

HISTORICAL HOMOSEXUAL CONVICTIONS EXPUNGEMENT BILL 2017

Second Reading

Resumed from 1 November.

MS L.L. BAKER (Maylands — Deputy Speaker) [3.32 pm]: I am not having much success with my question asking, so I will give a speech instead! This is a speech that I am extremely proud to give as part of the McGowan government. This speech relates to the Historical Homosexual Convictions Expungement Bill 2017 that the Attorney General read into this place a few weeks ago. I am obviously incredibly pleased to see this bill come to the house. I want to take a bit of time to walk through the history, from my perspective, of where this bill came from. I start off by mentioning the first time this issue was raised with me. I must thank the member for Bassendean who is now the Minister for Fisheries and other things, as he was the person who mentioned it to me. He had seen some work being done in the eastern states and suggested to me several years ago now that this issue had not yet been dealt with in Western Australia. The issue of course is that prior to 1990, homosexual acts between consenting men were still illegal. The bill passed in 1989 and was promulgated in 1990. From 1990 onwards it was no longer illegal for adult men to engage in consensual relationships of an intimate nature. I thank the member for Bassendean, who brought this to my attention several years ago.

I want to go back to Wednesday, 18 May 2016—just over 12 months ago. I want to speak about the first time, as I am aware, that this issue was raised in this Parliament. It was raised by me in the Address-in-Reply to the 2016 appropriations bill.

Mr J.N. Carey: Hear, hear!

Ms L.L. BAKER: Thank you for the small chorus of applause!

Mr J.N. Carey: You're a rock star. No-one else is listening, but I am.

Ms L.L. BAKER: I thank the member for Perth. He is always a great supporter.

The ACTING SPEAKER (Mr R.S. Love): I am listening too.

Ms L.L. BAKER: Thank you.

Mr J.N. Carey: There is no-one in the chamber!

Ms L.L. BAKER: I will go on, notwithstanding the huge crowd and applause.

The ACTING SPEAKER: Yes, please do.

Ms L.L. BAKER: In May 2016, I spoke to this house about the failures of the government of the day, which was the Liberal–National government, to do any significant work to rectify this historic blemish on our moral obligations to a community that I am part of and for which I care deeply. Two years before that, in 2014, we had made history in the Legislative Assembly by carrying an amended motion to the one that I put forward, admittedly, amended by the then Premier, the member for Cottesloe. That motion was moved to basically kick the federal government in the pants and tell it not to hold a plebiscite but to get on with making a decision on marriage equality in the federal Parliament. A letter was sent by the Legislative Assembly under the Premier of the day's signature. I want to thank members very much for that. It was an historic occasion for me and I am very proud that it happened.

We are now on the cusp of seeing some further debate in the federal Parliament, nearly three years later, which I hope provides us with an outcome that will allow many of my friends, myself included, if we wish, to marry legally with the same status that any other couple would have. It has taken a long time to get here. I hope that the debates in the federal Parliament that we will see in the coming weeks are not too hurtful. I am sure there will be vitriol from those who still seek to oppose the measure. The opposition is misguided and terribly out of step with community attitudes. I understand why those particular individuals might hold those views; it is time that we moved on as a community. As members know, I share my opinion with many Australians who just voted yes to allow same-sex marriage. That is another obstacle in the path to equality that the LGBTI community has faced. I am hoping that we can say that we faced it off and we get around that barrier by the end of this year.

I spoke in the house in 2016 about the need to expunge convictions. I talked about the unfair and unfortunately often legal at the time attacks that were conducted on gay men. We see that in the history of many people in our community who have been carrying with them some very grave consequences of being convicted under the previous law. For people in this house who are not aware of some of the ramifications—we have heard some descriptions in the past—I would like to put on the record just a few of the issues that the people who would have been convicted during that time may have carried forward with them and why it was so important for us to address this. The first point I raise is that if a person was being considered for supervised release by the Prisoners Review Board or the Mentally Impaired Accused Review Board, or even considered for appointment as a justice of the peace in the court system, they would not be eligible if they had been convicted. If a person were being considered

for appointment as a police constable, an auxiliary police officer, a special constable, an Aboriginal police liaison officer or a police cadet, none of those options would have been available to them if they were carrying a conviction. If a person were being considered for employment as a prison officer or considered by the police for a permanent appointment to a position in which duties require or may require the provision of services, or to deal in any manner with persons not of full legal capacity, they would not have been able to.

