

Hon DERRICK TOMLINSON: They probably do not. That raises an interesting question: If the parent knows, does the parent want to admit that this could be the beginning of a dependence and alcoholism? I do not know. I wonder if the parent looks at the child and thinks, "I do not know whether he is abusing a substance. I have my doubts, but I pretend not because I do not want to admit my child - "

Hon Cheryl Davenport: Do you raise it and risk alienating the child?

Hon DERRICK TOMLINSON: That is the dilemma parents face. I can recall when my daughter was 16 the principal of her school told me that she smoked. My reaction was, "Don't you dare say that about my daughter. She would not smoke." I learned when she turned 30 that she was also using marijuana.

Debate adjourned, pursuant to standing orders.

[Questions without notice taken.]

ACTS AMENDMENT (SEXUALITY DISCRIMINATION) BILL

Introduction and First Reading

Bill introduced, on motion by Hon Helen Hodgson, and read a first time.

Second Reading

HON HELEN HODGSON (North Metropolitan) [5.35 pm]: I move -

That the Bill be now read a second time.

Research indicates the following -

that between 7 and 13 per cent of the population are gay or lesbian;

115 inquiries were received by the Equal Opportunity Commission from individuals attempting to make a complaint on the basis of sexuality in 1995-96;

in a 1989 poll, 77 per cent of Western Australians said homosexuality should be decriminalised;

91 per cent of responses to a discussion paper by the Equal Opportunity Commissioner advocating equal opportunity laws based on sexuality supported the proposal;

by the age of 13 years most homosexual youth are aware of their attraction to same sex partners;

by the age of 14 years, most lesbians are aware of their attraction to same sex partners;

25 to 40 per cent of young gays and lesbians attempt to commit suicide;

65 to 85 per cent of young gays and lesbians feel suicidal;

66 per cent of young gays say they have been discriminated against or harassed on the basis of their sexuality;

70 per cent of gay men report experiencing homophobic abuse;

6 per cent of gay men report being bashed in the past 12 months;

more than 90 per cent of child molesters are heterosexual; and

a child is 100 times more likely to be molested by a heterosexual partner of a relative than by a gay or lesbian individual.

Equality is one of the most basic foundations of our democratic society. Although we pay lip service to the principle that we are all created equal, the reality is that some people are treated more equally than others. We should all believe in the innate worth of the individual, that the freedom of the individual must be protected, and that all people should have the opportunity to advance to their full potential.

We must not just pay lip service to equal opportunity and social justice for all Western Australians, and it is our responsibility to foster a tolerant community. It seems that in Australian society unless one is a healthy, white, Anglo-Saxon, heterosexual male, one is forced to battle to be awarded the status of human being, and therefore to be entitled to human rights recognition.

Throughout our history, minority groups have had to battle against hatred and prejudice to achieve that equality - I

refer to women, indigenous people, the disabled and the aged. Through society's sense of fairness, and often despite opposition from vocal minorities, these groups have all achieved laws that enable them to fight back against oppression and achieve equality before the law.

The gay, lesbian and transgender communities in Western Australia are not being afforded the right to equality. These sections of the community have no protection from persecution purely on the basis of their sexuality. Gay men are treated unequally in comparison to all others in society regarding the age at which they can have consenting sexual relations without being branded criminals. Western Australia has the highest age of consent for gay men in the world today, and the worst anti-gay laws in the nation. It is the only State in which consenting gay sex between adults is a criminal offence for which offenders can be gaoled for up to five years.

The Bill I present to the House seeks to overcome these inequalities and injustices. Gay, lesbian and transgender people are not asking for affirmative action or special rights. They are merely asking for equal rights; these are the same rights as those given freely to other members of our society - human rights.

Human rights are derived from the very nature of being, and it is the role of Governments, not to grant human rights, but to recognise the rights to which we are all entitled by the very fact that we are human beings. It is a question of recognising the dignity of every individual in society. It is easy to give lip service to the ideals of tolerance and acceptance, but far more difficult to put those values into practice.

Basic human rights, including the right to freedom of sexuality, are recognised throughout the world in a number of United Nations declarations to which Australia is a signatory. Australia ratified the International Covenant on Civil and Political Rights in 1980, and the optional protocol of the covenant was ratified in 1991. Both documents are scheduled to the Human Rights and Equal Opportunity Commission Act. As a result of this scheduling, Australia agreed that laws would be made with respect for individuals and without distinction of any kind; and that there would be no discrimination to the equal protection of rights under the law. The Human Rights Committee of the United Nations has found that sexuality is one of the areas in which there should be no distinction or discrimination.

