

ACTS AMENDMENT (LESBIAN AND GAY LAW REFORM) BILL 2001

Committee

Resumed from an earlier stage of the sitting.

Clause 41: Section 322A repealed and consequential amendments to *The Criminal Code and the Evidence Act 1906* -

Progress was reported after the clause had been partly considered.

Hon PETER FOSS: It appears that the Government is obdurate on this matter, which is a great regret. As the Leader of the Opposition said, it would have been easier to send this Bill to a committee. However, there is no use crying over spilt milk. We have done as much as we could. In case the Government has not got the point, we are totally and utterly opposed to this amendment.

This amendment renders totally nugatory any benefits that would have come from the amendment that was proposed in clause 38. It makes a mockery of any claim that this is an improvement for young people; it is a disaster for them. The opportunity to protect young people has been thrown away by the Government without any consideration for the social impacts; it has considered only the political impacts for the Government's need to get its legislation passed with the cooperation of the Greens (WA). That is disgraceful.

I hope all members in the Government and the Greens who have been responsible for this legislation understand the consequences of their actions. For their own political gain, members opposite have disgracefully cast young people to look after themselves without any real concern for their welfare. Not only will we vote against this clause, but also we will divide on it. This is a very bad day for this Parliament.

Clause put and a division taken with the following result -

Ayes (14)

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

Noes (13)

Hon Alan Cadby	Hon Peter Foss	Hon Robyn McSweeney	Hon Bruce Donaldson (<i>Teller</i>)
Hon George Cash	Hon Ray Halligan	Hon Norman Moore	
Hon Murray Criddle	Hon Frank Hough	Hon Simon O'Brien	
Hon Paddy Embry	Hon Barry House	Hon Barbara Scott	

Pairs

Hon Jon Ford	Hon Derrick Tomlinson
Hon Ken Travers	Hon John Fischer
Hon Tom Stephens	Hon Bill Stretch

Clause thus passed.

Clause 42: Section 329 amended -

Hon PETER FOSS: This is one of the consequential clauses to some of the changes made and also to the new definition that has been inserted. I do not see it as making a major change to the law. We will not be voting against it.

Clause put and passed.

Clauses 43 and 44 put and passed.

New clause 42 -

Hon PETER FOSS: I move -

Page 17, after line 24 - To insert the following new clause -

42. Sections 322A and 322B inserted

After section 322 the following sections are inserted -

322A. Sodomy unlawful with young people

- (1) In this section a “young person” is a person of or over the age of 16 years and under the age of 21 years.
- (2) A person who sexually penetrates a young person against the order of nature or who procures a young person to so sexually penetrate them is guilty of a crime and is liable to imprisonment for 5 years.

Summary conviction penalty: Imprisonment for 2 years or a fine of \$8 000

- (3) It is a defence to a charge under subsection (2) for the accused person to prove that:
 - (a) the young person was over the age of 16 years; and
 - (b) the accused was not more than 2 years older than the young person.

322B. Child of or over 16: Sexual offences against by person more than ten years older

- (1) In this section “**child**” means a child of or over the age of 16 years.
- (2) A person who sexually penetrates a child is guilty of a crime and is liable to imprisonment for 5 years.
- (3) A person who procures, incites, or encourages a child to engage in sexual behaviour is guilty of a crime and is liable to imprisonment for 5 years.
- (4) A person who indecently deals with a child is guilty of a crime and is liable to imprisonment for 4 years.
- (5) A person who procures, incites, or encourages a child to do an indecent act, other than an indecent act that is committed in the presence of or viewed by the spouse of that child, is guilty of a crime and is liable to imprisonment for 4 years.
- (6) A person who indecently records a child is guilty of a crime and is liable to imprisonment for 4 years.
- (7) It is a defence to a charge under this section to prove the accused person was lawfully married to the child.
- (8) It is a defence to a charge under this section to prove the accused person was not more than 10 years older than the child.

