



DAVID MORRIS MP

Member for Mornington

Fracking ban supported, but the mechanism remains questionable

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Mr MORRIS (Mornington) (15:04): I am pleased to have this rather unexpected opportunity to actually speak on this bill after narrowly missing out on Wednesday afternoon. I am delighted to have the opportunity, and as the member for Warrandyte indicated during that earlier debate, the opposition has indicated that it is supporting the bill.

We are supporting the bill because of the policy, our opposition to fracking, our opposition to the exploitation of unconventional gas.

Whether the legislative approach is appropriate, particularly as the then minister, the Treasurer, noted in his second-reading speech that these types of activities are already banned. Frankly I think the jury is out about the approach the government is taking, because the bill is an energy bill, pure and simple, but we find ourselves debating an amendment to the Constitution Act 1975.

Now, a question I would ask—if the usual rules that apply to legislatures applied in this case, where we actually examined a bill in detail—if I had the opportunity is: what advice had the then minister, the Treasurer, taken to suggest that these policy issues are best determined in this manner, what advice had the Victorian public service given to the government with regard to the implementation of this policy commitment?

It was a policy commitment—that is not in dispute—but whether this is the best way to actually implement it is another matter. We do not know the answer to that question, of course. We will not know the answer to that question.

The bill has been on the notice paper for 12 months. Its passage will make not a jot of difference to the way natural resources are harvested in Victoria, not a jot of difference. It has no practical impact whatsoever. But I do not think it is unreasonable to ask that question: why are the provisions written in this way?

I suggest we all know the answer: it is politics, pure and simple politics. The Labor Party is seeking to give some credibility to the claims that have been made.

I was pleased to hear the member for Buninyong walk back a bit from these claims. We have repeatedly been told that people on this side of the house support fracking. We have repeatedly made it clear—and the member for Warrandyte went through many, many declarations on this matter—both in a policy sense and by our actions in government that

we do not. But we are seeing this tactic frequently—just put it out there and see if they can make it stick—and I referred to that in a members statement this morning.

As I noted when the substance of this policy position was debated in 2017—and that is when the decision was made and that is when the ban was actually put in place—every single one of the 73 licences that were issued for exploration for unconventional gas were issued by a Labor government. Every single one of those 73 was issued by a Labor government. Every single one of the 23 permits that exist for fracking were issued by a Labor government.

Now, of course the government is trying to rewrite history, trying to claim, 'Oh, no, no, we're really the environmentally responsible party and we're going to amend the Victorian constitution to make sure that this can't ever be changed'.

It is not going to make a jot of difference in a policy sense at all. I have always thought what is important is not what you say, it is actually what you do. In government Labor issued, as I said, 73 exploration licences and 23 fracking permits, and they did it with no consultation—none. They were simply issued.

When we came to government in 2010, it was clear that while this form of extraction was being used overseas for many years, it was relatively new to Australia and it was clearly as far as we were concerned a problematic method of exploiting natural gas.

We saw that the risk to agricultural industries was very, very high. We saw the risk to the environment was very, very high. Unlike Labor, we saw the problems and we took action. We made sure that no more permits were issued—none. We placed a moratorium on exploration. We supported and have supported legislation to ban fracking.

So we are not about cheap political stunts. We are about doing what needs to be done to protect the environment, doing what needs to be done to protect our vital agricultural industries. We are about doing what needs to be done to protect Victoria for future generations.

What does this bill actually do? Well, it adds yet another group to the so-called entrenched provisions in the Constitution Act, a new part 8 to be titled 'Maintaining the prohibitions on hydraulic fracturing and coal seam gas exploration and mining'. That will be included in the provisions that can only be overwritten by a special majority, as a number of members have mentioned.

The constitution of course can be amended like any other act in part. There are a range of provisions that require an absolute majority of members of both houses. We now have a requirement for a special majority: three-fifths of the membership of the Assembly and the Council together—77 members—and there are a range of provisions requiring the question to be referred to the electors of Victoria.

Now, there is a school of thought that a Parliament cannot legislate to limit its own power, a well-established school of thought. It will be interesting, if this proposition is ever tested, to see whether those so-called entrenched provisions actually hold, but at this stage it has not been tested. So when we are considering this bill we need to make the assumption that it is constitutional to further limit the powers of the Parliament, as this bill is in fact intended to do.

There are a range of measures that can only be changed by this so-called special majority.

They are things like recognition of the Aboriginal peoples; the Crown; the Parliament; the membership of the Council and Assembly; qualification to be an elector and provisions relating to relief from disqualification; the delivery of water services, which is of course a critical natural resource; and some provisions relating to the judiciary—but essentially all matters that properly relate to the constitutional arrangements of the state, and they are, in my view, uncontroversial. But I do make the observation that requiring an overwhelming majority, in this case three-fifths, is not always the most effective way to ensure that the will of the people is respected.

If we go back to 1806, the then Vice-President of the United States, Aaron Burr, advised the Senate that a simple majority should not be sufficient to force a vote, which seemed reasonable advice at the time, but of course the decision of the Senate to accept that advice led to the rise of the filibuster.

Now, the US Senate for nearly a century tried to overturn its own decision. They saw the limitations they had placed on their own capacity to deal with issues. In 1917, over a century later, they managed to shift it so it became two-thirds of senators, and now it has been wound back to three-fifths of the Senate, coincidentally the same figure as required for a special majority here.

It is tempting, though, to draw on the contrast between the filibuster in the US Senate and the operation of the guillotine in this chamber, because that has precisely the reverse effect. It prevents this legislature from doing what it was elected to do, and that is to examine properly proposed legislation.

The US Senate of course passes very little legislation at all; we frequently pass bills with very little examination.

The point I am making is we need to be cautious in using a constitutional device to resolve a political issue.

I think we are all agreed that fracking should be banned; I have not heard a dissenting voice in this debate. We are agreed that the exploitation of unconventional gas should also be banned—again, no dispute. But is this the best advice to achieve what is intended?

No-one realised how badly the guillotine would cripple the Legislative Assembly, I am sure, in the same way that no-one foresaw how effectively the filibuster could be used to cripple the US Senate.

While I would say the policy outcomes of this bill are laudable and supported, and I suspect supported by every member of the house, the mechanism by which this is being achieved remains questionable.