Under the International Labour Convention No 111 - Discrimination in Employment or Occupation, ratified by Australia in 1973 - it is unlawful to discriminate on a number of grounds. Australia adapted the terms of the convention in the Human Rights and Equal Opportunity Act and in 1990 the Australian Government specifically included sexual preference as a ground of unlawful discrimination. Western Australia has thus far neglected its duties under these international conventions and has shown itself to be an international dinosaur in its refusal to act justly and fairly. The experience of gay, lesbian and transgendered Western Australians is that others have made their sexuality an issue in areas such as employment, education, accommodation and the provision of goods and services. Sexuality is not a preference any more than gender, age, disability, culture or any other ground currently protected by equal opportunity laws. To this end, sexuality is an essential part of what makes each of us who, and not what, we are.

It is also true that discrimination in society does occur not only when the victim is in fact gay, lesbian or transgendered, but also when the individual appears to be independent of their actual sexuality. I was present in the gallery when Hon Paul Sulc made his inaugural speech, when he referred to the discrimination that he suffered as a result of the perceptions of others. Individuals deserve protection against the prejudice, bigotry and often violence aimed at them because of their actual or perceived sexuality because it is their right to be protected against such evils in their everyday lives. For the Western Australian Government not to reach out to those being denied their human rights is tacit approval of that prejudice, of that bigotry and of that violence. It is condoning the actions of those perpetrators who seek, because of their irrational fears, to deny others their human rights.

Every jurisdiction across the nation - except Tasmania, which has passed laws through only one House - has recognised the right of individuals to be protected against discrimination on the grounds of their sexuality, whether homosexual, lesbian, transgender or heterosexual. The majority of jurisdictions have also legislated to give homosexuals rights equal to all other citizens to engage in consensual sexual activity with an equal age of consent.

The Commonwealth Government has recognised this by enacting the Human Rights (Sexual Conduct) Act, which provides all citizens over the age of 18 with a defence against criminal charges in respect of consensual sex. This inconsistency with federal law makes the current Western Australian legislation vulnerable to a High Court challenge.

In both of these fundamental areas of human rights the Western Australian Parliament has neglected its duty and made criminals of otherwise law abiding citizens because of prejudice. Western Australia's laws in relation to homosexuality have been condemned by the Human Rights Commission, the World Health Organisation, the Australian Medical Association, Amnesty International and the Chief Justice of the Supreme Court of Western Australia, David Malcolm. Only three weeks ago Commonwealth Human Rights Commissioner, Chris Sidoti, said Western Australia had the most discriminatory laws in the nation in relation to gays and lesbians. He said the

discriminatory laws are among the greatest of human rights abuses of which this Government is guilty, negatively distinguishing the State from all others.

The Bill that I present to this place today seeks to rectify this serious breach of duty and past failures in leadership and to respond to what has time and again been shown to be supported, not only by those in the gay, lesbian and transgender communities, but by the majority of Western Australians. It does not seek any special consideration for gays, lesbians or transgendered people, but seeks only for them to be treated the same as other members of society. It is time for change.

I would now like to outline the basic provisions of the Acts Amendment (Sexuality Discrimination) Bill. The Bill before the House today firstly prohibits discrimination on the basis of an individual's sexuality or transgender identity by inserting new definitions and parts into the Equal Opportunity Act 1994. The definition of sexuality is exclusive, expressly limiting the ground to bisexuality, heterosexuality, homosexuality or lesbianism. This Bill does not cover any other form of sexual identity or sexual behaviour. Transgender identity is a separate ground for complaint, as the issue of an individual's sexuality is not related to their gender identity.

The Bill will insert a new part into the principal Act that makes it unlawful to discriminate against an individual on the basis of -

- the individual's sexuality or presumed sexuality;
- a characteristic that appertains generally to persons of that sexuality; or
- a characteristic that is generally imputed to persons of that sexuality.

This means that complainants need not in fact identify their sexuality in lodging a complaint in respect of an alleged incident of discrimination. It also applies to discrimination against relatives or associates where discrimination has occurred because of their relationship with such a person. Identical clauses apply to the ground of transgender identity.

I would like to emphasise here that this Bill deals only with the issue of equal opportunity protection for all those who identify as transgendered, and does not consider the legal status of those who have undergone gender reassignment surgery. A separate Bill is currently dealing with this issue. I do signal my intention to ensure that legal recognition will shortly become available to such people.

