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SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Sexuality discrimination inquiry

PERTH

Monday, 23 September 1996

OFFICIAL HANSARD REPORT

CANBERRA

SENATE
LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Members:

Senator McKiernan (Chair)

Senator Abetz	Senator Cooney
Senator Bolkus	Senator Ellison
Senator Bourne	Senator O'Chee
Senator Cook	

Participating members

Senator Robert Brown	Senator Margetts
Senator Bob Collins	Senator Neal
Senator Coonan	Senator Stott Despoja

Matters referred by the Senate for inquiry into and report on:

1. The need to protect Australian citizens against discrimination and vilification on the grounds of their sexuality or transgender identity, as dealt with by the Sexuality Discrimination Bill 1995 [1996], with particular reference to Australia's international obligations in relation to sexuality discrimination and transgender identity and the action required to meet those obligations.

2. Measures which need to be taken to remove any legislative and administrative provisions which are currently discriminatory on the grounds of a person's sexuality or transgender identity.

3. The extent to which current legislation at a State level addresses discrimination on the grounds of sexuality or transgender identity and the extent to which Commonwealth legislation should take account of these provisions.

4. The appropriate scope of Commonwealth sexuality discrimination legislation and, in particular, the need for provisions including, but not limited to, the areas of:

- (a) public education;
- (b) appropriate exemptions;
- (c) dispute resolution;
- (d) remedies;
- (e) the availability of class actions; and
- (f) review of the legislation

5. The extent to which the Sexuality Discrimination Bill 1995 [1996] effectively addresses the issues of sexuality and transgender discrimination and vilification and the nature of any amendments required to make it more effective.

WITNESSES

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SENATE
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Sexuality discrimination inquiry

PERTH

Monday, 23 September 1996

Present

Senator McKiernan (Chair)

Senator Bolkus

Senator Murray

Senator Ellison

The committee met at 9.00 a.m.

Senator McKiernan took the chair.

CHAIR—I declare open this public hearing of the Senate Legal and Constitutional References Committee. On 30 May 1996, the Senate agreed that the committee inquire into and report on sexuality discrimination by the first sitting day of March 1997. The committee's terms of reference have been advertised and provided to all interested organisations and individuals.

This is the sixth in a series of hearings that the committee will conduct in the states and territories. Today the committee will hear evidence from a range of witnesses, including several psychologists, a government department, a gay and lesbian rights group, family and church bodies, and academic and private lawyers.

It should be noted that these proceedings and submissions given as evidence are protected by parliamentary privilege. Parliamentary privilege confers special rights and immunities in order for senators and others to discharge the functions of parliament. The committee has authorised the recording and rebroadcasting of these public proceedings in accordance with the rules contained in the order of the Senate dated 23 August 1990.

To date, the committee has received and publicly released around 180 submissions. Members of the committee have before them a list of further submissions that will be heard at public hearings over the next two days in Perth. Is it the wish of the committee that these submissions be received as evidence to the inquiry and that they be published? There being no objection, it is so ordered.

The committee will hold a further public hearing in Brisbane on Tuesday, 1 October 1996. At that hearing, the committee aims to release the remaining written submissions that have been received. The committee is closely considering the submissions to ensure that submissions of a confidential nature are not released.

CASS, Dr Vivienne Cheryl, Suite 3, 11 Richardson Street, South Perth, Western Australia 6151

CHAIR—Welcome. Dr Cass, do you have any comments to make on the capacity in which you appear?

Dr Cass—I am a clinical psychologist in private practice and also a researcher in the area of sexual orientation development.

CHAIR—Thank you. The committee has received your written submission and we have previously authorised its publication. We thank you for that and thank you for your attendance here today. I invite you to make an opening statement to speak to that submission and then members of the committee will address questions to you.

Dr Cass—Thank you. As I said, I really come in two capacities. One is as a professional person in private practice who sees people who are either experiencing discrimination or have experienced it, or who anticipate that they might be. I am also coming here as a person who has some academic knowledge that I hope will help the inquiry. In the first capacity, I would like to say that what I probably see most of is not so much people dealing with actual discrimination. They tend to perhaps go to other avenues for redress. What happens is that I see a lot of people who come with a fear of discrimination. One could say I am actually seeing the human face of discrimination at its most vulnerable because I am seeing people who come with a fear, and the fear heightens their belief about the likely consequences. My work is aimed at trying to lower that fear if I can. But in many cases, where there is a possible base in reality to their fear, that can be very difficult.

What arises for me most particularly in that situation is that, in dealing with discrimination issues, there are some people who come to me who are more able to cope with those situations than others. I just want to make the point that those people who have an education, those people who are financially secure and who have an upbringing that provides them with support or provides them with some ways of coping with adversity, are usually able to cope with discriminatory incidents far better than those people who do not. For example, I can think of two lesbians who are raising children and doing so reasonably well, who are able to tackle any issues that might arise with their children in day care centres and child care. They risk discrimination often, if you like, by disclosing their lesbian status; but they have the capacity, because of their education and their financial resources, to do things such as get wills made up, go to lawyers and attend to a whole range of issues.

What concerns me most is that those people who are not educated and not secure financially and who do not have the assertiveness are the people who really suffer discrimination. It is not just discrimination across the board, but there are some groups that are more vulnerable to it. I can think of one woman in particular, a lesbian, who was

defending herself against a child custody situation and was afraid of losing her child on the grounds that she was a lesbian. She could not afford lawyers and was not able to get access to legal aid, so she actually defended herself. Here was a woman who was totally uneducated, who gave that attention to, and spent that time, defending herself. I have many other examples of that. That is a very important point. It does seem to me that these are the kinds of people that need the backing of government: the people who are vulnerable, the people who are perhaps emotionally or financially weaker than others. These are the people who I think need some sort of support.

Last week, as I am sure you are aware, WA lost the opportunity to amend its equal opportunity legislation to include sexuality. It seems to me that this was a very significant example of how we need some kind of federal legislation to cover Australian citizens who are not covered by their states. It is quite untenable that we should have a situation where some Australians can be protected from sexuality discrimination and some cannot, simply on the grounds of where they live.

Often, when I am working with couples in my practice, I will say to them, 'The most difficult thing to do is to work with the differences and to live with the differences between yourself and your partner.' And I work with them to try and help them, to provide guidelines if you like, for how they can work with those differences effectively. I think the same applies to community relationships. We have to set guidelines for people to deal with differences, and I would suggest that one way in which we need to set those guidelines is through governments, via legislation and, obviously, through education and other ways of dealing with differences, as well.

To wind up, it seems to me that we need to understand that lesbians, gay people, people with different sexualities, have been placed in the position of being seen in a negative role by history, and I think it is very important that we understand that it was only the early moral or religious code which said that all sexual behaviour that was not for procreation was to be seen as a sin. It was that code that then got encoded into the legal code that was developed and that in turn became stated as the medical code. So what we have seen is a particular religious code which has slowly come down in history to present a picture now. It seems to me that we have a group of people in society who are now here before us, in a sense, as a minority group that, for a lot of people, is negatively valued because of that history. It is, I think, difficult to hold it against those people that they are the result of that history.

We now have a particular view of homosexuals as a minority group, which is the next development of history, one which sees groups placed into the position of being a minority group that is then considered perhaps to have rights, rather than being seen as sinful or criminal or something else. As I said in my submission, I think, though, we are actually even moving beyond that. What is moving into society is a view that the minority group is not so much a closed, set apart system; that actually, if you go and talk to a lot of people in society, you see that they are beginning to see the similarities between them-

selves and homosexuals; that is, if they are heterosexual. So, I believe—and I certainly see that in my own work—that people are beginning to look at the similarities between themselves and others, whether it be in relation to sexuality issues, racial issues or whatever, and moving beyond that very tight, separated kind of view of minority groups that existed in the 1970s. I personally see that as a good point, and I think that the community is ahead of government in that—ahead in the sense that it is beginning to look at the commonalities amongst people and not the differences. There are many other points I could make but I perhaps should finish there and allow you to ask me questions.

CHAIR—Possibly we will draw them out in questioning. I just note for the record the presence in the room of Mr Sid Spindler, the former distinguished senator. I welcome him to the hearings and to Perth.

Dr Cass, in the latter part of your oral submission and in your written submission you talked about the historical development of negative attitudes towards homosexuality. That was very helpful for the committee. Do you have any references that you can give the committee? If you do not have them with you, perhaps you could take it on notice.

Dr Cass—Yes, there are many references and historical accounts of this. I do not have them here, but I could certainly get those for you.

CHAIR—It would be helpful to the committee if you could do that. I noticed when I read your submission, when I was returning to Perth last week, that you have a global terminology. You talk about homosexuals and homosexuality, whereas, during the course of the hearings and in the submissions we have received so far, many want to talk specifically about lesbians, for example, not as merely part of the homosexual community. I am still coming to grips with the terminology and the language that is associated with the inquiry. Have you anything to say on that?

Dr Cass—Yes. A lot of the time when I use the word 'homosexuals', it is simply for economy of language. It is very hard to say 'lesbians, gay men, bisexuals and transgenders' every time you want to mention the subjects of your comments. I have always found that in my writing to be a difficulty. I certainly agree with the sentiment behind using the phrase 'lesbians and gay men and bisexuals' because it does remind us that there are different groups. This is as much a kind of reminder to us not to forget the women's side of the homosexual picture as anything, I think. Certainly, this kind of terminology has very strongly come through from the United States and is being very strongly adopted by Australia and Europe. I suppose it is fair to say that in academic circles there is as much use of the term 'homosexual' as there is of the other terms. So, we are really talking perhaps about terminology that is now adopted worldwide, in terms of lesbians, gays, bisexuals, et cetera, but it is very much the terminology also of community organisations.

CHAIR—In Mr Spindler's bill, the bill that is before the Senate—the Sexuality

Discrimination Bill 1995—there is a definition of sexuality. Have you looked at it yet?

Dr Cass—Yes, I have.

CHAIR—The definition says that 'sexuality' means heterosexuality, homosexuality and bisexuality that presently exists, existed in the past or may exist in the future. That has received some attention in the submissions the committee has received to date and quite a deal of discussion. I thought, while we are talking about definitions, I might ask you what your view is on that particular definition as it is currently contained in the bill.

Dr Cass—I actually was pleased to see that because, while on the one hand I recognise that there is a huge difficulty with discrimination against lesbians, gays, bisexuals and transgender people and I think we really have to place considerable focus on righting the wrongs that exist, at the same time, I think that if we look to the future, and if we look at that current historical change from minority group to commonalities that I was suggesting is happening now, or, if you like, from differences to similarities, I think inevitably, we have to use sexuality to include all sexualities. I think that we have to be broad and that somewhere down the track, we are going to be looking at that larger picture. We need to include that definition, as Sid Spindler has done, but keep in mind, however, that a considerable amount of discrimination at the moment is focused on homosexual and transgender people.

Senator ELLISON—In your submission you say that sexual orientation is the product of complex processes. I want you to just expand on that point.

Dr Cass—I think that this is a very important point. While we are still trying to come to some clear understanding of what sexual orientation is, I think that many people in the field would be in agreement with my comment. Whenever we develop something complex like this, we are bringing into play a whole range of factors.

We are bringing into play psychological, biological, social and cultural factors. If somebody is developing a sexual orientation, we cannot simply say, 'They have looked at somebody else acting in a homosexual fashion, and then they have decided to adopt that behaviour.' I think that is absolute nonsense and nobody adopts any kind of behaviour like that. Even if we take a very simple kind of behaviour like eating behaviour, we can look at some psychological factors that make people eat certain kinds of foods. There are obviously biological factors that encourage people to eat, and there are cultural factors. People eat different things in different cultures.

It is the same in sexuality. Sexuality, in a sense, is being seen as the same as any other kind of behaviour. And so, in fact, my own current work at the moment is trying to develop a theoretical model for looking at the ways in which we integrate all these factors. This means that in sexual orientation, for example, what always strikes me as a clinician is the fact that people define sexual orientation as much by a persistent focus on somebody

of either the same or opposite sex, as by whom they fall in love with, which is a very strong psychological component. When people fall in love with someone, they become very bound to that person and very drawn to the gender of that person. So that encourages them, if you like, to stay in the situation and to continue to act in that way.

Senator ELLISON—You say that the community, you think, is ahead of government with respect to accepting minority groups, and you mention in your submission Hewlett Packard and Disney giving those packages to all their employees. If the community is so far ahead—or if it is ahead—why have the need for the legislation?

Dr Cass—I think that that is a good question. I do not think that the community is so far ahead. Certainly, it is ahead. For example, I recently saw a young gay man who was being really hassled at work. He was being teased and bullied at work because of his homosexuality. He went to his employer who then actually did invoke the policy on equal opportunity that says that everybody should be able to be treated equally. On those grounds, the employer pulled in the people who had done the bullying, and who had been vicious, and said to them that they had to change their ways, otherwise they would receive reprimands and repercussions. The employer used that kind of company policy to do that.

It is clearly happening in quite a number of organisations that I have heard of. But it seems to me, almost as if organisations have been told that they must treat people better, and concern themselves with equal opportunity. And having done that, they do not make a distinction between certain groups having that and some groups not. So it is almost as if they have been brought into that way of thinking and they have taken it and gone with it without even thinking too clearly about it.

Obviously, we are talking here at an organisational level. We still need to deal with the individual level. While I would love us to be able to go into schools and provide all children in schools with what I call empathy training, in all respects—because we can teach people to empathise and be compassionate to some extent; not all people, but most people—the fact is that we do not have those situations. I believe that making a change requires that we come from all angles. I really do believe—if we go back to the previous example—that, when government said, 'You must bring in equal opportunity legislation,' people began to shift their thinking. Similarly, I believe, if we bring in federal legislation to make discrimination unlawful, then we will also provide that model that will gradually see individuals begin to change their attitudes.

Senator MURRAY—It strikes me that much of the opposition to the sort of legislation and the non-discrimination required has a visceral kind of background. The focus of those opposed is on unsafe or repugnant practices, and it is divorced in that sense from the principles that should be addressed. Would you say that is a correct judgment?

Dr Cass—I believe so. When I was preparing this I was getting quite upset when I began to think over the people whom I had worked with who had been discriminated

against. I could feel that emotional thing coming through. Then, as I worked through it I began to think, 'Wait a minute. Apart from that, there are certain principles that I very strongly believe in and would hate to think that I was living in a country that did not hold those principles of fairness and rights for all.' I think that people who oppose homosexual rights, if we look at that historical angle, which is one of the reasons why I put that in my submission, are very clearly coming from an era when those things were taught very strongly and I am quite sure they absolutely and utterly believe those with a fervour. If we were to accept that and say, 'Well, on the grounds that they have these very strong feelings, we should allow them to have those feelings,' then we would allow dreadful racist feelings and all those other things that we have focused on. We would allow people who are disabled to be kicked and abused and treated badly. I think that somehow we get to a point where we say that, while feelings of course are significant to people and we have to recognise that people do feel strongly about things, there surely must come a level of feeling which, I suppose, in very simple terms, we should call bad, where those feelings spill over into other people's lives in a very destructive way.

Senator MURRAY—When I go through a checklist in my own head of the discriminatory practices which progressive societies have now outlawed on race, language, religion or gender—all those milestones—I can imagine unsafe and repugnant practices within any of those subgroups. People in religious practices, I think, could be regarded as pursuing unsafe or repugnant activities, and some of the racial things, language problems, et cetera. Is the issue that parliamentarians and politicians have failed to tease out the principle and leave the private behaviour of people where it should be, and that is private? Is the real issue that we have got these mixed up, or are they inevitably mixed up?

Dr Cass—I actually think, from the areas you have been talking about, we have taken out the principle, surely. We have said, 'The principle is that people have to be treated with respect and dignity, and this is the basis of a civilised society.' I suppose what we are saying is that we are allowing people to act in emotional ways, irrational ways or fervent ways, if you like, within those different areas, but there comes a point where it is not right. I think this is the difficulty that every society has: how to balance out the individual good versus the collective good. Really, that is not a 'versus', but we have somehow to find a way of keeping a fine line between those things. Of course, in Western societies, where we are very strongly focused on the individual rather than on the collective, people become very concerned about any possibility that they just cannot be themselves—whether that be somebody who is totally in favour of guns, or whatever.

Senator MURRAY—If we see that we have progressively knocked off each discriminatory area—race, language, religion, et cetera—why does sexuality still evoke these kinds of responses? Why is not the principle an automatic follow-through?

Dr Cass—As somebody who works in the sexuality area, I think that is easily answered, because the area of sexuality has, if you like, a feeling of its own. This is somewhat of a pun, but the area of sexuality has always been difficult for people to deal

with. I think that is really what it is about. Again, that has a historical component, as well. Even now, I have people who come to me and say, 'I have had sexual difficulties for 20 years and I have finally been forced to come and see you.' Why? If it had been just an issue of stress or something, they might have been at my office within a few weeks. Overall, our Western populations do not deal well with sexuality. They find it a taboo subject and they put it in the realm of something different, something special and something unique. All of our education and all of our teaching says that we treat it as something 'over there'. What that means is that, when it comes to sitting and talking about it in a very normal and natural way, people really do have difficulty.

Senator MURRAY—I must say that I do not understand your answer, and it is for this reason. You brought the historical basis into your discussion. Race, religion and language have resulted in wars. I know the odd marriage between a king and queen has also resulted in wars. Those other areas have been so dramatic in the history of mankind and yet have been resolved. Why on earth should something which is so personal and so natural to people, whatever practices or whatever form of sexuality they pursue, and so fundamentally a private matter, make the principle of non-discrimination more difficult? I would have thought it is much more difficult to resolve matters of race, language and religion than it is to resolve matters of sexuality.

Dr Cass—I think you gave the answer yourself, because you referred to it as being a personal matter and a private matter. I think that is what makes it difficult. It is something that people personally find difficult to contemplate. This is a very trivial example, but people rarely stop to think about their parents, for example, having sex and, if they do, they do not like to. Why?

Senator MURRAY—My parents never did, you know!

Dr Cass—Neither did mine! The fact is that we just cannot bring ourselves to that very personal and private level. What happens when we come to issues of race is that there are people who will see somebody of a different race being attacked, let us say, and somewhere along the line their principles rise to the surface quickly.

Senator MURRAY—Is aggression on this level more likely at the collective level than on an individual basis? I ask this with a political intention. For instance, when a party vote is called for, is the collective prejudice likely to be greater than if the Western Australian government had actually called for a conscience vote?

Dr Cass—In this case, I do not know that you could say it was actually collective prejudice. My understanding is that there were many members of the Liberal Party who wanted to vote for it and chose not to. I do not think it is because somehow, when coming together, their prejudice rose to the surface. I think they were bound; obviously there was some sort of other agenda going on. I do not know why they voted collectively, but they did. But, in general, yes: in psychology we know that, if you get groups of people

together, it will develop and you will see a strengthening of resolve and a strengthening of prejudice.

If you take people at an individual level, you will see less. Often I have heard of people, for example, who know somebody who is gay or lesbian and who personally think that that person is very nice and have no problems with their homosexuality. But put them in a group of people who are all very anti—say, a religious group where people are very much opposed to homosexuality—and I would think they are very unlikely to voice their own specific views. Certainly, the psychological literature would suggest that.

What happens in groups is that, unless people are very strong, you will not see one person standing up against a whole group. What happens when you get a situation like that set up is that the whole group will turn on the individual to draw them into the group's opinion.

Senator MURRAY—So, as a psychologist, you would say that you are more likely to get pro-reform in these areas on an individual conscience vote basis, than where parties vote on a party basis—without regard to this Western Australia situation?

Dr Cass—Yes, when it comes to the vote. The process of coming to the vote, however, might see group processes occurring which teach people or bring people into line in some way. It is a difficult question when you are talking about parliamentary voting, because I think people vote for many reasons.

CHAIR—You noted in your submission that the American Psychiatric Association has taken homosexuality from their diagnostic and statistical manual of mental disorders. Is that also the case with transgender identity, or was that on the manual before?

Dr Cass—There is an area, under sexuality, where gender issues do come into it and it does focus on that. If you like I can certainly get a copy of that section to you. Gender issues in the DSM refer to those people who are at odds with their identity in those terms. They may, for example, be born male but focus all their attention on female activities and be developing a female identity. So that is still in the DSM in that sense.

I think the flavour of that entry has changed in that it is now not somehow presented as being a bad or a strong mental disorder, but simply as something that occurs, if you like, and that can cause stress to people. It is a bit of an anomaly and I suspect it is one of those things that will also change somewhat in the future. What the changes in wording are doing, I think, are trying to reduce it down from being something that is seen as bad to something that is simply seen as another issue.

CHAIR—Your comment there about being born male raises another question with me in the light of your submission where you talk about the complexity of the processes associated with homosexuality—or sexuality in general. Is homosexuality genetic? We

have had evidence to the effect that it is.

Dr Cass—That is actually not quite true, and I will go through that in a little detail if you will give me the time. Both this year and last year I was at conferences in America. Last year I was actually at a conference and giving a paper with the people who are involved in the genetic work. So I have had a chance to talk to them personally as well as read all the literature.

There is a certain amount of work being done on the genetic component. There is an enormous amount of work being done on a whole range of other biological aspects in trying to understand whether homosexuality is biological in some sense. Most of the current work is focusing on the genetic aspect of it, and the team that is doing this is at the moment feeling quite certain that they have discovered a genetic aspect for some gay men.

I say 'some' very specifically because, first of all, they have very clearly selected their sample at the moment to choose gay men who are, if you like, very gay. They have taken out anybody who might be slightly bisexual, anyone who is not quite sure. They are really focusing on this. They say they are doing that because if they are going to find a genetic component, they obviously have to find somebody who is 'very' something. So if you are looking for the genetic component of left-handedness, it is not much good looking at people who can use both hands.

While that is good from their research perspective, of course, it narrows the field down considerably. The interesting aspect is that they are having great difficulties with women, which any of us working in the clinical field could have told them they would have. Women's sexuality does not function quite the same way as men's and there are many examples of women—and I see this—in their forties, fifties and even older who suddenly, for the first time in their lives, and having been heterosexual and married all their lives, fall in love with other women and leave their husbands for those women. And that is a shift.

Getting back to the genetics side, there has been in the last couple of years quite a bit of critical literature coming out that really highlights some of the deficiencies in the research being done on genetics. My own belief—and this is the basis of the theoretical model that I am currently developing—is that we should probably work on the idea that for some people there may be a genetic predisposition. Even the researchers on genetics—Dean Hamer and others—talk about a predisposition.

Even if they find that there may be a genetic component, there is no way that that genetic component suddenly just makes a person immediately homosexual. There is a process that people go through, and that disposition that these researchers talk about would simply lead someone, perhaps, to move towards that orientation. But then we have to take into account the psychological and cultural components, as I was saying, and those three

factors come into it.

For example, to illustrate with that left-handedness again, somebody can be born left-handed—my brother was born left-handed, but he is now right-handed because my father thought he would not be able to use tools, so he changed him. He did not worry about me, I am still left-handed. I am the one who uses the tools. But, then again, amongst left-handers I am quite strongly left-handed. I know other people who use both hands—if you like, bisexual versus heterosexual or homosexual. So we have to consider always the integration of the psychological and cultural components.

What the geneticists do not answer is that you can go into some of the tribal groups in a non-western culture, such as Papua New Guinea, where homosexual behaviour amongst males and young boys is a requirement of learning masculinity. Every single male at the age of seven is taken away from his mother and put into a peer group of males, and there the young boys engage in homosexual behaviour with older males who are teaching them the masculinity of their tribe and the cultural thing.

They do this until they marry and then, lo and behold, once they marry, they do a switch and they go, if you like, into being heterosexual. Where is the genetics in that? Poor old Dean Hamer has been questioned on this and he does not yet have the answer for us. So I think that sexual orientation is a much more complex issue than a simple gene or a simple role model of somebody demonstrating some kind of behaviour.

CHAIR—We are finding that out as the inquiry proceeds.

Senator ELLISON—You mention that it is different for women, and that a woman perhaps at 40, or at any stage, could find that she has an attraction to another woman. Is there any biological factor that you can point to for that?

Dr Cass—No, none whatsoever. It varies. It is not as if you can say that all women who are at menopause are suddenly doing a flip in their sexual orientation, or anything like that, so that you can put it down to hormones. In fact, there is now literature coming out which shows that men will do that, too. It is only just starting to emerge that there are case studies coming through of men who are making shifts in sexual orientation later in life. I believe that it relates quite strongly to the love aspect that I mentioned earlier. It seems to me that people become attracted to a person and become drawn to and emotionally involved with that person and that can help them to move in terms of their orientation.

There is a constant ambiguity here, or an inconsistency, one might say, that is consistent with human nature. That is, on the one hand we have a very inflexible concept of sexual orientation in our culture and a lot of people are very inflexible in their sexual orientation. It is fixed in them; it is set there; they believe that it is a part of them; and they will act accordingly. Yet we also have examples in human nature of sexuality being

quite flexible. So, we have both of these things that exist at the same time. Our society believes that sexual orientation is something that exists and it is a fixed concept: if you are heterosexual, you are heterosexual; if you are homosexual, you are homosexual; and that sort of thing. In some of these non-Western cultures I was mentioning, they do not have that belief and they do not develop that kind of concept. But we cannot, in our culture, say that homosexuality is either fixed or flexible, because it is both.

CHAIR—The committee has received evidence from the Australian Medical Association that it is of the view that anal intercourse is unsafe. Do you have a view on that? If you care not to comment, that is fine.

Dr Cass—Do you mean unsafe in terms of sexually transmitted diseases?

CHAIR—Yes. It is probably a little more elaborate than that.

Dr Cass—Obviously, one needs to know what it is unsafe for.

CHAIR—I do not actually have the submission with me at the moment.

Dr Cass—Let us assume it is about HIV or something like that. Certainly, the HIV/AIDS literature does show quite clearly that anal intercourse is one way in which HIV can be easily transmitted because of tiny tears in the lining of the anus. Of course, equally the same situation can happen with vaginal intercourse, but the vagina is just a little tougher, if you like, than the anus. The other side of it is, too, that HIV will transmit across membranes. So, again, that is another way in which transmission can occur. And that is why, of course, the safe sex campaigns encourage the use of condoms to prevent that.

CHAIR—There are a number of exemptions contained in Mr Spindler's bill. Have you got a view on exemptions?

Dr Cass—It is one of those difficult situations. I have in the last three or four years worked with probably a dozen Catholic teachers who are lesbians and gay men. Most of them are lesbians—why in the last few years, I do not know, except that obviously something is happening. They are beginning to perhaps deal with the discrimination issues. They have all come to me because first of all they have had difficulties accepting they were lesbians, which tends to be a common phenomenon with people who have strong Catholic views or strong religious views. But, other than that, they have been very concerned about what is going to happen to their jobs. A couple of the women, for example, have been interviewed for promotions. These are people who are held in high standing in their careers. They are usually quite high up. They might be principals, deputy principals or senior teachers. They get asked questions like 'Do you have any homosexual experiences?' and, apparently, other people get asked about them.

These people do live with a great fear of losing their jobs. While I can sit and discuss with them the issue of changing schools and changing jobs and not being too worried, these are people who are really strong believers. They are practising Catholics, they believe in their Catholicism and they want to stay in those jobs. Now, of course, those sorts of experiences make it difficult for me to go along with the idea that religious organisations should be exempt from this bill. But I can also see the other side. When people have strong beliefs, such as a religious belief in this situation, this legislation is asking them to cut right across those beliefs. While I might not agree with the way that some religions perceive homosexuality, at the same time I have to recognise that that is what they see, that is what they believe. I think it is a very difficult issue. I have to say my preference would be to not have the exemptions, as a beginning, there in the bill, but rather to perhaps have some facility—and I have not really thought this out clearly and it may not even be possible—for, if you like, organisations appealing for exemption rather than providing a wholesale exemption. As I said, I am not quite sure how that would work, but that is just my own ideological preference.

CHAIR—On the experience you have just related to the committee of the teachers in Catholic schools, had they come out publicly about their sexuality in coming to see you, or was it something they were seeking professional help for from you, in handling the domestic and professional situation that they were in?

Dr Cass—Most of them when they first came to see me were very private. Some of them were in lesbian relationships, and only their partner knew about the situation. Some of them had maybe two other friends, but they were very quiet about it. They came to me mostly because the ones who were not in relationships were just trying to come to terms with being lesbian and being happy about it. Sometimes they do not present with that: they might say that they are feeling fairly depressed, and what you unearth is that the result of the depression is that they feel that they should not be lesbian, and so that is an issue that they have to deal with. None of them were open with their schools.