Proposed section 322A is to ban sodomy with a person between the ages of 16 and 21 years; in fact, the term used is not “sodomy” but “against the order of nature”. Proposed section 322B is a more general provision which sets up a series of sexual offences between a child of or over the age of 16 years who is penetrated by a person who is more than 10 years older than the child. Essentially, whether the child is male or female and whether the perpetrator is male or female, the proposed section says that such sexual relationships constitute an offence in the circumstances where there is this great age disparity between the child and the perpetrator. I have already spoken fairly extensively on this. I do not need to go further into it. However, I do urge members present to give serious consideration to this amendment, because it meets all the principles that the Government has said it espouses and it also protects children, which is something else the Government has said it espouses.

Hon SIMON O'BRIEN: I would be breaking faith with the Chair, having alluded to imminent dealings with this proposed new clause, if I did not at least rise to say that I support these new clauses. Admittedly other provisions have been taken away, but these add to the Bill. They add for children in certain situations some elements of protection that would not otherwise exist from some of the predators who exist in our society while at the same time not trespassing unduly on young people who are in relationships with other young people of an approximately similar age.

Before the Government dismisses this proposal, I invite the minister to tell me what is wrong with these proposed new sections in the Government's eyes. If he wants to tell me what the Government's line is and he wants to maintain that the proposed amendment is wrong, I invite every single member, or any member, on the Government's side of the House, be they members of the Australian Labor Party or the Greens (WA), to stand up and say what is wrong with these proposed new sections. They have not said “boo” during the whole time of this debate. Not one of them has had the guts to express support for this Government's totally ignoring any form of compromise or reason. I invite the minister to tell the Committee what is wrong with this amendment. I also

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invite members of the ALP and the Greens (WA) to indicate they are alive by participating in the debate on this odious Bill.

Hon N.D. GRIFFITHS: We had a discussion about the issues contained in this proposed new clause when we debated clause 41. I am sure the member was listening. I do not believe he needs to shout when addressing the Committee, but I always enjoy hearing him speak.

New clause put and a division taken with the following result -

Ayes (13)

Hon Alan Cadby	Hon Peter Foss	Hon Robyn McSweeney	Hon Bruce Donaldson (<i>Teller</i>)
Hon George Cash	Hon Ray Halligan	Hon Norman Moore	
Hon Murray Criddle	Hon Frank Hough	Hon Simon O'Brien	
Hon Paddy Embry	Hon Barry House	Hon Barbara Scott	

Noes (14)

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

Pairs

Hon Derrick Tomlinson	Hon Kate Doust
Hon Bill Stretch	Hon Tom Stephens
Hon John Fischer	Hon Ken Travers

New clause thus negatived.

Hon PETER FOSS: I move -

Insert new section 331A as follows -

331A. Deemed position of responsibility

A person who is not more than 10 years older than a child is deemed for the purposes of this chapter to be in a position of authority over that child.

This amendment does not create a new offence; it simply takes advantage of offences when the situation is different and a person has authority over another person. As a deeming provision, it will impact on various provisions in the legislation. I am raising it in this form to meet the Government's requirement for consistency. The one exception already included relates to people in a position of authority. The mode is clear. It takes a different tack, but it meets the Government's requirement not to make exceptions. This will allow a current exception to apply and is a deeming provision.

Hon N.D. GRIFFITHS: I oppose the amendment. The issues are very much the same as those we dealt with in debating the previous amendment. Deeming in this way is interesting. It does not follow that such a gap will mean that someone will necessarily be in a position of authority. The obvious example is that a state of marriage could exist with a 10-year age disparity. The fact that someone is 10 years older than someone else does not necessarily mean that that person is in a superior position.

As Hon Peter Foss said earlier, as it relates to the Criminal Code, this area must be treated carefully. He told us that he looked at these areas carefully when he was Attorney General - I think for about five or six years -

Hon Peter Foss: It was five years.

Hon N.D. GRIFFITHS: We have passed amendments moved by the Opposition to accommodate its concerns and, after giving the matter further consideration, I moved an amendment earlier today in response to members' contributions. If we were to advance along these lines in any way, we would need to give the issue a great deal more consideration. This smacks too much of making amendments on the run. I refer members to the comments I made earlier.