Mr P. Papalia: Or if you wanted to travel to America.

Ms L.L. BAKER: Yes. I am getting to those—travel, passports, getting in and out of the country.

Several members interjected.

Ms L.L. BAKER: I thank the Minister for Racing and Gaming. I would be very happy to have a group discussion about this.

The ACTING SPEAKER: Member, if you would like to carry on.

Ms L.L. BAKER: Holding or applying to be issued with a permit to do high-level security work under the Prisons Act 1981 or being considered for employment under the Gold Corporation Act 1987 would also not have been possible. Other things that would not have been possible are being considered for the grant of a licence as a casino key employee or a casino employee under the Casino Control (Burswood Island)(Licensing of Employees) Regulations 1985; holding a licence or permit or applying for the renewal of a licence or permit as a security agent, security officer, security consultant or security installer under the Security and Related Activities (Control) Act 1996; applying for the issue of a licence under the Firearms Act 1973; or being considered for employment or contract work involving assessing, reporting about or classifying prisoners. As was raised by my colleague, travelling overseas would also not have been acceptable.

This had a real impact on people's lives. These men would be in their 70s now, so there are probably not that many of them. We estimate that a couple of hundred men are still carrying the weight of those convictions, which will be expunged under the McGowan government's new bill. When those people applied for jobs, many of them did not go forward in their careers or choose to change careers. If they were quite young men when this happened, members can imagine that they would have been restricted to one job because in many jobs criminal record checks are done and they were simply too frightened to apply for a different job or to move up in their job in case someone discovered what they were so ashamed about. Many of those men would have passed on by now, I would think. We met a lovely man who came to hear the second reading speech when this bill came in who intends to apply for expungement for his partner even though his partner is now deceased. There is still the capacity for the families involved to suffer from the shame that their partners would have carried in their lives from having a criminal record. This is certainly a bill that will be very much welcomed. As I have said, most of the men would be around 70 or 80 now. Some who are as young as 50 or 60 might still be living with the effects of those convictions even more than the trauma of the circumstances of the arrest.

Through the records and the stories of the real lived experiences of people, it is clear that at the time many set-ups were entered into by the police of the day to entrap men, charge them and eventually convict them for homosexual acts. Those with convictions would have faced all those challenges of the exposure and public shaming of going through the judicial process and held those challenges for decades forward. It would have proved to be a significant barrier to travelling, volunteering or getting employment. I have heard that one man was so worried about his conviction being discovered by employers during a police clearance check that he stayed in the same job for decades.

The Criminal Code set up a system of discrimination against gay men and encouraged police to use prejudice and blackmail to effectively torment men in the LGBTI community during those times. For members' information, Western Australia is one of the last states in Australia to take this action to expunge historic convictions for homosexuality. As I have said before, this is something that urgently needs to happen. I am very pleased that the McGowan government is taking leadership in this area and has introduced this legislation to expunge historic convictions for homosexuality. We should be amending the existing legislation because that will make it possible for us to stand up for those men and their families and to see their convictions fully expunged to effectively erase any conviction they held for homosexuality that would not stand up in court today. Western Australians in particular should be proud of Premier Mark McGowan who stood and made a public apology in this Parliament to the victims of past misguided criminalisation of homosexuality. I think everyone who heard his speech was impressed with the passion with which he delivered it and his personal commitment to seeing these past wrongs made right. In that speech he apologised to those people who are no longer with us and their families for the pain that we as a society caused them through that wrong, and he recognised the harm that brought to both individuals and their families. I am very proud that he has committed to us righting what has been a dreadful wrong for many, many Western Australians.

