Legislative Council

Crimes Amendment (Sexual Offences) Bill Hansard - Extract

29/08/2002

Second Reading

The Hon. JAN BURNSWOODS [4.25 p.m.]: I move:

That this bill be now read a second time.

I am pleased and proud to introduce the Crimes Amendment (Sexual Offences) Bill. As many honourable members are aware, this is the third occasion on which I have done so. The bill is almost identical to that introduced by me in 1997 and again in 1999. The main purpose of the bill is simple: to repeal certain discriminatory provisions of the New South Wales Crimes Act that apply solely to male homosexuals aged between 16 and 18. The bill is designed to equalise the age of consent for sexual intercourse for all people regardless of their sex or sexuality. The object of the bill is very simple; this is a matter of equality and of justice. This is not a radical bill, despite the fears of some people, which I will discuss later. The Crimes Amendment (Sexual Offences) Bill is an attempt to finish the process of reform of laws relating to homosexuality in New South Wales. That process achieved its first great object in 1984 when homosexuality in this State was decriminalised. Nearly 20 years later we still have a grave inconsistency: Homosexuality still remains a criminal act for males between 16 and 18 despite its decriminalisation.

Since 1984 in this Parliament a number of important steps have been taken to remove discrimination against those who are gay. In 1999, only three years ago, Parliament passed the Property (Relationships) Act, which included a range of measures designed to remove discrimination against those who are gay. Despite the fears of some people, and the time it had taken for the matter to come before the House, a perusal of the division list shows that that bill was passed in this House by a vote of 36 to only three. That legislation was supported overwhelmingly. Indeed, I expect the bill that takes the Property (Relationships) Act many steps further, and which is currently before the House, to be passed just as readily. I congratulate the Government on moving on that front. However, the Government and all parties have been unwilling to move on this matter, which has been regarded as a matter for a conscience vote within the Labor Party since 1984. In 1999 I was pleased that the Coalition decided, for the first time, to allow a conscience vote on this matter. Obviously I would have preferred that all parties treat equality and discrimination as they treat other matters, but a conscience vote is much better than the blanket opposition that previously existed.

This bill is fundamentally about equality. Currently in New South Wales 16-year-old males and females are allowed to engage in consensual heterosexual sex, 16-year-old females are allowed to engage in consensual homosexual sex, but male homosexual sex is illegal until the age of 18. It is impossible to justify that discrimination. I regard it as absolutely unfair, unequal and impossible to justify. The law has important effects. It makes criminals of young people—of homosexual men and boys—purely because of their sexuality. The current legislation concedes that young men aged 16 are of sufficient maturity to consent to sex—that is, of course, if they are consenting to heterosexual sex. I fail to understand the argument, or at least the assertion, of those opposed to equalising the age of consent that young gay men are less mature than young heterosexual men. There is no evidence for that and the argument is put forward as an assertion rather than as a genuine argument.

I will spend a little time going through the arguments in favour of equalising the age of consent. For the benefit of honourable members, I will run through the arguments as spelled out in a report entitled, "The Age of Consent in Gay Men in New South Wales", which was published in 2001 and prepared by Richard Robertson and Peter Maplestone of the University of New South Wales. I commend to honourable members this comprehensive report. The authors, Robertson and Maplestone, identify seven separate arguments in favour of equalising the age of consent. Some arguments are of major importance and other arguments are perhaps of lesser importance. Nevertheless, it is useful for us to identify the arguments to help the debate. The first argument is a relatively simple point—that is, that existing law represents discrimination against young men who are gay. Discrimination is there obviously in the fact that we have an age of 18 for some people and an age of 16 for other people. It discriminates not only in relation to law but also in relation to setting harsher penalties in the Crimes Act for breaches of the law.

The second argument is that, despite the claims made by those who favour the existing discriminatory law to be acting out of some benevolent motive of protecting young men, at no stage in the 18 years since we have had this discrimination in New South Wales have those affected by this so-called protection ever been consulted, had a chance to express their views about this, or talk it through. The third argument is that the legislation, as it stands, at least tacitly supports or validates homophobia. Therefore, by extension, it supports oppression and violence. We all know that an inquiry is being conducted into some of the hate crimes that occurred over some years. It is well known that groups, in particular groups of young men—sometimes unfortunately who are still at school—are able to use laws such as we have in New South Wales to validate a homophobic pursuit of gay young men in certain parts of Sydney. I do not think that any honourable member in this House or anyone in this State can justify that sort of behaviour.