Hon RAY HALLIGAN: I certainly support this amendment put forward by Hon Peter Foss. The minister said that the Government has noted what the Opposition has said about other clauses in this Bill. Apparently it has magnanimously accepted some of the wording put forward by the Opposition. I sincerely trust that the minister is not suggesting for one moment that all the intelligence suddenly resides on the government side of the

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Chamber. In view of what has been happening during debate on this Bill, I suggest otherwise. This proposed new clause is a particularly good amendment because more often than not, an older person does in some way, shape or form control -

Hon N.D. Griffiths interjected.

Hon RAY HALLIGAN: The minister can argue a different case; that is his prerogative. I trust that he will do exactly that.

Hon N.D. Griffiths: I note what you are saying.

Hon RAY HALLIGAN: We do not have to agree, and I will agree to disagree. However, I suggest to the minister that even though he is on the government side of the Chamber, not all the intelligence resides on that side. This is a particularly good amendment. There is absolutely no reason it could not be included in the Bill. It will not detract one iota from a situation in which an older person may not control a younger person. However, in instances in which an older person is able to control a younger person, this will, as the wording says, place that older person in a form of authority and, by way of previous amendments, place a responsibility on that older person.

Hon J.A. SCOTT: I am puzzled by this amendment. Would Hon Peter Foss like to explain why people who are more than 10 years older than a child might not be deemed to be in a position of authority over that child? It seems to me to be a bit of an anomaly.

New clause put and a division taken with the following result -

Ayes (13)

Hon Alan Cadby	Hon Peter Foss	Hon Robyn McSweeney	Hon Bruce Donaldson (<i>Teller</i>)
Hon George Cash	Hon Ray Halligan	Hon Norman Moore	
Hon Murray Criddle	Hon Frank Hough	Hon Simon O'Brien	
Hon Paddy Embry	Hon Barry House	Hon Barbara Scott	

Noes (14)

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

Pairs

Hon John Fischer	Hon Tom Stephens
Hon Derrick Tomlinson	Hon Kate Doust
Hon Bill Stretch	Hon Ken Travers

New clause thus negatived.

Clause 45: *Equal Opportunity Act 1984* amended -

Hon PETER FOSS: Generally speaking, the Opposition supports this part. We did not support it until a very important change was made in the other place. This provision started out in the other place with a definition of "sexual orientation" that did not include heterosexuality. That was a bit strange. The majority of people in our society are heterosexual; yet that was not regarded as a sexual orientation. The only precedent for this is the New South Wales Act, which has bright lights to tell people that it prevents discrimination on the grounds of homosexuality. This Bill was, to put it mildly, deceptive when it came into the Parliament because it said that it would protect people against discrimination on the ground of sexual orientation. It was nothing of the sort. It was to protect only one type of sexual orientation. It was a despicable piece of legislation when it came in with that definition. Only one word needed to be added to that definition. It has now become something that we can support. The Government tried to get this provision past people as being an even-handed sexual orientation provision, but it then included a definition that was absolutely biased one way. It did not even contemplate that people might be heterosexual, and it did not protect people against discrimination on the ground that they were heterosexual. With all the fine words of equality and equal treatment, the Government did not even tell people that the Bill did not deal with heterosexuality. It tried to tell people that the Bill dealt with sexual orientation. At least the New South Wales Act, which I think is offensive, is up front about it. It has the excuse of being the first

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Act of its kind in Australia. Perhaps at the time it was enacted it could be justified. Anyway, that is history and the despicable part of this Bill has been removed. This Bill now deals with sexual orientation as understood in the ordinary meaning of the term. The Opposition has concerns about some of the provisions, but it is purely a matter of drafting. We support the principle of the Bill.

Clause put and passed.

Clauses 46 and 47 put and passed.

Clause 48: Section 4 amended -

Hon PETER FOSS: I move -

Page 20, after line 3 - To insert -

(5) Section 4(1) is amended in paragraph (d) of the definition of "services" by inserting after "trade" -

(other than the assessment by a licensee as to whether an *in vitro* fertilisation procedure may be carried out, giving consideration to the welfare and interests of any child likely to be born as a result of the procedure, under the *Human Reproductive Technology Act 1991*)

When this Bill started in the other place it had a definition of "services" that was different from the one introduced into the Legislative Council. What is now proposed subsection (5) was added in the other place. We had this debate when dealing with the Adoption Act. We had to determine what matters could be taken into account when decisions were being made. We were given a number of assurances about that. Proposed section 4(1)(e) refers to services provided by a Government -

