

practices can be entrenched — something I am sure all members would support.

The government is also committed to furthering its work on the no-interest loans scheme. This is a scheme which was funded through some \$4.7 million in last year's budget, and it is being partnered by the Good Shepherd Youth and Family Service organisation. We are also continuing our work on research projects in conjunction with some great organisations such as the Smith Family and the Brotherhood of St Lawrence.

The member for Oakleigh may be aware that there have been recent calls for further action. Indeed on the weekend the federal Treasurer was calling for a crackdown on low-doc lenders. We appreciate the federal Treasurer's anxiety about this matter, although I have to say that we are a little bemused that his comments appear somewhat at odds with a submission made by the Reserve Bank and the Australian Prudential Regulatory Authority to a current House of Representatives economic committee inquiry into home lending practices. This is a federal parliamentary inquiry that is under way.

Amongst other things the joint submission from those agencies said of low-doc lenders — and I am quoting from the *Australian Financial Review* (AFR) of a few days ago — that the:

... overwhelming effect —

of these lenders —

has been to widen the range of households who can get access to finance ...

I can assure all members of the house that the Brumby government as a general rule thinks that increased choice for householders is a good thing.

The AFR report went on to say that the rising popularity of so-called low-doc and non-confirming loans had led to the interest margins that lenders make on standard home loans shrinking from 450 basis points in the early 1990s to just 120 basis points today. Again, I can say that as a general rule the Brumby government regards that as a very good thing. We do not quite understand where the federal Treasurer is coming from with these comments about a crackdown, but we accept that it is an important issue and we accept that he is seeking assurances from the states as to the work they will continue to do.

14:47 I want to assure the federal Treasurer that we will do a number of things. We will continue to cooperate with or through the ministerial council with our state and federal colleagues to further develop the model bill. I

can assure the federal Treasurer that the Brumby government will continue its work on the vital initiatives I have already outlined to the house.

I want to assure the federal Treasurer of one other thing — that is, of an enduring economic truth. This is that the biggest single determinant of credit affordability both in Victoria and in Australia was, is, and remains interest rates. That is the case: interest rates are the key determinant. When interest rates go up, borrowers get hurt. When interest rates go up five times, borrowers get hurt even more.

In conclusion, we will continue to do our bit when it comes to credit affordability. We only ask that the Howard government does its bit and honour its promise to all Victorians that it would keep interest rates low, not high.

The SPEAKER — Order! The time set aside for questions without notice has expired.

CRIMES AMENDMENT (RAPE) BILL

Statement of compatibility

Mr HULLS (Attorney-General) 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 Crimes Amendment (Rape) Bill 2007.

In my opinion, the Crimes Amendment (Rape) Bill 2007, as introduced to the Legislative Assembly, is compatible with the human rights protected by the Charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill amends the Crimes Act 1958 ('the act') to clarify the jury directions relating to the offence of rape and to alter the offence of rape to include situations where an accused person did not turn their mind to the issue of consent. More specifically, the bill amends the act by:

restructuring the jury directions in relation to rape to improve the clarity of the provisions;

adding a new jury direction to correctly focus the jury on 'awareness' as the fault element in rape;

adding a requirement that the judge direct the jury in relation to consent issues in relevant cases;

amending the jury direction about belief in consent to provide more guidance on assessing the fault element in the offence and to strengthen the communicative model of consent; and

amending the offence of rape (and other sexual offences to which the issue of consent is relevant) to provide that inadvertence or indifference to the issue of consent is an alternate fault element.

Human Rights Issues

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

There are three human rights protected by the Charter of Human Rights and Responsibilities Act 2006 (the Charter) that are relevant to the bill. Each of these rights together with the relevant clauses are outlined below.

2. *Right to a fair trial and the right to be presumed innocent*

Clauses 5, 6, 7 and 8 of the bill amend the offences of rape, compelling sexual penetration, indecent assault and incest respectively. Consequently, they have the potential to raise the right to a fair trial (section 24 of the Charter) and the right to be presumed innocent (section 25(1) of the Charter), should the amendment in any way shift the legal or evidential burden from the prosecution to the accused. However, the bill does not alter either the legal or evidential burden, which remains with the prosecution. Consequently, these rights are not engaged and therefore, are not limited.

3. *Retrospective criminal laws*

As the alteration to the offences set out above broaden the offences, the bill could potentially raise the right not to be subject to retrospective criminal law set out in section 27(1) of the Charter. However, clause 9(2) of the bill provides that the amendment to these offences only applies to offences alleged to have been committed on or after the commencement of the Crimes Amendments (Rape) Act 2007. Consequently, it will not operate retrospectively and therefore the right is not engaged and therefore, is not limited.

Conclusion

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

do not raise human rights issues; or

to the extent that some amendments do raise such issues, these amendments do not limit human rights.

ROB HULLS, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

This bill is the third bill to be introduced by the government in response to the findings of the Victorian Law Reform Commission's *Final Report: Sexual Offences Law and Procedure*. In its report the commission found that there is a high incidence of sexual assault, a low disclosure rate, serious health

consequences for victims of sexual assault, relatively low prosecution and conviction rates and a criminal justice response that, in many cases, causes further trauma to victims.

The commission made a large number of wide-ranging recommendations in recognition of the need for a broad systemic response to the problem of dealing with sexual assault. Most of the commission's legislative recommendations have already been implemented with the passage last year of the Crimes (Sexual Offences) Act 2006 and the Crimes (Sexual Offences) (Further Amendment) Act 2006. As with the earlier legislative changes, the amendments in this bill represent one component of a broader policy initiative to make the criminal justice system respond to sexual assault in a fairer way, and in a way that does not re-traumatise victims.

In summary, the bill:

restructures the jury directions in relation to rape to improve the clarity of the provisions;

provides a new jury direction to correctly focus the jury on 'awareness' as the fault element in rape;

includes a requirement that the judge direct the jury in relation to consent issues in relevant cases;

amends the jury direction about belief in consent to provide more guidance on assessing the fault element in the offence and to strengthen the communicative model of consent; and

amends the offence of rape (and other relevant sexual offences) to provide that inadvertence or indifference to the issue of consent is an alternate fault element.

Amendments to jury directions

There have been previous amendments to these aspects of the law relating to rape, primarily in 1991 and 1997. However, the commission found that those amendments had not been as effective as intended in achieving a fair balance within a rape trial between the rights of an accused person and the rights and needs of a complainant to preserve, as far as possible, her or his dignity.

The commission raised concerns about the operation of the statutory jury directions contained in the current section 37 of the Crimes Act 1958 including the circumstances in which a judge is required to give such directions. Of particular concern to the commission was the distinction between the current direction relating to