

**ACTS AMENDMENT (LESBIAN AND GAY LAW REFORM) BILL 2001**

*Receipt*

Bill received from the Assembly.

*First Reading*

**HON N.D. GRIFFITHS** (East Metropolitan - Minister for Racing and Gaming) [10.31 pm]: I move -

That the Bill be now read a first time.

Question put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon G.T. Giffard	Hon Ljiljanna Ravlich	Hon Giz Watson
Hon Robin Chapple	Hon N.D. Griffiths	Hon J.A. Scott	Hon E.R.J. Dermer ( <i>Teller</i> )
Hon Sue Ellery	Hon Dee Margetts	Hon Christine Sharp	
Hon Adele Farina	Hon Louise Pratt	Hon Tom Stephens	

Noes (13)

Hon George Cash	Hon Ray Halligan	Hon N F Moore	Hon B.K. Donaldson
Hon M.J. Criddle	Hon Frank Hough	Hon Simon O'Brien	( <i>Teller</i> )
Hon Paddy Embry	Hon Barry House	Hon B.M. Scott	
Hon John Fischer	Hon Robyn McSweeney	Hon W N Stretch	

Pairs

Hon Ken Travers	Hon Alan Cadby
Hon Jon Ford	Hon Peter Foss
Hon Kate Doust	Hon Derrick Tomlinson

Question thus passed.

Bill read a first time.

*Second Reading*

**HON N.D. GRIFFITHS** (East Metropolitan - Minister for Racing and Gaming) [10.35 pm]: I move -

That the Bill be now read a second time.

The Acts Amendment (Lesbian and Gay Law Reform) Bill 2001 gives effect to a simple principle: that all individuals of the Western Australian community should enjoy equal rights under the law, regardless of their sexual orientation. The Labor Party stands for that simple proposition - equality under the law.

Western Australia is now the only State in Australia that does not make discrimination on the grounds of sexual orientation unlawful in its Equal Opportunity Act 1984. It is the only State that makes it a criminal offence for males to engage in consensual sexual activity until they are 21 years of age. Unlike New South Wales, Victoria, the Australian Capital Territory and Queensland, Western Australian laws do not recognise the rights of same-sex partners with regard to medical treatment, inheritance and death. Lesbian and gay law reform in Western Australia is long overdue.

Before the last state election there was a clear commitment by the Labor Party to amend Western Australian laws to recognise that lesbians, gay men and bisexuals have the same rights as other citizens in Western Australia and are equal before the law. The Acts Amendment (Lesbian and Gay Law Reform) Bill implements the Government's commitment. I now turn to a more detailed examination of the Acts that will be amended by this Bill.

The Criminal Code and the Law Reform (Decriminalization of Sodomy) Act 1989: the Government is of the view that a primary function of the criminal law is not to impose a moral standard but rather to identify the types of actions that warrant punishment. Currently, the age of consent for consensual sexual activity is 16 for heterosexuals and 21 for gay men. This means that it is legal for a 16-year-old girl to engage in consensual

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sexual relations with a 16-year-old boy, and a 16-year-old girl to engage in consensual sexual relations with a 16-year-old girl; however, it is a criminal offence, punishable by five years in prison, for a 16-year-old boy to engage in consensual sexual activity with another 16-year-old boy. The objective of equalising the age of consent for homosexual sexual activity is simply to remove the distinction between homosexuals and heterosexuals in the way that the law applies.

In no Australian jurisdiction is the disparity for consensual sexual activity as great as it is in Western Australia. The age of consent for homosexual and heterosexual consensual sexual activity is equal at 16 years of age in the Australian Capital Territory and Victoria, and 17 years of age in South Australia and Tasmania. In New South Wales and the Northern Territory the age of consent for consensual homosexual sexual activity is 18 years of age, while it is 16 for heterosexual sexual activity.

An argument that is commonly raised in opposition to equal ages of consent for heterosexual and homosexual ages of consent is that it exposes young boys under the age of 16 years to paedophilic behaviour from older men. The Criminal Code provides that it is a criminal offence for lesbians and heterosexuals to engage in sexual activity if the young person is younger than 16 years of age. The Criminal Code also provides that it is a defence to this offence if the offender had a mistaken but reasonable belief that the young person was 16 years of age. However, the question of whether such a belief is reasonable is a matter for a jury to decide. In the Government's view, it is appropriate that the defence of mistaken but reasonable belief that a young person was 16 years of age should be limited. Since the Government is concerned about the young and those who are vulnerable, this provision will be strengthened by the proposed amendments to the Criminal Code whereby a person will be able to claim that they were mistaken about the victim's age only if the accused was of the same age group as the victim. Further, the accused would still have to demonstrate that he or she believed, on reasonable grounds, that the young person was over 16 years of age. This amendment will apply to both young men and women and curtails the defence of reasonable but mistaken belief.