The fourth argument is that the higher age sets up barriers that make it more difficult for gay young men to approach certain essential public services and workers and the organisations that provide those services. They

include, importantly, public health services, particularly in relation to diseases such as AIDS and sexually transmitted diseases but, more broadly, in relation to public health. Similarly, barriers are set up for those approaching welfare and education services. Those barriers, of course, occur because an honest approach to such services involves the admission that acts that are technically criminal under the New South Wales law have occurred. The fifth argument is one that we last heard a great deal about in 1997 during the Wood royal commission—that is, that the legislation abets both corrupt law enforcement and also the possibility or the actuality of extortion or blackmail against gay men. We hope that that kind of practice and behaviour is much less common than it used to be, but there is certainly still evidence that those things occur. Of course, they can stretch back many years in the past to cover previous behaviour.

The sixth argument is that the unequal age currently enshrined in New South Wales legislation creates the potential for division amongst gay men by setting up certain tensions between young men and their older partners. The seventh and final argument that the report by Robertson and Maplestone presents in favour of equalisation is that the legislation criminalises a group—young gay men—but with no measurable benefit either to them or to New South Wales society. That is by no means a trivial point. It is sometimes regarded these days as though the provisions in the Crimes Act that my bill would repeal are of very little relevance, that they hardly matter any more and that they are not acted on. They are certainly acted on less than they used to be. Nevertheless, it is a serious matter when our society criminalises a group of people on grounds that I believe are more a matter of prejudice and fear than a matter of any measurable benefit either to young gay men or to society.

I mentioned in passing organisations such as the Wood royal commission. Although this bill is being introduced by me as a private member, this is not an action that stems from just my belief or the belief of nearly half the members of this House who voted for a similar bill in 1999. It is possible to draw up a long list of professional organisations, royal commissions and various other committees that have supported the lowering of the male age of consent for homosexual acts from 18 to 16. I will mention some of them and, as I said earlier, the list could be very long. I refer to Justice Wood's royal commission into the police service in 1997, in particular that aspect of the royal commission that involved an inquiry into paedophilia. Included amongst its recommendations is a recommendation relating to the reduction of the age of consent.

In 1999 the Standing Committee of Attorneys-General also supported a lowering of the age of consent. Amongst the other groups that favoured this reduction over the years—groups not necessarily in New South Wales—are the South Australian police force, the Child Health Council of South Australia, Westmead Hospital and Community Health Services in New South Wales, the Federation of Community Legal Centres, the National Children and Youth Law Centre, and Queensland Psychologists for Social Justice. In addition to those royal commissions and government inquiries that I have already mentioned, there was also the Model Criminal Code Officers Committee in 1996 and 1999—national bodies, of course—and the Queensland parliamentary Criminal Justice Committee in 1990. Honourable members will remember the important inquiry by Fitzgerald and the way in which the links between police corruption and extortion and unequal ages of consent were clearly made.

As I said earlier, this is the third time that I have introduced this legislation. I am sure that, sooner or later, this bill will be successful. I hope that it will be passed by this House during this session. If it is not, it does not mean that it is not worth trying again. I make that point because as the years have passed we have attempted to bring about equality in New South Wales—a campaign which in one form or another has existed since 1984—and we have gradually become the only State in Australia to have a discriminatory age of consent.

When I first introduced this bill, when it was on the notice paper prior to being debated, and before it lapsed in 1997, the Tasmanian Parliament took steps to amend similar legislation to equalise the age of consent. That was achieved by Tasmania in 1997. Only at the beginning of this year did the State that had the most outrageously discriminatory regime of all, Western Australia—where the age of consent for gays had been 21—have the good sense to pass legislation to equalise the age of consent. New South Wales is now the only Australian State that has a discriminatory age of consent. In all other States arguments similar to those that have been raised in New South Wales were put forward. In all those States people predicted that the sky would fall. In none of those States has that happened.

As I said earlier, this is not a radical bill. It is in fact a quite conservative step to do something that was openly predicted in 1984 in New South Wales as being only just around the corner. This action has been taken everywhere else in Australia. In all other States the age of consent has been equalised, and in none of those States have any of the fears held by members in relation to this matter been realised. The United Kingdom recently equalised the age of consent. I could go through a list of democracies of western Europe, eastern Europe and elsewhere around the world, most of which have significantly more progressive age of consent measures than has New South Wales. I cannot think of a reason why New South Wales should continue to be so out of step.