I have watched over the past few years and, as these people have come to terms of their own homosexuality, many of them have now begun to move discreetly in the lesbian community, even to the point of some of them going to social functions that are private. That means that it is a bit of a catch-22. I see that particularly younger people are, more and more, growing up with the idea that if they are homosexual, then they are homosexual and that is how it is; and so in their private lives they are acting more and more in that way. I would say that even the Catholic teachers were doing that. But, at work, they were having to go right back into being very hidden and very closed; but, more than that, they were being fearful, which was a concern for me.

Senator MURRAY—I have one remark to make following that. Earlier, we discussed the fact that the principles of non-discrimination should logically apply across the whole spectrum of human circumstances, and therefore the exemption should apply across the spectrum. Religious institutions in particular, of course, are at present given

exemption from, for instance, discriminating against women and from other discriminatory activities they pursue. In that sense, an exemption is consistent with a practice we have in our society, particularly for religious institutions and particularly because of the strength of feelings people have in that area. It is in the interests of social peace, I guess, to allow them to have exemptions. What is your reaction to that?

Dr Cass—I suppose I still prefer the idea of applying for an exemption. If a religious organisation applied for an exemption on the grounds that admissions were going to be single-gendered for obvious reasons, and they wanted that, then they could be given that exemption; yes. You do not have to advertise for men and women to become a nun or a priest. In that way you could in a sense be putting the onus on the organisation to prove that there is just cause why they should be exempt, rather than just giving a blanket permission in this way.

CHAIR—Dr Cass, thank you very much for your attendance here this morning. It has been very helpful to the committee. You have agreed to provide us with additional references. Thank you very much. Our next set of witnesses were to be from the WA government, but they are somewhat in doubt. There are frantic phone calls happening at the moment. I have been informed that there is some confusion about the position of the witnesses from the WA state government and they will not now be attending. This is something we were advised about very late in the piece this morning. I am not sure if it is as an alternative, but we now have the opportunity to have the Commissioner for Equal Opportunity appear before the committee.

[10.10 a.m.]

WILLIAMS, Ms June, Commissioner for Equal Opportunity, Equal Opportunity Commission, 2nd Floor, Westralia Square, St Georges Terrace, Perth, Western Australia

CHAIR—Welcome, and thank you very much for your attendance here this morning. I invite you to make some opening comments and the committee will then address some questions to you.

Ms Williams—Thank you. I am certainly not representing the Government of Western Australia.

CHAIR—I do not think I was implying that, but you have put it on the record now. You are here in your own right as—

Ms Williams—I am here in my capacity as Commissioner for Equal Opportunity. My position on this question of sexuality and discrimination is well known in that I released a report some time ago which is entitled *Discrimination on the basis of sexuality: A discussion paper* and which was done under Section 81 of the Equal Opportunity Act. Section 81 deals with the situation where the minister makes a reference to the commissioner to report to the government on issues.

There have been a number of Section 81 reports on the question of discrimination. The first one was whether or not disability or impairment should be added to the act. The second one was whether age should be added to the Equal Opportunity Act and this third one was whether or not sexuality should be added to the Equal Opportunity Act. On the basis of the research that we did in the discussion paper, the recommendation was very clearly put that the Equal Opportunity Act should be amended to include sexuality as a grounds for unlawful discrimination.

While the report was commissioned by the previous government, it was released by this government. Following the release of that report there was a period for public comment and discussion which produced an inordinate number of public comments. In total, 394 submissions were received from the public on the issue—362 of them, 92 per cent of the public submissions, were in favour of amending the Equal Opportunity Act and 32, or eight per cent of them, were against amending the Equal Opportunity Act. Of those public submissions, 272 were identical—in other words, they were a form letter that was sent in.

It certainly did create a fair amount of public discussion and, to a degree, public concern on both sides—concern that it should be amended and concern that it should not be amended. The points of view put were very strong. It is, of course, a question for the government to decide, and the government has decided not to amend the Equal Opportunity Act at this stage.

CHAIR—Thank you. Had I known you were going to appear, I would have organised to ask you questions about the numbers of submissions that you received, because this committee is actually now receiving a number of submissions which have come in the form of a form letter. I have some doubt about the weight of influence that they carry before a committee such as mine. How much influence do form letters carry before your commission?

Ms Williams—It is not for me to weigh their influence. I did my report independently of public submissions. I did not call for public submissions. It was the government that called for public submissions; and it is for the government to weigh those public submissions, not me.

CHAIR—You did your report, the report was presented to the government, the government then issued the report in the public consultation phase. Did they then invite submissions from the public?

Ms Williams—Yes. They were sent to me, collated by me and referred back to the government.

CHAIR—Right. Your report made 12 recommendations. I am looking at the executive summary. Has the government accepted any part of that report?

Ms Williams—Not that I am aware of.

CHAIR—Recommendation No. 1 is that the report forming the basis for consultation be released—it is probably coming.

Ms Williams—Yes. I guess that was—

CHAIR—Yes. I am sorry. It is one that caught my eye as we were passing through it. So, with the decision of the WA parliament last week, that would bring a finality to the situation here in Western Australia. It would mean that the work that you and your commission have done is now at an end and is completed, would it?

Ms Williams—Certainly, I have not been asked to do any further work on the subject. The report stands. The recommendations stand.

CHAIR—But the recommendations have been effectively rejected in a sense that the parliament which is—

Ms Williams—Yes. Two Attorneys-General have rejected the recommendations to the report.

CHAIR—Would that, in your opinion, increase the necessity for Commonwealth

legislation in this arena?

Ms Williams—Yes. Being conscious of Australia's international obligations.

CHAIR—Do you see the bill that this committee is looking at at the moment as being an avenue for overcoming that?

Ms Williams—We have not actually seen the bill, I do not think. I am sorry, I am not familiar with the bill.

CHAIR—You are not. That is fair enough.

Ms Williams—I am not familiar with the details of the bill.

Senator BOLKUS—I was just going to ask whether any of the recommendations were, in any way, positively responded to by the government.

Ms Williams—Apart from recommendation No. 1, no.

Senator BOLKUS—Okay. Were any reasons stated as to why?

Ms Williams—There were a number of reasons which are not mine to restate, I think.

Senator BOLKUS—Okay. Going back one step: you obviously focused on some incidents where you thought there was need for legislative response. Are you in a position to tell us whether there have been any growing incidences of discrimination, either over recent years or, maybe, even during the course of the bill being debated by parliament?

Ms Williams—No. I do not know of any incidences of discrimination in that people do not contact my office. It is a very well known fact that there is no point in contacting the Equal Opportunity Commission for there is nothing that we can do. So, we would in no way have access to that information.

Senator BOLKUS—So how then did you focus on the areas that you recommended as being areas of—

Ms Williams—We looked at what was happening in other states and the incidences of discrimination there, and we looked at legislation overseas, as well, and various reports that have been done all around the world.

Senator BOLKUS—So there is no redress mechanism, nor any reporting mechanism at all in Western Australia?

Ms Williams—No.

Senator BOLKUS—I suppose that you have just given the answer, but you picked up as one of the standard responses, nationally as well as internationally, that 'imputed sexuality be included'.

Ms Williams—Yes. Plus, it is an important issue on other grounds of discrimination. We could see its application in this ground, as well. Imputed impairment is always an issue.

Senator BOLKUS—Sure. There is often concern about the way people are handled by law enforcement officers. Is that something you focused on?

Ms Williams—No. We did not focus on that, but it would be covered under the goods, services and facilities provision.

Senator BOLKUS—Goods and services?

Ms Williams—Goods and services. The police provide a service in arresting you: that is the argument, one presumes!

Senator BOLKUS—That is one that you would not want to pay for.

Ms Williams—No.

Senator BOLKUS—Okay. That is all I have got at this stage.

Ms Williams—It has just been pointed out to me that we do keep statistics on inquiries, but I do not think they tell us anything. Most people would not even ring us to inquire, because they know that it is not covered.

Senator BOLKUS—I agree with that. I think, though, they might be useful in terms of reflecting a trend of interest. Is there any such—

Ms Williams—Yes; they have gone up, but they are still not indicative of anything very much, as far as I am concerned.

Senator BOLKUS—I would not argue that they were. It is just that at times when people are discriminated against they try and work out where to go.

Ms Williams—Yes. The previous Attorney-General did invite people to ring the commission and raise the issues that were of concern to them, but the fact that they have not done so in large numbers does not mean anything very much.

Senator BOLKUS—I suppose you would suggest that they should ring the Attorney-General?

Ms Williams—I am quite happy to have them ring the commission. If we could get a whole body of evidence that said there was a lot of discrimination there, then it would be reason for us to go back to the government.

Senator BOLKUS—Have you got the capacity to go back to the government?

Ms Williams—Yes; I can advise the government under section 80, I think, of the act on any issues I think should be brought to their attention relating to discrimination.

Senator BOLKUS—But you would argue that you would only do that if there were a tide of complaints?

Ms Williams—Yes; or a significant issue that was raised.

Senator MURRAY—Ms Williams, the community in WA is said to be ahead of the government in many areas—including on the gold tax and environment and sexuality—and your report is obviously ahead of the government in terms of directions you would go. Has there been any polling or research done in the community in this area, to your knowledge?

Ms Williams—Not to my knowledge; no. To a degree, the public submissions—even though those figures are quite large, and taking into account that there was a body of form letters there—overall you have still got an overwhelming response that agreed with the proposition that the act be amended.

Senator MURRAY—Ms Williams, are you familiar with the bill that was rejected last week?

Ms Williams—Yes; I have had a quick look at it. I certainly have not studied it.

Senator MURRAY—Not in any detail?

Ms Williams—Not in any detail. It pretty well follows the recommendations contained in that review.

Senator MURRAY—Yes. In carrying out your duties, do you engage in public education activities in this area?

Ms Williams—Yes, but only on matters that are covered by the act.

Senator ELLISON—Ms Williams, in relation to the current state act, are there any

exemptions which apply?

Ms Williams—Yes; there are the usual exemptions that are contained in both Commonwealth legislation in other areas and in state legislation: exemptions about religious institutions and so forth. The act is almost an act by exemption. All of the acts are: the exemptions are quite long. It is significant that in the recommendations that we put up we did not follow the Queensland model, where there is a special exemption given in education against people on the grounds of their sexuality. We said that we did not think that was reasonable, for instance, and that it should not be a special exemption.

Senator ELLISON—So there would be a difference between the Queensland position and the Western Australian position on the question of education?

Ms Williams—If these recommendations were accepted; yes.

Senator ELLISON—Do you know whether the bill which was presented to the Western Australian parliament continued that difference between Queensland—

Ms Williams—I think it did.

Senator ELLISON—With respect to education, the exemption, I take it, related to religious schools or institutions: is that right?

Ms Williams—All educational institutions.

Senator ELLISON—All education: I see. Have you had a look at the exemptions contained in the bill which was submitted to the parliament by Senator Spindler?

Ms Williams—Not in detail, I am sorry.

Senator ELLISON—What are your views on exemptions? Do you think that they are necessary?

Ms Williams—Some exemptions are. Some exemptions I think are just commonsense and I do not really have a quarrel with them. My own personal view—not even my view as Commissioner for Equal Opportunity—is that the exemption for religious institutions has never been tested. It has been there for 20 years and nobody has ever tested it. What does it mean? I think there are some occasions upon which, if you like, the religious sensibilities of particular organisations should be taken into account. But there are others when I think it probably is unreasonable and it probably is too broad.

Senator ELLISON—With respect to the current legislation, has there been much litigation in relation to that act?

Ms Williams—The Equal Opportunity Act, generally, yes.

Senator ELLISON—What sort of sanctions do you have under that act?

Ms Williams—It has got a limit of \$40,000 damages if matters go to the tribunal for litigation. It depends what you mean by litigation.

Senator ELLISON—It is not actually a prosecution, is it?

Ms Williams—No, it is not.

Senator ELLISON—That is why I used the term litigation because I am trying to give it another label. Actions I suppose is a better word. How many actions have you had?

Ms Williams—Generally speaking, about 500 actions a year, not all of which go to a hearing in the tribunal. A large number of those are settled by way of conciliation. The act is well used.

Senator ELLISON—Your recommendation, I take it, would have just included sexuality, so that the penalties and the course of action et cetera would have been the same for sexuality as for other grounds of discrimination?

Ms Williams—That is right.

CHAIR—To continue the theme on exemptions, I note your recommendation No. 8 and your recommendation No. 12 and suggest that there is somewhat of a conflict between the two recommendations, as they relate to exemptions.

Ms Williams—Eight and 12, did you say?

CHAIR—Yes.

Ms Williams—No, they are different. Recommendation No. 8 refers to the situation that you have in Queensland, where the act allows for there to be discrimination on the grounds of sexuality in education. In other words, people can discriminate against another person in terms of employment only, I think, in education. That is where we have said that we do not want to follow that line; we think it should be unlawful to discriminate against a person in education, in employment, on the grounds of their sexuality.

Recommendation No. 12 deals with the general exemptions—I have not brought a copy of the act—and there are very many of them. The general exemptions, with the exception of the religious one, are commonsense exceptions. When you sit and examine them, most people would agree with them.

CHAIR—Your recommendation No. 7 also is a limited recommendation. In the area of employment, it is limited to companies or partnerships with six or more employees. Why didn't you go all the way in your report and not have any limitation on it?

Ms Williams—It only refers to partnerships with six or more. The rest of it is unlimited. In fact, we are saying that small employers should be covered as they currently are in the act. We never had that limitation as other states did.

CHAIR—Do you think that the general public or even some people in authority realise that that limitation is there? I must say that I have—

Ms Williams—Regarding partnerships?

CHAIR—Yes.

Ms Williams—Partnerships are seen to be a bit different to general employment; that is a close working relationship between people. If you are the boss and there are three or five employees it is different to a partnership.

CHAIR—I had actually accepted your recommendation on the basis of what I had heard previously in uninformed comment saying that there was a limitation in employment to places where there were six or more people.

Ms Williams—No.

CHAIR—And I read it in the distorted way that I had heard it.

Ms Williams—No; it only relates to partnerships.

CHAIR—In recommendation 11 you raise the matter of superannuation. This is a contentious area and has been the subject matter of quite a deal of submission to this inquiry so far, in that it is argued that this is one very clear area where discrimination does exist. You have included it in your submission. Could you elaborate on the reasons you have included superannuation in particular, but perhaps if you want to deal with those other matters that are contained in 11 you might care to do so?

Ms Williams—We are all familiar with what the difficulty is. With people who have a longstanding or very committed relationship, at this stage if they die their superannuation just goes back into the pot—they cannot leave it to their partner. They could leave it to their de facto wife or their wife, or their husband or their de facto husband. But in same sex relationships it is not possible, and that seems unjust.

CHAIR—Are there any areas where the individual who is superannuated can say

that his or her pension rights go to their partner irrespective of sex?

Ms Williams—Irrespective of sex?

CHAIR—Yes.

Ms Williams—No. I could not assign my superannuation to you, but I could assign it to my de facto husband or my husband. It would automatically go to them if I died now.

CHAIR—Does any of the anti-discriminatory legislation in any of the other states recognise this difficulty for same sex couples in the area of superannuation?

Ms Williams—Yes, I think they do.

CHAIR—Do you know which states?

Ms Williams—Certainly New South Wales does.

CHAIR—Would you argue that Western Australian people in same sex relationships are being discriminated against in the area of superannuation?

Ms Williams—Yes; their superannuation cannot go to their partners.

CHAIR—It is also argued by some that the access to clubs is actually a reverse discrimination in that heterosexual people cannot get access to homosexual clubs. We have had some debate in the public inquiry of the committee so far on this. I would be interested in your views with regard to that reverse discrimination, as it was put to us by one witness.

Ms Williams—That brings me back again to one of these exceptions that you asked me talk about before. There are so many of them. The general scheme of the act allows for exceptions in clubs. We are sitting on top of or next door to the World Club which is an all male club.

CHAIR—Still?

Ms Williams—Still. And around the corner is the Karakatta Club which is an all female club—still. The Equal Opportunity Act allows for single sex clubs to exist. There are some who would argue that that should cease in the interests of equity. I think there is a place for single sex clubs. Generally what happens is that they run out of money and they have to open up their membership to become viable, so it gets looked after in that way. I do not really regard it as a form of reverse discrimination to allow for special interest clubs, if you like.

Senator ELLISON—And certainly a hotel would be a different situation, wouldn't it?

Ms Williams—Most certainly.

Senator ELLISON—We have had evidence of hotels which have had signs saying, 'This is not a straight bar.'

Ms Williams—Yes.

Senator ELLISON—That is different.

Ms Williams—I think that is different, yes.

CHAIR—You would accept it?

Ms Williams—I would accept that a hotel is different to a club, yes.

CHAIR—Where does the application form in your recommendation come into it? Can you explain the context in which you made that recommendation as it relates to application forms and insurance?

Ms Williams—It follows the general form of the legislation. The application form provision generally just says that you can ask it but you cannot use it; that is a tricky one. Marital status discrimination is unlawful but you can still ask on an application form if people are married. Age discrimination is unlawful but you can still ask on an application form a person's age. The question then becomes what you do with the information. If you decide not to employ a person on the basis of their age then you are behaving in a discriminatory manner but it is still permissible to ask that. I cannot envisage a situation where people would ask a person's sexual preference on an application form.

CHAIR—I think I could; whether they would get away with it or not would be a different matter but I can think of a couple of areas where it might happen. Recommendation three is an interesting recommendation as well, as it relates to the current inquiry that this committee is conducting. Senator Spindler's bill has sexuality defined as meaning heterosexuality, homosexuality and bisexuality and you have gone on and included those words and added transsexuality as well. That has received a deal of attention in the submissions to the committee and in the public debate on the bill. There is argument that heterosexuality should not be included in it. Could you develop your argument or could you explain the reasons why your recommendation has included heterosexuality in your report.

Ms Williams—On page 25, there is recent example of heterosexual discrimination concerning a female cricket player, you might remember it, who alleged that she was not

selected for the Australian women's cricket team because of her heterosexuality. The allegations could not be investigated because it is not unlawful to discriminate on the grounds of heterosexuality, and sport is not an area of public life covered by the act. You might recall it was about three years ago, I think.

CHAIR—It was not in Western Australia.

Ms Williams—No, it would not happen in Western Australia, Jim.

Senator MURRAY—This business of single sex clubs: where does the transsexual person belong in that kind of discrimination?

Ms Williams—One would assume they belong where ever they want to be and where ever they are welcome.

Senator MURRAY—I do not know, but I assume that single sex clubs decide on your sex solely as a result of appearance: if it is a women's club and you appear as a man they are going to throw you out. Do they do any tests? What happens if a man dresses up as a woman and turns up as a woman.

Ms Williams—There was a very famous case in New South Wales, well over 12 years ago. A person had, in fact, lived as a woman for a large number of years and was a member of a local bowling club and had won all the trophies. There was a lot of political activity about homosexual rights and this person came out and spoke out on her status and when her bowling club found out that she really was not a she and was a he, they kicked her out of the bowling club and took all her trophies off her. There are other ways of finding out a person's sexuality, despite their appearance.

Senator MURRAY—I am interested in the reverse discrimination matter. How would a gay or lesbian club which sought to restrict membership to just gay and lesbian people do such a thing? If you do not do it on appearance, are there tests? That is the problem with that kind of discrimination; you start intruding into people's personal lives, do you not?

Ms Williams—Yes, you do. I mean it is a self-identification process and an acceptability process, I think. I am often asked what is an Aboriginal person and the definition of that is somebody who says that they are Aboriginal and is accepted by other Aboriginal people as being Aboriginal. I would suggest that the same sort of—

Senator MURRAY—I see that your view is that generally society sorts itself out.

Ms Williams—I think it is capable of sorting itself out on this question with regard to clubs.

Senator MURRAY—Just a last question on a bit of housekeeping—

CHAIR—There is a strong body of argument that special measures ought to be included in legislation such as former Senator Spindler has put forward to the Senate—some forceful argument, I might add. Did you have such an argument put to you?

Ms Williams—No, we did not. It was never put to us. Special measures really only apply in relation to sex and race and family responsibility. The other grounds under the act, age and political and religious conviction—and impairments get special measures as well. It seems to me there are some grounds where special measures are appropriate to apply and other grounds upon which it is not necessary to apply them.

CHAIR—Thanks.

Senator MURRAY—Just from a point of view of my own housekeeping, when you referred earlier to the form letters you received and then the submissions you received separately, if we separate those out as two types of submissions, of the form letters you received, were you able to divide those into those for and those against?

Ms Williams—They were all pretty well for.

Senator MURRAY—Okay. Thank you very much.

Senator BOLKUS—I noticed in the Western Australia Decriminalisation of Sodomy Act, you have a preamble which states that the parliament disapproves of sexual relations between persons of the same sex and so on. To me it just seems totally inconsistent with the act, but in terms of educating the public with the objective of tolerance, if we were to adopt similar preambles, I would presume you would find them very unhelpful.

Ms Williams—It is not my preamble. I am aware of it. I do not know that I can say any more about it, but—

Senator BOLKUS—What I am getting at is that it would be helpful for legislation to be consistent, rather than have such an inherent inconsistency in it.

Ms Williams—Yes. This preamble is quite a separate issue.

Senator BOLKUS—Sure. Thank you.

CHAIR—Are you aware of any intention by government to introduce legislation in the area to help, to assist or to recognise transgendered people?

Ms Williams—I understand that the Attorney-General has announced his intention

to amend the legislation to allow transsexual people to legally change their status.

Senator ELLISON—Can you tell us any more about the form it might take?

Ms Williams—No. I have not even seen the bill.

Senator ELLISON—Would that be a piece of legislation which would come under your responsibility?

Ms Williams—No. It would not. It would be a separate piece of legislation.

Senator ELLISON—As far as discrimination went in that area, we have had some evidence about the birth certificate being changed. If the birth certificate remains in a different name, demonstrating a different sex at birth, this then gives rise to subsequent discrimination. Do you think that that would be a point to look at?

Ms Williams—I understand that the proposal is to address that issue in this legislation.

CHAIR—Was that announcement by the Attorney made in the context of the debate on the bill that was defeated last week or is it separate?

Ms Williams—No, it was made some months ago.

CHAIR—Thank you very much. There is nothing further from the committee. Many thanks for your appearance here this morning. It is much appreciated by the committee.

[10.50 a.m.]

FRANKLIN, Dr Kevin Thomas, Assistant Director, Gay and Lesbian Counselling Service of Western Australia Inc., GPO Box G406, Perth, Western Australia 6001

FROOME, Ms Jennifer Maree, Director and Chair of Board, Gay and Lesbian Counselling Service of Western Australia Inc., GPO Box G406, Perth, Western Australia 6001

CHAIR—Welcome. I invite you to address the committee and then I will invite members of the committee to address questions to you.

Dr Franklin—Jennifer will speak first. She is speaking as the director and I am speaking both as the assistant director and as a citizen.

Ms Froome—I have decided that part of my role today in representing the Gay and Lesbian Counselling Service will be to speak about the impact that the legislation and the discrimination in our state has on people within our community. Our service has first-hand experience of that.

By way of some background, the Gay and Lesbian Counselling Service is a non-profit community based organisation that has been operating in Perth for some 22 years. We provide a telephone counselling information and referral service on issues relating to homosexuality and sexuality, as well as providing self-esteem and support groups for the community.

This service is provided to, but not limited to, lesbians, gay men, isolated people, bisexuals, victims of violence, transgender people, youth, married people, parents, siblings and family members. GLCS is staffed on a completely voluntary basis and is funded primarily through donations and fundraising.

It is generally agreed in the community that GLCS is a leader in the gay and lesbian community. It has strong links with other organisations. It is often the first point of contact for many people coming into the gay and lesbian community. GLCS provides support and resources that allow people to explore sexuality as it relates to them, without judgment and without prejudice. Lesbian and gay identifying people are a group largely ignored in traditional agencies. The service that GLCS provides is unique and it is recognised as an important and legitimate form of mental health care.

Our counsellors attend to some 5,000 calls per year—sometimes up to 6,000—on issues relating to discrimination, self-esteem, health, safe sex, HIV and AIDS, assault and violence, grief and loss, and suicide. It seems that the current discriminatory legislation impacts on many issues in our community and I thought I would focus on two of those that we have first-hand experience of.

Young people grappling with same sex attractions face enormous isolation and stigma in making sense of their feelings. Young lesbians and gay people grow up acutely aware of the prejudice and discrimination and possible violence that they will face if their peers and family discover their sexual orientation.

We have found that about four out of five young gay and lesbians have not come out to their peers or told their parents of their same sex attraction. As a result, they are distanced from their family and peers. The results of this hiding and, indeed, sometimes the results of the disclosure are that their same sex attractions result in damaged self-esteem, a sense of isolation, inferiority and self-loathing.

The current legislation in this state does not encourage lesbians and gay men to live open and full lives. As a result, there is a lack of accurate and appropriate information and role models available to young gays and lesbians. I feel that this contributes towards a negative self-image and reduces the ability of a large proportion of the youth population and, indeed, our adult population, to interact socially and to contribute effectively to and within society.

Young lesbian and gay people do experience serious and extensive problems, are marginalised from mainstream youth and society, and are at risk of suicide. Our experience is that 33 per cent of young lesbians and gays have attempted suicide, and suicide ideation rates range from 65 to 85 per cent. Of course, the shame and the silence behind homosexuality itself precludes us from having many results or statistics about actual suicide.

If we consider that 10 per cent of the population of Western Australia identify as gay or lesbian—I believe this percentage is underestimated—and if along with the youth figures for attempted suicide we include the incidence of adults who have similar ideation or attempts, this equates to a sizeable amount of our population who are attempting suicide as a result of discrimination.

It might seem easy for some to tolerate this issue if it is viewed in terms of population and percentage but in fact what this means is that within Western Australia there are thousands of people, fellow human beings, whom the government, the legislation and some parts of the wider community, openly discriminate against and do not support.

Another area that has an impact on the Gay and Lesbian Counselling Service, and vicariously to our community, is the fact that our organisation is kept running by donations and small grants. With the current discriminatory legislation it means that outside agencies exclude GLCS from seeking funds from the community on the grounds that GLCS represents something unlawful.

For example, in the past GLCS has been contracted by the WA AIDS Council to provide a counselling, information and referral service to the gay and lesbian community

pertaining to HIV related issues. This year the government of the day, via the health department, has indicated to WAAC that it will not agree to any funds being allocated from the WAAC to GLCS. It has been reported that they are not willing to spend taxpayers' money on any gay or lesbian issues and are quoted as saying, 'Don't argue, it's political.'

The outcome of what appears to be a blatantly homophobic policy now means that an important source of funding previously received from WAAC will not be forthcoming this year. This leaves GLCS with the ongoing difficult search for financial support being once again exacerbated, not only by legislation but also by policy. It means that the important service that GLCS provides to the community is in jeopardy and that impinges on our ability to continue to save lives on a daily basis.

CHAIR—Thank you very much. Dr Franklin?

Dr Franklin—I am Dr Kevin Franklin, a clinical psychologist and Assistant Director of the Gay and Lesbian Counselling Service. My theme here today is to discuss authority and authoritarianism. I will first make a summary statement of the main points presented. I will then illustrate these and then draw some conclusions.

Firstly, my summary statement. In the absence of a positive identity for homosexuals in our culture there is, instead, psychological abuse. Contrary to this abuse and ridicule, there is a substantial body of evidence that homosexuality is innate, it is relational, it is historical and it is ethical. A cultural change from authoritarian moralism to an ethic of authority is needed. An applied ethical theory is needed and it is presented here. I will illustrate this.

In this absence of goodwill why, instead, is there a negative identity for homosexuals? There are three reasons that I have seen. Firstly, there has been no compelling theory of hetero or homosexuality; secondly, there has not been a unifying theory of reality in science which has been applied in education or in psychology; and thirdly, many people assume that homosexuality is, or causes, mental ill-health and that this negative belief is directly promoted by legislation such as in WA and in Tasmania.

There is an absence of positive identity. The community belief of homosexual deviancy has been scientifically tested and this hypothesis has failed on numerous occasions. A continuous theme from this research has been that, apart from their sexual preference, there is no difference between heterosexuals and homosexuals. The moral view is that sexual preference should make a difference. I call this position 'the ridiculous theory of homosexuality' because of its moralising heterosexism and homophobia. The moral hypothesis that homosexuals should be deviant is not supported.