I also draw the attention of members to other provisions in the Criminal Code that apply equally to both homosexuals and heterosexuals and currently prohibit indecent acts in public places, sexual offences against children under 16 years of age, sexual penetration or sexual behaviour by a person with a child who is between 16 and 18 years of age when that child is under the person's care, supervision or authority, sexual offences against a child by a relative, and sexual offences against a person who is so mentally impaired as to be incapable. These provisions will not be altered, and will continue to apply to both homosexuals and heterosexuals.

The Bill also repeals criminal offences of indecency and gross indecency that are limited to acts between males as such acts will remain unlawful regardless of the gender of the perpetrator or victim.

The Bill also repeals the Law Reform (Decriminalization of Sodomy) Act 1989. Some sections of the community have expressed concern that the repeal of sections 23 and 24 of the Law Reform (Decriminalization of Sodomy) Act will result in the promotion of homosexuality in schools. This will not be the case. Sections 23 and 24 of this Act prohibit the promotion of homosexuality. Section 23, entitled "Proselytising Unlawful" states that it "shall be contrary to public policy to encourage or promote homosexual behaviour and the encouragement or promotion of homosexual behaviour shall not be capable of being a public purpose". Section 24 relates to educational institutions and states that it shall be "unlawful to promote or encourage homosexual behaviour as part of the teaching in any primary or secondary educational institutions".

It has been argued that section 24, in particular, is ambiguous in that it is unclear what is meant by "promote" or "encourage", and that this section may have impeded beneficial activities such as safe sex education campaigns and information about safe sex practices in schools since 1989 as this relates to young gay men. It is important that all young people receive information about safe sex practices, support and appropriate health education as they make the transition to adulthood. This should not be denied to them simply because of their sexual orientation.

Equal Opportunity Act 1984: as I stated earlier, Western Australia is the last State in Australia to amend its antidiscrimination laws to offer a means of redress to gay men and lesbians. The inclusion of sexual orientation in the Equal Opportunity Act is consistent with the general schema of the Act in relation to the other grounds of unlawful discrimination such as sex, race, impairment and age. The Bill defines sexual orientation to mean lesbianism, homosexuality and bisexuality, and covers discrimination on the basis of imputed or presumed sexual orientation.

In all antidiscrimination law and in relation to specific grounds of unlawful discrimination, reference is made to the various characteristics that are assumed to constitute or be part of the distinct qualities of a minority group. Thus, people who share that attribute may be presumed to belong to that group, irrespective of whether or not this is true, and such belonging operates frequently to their detriment. Empirical findings cited by the Commissioner for Equal Opportunity in her discussion paper on sexual orientation discrimination, and by the Ministerial Committee on Gay and Lesbian Law Reform in its report, confirm that people who were assumed to

be gay or lesbian were subject to an ongoing pattern of harassment. The Bill makes both direct and indirect discrimination unlawful in specified areas of public life including employment or work, education, provision of goods, services and facilities, and accommodation.

It is also proposed that the general exceptions included in the Act apply in relation to sexual orientation. Within the general schema of antidiscrimination law, exceptions are circumstances in which discrimination may be lawful. Like other statutes, the WA Equal Opportunity Act provides for a number of general and specific exceptions that relate to each ground of unlawful discrimination. The Act also provides that in the event that someone complains about another's use of an exception, then the onus of substantiating or justifying use or reliance on that exception falls on the individual or organisation doing so. Exceptions enable people to discriminate according to personal beliefs and views in the conduct of their private affairs. The exceptions of relevance include domestic workers in private households, accommodation provided by a religious body, charitable or other voluntary body, and religious bodies carrying out acts in accordance with their religious beliefs. These exceptions explicitly acknowledge the individual's right to hold religious beliefs and convictions, and determine whom they wish to employ, or provide accommodation or services for, consistent with their beliefs. The distinction between the private and public spheres has been maintained.

