

**ACTS AMENDMENT (SEXUALITY DISCRIMINATION) BILL 1997**

*Second Reading*

**MS WARNOCK** (Perth) [5.02 pm]: I move -

That the Bill be now read a second time.

The Opposition is pleased to support this Bill, which was first introduced in the other place in 1997 by Hon Helen Hodgson. The Opposition supports it because it mirrors a similar Bill introduced by Yvonne Henderson in this place in 1996.

Equality is one of the most basic foundations of our democratic society, and although we pay lip-service to the principle that we are all created equal, the reality is that some people in our society are treated more equally than others. 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 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 peoples, 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 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 to all others in society in regard to 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 where consenting gay sex between adults is a criminal offence and offenders can be jailed for up to five years. The Bill I present to the House today seeks to overcome these inequalities and injustices.

Gay, lesbian and transgendered people are not asking for affirmative action, nor are they asking for special rights. They are merely asking for equal rights, the same rights as those given freely to other members of our society - simple human rights.

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. 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. Western Australia has thus far neglected its duties under 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.

Individuals deserve protection against the prejudice, bigotry and often violence aimed at them because of their actual or perceived sexuality. 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, bigotry and violence. It is condoning the actions of those perpetrators who, because of their irrational fears, seek to deny others their human rights.

Every other jurisdiction across the nation has recognised the right of individuals, whether homosexual, lesbian, transgender or heterosexual, to be protected against discrimination on the grounds of their sexuality. The majority of jurisdictions have also legislated to give homosexuals equal rights with all other citizens to engage in consensual sexual activity with an equal age of consent. In no other jurisdiction is that age over 18 years. The Commonwealth Government has recognised this by enacting the Human Rights (Sexual Conduct) Act, which provides gay men over the age of 18 years 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 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.

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 time and again has been shown to be supported, not only by those in the gay, lesbian and transgender communities, but also by the majority of Western Australians.

I will now outline the basic provisions of the Bill. The Bill before the House today firstly prohibits discrimination on the basis of individuals' sexuality or transgender identity by inserting new definitions and parts into the Equal Opportunity Act 1984. The Bill will insert a new part into the principal Act that makes it unlawful to discriminate against an individual on the basis of that 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.

Each division then sets out specific circumstances in which it is unlawful for discrimination to take place. Where relevant, specific exemptions are provided under which it is lawful for discrimination on the basis of sexuality to occur. The tabled explanatory memorandum provides more detail of the specific clauses of the Bill as they apply to work provisions; education; goods, services and facilities; accommodation; clubs and incorporated associations; discrimination in sport; and land.

The notion of equality is again the impetus behind changes to the Criminal Code, with the aim of equalising - I emphasise the word "equalising" - the age of consent for gay men. For gay men, it is a criminal act to have sex with another man aged between 16 and 21 years in all circumstances, with the age of consent set at 21 years. This Bill will make the age of consent for all people 16 years, retaining the strict enforcement of an age of consent of 18 years in situations in which one of the parties is in a position of power or authority over the other. There is no legitimate reason that the age of consent for 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 man. It is essential to give homosexuals this respect and to give them equality, as there is no logical reason to deny it.

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

The current lack of laws protecting gay, lesbian and transgender individuals is tacit approval of prejudice, discrimination and bigotry, all of which are merely euphemisms for hatred. Western Australia's current laws validate attitudes of intolerance, alienation, prejudice and, sometimes, violence. Discriminatory behaviour is often the result of ignorance and fear fed by myths, misconceptions and stereotypes. Few areas of life have experienced this more than sexuality. This Parliament has the opportunity to lead the way; to educate, to eradicate ignorance, to alleviate fears and to quash those myths, misconceptions and stereotypes. We have the chance to promote tolerance and condemn hatred. 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 believe it is this Parliament's obligation to initiate change. I quote Martin Luther King Junior -

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

I commend the Bill to the House.

Debate adjourned, on motion by Mr Tubby.