Is there an alternative? In my doctoral research I addressed the origins and the nature of sexual preference. A literature review showed an absence of scientific theory and

confused thinking about sex and gender. Why is it confused? Because just as it seems obvious that depression predicts poor self-esteem, it also seems obvious that something like sexual identity should predict sexual preference. It does not. The absence of evidence of a difference between homosexuals and heterosexuals contradicts community 'commonsense' that homosexuals should be deviant.

There are two independent research streams on sexuality. One uses gender identity as its principal concept, that is, the idea of being psychologically male or female. The other stream uses sexual identity as its principal concept, that is, being bio-socially male or female. That is to do with our plumbing, whether we have male or female gonads. Using role theory I developed an integrated theory of sexuality using both of these psychosocial concepts.

My theory of sexuality is based on role theory of personality that uses the Trinity of the Christian theology as a personality theory. I have no theological training or expertise here, and I speak here as a psychologist. Nonetheless, my theory of sexuality is derived from Christian theology and from this theory of sexuality I predicted and showed three things. Firstly, in empirical test hetero and homosexual preference is explained by the innate male or female nature of our self, our being male or female. The male or female nature of our psyche, that is, gender identity, predicts sexual attraction towards maleness or femaleness in others. That was new.

Secondly, I also tested whether this attraction is male-female, as is so often assumed in heterosexual relationships, male is attracted by female, or whether this attraction is between mirroring identities, that is, male attracts male, female attracts female. I have quite clearly shown that the sexual relationship is a mirroring of like identities. For example, the homosexual man has a male gender and is attracted by other males. Similarly, the heterosexual man being psychologically female is sexually attracted by biological females, and so on. You will recognise that this is a rather radical departure from current theory but, nonetheless, I have shown this to be true.

It can be confusing stuff and so it may be opportune to quote Freud who said: It is important to understand clearly that the concepts of 'masculine' and 'feminine', whose meaning seems to unambiguous to ordinary people are amongst the most confused that occur in science. This confusion arises in a common but mistaken assumption that sex of body and gender of self should be the same, for example, biologically male, therefore gender male. Homosexuality breaches this 'opposites attract' assumption. Instead of clear thinking there has been much moralising finger pointing at the supposed evil of homosexuality.

The third area of research showed that being innate, developmental, relational and ethical, my theory predicts mental health whereas the 'ridiculous theory of homosexuality' predicts mental disorder. I have presented some of the data in my original submission which you have. It is a most unusual set of psychological data. It is very clear. All the scales are in the correct predicted direction and it also predicts in a discriminate analysis fear as being the main origin of mental ill health. That is, fear of authoritarianism. My

theory predicts a model of mental health and that homosexuality per se is not deviant. It does both of those things. However, the brutish and manic thinking of the ridiculous theory is itself shown to be deviant in identifying the origins of mental ill health.

The moral view of homosexuality as evil is thus not supported. Its ridicule is erroneous in its thinking and it leads to inappropriate heterosexism and even homophobia and vilification.

This authoritarian approach enshrined in Western Australian and Tasmanian legislation has stridently sought to prevent the adoption of an ethical attitude towards homosexuality in our Judaeo-Christian culture. In the absence of a positive culture identity, homosexuals may internalise this culture of authoritarianism as social phobia, with a consequence that Jim has referred to, such as suicide. The GLCS seeks to limit the consequences of this damage through proper education of the community.

My research findings support an ethical view of homosexuality. This ethical view of Christian ideology first of all provided a testable theory of personality grounded in Christian theology. It provided a testable theory of sexuality based on ethics. It clarified the origins of heterosexuality and homosexuality as innate nature, that is, God given nature. It clearly shows the origins of psychological disorder as arising in authoritarian cultures that would ridicule a God given human nature such as homosexuality, and it identifies a moral-ethical dimension of personality that is developmental and a general system model for best and ethical practice which could be applied in many areas, including education and health.

So I have tested two ideologies: a moral Christian view requiring obedience to an externalised authority, and an ethical Christian view based on the psycho-social integrity of the person's personality, that is, their own inner authority. Put simply, this is a model of how children grow up to become ethical adults and developing their own authority to be adults.

Homosexuality has a long history predating its biblical references. The Old Testament, requiring obedience to an external parental authority represented by the God of Moses, was fulfilled by the inner directness and authority of Jesus and his ideology. I have shown that his legacy has real and practical applications today in education and health. Those who indiscriminately seek to suppress the Kingdom of God, that is, our nature, in its homosexual expression by invoking a childish moral view of Christianity are misguided. This psychological abuse attacks Christian theory and practice.

So, in conclusion, the view that homosexuality is immoral has its origins in wrong thinking. In the absence of goodwill, there is instead a degradation of the human spirit into psychological disorder and our current cultural malaise of confusion, for example over homosexuality and heterosexuality. I have shown that the origin and nature of homosexuality and heterosexuality both arise from our innate nature which we should work to equally protect and restrict. In my view, governments and other institutions,

particularly churches, ought consider how they might redress and remedy this ongoing destructiveness.

CHAIR—Thank you very much. I neglected to say in opening that the committee had received your submission and we have agreed to publish it, and that is now a public document in the public domain. I wonder if you would mind giving us copies of those two documents you have just read from. It would help us with the record.

Dr Franklin—Just the one copy, or do you want other copies as well?

CHAIR—No, just the one copy, just to make sure that our records are quite in order. We have received a submission—and I am asking you as a counselling service now—that has said that in the United States homosexual people have been able to be counselled out of their homosexuality. That is a front-up question challenging the submission that you have particularly made, Dr Franklin. Would you agree or disagree that such a thing is possible, from your research?

Dr Franklin—From my research it seems unlikely. As far as I know, the evidence of that research is unlikely as well.

CHAIR—Are you aware of the research?

Dr Franklin—I am vaguely aware of it, I'm not totally aware of it.

CHAIR—The reference I've got is West 1977.

Dr Franklin—It is an old reference.

CHAIR—It is quite old.

Dr Franklin—The necessity of following up those people in 10, 15 or more years later as far as I can see is not done, and that would need to be done. It needs a longitudinal study longer than a couple of months or even a couple of years.

CHAIR—Are you aware of any studies being done in that area?

Dr Franklin—No.

CHAIR—I am referring to longitudinal studies.

Dr Franklin—No.

CHAIR—On the first page of your submission you talk about the fact that in 'WA there is currently a preamble in legislation'. What are you talking about there? Are you

talking about the bill that was defeated last week or the other legislation on the books from 1989—the decriminalisation of sodomy act?

Dr Franklin—The one that Senator Bolkus was referring to earlier is the one that I was thinking of.

CHAIR—The figures on the suicide rate are pretty devastating and we have received shocking figures from other states. Are you able to fit the figures that you gave the committee today into an overall pattern of youth suicide figures?

Ms Froome—My understanding of the figures that we have is that the incidence of suicide amongst youth who are attracted to the same sex is much higher than the youth suicide rate for those that are not in that position.

CHAIR—Is that evidence that can be tested or is it anecdotal?

Ms Froome—Some of it is anecdotal and some of it has come from research that was done. Mark Goggin, a former executive director of the WA AIDS Council, put in a submission for the Gay and Lesbian Counselling Service and WAAC to get Commonwealth funding for a youth suicide project. He has done a lot of research in that area. I am probably quoting from his background and from speaking with him and his colleagues.

CHAIR—Have the figures that you have quoted to the committee today been broken down between males and females? Do a higher proportion of young men attempt suicide?

Ms Froome—From what I understand, it is a higher proportion of young men. If a young guy is effeminate it is more difficult for him to fit in with his peers but for a young woman who might be a lesbian it is okay now to wear jeans, to act boyish and those sorts of things. It is not quite so ostracising. The level of incidence in young men is much higher. From what I understand, the struggle for young men is much harder. I am not saying that all gay men are effeminate, but that situation makes it more difficult for them to fit in.

CHAIR—The committee has heard evidence as the inquiry has progressed that as young people come to realise their sexuality there is increased difficulty if they are living in a country or non-metropolitan region in a state. In a state such as Western Australia is that problem enlarged? What is the extent of the problem?

Ms Froome—The majority of our work is focused on the metropolitan area because we do not have enough resources to go out to other areas. We have calls coming in from the country and we have information going out to health centres in different areas. Once again this is anecdotal, but from reports from clients and the records we keep of

clients we find that they come to the city because it is just too hard in the country to manage because there is no way that they can find people who have similar feelings. They feel isolated enough as it is without actually being out in the country. I do not actually have any figures on that, but the response that we have had from clients who ring in, particularly young people, is that it is much more difficult to be in country areas.

CHAIR—Are there services in any areas other than Perth for homosexual young people?

Ms Froome—No, we are it basically. There is little support within normal agencies because there is not the expertise. There is homophobia within the youth groups which we are trying to change.

Dr Franklin—It is also prevented by the preamble which says that organisations that are seen to deal with homosexuals and promote homosexuality in any way are liable to lose their funding, so many organisations are reluctant to do that.

Ms Froome—It means that we cannot actually be seen to be raising awareness about our services because it is deemed we are promoting homosexuality. We cannot go into the schools and we cannot access youth groups because the law says it is unlawful for us to do that. It is a very fine line.

CHAIR—You mentioned your funding in your opening comments. Did you say that it no longer exists? Has it been stopped?

Ms Froome—We were getting some funding, which was a large proportion of our service requirements, from the AIDS Council. We rely on fund raising grants, so we put out into the community different agencies. Often those responses are small, such as \$1,000 or \$2,000. The larger money was coming from the AIDS Council for the service that we provided regarding HIV and AIDS. Some of that money was to women and to men. Then it was honed down just to men, and now it has cut out altogether because they do not want to be seen to be promoting gays and lesbians. Our funding is always very ad hoc. We have a difficult time trying to get continuity.

Dr Franklin—We have a cycle of boom and bust which is not very helpful for our organisation. We have a high and then it goes into low and that does not assist us at all.

Ms Froome—I guess that the example of the AIDS Council is indicative of how it works in other agencies. For us, when we want to put in a submission, some of the managers or some of the people within the organisation might say, 'That sounds like a good idea.' It then goes to the board and they say, 'No way in the world. We are not going to do anything with G&L in it.' It is very difficult.

We are a volunteer organisation at the moment. It takes between \$30,000 and

\$50,000 per year to maintain the offices, the phones and all that sort of thing. That is not a huge amount of money but we just cannot get any money from the government, directly, nor from other agencies. It is very difficult.

Senator ELLISON—Dr Franklin, let me ask you about that table on page 4 of your submission, dated 7 July 1996. In those three columns there are three separate groups of homosexual males, and there is a variety of areas where they were polled—if I can put it that way. I take it that in the first group you have 'depression' which was 109 and was the greatest issue in that group. It then was a great issue in the second group and in the third. You have other breakdowns which relate to that. Could the depression mask the other subgroups? What I am saying here is that part of your depression could be the phobic anxiety. Could you explain that?

Dr Franklin—Perhaps, I can explain the table a little bit. There are three groups there. On the left-hand side is what would commonly be referred to as 'closet queens', that is, those people who are so overwhelmed by the homophobia in themselves and others that they prefer to remain anonymous. The group on the far right are those people who are reasonably open about being homosexual in their homes, work, and in society and, by and large, they do not find it a problem any more—they have outgrown that. The group in the middle are intermediate.

What I did then, with those three groups, was to measure them on the various scales of depression, anxiety, somatisation, and the others that are mentioned there, as well as some others. I was testing the hypothesis that those guys who are closet queens—that is, adapting themselves to the authoritarianism and the Old Testament view of the moral majority—should be healthy. In their view, those people should be quite healthy because they are not actually engaging in homosexuality—they are being closeted.

The other hypothesis was that those people who are openly gay and self-accepting, as in the Christian view of an ethical model, should be reasonably healthy. What it is testing there is a hypothesis that one group is healthy and the other group is not. It is not trying to show the relationships between the things, it is just trying to show really that guys who are closet queens are likely to be far more unhealthy mentally than people who are open and self-accepting. The main issue is the phobia. These are not scores out of 100 or out of 200. It varies from one scale to the other, so the main ones are in fact the ones with the asterisks next to them. Homophobia is one, psychoticism is another, and the other one is phobic anxiety.

Senator ELLISON—The difference on homophobia is not as great.

Dr Franklin—That does not matter in the statistical test, it is what is significant statistically. The ones that separate them are those ones with the three asterisks, they are the three most important variables in that—

Senator ELLISON—But homophobia has got an asterisk.

Dr Franklin—Sorry, yes, it has, but those are the three that are important.

Senator ELLISON—And what I am saying here is that the ones who suppress it or remain anonymous as to those ones who come out into the open, the difference is not as great on the homophobia. I would have thought you would have seen a more marked reduction in the homophobia—

Dr Franklin—You cannot regard these scores as a score out of 100 or something like that. It is not the size of the score that is important, it is the direction and the discrimination.

Senator ELLISON—With respect to the proposition you are putting, it is on the basis that if you can come out into the open, accept yourself and have others accept you, that is a much healthier situation for the individual.

Dr Franklin—Yes. It is the ideology of self-acceptance.

Senator ELLISON—Is there an element of the individual imposing upon himself a regime which causes the inner anxiety?

Dr Franklin—Yes, there is. For the individual who is homosexual and because of his upbringing has to pretend and act as though he is heterosexual, that is a great imposition on him. That authoritarian view is in fact shown here in this test to be the origin of mental ill health.

Senator ELLISON—Fear seems to be the big thing.

Dr Franklin—Fear is the central issue.

Senator ELLISON—But, of course, there are perhaps two sources for the fear: one is the fear you impose upon yourself—

Dr Franklin—That is right—the internalised homophobia.

Senator ELLISON—The other one is the one that the outside world imposes on you. Are you able to break it down to give us a percentage, or is that too difficult?

Dr Franklin—I would not know where to start on that one at the moment.

Senator ELLISON—Finally, are there any comparisons between the rates of suicide of gay and lesbian youth of Western Australia as opposed to other states? Are there any comparative statistics?

Ms Froome—I do not have them now, but I can probably get hold of some. It is difficult because there has not been a lot of work done on the gay and lesbian youth suicide issue. I think the grant that the AIDS council and GLCS have received to do that project is a breakthrough, so it is difficult to quote statistics from across Australia, but I am sure that we could probably come up with some indication by speaking to other groups.

Senator BOLKUS—Senator Ellison was drawing a distinction between fear imposed by the outside community, as opposed to fear imposed by oneself. Is that second category so self-contained? Can you actually have fear imposed on oneself without really factoring in external pressures?

Dr Franklin—The origin of the internalised homophobia and the loss of self-esteem is seen to arise from outside as a cultural factor. It is very clear from my work that that is where it comes from. Nonetheless, the person still experiences fear, even though its origins are in fact outside the person.

Ms Froome—The response from clients is that there is not a role model of somebody who is safe or experience in the community of where they can go and be safe. The experience is that you get bashed up, the experience is that you get vilified, the experience is that you lose your job, the experience is that you cannot go into particular places because they will not let you because you are a poof or a dyke. You were speaking before to June Williams about entrance into clubs, and about some of the venues and the fact we make them preclude outside people from coming in. That is not always a strict rule.

From my experience there is a behaviour code and they expect people to be acting in a proper manner. So they try to keep out of the venues those people that are leering, being abusive, violent in behaviour—just being awful, basically—because it makes it unsafe. It makes it unsafe to be with your peers and to actually be who you are. That outside influence is huge because it is about violence, it is about discrimination, it is about not being accepted, and it has a strong impact on what happens internally because there is no role model of safety.

Senator BOLKUS—Some would argue that all this is about is part of a broader, sinister, Stalinist political correctness agenda. Everything seems to be tagged now as being politically correct and, as a consequence, we need to revisit it. But what you are really saying is that this is important not just for the way society treats people, but for people's self-esteem and the dire consequences of not having that.

Ms Froome—Absolutely. It impinges on people's ability to function in society, to contribute to society if they are so scared about going for a job because if someone finds out that they are gay, they are going to lose it; if they are so scared that they cannot contribute in other ways towards the community because they are not going to be

accepted. It is not just about political correctness. Definitely, it is about the impact that it has on people, the impact on their self-esteem.

Senator BOLKUS—I raise that because I think too much has been tossed out in the rebellion against that American term 'political correctness'. People are not focusing on the real need for decency in legislation and behaviour.

Ms Froome—Yes. I am reminded that our Premier Court, I think it was, said that you do not need to make laws in order to make people behave properly. Like, 'Yeah, but why have you got laws against murder and why have you got laws about all these other things?'

Senator BOLKUS—Protection of property.

Ms Froome—Yes. People do not act properly—that is our experience. People get vilified at work, they do not get jobs—all of that stuff.

Senator BOLKUS—We do tend to protect property more than people sometimes.

Ms Froome—Yes. And if you tell your mum and dad you get kicked out of home; if you tell your landlord that you are gay or lesbian, and they do not like it, you can get kicked out and you cannot prove it in a court of law.

Senator BOLKUS—Even though you have been a good tenant for 10 years.

Ms Froome—And you are too scared to stand up and say anything about it. It is difficult. We had a rally at Parliament House last Sunday and people were saying, 'Oh, there is not much response.' But the cameras were there. It meant that you actually have to go out on a limb to say, 'Listen, this is what I believe in. And if your boss sees you because of the camera, you were there, so you are gone. You have no protection.'

Dr Franklin—I work for a Catholic organisation.

Senator BOLKUS—The further point I had, and just picking up on Chris Ellison's on homophobia, was about the figures in the table on page 4—the 59 and 42. Do those figures actually reflect anything at all? I think you argue that maybe they do not, that the fact they are there is the important aspect. But why would they be there in different quantities?

Senator ELLISON—Just a point of correction: it was not my homophobia.

Senator BOLKUS—Sorry, Chris.

Dr Franklin—When people respond to various dimensions, such as depression or

homophobia, sometimes they might respond on a scale. Say it was a scale from 1 to 100, sometimes they might respond just using numbers 10 to 20. On another question they might use the same sort of scale, from 0 to 100, but they might respond between 90 and 100. So you still have a 10 per cent band. But it does not mean to say that the scores between 90 and 100 were more important than the ones between zero and one. The test here is trying to decide, 'Okay, we have got these bands between those scores, but which one is actually the most important?' And the statistical test used there was the discriminate analysis that asks the question: we have got these 10 or so dimensions that separate these three groups, but which are the most important ones? And the three that come out in a statistical test are those three with the asterisk. So it is looking, if you like, at the underlying factors rather than just the face value of these things.

Senator MURRAY—One of the problems in trying to view this area as a finite area is that both the law and those trying to reform it tend to regard sexuality as a fixed property. The clinical psychologist we heard earlier in evidence clearly illustrated that you can move up and down the continuum of sexuality: from heterosexuality to bisexuality to homosexuality and back again, all the way up the scale. Of course, in discrimination terms that can mean that somebody who was never discriminated against as a heterosexual moves into a discriminatory environment. My assumption, though, is that when they move back up the continuum they never lose that discriminatory environment. So if you return to heterosexuality, you still have this stigma, and offensive and violent behaviour to deal with. I think that particular aspect has not been exposed sufficiently and I would like to have your views on those remarks I have just made.

Dr Franklin—You are talking about Dr Viv Cass?

Senator MURRAY—Yes.

Dr Franklin—There are numerous ways of understanding homosexuality. Essentially, there has been no one way of understanding it that has made coherent sense. That is why I present that evidence today that shows that the only thing that has ever predicted it essentially—that is, why is a man attracted to another man—is this notion of a person's gender identity.

Senator MURRAY—Can I lead you with a question, if I may?

Dr Franklin—Yes.

Senator MURRAY—I am not really concerned about sexuality; I am concerned about discrimination. It has clearly been evidenced that persons who are not heterosexual are discriminated against. I am suggesting that, even when they return to heterosexuality, they remain discriminated against. Really I would like to know if you, in your counselling abilities and environment, have come across that problem.

Dr Franklin—For example, the person who may have a homosexual experience in their life and is too ashamed to say anything to other people about that?

Senator MURRAY—No. We know that if people have been heterosexual and become homosexual, they are discriminated against—there is enough anecdotal and real evidence to express that. But my interest as well is that, of course, people who come out of homosexuality remain discriminated against, because people will remember that they were seen in the homosexual environment. I think that is an area of discrimination which is missing in the debate. Because everyone is talking about how it is the homosexuals, those who are regarded as having a finite sexuality, who are discriminated against. But I am interested in those people who move up and down the continuum at different stages in their life, as Dr Cass outlined.

Ms Froome—I would suggest that there would be two parts to that. In moving between those places there is a sense of isolation for the person because they do not know where they belong. That sometimes occurs, from my experience of counselling people who are bisexual and who move into one community and then move out. And when they move out they feel isolated from here but they still have a connectedness—it is a sense of not fitting. The other thing is that, having moved into the homosexual realm, there is an awareness of the discrimination that is there.

So in lots of ways people in the community walk around with their blinkers on because they do not actually see what is happening. But when you have an experience of that, it raises your awareness about the subtleties and the impact that is actually there. In moving into that position and then going back, you take some of that awareness with you. You are able to notice it more and, certainly, if it is known that you have moved into this realm and moved back again, there are a lot of incidents where people are discriminated against, they are made fun of, they are teased, they are ostracised from their previous peers because now 'they are not the same as us.' You cannot go down the pub with your mates because they have their backs to the wall and all that sort of thing. It is a difficult process for those people who are moving and there is certainly a sense of isolation because of not knowing where they belong and not being able actually to own that place. Does that help?

Senator MURRAY—Yes, it does. Excuse my drawing you back to the discrimination, but I think fundamentally this bill is about discrimination, not about people's private lives. That is what we must seek to focus on.

The other area that I was very interested in, which you raised as a fundamental problem in our society, is the whole suicide area. You quite rightly picked up the fact that there is no statistical work done on the real causes of suicide, but I was very interested in your suicide ideation figure of between 65 and 85 per cent. Has that been differentiated for people of varied sexuality—and I include there the homosexuals, bisexuals, lesbians, transsexuals—from heterosexuals? Is the 65 to 85 per cent also represented in the heterosexual community or was it lower?

Ms Froome—My hunch is that it is lower in the heterosexual, but that is a hunch only—mainly because I think it is linked to the actual incidence of attempted suicide. It makes sense that if there are more attempted suicides if the ideation rate is that level that the proportion would be a similar thing. That is only a hunch.

The statistics that we have obviously are from feedback from people that we have in support groups, have contacted through the phone and other ways of actually having contact with people, with young people, without breaking the law, as it were. I do not have statistics about where the ideation levels are for heterosexuals.

Senator MURRAY—Your thesis, which I am instinctively responsive to, is that people who have these personality concerns, as evidenced in your counselling, will therefore evidence further and be in the ideation of suicide and attempted suicide and then actual suicide, and that that rate is going to be higher than in the heterosexual community who believe they have a sense of belonging. But I think it would be very useful for the committee if you were able to find out if any ideation work has been done in the heterosexual community and provide that comparative basis and come back to us.

Dr Franklin—It would also be very important to show where it is coming from, whether it is coming from the notion that because the person is homosexual or whatever, they have an innate tendency to suicide, or whether it is because their upbringing gives them an proclivity to suicide. What I have shown in my stuff is that there is no substantial, compelling difference between homosexuals and heterosexuals. It just has not been shown.

There are some tentative ideas that homosexuals and heterosexuals are different when it comes to suicide, but that is not attributable to being homosexual, it is attributable to the pressures that are on them, and it is quite different. That is why I take some differences to Viv Cass's approach to homosexuality. I am actually looking at the origins and the nature of the sexual preference, not a person's behaviour which is caused by social factors as well as their innate nature. It is quite different.

Senator MURRAY—This is my last area of questions. Does society as a whole need to be concerned with what is happening to our youth? This is evidenced in many ways. I see that your organisation is discriminated against by governments because of the title. If you called yourself something else you might not be discriminated against. My question is therefore a broader, practical one I guess. Do you believe there should be an overall youth agency, which might have divisions within it concerned with the homeless, the drug addicted, those with drug problems and, incidentally, gay and lesbian counselling services, so that overall we could encourage young people to have a one-stop shop, if you like? A person is not just gay or lesbian, or not just a drug addicted person; they probably have other things. They might be homeless and they might have other issues.

Dr Franklin—In my vision of the world, yes. But, in reality, we have

organisations such as family planning, we have marriage guidance and we have many other institutions which are well funded by heterosexual and homosexual dollars, and our organisations have to fight for every dollar that they can get. There is a huge inequity in that at the current time. It is quite clear to us that youth will not go to a heterosexual organisation. They just will not do it.

Senator MURRAY—If they are gay or lesbian?

Dr Franklin—Yes.

Ms Froome—Because they do not understand me.

Dr Franklin—Why should they go back and repeat the same thing that they are already getting from their parents and school?

Ms Froome—Why would I go back to Mum and Dad when they have already kicked me out of the house?

Senator MURRAY—So your answer to government is that, if they are concerned about youth, and suicide, and attempted suicide and a sense of belonging, they have to fund you?

Dr Franklin—They have to actively fund homosexual and heterosexual, yes.

Ms Froome—I think in an ideal world, absolutely, it would be great to have that process. But, if I was to just visualise a structure, we have underneath all the different areas. The young homosexual has to walk into the same building with all the other youth that have been vilified. Similarly for young people who might be injecting drug users or whatever, it means really exposing yourself. Part of their dilemma is they are absolutely terrified. So why would they want to make that even worse? Obviously, if we had enough money, we could create that kind of environment where it might be safe, ideally.

CHAIR—Ms Froome and Dr Franklin, thank you very much for your attendance here this morning and for the assistance you have given the committee in our inquiry.

[11.40 a.m.]

GREIG, Mr Brian Andrew, WA (Male) Delegate, Australian Council for Lesbian and Gay Rights (WA), PO Box 466, North Perth, Western Australia 6006

CHAIR—Welcome. In what capacity are you appearing before the committee?

Mr Greig—I am a spokesperson for the Australian Council for Lesbian and Gay Rights but I appear here today specifically representing the Western Australian branch of the organisation.

CHAIR—The committee has received your submission and a number of attachments that were attached to it. We thank you for that. We have previously authorised its publication, and it is now a public document. I now invite you to make an opening statement and, at the conclusion of your remarks, I will invite members of the committee to address questions to you.

Mr Greig—Thank you, Senator. Firstly, I thank the committee for the opportunity to submit the information which I have done, which was late. Time and resources are often difficult for voluntary organisations, as I am sure you would appreciate. I also thank the committee for the opportunity to appear. While he is here as an observer, I would like to take the opportunity to thank retired Senator Sid Spindler for taking the initiative to set all this in motion.

We have heard much today about statistics and data and psychological theories on biology versus genetics and academic papers presented by academic people. It has, in most respects, been largely dealt with in a third-person scenario.

For me, politics is personal and the personal is politics. I want to talk about me, why I am here and how I am here to give the committee some indication of what it is like, not merely to talk about this issue, but to live it.

At the age of 11 or 12, I was well aware of the fact that I was not heterosexual. This is an extremely difficult, confusing and isolating time for a young boy, as it is for anybody. I was unaware of any information, literature or education scenario which would allow me to deal with this, and it was too terrifying a concept to discuss with my parents.

I then found myself some years later at boarding school, where I was in an all-male school for five years. I experienced the extraordinary social and psychological isolation of being a gay male in an all-male environment and having a complete lack of education as to who I was and why I was. I did not know where to turn or what to say. I then found myself some years later at university where I took the initiative of approaching the only gay and lesbian identified group on campus. It is from there that I began to find the information that I was seeking and I discovered an entirely new world and a range of

thousands of people who were around me all the time but I had not known they were there.

I then found myself in 1989 as a 22 or 23 year old in a state where the Labor government was trying to repeal offensive anti-gay provisions in the criminal code which deemed me to be a criminal worthy of 14 years in prison, with or without whipping. Despite public polling which showed that 77 per cent of the state population were fully supportive of this reform, our gerrymandered upper house blocked it for the fifth consecutive time in about nine years.

I was outraged that the debate within the media and within the parliament was appalling, trivial, trite and irrelevant, and increasingly angry that people could say these things about me, despite the fact that I was a law-abiding citizen, a voter and a taxpayer. The bill was partly repealed in 1989, but only because one opposition backbencher—interestingly now the state's Attorney-General—crossed the floor and voted for the government bill, but on the proviso that the government concede his amendments.

It was to some extent blackmail, but the Labor government, which had tried five times to do this, conceded his amendments. They were in a number of parts. Firstly, he insisted that the age of consent be 21 and not 18. This has proved to be problematic in a number of areas, which I am happy to illustrate further. I note that, despite the passage of the Human Rights (Sexual Conduct) Act 1994 of the Commonwealth, the government has given no indication that it intends to reduce the age of consent from 21 to 18.