I started giving a time line and have just spent the last few minutes talking about the first speech I made on this subject in May 2016. I note that we are on the very cusp of the Pride festival and march. At the launch of PrideFest last year I was very proud to accompany the then Leader of the Opposition, when he made a number of commitments that we would bring in for the LGBTI community in Western Australia if we were elected. Some of those things were making sure that the Safe School program had access to the funding it needed to continue in Western Australia in those schools that choose to deliver that program. He was also very clear about his support for legislation for same-sex marriage. He also talked specifically about the WA Labor Party's commitment to bringing to the house this bill for the expungement of historic convictions for homosexuality. That was around this time last year. I seem to remember he got a very warm ovation from the crowd. At that time, Rainbow Labor was circulating a petition on the subject. We tabled that soon after, in 2016. Then, of course, we moved to the March election and the then Leader of the Opposition became the Premier of the state and, along with the Attorney General, moved very quickly to put this bill into this house. As members would know, it has been a busy year and we have been trying to get as much legislation up as possible, given the restraints of human resources in the drafting department. I recognise the Attorney General's efforts in getting this bill drafted and into this place.

I congratulate the Attorney General for bringing in this bill, which seeks to establish an administrative scheme for the expungement of convictions for a select number of historic offences now repealed under sections of the Criminal Code involving homosexuality. The bill provides that an eligible person, an appointed guardian or enduring guardian, or a relative or partner of a deceased eligible person, may apply to the chief executive officer of the Department of Justice to have a conviction for a historical homosexual offence expunged. There is definitional clarity in the bill about exactly what that means and to whom this applies, and a process is also outlined. People must apply for this; it does not automatically happen. I am hoping there will be sufficient media attention, as this bill passes through the house, to encourage people to come forward and put their hand up to go through this process. I am really looking forward to seeing some good results—the sooner the better—on that.

[Member's time extended.]

Ms L.L. BAKER: I would like to briefly speak to a couple of other issues. When I think about the journey we have been on in this place—me as an individual and my gay colleagues in this house and in the other place—I think we have had a very busy —

Mr J.N. Carey: There's only one!

Ms L.L. BAKER: All right; there are not that many, but we are slowly moving towards a representative standing, member.

Mr T.J. Healy: That you know of!

Ms L.L. BAKER: You never know! There are two who might be out; we never know about the reality of these things!

There is a need for us to regroup and think about the other issues that perpetuate inequality in our legal system, our legislation and our structures and communities. I know that groups like Rainbow Rights are looking to highlight injustices relating to gender reassignment in Western Australia and to try to start to pick through how we can address that for people seeking gender reassignment. There are many injustices. Even though they may seem to be procedural or even petty issues to people who are not dealing with that massive change in their lives, they are very serious matters for the individuals who are impacted. I think we as a community are ready to start looking at this and, indeed, fixing it.

We have various certificates and registration processes in government and a lot of our administration needs cleaning up, including state forms for births, deaths and marriages. Those will all need to be adjusted. I have had many discussions about this with the LGBTI community, particularly given that it is a community that has so many families that are raising children. Already there are existing prejudices built into the forms we use; if one is registering a birth, it is always about a mother and a father and there is no place for same-sex couples to register that there is a mother and a mother or a father and a father in that family. These might seem inconsequential matters in the scheme of things, but even though I do not have children, I am very aware that many of my friends with children have run into this issue and they feel it is discriminatory to them. It may be that administrative change is required, and it is not much to do, but there are many examples of such forms in government that ask people to identify by gender. In a community, society and country that is, I hope, progressive and looking to the future, it is time that we weeded out those kinds of administrative prejudices that are hangovers from perhaps an older society and culture.

I am very proud in this twenty-first century to be part of a Parliament that has chosen to support the Historical Homosexual Convictions Expungement Bill 2017. I also note and again acknowledge the support I gained in my journey, under the previous government and before we won government in March, from both the member for Cottesloe and the member for Scarborough, who were very quick to acknowledge that this needed to

happen. Unfortunately, I am assuming that they just could not get the priority that was required to get it into the house. I am sure that was not through a lack of personal commitment. I am really proud that this is a Labor government and this is what Labor governments do; we address social wrongs, inequality, unfairness and injustice. This is at the heart of what I believe as a human being, what I believe as a Labor politician and what I believe as an Australian. We must try to make a society that is far more equitable in the way we treat each other and individuals across our community.

With those words, I add my warmest support for this bill and look forward to seeing it pass as quickly as possible through the house.