Each division then sets out specific circumstances in which it is unlawful for discrimination to take place, except where relevant specific exemptions are provided, under which it is lawful for discrimination on the basis of sexuality to occur.

The first area dealt with in the Bill is discrimination in work. These provisions are identical to those in the Equal Opportunity Act that extend protection to the disabled, the aged and indigenous people, and in the gender provisions. For this reason alone I can see no reason for objection by any party to providing equal protection on the basis of sexuality. The clauses prohibit discrimination when selecting candidates for employment, in the terms and conditions offered in employment, when awarding promotion or opportunities in employment and in dismissing an employee.

Similar prohibitions are made in the areas of commission agents, contract workers, partnerships, professional or trade organisations, qualifying bodies and employment agencies. Exclusions to having to comply with the provisions are also identical to other grounds of discrimination. The existing provisions provide exclusions for employment for domestic duties in the discriminator's home and partnerships of fewer than six persons.

It would become unlawful for an education authority to discriminate against people because of their sexuality or transgender identity by refusing to admit them as students by making special terms or conditions for their admissions, by denying or limiting access to benefits, or by expelling them or exposing them to any other detriment. Again, these provisions are essentially identical to those that appear in the principal Act in relation to other grounds for a discrimination complaint. In relation to religious educational facilities, the general exemption in the Equal Opportunity Act in sections 72 and 73 would continue to provide any freedom those institutions felt they needed in relation to their religious code. Every individual should have the right to an education regardless of race, gender, age disability or sexuality. To be able to legally take that right away strips a human being of his or her right to learn and their dignity.

The goods, services and facilities section would give gay, lesbian and transgendered individuals the same rights to protection against discrimination in the provision of goods, services and facilities as other grounds for action in the Equal Opportunity Act. It makes it unlawful to refuse to provide goods, services or make facilities available or to attach special conditions to the provisions of goods, services or facilities. The existing definition of services includes insurance. Many gay, lesbian and transgendered people have been discriminated against in the very important areas

of insurance and superannuation, and so it is an aim of this Bill to attempt to overcome those inequities. This will make it possible for gays and lesbians to take care of their same sex partner through superannuation contributions and insurance policies; an issue of immense importance to those in the gay and lesbian communities.

The right to accommodation is fundamental in our world today. We, as a society, have an obligation to ensure that members of our community are not discriminated against in seeking shelter because of their sexuality. The provision here would make it unlawful to refuse an application for accommodation, impose discriminatory terms and conditions for accommodation, defer or give lesser precedence for accommodation, deny or limit access to accommodation or evict an individual based on their sexuality. It does allow people to discriminate when the person letting the accommodation or a close relative of that person will also be living in the accommodation. This allows people to have the freedom of choice of whom they may have residing in their homes. Religious bodies providing accommodation will also be exempted and charitable or voluntary bodies providing accommodation solely for use by those of a particular sexuality or transgender identity will also be able to refuse accommodation on the basis of sexuality.

Clubs and incorporated associations: Under this Bill clubs and associations may not refuse membership or place special conditions on membership because of an applicant's sexuality or gender identity. Once a member of the club or association, there can be no discrimination in the terms or conditions of that membership, access to benefits afforded to members, or depriving a member of membership or any other detriment to a member on the basis of sexuality or transgender identity.

The exemption attached to this clause is for clubs or associations that have, as their principal purpose, the provision of benefits for people of a particular sexuality or transgender identity. The sole purpose test must be strictly enforced, with the club or association having to show that its affairs are structured in such a way as to solely benefit individuals of a particular sexuality or gender identity.

Discrimination in sport: Excluding a person from a sporting activity on the basis of his or her sexuality or gender identity would become unlawful under clause 35ZB of the Bill. This includes administration or coaching activities. However, discrimination will be lawful if the sporting activity is specifically conducted only for persons of a particular sexuality or gender identity.

Land: In disposing of interest in land it would be unlawful to discriminate on the basis of sexuality or gender identity unless the disposal is by will or gift or the land is within an area of land that has as its principal object the occupation by persons of a particular sexual or gender identity.

Other provisions: In all these areas it would be unlawful to ask a person to reveal his or her sexual or gender identity, as it should not be relevant to the situation. Of equal importance are the problems the partners of gay and lesbian people face. For example, access to their partners in hospitals when they are ill. In many situations, hospitals will not afford next of kin status to a same sex partner, thus denying them visiting rights or the right to be consulted when making medical decisions.