Secondly, a preamble was appended to the act and, although the preamble has no effect in law, it is utterly offensive and basically says that homosexual people remain in the eyes of the parliament second-class citizens and are a percentage of the population that the parliament neither likes nor wants, quite frankly.

Thirdly, there were two amendments added to section 181, I think, of the Criminal Code which then became clause 23 and clause 24 of the Criminal Code within that section. While I do not have them verbatim in front of me, they are in my written submissions. They are essentially in two parts. Firstly, the parliament has said that it is unlawful and a criminal offence to promote or encourage homosexuality, the penalty for which is one year in jail.

Secondly, it says that it is unlawful to teach homosexuality in schools, the penalty for which is one year in jail. These amendments are repugnant because they perpetuate the myth and the insidious mythology that homosexuality is something that can be promoted and encouraged and is something that can be taught, neither of which is true.

Because of my interest in this area and my increasing frustration and anger with the way that I and my brothers and sisters were being treated, I then involved myself in what is known as gay politics. That is how I find myself to be involved in the ACLGR and

presenting to the inquiry today.

That is the history of the decriminalisation, but further to that there remains, as the committee is aware, no anti-discrimination legislation in this state to protect gay men and lesbians from discrimination within the areas of employment, housing and provision of goods and services. There is some minimal legal redress available through the Commonwealth, but that is now under threat with proposed changes by the federal minister to the workplace reform bill.

The committee would be aware that, as was indicated earlier today, the Commissioner for Equal Opportunity, Commissioner June Williams, researched the issue of sexuality discrimination within the state for three years, finally producing her report in October 1994 which recommended to the government that sexuality be included in the equal opportunity act as a ground of complaint. That report was then made public, and as also was indicated earlier, there were approximately 400 public submissions, of which the overwhelming majority were in favour of the report. The then Attorney-General, Ms Cheryl Edwardes, said that she was going to do nothing and nothing was done.

That then prompted the lesbian and gay community in Western Australia to approach the state opposition to ask them if they would consider introducing the bill as an opposition bill, and to their credit they did so. It is now a matter of history that it was only last week that the bill came up for debate and vote where it was opposed and voted down, despite the fact that hard work on behalf of myself and others in lobbying coalition backbenchers made it very clear to us that there were a considerable number who would have been quite happy to support this bill if a conscience vote had been allowed.

We now find ourselves in the situation where those of us in Western Australia who are not heterosexual have no legal protections by the law. We appear and appeal to this committee today to argue in favour of the sexuality discrimination bill Commonwealth such that in the event that it is implemented we have some legal redress if and when we are discriminated against. I am now happy to answer questions from the committee.

CHAIR—Thank you very much for that oral presentation. I suppose it goes without saying that, following the events of last night, you would be in favour of an overriding Commonwealth sexuality discrimination legislation, or act of parliament.

Mr Greig—Yes, without question.

CHAIR—Have you given any consideration to the constitutional difficulties that may or may not arise by enactment of such legislation at a Commonwealth level?

Mr Greig—As I understand it, we have made approaches to a number of people with legal expertise in this area, Mr Wayne Morgan from Melbourne University being one of them. Their finding is that there is a constitutional basis on which the Commonwealth

could conceive this legislation. It is not an area of expertise I am intimately familiar with but, as I understand, part of it—not all of it, but part of it—hinges on the finding by the United Nations Human Rights Committee in the *Toonen v. Commonwealth* case where the UNHRC were asked if—I think they were asked—if the lack of antidiscrimination laws in Tasmania were a breach of Australia's international rights obligations. The committee said—and I am not speaking verbatim here, but they essentially said—in their view the term 'sex', as in gender, ought to be included to encompass the notion of sexuality.

CHAIR—Do you see the bill that we are discussing, the Sexuality Discrimination Bill 1995, being a perfect instrument? Has it got problems, and if so, what are those problems?

Mr Greig—No legislation is perfect, but some legislation has to be better than none, particularly for those of us in WA and Tasmania. I have some minor concerns about the bill, but they in no way influence my overwhelming support for the bill as a whole.

CHAIR—Would you care to put those minor concerns on the record, because if we decide to make a recommendation and it goes ahead we might be recommending that the legislation, the bill as we have got it so far, could be amended.

Mr Greig—One minor concern is the thorny issue of exemptions within the realm of religious bodies. My concern there is it boils down to a fundamental question really, I think, of if a person identifies as religious, does that give them a mandate to discriminate in deference to others. I do not have an easy answer to that. My concern is more that people who are homophobic for irrational reasons might claim under the act that they discriminated on the grounds of their religious belief despite not having any religious belief. It may be difficult in some cases to determine that that person has discriminated on the grounds of their religious belief.

Senator BOLKUS—I want to pick up on your point about discrimination in employment and the anticipated less protection federally. Have you looked at alternative ways of providing protection in the absence of WA legislation? Obviously industrial legislation is one way and this is another. Which would you prefer and why?

Mr Greig—As I understand it, there are basically three existing opportunities to seek legal redress with the Commonwealth. The first is HREOC, the Human Rights and Equal Opportunity Commission; but there are problems with that. For example, the gay and lesbian community in WA have lodged a claim of discrimination with HREOC against the WA museum over an issue which happened a year ago. But HREOC has not yet even opened that case because it is so snowed under with work.

It is frustrating that a case could take that long; whereas, if you had state based legislation, it could be remedied much more quickly. The other thing is that HREOC can only conciliate, which means that, in the event that HREOC finds that, yes, the person you

have complained against has done so wrongly, there is nothing that can effectively be done about it.

The other two remedies of which I am aware exist within the current industrial relations system. One is that, as I understand it, no worker anywhere in Australia whether on an award or not on an award can be sacked simply because of their sexuality. However, employers can refuse to hire them or refuse to promote them. Those who experience sexuality discrimination within the workplace do not have any clear means of legal redress either.

There is also an existing provision in Commonwealth legislation, both of which I detailed in my written submission, which means that a gay or lesbian teacher in a religious school or a heterosexual person in a defacto relationship in a religious school cannot be sacked from their job simply because of their situation. However, again, the religious school could refuse to hire or promote, et cetera, that person.

So you have the quite absurd situation in WA, for example, where a gay man or a lesbian applying for a job anywhere—it could be a religious school—simply is coy about who they are in the job interview and dodges tricky questions. It is not as if people are up-front about their homosexuality; that does not get them jobs. But if your employer starts asking you about your life, where you live and whether you are married or not, it can be difficult sometimes to answer those questions, honestly at least.

So we have the absurd situation in Western Australia where a person can be employed unwittingly by an employer who is homophobic, but then that person cannot be sacked if the employer later finds out. But, as is often the case, they experience continued, sustained, subtle discrimination to the point where they eventually leave anyway. That of course happens now within other areas such as racism and sexism. Legislation is not perfect, but it is better than none.

The other remedy which I referred to is what is known as the alternative remedy provisions within existing Commonwealth legislation as it relates to industrial relations. Western Australian and Tasmanian employees can appeal to the Commonwealth through the alternative remedy provision that exists in current IR legislation. However, my understanding is that the current minister, Peter Reith, intends to do away with that aspect of industrial relations within his WR bill. I met with him in Canberra approximately two weeks ago with a number of my colleagues to discuss this, but I do not know whether he conceded our point.

Senator BOLKUS—Has that mechanism been used in the west?

Mr Greig—Not that I know of.

Senator BOLKUS—Are you aware of any statistics kept in Western Australia on

the incidence of discrimination?

Mr Greig—Largely it is anecdotal. As the commissioner said earlier today, why go to the commission if it cannot do anything? I think, however, it is important to go to the commission so that they can start collecting some comprehensive data on this stuff. But it is not easy educating the community about that.

The data is clear on the number of inquiries. During 1993-94 there were 63 inquiries to the WA commission on the grounds of sexuality. In 1995-96 there were 115. That is approximately a 100 per cent increase in the last financial year. That does not mean that discrimination itself has increased but simply that more and more people are making the effort to contact the commission, more and more people are aware of the fact and educating themselves about the fact that the discrimination they are experiencing is unacceptable and they should do something about it.

Senator BOLKUS—You mentioned the Western Australian museum. I presume that is the incident with the withdrawal of the lease to run an exhibition.

Mr Greig—Yes.

Senator BOLKUS—That is one instance of, I suppose, government discrimination. Do you have many other examples of the arms of government discriminating in similar ways?

Mr Greig—Not unless you are going to look at issues like partnership recognition, superannuation, coronial rights, death benefits and so on, some of which come under state jurisdiction and some of which are Commonwealth.

Senator ELLISON—Just on those points—superannuation and coronial rights—what do you think needs amendment there?

Mr Greig—Quite specifically, Senator, with relation to superannuation, you have to actually deal with that act itself, because superannuation stands on its own. It is not related to other legislation, or at least it is with the Commonwealth; I am not clear about the state.

As it stands, the Superannuation Act gives definitions of relationships which are heterosexist in their intent. So, when it talks about next of kin, it specifically nominates opposite-sex partner or a blood line which runs through your immediate family. As the commissioner was saying earlier, if, for example, my partner is killed, I am not entitled to his superannuation or death benefit because our relationship is not recognised, despite the fact that we have been together for 10 years.

In order to address superannuation specifically, you would need to somehow amend

the act to either recognise homosexual relationships or to recognise no relationships. It is interesting that the Senate select committee which looked into superannuation, chaired by Senator John Watson from Tasmania, released a report on this approximately a year and a half ago—I think it was called the *17th report into workplace relations* or something like that—and their recommendation to the government, after investigating this, was to argue that the Commonwealth act should be changed such that the superannuant should be allowed to nominate anyone of their choosing with whom to leave their superannuation in the event of death, and I would advocate that also.

Senator ELLISON—And the coronial matter you mentioned; how should that be amended?

Mr Greig—I am not clear on how that works with the Commonwealth, but within the state there were changes made to the Coroner's Act approximately two years ago to allow next of kin to have a much greater say over the body and body parts of their deceased loved one. We intervened in that to the extent of lobbying the then Attorney-General to recognise same-sex partners, because there are far too many case where, for example, a gay man has died but his partner is not only denied access to his other partner through visitation rights in the hospital but, if and when that partner then dies, the surviving partner has no rights over the body of the deceased or the funeral arrangements.

We were told unequivocally by the then Attorney-General that she had no intention of doing anything about that because that would be inconsistent with other state legislation. I put to her that the age of consent issue was remarkably inconsistent, but did not get an answer.

Senator ELLISON—In other states have they got the same situation with respect to coronial rights?

Mr Greig—Not that I am aware of, Senator, but I understand Queensland is considering it.

Senator ELLISON—Are there any other aspects of state legislation which would need to be amended? We are talking about nuts-and-bolts stuff such as land tenure. There is nothing in land tenure, is there, that is a problem?

Mr Greig—There would be a vast range. I do not have the time or the resources to do that; but, for example, I understand that, as recently as last week, it was reported in New South Wales that the government in that state is looking at the question of partnership recognition for same-sex couples in that state. They are looking at introducing one bill which would take care of all the anomalies in existing legislation where there is discrimination. There are approximately 126 pieces of legislation which discriminate. This bill would, in a blanket fashion, remedy those areas of discrimination. So I dare say there would be roughly the same number of areas within Western Australian legislation where

that would also be applicable.

Senator ELLISON—Finally, you mentioned legislation going some way to remedy things. One of the previous witnesses mentioned parents throwing children out of the home because they said they were either gay or lesbian. The law is not really going to affect that much, is it? That is a family matter, or a matter between members of a family. People are not expecting that the law would cure that sort of situation, are they?

Mr Greig—No, nor do I. But I think it is important to understand that, at least from my point of view, there are really two different issues in relation to this legislation. One is the fact that it provides legal remedy when you are discriminated against. But, in some ways more importantly, it sets a benchmark, it takes a stand and says, 'This discrimination is unacceptable.' For example, in Western Australia because we have no benchmark it is open slather for discrimination against homosexual people. When Martin Luther King and his colleagues tried to introduce equal opportunity laws and civil rights for blacks in America, many whites argued against that and said, 'You can't change people's attitudes and opinions with legislation.' He retorted by saying, 'Judicial decrees may not change the heart but they can restrain the heartless.' I think that is important because what he is saying, and what I concur with, is that when the parliament takes a stand on behalf of the community and says, 'Look, this is wrong. We are providing a beacon, a sentinel of what is just,' that is often more important than the actual practicality of the bill itself.

Senator ELLISON—I think the chair asked about this. Do you agree with the inclusion of heterosexuality in the definition of sexuality?

Mr Greig—Yes. I have no problem with that.

Senator MURRAY—I understand that in your community's terminology a 'closet' homosexual is someone who is a practising homosexual, but privately. In other words, no-one is supposed to know.

Mr Greig—Yes, closet homosexual refers basically to gay men, usually, but possibly a lesbian, who understands in themselves that they are homosexual but who for whatever reasons—usually fear of persecution—lead a very clandestine life to the point that they do not tell their friends or families.

Senator MURRAY—So fear is the fundamental motive?

Mr Greig—Absolutely.

Senator MURRAY—I am not going to ask you to name them but my next question is as follows: do you know, to your certain knowledge, that there are members of the coalition in the Western Australian parliament who are closet homosexuals?

Mr Greig—Yes.

Senator MURRAY—Those people would be afraid to vote against their party. Would a conscience vote have allowed them to express a vote freely in favour of their homosexuality?

Mr Greig—Possibly, but I think the factors which decided that the coalition did not vote for that were different. It is also possible that those members of the coalition who are either homosexual or bisexual might have been more inclined to vote against it; if they had have voted for it under a conscience vote they might have drawn unnecessary attention to themselves.

Senator MURRAY—I am not going to press you to answer this question but if you wish to answer it please do so. Can you give me an idea of the numbers of persons in the coalition government?

Senator ELLISON—Mr Chairman, I wonder if that really is now getting a bit beyond the terms of reference.

Senator MURRAY—It might be sensitive. Let me tell you why I was asking the question and I will not press you to answer it. I was really seeking to see if the numbers were sufficient to have allowed the bill to pass, because if it was just one person it would make no difference. The purpose of my question is not to embarrass those persons in parliament but to draw attention to the possibility that, when this bill comes before the federal parliament, it may be the recommendation of this committee that it is wiser to allow or to recommend that the parties follow a conscience vote. If there are closet homosexuals in the federal parliament, then that fear issue may operate there. That is my purpose in raising the issue. But I am quite happy if you do not tell me about the numbers. Was it more than one? That is really my question.

Mr Greig—What is your ruling on whether or not I can answer, Mr Chairman?

Senator BOLKUS—I do not have trouble with this sort of question but once it got to identifying people we would be reasonably entitled to object. I cannot see any damage in a numbers question.

Senator ELLISON—It is just that, if it goes to party policy, it is not part of our terms of reference to say whether the mainstream or minor parties ought to have a conscience vote. It just does not appear in our terms of reference, but that is all I would say.

CHAIR—I am just a little bit nervous of a direction and we might do something that is a bit untoward. I certainly do not want to stifle debate. I feel that perhaps Senator Murray could make that point equally forcibly during debate in the Senate chamber rather

than before a committee of the Senate.

Senator MURRAY—Let me withdraw that particular question and pursue it as follows. Do you, to your certain knowledge, know whether any members of the federal parliament of any particular persuasion are closet homosexuals?

Mr Greig—Certainly, and I am pleased that we now have Australia's first openly homosexual member in Senator Bob Brown, who made a point of indicating that in his maiden speech.

Senator MURRAY—So would it be your view that if closet homosexuals are affected by fear and would not like to be identified by crossing the floor—for instance, on an issue of principle—that a conscience vote would allow them to more easily vote with the heterosexual parliamentarians who believe that non-discrimination is the right way to go?

Mr Greig—It is difficult to answer, Senator. I really think it is fifty-fifty. Some of them would be relieved at the opportunity of a conscience vote, but others would fear party reprisals, notwithstanding their personal situation.

Senator MURRAY—Thank you.

CHAIR—I want to return to the bill that is before us and explore some avenues of the bill. An area that has not been canvassed today is part 6, which deals with same sex couples. It has been put to the committee that what is happening here with this particular piece of proposed legislation is that it is the thin end of the wedge. Whilst the bill is not sanctioning marriage between same sex couples, that part is seen as the beginnings of a means to an end whereby the Commonwealth will be recognising same sex marriages. Have you got any views on the clauses contained in the bill currently or the rumoured concept about it being the thin end of the wedge?

Mr Greig—The lesbian and gay community have been agitating for a range of reforms for at least 25 years. We are always told that it is the thin edge of the wedge. It is a bit tiresome and a bit trite. All we are trying to achieve, and the only thing we have ever tried to achieve, is equality under the law. In relation to the specific aspects of the bill clause by clause, to be honest, I am not intimately familiar with them but, as I understand it, what the bill aims to do is to delete heterosexist references from Commonwealth legislation where it relates to couples. As far as I am concerned, that is not before time, it is perfectly just and I believe it would have the support of the majority of the community.

CHAIR—I think it probably goes a little bit further than that, but I will not press it at this moment in time. The definitions I have raised—

Senator BOLKUS—You are not arguing that it recognises same sex marriages?

CHAIR—No, I am not arguing that, but I still think it goes further than what Mr Greig said, but he has not got it in front of him so I am not going to press it at this moment because it would take you some time to study it.

Mr Greig—As I understand it, the Commonwealth does not have the power to recognise same sex relationships or to impose same sex marriage rights.

Senator BOLKUS—That is a constitutional argument which continual governments have maintained.

Mr Greig—As opposed to deleting discrimination against people who identify as same sex couples.

CHAIR—On the definition of sexuality, I think you responded to Senator Murray by saying you do not have a problem with the inclusion of heterosexuality in the definitions?

Mr Greig—No.

CHAIR—On the matter of exemptions which you addressed earlier as well, that is one of the very contentious areas of the proposed bill. The one that has received I think most attention so far is the area of education. Have you any further comment on that?

Mr Greig—Yes, indeed. I think the paranoia and fear which revolves around this question is really important to study. It is based on essentially two fundamental myths. The first is that homosexuality can be taught. There is this extraordinarily irrational fear in the community that we must prevent homosexual teachers from existing and from teaching geography, maths and arts, because their very presence in the classroom may influence a child to become homosexual.

I make the point that if that were the case there would not be one single gay or lesbian person in the entire country because there is not one school in the entire country which teaches homosexuality. What you can do is educate young gay men and lesbians about who they are and to bring them to understand that they are not alone, there are support services for them and they have a right to exist free from discrimination.

I think also that there is the fear that by educating people about homosexuality you can in some way encourage them or teach them to be homosexual. That is patent nonsense as well. When I look back on my own life and my experiences at both primary and secondary school I feel very angry and very frustrated about the complete lack of information or the existence of misinformation which caused me so much psychological pain and isolation for so many years. I look forward to the time when we have a curriculum at both a state and federal level which deals with homophobia in the same way that racism is dealt with.

CHAIR—And religious institutions and organisations?

Mr Greig—Again that comes down to the fundamental issue of whether or not, if a party identifies as religious, that gives them a mandate to discriminate. My feeling is no, it should not. It is worth noting that the submissions from both the Anglican Church of WA and the Uniting Church of WA to the state equal opportunity commission report advocated that there should be no exemptions for religious organisations and that simply because they are religious organisations it does not give them the right to discriminate.

I think the political reality, however, is that there are some churches in Australia that have considerable sway with governments of either political colour and, as a matter of political process and political reality, it may be necessary to concede some exemptions on the grounds of religious belief. But as I indicated earlier, one of my concerns is that I fear that people who may discriminate unjustly could then jump up and down and say they did so on the basis of religious belief. That would be difficult to determine.

CHAIR—My next question relates to the bill and the prohibition of discrimination and the means of resolving alleged discrimination. You mentioned in your oral submission, I cannot recall if it was in the written submission, your complaint to HREOC about the art gallery issue and the fact that 12 months down the line nothing has happened on that. Am I correct about what I recall?

Mr Greig—That is correct. We lodged the complaint in December 1995. After about six months I had not heard anything so I wrote to HREOC and asked them if and when they might be opening our case. I have not even had a reply to that letter.

CHAIR—The remedies contained in the bill rely very heavily on HREOC. In the recent budget, HREOC has been subject to a 3½ per cent cut in its funding for this current year and there is going to be ongoing cuts next year and the year after.

Mr Greig—I am aware of that and I expressed those concerns in my written submission.

Senator ELLISON—In your briefing notes on the state bill you state:

Q: Are there exemptions to the bill?

A: Yes, complete exemptions apply to all religious bodies and educational institutions, charity organisations and private landowners.

I asked the Commissioner for Equal Opportunity, June Williams, about this. The evidence, as I recall it, was that there were no exemptions for education in the state legislation, whereas the bill we have, Senator Spindler's bill, includes the educational exemption. What is the position in relation to the state bill, is it exempted or not?

Mr Greig—In the state bill, which was defeated last week, one of the general exemptions refers to educational institutions which are religious educational institutions, it does not apply to educational institutions as a whole. I make the point that that exemption

applies to all grounds of complaint under the WA act and had not been singled out for sexuality. On that basis I had no problem with it.

Senator ELLISON—Would agree that there is a big difference between state legislation, which we saw last week, and the bill that this committee is looking at, in so far as the exemptions are concerned?

Mr Greig—There is a clear difference, yes; I agree.

Senator ELLISON—The Catholic Archbishop for Western Australia mentioned some reservation, I believe, about the state bill. Do you know what that reservation was?

Mr Greig—Yes, indeed, and I found it very curious and rather disappointing that he made that comment. It is interesting to note that the first gay rights movement which was ever started in Western Australia was started 25 years ago and it was called CAMP—campaign against moral persecution. Archbishop Hickey, as a young priest, was involved with that group and helped facilitate it. He spoke out publicly on many occasions, advocating tolerance and anti-discrimination provisions for homosexual people.

I sent out a range of briefing notes about the bill to a range of politicians and community leaders, explaining precisely what the bill did and did not mean. If the committee will allow me, I am happy to illustrate. There was a range of papers such as these, which detailed simply and clearly various facts about the bill. I draw your attention to this one, No. 4, in which I identify specifically what the bill does not mean. It saddened me, therefore, to see Archbishop Hickey's press release basically turn that entire thing on its head and say, 'This is what the bill might mean,' which in my view was dishonest. I also found it curious that he left it to the eleventh hour to make the statement.

CHAIR—For the record, Mr Greig has just presented the committee with fact sheets, numbered one to six.

Senator BULKUS—Can we have them incorporated in *Hansard*?

CHAIR—Because of the volume of material that we have been receiving we have actually been taking things as exhibits rather than as incorporations.

Senator BULKUS—What about No. 4 then? I think No. 4 is relevant to the argument.

CHAIR—Is it the wish of the committee that the document be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The document read as follows—

DID YOU KNOW ?

Fact Sheet #4 September 1996

THE SEXUALITY ANTI-DISCRIMINATION BILL currently before Parliament *only* applies to employment, housing and the provision of goods and services.

It does **NOT** mean gay and lesbian couples can get married.

It does **NOT** mean gay and lesbian couples can adopt children or access the IVF program.

It does **NOT** mean same-sex couples will be recognised by law.

It does **NOT** mean the age of consent for gay men (21) will be lowered.

It does **NOT** mean that employers will be forced to hire homosexual people.

It does **NOT** mean homosexuality could be promoted in schools.

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Monday, 23 September 1996

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Mr Greig—Mr Chairman, I draw your attention to No. 3, which is in front of you. You will see there a quote from Archbishop Hickey in which he indicates very clearly that the church does not support discrimination on the basic grounds of employment, housing, et cetera. For the record, I will read Archbishop Hickey's comment in a letter to the Western Australian gay and lesbian community, dated 31 May 1996:

In the areas of employment, housing and basic human rights, the Church does not support discrimination against homosexuals.

Further to that, in reference to the Catholic Church, the National Committee for Justice and Peace, sponsored by the Catholic Bishops of Australia, said on 15 February 1992:

We deplore discrimination, and affirm the obligation on those responsible for administering the law to ensure just and fair treatment of homosexuals.

Finally, I add a quote from Cardinal Basil Hume, Archbishop of Westminster, as reported in the *West Australian* of 8 March 1995:

Nothing in the Church's teaching can be said to support or sanction, even implicitly, the victimisation of homosexual men and women. . . in employment or protection from violence, the Catholic Church will oppose discrimination against homosexuals.

CHAIR—I have one final question. I am seeking your opinion on the ACT Domestic Relationships Act. You alluded to it in your submission. The committee has heard evidence that suggested that it is a very simple and effective way to resolve matters arising from the breakdown of a relationship, particularly a same-sex relationship. Have you any further comment on that?

Mr Greig—I am not intimately familiar with the ACT act; but, as I understand it, it only comes into play if a same-sex couple has taken the option of actually registering their relationship. So that provides inherent problems initially because, in the event of unexpected break-up or sudden death, you are not covered. But to the extent that that bill, as I understand it, does recognise and advocate the rights of same-sex couples in relation to, I think, de facto heterosexual couples, then I endorse it.

CHAIR—Have you any final comments for the committee?

Mr Greig—If I could just glance over my notes, Mr Chairman, I think not, I have raised the points that I wanted to raise.

CHAIR—I had my eye on the sheaf of papers you have got there and I am wondering whether you have brought them to take away again or whether you want to put them into—

Mr Greig—You would be aware that the vote to oppose the anti-discrimination bill

in Western Australia was only defeated last week. I have taken the liberty of compiling articles from the *West Australian* newspaper in relation to that and, as requested, have made eight copies which I table for your consideration.

CHAIR—Thank you. We will identify selected newspaper articles relating to the bill; we will accept them as exhibits—

Mr Greig—They are not so much selected as being the only ones which have appeared. I have not culled them in any way.

CHAIR—We will accept them as exhibits.

Senator MURRAY—I have just had a note passed to me and I think it is relevant. Just for the record, it should be confirmed with Brian Greig that the education exemption in the bill refers to religious schools and institutions only, not to religious institutions *per se*.

Mr Greig—Yes.

CHAIR—Thank you very much for your attendance here and the assistance you have given the committee today. The committee stands adjourned until 2 p.m.

Luncheon adjournment

[2.05 p.m.]

BARICH, Mr John Robert, President, Australian Family Association, 949 Wellington Street, West Perth, Western Australia 6005

EGAN, Mr Richard John, Executive Member, Australian Family Association, 2/949 Wellington Street, West Perth, Western Australia

CHAIR—I reconvene the public hearing of the inquiry into sexuality discrimination and welcome representatives of the Australian Family Association, Western Australian branch, to the table. I thank you for your submission which you submitted to the inquiry. The committee has earlier decided to publish the submission and it is now part of the public domain, the evidence on this particular inquiry. I now invite you to speak to that submission or, indeed, to add other matters if you choose to do so. At the conclusion of your remarks, I will invite members of the committee to address questions to you.

Mr Barich—Thank you, Senator. I would like to add a few more things. Until sodomy was decriminalised and the Mardi Gras was televised on my ABC, the case for a disadvantaged minority may have been sustainable. What we are questioning is whether homosexuals still remain a disadvantaged minority, and we say that today a reassessment is in order. Why do we say this? For three reasons. First, homosexuals enjoy the same protection under the law of basic civil rights as anyone else. Second, we contend that behaviour should not be the basis of civil rights legislation. Homosexuality is not a benign factor like race or gender but is primarily a behaviour based activity. We do not extend special rights to other behaviour based groups—for instance, smokers or stamp collectors—therefore we do not see any need for distinction.

We also feel that the analogy between homosexuality and race has proven to be insupportable, and for three reasons. First, economic, educational and cultural opportunities are usually denied to minority groups. We do not see that being the case in the situation of homosexuals who have higher than average annual income and therefore you see the competition for the so-called 'pink dollar' that Mr Kennett and others are currently embarking on. Homosexuals are, more than often, tertiary educated and they have quite extensive talents in the cultural world such as in art, and so on. So that is our point about the analogy not being sound. We also think that a disadvantaged minority must have an immutable trait and we do not see that being the case. A black person is a black person. But we contend that gays can alter their behaviour if they so wish. Later on I will be mentioning people who are of that opinion—expert people.

The third point we make is that, again, for a disadvantaged minority, you need a class which demonstrates political powerlessness. We do not see that in the homosexual community. In fact, we find that their influence in the community is staggering, given the small percentage of the population that they represent. In summary, we think that the gay rights laws meet none of the traditional criteria for human rights protection.