(other than the assessment of an application for suitability for adoptive parenthood, or the placement of a child for adoption or with a view to the child's adoption, under the Adoption Act 1994)

"Services" do not include that particular service. The amendment seeks to amend paragraph (d) of the definition of "services" by inserting after "trade" -

(other than the assessment by a licensee as to whether an *in vitro* fertilisation procedure may be carried out, giving consideration to the welfare and interests of any child likely to be born as a result of the procedure, under the Human Reproductive Technology Act 1991)

That is consistent with the assurances we received from the Government. It would exclude discrimination in which the interests of the child were taken into account. It does not allow any sort of discrimination; it is not a blanket exclusion. It is only an exclusion so far as the assessment is dealing with the interests of the child. It is quite a narrow exception. It is consistent with the debate when the House dealt with the Artificial Conception Act. This will allow a very limited degree of discrimination that I think is necessary in the light of the discussion the House has formerly had.

Hon N.D. GRIFFITHS: I should put on record the position of the Government on this amendment. Reference has been made to the Government's treatment of adoption. There is a difference between adoption and artificial fertilisation. Adoption involves an existing child and the parents of the child being unable to express views about who they want to adopt the child. In the case of artificial fertilisation, the decision about what is the provision of the service is made prior to the existence of the child. It is a view of the Government that it should be made only on the basis of considerations about the welfare of the child and not on an irrelevant consideration. With respect to adoption, the Government says that different considerations apply.

Hon PETER FOSS: I understand the point. I think greater width is being read into this amendment than it has. It does not allow discrimination simply because a person is of a particular sexual orientation. It says that while a decision is being made on all the facts about the welfare of the child, including the stability of a relationship, one of the things that may come into that consideration is the nature of the relationship between the people involved. With a strict reading we may not be able to do that. We are not suggesting that it be a ground for discrimination. Discrimination has to be on the basis of all the matters taken into account. Hopefully, one of them will take into account the relationship and the nature of the relationship. If the amendment were as broad as the minister says I would agree that it would be inappropriate. It has been specifically drafted to be not quite what he says it is. I accept that point he makes but I believe the amendment has catered for that.

Amendment put and a division taken with the following result -

Hon Peter Foss; Hon Simon O'Brien; Hon Nick Griffiths; Hon Ray Halligan; Hon Jim Scott; Hon Alan Cadby

Ayes (13)

Hon Alan Cadby (<i>Teller</i>)	Hon Peter Foss	Hon Robyn McSweeney	Hon Bruce Donaldson
Hon George Cash	Hon Ray Halligan	Hon Norman Moore	
Hon Murray Criddle	Hon Frank Hough	Hon Simon O'Brien	
Hon Paddy Embry	Hon Barry House	Hon Barbara Scott	

Noes (14)

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

Pairs

Hon John Fischer	Hon Kate Doust
Hon Derrick Tomlinson	Hon Ken Travers
Hon Bill Stretch	Hon Tom Stephens

Amendment thus negatived.

Clause put and passed.

Clauses 49 to 51 put and passed.

Clause 52: Part IIB inserted -

Hon PETER FOSS: Hon Alan Cadby also wishes to raise some matters about this clause. I move -

Page 34, after line 2 - To insert -

35ZE. Care of children

Nothing in Division 2 or 3 renders it unlawful for a person to discriminate against another person in connection with a position as an employee or contract worker where -

- (a) the duties of the position involve the care, instruction or supervision of children; and
- (b) the first-mentioned person genuinely believes that the discrimination is necessary to protect the physical, psychological or emotional well-being of the children.

This amendment is modelled on section 25 of the Victorian Equal Opportunity Act 1995, which was added to that Act at the same time as the grounds for discrimination on the basis of lawful sexual activity. It allows a person to put the protection of children first without fear of acting unlawfully when doing so. Whatever a person might think about outside activities, an important role of a parent is to determine the regime under which their children are educated and looked after. It is perfectly proper under those circumstances that the role model provided to the children is a role model that the parents want. The Government may not agree, but it is wrong to interfere with the capacity of parents to determine the upbringing of their children in an Act that is really trying to deal with the public behaviour of people. As I said, the proposed new section has its precedent in Victoria. I probably should hear the Government's attitude to this amendment before proceeding.

