it will be for the Supreme Court to interpret cl.8 in the light of the Charter, thereby making a declaration of inconsistent interpretation.