MR J.N. CAREY (Perth — Parliamentary Secretary) [3.55 pm]: It is my pleasure and honour to speak to the Historical Homosexual Convictions Expungement Bill 2017, which has significant meaning for the gay and lesbian community. First of all, I want to say that I am incredibly proud to be part of a government that has formally apologised to hundreds of people who were convicted under state law that banned homosexual acts. This apology is well overdue. I also want to add to that apology that I am sorry for the hurt, pain, shame and public humiliation that comes with a criminal offence like this—in cases, criminal offences for having a consensual and loving relationship. I will talk a bit about the history of reform in the LGBTIQ community—I struggle to spit that out—and I will also talk from my own experience as one of the few openly gay men in Parliament. There are two men and one woman; that is three.

Ms L.L. Baker: You said men.

Mr J.N. CAREY: Yes, I did say men. I want to talk about it from my perspective as well. First of all, I want to acknowledge what the Premier had to say about this issue. I think he put it very well. I quote —

“For decades in Western Australia, unjust laws against homosexual acts were used to shame homosexual men, to deny their human rights, and to deny their humanity.

“I feel a sense of deep sadness that many victims of these unjust laws are not alive today to hear this apology.”

He went on, and this is very important —

“These laws were State-sanctioned discrimination,” ...

“The uncomfortable truth is that they were also the foundation upon which much of current homophobia was built.”

That is very important because there is a clear correlation between institutionalised discrimination and homophobia in our workplaces and in universities; that is the clear connection. Advocates have argued for a very long time in a consistent campaign that has sought to remove these unjust offences and to have these criminal acts expunged.

I want to acknowledge the efforts of Rainbow Rights WA to champion this reform. I will quote its spokesperson, Jonathon Mann, who said —

“These laws ruined peoples’ lives, they created a cloud of fear and anxiety over peoples’ heads,” ...

“It made people think there was something wrong with them and today the Government has said ‘no, there is nothing wrong with you’.”

This was a really important day for the gay and lesbian community, and I want to acknowledge the efforts of Rainbow Rights and Jonathon Mann, Katrina Montaut and Neil Buckley and their advocacy and work to ensure that the government delivered on its promise.

We do not know exactly how many people were affected. The gay and lesbian community estimates that it was between 200 and 300 people. It is very powerful for those who are still alive today to know that their criminal records have been wiped as though they never happened. It will also provide an opportunity for family members whose loved ones are no longer here to apply to have these convictions expunged.

I want to take a broader look at the reform of gay and lesbian rights in this Parliament and its history, and also again come back to the themes of homophobia. I do not mean to treat the Parliament or its members as idiots, but I want to make very clear what I mean by homophobia. Wikipedia has the best definition. It is always good to go to when we need something quickly—pull out Wiki because it gives a great summary. I am sorry; I must not be the only politician who has looked at Wiki. But I am not going to be accused of plagiarism. I am going to quote Wiki because it has a very good definition. It states —

Homophobia encompasses a range of negative attitudes and feelings toward homosexuality or people who are identified or perceived as being lesbian, gay, bisexual or transgender ... It has been defined as contempt, prejudice, aversion, hatred or ... may be based on irrational fear, and is often related to religious beliefs.

Extract from Hansard

[ASSEMBLY — Thursday, 23 November 2017]

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Ms Lisa Baker; Mr John Carey; Mr David Templeman

Often some people think that homophobia is defined as a physical act. I even see the word “gay” used as a derogatory term. As a gay man, I find it personally offensive to hear people use the word “gay” in that way. I note that there are some conservative advocates who are devastated that the word “gay”, which used to mean happy, has now been taken over by gay men, apparently. I do not know about that. I think it might have been Bob Katter who complained about the use of the word “gay” being taken over by the gay community—shock, horror! But I want to say this: I am proud to be a member of a government that has consistently delivered on reform for the gay and lesbian community. At the heart of this is a respect for the humanity of every individual. Of course, I refer first to the fact that it was a Labor state government that in 1989 passed the Law Reform (Decriminalization of Sodomy) Act 1989, which decriminalised private sexual acts between two people of the same sex and came into effect in March 1990. There were some other strict rules around that. Again, it was a Labor government—this time in 2002 under Jim McGinty and working with Giz Watson, the Greens WA leader at the time—that legislated the Acts Amendment (Lesbian and Gay Law Reform) Act 2002. That was a package of reforms including comprehensive provisions that allowed same-sex adoption and parental rights for lesbian couples with children, and it also allowed same-sex couples more cost-effective access to the Family Court of Western Australia to resolve their disputes. I note in this debate, and people may have forgotten the history, that the Liberal opposition at the time sought to split the bill because of the potential controversy regarding family adoption by same-sex couples. Luckily, it did not win the day and we have not seen the sky fall in. We have seen many loving, same-sex couples bring up children, and all of the consequences and fears that we hear from those who want to spread fear came to no avail. I am proud that the Labor government again delivered those reforms.