The Bill also makes a few technical amendments to the Equal Opportunity Act 1984. The definition of marital status will include same-sex de facto partners, and extends an exception for discrimination in insurance based on actuarial or other data to marital status. This amendment corresponds with existing provisions in the commonwealth Sex Discrimination Act 1984.

Human Reproductive Technology Act 1991: currently only heterosexual couples, when one partner is medically infertile, are able to seek in-vitro fertilisation. Extending access to in-vitro fertilisation to lesbian couples and single women gives effect to the Government's pre-election policy that neither marital status nor sexual orientation are relevant criteria to assess who may obtain the services of assisted reproductive technologies. I draw the attention of the House to the fact that lesbian couples and single women in other Australian States, such as New South Wales, Queensland, Tasmania and the Australian Capital Territory, are currently able to access reproductive technologies, and have been doing so for some time now.

The Bill will enable lesbian couples and single women who are unable to conceive a child for medical reasons to seek in-vitro fertilisation. I emphasise that a fertile single woman, or a fertile woman in a same-sex relationship, would not be able to obtain in-vitro fertilisation. I also emphasise that existing provisions in the Human Reproductive Technology Act 1991, which list criteria prospective participants must meet, remain intact. The objects of the Human Reproductive Technology Act currently provide that "the prospective welfare of any child to be born consequent upon a procedure . . . is properly taken into consideration". This is reinforced in section 23 of the Human Reproductive Technology Act 1991 that requires that an in-vitro fertilisation procedure cannot be provided without consideration of "the welfare and interests of . . . the participants; and . . . any child likely to be born as a result of the procedure". This Government is committed to ensuring that the rights and welfare of children remain central in all considerations about who may have access to in-vitro fertilisation, be they heterosexual couples, lesbian couples or single women.

Adoption Act 1994: currently, under the Western Australian Adoption Act 1994 partners in same-sex relationships cannot adopt children. This is unjust for members of gay and lesbian relationships, because they cannot adopt the offspring of their partner if the children were conceived through artificial insemination or a friend with little or no interest in the child; nor their partners' children from previous heterosexual relationships. Therefore, although both partners in same-sex relationships care for the children, the non-biological parent has no legal rights in relation to those children. This causes many problems; for example, in medical emergencies, and after the death of the biological parent, the non-biological parent has no legal rights to care for children.

The Acts Amendment (Lesbian and Gay Law Reform) Bill amends the Adoption Act to enable same-sex couples to be considered eligible to jointly adopt a child. It also amends the Adoption Act so that a same-sex partner who has long-term and day-to-day care of children of the birth parent will be able to be considered the joint guardian for the children being adopted.

Again, all other criteria against which the eligibility of the adopting parents will be assessed in order to adopt a child remain intact. I note that same-sex couples who wish to adopt a child would, as a matter of course, have had to have cohabited for a continuous period of no less than three years and be of good repute. This reflects the current provision in relation to heterosexual couples, and corresponds with the Government's intention to ensure that the key focus relates to what is in the best interests of the child.

A new criterion requiring applicants to show a desire and ability to provide a suitable family environment is proposed by amendments made to the Bill in consideration in detail in the other place. This reinforces the Government's commitment to ensuring that the interests of the child are central and pivotal in the decision-making process concerning adoption. The assessment by the Adoption Applications Committee of an

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application for suitability for adoptive parenthood and the placement of a child for adoption or with a view to the child's adoption by the director general will not be subject to challenge on the basis of unlawful discrimination. Accordingly, the Equal Opportunity Act 1984 is being expressly amended to exclude from the definition of "services" in the Act these decisions made under the Adoption Act 1994.

This law reform Bill also makes a number of consequential amendments to the Administration Act 1903, the Artificial Conception Act 1985 and the Family Court Act 1997, to ensure consistency with the amendments proposed by the Bill, particularly the Human Reproductive Technology Act 1991 and the Adoption Act 1994. Consequential amendments will also be made to the Births, Deaths and Marriages Registration Act 1998 to enable the deemed parent under the Artificial Conception Act to register the child's name and to be named on the birth certificate as the other parent.

