

ADDENDUM

TO THE REPORT OF THE STANDING COMMITTEE ON LEGISLATION IN RELATION TO *Acts Amendment (Sexuality Discrimination) Bill 1997*

Presented by the Hon Bruce Donaldson (Chairman)

Report 45

The Committee brings to the attention of the House the following qualification to its Report in relation to the *Acts Amendment (Sexuality Discrimination) Bill 1997* ("**Report 45**").

Contrary to pages 59-61 of Report 45, in the case of *Rodney Croome & anor v The State of Tasmania* the High Court did not declare that any section of the Tasmanian *Criminal Code* was invalid. Rather, the High Court decided that the plaintiffs' action, seeking a declaration that sections 122(a) and (c) and 123 of the *Code* were invalid, involved a "matter" within the meaning of that term in section 76 of the Constitution (Cth) and section 30 of the *Judiciary Act 1903* (Cth), and could therefore proceed.¹

Shortly after the decision, the Tasmanian Parliament repealed sections 122 and 123 of the *Code*.² The Croome case did not proceed to final determination.

References in Report 45 to "inconsistency" of Western Australia's *Criminal Code* with the Commonwealth *Human Rights (Sexual Conduct) Act 1994* (Cth) should be read as references to "risk of inconsistency".

One other matter should be noted. On page 43 of Report 45, reference is made to an unreported decision by the Queensland Anti-Discrimination Tribunal, *JM and OFG and GK and State of Queensland*. Since the passage was written, the Supreme Court of Queensland on appeal has confirmed that under the *Queensland Anti-Discrimination Act 1991*, the service provider "directly discriminated . . . if and only if a substantial reason for his refusal of treatment was either her lesbian sexual activity or her exclusive lesbianism."³ However, the Supreme Court reversed the decision of the Tribunal, on the basis that "the doctor's refusal to provide services to the patient was not because of her lesbian activity but because of heterosexual inactivity".⁴

¹ (1997) 71 ALJR 430

² *Criminal Code Amendment Act 1997* (Tas), sections 4 and 5

³ *JM v QFG and Anor*, Supreme Court of Queensland Court of Appeal (unreported), per Davies JA at 5

⁴ *JM v QFG and Anor*, Supreme Court of Queensland Court of Appeal (unreported), per Thomas JA at 14

Hon Bruce Donaldson
Chairman

Date: