



REPORT OF THE
STANDING COMMITTEE ON LEGISLATION
IN RELATION TO
Acts Amendment (Sexuality Discrimination) Bill 1997
clause 8, proposed sections 35O(3) and 35P(3)

Presented by Hon Bruce Donaldson MLC

Report 49

STANDING COMMITTEE ON LEGISLATION

Date first appointed:

December 21 1989

Terms of Reference:

- 1 There is hereby appointed a standing committee to be known as the *Legislation Committee*.
- 2 The Committee consists of 5 members.
- 3 A Bill originating in either House, other than a Bill which the Council may not amend, may be referred to the Committee after its second reading or during any subsequent stage by motion without notice.
- 4 A referral under clause 3 includes a recommittal.
- 5 The functions of the Committee are to consider and report on
 - (a) Bills referred under this order;
 - (b) What written laws of the State and spent or obsolete Acts of Parliament might be repealed from time to time;
 - (c) What amendments of a technical or drafting nature might be made to the statute book;
 - (d) The form and availability of written laws and their publication.

Members as at the time of this inquiry:

Hon Bruce Donaldson MLC (Chairman)
Hon Bill Stretch MLC (Deputy Chairman)
Hon John Cowdell MLC
Hon Derrick Tomlinson MLC
Hon Giz Watson MLC

Staff as at the time of this inquiry:

Ms Mia Betjeman, Principal Advisory Officer
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REPORT OF THE STANDING COMMITTEE ON LEGISLATION**IN RELATION TO*****Acts Amendment (Sexuality Discrimination) Bill 1997*
clause 8, proposed sections 35O(3) and 35P(3)****1 EXECUTIVE SUMMARY**

- 1.1 Clause 8, proposed sections 35O(3) and 35P(3), of the *Acts Amendment (Sexuality Discrimination) Bill 1997* (“Bill”) was referred to the Standing Committee on Legislation (“the Committee”) on March 23 2000 on a motion by Hon Helen Hodgson MLC.
- 1.2 The Committee previously considered those proposed sections of the Bill in its 45th Report and reiterates its narrative and recommendations in that report.

2 RECOMMENDATION

That the Legislative Council have regard to and consider pages 69 – 70 and Recommendations 4 and 5 of the Committee’s 45th Report in relation to proposed sections 35O(3) and 35P(3) of the *Equal Opportunity Act 1984*.

3 REFERENCE

- 3.1 On March 23 2000 the Legislative Council resolved:

“That the Order of the Day be discharged and the Bill be referred to the Legislation Committee for clarification of the committee’s recommendations in respect of clause 8 proposed sections 35O(3) and 35P(3) and that the committee report back to the House no later than May 2 2000.”¹

¹ *Parliamentary Debates (WA) (Hansard), Thirty Fifth Parliament Third Session 2000; Thursday, March 23 2000, pp.5431 – 5433.*

- 3.2 A copy of clause 8 of the Bill, proposed sections 35O(3) and 35P(3), is attached as Appendix 1 for ease of reference.²

4 THE COMMITTEE'S 45TH REPORT

- 4.1 The Committee previously considered proposed sections 35O(3) and 35P(3) in its 45th Report stating³:

“14.3 EQUAL OPPORTUNITY ACT #35O AND #35P - RELATIVE OR ASSOCIATE

*Each of #35O and #35P contains a subsection (3) protecting a person from discrimination arising as a result of the person's having a relative or associate of a particular sexuality or transgender identity respectively. The subsections are closely based on existing section 36(1a) of the EO Act [Equal Opportunity Act 1984] which provides similarly for the ground of **race**. There is not an equivalent section in any of the other Parts of the EO Act.*

The purpose of #35O(3) and #35P(3) is somewhat obscure. Intuitively it might be thought that the provisions are intended, using a simplified example, to prohibit an employer favouring:

*an employee whose **friend is not** a lesbian*

over

*an employee whose **friend is** a lesbian.*

However, as it is drafted, the provision actually prohibits the employer favouring:

*an **employee who is not** a lesbian*

over

*an employee **whose friend is not** a lesbian.*

It is not clear that the provision has any significant effect. In the Committee's view the usefulness of the provision is marginal at best. The House may wish to consider whether #35O(3) and #35P(3) should be deleted.