Cremation Act 1929, Guardianship and Administration Act 1990, Inheritance (Family and Dependants Provision) Act 1972, Human Tissue and Transplant Act 1982, Public Trustee Act 1941, Members of Parliament (Financial Interests) Act 1992, Parliamentary Superannuation Act 1970 and State Superannuation Act 2000: many legal issues arise when a same-sex partner dies, or is medically incapable of making a decision. Western Australian laws do not recognise either the rights of the same-sex partners of the deceased to make decisions about a range of matters from cremation to post-mortem examinations or their right to benefit from the estate of the deceased. The rights and automatic responsibilities that are granted by these Acts are all too often forgotten and taken for granted in heterosexual relationships. It is evident in a number of reports and in correspondence that I have received that their absence in the legal treatment of same-sex relationships causes enormous pain and hurt. The Bill amends the Cremation Act 1929 so that the same-sex partner of a deceased person has an opportunity to object to the cremation of the deceased partner.

The Guardianship and Administration Act 1990 provides for the guardianship of adults who need assistance in their personal affairs and for the administration of the estates of persons who need assistance in their financial affairs. This Bill amends the Guardianship and Administration Act to include a de facto partner within the definition of a person's nearest relative. This will ensure that a de facto partner, including a same-sex partner, will be given the right to be notified by the board of hearings concerning their partner and to consent to medical treatment in certain circumstances. It also amends the Inheritance (Family and Dependants Provision) Act 1972, which deals with who is entitled to make a claim on a deceased person's estate. This amendment will recognise the rights of the same-sex partner of the deceased. I emphasise that the provision is not retrospective to deaths that occur prior to the commencement of the Acts Amendment (Lesbian and Gay Law Reform) Bill 2001.

The Human Tissue and Transplant Act 1982 makes provision for, and in relation to, the removal of human tissue for transplantation and for post-mortem examinations. Again the rights of same-sex partners are not recognised and the definition of "senior available next of kin" is expanded to cover same-sex couples.

The Public Trustee Act 1941 deals with the administration of the estate of the deceased. The Act is amended so that coverage is extended to same-sex couples.

The responsibilities and liabilities that apply to heterosexual couples will apply equally to same-sex couples. The Bill amends the Members of Parliament (Financial Interests) Act 1992 so that members of Parliament in same-sex relationships would be obliged to disclose financial interests as these relate to their partner, a requirement that applies to heterosexual couples.

Both the Parliamentary Superannuation Act 1970 and the State Superannuation Act 2000, which deal with the beneficiaries of superannuation benefits and schemes, are amended so that same-sex partners are recognised.

These amendments confer upon same-sex couples and their offspring only rights that are currently available to heterosexual couples. Neither new nor additional rights are being proposed. In addition, such rights are available to lesbians and gay men who live in Victoria, New South Wales and the Australian Capital Territory.

This Bill will have a real and beneficial impact upon people's lives. It reduces the discrimination experienced by same-sex couples in some areas. It will allow recognition of a same-sex partner in relation to the distribution of the deceased partner's estate. It will prevent situations in which the same-sex partner cannot make decisions about organ donation and cremation regarding the deceased partner.

There remain a number of other laws that discriminate against same-sex couples on the basis of their sexual orientation, including the Stamp Act 1921, the Coroners Act 1996, the Fatal Accidents Act 1959, the Criminal Injuries Compensation Act 1985 and the Workers' Compensation and Rehabilitation Act 1981. These Acts cover property-related benefits, compensation schemes, consumer and business legislation and other general legislation. Amendments to these Acts are consistent with the principles of equality that underpin the Acts Amendment (Lesbian and Gay Law Reform) Bill 2001. The Government intends to introduce a Bill amending these Acts early in the autumn session of Parliament next year.

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This Government is committed to the fundamental principle that all people should be equal before the law, and this Bill is long overdue in giving lesbians, gay men and bisexuals rights, responsibilities and liabilities that have been denied to them simply because of their sexual orientation. I commend the Bill to the House.

Debate adjourned, on motion by Hon B.K. Donaldson.

*Withdrawal of Remark*

Hon BARRY HOUSE: I did not want to interrupt the second reading speech, but prior to its delivery, during the vote on the first reading, I distinctly heard Hon Giz Watson refer to members on this side of the House as bastards. I know who my mother and father are. I believe her comment to be unparliamentary and I ask for it to be withdrawn.

The PRESIDENT: The question is whether the member heard correctly. If he did hear correctly, will the member withdraw?

Hon GIZ WATSON: I withdraw.