The Bill before the House today attempts to remove the discrimination against same sex partners. It acknowledges the rights of these partners and makes those rights equal to those enjoyed by heterosexual de facto partners where discrimination occurs. By altering the definition of de facto for the purposes of the Equal Opportunity Act, same sex couples will have protection under the ground of discrimination on the basis of marital status and therefore be given rights to see their partners, to be consulted in medical situations and to access employment benefits available to de facto partners. The recognition of same sex partners does not extend beyond the scope of the Equal Opportunity Act and does not provide recognition of such relationships for any other legal purpose. Only the Federal Government could amend the law to recognise homosexual or lesbian marriages. This Bill does not, and could not, do that.

Criminal Code amendments: The notion of equality is again the impetus behind changes to the Criminal Code with the aim of equalising, and I emphasise equalising, the age of consent for gay men. Currently the law discriminates between gay men and all other couples, including lesbians.

At the age of 16, both males and females are free to decide to have sexual relations with the opposite sex, and lesbians are also legally allowed to have sexual relations at 16. The age of consent differs for sexual relations with someone in a position of authority or power, being 18 years of age. For gay men, however, it is a criminal act to have sex with another man aged between 16 and 21 in all circumstances, with an age of consent set at 21.

This Bill will make the age of consent for all people 16, retaining the strict enforcement of an age of consent of 18 in situations where one of the parties is in a position of power or authority over the other. There is no legitimate reason why the age of consent for young gay men should be different from that for other citizens, and no reason why a man should be labelled a criminal for having a loving relationship with another male.

The paranoia and uninformed opinion that "dirty old homosexuals" would prey on vulnerable 16 year old boys is a most offensive notion. It is a fact that the overwhelming majority of paedophiles are heterosexual men who violate young girls, yet we hear no objection to an age of consent of 16 for girls who wish to be sexually active.

It is also a nonsense to claim that raising the age of consent will give youths more time to really decide if they are homosexual before being "inducted" into homosexuality. Research indicates that at least 33 per cent of males have a homosexual experience at some stage in their life, but this does not mean they are gay. We do not criminalise heterosexual activity for youths who are experimenting, and there is no reason to treat gay and lesbian youth differently. It is a myth that young men are confused about their sexuality when they have their first homosexual experience. In fact, no gay man I have spoken to supports this argument. We cannot structure the law around a myth.

At what age does one become aware of one's sexuality? Study after study indicates that an individual is aware of his or her sexuality by the age of 14. Most of us here today would think it ludicrous to be asked at what age we realised we were heterosexual, and the same question is equally ludicrous when asked of a gay or lesbian person. One does not decide to become homosexual or lesbian, it is a part of who one is. It is essential to give homosexuals this respect, to give them equality, and there is no logical reason to deny it.

Finally, this Bill seeks to repeal in its entirety the Law Reform (Decriminalisation of Sodomy) Act 1989. Throughout my consultation with the gay and lesbian community I do not believe I have heard any section of legislation condemned in stronger terms than the preamble and amendments to this Act. It is overwhelmingly rejected as bigoted and prejudiced and is seen to be used by those who vilify gay and lesbian people to exonerate and justify their hateful behaviour.

Impact of current laws on society: The current lack of laws protecting gay, lesbian and transgender individuals is a tacit approval of prejudice, discrimination and bigotry, which are all merely euphemisms of hatred. As a Parliament we should not stand for allowing hatred to bloom in our society.

The repercussions of this State's laws oppressing gays, lesbians and gender dysphoric are well documented. Making adult homosexual activity criminal sends a message to gay youth that they do not have any value, they are not worthy of compassion or protection. By forcing youths to hide their sexuality they feel they cannot talk to anyone about their feelings and this further isolates them and increases the stigma they are already forced to feel by a society that approves of denigrating those who are a minority.

Western Australia's current laws validate behaviours of intolerance, alienation, prejudice and sometimes violence. The suicide rate for gay and lesbian youths in this State is a disgrace and our laws do little to help save them. The criminal label attached to homosexuality means that a sexually active gay man cannot be recruited to the Police Service as his criminal activity - until he turns 21 - would preclude him.

A recent HIV-AIDS scare in our prison system has highlighted another social disaster caused by our discriminatory laws. Condoms cannot be distributed in prisons as the Government could then be seen to be aiding criminal activity. Men over 18 are imprisoned with men over 21 and any prisoner between the ages of 18 and 21 in an adult gaol cannot legally engage in same gender sexual activity. Not only does this have repercussions inside gaols, but those men then go back out into society and spread a variety of infectious diseases.