Hon N.D. GRIFFITHS: The proposed words do not provide for what is considered to be an objective test. Those words would allow a person to discriminate because he does not agree with what that person considers to be an appropriate lifestyle as distinct from what may be an appropriate lifestyle. The Government does not accept the proposed words; they display a lack of objectivity. They would open the door to discrimination; they rely on the phrase "genuine belief".

Hon PETER FOSS: We are dealing with a fairly fundamental situation. I did not make this statement at the beginning, but I think I have to make it. The word "discrimination" has gained a pejorative meaning because it has come to mean discriminating on unthinking, biased and prejudiced grounds. Discrimination distinguishes what human beings are: they have the ability to discriminate between one thing and another, between conduct that is right and conduct that is wrong, and that which is beautiful and that which is ugly. Our ability to make

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judgments every day is what makes us human beings. We call upon people to discriminate every day. We encourage people in society to obtain property, to bring up children, to participate in clubs and to do all these things that are regarded as the ordinary rights of a citizen in a civilised society. Any antidiscrimination legislation is justified on the basis that there is some higher, necessary requirement that overrides the normal rights that a person has to discriminate with respect to those things that are theirs or for which they have responsibility. I accept the concept of this type of legislation. However, all the time there are competing requirements.

I have been the Minister for Health, the Attorney General and Minister for Justice. One of the things that became clear to me is that there are no justice and health problems; there is one set of people problems. A health problem in the health portfolio was also a justice problem in the justice portfolio. Research around the world has indicated that the possibility that a person will become a criminal is determined at least by the age of five years and probably by the age of two years. It is not a certainty, but it is a statistical likelihood. That is a significant statistic. That is why such a high number of Aboriginal people are involved in the justice system.

Hon Kim Chance: As young as two years old?

Hon PETER FOSS: The original research indicated that that likelihood could be determined in children as young as five years. Other research indicated major areas of learning at two years. The evidence regarding five-year-olds is clear and it is becoming clearer for two-year-olds. If we wish to address criminality and all the other problems in society, there is only a short time to do it. People's family background in those first five years is vital. We underestimate the value that families add to our society. As parents, we probably do not realise the awful responsibility we have to get it right, because we do not get a second go. Parents are faced with the awful problem of determining what is right. Many parents have asked themselves whether they did the right thing. Most importantly, parents can provide an example for their children. Most of the ills of our society are due to the breakdown of family life and the support families give. Of course, some people do not have that family support.

The Opposition's proposed amendments are very minor. In relation to the overall employment of people, we are not dealing with a massive cross-section of employment opportunities. However, we are dealing with probably the most responsible and important task that any human being can ever have. I hope that those members present who are parents recognise the responsibility they have for their children. We all know that the early days of childhood are important. Until we consider the statistics, we do not realise how vitally important they are. Members can get it wrong, but the one area in which we should not meddle - by saying that we think employment opportunities and other matters are more important than the rights of the individual - is in the upbringing of children. I do not know what is right; I wish I did. However, I know that parents should love their children and do the best they can for them.

I find it offensive that we cannot allow parents the right to determine that somebody with a particular sexual orientation will not raise their children. That is the case in Victoria. This is one tiny area of human employment, but it is a massive area of human endeavour and importance concerning the respect of the role of parents. We must always try to balance one issue against the other. How much harm will we cause whichever way we legislate? Frankly, I would have thought that the Government should consider this type of amendment, which is in the Victorian Act. Merely saying it allows an objective test is not the point. The subjectivity of a parent is what counts; it is a very qualitative responsibility.

I apologise for not putting this position more fully when I began, but I thought I would expedite the debate by not saying too much other than where the amendment came from and so forth. This is important to me and I have expanded on it because of the way in which the minister dealt with it.

Hon N.D. GRIFFITHS: I am conscious that other jurisdictions in Australia have similar provisions as those proposed here, although they are not identical. Those other jurisdictions use words that tend towards objectivity. However, the call at the end of the day is whether it is considered appropriate that a person is able to discriminate against another person in connection with a position as an employee or contract worker in the circumstances set out in the proposed new clause. The Government's position is that it should be unlawful to discriminate in those circumstances.