Today in 2017, we complete another piece of the puzzle by this expungement. Of course, there is still a long way to go. I see it as a puzzle whereby little bits are put together to change the rules. Of course, we have had the vote on marriage equality and now we need the federal Parliament to get on with the job that it has been elected to do and follow the mandate clearly given by the people of Australia to ensure marriage equality. We can then ensure that all same-sex couples can enjoy the misery of marriage like every heterosexual—here we go! That was a slight.

I also want to say this: I am, as I said, one of the three openly gay members of Parliament that I know of, in the lower and upper houses, but it is only part of my identity. I appreciate that many gay and lesbian people are heavily involved in advocacy and rights. I have not been one of those people. I was a volunteer on the board of Gay and Lesbian Counselling Services, but I have not been one of those advocates who have dedicated their lives to the cause. I acknowledge that, and I pay tribute to all those people.

This expungement is about dismantling homophobia. If people believe that homophobia does not exist today, they have their heads in the sand. I could not imagine how it would be to be arrested for my consensual loving relationship, but I can imagine the homophobia that those people received in their lives. As a public official, as the Mayor of Vincent, as a Labor candidate and now the member for Perth, I have learnt to accept this in my public life. When someone is incredibly hostile to a decision I have made or an agenda I propose, I am attacked on my sexuality. It is guaranteed that I will wait for it, and it will come. As Mayor of Vincent, I was accused of pushing a poofter agenda for dogs and pergolas. I did not even actually get that one, but it is the reality, and it comes. In the election campaign I was subject to some of the most horrific homophobia. I was shocked by it, but it was there and it was used against me. I received a text from a local resident and supporter of my political opponent. It had the audacity to connect homosexuality with paedophilia, and directly tied it to me. I only knew that this person was a supporter of my opponent because that person accidentally sent me a Merry Christmas message with their photo with another person. They had been clear supporters of my opponent. Last year I was walking down the street in November, and a well-known Perth identity yelled out to me repeatedly, “You rotten faggot!” If members do not think homophobia exists, it does, and this is the kind of homophobia that people are still subject to in public life.

I am resilient, but I have to admit that it did take a toll when I received that kind of disgusting and derogatory remark. I have always conducted myself with the greatest integrity and honesty as a lobbyist, when I lobbied the previous Liberal government as an environmental lobbyist, and in my time as the Mayor of Vincent. I accept that in public life we have robust debate, and there will be satire and everything under the sun, but there must be a line about attacking people’s humanity. We have not got there yet. I am resilient, but I think about young gay and lesbian people who were not subject to the same toils of public life, and have had experience of absolute derogatory feedback. I feel for them. The statistics on gay and lesbian suicide are not great, but the National LGBTI Health Alliance has stated that a lesbian, gay, bisexual, transgender or intersex young person aged between 16 and 27 is five times more likely to commit suicide. Transgender people aged 18 and over are nearly 18 times more likely to commit suicide. That puts me into absolute despair. It makes me deeply sad that young people would choose to end their lives because they have lost all hope and feel devalued as human beings.

That is why I appreciate that in the scheme of things—I understand the need for jobs in our economic agenda and all the other things we need to do in a government—these parts of social reform are actually important. They all add up to changing a culture in our community, in the workplace, in education facilities and maybe even in politics and in the Parliament. We can change this culture so that every person understands and sees from the top—the

political leadership—that they are valued and dignified and have respect regardless, ultimately, of the choice of whom they love. That is what it is ultimately about—choice and whom they love. This is why I see this legislation as important. There will be perhaps other reforms to come. The member for Maylands has suggested that future reforms are needed. I look forward to this legislation being passed and to righting the wrongs for those 200 to 300 men and women who have been humiliated and not felt their humanity. I also look forward to marriage equality legislation being passed in the federal Parliament so that, ultimately, every relationship in this country is recognised and dignified.

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.

House adjourned at 4.11 pm