The religious arguments often used to justify the continuation of prejudice towards gays and lesbians are similar to those used throughout the ages to justify the campaigns against the Magna Carta, to uphold the principle of the Divine Right of Kings, to justify slavery and to continue policies of discrimination and hatred against blacks and women.

We cannot use a moral wrong - discrimination and hatred - to achieve what some see as a moral right - illegality and lack of support for homosexuality and lesbianism. Our society teaches us to cherish the values of tolerance, acceptance and to do unto others as one would have done unto oneself. To do other than to support this Bill would prove hypocrisy to anyone who subscribes to this basic value system. To do otherwise is merely hatred cloaked as morality.

Conclusion: Discriminatory behaviour is most often the result of ignorance and fear fed by myths, misconceptions and stereotypes, and there are few areas in life that have evidenced this more than sexuality. This Parliament has the opportunity to lead the way, to educate to eradicate ignorance, to alleviate fears and to squash those myths, misconceptions and stereotypes.

We have the chance to promote tolerance and to condemn hatred. What this Bill is really about is whether gay, lesbian and transgendered individuals have a right to exist and to be embraced and included in society. I say yes, they do. While I do not believe that legislation of itself has the power to change the prejudice that generations of approval of inequality has bred, I do believe that it is this Parliament's obligation to initiate change. To quote Martin Luther King Jr -

Morality cannot be legislated, but behaviours can be regulated. Judicial decrees may not change the heart but they can restrain the heartless.

Debate adjourned, on motion by Hon Norm Kelly.

PARLIAMENT HOUSE - VISITORS AND GUESTS

THE PRESIDENT (Hon George Cash): I recognise the presence in the President's Gallery of Senator Lyn Allison, senator for Victoria, a member of the Australian Democrats, who is visiting Perth on official business.

Sitting suspended from 6.01 to 7.30 pm

STATEMENT - LEADER OF THE HOUSE

Metropolitan Region Scheme Amendment - Ground Water Protection

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [7.30 pm] - by leave: I make this statement on behalf of the Attorney General representing the Minister for Planning.

I rise to make a statement about moves by this Government to further strengthen protections over Perth's valuable ground water reserves. The amendment to the metropolitan region scheme, which the Attorney General tabled earlier today, defines a protection boundary over the Jandakot water mound and is a positive step in the State Government's protection of ground water. The ground water amendment introduces an historically new zone called "Rural - Water Protection", the first new zone in the metropolitan region scheme since its inception in 1963. This underlines the importance the Government has placed on protecting drinking water for future generations and on protecting the associated wetlands.

Planned changes to the MRS were advertised late last year, and 235 submissions were received. The Western Australian Planning Commission examined all the concerns raised in the public consultation process and made some alterations to the amendment. The commission found the planned changes reflected best available scientific data or were compatible with planning policies, and were supported by the majority of submissions received. The proposals were backed by detailed research by the Select Committee on Metropolitan Development and Groundwater Supplies, and the Jandakot land use and water management strategy.

In addition to this amendment, the WA Planning Commission released a statement of planning policy for public comment last week. This policy reinforces a minimum lot size of two hectares within the protection zone, and subdivision potential will continue to be guided by the Jandakot land use and water management strategy.

Uses such as equestrian activities and stables, kennels, extractive industries and some horticultural uses, such as extensive floriculture, hydroponics, orcharding and viticulture, must be referred to the Water and Rivers Commission before being approved by the local government. Golf courses and turf farms will not be permitted.

However, people may still build homes, run hobby farms, grow broadacre crops and provide public recreation. Any future development plans will be assessed on merit. The aim of the policy and this amendment is to control and manage land use to achieve acceptable levels of risk for contamination of Western Australia's important underground water supplies. The "Rural - Water Protection" zone will correspond with the priority 2 water source protection area over the Jandakot mound and the new policy will provide guidelines on appropriate land uses. I commend this amendment to the House.

Consideration of the statement made an order of the day for the next sitting of the House, on motion by Hon Bob Thomas.

EQUAL OPPORTUNITY AMENDMENT BILL (No 3)

Introduction and First Reading

Bill introduced, on motion by Hon N.F. Moore (Leader of the House), and read a first time.

Second Reading

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [7.34 pm]: I move -

That the Bill be now read a second time.

Background: In January 1993 the Equal Opportunity Amendment Act 1992 came into force. The Act, among other provisions, amended the Equal Opportunity Act 1984 to include age as an unlawful ground of discrimination in all areas of public life covered by that Act, including employment.