I have examined the operation of the Equal Opportunity Act. That Act refers to discrimination against contracts workers. Section 35D(2) states -

Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the family responsibility or family status of the other person, in connection with work to perform domestic duties within a private household in which the first-mentioned person resides.

The principle in part is met by this legislation; however in overall employment situations, the Government has decided that the view being put forward by Hon Peter Foss should not be acceded to.

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Hon Peter Foss: That would not apply to this though, would it?

Hon N.D. GRIFFITHS: The relevance of what I have just referred to deals with matters involving households and domestic relationships. It is one thing for somebody to take on board a babysitter or something along those lines; however, we are considering general areas of employment.

Hon Peter Foss: Would you contemplate it if it just referred to domestic situations?

Hon N.D. GRIFFITHS: The domestic situation is dealt with as the law now is.

Hon Peter Foss: I do not think it is.

Hon N.D. GRIFFITHS: We think it is.

Hon Peter Foss: That section referred to by the minister refers to only family responsibility and family status.

Hon N.D. GRIFFITHS: In connection with work to perform domestic duties within a private household in which the first-mentioned person resides.

Hon Peter Foss: That does not protect -

Hon N.D. GRIFFITHS: It does not go as far as the member wants it to go, but it deals in part with these situations of domestic activity.

Hon Peter Foss: It would not pick up sexual orientation.

Hon N.D. GRIFFITHS: We do not agree with the Opposition's proposition. The purpose of this part of the Bill is to deal with the Equal Opportunity Act as it applies to sexual orientation. We say that to discriminate on the basis of sexual orientation is unlawful. The Opposition is trying to open the door to deal with a certain area of employment, which would undermine what the Government is seeking to achieve. The Equal Opportunity Act as it exists at the moment deals satisfactorily with domestic matters, but we do not think that the Committee should proceed along the lines of dealing with the area of employment in general terms. The member raised a specific query on the current arrangements. I refer the member to proposed section 35P(3) in which he will see that the question is dealt with.

Hon PETER FOSS: I regret the Government's attitude on this and that it does not see fit to follow other jurisdictions. It seems to have followed them on some things but not others. It is unfortunate, and we will be dividing on this.

Hon ALAN CADBY: I refer to proposed section 35P(1) and (2). There may be reasons that parents may wish a school to discriminate when dealing with gender or sexual orientation. A school has a duty of care to ensure that all students are supervised during the whole process of physical education; that is, getting changed, showering and dressing. It is unlikely that parents would find it acceptable that a male teacher should supervise girls or that a female teacher should supervise boys. It may be acceptable that teachers of a different gender teach physical education. To cover that situation, the Equal Opportunity Act 1984 contains a list of exemptions. On page 27, section 27(2)(c), (e) and (g) provide for exemptions when people need to get changed or are in a state of undress. The Act covers gender. Parents may not feel it is acceptable for a male homosexual to supervise boys getting changed or a female homosexual watching girls getting changed, yet there is no exception in this Bill. Has the minister considered any exceptions when children undress? If not, why has the minister not considered it, and is it likely that the minister will think of an amendment?

Hon N.D. GRIFFITHS: We are seeking to amend the Equal Opportunity Act. This is not a wholesale rewriting of the Act, which contains many provisions. I refer the member to section 27.

Hon Peter Foss: That is the example he used.

Hon N.D. GRIFFITHS: I would have thought that section 27 would meet the concerns that the member has raised.

Hon Peter Foss: The member raised the concerns by saying that section 27 provides for gender but not for sexual orientation. Previously it was not illegal to discriminate in such circumstances, but now it is illegal and there is no exception to it.

Hon N.D. GRIFFITHS: We do not accept the point of view that I think the member is seeking to make about somebody's sexual orientation. The exception is for gender. We do not think that the difficulties the member is proposing will arise. The argument the member is mouthing seems to be based on the proposition that somebody with a particular sexual orientation would be disposed to misbehaving in some way. We do not accept that. Some people unfortunately misbehave irrespective of their sexual orientation.

