

Gender Law Reform

During the October 2003 sitting of Parliament, Attorney-General Dr Peter Toyne introduced the Law Reform (Gender, Sexuality and De Facto Relationships) Bill 2003. The reform package, which was passed in the recent November sittings, changed the treatment of same-sex relationships under the law and proposed harsher penalties for sexual offenders.

Part of the bill lowered the age of consent for homosexual sex for boys to 16. This particular change sparked strong debate in the community, but the comprehensive bill also included a lot of other changes.

The complex nature of this reform package means that it is easier to split it into three separate issues: changes to the criminal code regarding sexual offenders; anti-discrimination reform; and changes to the status of de facto relationships.

Despite this bill having been passed through Parliament, the issue looks set to continue with three petitions already having been tabled in Parliament and ongoing debate about recognition of traditional marriages.

Sexual Offenders:

These changes have been promoted as introducing the toughest penalties in Australia for sex offences against children, the key changes are:

- * Lowering the age of consent for boys to 16, bringing it into line with the age of consent for girls;
- * Removing any gender references from incest, sexual intercourse or gross indecency offences;
- * Increasing the penalties for sexual intercourse, gross indecency or indecent dealings offences;
- * New aggravated offences for certain circumstances (the offender is in the company of others, the child is under the authority of offender, the child has a serious disability, or the child is affected by drugs or alcohol);
- * Maintaining a sexual relationship with a child will also attract a high penalty, either 20 years or life depending on the nature of the offence;
- * In an attempt to protect young people from predatory adults, a new offence has been introduced for sexual intercourse or gross indecency involving 16-17 year olds

who are under the offender's care/ authority; and

- * The defences of Aboriginal marriage or that the person believed the child was above the age of 16 have also been restricted.

"It has been argued that equalising the age of consent for both males and females reduces the protections available to young men. The government does not accept this argument. Strong protections for children and young people from the predatory behaviour of adults of either gender is provided by our sexual assault and related laws, and we have taken this opportunity to significantly strengthen the Northern Territory criminal law in that area," Attorney-General Dr Peter Toyne said.

"We want to see effective enforcement against the perpetrators of these types of offences. We want to see successful prosecutions through our courts. We want to see appropriate charges being laid that match the culpability and seriousness of the offence and particularly the effect on victims of these very traumatic crimes," Dr Toyne said.

Shadow Attorney-General Jodeen Carney raised concerns about increasing penalties for sexual offenders.

"Penalties have been increased up to 25 years for some offences. This no doubt seems laudable to many but the result is likely to be that more child abusers will walk free. As most people who work in this area already know, it is very difficult to obtain convictions in child sexual assault matters; there are a number of reasons for that which I will not go into here," Ms Carney said.

"I suspect, however, that a good many of the convictions obtained are because some offenders are prepared to plead guilty. The reality

of such significant increases in proposed sentences is that fewer pleas of guilty will be entered and more cases will thereby proceed to trial before the jury; juries which are notorious for not convicting in cases of sex crimes.

"Rather than plead guilty, accused child sex offenders will proceed to trial. This means that more children will be required to give evidence, which, for many of them, is very traumatic. This will be occurring at a time when all jurisdictions are actively seeking to minimise these kinds of harms to children by enacting a variety of measures to avoid them having to give evidence or give it only once.

"Furthermore, juries have real difficulty in accepting the evidence of children, particularly when it is against an adult... children's evidence is almost always not regarded sufficient to convict. The conviction rate in the Northern Territory is so appalling that the abusers can be almost guaranteed to go to trial because of this legislation. This is to say nothing of the additional burden for taxpayers who have to foot the bill for more trials and all the expenses involved."

The Attorney-General has confirmed that the Government will consider changing these penalties if evidence shows that there are fewer pleas of guilty and a lower conviction rate.

Sue Carter proposed the introduction of a safety net amendment for 16 and 17 year-olds.

"Until they turn 18, when they become an adult, it is illegal for anyone more than four years older than them to have sex with them. My aim with this amendment is to put a legal barrier up between older people, people who generally have more experience and who may use

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their skills of persuasion to gain the consent of a much younger person, a person who is still discovering their sexuality, into having sex with them," Ms Carter said.

Despite careful consideration, the Government rejected the proposed change.

"The reason that we are not supporting the approach of going to a differential is that it is arbitrary. You will inevitably end up with situations where an adult is three years and 11 months older than the victim or four years and one month older, and they will be treated in totally different ways, even though they may be very similar in age," Dr Toyne said.

Anti-Discrimination:

According to the Attorney-General the purpose of this bill is "to remove or modify illegal distinctions based on a person's gender, sexuality or de facto relationship with another person. By doing this the bill will provide greater protection and equality for all Territorians".

It eliminates the provisions that allows for discrimination on the basis of sexuality for work involving caring for children. The bill also removes some of the exemptions currently given to religious bodies, but does not go so far as to stop religious schools discriminating on the basis of sexuality or religious belief when employing teachers.

The area of concern in this bill is the proposed amendments to the *Criminal Records (Spent Convictions) Act*. Under the changes irrelevant criminal records held by police will be able to be released (only under specific

circumstances, principally for work involving the care or instruction of vulnerable people) to a potential employer with the person's consent.

"To be clear on this, it is the irrelevant criminal record, which is things like spent convictions or charges that were not proceeded with, those areas rather than the actual criminal record of the person, in other words, convictions that continue or are currently on the person's record," Dr Toyne said.

This would allow unproven abuse accusations to be accessed by potential employers, and as a potential employee who would actually have the right to refuse. Particularly when employers would be allowed to discriminate against applicants on the basis that they refused to allow access to this information.

De Facto:

Effectively, this wide-ranging bill changes the definition of a de facto relationship in every piece of relevant legislation. The definition has been broadened to include heterosexual de facto relationships, same-sex de facto relationships and Aboriginal traditional marriages. Determining factors will include the duration of the relationship, whether a sexual relationship exists, the degree of financial dependence or inter-dependence and the public aspects of the relationship.

The legislative changes will also address the following areas:

- * Bringing the rights of children from same-sex families into line;
- * Property and superannuation dispute resolution after the breakdown of a de facto

relationship; and

- * Recognising same-sex partners in areas where the de facto partner has the right to be informed of certain things (for example by the police or medical staff).

Despite wide-ranging reforms, same-sex couples will still not be allowed access to adoption or reproductive technology. In what appears as something of a contradiction, the Government has also introduced changes to allow females partners to be listed on a child's birth certificate as mother and parent (instead of father) when the child is born via IVF.^①

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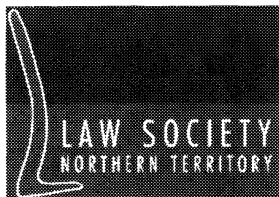
Meredith Day
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(Endnotes)

¹ Brand, V., "Decline in the reform of Law Teaching?: The impact of policy reforms in tertiary education" (1999) 10 Legal Education Review 109 at p. 111

² *ibid.*

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