I go on to talk about some of the other matters. During the debate here in Perth recently, the gay lobby made a lot of the high percentage of youth that are homosexual and who suicide. We totally attack that. We do not believe it to be correct, and we have tabled an article from the Institute of Family Studies. A man called de Vaus has done a lot of research and cannot find any evidence whatever. We have released that to the media but the media has chosen not to give it any publicity; in other words, accepting the homosexual position totally.

We also agree with the Catholic Archbishop of Perth that the complete legitimisation of homosexuality will render self-restraint by those people who want it almost impossible. In that instance, we draw attention to the existence of Homosexuals Anonymous—people who do not want to live the homosexual lifestyle. This legislation that is currently being examined would be a hindrance to them. To show that there are people who want to opt out of the lifestyle, I included a reference to a book by Professor Satinover, *Homosexuality and the Politics of Truth*, and I have given the committee a blurb about it, where he demonstrates how it is possible to change your lifestyle if you so wish.

My second last point is that we have claimed in the Perth debate that there is a homosexual agenda. They have denied it. We can prove it conclusively from their own publications, and the agenda we categorise as the salami tactics, that they take a slice at a time until they have got the whole salami. At the moment it is what is in that bill. Last week, of course, it was what Henderson wanted to give them. That has been denied to them but this committee is looking at advancing that. We say that they are looking for lowering the age of consent; in Holland it is down to 12. They want superannuation rights, adoption rights and the right to proselytise, especially in schools, and we consider that to be the most threatening to marriage and the family. To support that we have tabled a statement from our national executive which states that the Australian Family Association opposes the legislation primarily because certain passages in the second reading speech to parliament clearly indicate what the real objective of the bill is, namely, to secure recognition of homosexual and lesbian partnerships as real marriages and the domestic relationship of the partners as constituting a family. For both those reasons we see that as a threat to our position.

Mr Egan—The only thing I would like to add to what John said and to the submission is a recent court case by the South Australian Supreme Court, the decision of *Pearce v. the South Australian Health Commissioner*, which had to do with the Commonwealth Sex Discrimination Act and its interaction with laws governing reproductive technology in South Australia. The finding in that court case was that a single woman could not be denied access to reproductive technology on the grounds that it would discriminate against her on marital status. It seems quite clear to me on reading that case that, if the sexuality discrimination bill did not already make it so, in the light of that court decision it is now quite certain that this bill, if enacted, would enable homosexual or lesbian couples to access both reproductive technology and adoption. That is a matter that

perhaps has not come out clearly in the debate, at least in the public debate, to this point. Perhaps those things have been seen as down the track a bit further, but it does seem to me in the light of that court case that that step is actually built into this bill in the light of that Supreme Court ruling.

CHAIR—Thank you. Mr Barich has presented the committee with a supplementary submission, which is essentially the document you spoke to in your verbal submission, and a number of attachments which in your oral presentation you identified on the way through. Is it the wish of the committee that the supplementary submission and the other documents as identified by Mr Barich be accepted as exhibits to the committee? There being no objection, it is so ordered.

Coming back to your main submission, Mr Barich or Mr Egan, whoever chooses to, in this submission the Australian Family Association upholds sexuality and transgender anti-discrimination legislation. But is it not a fact that sex reassignment operations are currently conducted by doctors and people's sexes are changed by the medical profession. Do you oppose these operations?

Mr Egan—The Western Australian government is currently working on a bill that will specifically deal with the question of gender reassignment as a discrete category. I understand that South Australia already has such a bill and that the New South Wales parliament recently passed one. We think it is an issue that raises some different questions than the broader issue. We note here that transgender is defined in this legislation as a much broader category of people than those who undergo gender reassignment procedures. That in fact is only part A of the definition in this bill; there are three other categories, including, as I read it, I may be mistaken, but it seems to me category D seeks to cover those who want to identify neither as male nor female but as transsexual, understood as a new gender or beyond gender or outside of gender. So I think the catchment of this bill is much wider than the specific question of gender reassignment.

In regard to gender reassignment, we understand there are conflicting views in the psychiatric profession, but we certainly do not purport to be experts on it. One psychiatrist I spoke to about the matter had some doubts about the diagnosis of gender dysphoria, which is the usual diagnosis leading to these reassignments. Secondly, even if one acknowledges the condition of gender dysphoria, there are some serious questions as to whether the medical procedures are the appropriate way of dealing with what is essentially a perceptual mental illness. Again, we do not have a firm view on what is a matter for the psychiatric experts. So our principal objections to this act are that it is going way beyond certainly the gender reassignment question which may deserve to be considered in its own right.

CHAIR—Do you have any references on that gender dysphoria argument that you are using?

Mr Egan—The psychiatric assessments of it?

CHAIR—Yes.

Mr Egan—No, I have not. They are purely verbal consultations I did when the matter came up in the state parliament here.

CHAIR—The American Psychiatric Association has taken homosexuality off the diagnostic and statistical manual of mental disorders. Are you in any way arguing that they were wrong in doing that? I understand it happened way back—

Mr Egan—There was certainly a huge political debate at the time, and there would be a dissenting school of psychiatrists. My understanding is that psychiatry is not an exact science, that among psychiatrists themselves they would have widely differing assessments on questions such as homosexuality and gender dysphoria. Therefore, whoever at the time could get a majority up on the floor of the annual congress of the American Psychiatric Association could determine what goes in and out of the manual. I understand that recently there have been attempts to get homophobia listed in the manual, so that just shows how times and assessments change. It is clearly a political and ideological debate as well as a psychiatric one.

Senator MURRAY—Is the Australian Family Association a large organisation in Western Australia?

Mr Barich—I suppose it depends on what you mean by large. We have got lots of families, so if you take all the families in it, it is large. How large is the Democrats' party?

Senator MURRAY—I just wanted to get a picture, without having your smart answer if I may say so. I just wanted to get a picture for my own understanding of just how large you are.

Mr Barich—Do you want to know our membership—how many members we have got?

Senator MURRAY—I did not ask that question; I just asked whether you were a large organisation. For instance, do you go through the whole of the state or are you just in Perth?

Mr Barich—No, we are national.

Senator MURRAY—I understand that. It says here it is the Australian Family Association Western Australia branch—

Mr Barich—Throughout the state—I see. Fifty per cent of our members are in the country and 50 per cent in Perth.

Senator MURRAY—Is the Australian Family Association largely a Catholic body or open to all religious denominations?

Mr Barich—Again, I do not want to be disrespectful, but how many Catholics are in the Democrats' party? We do not ask that question. Do you ask that question?

Senator MURRAY—I want to know where you are coming from in terms of your particular stance.

Mr Barich—We have no affiliation with any church. It is in our aims and objects. We are non-political, non-sectarian, non-religious, non-smoking—we are all the 'nons'.

Senator MURRAY—Pretty aggressive too, I notice.

Mr Barich—Absolutely. We feel very strongly about these issues.

Senator MURRAY—Yes, I see. Even when you are asked a polite question you like to be aggressive.

Mr Barich—No, I only asked you back to understand what you are telling me.

Senator MURRAY—Right. Are you familiar with the Confederate Action Party?

Mr Egan—Yes, Senator—it is in the press.

Mr Barich—We read of it in the papers, yes. We do not like them.

Senator MURRAY—I understand that they joined with you in a rally to oppose the sexual privacy bill in October 1994.

Mr Egan—I do not believe they joined with us; there was a number of organisations that put on a rally and they were not part of the planning of the rally, but they turned up on the day in some numbers. We, from time to time, have attempts by, what I would call, right wing fringe groups to come along to our meetings or infiltrate and we show them the door as soon as possible, because we find much of their rhetoric and positions quite unpalatable.

Senator MURRAY—Is the National Civic Council associated with you? Do you share money and resources?

Mr Egan—We do indeed. It is a sister organisation. The National Civic Council

has a long interest in family policy. Some decades ago our national president, Mr B.A. Santamaria, played a part in setting up the Australian Family Association. In most states we share offices, and my employment, for example, is with the National Civic Council, but I would spend a day or two a week doing work for the Family Association. On the other hand, it has its own national executive and its own state officials and its own constitution. So it functions with some independence, but certainly with significant resource support from the National Civic Council.

Senator MURRAY—Thank you, Mr Egan, I appreciate the tenor of your reply. Is Focus on the Family also part of your—

Mr Egan—No, Focus on the Family is an international organisation directed by, as I understand it, Dr James Dobson, who has had a long public role in the United States. He is associated quite specifically with the evangelical branch of Christianity. Our former national secretary now happens to be working for Focus on the Family. He also happens to be an evangelical Christian. It is an organisation that we would obviously get newsletters from and exchange information with from time to time. But we have no formal links with them.

Senator MURRAY—The Anglican, Catholic and Uniting Churches, and I cannot quote their words as I do not have them, apparently have, at different stages, issued statements, particularly one in WA on 29 June 1991, about the equal application of human rights to all people. Does your organisation support that statement?

Mr Egan—I am not familiar with the statement, so I cannot say.

Senator MURRAY—I understand that.

Mr Egan—If you are asking a question about the equal application of human rights, I repeat the point made in our submission, that we certainly view homosexuals or people of any other sexuality—all those covered by this bill—as human persons. We believe they are all equally entitled to rights of liberty, protection of person and so forth. We have no argument with that, at all.

But it is not our belief that discrimination legislation, as such, is part of equal rights for people. I think that is an easily proven assertion, because we simply do not make discrimination laws that say, 'You can't take anything into account in how you treat people.' The definition of discrimination in this bill is: can you treat someone more favourably than someone else, taking into account something to do with their sexuality. That is how I read the bill. There are lots of other things that we do not outlaw discrimination on, the colour of someone's hair, for example.

Senator MURRAY—Or lack of it.

Mr Egan—Or lack of it, and so on. Perhaps more significant, as my colleague

pointed to, is other behavioural matters, no matter how much bound up with the person and their values and life experience those things might be. Our complaint is not against a class of people and their entitlement to equal rights. We would certainly support equal rights within that understanding that I am putting forward.

Senator MURRAY—I made the remark to someone in discussion earlier today that we really have to distinguish between discrimination, in terms of a principle, and sexuality, which is an issue about how people are and how they feel about themselves. If we look at the issue of discrimination separately from that of sexuality, do you accept that there is a common thread in a generic approach to discrimination? When the argument is against the fact that you should not discriminate against race, sex, language, or religion, or those sorts of things, we all accept that there are nuances within that, but as a broad principle—

Mr Egan—No, to be frank, we would have to say that we think there are serious problems with most discrimination legislation. That is not because we favour treating people wrongly because they are of a particular race or whatever. I think my own work in defence of refugees from a particular Asian country is well enough known to be an illustration of that point in regard to race.

On the whole, we do not favour even racial discrimination legislation, particularly when it reaches into decisions that are made by individuals that really are as much part of the private sphere as of the public sphere. We think the boundary is drawn too much. For example, we may be comfortable with this. We have not thought it through and set all the boundaries we would want to set, but it may be proper to say that the Public Service, for example, ought not to discriminate on the grounds of race and so forth, because it is a major employer and so on; but we think it is a problem when you get down to Joe who is running the corner deli and is employing one or two people.

We think that personal freedom ought to mean that the decision as to whom he employs or does not employ largely should be a matter for Joe, and he ought to be able to take into account whatever factors he likes, because the smallness and closeness of the working environment really mean that paramount in his concerns is having a small group of people who are going to get on well and work together well under his direction. That becomes different, when you have got a BHP with thousands of employees.

Senator MURRAY—But do you not think that, practically, that is what occurs in society? To use your example, Joe the corner cafe person may not like blue-eyed, blonde-haired females, so when that person turns up in answer to an application for a job, he simply will not employ them. Is that not what actually happens?

Mr Egan—That can be the case but, if Joe looks at her a bit funnily and if he says anything inadvertent that suggests that his not employing her may be to do with her femaleness, then she has got the potential to take him before the Human Rights and Equal

Opportunity Commission. With the way that process is set up, it does seem to us that the odds are stacked against the person against whom the complaint is made. It is they who must deliver all documents; it is they who must appear at any required hearings; it is they who do not have the right to be represented by counsel; and it is they who are not protected from making self-incriminatory statements.

Even if Joe kept his reasons to himself, once the complainant takes him before the tribunal and he is asked on oath, 'Was this a factor in your deciding not to employ her?' unless he is prepared to perjure himself, he has to say, 'Yes, it was a factor,' and that lays him open to punitive damages and so forth. There is no doubt at all that discrimination legislation reaches right down to that micro level of individuals making decisions about whom they closely associate with in regard to goods and services, employment and residential housing.

Senator MURRAY—Statistically, I am not up to speed but perhaps you are. Could you illustrate for us the number of instances in which the Joes of this world are—

Mr Egan—I am afraid I cannot give the reference, although I probably could find it, given time, but the classic case would be under the New South Wales Equal Opportunity Act, where a Christian couple had either a single room or an investment house. It could not have been in the family home, or they would have been exempt, but perhaps it was the house next door or just a single investment housing they held. A defacto pair applied to rent the place. This particular couple interpreted their Christian obligations to mean that, if they rented the pair the place, they would be either endorsing their lifestyle or in some way giving approval to what they rightly or wrongly believed was living immorally. My understanding is that, as a result of a complaint against them from the defacto pair, the Christian couple ended up receiving a fine of \$40,000. That is one example.

I have not made a study of tribunal decisions, so I do not know how much the Joe kind of example is a reality, but I certainly know from reading the legislation that Joes are potentially at risk of complaints being laid against them. Even if at the end the complaint is dismissed as frivolous or vexatious or not founded, it is still inviting a culture of complaint against people, in which they bear significant costs even just in defending themselves.

Senator MURRAY—In summary, if I can understand your position and restate it—and please tell me if I have got it right or not—as a broad principle across the range of anti-discrimination legislation, picking up race, language, religion, culture, sexuality and gender within that, your principle—without regard to the particular issues of sexuality concerned with this bill—is that anti-discrimination legislation in Australia has gone too far, and is too intrusive into the average person's relationship.

Mr Egan—Yes; that is certainly our position.

Senator MURRAY—And then, over and above that broad principle approach to anti-discrimination legislation, you say with respect to this homosexuality issue that there are particular issues there which make your association very uncomfortable.

Mr Egan—Yes. We say about that, essentially, that people have widely different assessments of sexuality. A whole spectrum of views on any particular sexuality is held in Australia and, therefore, there is perhaps not the same level of consensus that there would be, say, on the race question in Australia, at this point. That may well change over time, but it does seem to me that this legislation would certainly have to fall into the category of attempting a social engineering project—attempting to eliminate discrimination—and in fact that is the stated object of the bill.

The purpose of this bill is to eliminate as far as possible discrimination against people on the basis of their sexuality or transgender identity, and there is no doubt that, with the way in which the bill is framed, it seeks to use every possible Commonwealth head of power to make the reach of the bill as comprehensive as possible. So, yes, I think there is a difference, simply because sexuality is something that people are likely to have stronger feelings about in some cases than they have about race or gender or some of the other matters. But I would not want to make it too much of a different principle. Essentially, it is the same kinds of objections that are at stake.

Senator MURRAY—Thank you, Mr Egan. My last question is to Mr Barich. How is it that I can have a reasoned question and answer situation with Mr Egan and that I can get a good response and I can thoroughly understand his point of view, but from you I get aggression and up-tightness? Are you homophobic to such an extent that you are aggressive in this environment automatically, or is it a cultural problem we have? Why did you behave in a manner entirely different from Mr Egan's?

Mr Barich—Ask Mr Egan.

Mr Egan—He behaves that way to me, as well! It is a general characteristic. I could be racist and say it is because he has got a Croatian background, but I might be had up before the discrimination tribunal, if I did.

Senator MURRAY—I make the point very deliberately, you see. Here, in a difference of views, we have had a reasoned discussion, but the equivalent reaction from Mr Barich resulted in hostility both from me and him, and I say to you, with respect, that that is the problem when you are dealing with an anti-discrimination bill. The way in which you discriminate may in fact be acceptable to the person who is discriminated against, because of the way in which it is expressed and the reasonability of it. The way in which Mr Barich might react might be completely the other way.

Mr Egan—Yes, but the question in both instances is whether it should give rise to a legal action, as opposed to it just being something that someone might justly feel upset

about. There are lots of things in life that upset us. There are lots of people that we do not get on with and that we are better off staying away from. But, whether that should give rise to legal actions that can result in significant fines, or in some instances in imprisonment, if you do not go along with what I believe are the commission's somewhat draconian rules, is another matter.

Senator MURRAY—Thank you, Mr Egan.

Senator ELLISON—Mr Egan, I understand that in your supplementary submission you are saying that there is sufficient provision in the law to cater for same sex couples and the rights that they enjoy. For instance, there is the change in the Family Court's attitude to custody matters, mentioned by the Chief Justice of Western Australia, with equitable principles applying to property disputes being capable of being applied to same sex relationships. Are you are saying that there is sufficient—

Mr Egan—Let me say it this way, and maybe make a broader statement. In terms of some of the particular benefits that are on the homosexual lobby's agenda, as I understand it—superannuation, intestacy, property division and so on—we have got no objection in principle to those things being worked out on the normal basis of the laws of equity. My understanding, from Justice David Malcolm's paper, is that there has been significant advance in the laws of equity so that some things such as emotional dependency and other things can be taken into account, for example, in property and separation. We have no objection to that.

Within the homosexual lobby there has been a debate on the two ways to go, particularly in the New South Wales context. One is to try to get an equivalence between same-sex or domestic relationships and marriage by first of all using the de facto situation as the stepping stone. There is some serious debate within the homosexual lobby as to how close to marriage they want to get, because many of their apologists say that we have got something different. In some cases they say they have got something better than marriage. So they are not entirely sure they want to get locked into the institution of marriage, but certainly one element of them want to pursue the equivalence with de facto relationships.

The other way of tackling it is simply to get the piece by piece gains in particular areas using the new concept of 'significant other'. The idea is that in legislation normally a spouse is entitled to certain things. For example, in regard to the coroners act, the transplant act and so on, normally there is provision for a spouse to be able to do certain things. Their proposal, as I understand it, is to allow a 'significant other', which would encompass a same-sex partner, to do certain things. Again, on that ground we have no objection as long as the community understands that two brothers who may not be married and are very close, a grandmother and a granddaughter or any other two single people—in fact, three people or whatever—may be included in the 'significant other' as well.

In some cases, the cost of that is going to be more than the community wants, and

the community has to make a choice about whether we are going to continue to give special privileges to marriage and, flowing from that, perhaps to de facto marriages because of their particular role in the bearing and raising of children, or decide whether we are going to extend all of our social security provisions and so on so that all kinds of people can be claimed as dependants or treated as 'significant others'.

So the thing that we object to is identifying a same-sex relationship as having equivalent social status to marriage and therefore being the locus for the same set of benefits and responsibilities as marriage.

Senator ELLISON—I understand that, but at the same time you say that you do not have an objection under various other provisions because there has been this relationship that can be relied on for—

Mr Egan—In simple justice, if two fellows are living together and if one gives up his time and employment to care for the other, or if one is working but supporting the other who may be suffering from a terminal illness of some kind or whatever, the courts should be able to take the real relationship into account. That is different from how the courts handle marriage. What they say in regard to marriage is marriage is an institution which automatically conveys a certain understanding of the contract involved. I do not think you can say the same thing for same-sex relationships because, on their own account of things, they take a widely different shape and form. That may be more and more true of marriage today as well, but then that is an argument for abolishing marriage, not giving same-sex relationships the equivalent status.

Senator ELLISON—So, to get the benefit of the same-sex relationship, you would still have to prove the existence of the relationship—

Mr Egan—You would have to prove an existence of the particular element that gives rise to a claim in justice for whatever it might be.

Senator ELLISON—Such as dependency or—

Mr Egan—Such as dependency or whatever, or in the case of, say, the Coroners Act it is a question of who can give permission for a post-mortem—well, maybe to be named on a statutory declaration by the other party or to have been named in some way as a beneficiary or whatever, which then opens it up and simply says that the community is going to take into account all kinds of relationships that are of significance to people. That means the person is choosing what relationships are significant and what are not, as opposed to society saying there is one relationship that we treat differently from others. We treat married couples differently from beer-drinking mates who go back 40 years. They may in fact be closer than a married couple, but we do not give rise to any social benefits usually arising out of that kind of close mateship. I do not know if that point is understood, but—

Senator ELLISON—I think you have explained that. I have no further questions.

CHAIR—I have a copy of the then Senator Spindler's second reading speech to the bill in the parliament. I believe you are reading into the second reading speech a little bit more than what actually was contained in the speech itself. Do you have the speech there?

Mr Barich—Melbourne gave us this; I did not check it, I assumed it was correct.

Mr Egan—I tend to work off bills rather than second reading speeches because my understanding is that the second reading speech only comes into play when the plain meaning of the words is in dispute before the court, so then the second reading speech may be a guide. But if there is something in particular in the second reading speech that you want to draw to my attention and see how it relates to our analysis, I am happy to attempt to answer that.

CHAIR—It is in your attachment 6 to the Sexuality Discrimination Bill. It is the one that Mr Barich put to us today. In the opening line you have:

The AFA opposes this legislation primarily because certain passages in the Second Reading Speech to Parliament clearly indicate that the real objective of the Bill is, namely—

And so on and so forth.

Mr Egan—This document was prepared in our Melbourne office. I do not know what passages in the second reading speech they are alluding to; I would have to check that and see. I recall the earlier issues paper that the Democrats issued on this subject. There certainly was discussion of the goals, as I have been talking about, of securing recognition as marriages. I could not answer as to what extent the second reading speech goes that far.

We might be able to take that on notice if we could. If we find passages that substantiate our statement here we will report those to the committee. If we find that this has been inaccurately put together and should read differently we might propose an emendation of it.

CHAIR—I leave it in your hands.

Mr Egan—The point we would make is that it is part of the agenda being discussed; how far this bill goes towards it may be a moot point.

CHAIR—I will not buy further into the argument at this time. In response to one of Senator Murray's questions, you alluded to an individual who was fined some \$40,000. Was that last week's case?

Mr Egan—No, this was a case several years ago in New South Wales law. It is one that has been quoted several times in publications I have read on the matter.

Senator ELLISON—Could you give us the details of that?

Mr Egan—I would have to do some checking to try to get the details of that. That is the de facto couple case; we should have that on file somewhere.

CHAIR—Are you aware that last week in the Equal Opportunity Commission in New South Wales there was another decision handed down where an award of some \$50,000 was made to an individual on the basis that he had been discriminated against and also vilified on the way through?

Mr Egan—As reported in the media—I have not seen the written judgment—there is no doubt that Mr Marinkovic's actions, as he himself has admitted, were quite shameful and should not have been undertaken. That certainly is the case for the reported leaving of dirty nappies outside the complainant's door and threats of physical violence.

On the question of vilification legislation, our position would be that we cannot see that the particular ground on which vilification is undertaken should give rise to particular offences in criminal law. In fact, it seems to us contrary to the principles being enunciated by the Standing Committee of Attorneys-General in their formulation of a model criminal code for Australia; I understand that they have published the third part of that. As I understand it, the philosophy behind the model criminal code is that it is trying to reduce old legislation that works from particulars and instead trying to be more generic in the kinds of offences that are in there.

I would think that if we are looking at vilification, what we want to look at is a general criminal code offence that deals with vilification of anybody for any reason. How far that goes beyond current criminal law on threats of violence or intimidation or libel or whatever it might be, I am not sure, it is not something I have gone into in detail. But it does seem to me that in New South Wales, where you have specifically got a law against the vilification of people on the grounds of homosexuality but no other laws dealing with vilification, it is a very odd situation.

You would have to ask then whether Mr Marinkovic was harassing the fellow because he had a personal grievance unrelated to his sexuality or he had been doing it on some other grounds—they would have race, I guess; so that would be covered; maybe he had just annoyed him. You would hope there would be some kind of action for that.

I just cannot see the argument for there being special vilification laws on special grounds—even in the case of this bill, where it is not specifically homosexuality but every sexuality. So people being vilified for their heterosexuality would, at least in theory, be protected.

CHAIR—Do you think it is fair, though, that an individual could be so vilified in one state of Australia and receive damages as a result of it and that exactly the same type of behaviour could happen in a different part of Australia and there be no recourse to law?

Mr Egan—I tend to be a bit of a states righter, but that is a personal view rather than a Family Association view. In some matters and in other matters I think the federal government does have a right to intervene. I think the proper forum for this particular concern should be the model criminal code committee. There will be elements of that code that would touch on these matters. I would have thought that, rather than bringing up a special bill in the federal parliament to deal with it, it should be referred through the Commonwealth Attorney-General's office to that committee to see that vilification is included in the appropriate chapter of the draft code, which I understand the whole nation is supposed to be committed to producing by 1998 and implementing by 2000. I doubt whether state parliaments will do so, but at least it would set a national standard.

Senator ELLISON—Just on that point: in Western Australia under the Justices Act a restraining order could have been obtained against that person.

Mr Egan—Yes, I understand that. But in New South Wales he obtained an apprehended violence order and there was a fine of \$100 relating to a breach of that. I do not have enough understanding of the criminal law to know the kinds of fines. I did ask a lawyer about that just casually, so I would not take it as a firm view, but he was of the opinion that, based on the reporting of the case, the \$50,000 was certainly a larger amount of money than people would get for all kinds of other damages, including in some cases some quite serious physical damage that might have been sustained by an actual attack as opposed to an apprehension of attack.

Again, let me make quite clear that I think Mr Marinkovic's behaviour was quite unconscionable and he has said so; there is no question about that. But it is the law under which it gets dealt with.

Senator ELLISON—What do you think about this: that really the question is to restrain the person rather than to punish them. What was wrong was that the \$100 fine did not obviously stop him.

Mr Egan—It did not stop him; although it is not entirely clear from the report that the harassment continued after the violation of the restraining order, because there was some mediation process already in place. I am not familiar enough with the case to know the sequence of events.

Senator ELLISON—In Western Australia we now have the stalking law, which can be severe if you continue to breach an order.

Mr Egan—That is probably an appropriate mechanism because it tries to stop it

before it gets out of hand and then the breach is against contempt of court. So you are breaching a clear standard. The court has told you, 'If you do this again, you will be in contempt of court and you will face this fine.'

I think part of the problem with the vilification legislation, and certainly in this bill, is that knowing the boundaries of it is very difficult. I appreciate that is the case with a lot of law, but the vilification law here talks simply about severe ridicule. So, while the complainant in the Marinkovic case did not take action before the tribunal apparently until things had escalated somewhat, it does seem possible that he could have taken action even from the very first complaint when he was spoken to in a way that was aggressive and impolite but perhaps did not amount to harassment.

It is very difficult to know how far you are going here. There is talk about inciting hatred towards serious contempt for or severe ridicule of a person. In relation to the severe ridicule of a person, certainly on the dictionary's definition, you do not have to go very far at all before you are possibly in that category.

CHAIR—In the conclusion of your original submission you are fairly categorical. You say that it is unnecessary, it is unjustified, it is intolerable legislation. Is there no half-way point, no meeting point, no amendments you could propose to make the bill livable for you?

Mr Egan—If the bill looked like it was going to pass the Senate and then the House of Representatives—as I think you have pointed out to me recently, Senator, all kinds of things can happen to bills along the way—

CHAIR—We are dealing with this issue.

Mr Egan—Yes—I am not going on to them. If it was at the point where this bill looked as if it was going to attract majority support, then we would look seriously at what amendments we might propose. At this stage we have not done that. We hope it does not get to that point because of the principles that Senator Murray drew out of me earlier in the discussion. We think discrimination legislation itself has probably gone too far in Australia. We would like to see a halt at this point.

If we had to say things we wanted knocked out first of all, I think the vilification one should go, and it should be dealt with on that uniform law basis without specific reference to sexuality. The same sex couple provision at the end of the bill—section 107—we think should go. We think the Commonwealth is better dealing with those things on a piece by piece basis when the case for each can be made out.

The other thing would be that the religious exemption should be broadened to take account of people's private actions as religious people; indeed, we would perhaps even prefer a conscientious exemption rather than a religious one. But, as it is, it puts the onus

on religious organisations, particularly schools and churches, to prove injury to the susceptibility of their adherents which, from a freedom of religion point of view, appears to go close to violating section 116 of the constitution by essentially making the content of the religion and the state of mind of its adherents a matter of scrutiny by the courts which to me seems unwarranted. It also assumes that the only areas of life in which religious people want to take their religious views into account are those when they are engaged in public acts of worship, and so on, rather than in daily life.