Hon ALAN CADBY: I am not suggesting any types of behaviour. I am saying that parents would not find it acceptable for a male to supervise a girl's changing room. In the same way, I do not believe that parents would

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find it acceptable for a male homosexual to supervise boys getting showered or a homosexual woman supervising girls getting showered, yet there is no provision for a school to discriminate against them or change their conditions of employment in that area. The minister is suggesting that he is quite happy for schools to be unable to discriminate for sexual orientation in changing room areas. I am sure that will make parents very happy!

Hon PETER FOSS: I had hoped that there would be a substantive response to this. Section 27 does not suggest that a person of the opposite sex would misbehave towards children in a changing room.

Hon N.D. Griffiths: It is a matter of community standards. We say that the community standard is, or should be, that people should not be discriminated against on the basis of their sexual orientation. The Opposition has a different view on these matters. I understand that view.

Hon PETER FOSS: We agree that people should not be discriminated against on the grounds of sex. That is in the Act. However, the Act provides for an exception relating to what is appropriate and proper. It is not a question of not agreeing with the fundamental proposition. We have said that we agree with the fundamental proposition, so the minister must not put words in our mouths.

We are saying that even though everybody accepts that we should not discriminate against people on the grounds of their gender, there are times when it is not appropriate, particularly with young people who are extremely conscious about their bodies and at a time when they are going through major hormonal changes. It would be considered quite inappropriate, although no suggestion is being made of impropriety, if a male teacher were present when puberal girls were getting showered. It would be quite unacceptable to have a woman teacher present while puberal boys were getting showered. They are extremely self-conscious about their bodies. Up until now, we have been able to say that it is also inappropriate for a homosexual male to be present while puberal boys are getting showered and that it would be unacceptable for a homosexual woman to be present when puberal girls are getting showered. It is not a question of thinking that they would misbehave in either case but a question of what is appropriate and whether puberal children should be subject to their gaze. The children must be inspected because the whole point of the teacher's being there is to supervise them and make sure that they come to no harm. What will be the impact on young people - keep in mind how sensitive they are - of having a person present whom they know to have, although of the same gender, a sexual orientation towards a person of their gender? The argument that supports that is exactly the same argument that allows the inclusion of section 27.

Hon N.D. GRIFFITHS: I understand the arguments. There is a very clear and obvious community standard for people of different genders. It is clear that a man is a man and a woman is a woman. A school should have no difficulty in determining one or the other. However, in this case, are schools supposed to undertake separation through screening?

Hon Peter Foss: It would not be compulsory; it would just provide the capacity.

Hon N.D. GRIFFITHS: On the face of it, that proposal would be unworkable. In any event, the Government maintains the position that sexual orientation in this area should not give rise to discrimination, noting, however, the clear longstanding community standard for persons of the opposite sex.

Amendment put and a division taken with the following result -

Extract from *Hansard*
[COUNCIL - Tuesday, 19 March 2002]
p8438b-8448a

Hon Peter Foss; Hon Simon O'Brien; Hon Nick Griffiths; Hon Ray Halligan; Hon Jim Scott; Hon Alan Cadby

Ayes (13)

Hon Alan Cadby	Hon Peter Foss	Hon Robyn McSweeney	Hon Bruce Donaldson (<i>Teller</i>)
Hon George Cash	Hon Ray Halligan	Hon Norman Moore	
Hon Murray Criddle	Hon Frank Hough	Hon Simon O'Brien	
Hon Paddy Embry	Hon Barry House	Hon Barbara Scott	

Noes (14)

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

Pairs

Hon John Fischer	Hon Kate Doust
Hon Bill Stretch	Hon Tom Stephens
Hon Derrick Tomlinson	Hon Ken Travers

Amendment thus negated.

Hon ALAN CADBY: I refer to proposed section 35P headed "Discrimination against applicants and employees". I am not suggesting that it would be inappropriate at all times for a homosexual to supervise children of the same gender in the showers. However, it might be inappropriate in certain cases, particularly if a homosexual were openly gay and behaved in a way that caused some doubt to the school that that person was the appropriate person to supervise the dressing and undressing process.