I am reminded that earlier this week we celebrated the centenary of the achievement of female suffrage in New South Wales. In some ways this debate is an unfortunate echo of what occurred 100 years ago. The achievement of female suffrage occurred in New South Wales in 1902 at the third attempt after, unfortunately, this New South Wales Legislative Council had defeated the two earlier attempts. New South Wales, 100 years ago, in relation to equal rights for women, was way behind other States. The most dire predictions of the awful things that would occur in our society were made in 1902. Of course, none of those things happened. How could any of us now look back and say that we would not have supported the vote for women. To me, it is very sad that in many ways this debate echoes the kinds of prejudice and discriminatory attitudes that were so notable in this House in 1902. I would have hoped that in 100 years we would have learnt a few things. In particular, I would have hoped that in 100 years we would

have learnt that discrimination and injustice are indefensible and that the arguments from fear that are put forward are very rarely borne out in practice.

I wish to make a few remarks about the content of the bill to address the concerns of some honourable members that the bill introduced by me does not deal with all relevant matters that I could perhaps broadly describe as safeguards. I took the view in preparing the bill that I wanted it to be as simple as possible and deal with the major issue of equalising the age of consent. The bill has a small number of other clauses essentially designed to ensure that with equal rights go equal responsibilities. The gendered language, for instance, referring to stepfathers needs to be changed so that exploitative relationships are dealt with regardless of the gender of those involved. I am aware that some sections of the Crimes Act need attention to deal with a number of other arguments regarding commitment to child protection that we all share. I certainly support attention being given to that matter.

Obviously, there are a number of ways in which we can deal with the need to upgrade the Crimes Act-which, after all, is the Crimes Act 1900. Therefore it is not altogether surprising that the Act is rather out of date in relation to modern standards. I do not regard it as my responsibility to initiate those actions. I am certainly aware of the Premier's answer to a question in the lower House in relation specifically to the age of consent. The Premier not only said that he had no philosophical objection or problem with an equal age of consent but made the point that he wanted to have clear advice on safeguards that might be necessary. I understand that that advice has since been prepared-as, of course, it properly would be—by the Attorney General's Department. Certainly, some changes need to be made to the Crimes Act. I cannot imagine-although I have not seen the proposals that might be drawn up-that I would have any problem at all with those changes.

The point I make is that the need to modernise and update child protection measures associated with sexual abuse are not strictly related to this bill. However, some parts of the Crimes Act may need change to deal with an overlap created by the provisions of the bill. All I need say about that at this stage is that the second reading on this bill is about the principle of the bill. That principle is about equality and an end to discrimination, to achieve an age of consent that is equal at 16 years of age. Certain things need to be done in relation to that. It may well be that in Committee we could have a valuable debate about what those things are. But the fact that there are other issues relating to child protection is no reason not to support this bill.

I would like to point out in passing that when people, in the context of the age of consent for gay men and boys, discuss issues of child sexual abuse or paedophilia, they usually seem to ignore the fact that overwhelmingly child sexual abuse occurs on young girls and young women, not on young men and boys, and that overwhelmingly such abuse occurs within the family or extended family, by step-parents and so on. Arguments about child abuse and child protection are only in the smallest way related to this bill. The problems that such abuse presents in our society are overwhelmingly related not to homosexual sexual behaviour but to heterosexual sexual behaviour.

I shall not detain the House much longer in speaking to the second reading of the bill. As I have made a speech similar to this on two previous occasions, I think the arguments are fairly clear. I guess my views are fairly clear. When this bill was dealt with in 1999 it was defeated at the second reading by only one vote. The vote in favour of that bill included the votes of members of the Labor Party, the Liberal Party, various minor parties and Independents. Given the conscience vote, those against also included members of the Labor Party, the Coalition and minor parties. I am aware that quite strong views are still held by members on both sides of this debate.

I conclude by appealing to honourable members to exercise their conscience and accept 16 years as the age of consent for young men and boys—as has been accepted in our community, probably for centuries, for young women. I ask honourable members to do that not only because of the moral arguments and ethical arguments for equality but also in recognition of the sexual practices of young adolescents in our society. I believe it is time to bring the New South Wales Crimes Act into line with legislation in all other States of Australia and in most countries with which we traditionally compare ourselves. Moreover, it is time to bring our legislation into line with the current sexual practices of young people. We run the risk of making legislation inoperable, indeed a laughing-stock, if it remains wildly out of step with what our young people are doing.

Parliament and legislation should stay out of most matters of sexuality, with the exception of those relating to protection against exploitative behaviour. Sexual practice should be a matter for the conscience of every individual in our community. Certainly, legislators should not use discriminatory law to enforce a view of morality held by only some people. Our role is to reflect the reality in society, to make sure that we continue to protect young people—indeed, all people—against violence, exploitation and real crime, but not to continue to make young people who do not share the attitudes of some members of this Parliament the subject of criminal sanctions. The law as it stands criminalises people for behaving in ways that most do not regard as criminal. The time has long passed for us to reform the Crimes Act in New South Wales to end the discrimination and injustice that young gay people in this State have endured for so long.