Going back to that case of the de facto couple, another way of looking at it, for example, is that in the New Testament somewhere—I am not so good on the biblical quotes—there is some obligation on Christians to do good to all men, but first of all to those who are of the household of the faith. I understand that means you are supposed to look out for your mates in the church first, which is not a principle that only Christians follow, as far as I can make out. By that they mean that if a couple had a house to rent, in the normal course of events, if there were not discrimination legislation, they may want to advertise first for a Christian couple to live in that house. Discrimination legislation, as I understand it, prevents them from doing so.

Victorian Christian newspapers have been prevented from carrying ads offering jobs or housing to believing Christians, and so on. So there is this infringement on people's rights simply to choose, on the basis of their own deeply held beliefs, who they closely associate with or deal with. I am sorry, that was a longwinded answer.

CHAIR—No, that is fine. It is your answer, and I asked the question so I cop the answer. On anti-discrimination legislation as a whole, there is anti-discrimination legislation on the basis of disability which has been on the statute books now for some period of time. It is argued—and it has been argued to this committee—that the legislatures, the parliaments, are actually behind the community. We are behind the community; the community is leading in areas such as this. Doesn't the fact that there is now a number of anti-discrimination legislations on the statute books indicate that perhaps your association is even further behind the ball than the parliaments are?

Mr Egan—I think there are different approaches to this. With regard to disability discrimination, I will sidetrack if I say too much about it but I think discrimination against the disabled starts in the womb. We are trying to wipe out all the Down syndrome kids before they even get a chance to be born, so I would like to see some laws dealing with that. But, in regard to general disability discrimination legislation, some of the same issues arise. Again, from the Christian point of view at least and from a commonsense point of view, people ought to not just treat disabled people fairly but also give them special consideration. But whether a law with punitive damages is the right way to bring that about is another question. I have not looked at disability discrimination cases, so I do not know if some of them are made on appropriate grounds.

CHAIR—I am not actually looking at the detail of the legislation. I am just saying

that doesn't the fact that it is there in those areas indicate that—

Mr Barich—If you see the end of our statement that we have just given you from our national office, our national president draws attention to Pauline Hanson's maiden speech and the 80 per cent support she is getting; so I do not think you would say that we are necessarily further behind than the rest of the community is. In some of these areas, I think we have the majority, but it is just that we do not get the opportunity. I have been vilified in the homosexual press by being called a 'breeder'. I do not get a chance to reply to that in the *West Australian*.

I got this suicide thing that I have told you about already; we try to counter that. We put it in as a press release, but it was not reported; we put it in as a letter, but it was not reported. Are we more than we really are? That is probably why I was getting a bit sticky about how many members we have got, because I do not think it really matters how many members you have got; it is whom you represent that counts. Are you speaking for a group that is trying to say something and is not being given the opportunity to give its point of view, because of the media influence, if you like? That has got to be so, because of what we hear from the people we talk to daily.

While we do not support Pauline Hanson in some of the things she said, the point is that a lot of Australians agree with her in some of these things. I am not saying that the anti-discrimination legislation has got to be changed because of that. All I am illustrating is that there is a large proportion of the Australian electorate who feels as we do, and we represent them.

CHAIR—I disregard what Ms Hanson had to say. She really is irrelevant to Australia in this day and age. I am not trying to trap you, but the argument that is put to us is that we as parliamentarians are too far behind the community when it comes to where we are at today. Our constitution is really antiquated and outdated and we cannot get around to changing it, and the argument on anti-discrimination legislation is that we are dragging behind what the community feeling is.

Mr Egan—Certainly, there would be a class of people who think that, and that is always the case. That would firstly be the class which stands to benefit most from particular discrimination legislation; but secondly it would be those who adopt a particular view of human rights. There are different views on human rights. How you measure it I do not know, short of opinion polling, and that is not always terribly reliable. I do not think we can say. All we can say is that we know we are not expressing the view of a small element in society. We get enough positive feedback to know that the kind of position we are expressing enjoys some support in the community, but I do not think we can put a figure on it, nor on the opposite view that the parliament is not going far enough and fast enough on it.

Mr Barich—And in the Western Australian parliament, in a recent debate, Mr

Trenorden ran a survey in his electorate. He said that 80 per cent of the people responding were supporting our point of view. That is just one electorate, but that is what he put in the parliament; and the minister said that the balance was reached in 1989 when we decriminalised sodomy but with these provisos: age of consent of 21, no proselytising, and sodomy not to be a public policy. What has happened in the intervening years? Some people say the community has moved. We would say that, if anything, the community has gone the other way because of the factors that I drew attention to: we have had the Gay Mardi Gras, that the Premier of the day told us would not be run in Western Australia but it has been running every year, and now we have it in our lounge rooms at 8.30 p.m. through the ABC. I think people are reacting to that. They are saying, 'Look, it is one thing not to bash people, and it is one thing to discriminate severely; but it is quite another thing to have these things foisted down your throat.' That is the view that we are representing.

CHAIR—In terms of the movement that has taken place since 1989, Senator Murray mentioned a quote in his question to Mr Egan. The heads of the Anglican Church, the Catholic Church and the Uniting Church in Western Australia on 29 June 1991 said in part:

Basic human rights for gay, lesbian and bi-sexual people are important and to be encouraged. The need for change in the hearts and minds of everyday Australians is fundamental if we are to achieve justice and acceptance in our society for all perceived minority groups.

Speaking as a non-religious person, isn't that statement something that could be used as a basic yardstick in the measurement of human rights?

Mr Egan—I think in the attachments to the supplementary submission there is a recent media release from the Catholic archbishop which distinguishes I guess a little bit the principle in that earlier statement from its application to sexuality discrimination legislation. He draws the distinction between unjust discrimination and discrimination, and says that not all discrimination is unjust and so forth. I am not here to defend his statement, he can speak for himself if he chooses to. But it does seem that the Catholic position at least on this is somewhat nuanced, that there are two principles that they try to bring together and apply to particular legislative proposals. I understand the Catholic bishops conference may have made a submission to you. I am sure if they have their views would be on the record.

CHAIR—One area where it appears to raise clear discrimination in this state of Western Australia is the age of consent. It is a different age for different individuals—

Mr Egan—Correct me if I am wrong but I do not think this bill goes to that. I am not sure whether it is before us or not.

CHAIR—No. There could be a legal argument on that if a 20-year-old male wanted to engage in a particular sexual activity and there is discrimination because he is

not allowed to do that or may be punished if he does. It is a moot argument.

Mr Egan—It is possible that the Human Rights (Sexual Conduct) Act has the same effect. Of course we will know that a little more clearly after the Toonen case is heard in the High Court.

Senator ELLISON—Do you know when that is due for hearing?

Mr Egan—No, I do not, I have only seen it reported in the press.

Senator ELLISON—Last week.

Mr Egan—Yes.

CHAIR—It was actually heard last week was it? It was before the court. Mr Barich and Mr Egan, thank you very much for your attendance here this afternoon and your assistance to the committee.

[3.10 p.m.]

HARVEY, Canon Gregory Newton James, Former Chair—now member—Anglican Social Responsibilities Commission, Sambell Centre, Colin Street, West Perth, Western Australia

CHAIR—The committee have received a submission from the Social Responsibilities Commission and have earlier decided to publish that document. It is now part of the public domain. I invite you to speak to it in brief and then members of the committee will be invited to address questions to you.

Canon Harvey—Thank you. I really will not keep you very long because you have the outline of the submission in front of you. That was a submission that we made before the Equal Opportunities Commission of Western Australia in 1994.

What I want to say about it is that it is a document that was prepared by the Social Responsibilities Commission for the Equal Opportunities Commission here. After that it was accepted by the Synod of Perth. The Synod of Perth is the governing body of the Anglican Church in Perth and it was accepted by that body. In that submission, and in other such similar submissions, we join with many groups in Western Australia. I want really, if I may, at this time to just address some issues that arise from the situation here in Western Australia with regard to the Anglican Church, issues about which I alone can speak.

The basic position of the Anglican Church in the diocese of Perth is that we disagree with discrimination in any form at all against any person, in any place, for any reason. We believe that that is entirely contrary to the teaching of the Christian gospel.

You will see from our submission that we do not believe that there ought to be exemptions of any kind on the grounds of religion in this particular matter. We are opposed to that level of discrimination as well. I hope that that is in that submission; it was in the previous submission. We are opposed to discrimination even in this matter of religion. We would welcome such laws which made such discrimination unlawful whether that was for Anglicans or the Roman Catholics or Muslims or whomever else. We find all discrimination, of whatever kind, to be offensive.

Of course, there are some people within the Anglican Church who find it difficult to deal with homosexual people. The Anglican Church is a broad and a diverse body and a very large body but the Synod is finally the body where the views of the Anglican Church are distilled through discussion and so on. We have found that in the long run within the Anglican Church the people who find it difficult to deal with homosexuals and homosexuality are in fact a quite small minority.

If I may just add these points to the submission that you have: the Anglican diocese of Perth in its Synod has never voted to condemn or to discriminate against homosexual people. Indeed, last year it voted in a very inclusive way, in a very positive way, to involve and support homosexual people.

The Archbishop of Perth in particular, Dr Carnley, has been very outspoken in his support for non-discriminatory measures. Although this may not been within the purview of this particular matter before us, the Synod of the diocese of Perth has in fact voted unanimously—and there are six hundred members of the Synod of the diocese of Perth—to reduce the age of consent for homosexual people to sixteen to bring it into line with that of heterosexual people, simply on the grounds that the current law is discriminatory. The Synod of the diocese of Perth also voted to accept the recommendation of the submission that you have before you when it said that non-discriminatory laws ought to apply also to the church.

Let me just conclude by saying that here in Western Australia, I think in 1992—but I may need correction on that—there was a poll published in *Time* magazine, I think. It was, at the time, a notable poll and it showed that more people in Western Australia than anywhere else supported the removal of any kind of discrimination against homosexual people. I think that it is really quite important to note that.

Senator ELLISON—Which poll was that?

Canon Harvey—I cannot remember the details of it. Had I remembered them, I would have brought them.

Senator ELLISON—Can you help us find it?

Canon Harvey—Yes, I can help you find it. I have actually been looking for it for a while myself. But I will seek it out. I am here to underline where the Anglican Church stands on the matters before you.

CHAIR—Thank you very much for that. Again, thank you for the submission that you put in. I just might observe that—and it is an observation which you might care to respond to or not—we have received quite a deal of the opposition to this bill in our travels around Australia, and this is the sixth day of public inquiry into the bill for we have covered most of the capital cities now. Most of the opposition to the bill has come from churches or church based organisations. Many of them use the Bible or the scriptures to put force into their argument of opposition. Yet you are here as an active church person on behalf of a major church, putting a contrary view to that.

Canon Harvey—I certainly do not want to waste the committee's time by doing a Bible study. But it is possible, of course, to make the Bible really say anything you want it to say. People do that all the time in every kind of area and they can find an argument in

the Bible for everything. There are, however, two particular things I would just say. One is that there is a teaching in Leviticus, which is one of the early books of the law in the Old Testament, which seems to be explicitly teaching against homosexuality. So, also, it teaches against a whole lot of other things which we would not wish to make laws against now. The teaching in the book of Leviticus, which so many people base their work on, is in fact to do with Jewish racial purity and the desire of the Jewish people to increase the number of Jews in the Land of Canaan so that they would not be driven out. That is what it is really about. So that is as simple as that.

There is another passage in St Paul. There is a lot of discussion about that, but the Anglican Church, broadly, would say that St Paul there is, in fact, referring not to homosexuality as we understand it now, but rather to temple prostitution. However, it is a very complex argument. But, certainly, people hang things on the scriptural things.

CHAIR—We have heard it reasonably frequently as the inquiry has progressed. I might just say by way of clarification—and, again, do not feel compelled to answer the question—that with the previous set of witnesses, we did put that quote to them which was contained in your submission about basic human rights as they apply to gay and bisexual and lesbian people. The retort—I do not know if you heard it—is a quote from the Catholic Archbishop of Perth in relation to the recent debate on the bill before the Western Australian parliament. Are you aware of Archbishop Hickey's quotation and press statement?

Canon Harvey—I was aware of the debate last week and of a reported thing that he said. I did not understand it, quite frankly. If I may be so bold, it seemed to me that he was having a bet each way. That is how it came across to me. It was not, in my view, a very clear statement.

CHAIR—From the arguments that are contained in your submission you are supportive. The submission the committee had was the one which went to the Equal Opportunity Commission in the preparation of its discussion document. As a result of that there was legislation introduced in the Western Australian parliament which has now failed. As I take it, the submission which was made to this committee on this bill is that you are supportive of the general thrust of, and of the need for, legislation to protect people against discrimination on the basis of sexuality.

Canon Harvey—Absolutely. That would be the sure and certain position of the Anglican Church in the diocese.

CHAIR—I thank you for that. How much study have you actually put into the content of the bill which is before the committee and before the Commonwealth parliament?

Canon Harvey—We have done some work on it. I unfortunately have been

travelling a good deal lately so I am not totally up with it, but I have met with Senator Spindler and I know what is in the bill.

CHAIR—One area that you have addressed in your oral presentation to us today was the matter of exemptions and particularly exemptions for church organisations. You are pretty strident in your views that there should not be any exemption for church organisations.

Canon Harvey—Yes, that is so.

CHAIR—I suggest that, on the grounds of compromise and argument, in order to get the bill, through such exemptions ought to be there.

Canon Harvey—It is a matter of the numbers and the politics. One understands that, indeed. One could not imagine the bill going through without that exemption. That does not mean to say that we would support it being there.

CHAIR—There are also included in the bill some special measures. Are you aware of them?

Canon Harvey—No. Perhaps I will have a look. Can you help me with that?

CHAIR—I would like to help you, but Mr Spindler is in the room and if I got it wrong I would be putting myself in some danger. I will try to paraphrase it: it does allow an area of positive discrimination in a sense—there ought to be some special measures taken in certain areas for a period of time out, as it were.

Canon Harvey—Yes. I think that we would understand that any reforming legislation needs to have that kind of clause within it as a sort of sunset clause. Hopefully, that allows, as it were, some positive discrimination so that the community can work its way into where the legislation leads. We have had a lot of understanding of that, for example, in the matter of positive discrimination in favour of women. That is part of the function of reforming legislation.

CHAIR—Yes, it is paragraph 27 and I will read it in part:

This Part does not make it unlawful to do an act that is reasonably intended to (a) ensure the persons of a particular sexuality or transgender identity have equal opportunities with other persons in circumstances in relation to which a provision is made by this Act; and so it continues.

Senator ELLISON—Referring to what the Catholic archbishop said, he said, 'The legislation before the WA parliament should be carefully analysed for its long-term effects before being put to a vote.' Would you have liked to have seen more scrutiny of the Western Australian bill before it went before the parliament?

Canon Harvey—No. I think the Western Australian bill was a very simple bill. It did not do anything very dramatic. It was not a far-reaching bill. I know a lot about the bill and it was a very simple straightforward piece of legislation and I do not believe that there was any need of any further discussion. I would not have thought that there was any need for that.

Senator ELLISON—It had different exemptions from those in this bill. Certainly there has been a lot of evidence given on the exemptions. Were they not in themselves a complex question?

Canon Harvey—Again, it is a simple matter, isn't it, of the politics of the thing? The sheer politics of the thing is that you cannot get reforming legislation through unless you first build in some kind of positive discrimination, on the one hand; but, on the other hand, you are not going to get a thing through unless you have some exemptions to calm people's nerves.

Senator ELLISON—If it is a simple issue, how do you resolve the situation where you have a religious institution, and the religion prohibits homosexual behaviour, and the institution wants to exclude any homosexual from working for it in the institution? There you have a clash between a religion and the private practice, or sexual preference, of an individual: how do you accommodate that?

Canon Harvey—If I may speak for myself in this matter, I would say that a person's basic human rights are involved in their religion, as well. Presumably, if a person was so convicted by a particular religious faith which contained within it prohibition of a particular practice, then that matter would solve itself, would it not?

Senator ELLISON—It is like a religion that allows more than one wife. We outlaw that in this society. I dare say you would be quite happy with the fact that the followers of some religions in this country would not be able to have more than one wife. It is something which the Christian churches teach and the law enforces upon people. Do you think that is a happy state of affairs?

Canon Harvey—I think it is a difficult and vexed state of affairs. I have not given the matter a great deal of thought. I have thought of it a little, and I think that in a pluralistic and multi-cultural society, as we claim to be, that is a very vexed and difficult state of affairs.

Senator ELLISON—You see, that is the problem with the issue we are looking at here. It is not such a problem where you have someone who uses a religious excuse that is a sham, not a legitimate one. But where you have people with legitimate conviction, and that legitimate conviction outlaws or prohibits behaviour which might be accepted by other sectors of the community, then you have competing rights and interests, do you not? That is always difficult to accommodate.

Canon Harvey—Yes; that is very difficult to deal with, and that is perhaps why the exemptions are in the bill.

Senator ELLISON—With education generally, some people might have a conviction which does not relate to a religious base but that nonetheless holds that, in education, there should be some exemption against discrimination dealing with homosexual behaviour.

Canon Harvey—One would hope so.

Senator ELLISON—That is why this bill provides for the possibility of an exemption. Should those people who hold their beliefs legitimately and genuinely be afforded any exemption? It is not a matter of religion; it is just that they have got a school, perhaps because they do not want to go to a government school, and they just run their own school with no religious base. Nonetheless, they do not want to have—

Canon Harvey—I understand that. In a perfect society, as it were, in a world where things were properly ordered, presumably education would be of a sufficiently high standard that you would not need to have exemptions. I suppose that much of the problem in those respects is a whole lot of stereotyping of homosexual people. That is to say, there is a view that there is some connection between homosexuality and paedophilia, and that there is some relationship between homosexual people who are predatory: all of those kinds of things. They are stereotypes. I would have thought that the exemptions would have to be there for as long as it takes to be educative.

Senator ELLISON—So, in their own way, they would be not a special provision but something similar to a special measure, with a sunset clause, perhaps. Is that what you are saying?

Canon Harvey—One would hope there would be a sunset clause; but there will not be, because it is not in the nature of such legislation. As I said, in an ideal world, people would be educated sufficiently to understand things in such a way that they would lose the fears that they frequently have that are, on the whole, often quite irrational.

Senator ELLISON—Do you believe that there should be some distinction between private entities and the government? For instance, if you are a person who is, say, renting a room in your house or renting a property which is privately owned, should you be allowed to have some private choice allowed to you as opposed to a public institution?

Canon Harvey—I do not believe so. I do not believe that this is permissible on other grounds. I would be, obviously, able to be corrected but I understand that it is not possible to refuse to let a house to a person who is of a particular race on the grounds of race, or on the grounds of disability or anything else—on those grounds. Therefore, I would have thought that it should not be possible to refuse in this matter either.

Senator ELLISON—With respect to the Senate's unanimous decision on the reduction to the age of consent, did it say at the same time that if there was a position of supervision or influence—

Canon Harvey—Yes.

Senator ELLISON—It went along with that, which is the same for the heterosexual, of course.

Canon Harvey—Yes, of course.

CHAIR—How is the work of the Anglican Social Responsibilities Commission perceived by the wider body of the Anglican Church?

Canon Harvey—How can one judge that? We do a lot of work in parishes and therefore we are pretty well networked. We have parish groups formed; we have got nearly 180 or 200 parishes in Perth—maybe a bit less than that, I think. In about three-quarters of those parishes we have social responsibilities groups meeting, which we organise.

In terms of the perception of the commission, the commission runs on a very tight budget of about \$50,000 a year and at various times the purse strings get a bit tight in the Anglican Church, like everywhere else, and they are always looking for ways to cut back on the funding. Once or twice the treasurer has suggested that the work of the Anglican Social Responsibilities Commission should be reduced for a period but the synod has overwhelmingly said, time and time again, that the church's voice and place and role in public policy is so important that it must be funded as a priority. The synod says that over and over again.

CHAIR—It sounds as if the synod is something like our ministries of finance and treasury. This is my final question: within the church itself, if there was priest who was gay, would that priest be allowed to continue in the ministry?

Canon Harvey—Yes, with the same proviso as for anybody else—that is to say, that that person's life was not a cause of scandal. But that would apply to homosexual clergy or heterosexual clergy. That is a very simple answer. One hopes that the lives of the clergy are not too frequently the cause of scandal and distress to the church.

Senator ELLISON—At what point does it become a scandal?

Canon Harvey—I think if it becomes an offence, if a person lives a life of any kind that is a cause of distress to the congregation, that is a cause of notoriety to the congregation. It would be very clear if a person was living in such a way, whether heterosexual or homosexual, that that person's life became notorious and therefore the

cause of the church was being inhibited. People have a right to expect of their priests some standards of integrity and circumspect living.

Senator ELLISON—We have just seen, in England, that a heterosexual seems to have achieved a pretty notorious—

Canon Harvey—Yes, indeed. So you see, that is a clear case. The poor man is a cause of distress to the church.

Senator ELLISON—What action do you take with a person in that position, though?

Canon Harvey—I am not the archbishop so I do not take any action at all.

Senator ELLISON—I meant it hypothetically.

Canon Harvey—If a person's life were to become notorious, for whatever reason—there could be a lot of reasons why a person's life would become notorious—then the bishop would have the quite proper responsibility to that congregation to ask the person to step aside from ministry and, depending on the circumstance, to receive counselling and therapy or whatever else, or maybe just not continue.

Senator ELLISON—It would not be discriminatory in that case, in your opinion?

Canon Harvey—I think that, when people become priests, they willingly and of their own volition take an oath not to cause distress to the congregations where they are given. Therefore, if they do and have to be dealt with in some way, it cannot really be said to be discriminatory. It is a simple matter of breaking an understanding and an oath that you have taken.

CHAIR—Thank you very much for your attendance here this afternoon and the evidence you have given to the committee in our inquiry.

Canon Harvey—Thank you.

[3.40 p.m.]

KENDALL, Mr Christopher Nigel William, Lecturer in Law, School of Law, Murdoch University, Murdoch, Western Australia 6150

CHAIR—Welcome. Is there anything you wish to say about the capacity in which you appear?

Mr Kendall—In my capacity as a law lecturer I teach a unit entitled 'Law and sexuality: an introduction to lesbian and gay legal issues.' I highlight that deliberately for reasons I will explain later. There is still a great deal of concern amongst my students that should the words lesbian and gay appear on their academic transcript it will cost them employment. So I have deliberately changed the name of my course to 'Law and sexuality'. I can get into that in more detail if you like.

CHAIR—Perhaps we will do that in a moment. We have received your submission and we have authorised its publication. It is now in the public domain. I invite you now to make an opening statement, at the conclusion of which we will address questions to you.

Mr Kendall—Perhaps I should start by apologising. I have been told by one of my students that the submission is too academic in the sense that I do not discuss real law. I should add that it was only written in a day, because I had to fly to New York, and I can add to it today and intend to do so. The purpose of my submission was to try and get across the idea that inequalities in Australian society do not exist in a vacuum. Most importantly, I wanted to make it very clear that I find the commitment of the present government of Western Australia to the notion of sex equality while quite publicly stating its opposition to the notion of sexuality equality to be somewhat hypocritical and, I would add, socially myopic.

Since the release of June Williams's report in 1994 much has been written in Western Australia and across Australia outlining why this present government's refusal to extend basic human rights protections to lesbians, gay men, bisexual persons and persons who are transgendered is inexcusable, a violation of some basic human rights principles—internationally and domestically—and even an abject failure of leadership on the part of the government.

If we read what Ms Edwardes, who was then the Attorney-General of Western Australia, has said during her tenure as the Attorney-General with regard to sex equality we see that publicly she has made it very clear that she supports the notion of sexual equality, that is, equality amongst the sexes. She has been, for example, quite publicly supportive of projects to end domestic violence. She has made it very clear that she sees, for example, the distribution of heterosexual pornography as an issue of sex equality. It is quite progressive really when you look at that in an academic context. Given this, I can only assume that Ms Edwardes and her colleagues do take quite seriously the notion of

sexual equality, or at least they are willing to admit that it does exist and is something the government should try to address.

The purpose of my submission today is to ask: why, then, the type of inaction we are presently seeing when it comes to the issue of sexuality? More importantly, I want to ask quite bluntly whether the government honestly believes it can combat the many inequalities that result from systemic gender hierarchies or gender polarity or the difference between male and female—and I mean that as socially defined, not biologically—without also combating inequalities based on sexual difference. My own research and my understanding of the way in which social hierarchies are presently constituted indicates that they cannot.

If the government is truly committed, as it must be, to eradicating sex discrimination, then a concerted effort must be made to eliminate the many barriers that presently impede all forms of gender inequality. Human rights legislation is but one means of doing so. However, to implement equality initiatives without first understanding what gender stereotypes do—who they harm, how they harm and who they benefit—is to implement an equality agenda that I believe is, at best, politically naive.

As long as lesbians and gay men are denied participation in all aspects of public life, real systemic equality—an agenda which all governments must support—will never be achieved. To a large extent, forced invisibility is what homophobia is about. Without a voice, lesbians and gays do not cease to exist—if you like, they have the option of remaining invisible. It is the invisibility which is, perhaps, the worst kind of discrimination thrust on lesbians and gay men in our society, and it is invisibility that is exactly what homophobia is about. It is because of that invisibility that gender inequalities in society remain intact. To the extent that lesbians and gay men choose to build relationships based on reciprocity, mutuality and trust; to the extent that they build relationships that do not depend on a system in which male is top and female is bottom, a system in which male is dominant and female is submissive, a system in which male is always right and female means to do only what the male tells you to do, they build a system in which gender hierarchies no longer exist. To the extent that lesbians and gay men are rendered invisible, however, a system of gender inequality, of sex discrimination as we know, it will remain intact.

I submit to the committee that, in so far as we refuse to combat the many types of hideous forms of discrimination that presently affect all lesbians and gay men in our society, to the extent that we ignore those realities, to the extent that we do not in fact allow lesbians and gay men a voice through which they can be visible, in essence we really do not take the notion of sex equality and, on a larger scale, systemic equality seriously.

Given what I have said, based on the submission that you have before you, it should perhaps be obvious—although I have not outlined it in any great detail in my

submission—that, in order to achieve the type of equality I have in mind, such equality has to exist in all aspects of society. We, in essence, have to give visibility to those who do identify as lesbian, gay, bisexual or transgendered. To that extent, I have some difficulties with the use of the words 'sexuality discrimination'. I think that to define us only according to sexuality can, in fact, be a bit dangerous. On one level, it tends to bring us back to the notion of homosexuality, which primarily tends to ignore the existence of lesbianism. I think that when people think sexuality or homosexuality they think gay male. Given the types of discrimination that lesbians face as women and as lesbians, it is important to say point blank that the type of discrimination we are talking about is discrimination against lesbians. We have to make people aware that when we refer to sexuality discrimination, we are not simply referring to gay men.

I also have some concerns with regard to the fact that, when talking about sexuality discrimination, we always seem to say that heterosexual discrimination is also included in that form of sexuality discrimination. In my years as an academic and as a practitioner, I have never come across discrimination against heterosexuality which cannot even begin to stand on a par with the types of discrimination that gay men and lesbians face.

I also have a problem with the fact that, when we list the types of sexualities we are talking about, we always list heterosexuals first and transgendered people—if they are mentioned at all—are always last. I realise that it is not a deliberate hierarchy that is created in text or in legal drafting, but it does exist, and to people who do suffer discrimination on those grounds I think it sends a very real message that, again, they are at the bottom of the totem pole—excuse my Canadianisms.

I also have some problems with the notion that vilification can only occur in the public sphere. In order to achieve systemic equality, it has to be systemic. We seem to have this notion that discrimination, if it happens in private, is not really discrimination. We seem to think that hate and harm and the effects that result from hatred, once spread, occur only in the public sphere. Hatred has to start somewhere. The KKK in the United States spreads its message by beginning with community hall meetings which it labels private. These private meetings are as harmful as anything which is distributed publicly. I think we have to get over the idea that harms do not exist in the private sphere or that there is some kind of sacred space in the private sphere. That flows from the idea that the type of equality I am talking about tackles those inequalities at all levels.

Given this, it should not really surprise the committee that I have some very real concerns with respect to the type of exemptions which this type of legislation—and I should, for the committee's benefit state that I am familiar with human rights legislation in Canada, having been involved in attempts there to extend human rights protections to lesbians and gay men. But in Canada as well we see the same types of exclusions with respect to religious organisations.