A further matter for consideration is that #35O(3)(b) and (c), read closely, do

² Bill Version 75 – 1. The Committee notes that Hon Helen Hodgson MLC has moved amendments to the Bill which include amendments to the sections referred to the Committee (refer Supplementary Notice Paper No 23-2). The Committee has not addressed those amendments in this report.

³ Report 45 of the Standing Committee on Legislation in relation to *Acts Amendment (Sexuality Discrimination) Bill 1997*, presented December 10 1998, pp.69 - 70.

not add anything to the clause. If #35O(3) is to be retained in the Bill, these subparagraphs should be deleted. #35P(3) does not contain equivalent subparagraphs so the problem does not arise. ”

4.2 The Committee’s relevant recommendations in the 45th Report were:⁴

“

Recommendation 4: that the House consider whether proposed new sections 35O(3) and 35P(3) of the Equal Opportunity Act 1984 should be deleted.

Recommendation 5: that if proposed new section 35O(3) of the Equal Opportunity Act 1984 remains in the Bill, paragraphs (b) and (c) be deleted.

”

4.3 Attached to the Committee’s 45th Report are draft amendments reflecting the Committee’s recommendations in a form suitable to be moved in Committee stage in the Legislative Council. Those amendments include alternatives reflecting recommendations 4 and 5 of the 45th Report.⁵

5 CLARIFICATION BY THE COMMITTEE

5.1 The Committee has been asked by the Legislative Council for clarification of the Committee’s recommendations in its 45th Report in respect of clause 8, proposed sections 35O(3) and 35P(3).

5.2 The Committee has considered its treatment of proposed sections 35O(3) and 35P(3) in its 45th Report. In clarifying the relevant recommendations the Committee reiterates its earlier comments that the purpose of proposed sections 35O(3) and 35P(3) is somewhat obscure and that it is not clear that the provision has any significant effect. The Committee gives an example of the difficulties with application of the provisions.⁶

5.3 Further the Committee reiterates its view, expressed in the 45th Report, that the usefulness of the provisions are marginal at best. The Committee noted that the Legislative Council may wish to consider whether proposed sections 35O(3) and 35P(3) should be deleted. In the event that the Legislative Council decided not to delete proposed sections 35O(3) and 35P(3) the Committee then sets out proposed amendments to proposed section 35O(3).⁷

⁴ Supra, p.70. Extracted at paragraph 4.1 of this report.

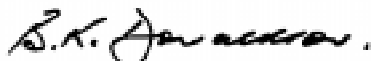
⁵ Supra, Appendix A, pp.74 - 75.

⁶ Supra, p.69. Extracted at paragraph 4.1 of this report.

⁷ Supra, pp.69 - 70. Extracted at paragraph 4.1 of this report.

5.4 Accordingly the Committee recommends:

That the Legislative Council have regard to and consider pages 69 – 70 and Recommendations 4 and 5 of the Committee's 45th Report in relation to proposed sections 35O(3) and 35P(3) of the *Equal Opportunity Act 1984*.



HON BRUCE DONALDSON MLC
CHAIRMAN

April 06 2000

APPENDIX 1***Acts Amendment (Sexuality Discrimination) Bill 1997***

Clause 8 - proposed sections 35O(3) and 35P(3)

35O(3) 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 sexuality if, on the ground of –

- (a) the sexuality or presumed sexuality of;
- (b) a characteristic that appertains generally to persons of the same sexuality or presumed sexuality as; or
- (c) a characteristic that is generally imputed to persons of the same sexuality or presumed sexuality as,

any relative or associate 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 who is not of that sexuality.

...

35P(3) 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 transgender identity if, on the ground of the transgender or presumed transgender of any relative or associate 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 who is not a transgender or who had a relative or associate who is not a transgender.