I asked earlier who was being targeted in proposed subsection (9a). The minister's response was, "I think you know who I am targeting; I am targeting schoolteachers." Children would be very vulnerable if they were exposed during the changing and showering process to one of the small minority of deviant homosexuals. Schools should have the right to protect their children. The minister is saying that irrespective of his behaviour, the school would not be able to prevent a homosexual teacher from supervising his same gender while the children were changing their clothes. I find that appalling and so will most schools and parents.

Hon N.D. GRIFFITHS: The Government differs from the Opposition in that, with respect, the Opposition is making assumptions about people's behaviour just because of their sexual orientation.

Hon ALAN CADBY: The minister is twisting the situation. I said that the majority of homosexual people would not be likely to transgress. However, a minority possibly would. Surely, we should protect our children even if it is from only one deviant person.

Clause put and a division taken with the following result -

Ayes (14)

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

Noes (13)

Hon Alan Cadby	Hon Peter Foss	Hon Robyn McSweeney	Hon Bruce Donaldson (<i>Teller</i>)
Hon George Cash	Hon Ray Halligan	Hon Norman Moore	
Hon Murray Criddle	Hon Frank Hough	Hon Simon O'Brien	
Hon Paddy Embry	Hon Barry House	Hon Barbara Scott	

Pairs

Hon Ken Travers	Hon Derrick Tomlinson
Hon Tom Stephens	Hon Bill Stretch
Hon Kate Doust	Hon John Fischer

Clause thus passed.

Clauses 53 to 59 put and passed.

New clause 54:

Hon PETER FOSS: I move -

Page 34, after line 6 - To insert the following new clause -

54. Section 73A inserted

After section 73 the following section is inserted -

“

73A. Religious or moral beliefs or principles

Nothing in this Act renders it unlawful for a person to discriminate against another person on any one or more of the grounds of discrimination referred to in this Act if the discrimination is necessary for the first-mentioned person to comply with the person's genuine religious or moral beliefs or principles.

”.

This clause is to add a new section 73A. It is clear that we are dealing with an area in which people have genuine and strongly held moral and religious beliefs. I am concerned that we have concentrated on one aspect of discrimination and ignored others, including aspects of the Equal Opportunity Act. One aspect that the Act protects in part 4 is a person's religious or political convictions. Section 53(1) of the current Act states -

For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of religious or political conviction if, on the ground of -

- (a) the religious or political conviction of the aggrieved person;
- (b) a characteristic that appertains generally to persons of the religious or political conviction of the aggrieved person; or
- (c) a characteristic that is generally imputed to persons of the religious or political conviction of the aggrieved person,

the discriminator treats the aggrieved person less favourably than in the same circumstances or in circumstances that are not materially different, the discriminator treats or would treat a person of a different religious or political conviction.

The Act therefore recognises that we want to protect a person's political convictions. It would be a strange thing if, as part of the Act that deals with the lack of discrimination of a person's religious convictions, we were to then trample on those religious convictions with another brand of discrimination.

I come back to the point that I made earlier: it is not a matter of simply giving people rights. This Bill takes away rights and by doing so confers new rights. Some members have a simplistic attitude that a right can be conferred on one person without taking away a right from someone else. This Bill necessarily impinges on other people's rights. This simplistic attitude is rather like those people who believe that money grows on trees and that Western Australia would be rich if the Government paid everybody \$100 000 a year. We would all be rich, I suppose, if the Government paid everybody \$100 000 a year. The issue is that the money must come from the people of Western Australia. We would therefore achieve absolutely nothing from a measure such as that.

I have given a ridiculous example but it is amazing how often that simplistic idea is put forward by people, except that it is not that obvious how ridiculous it is. I picked an obvious example. For all I know, there might be people in the community who believe that it is a good idea and we should pay everybody \$100 000. There are many alternative suppositions in which people say that the Government should pay for this and that. The classic example is when we pay compensation to people. The Government is continually asked to award damages for this and that as if money comes off a tree somewhere and not from society. Damages awarded from one person to another are taken from one section of our society and given to another section. Frequently, when it is taken from one section of society, it is also taken from the person being given it because there is no way in which one section of society can be altered without altering the other. Laws relating to discrimination have exactly the same characteristic. We cannot give to people the right not to be discriminated against without taking away from other people their right to practise their fundamental beliefs.

Progress reported and leave granted to sit again, pursuant to standing orders.