If you are serious about tackling discrimination at all levels, it seems to me a little

naive to assume that we can just create equalities in certain pockets of society and allow discrimination in other pockets where we are just simply willing to accept that they exist and should not be tackled. I think it has to be tackled at all levels.

CHAIR—Thank you. I suppose the threshold question would be the title of the bill, which you raised in that oral presentation. You expressed your concerns about the title, the fact that you are not happy with the title as such, but you are also not happy with the inclusion of heterosexuality in the definitions of what sexuality is.

Mr Kendall—Yes.

CHAIR—I am posing an argument to you, were the bill to pass, surely it will be seen as being threshold legislation, and should it not seek to be as broad as possible in the first instance rather than run the gambit of possible amendment down the line and over the years? Amendments can be very difficult things.

Mr Kendall—Absolutely, and I think that the reality of politics is such that you have to at least give the impression to people that you are attempting to make the protections given as broad as possible. However, it has been my experience that one of the reasons we always extend these protections to heterosexuals is that we always hear the arguments that heterosexuals face discrimination against themselves on the grounds of their heterosexuality by gay men and lesbians.

Earlier there was a submission in which a gentleman claimed that his feelings were hurt because he was labelled a 'breeder'. I do not support that kind of language either; I think it is derogatory and it can in fact hit someone where it hurts most. However, having said that, there is a great deal of difference between calling someone a breeder—which implies that they have the potential to have children and the legal right to do so—and calling someone a stupid faggot, which implies that they have no rights at all and should be immediately silenced.

Someone who is labelled a breeder does not immediately have his right to participate equally in society taken away from him. He has the option of still maintaining his job. He has the option of saying publicly, 'I am a heterosexual,' knowing full well that he is not going to lose his or her job because of that. If, however, someone is labelled a faggot or a dyke, he or she knows that in the public sphere that means one thing, it means you are inferior. It is a form of discriminatory comment, but I do not think it is a discriminatory comment which undermines someone's right to participate equally in society.

CHAIR—Sorry, I was not actually able to follow you all the way through on that one. As I heard you, you were talking of a name calling basis, when names are called at different individuals because of their sexuality. I would have thought from an equal opportunity, human rights point of view that one is as offensive as the other at that given

moment in time and both, as such—outlawed is probably too strong a word—should not be encouraged.

Mr Kendall—I do not think they should be encouraged or condoned, and I think in fact that is something that the gay and lesbian communities in Australia are struggling with themselves. I think it is a derogatory, negative message which does not do anything to promote gay rights in particular. We do not need any more enemies, and we are not doing ourselves any favours by making those comments.

What I am trying to say to you, however, is that it has a very different impact when someone is labelled publicly a breeder and when someone is labelled a faggot. If someone is labelled publicly as a breeder, for example, while I would not support the labelling of anyone on those terms, the difference is that someone is not going to lose their job or their children or family support because of it. If someone is labelled a faggot or a dyke publicly and has never come to terms with it or has never identified publicly as such, he or she is likely to lose their job or family support or children, and the list goes on.

CHAIR—I am not disputing the latter part of what you are saying. I accept that in the context in which you are saying it, but going back to the name-calling thing, it is also the intent behind the name-calling. For example, when we were taking evidence in Melbourne recently, we were given examples of some posters. I cannot recall the exact words on it, but the word 'faggot' was mentioned. It said something like, 'There ought to be a law to protect faggots and dykes.' It was put out by the organisation itself. In that sense it was not offensive—

Mr Kendall—Because it is reclaiming it.

CHAIR—But it was not offensive in the sense that it was not meant to hurt, but if somebody is making a comment to another person who is heterosexual, calling them, in a derogatory sense, a breeder, that can be equally offensive.

Mr Kendall—When we look at human rights protections and equality based protections, the reason we have that type of mandated legislation is to ensure that people have the right to participate equally. While I take offence at some things that people call me—for example, if someone notes that I am a little bit underweight and calls me an anorexic or something along those lines, I take offence—however, that does not take away my right to participate equally in an employment context, for example. So when you are looking at something which might border in terms of hate speech, the reason we have anti-hate speech protections is to ensure that people are not silenced by that speech so that they can then continue to participate fully in society.

My experience has been that when dealing with the types of language that people who identify as heterosexual always use as a means of trying to demonstrate that gays are as anti-heterosexual as heterosexuals are anti-gay, they are on two completely different

planes. Simply because someone has their heterosexuality questioned, while that might be offensive to the individual, it does not mean that they are then denied the right to participate fully and equally.

It does not follow though that because someone is called a faggot that they automatically have the right to just go and find support somewhere else. We do not have the same support networks that the heterosexual community has. The entire sphere is a mandated support network for heterosexuals. Lesbians and gays, if they are lucky, have one in every city, so there is a remarkable difference in terms of the type of effect that it has. The effect that it has is that in one context it undermines that person's right to speak and be equal because he has nowhere else to turn and because the impetus behind it is supported by society at large.

For heterosexuals, however, while some language might be offensive—and I agree that it is—these people do have support networks in place and in fact are not likely to find employment discrimination or other forms of discrimination or feel the same types of discrimination and the effects of silencing, which is really what lesbian and gay discrimination is about, that a lesbian and gay person would feel.

I realise this is controversial, but I think it is important to draw it out because again and again and again in the Western Australian press, people within the community are saying, 'I am always discriminated against by lesbians and gay men'. I think it is a manipulation and it is an incorrect use of the term discrimination within a human rights context. For example, when heterosexuals say, 'I wasn't allowed into a gay bar. That is discrimination.' That is not discrimination, it is ensuring that lesbians and gay men have a safe space.

CHAIR—Yes, but we can address questions on that. Special measures—

Mr Kendall—Exactly, and I think they fall in line. To come back to my original concern though, I guess I am not terribly opposed to the bill because protection of heterosexuals against discrimination should exist. My biggest concern, however, is if we keep going with that, heterosexuals always seem to be ranked first in terms of the hierarchy that is created judicially and legislatively, and then we sort of clump homosexuals into one category.

That is a bit naive and dangerous because again I think it ensures lesbian invisibility. We then continue down the line to bisexual discrimination and transgender discrimination. I applaud the committee on those grounds. In Canada transgender discrimination is still not recognised as a form of discrimination and I think in that sense this report is remarkably progressive.

CHAIR—To stay with definitions, which I think the original question was in

relationship to, it was also suggested to us—I think it might have been in Hobart—that we also ought to recommend the insertion of another definition, of asexuality, if you understood what I am saying.

Mr Kendall—Asexuality?

CHAIR—It was suggested in Victoria. Have you got a view on asexuality? I am not sure where you put it in.

Mr Kendall—I do not think I have ever met anyone who claimed to be asexual. I can respond to that, actually. I think that if someone claims to be asexual they are immediately labelled homosexual. I think that, if someone claims publicly to be asexual, the immediate interpretation put on that is that a person cannot deal with his or her homosexuality and is not quite prepared to deal with it yet. I honestly think that is how people see it.

CHAIR—Would you have a problem with such an inclusion in the bill?

Mr Kendall—I guess the only problem I would have is on the same lines as I have with respect to the use of the word 'homosexual'. If you are going to create categories, we need to broaden the category to ensure that homosexual is lesbian and gay, and I think the only problem I have with listing asexuality is that, to the extent that someone is discriminated against because they are asexual, in my experience they are discriminated against because they are perceived to be lesbian or gay or bisexual, in which case the protections extend, if I read the act correctly. But I am not about to boycott or picket against the passing of this piece of legislation if the term 'asexual' is included.

Senator ELLISON—Just on the question of the constitutional validity of the legislation, do you think that article 26 of the International Covenant on Civil and Political Rights is a general equality clause that would support this legislation? Would you comment on this as well: we have heard evidence that that clause is a general equality clause which prohibits discrimination against all people. However, the Commonwealth Attorney-General's Department disagrees with that, or its stance has been that the provisions in the bill that deal with goods and services and superannuation might not be supported by the external affairs power. Could you comment on that and deal with the first question I asked, in whatever order you pick.

Mr Kendall—I wish I could. I probably could with more time. I am not an international lawyer; I do not teach in the area of international law. I do, however, have a number of papers which have been submitted to me by my students directly on the first point, which I can get for this committee if you like and which probably do address the first question. I can get those within the week.

Senator ELLISON—That is no trouble. It would be of assistance.

Mr Kendall—Unfortunately, I am not of much help with respect to the second question either. I am not an Australian citizen yet—I need another month; I intend to be, provided the present government does not outlaw immigration by gays—so I cannot really answer the second question either. My knowledge, as it were, with respect to constitutionality right now tends to be based more on the Canadian experience. The classes that I teach tend to deal with the types of discrimination that lesbians and gay men experience in their daily lives and the ways in which the law might be able to deal with those types of discrimination.

Senator ELLISON—On the inclusion of heterosexual in the definition of sexuality, a previous witness mentioned a case in the eastern states where, I think, there was a claim of discrimination on the basis of heterosexuality dealing with a female cricket team. The claimant, or applicant, said that she had been discriminated against because she was not a lesbian. You mentioned that you had not seen an example of discrimination. That might be said to be one that was claimed as such. In that instance, do you think it should be open for the individual concerned to have a right of application under any discrimination laws?

Mr Kendall—I would have to see the facts of the particular case. My own experience with respect to those types of claims is that they tend to be more political than based on actual perceived experience. I think a case like that borders on the dangerous in the sense that it tends to rely very heavily on systemic stereotypes, that is, that lesbians are all jocks and only participate in athletics because they are dykes—excuse my use of the language. I am not aware of the case but I can see an argument being made which relies very heavily on homophobic stereotype in order to gain access to something by relying on that stereotype, that is, the stereotype being that only lesbians are allowed to play in athletics. If in fact an individual was denied participation because she was not lesbian, clearly that is discriminatory, but again I would have to see the facts of the particular case before I was able to say whether or not that was in fact what occurred.

Senator ELLISON—If it had occurred, would you say that it was desirable then to include that in the definition?

Mr Kendall—Again, I would have to see the facts. I am not sure. I think in a situation like that she may be able to rely on a sex equality claim in the sense that she had been discriminated against on the grounds of her gender, which is something which heterosexual complainants do have access to right now but homosexual claims do not in a sense that homosexuality as a form of discrimination has never been recognised under Australian law as a form of sex discrimination. My understanding, though, is that in law heterosexuality and categories of heterosexuality do tend to fall under protections offered on the grounds of sex as an issue of gender, and I think the distinctions have been made along those lines.

CHAIR—Do you have sexuality discrimination legislation in Canada?

Mr Kendall—In Canada it is not referred to as sexuality, it is sexual orientation. All provinces with the exception of two mandate that discrimination is outlawed against an individual because of his or her identification with a specified group, the groups being lesbians, gay men or bisexual persons. Sexual orientation has now been recognised under Canadian law as protected under the Canadian Charter of Rights and Freedoms as well. The only two provinces which do not extend human rights protections will now be forced to read in protections to the legislation because the provincial legislation has been challenged under the charter and the legislation has been ruled to violate the Canadian Charter of Rights and Freedoms to the extent that, by not offering protections against lesbians and gay men in the provincial statutes, the provincial governments have in fact violated national law by discriminating against lesbians and gay persons who are recognised as such on the basis of their sexual orientation.

CHAIR—How long have the laws been in place and are they effective in overcoming and stopping discrimination against gay men and lesbians?

Mr Kendall—I do not think any one law is going to single-handedly stop the types of discrimination experienced by lesbians and gay men. The advantage that this law has is that it does include vilification measures, which human rights statutes in Canada do not. Complaints are on the increase on the basis of sexuality at all provincial levels, particularly in Ontario, where most of the equality legislation is now being litigated. A great deal of the types of discrimination being lodged right now are in the area of family benefits, what might be referred to here as superannuation, for example, or dental benefits and the type of benefits that are normally afforded to de facto cohabitant couples.

The types of discrimination that we are seeing in Canada have been successfully combated in the sense that the remedies afforded tend to prove relatively successful and at a very basic level send a message to the community that certain types of discrimination are unacceptable. But I think it is going to take more than one piece of human rights legislation to combat the types of discrimination that we see. I think it is a good first step which I suppose is why I find it ironic that the government thinks that it can promote homosexuality by including protections in legislation. I think this particular government needs to take a reality check if it honestly thinks that it is going to make it that much more comfortable for people to express their sexuality publicly simply by drafting legislation which protects people from employment discrimination.

CHAIR—Are you aware of the book *After the Ball, How America will conquer its fear and hatred of gays in the 90s* by Marshall Kirk and Hunter Madsen?

Mr Kendall—Yes.

CHAIR—It has been argued in a number of submissions to the committee that the book promotes telling lies to get acceptance for the gay and lesbian cause. Is it the bible

on gay and lesbian activists as some submissions from opponents to the bill have suggested?

Mr Kendall—I would certainly hope it is not the bible. I think it sends a very negative message, particularly to gay men, that they have the option of participating in gender male privilege if they take up that option. I think it is politically very dangerous for gay men and it is a form of encouraged sexism which I certainly do not promote.

It is a popular book in the sense that it tends to provoke controversy and perhaps give some lesbians and gay men who have not been as politically active the kick in the behind that they need, but I think it is probably the wrong kind of kick. I think if gay men, in particular, committed themselves a little more readily to gender equality and to eliminating all forms of racial discrimination as they should, that politically would be much more effective.

I am not saying that I do not understand why gay men, in particular, want or choose to benefit from gender male privilege and heterosexual privilege. We do have the option of doing so, and given what it means to express one's sexuality publicly I can understand why they would. I do not think, however, that they should and the best way to ensure that we do not continue to prop up those types of inequality is to make it very clear to gay men that they do not need to, and the best way to do that is to extend human rights protections which allow them to actually express a form of gay male identity which is in fact socially subversive.

CHAIR—A final question from me: concerning the exemptions which are included in this particular bill and clause 107; that is, the one dealing with same sex couples, have you any explicit comments on both of those things?

Mr Kendall—I guess, as I said at the beginning, I have always had a real problem with religious exemptions. I think those religious exemptions are really used as an excuse or a justification for some pretty horrific forms of discrimination. The examples are always used of the hypothetical lesbian who will stand up and attempt to convert all her Catholic schoolchildren to homosexuality. I think that is a bit unrealistic.

The types of discrimination we are seeing which then are justified on the grounds of religion occur, for example, in the following context: a lesbian is identified by one of her colleagues as a lesbian because she is seen on television by mistake—she just happens to be in the wrong crowd at the wrong time according to the person, who happens to be principal of his or her high school. This person has never stressed publicly that her students should in fact be homosexual. She has just been identified as a lesbian and because of that she is fired; loses her employment and all possible benefits. The educational institution then justifies that discrimination because they are allowed to discriminate under human rights statutes. That to me is a pretty horrific form of discrimination and I do not think it is one which we need to promote or encourage.

You do not need to make exemptions based on sexuality within the context of religions. I think you need to make exemptions within the context of religion when someone seriously undermines the ability of that religious institution to do what they set out to do. Within the context of the Christian faith my understanding is that it is to promote understanding, compassion, mutuality, trust and reciprocity. That is my understanding of Christianity. I do not think someone being identified as a lesbian or gay man in any way challenges the religious principles upon which that particular institution is built. But I think the fact that a person can be justifiably dismissed for being lesbian or gay, allows someone who is blatantly homophobic to justify it on the grounds that it threatens the religious institution. In fact, I do not think that that is the real reason for that person's dismissal.

CHAIR—Is it the same for same sex couples, too.

Mr Kendall—I guess that socially same sex couples are problematic for me. I would rather see benefits given on an individual basis. There are obviously exceptions to that, for example, with reference to the rearing of children, or taking care of persons who are disabled. One of the problems with lesbians and gay people participating in an institution like the family, as we now know it, is that it tends to prop up the type of institutions which have, in fact, been responsible for our own historical and present oppression.

Having said that, insofar as families are recognised as a form of benefit, and lesbian and gay domestic partnerships, for example, are simply denied the opportunity to participate in that, then I support any legislative effort which extends those benefits. I guess I would only add a proviso such that I would like to see in the future an attempt to extend those benefits to different types of families, for example, to four or five women, who for economic reasons, live together so that they might support their children. In that context, as well, I think that we have to recognise that that also is a family. Perhaps, it is not one which has been historically recognised, but it is one which is, as well, entitled to the types of benefits that a more traditional, nuclear family has been granted. So, in a sense, I support the extension of same sex benefits because I think that it is one way to eliminate the types of discrimination we have been talking about. But I would hope that the legislation does not simply end here. I hope that future steps are also taken to extend those benefits.

CHAIR—Mr Kendall, thank you very much for your attendance here this afternoon. You have promised to send on some more material to us. We look forward to that and thank you in anticipation for it. Thank you.

[4.20 p.m.]

HOSKEN, Mr Anthony John, Legal Practitioner, 3rd Floor, 524 Hay Street, Perth, Western Australia 6000

CHAIR—Welcome. The committee has received your submission of the 2 September 1996. We have this morning made a decision to formally accept that submission and it is now a document in the public domain. We thank you for that and for your attendance here this afternoon to assist the committee with its deliberations. I now invite you to make an opening statement, and at the conclusion of your remarks, I will invite members of the committee to address questions to you.

Mr Hosken—I appear as an individual, as a legal practitioner who has dealt quite extensively with discrimination of gays and lesbians. There are just a few additional things that I thought that the committee should possibly look at which I did raise in my initial draft submissions. First of all, I was referring to section 117 of the constitution and I would refer the committee to an article called 'The High Court and the Constitution', third edition, 1992 Butterworth, and the article is by Leslie Zines. Again, I refer to section 117 which I have always thought was quite interesting. It says:

A subject of the Queen, a resident in any State, shall not be subject in any other State to any disability or discrimination which would not be fully applicable to him if he were a subject of the Queen resident in such other State.

And the really interesting point that I find that Leslie Zines has highlighted is that there are three cases in dealing with section 117. The first one is the 1904 case which came from Western Australia; the second one was a 1973 case which was from South Australia dealing with legal practitioners; and, finally, the most important case is the case of Street which was a 1989 case. From that case the extract that has been taken is by Leslie Zines and she says:

The object of the provision was seen by all the judges as one of fundamental importance to the nature of our federation, as enhancing national unity . . . promoting national, economic and social cohesion . . . [and] ensuring that persons from one state are treated in another as citizens of the one nation and not as foreigners.

And the sort of issue that I would raise with this is that, for example, Western Australia has an age of consent of 21 years, whereas, someone coming to Western Australia as a tourist, or as relieving staff of a bank or mining company, could be entitled to the benefits that he receives in New South Wales with reference to any age for consent. Therefore—and this is what I am trying to draw to—there is a disparity from state to state, rather than having one nation which I think she clearly outlines in this article. I am quite happy to leave this for you if you wish to peruse that article.

CHAIR—We would be happy to accept that.

Mr Hosken—I think I have the front sheet of the case of Street in here somewhere and I will leave that for you also. I thought that was really quite significant.

The other thing which did concern me was that I did hear earlier this aspect of the religious exemption. I looked at the Anti-Discrimination Act of New South Wales and the Equal Opportunity Act of Victoria, which I would also tender just for your own perusal at your convenience. All that deals with is just the religious discrimination sections, and it is really more to assist you to follow what I am saying.

What does give me some concern is that if an act did come in and it incorporated extensive exemptions which would follow more of the Victorian blueprint, then I would submit that I would be quite concerned with reference to people in New South Wales who are receiving benefits already under their own act. Those benefits would, in fact, be curbed by a federal act because of the constitution, in that a federal act would override a state act. So I would just draw that to the committee's attention because in the Anti-Discrimination Act of New South Wales, the religious bodies do have some exemptions—and that is on page 66—but they are nowhere near the extent as drawn out under the Victorian act which I find offensive and onerous and totally unnecessary.

Still dealing with religious exemptions and what the previous person was submitting to you, my concern is that under section 170DF of the federal Industrial Relations Act no-one can be dismissed because of their sexual preference but people can certainly be discriminated against and harassed to such an extent that they leave their work. One of my examples in my submission was of someone working in a religious school who was harassed. That does give me some concern. So as the previous witness was saying that the religious people may want some rights to carry out their religious function, then individuals working within that environment—and providing they are not impeding the religious function—should not themselves have their own freedom impeded. And that is the freedom to carry out their duties in accordance with what they have been employed to do. To some degree this is really quite offensive.

There is another thing that does give me some concern with the religious exemptions. I would ask you to look at page 43 of the bound submissions and the article there which was placed in a letterbox of a homosexual man by what appears to be a religious group. The police became quite alarmed at this because the Cross of Iona, which is at the bottom of it, was the symbol that was used by a person who was convicted of racial hatred and—

Senator ELLISON—The Australian National Movement? I think that was the one.

Mr Hosken—It was also tied up with some American fanatical groups and the police here became quite alarmed at these articles. A lot of gays and lesbians are also members of religious bodies. But religious bodies should certainly not be able to discriminate or vilify to the extent that these articles do.

Senator ELLISON—Do you think that that publication would attract the protection of the definition of religious?

Mr Hosken—Well it is an awful lot of danger. This is really what it is talking about.

Senator ELLISON—When we talk about religious freedom and the constitution, there is case law on that. And I take the point that people might use a religious cover to achieve other ends. I am alive to that and I appreciate that point. But I would have thought that the concerns would have been about things that were much more subtle, or more grey. That, really—

Mr Hosken—Is outrageous.

Senator ELLISON—Yes; it is a cut and dried situation, isn't it?

Mr Hosken—But what I am trying to explain also is that this is the frightening extent which some religious groups are going to.

Senator ELLISON—But is it a religious group that is behind this?

Mr Hosken—We could never isolate the individual, but I would have thought that someone who has gone to such an extent as this must have some religious motive.

Senator ELLISON—I just wonder whether their bible references are correct and whether they stand up to—

Mr Hosken—Apparently they are—they are there in the bible. They are taking the wrong interpretation.

Senator ELLISON—Okay. I am sorry I interrupted you.

Mr Hosken—That is fine. What I am really saying is that religious bodies may wish to have the right, as they have under the New South Wales act, for ordination and appointment of priests, ministers et cetera for training and education, and the appointment of any person in any capacity by a body established to propagate religion. I think this is appropriate. But what does worry me is that I would hate any religious bigots within the federal parliament to suddenly go catching onto the Victorian remedy as being the appropriate remedy for protection of religious bodies.

Quite often discrimination goes far and wide and in many ways it is the self-perception of the individual which is also very important. I had a person come to me who was arrested for loitering a week before homosexuality was decriminalised in our state parliament. He was a school teacher and afraid to stand up. The circumstances of his arrest

were that he was spoken to at Swanbourne Beach by a person for an hour and they spoke about philosophy and the stars and the moon. It was a Sunday afternoon. He was invited to go down and sit in front of the surf lifesaving buildings for another half an hour and then this person said to my client, 'I suppose you want to take me home and have oral sex?' My client said, 'Yes', and this person said, 'I am a police officer and you are under arrest.'

Senator ELLISON—That was a case of entrapment.

Mr Hosken—Yes. What happened was that he paid his fine of \$50 or something, and he then went to get a job in England but he was on record here and could not get a job as a teacher. He was half Italian and went to get a passport for Italy and could not get one to get a job in Italy. He cannot have it expunged yet; he has to wait 10 years. So it really does impact quite dramatically on people's lives, and it does affect how they see themselves.

In many ways I would think of the sexual orientation equal opportunity legislation in the same way as racial or gender, in the sense that individuals need the right and the opportunity to, as my previous learned friend said, 'Be on an equal playing field.'

Senator ELLISON—Is there not sufficient protection in the complaints process against police behaviour? I noted, earlier on, the deposition there from someone who was saying how they were treated in a car park. If any objective member of the public had seen that they would say that that was unacceptable behaviour by a police officer. If that was complained of I am sure that action would be taken if there was evidence to make it out. That is my first comment: is that not sufficient protection, if not, why not?

Mr Hosken—Protection by the police?

Senator ELLISON—Protection to the individual. What you are talking about here is the police entrapping someone. Does that still go on?

Mr Hosken—Yes. The last incident of that happening was four weeks ago.

Senator ELLISON—As blatant as the one you have just mentioned?

Mr Hosken—Yes. You will notice, in the bound volumes, my correspondence with reference to a matter at Maylands earlier this year. It just so happened that they had chosen the wrong person; they had chosen someone who was not homosexual and who, in fact, was there for legitimate reasons. They thought that they had entrapped him.

Senator ELLISON—With the other aspect, though, the complaint against police: why is that not sufficient?

Mr Hosken—To start with, there is no gay liaison officer; there is no empathy or understanding by a police officer who is in tune with the needs, requirements and discrimination of gays and lesbians. You may find one in the New South Wales police, and, since that problem at that nightclub, you may find a liaison officer in Victoria. In the one that is in front of you, on page 49, I have a statement from an individual who was threatened with assault by the police officer. He lodged the complaint and the police officer whom he complained against rang his mother and said, 'Do you know that your son is a poofter?' The inspector at Warwick police station, who was his superior officer, rang me and was outraged at what had gone on.

Senator ELLISON—Outraged by the policeman's conduct?

Mr Hosken—Yes.

Senator ELLISON—What happened to the policeman?

Mr Hosken—In this particular instance, because the inspector was so outraged, the policeman was sent for psychiatric assessment and retraining.

Senator ELLISON—But this bill that we are talking about here is not going to help this sort of situation, because that situation deals with proper policing, doesn't it?

Mr Hosken—What do you mean?

Senator ELLISON—Well, the fact is this: policemen should not have prejudices like that, but they are human beings and they have prejudices one way or another.

Mr Hosken—But they cannot afford to. They cannot have prejudices for race or gender.

Senator ELLISON—That is what I am saying—that there should be safeguards for that. But it is not to be found in discrimination legislation; it is to be found in the disciplinary process of your police force.

Mr Hosken—But I think you will find the disciplinary process will follow the equal opportunity legislation. In actual fact, I think they are trying to do things in anticipation that your legislation is going to come through.

Senator ELLISON—But, in any event, you do not need the legislation to back up your superintendent's actions.

Mr Hosken—But you certainly give impetus to organisations like the police force to actually carry out and do things. This is where your legislation will be effective. Legislation will not change people's attitudes. It will certainly change environments in

which they operate with their attitudes, and it will give people who are discriminated against the right to equality. That is what your legislation will do. Basically, you have 10 per cent of the population not being entitled to the rights that the other 90 per cent enjoy daily. A lot of gays and lesbians feel like Jews in a Nazi homeland.

Senator ELLISON—That is the police aspect of it.

CHAIR—I was surprised at your comment that there were no liaison officers within the WA police force.

Mr Hosken—You will see my letters there that are constantly—

CHAIR—Unfortunately, there are rather a large number of letters, and I have not had the opportunity to read them all but I have read some of them on the way through. I have been trying to follow the discussion.

Mr Hosken—If I can just—

CHAIR—But if I might deal with a more general point than that: are you aware of any requests that have been made of the WA police force to have such a liaison person on the force?

Mr Hosken—You will find in the submissions that there are constant requests. Initially, as you will see by my submission, there were five gays and bisexuals being blackmailed by the police. A group of lawyers then started, using night vision cameras to entrap the police. Then, when Commissioner Bull found out about it, he asked for a summit. He guaranteed a liaison officer at that summit, and that was in early 1993. We have been trying to get that liaison officer. The approval was granted in February this year but there has still been no liaison officer appointed.

CHAIR—Has a subsequent request been made of Commissioner Falconer?

Mr Hosken—Yes, and he said that it would be done.

CHAIR—But so far we have not got one in this state.

Mr Hosken—No, and I have advised the police that I would be making that submission to this committee. I cannot be more explicit.

Senator ELLISON—And one has been approved, but when was that approval granted?

Mr Hosken—February.

Senator ELLISON—Just on that blackmail business: the officers there, if that is the case, would be guilty of a criminal offence.

Mr Hosken—Yes, but when people are so afraid to come forward. The whole problem is that silence is the oppressor, and gays and lesbians have learnt to play the game. They shut up; they get bashed; they get raped. I think there would be two gay men who get raped in the city each week by heterosexual men, but they shut up.

Senator ELLISON—Well, if they are being raped by heterosexual men—

Mr Hosken—They learn to shut up.

Senator ELLISON—the heterosexual men would be homosexual then, wouldn't they?

Mr Hosken—No, they would not be homosexual.

Senator ELLISON—Why not?

Mr Hosken—They would be identifying as strictly heterosexual men.

Senator ELLISON—Yes, but they are suppressing—

Mr Hosken—Not necessarily suppressing. It is seen as a power and a put-down, like rape with a woman.

CHAIR—I cannot say I understand that but that is probably for another day.

Senator ELLISON—I think the submission you made on the police has been a comprehensive one and an important one, and that is why I have asked the questions. I am sorry if I interrupted your flow there but I think you made some important points.

Mr Hosken—The police have had a chief superintendent who is the head of the community liaison unit and one of his many chores was gay liaison. But he was not a full-time gay liaison officer. They have had constant changing of the police force and they expect me to retrain each officer as he comes on board as to the rights and wrongs of their occupation. It is just totally unacceptable.

The biggest thing that worries me is this fear. If anyone else was attacked or violated, they would come forward and they would say, 'This has happened to me.' I had a fellow who was bashed by some poofter bashers in a service station in Thornlie. It was actually taken on camera and they got the numberplate of the people, but it took the police a long while to react to that complaint. The person was quite badly assaulted. I tried to get him to lodge a criminal injury compensation, but he will not. He is afraid that the person

will come forward and murder him in the home.

Senator ELLISON—Yes, but he does not have to say that he is gay or anything if he claims compensation. An assault is an assault, isn't it?

Mr Hosken—The assault has gone through and there has been a conviction, finally. But he is too afraid to lodge a compensation claim.

Senator ELLISON—Again, it comes down to the fact that this discrimination legislation is not going to help there. I mean, what happened there is just a pure and simple criminal act.

Mr Hosken—Yes, but what you will change with your legislation is that you will empower people. That is what equal opportunity is all about. It is people who are disadvantaged by discrimination are empowered. This is what the Sex Discrimination Act was all about. This is what racial discrimination was all about. You empower them to try to be equal and to accept their rights.

A lot of gays and lesbians see themselves as victims. For instance, women hand over their children to their husband if they are leaving because they are going into a lesbian relationship. So many lesbians just leave their children behind because they feel that they have no rights. They see themselves as victims. You have a sub underclass in our society.

Senator ELLISON—In the Family Court, though, lesbianism or homosexuality is not a bar to custody; is it?

Mr Hosken—No—I mean, ostensibly, no. It sometimes comes in via the back door. I have explained this through my example of an HIV man whose wife was outraged. She used the HIV to block access under an old case—I think it was 1986—which says that if a man has HIV then it is in the child's interest not to see him. That was a full court of the Family Court decision. Therefore, he lost any contact with his child.

Senator ELLISON—Was that the sole ground for the loss of contact?

Mr Hosken—Yes.

Senator ELLISON—There was no other aspect such as his dangerous behaviour or anything like that?

Mr Hosken—No. The argument of the lawyer was that the husband was homosexual and he may bring the child into contact with other homosexuals who are undesirable. But ultimately it was the HIV ground that was ruled on.

Senator ELLISON—And he was the natural father?

Mr Hosken—Yes, and he had three children of a previous marriage in which his former wife was coming in to support him for his claim.

CHAIR—Can you give us a reference on that case?

Mr Hosken—I could give it to you later. I do not have it with me at this moment.

Senator ELLISON—Yes, please, if you could. That would be helpful.

Mr Hosken—I am also on the legal committee for the AFAO, the Australian Federation of AIDS Organisations. I have often raised in that forum that it is outrageous that, even though we have a disability discrimination act, the Family Court still has the power. This was a single judge who was very sympathetic but who was bound by the full court's decision.

The other thing which I think is often lost is that we look at 10 per cent of the community, but I think that when you look at the bisexual community you are looking at a far greater number within the community. The other thing that does give me some concern is that it appears that a lot of the people opposing any equal opportunity legislation for gays and lesbians often bring in this thing of anal sex. I always find it most amusing, because there are more heterosexual people within the community practising anal sex than there are homosexuals.

Of the figures I have seen, 43 per cent of homosexual men practice anal sex, but I think something like about 25 to 30 per cent of all heterosexuals between 18 and 55 practise anal sex. If you look at the figures, the number of gay men practising anal sex is quite small. I saw these figures being reproduced when there was an argument with the Tasmanian fight over the Rodney Croome matter.

Senator ELLISON—That used to be illegal, did it not? As I recall, the criminal code outlawed anal sex between heterosexuals.

Mr Hosken—Yes.

Senator ELLISON—Is that still in the statute books? I have not practised for a while.

Mr Hosken—I cannot remember. This is where the police exercise their discretion. If they see a couple of heterosexuals in a car bonking they sort of smugly titter and then walk away, but if they see two people of the same sex they get in there and arrest them.

Senator ELLISON—There have been cases of heterosexuals being told to move

on if they are being a bit—

Mr Hosken—Like doing it in a park openly, yes, then they might be.

Senator ELLISON—And it then comes under disorderly conduct. I think that is the general approach.

Mr Hosken—It is always a snigger and then they just sort of turn a blind eye to it. But if there is anything to do with gays showing any affection they will soon jump on them. I think you may be correct in that I think anal sex between heterosexuals—

Senator ELLISON—Could you let us know about the anal sex aspect in the criminal code of Western Australia, if you would be so good. That would be of great assistance, thank you.

Mr Hosken—All right. I think also the other problem with homosexuality that I have experienced, and this is starting out with homosexual and then going into the HIV problem, is sex in prisons. It goes on and, as one of my clients said, they are in there bonking like rabbits. The prison officers are averse to condoms being allowed in prisons because they are promoting homosexuality.

Even when we offered for an organisation like the AIDS Council to do monitoring and servicing of any condom vending machines, the prison officers still were averse because they said it is promoting homosexuality. So there are people having sex in prison and they do not have condoms.

All I am saying is that there is this problem that the community has, and it is a past problem, and I think it is one we have inherited from our Anglo-Saxon forefathers because, as you will see in my submissions, I think France decriminalised sodomy in 1791. I do not think some of the Latin countries of Portugal, Spain, Italy et cetera have ever had any anti-sodomy legislation. I know some people probably think the Greeks make it compulsory!

I was listening to the comments of my learned friend before me on the terminology of 'breeder'. I understood that that was really a terminology of reclaiming rights. I think homosexuals have been discriminated against for generations because they have no value because they do not breed. I think that is often used as a flip back of taking back the power, the same way as Aboriginal or non-white people refer to caucasian people as 'whities'. It is a recovery of power. I know I first heard the term being used by a heterosexual woman who was half African-American and half American Red Indian and lived in San Francisco. She used that term because she said that her friends were reclaiming their power.

With reference to the goods and services aspect that I heard you asking my learned

friend about, I would have thought that the Sex Discrimination Bill came in on a treaty and covers all of those areas.

Senator ELLISON—Yes, but the treaty does not itself.

Mr Hosken—It does—

Senator ELLISON—It does not. That is what I put in that article. If he is relying on the International Covenant for Civil and Political Rights, article 26 does not extend it that far.

Mr Hosken—I thought that there should be no discrimination based on sex. That was at 2.1 or something of the treaty.

Senator ELLISON—Sorry, we are talking about two different conventions. I asked him about the International Covenant on Civil and Political Rights.

Mr Hosken—Yes, on the ICCPR.

Senator ELLISON—You are talking about the discrimination against women.

Mr Hosken—I was not aware if the treaty with women included goods and services in that treaty.

Senator ELLISON—It is a completely different treaty.

Mr Hosken—It is a different treaty and I do not know whether it included goods and services in it. That is where the women's act gained its power from. Under the ICCPR, from when I last read it, it refers to the term 'sex' which the human rights commission has defined as including homosexuality. There is an obligation on the signatory governments to bring in legislation to implement the treaty. That is the only way I can help you in that area.

CHAIR—Just as a matter of clarification concerning your bound submission, is the earlier part of the submission the same as what we have received—

Mr Hosken—It is almost verbatim except that I did do some editing.

CHAIR—We have formally accepted the other one as your submission and published that. What we might do is substitute this one. With the attachments, we will accept those as exhibits and they are available to the committee.

There are some more questions that arise out of the submission, which I again thank you for. The committee notes that sexual preference has been declared as a ground

for limited complaints under the Human Rights and Equal Opportunity Commission Act. Such complaints are limited to incidents of employment discrimination. Have you ever pursued this avenue of redress on behalf of any of your clients and, if so, what was the result?

Mr Hosken—Is this through the HREOC?

CHAIR—Yes.

Mr Hosken—Do you mean sexual preference stuff?

CHAIR—Yes.

Mr Hosken—Yes, I have, and they say they do not have the power. I asked them to investigate under sections 20 and 21 of the act, I think, where the commissioner has the right to investigate and report back to the minister, and they did not do that either.

CHAIR—Did they choose not to do it or—

Mr Hosken—They never did. I did ask and they never did. I raised a complaint with them. They said they did not have the power.

CHAIR—In the context of the current bill that is before the committee, what do you think of the powers that would be vested in HREOC to investigate complaints by people who feel they have been discriminated against?

Mr Hosken—Fine. My only concern, which I think I have raised briefly in my submissions, is that I am concerned with HREOC being basically administered out of New South Wales. That is my main concern, that any inquiry or complaint must go through New South Wales. I find this a bit onerous for individuals, firstly, to lodge the complain and, secondly, for it to be dealt with. Under the Disability Discrimination Act I have done most of the HIV stuff through HREOC and I have done it mainly pro bono.

It has been very difficult—and I am a practitioner dealing with this. For individuals to be doing this across Australia is very difficult. For them to come across for conciliation conferences et cetera is very difficult. I think it is about to come in under legislation that it is going to come in as a division of the Federal Court. I just wonder whether the Federal Court may have some powers to assist or deal with this on a regional level. But that is my concern, that it has to be accessible to the community, or else that it go through the state equal opportunity commission, as I think operates for the Queensland and federal act.

CHAIR—Was there any advantage in the fact that the president of HREOC lived here in Western Australia?

Mr Hosken—Yes, there was an advantage in that Sir Ronald would sometimes be

available, and he was wonderful in conciliating. That was an advantage in that he would be home and we would try and organise a conference while he was in Western Australia.

CHAIR—We are going to lose that shortly.

Mr Hosken—Yes, we are. That is my concern.

CHAIR—The homosexual panic defence is mentioned in your submission. Could you briefly discuss that for the committee?

Mr Hosken—It is basically a defence where if a person feels that another person is homosexual and has desires upon him, he has the right to murder them. There are a couple of examples. One was in Fremantle—a minister of religion was murdered, and that was used as a defence and accepted by the jury. I thought at the time that it was quite strange. It was an Iranian man who merely thought that the person was homosexual. I do not know whether there were any direct sexual advances.

The second example was when it was attempted to be used for the murder of a homosexual man in Mosman Park. The trial was last year. In that case, it did not succeed before the jury but it was attempted. In that case, the person had gone home with the homosexual man, they had had sex, the homosexual was asleep and the other person started removing articles from the house. The homosexual woke up so he strangled him with a cord and continued removing articles from the house, then the homosexual started to rouse from what the person thought was death so he then slit his throat. I find it rather onerous and outrageous that, in this day and age, you could be claiming that sort of defence. But it is a defence.

Senator ELLISON—What section of the code does that come under?

Mr Hosken—I think it comes more under common law than a section of the code. I think it is a common law defence.

Senator ELLISON—But there is no defence as such which says that, because you are scared of someone being a homosexual, you can—

Mr Hosken—By common law it can be used, and that is what I am saying—it was used.

Senator ELLISON—You have to link it to some possible threat to yourself, don't you?

Mr Hosken—It was not in the case of the clergyman being murdered.

Senator ELLISON—What about the question of a woman? We have had females

who have had serious charges downgraded where you had had sustained sexual abuse by a man to a woman, and they have claimed the same sort of thing.

Mr Hosken—But this would be like a man with his hand on a woman's knee and her picking up a knife and slitting his throat. And that is what I put in my submission—I found it to be rather unusual because a woman cannot use that defence, that suddenly she thought this man had tickets on her.

Senator ELLISON—But you have cited New South Wales decisions here, which are common law, and then you have got Western Australia where your defence is in the code—

Mr Hosken—But they also allow it as a common law defence here.

Senator ELLISON—And you are saying that the law allows a defence where there is a particular reliance on the question of a fear of some homosexual action?

Mr Hosken—Yes. Often, as I said with this one case in Fremantle, I do not think there was any manifestation of that homosexuality. There was no direct advance. I think in that case it was in the pew of the church: the pastor was counselling the person and put his hand on his knee.

Senator ELLISON—Is that case cited here?

Mr Hosken—I do not think so.

Senator ELLISON—Is it possible for you to get us some detail on that? If it is difficult I will try and see if I can get it. What was the name of it?

Mr Hosken—I would have to find that out. It was a well-publicised one.

Senator ELLISON—Yes, I seem to remember it.

Mr Hosken—It was in the front pew of the church or something; it was late at night and he was counselling him. He had come to the church in distress or something, and homosexual panic was used successfully as the defence.

Senator ELLISON—Get that for us only if you can come across it easily. If it is too much trouble then do not worry. I will see if I can find it as well. The only reason I raised that is that years ago I briefed Terry Walsh, who is now a Supreme Judge. It concerned a hitchhiker who murdered another man whilst they were hitching together. He claimed that homosexual advances had been made, but it was rejected out of hand. The offender was a juvenile under age, under 18, and that was thrown out. That is why I am interested in the reliance or the frequency, or perhaps even more of the defence you have

mentioned.

Mr Hosken—This is just to give you an idea of how, by a liaison officer not operating, they are losing resources. In the case of the Mosman Park murder I heard the description and I rang the police and said, 'I think I know who that person is.' I said, 'I had a client come to me who had a person come to his house in Mirrabooka. They had sex. He dropped him off in Tuart Hill the next day. The next day he came home and all his CDs had gone. He came home the next day and the house was cleaned out. By what has happened, I think this is the same man.' For seven months I rang them, and after seven months I finally got through to the officer and he said, 'We arrested him yesterday.'

Senator ELLISON—So you spent seven months trying to give them the tip-off and they did not listen?

Mr Hosken—No.

CHAIR—Let us not develop the theme. I am acutely aware of the time. We could get away at a tangent on that one but we will not. I am aware of the time and there are some restrictions on both Senator Ellison and myself, for other engagements after today. I might try and wind up with a final question on the definitions of sexuality as included in the bill at the moment. Have you any thoughts or views as to the inclusion of heterosexuality or whether homosexuality ought to be expanded to define lesbians and gay men, for example, or have you any other thoughts on it?

Mr Hosken—I find it trite to be including heterosexuality in it. In the same way, to put Caucasian in race discrimination legislation would be trite. To give men the same issues as women are being given defies what the object of the bill is. If it meant for us to get it through, though, I probably would not be too worried, but I find it trite. I find it insulting and trite.

Senator ELLISON—Do you think they cannot be discriminated against like anybody else?

Mr Hosken—When you are 90 per cent of the community, when you have all the media and all the institutions behind you, I find that it would be very difficult. I heard your reference to the cricket team and, as my learned friend said, I would like to know the real details of what that was. It sounded a wonderful media story but as to the reality of it I just find it very trite. I think it is people undermining the discrimination that is effected upon gays and lesbians.

CHAIR—Unless there are any more burning questions from my colleague I will call it a day at that point. Thank you very much for your assistance, in terms both of the written submission and the attachments and also of your appearance before the committee to answer our questions this afternoon. Thank you very much.

Mr Hosken—Thank you for the opportunity.

[5.10 p.m.]

GETHIN, Mr Stephen James, 2 Luita Street, Wembley Downs, Western Australia

CHAIR—Welcome. In what capacity are you appearing today?

Mr Gethin—I am appearing as a private citizen.

CHAIR—The committee has received your submission of 12 August 1996 and a supplementary submission of 20 September 1996. We have already made a decision to formally receive and publish those submissions. We have also received two other documents over the weekend which give the committee additional information. One is a submission made to a New Zealand commission on homosexuality issues in New Zealand in 1995, and there is also some other material which includes a decision in the Jobling case, a photocopied pamphlet entitled 'Medical Consequences of What Homosexuals Do,' and an article entitled 'The Shrinking Ten Percent' from *Time* magazine of 26 April 1993. These latter documents we will receive as exhibits to the committee.

I now invite you to make a submission to the written comments you have given the committee, and we shall then address questions to you at the conclusion of your remarks.

Mr Gethin—My perspective on this bill is that of a Catholic, a solicitor and a small employer. I have had a substantial role in lobbying on issues of homosexual law reform. I have had an input into the submission which has or will be presented to this committee by the Australian Catholic Bishops Conference. My view is that this bill should be rejected in its entirety.

I will start with the provisions dealing with transsexuals and transvestites. Firstly, I might say that I find these to be perhaps the most extraordinary proposals ever to come before any Australian parliament. I will deal with the question of transsexuals first. People suffering confusion about their sexual identity deserve compassion and understanding. Nevertheless, that compassion cannot extend to forcing the community to regard a man who wears a dress or has a sex change operation as being a woman, and certainly there is no question that this bill in its terms is wide enough to include within its provision a man who turned up at work wearing a dress.

It would just be totally inappropriate in a commercial setting to accept somebody like that as an employee in almost any business that had dealings with the public, and one could envisage considerable problems between that person and other staff. Even the most benevolent employer, even assuming that he or she would have some duty to employ such a person, is not responsible for the fact that the other members of the staff may not be as charitable or as welcoming towards such a person, and is simply entitled not to put someone who is going to create that kind of difficulty in an employment setting into his or her workplace.

I would also be surprised if the majority of Australians did not share my view, but it is the kind of subject on which perhaps we are not going to get any opinion polling done. It is one of those subjects which fear of touching off politically incorrect subjects means that people like AGB McNair and so on are not particularly interested in inquiring into. I would sincerely hope that they would though.

I think there is some scope to afford transsexuals protection in a situation where they may have perhaps been imprisoned for an offence. There may be difficulties with them mixing with a male prison population. There may be other circumstances where some amendments to the law are necessary, but certainly a blanket statement that people must in all respects disregard the significant feelings of confusion or repugnance that they might feel towards someone who has that problem in a bill that is that wide is not justifiable.

I believe that the proposals dealing with vilification are wide enough to include within their ambit two different types of conduct: first, a type of conduct which is unjustifiable on any test. That would be exemplified by the Marinkovic case, the decision of which was handed down by the New South Wales Anti-Discrimination Board last Thursday. The conduct to which Mr Marinkovic's neighbour was subject was certainly unjustified. No-one could seriously contend that anyone has a right to behave in the way in which Mr Marinkovic behaved towards his neighbour.

There are two issues of concern with regard to that judgment, however. The first is why Mr Marinkovic's neighbour's case should have depended upon him being a homosexual. Surely any person of whatever orientation who is subjected to that kind of conduct should have an equal remedy.

Secondly, if abusive neighbours are a problem then that is a matter for, as they call them in New South Wales, apprehended violence orders, as they are called in Western Australia, restraining orders. Perhaps there is a need for those laws to be tightened up further. I understand that that proved to be a somewhat ineffective remedy for the complainant in the Marinkovic case. Certainly one could seriously consider tightening up that law quite substantially. That is primarily, of course, a state matter rather than a matter which I would think the Commonwealth would normally want to concern itself with.

The second question is the quantum of damages awarded in that case. There has been in equal opportunity decisions generally, a tendency to perhaps take out of proportion damages for the hurt or outrage that the discrimination causes. If you compare awards of damages for what might amount to hurt feelings in an anti-discrimination case to damages awards made in personal injury cases, for the equivalent head of pain, suffering and loss of amenities, you would find that you would have to be quite severely injured to receive an award of, say, \$50,000 on that head.

I will just very briefly quote from one New South Wales decision, a person that was awarded the amount of damages of \$55,000 on the heading of pain, suffering and loss

of amenities in a road accident case. This was a lady who had suffered these problems for nine years at the date of the trial. Her injuries were summarised as severe bruising and severe pain in the back; severe left sided sciatic pain causing limp; early development of osteoarthritic change in L-5, S-1 facet joint, which is essentially the lower end of the spine. Unfit for previous occupation. She did receive additional damages for economic loss, but I am just here comparing the sort of damages that are awarded for, say, the hurt of the injury and the generally out of proportion in equal opportunity cases.

So, if this bill is going to become law, I suggest that some thought would need to be given to giving judges some guidance as to the kind of damages that they are going to award so that they can be kept in proportion to damages for physical injuries, which, in my submission, are considerably more severe.

The anti-vilification provisions in this bill are wide enough to include within their ambit not only the conduct of the Marinkovic type of case but conduct which just includes general polemic on the subject of whether homosexuality is licit or not. I believe you have been addressed in much more detail by the Festival of Light from South Australia on this issue, but apparently they had been in contact with a medical practitioner from Victoria who is regularly engaged in newspaper letter writing on the subject of various moral issues. I have seen the letter that he wrote to a regional paper in New South Wales. You may disagree with its contents, but I think on no test could you say that it is something which someone should not have a right to publish. He basically listed various diseases which were more prevalent amongst the homosexual community and used that to conclude that homosexuality was not a healthy sexual orientation and that various government proposals to encourage it were therefore not constructive.

He received a letter from the head of the New South Wales Anti-Discrimination Board. He is made of fairly stern stuff and was not cowed by that, but I think the average citizen receiving a letter to the effect that—and, again, I believe the actual letter may be before you, and I certainly do not want to be taken to be giving evidence on what that says if it can be obtained—but the impression I got was that it was a letter which told him that his conduct may well breach this act. It also seems that editors in New South Wales are quite reluctant to publish any matter critical of the homosexual lobby or its arguments on any issue for fear of incurring an action under this section.

Even a successful defence of an application under this section would leave a defendant substantially out of pocket, because the complainant is under no obligation to pay the respondent's legal costs if the respondent is successful. That brings me to perhaps one of the difficulties with equal opportunity law generally—not the concept so much as the procedural advantages that are given to equal opportunity complainants which are not given to people in an ordinary personal injury case. To take any form of prohibited discrimination, what is it about that conduct which makes it so much worse than, say, careless driving that a person who suffers injury as a result of careless driving has to fund his or her own case, unless he or she comes within the extremely small range of people

entitled to legal aid? He or she does not have a state funded official to investigate the case for him or her.

He or she does not have the ability to have the accused person answer questions. This proposal gives the commissioner the power to compel answers to questions. That is, in my submission, fairly contrary to the Western democratic tradition that people accused of any kind of wrongdoing, be it civil or criminal, are essentially entitled to silence until the hearing of their defence.

The third procedural objection which I have is that the liability of an unsuccessful plaintiff in a civil action for costs is a powerful and necessary disincentive against unreasonable or vexatious proceedings. It is true that in some equal opportunity cases they say that, where a person's claim is proved to be so unreasonable, they may have to pay costs. But in an ordinary civil case, if you did not win you would pay the other side's costs, and that is fair. If the defendant was established not to have done anything wrong, why should he or she nevertheless end up with a very substantial bill for legal costs? It just does not seem fair.

There is possibly a constitutional difficulty, too, with anti-vilification provisions. I am sure that senators would be aware of the case of Australian Capital Television in 1992. I will read briefly from the head note of that case.

Senator ELLISON—It is implied free speech, is it?

Mr Gethin—Basically, yes. I am sure the senators are fairly familiar with the scope of that doctrine. It is described here as freedoms embodied by constitutional implication in an implied guarantee of freedom of communication as to public and political discussion. That is essentially it. There is an implied freedom of communication as to public and political discussion. I think members of the homosexual lobby would be the first to tell you that their issue is a political one. Full and frank discussion, even it becomes somewhat heated, is part of the price we pay for an essential component of a free society.

The only conduct which I think you can legitimately prohibit is a direct exhortation to violence. If someone were to say, 'I think homosexuals should be killed. I think they should be beaten up. I think their houses should be burnt down,' that sort of thing would be clearly unjustifiable—although again I would say that there is no warrant for extending a protection against those kind of statements to homosexuals alone. It should be extended, if at all, to all members of the community. Perhaps I could respectfully submit that the committee at some stage might need to discuss the matter with some suitably qualified queen's counsel on the question of the constitutional validity of that.

The real problem with the definition of vilification is that it is just too unclear to know what it means in any particular case. It is contained in, I believe, section 26. It is, on

the one hand, making it illegal to incite hatred, contempt or severe ridicule. On the other hand, it is not making unlawful any incitement to hatred, contempt or ridicule which is reasonable or in good faith. It is a little bit difficult to conceive of contempt or ridicule which is nevertheless in good faith. There is a bit of a contradiction there. It is just impossible for anyone to look at that section and tell whether a particular statement comes within it. I would suggest that, if you limited any anti-vilification provisions to a simple prohibition on statements directly encouraging violence, that would achieve the objects behind this bill. Certainly this was very clearly the debate in the New South Wales house of parliament, that they thought that anti-homosexual statements should be banned because they created violence against homosexuals.

I suggest that, to limit violence against homosexuals, the first remedy is obviously the police power. The police should be continually provided with sufficient resources to prevent violence against all sections of the community. If there is any direct incitement going on, then that can be prohibited. But they are trying to make the jump; the homosexual lobby is trying to say that people who go round just being highly critical of homosexuality or saying that it is wrong are themselves, by reason of those statements, inciting violence. That is unsafe, an unreasonable jump to make and upon which to base, then, criminal liability for those types of comments.

The next aspect of the bill which is of concern to me is the prohibition on discrimination against homosexuals in the workplace. I am not going to sit here and contend that all homosexuals ought to be prevented from working. But there are certain circumstances in which a person's religious beliefs might suggest to him the imperative of not employing a homosexual, particularly one who might have been involved in public attacks on the church—as may happen in the gay pride march or the Gay Mardi Gras—or one who is engaged in some sort of militant homosexual propagandising of the type which was before the South Australian Equal Opportunity Commission in the case of Jobling against the Director-General of the education department.

Mr Jobling had temporary employment with the South Australian education department. Prior to that he had been employed in some capacity with the Northern Territory AIDS Council—it does not appear particularly clearly from the judgment. But while he was involved in that occupation he had produced what was described in court by an expert witness as a 'publication containing graphic imagery of terrible sexual violence'. When the South Australian education authority found out that he had produced this material, they quite reasonably thought that he was not suitable to be in their employment. Unfortunately, the equal opportunity commission took the contrary view, and Mr Jobling was awarded a total of \$60,000 in damages. That case ultimately went on appeal. But a verdict in the appeal was not reached. It was settled by some sort of negotiated payment from the education department.

Senator ELLISON—Where did the appeal go to—the Supreme Court?

Mr Gethin—I am not sure. If it is a standard equal opportunity act I do not believe that it would be anything other than a certiorari to the full court or something like that.

Senator ELLISON—But, nonetheless, it was never disposed of; it was never dealt with one way or another.

Mr Gethin—On appeal, no. Again, the effect of this decision is to say that that is not a matter which can be taken into account. One could argue that he was dismissed for expressing his political opinion, and that is also prohibited under most state laws. But the fact is that the commission did base the decision on the grounds that he had been discriminated against on the basis of his sexuality: he was a homosexual activist and the publication that was objected to was put out in a homosexual community publication.

CHAIR—Mr Gethin, unfortunately, I have to remind you of the time. I really am on a very restricted deadline. I am supposed to be at another place right now. I do not want to stifle anything, but the longer you go on with your opening statement, the less time there will be for questions from members of the committee. Could you perhaps highlight what you need to highlight and then we can move into the questions.

Mr Gethin—Yes, I could wrap it up very shortly. First of all, certainly an education department with responsibility for the education of young children should not be under any obligation to employ anyone who is in any way engaged in that kind of conduct. But any employer, whether employing in a school setting or not, has the right to regard somebody like that as being of thoroughly bad character and not deserving of employment at all—particularly a Catholic employer.

As a Catholic employer, I accept the teachings of the Catholic Church on the subject of homosexuality. If I can briefly read from the *Catechism of the Catholic Church* published in 1994. Paragraph 2357 states:

Basing itself on sacred scripture, which presents homosexual acts as acts of grave depravity, tradition has always declared that homosexual acts are intrinsically disordered. They are contrary to the natural law. Under no circumstances can they be approved.

As an employer I may well wish to exercise my right not to be forced to associate with them regularly on a day-to-day basis in a small business type setting, which I would be if I employed somebody, if they engaged in a lifestyle which I, in the exercise of my right to freedom of religion and freedom of conscience, considered to be a lifestyle involving grave depravity.

Again, it is unlikely that me, being permitted this right, is going to prevent homosexuals from earning their living. I do not believe that the majority of employers are concerned about sexuality. I would like the discretion to exercise my right on an individual case. I am not saying at all that I certainly would not employ a homosexual person. There

may be circumstances where, if he was particularly up-front or militant about his sexuality, I might well find that quite offensive and not wish to be spending the best part of my waking hours with him each day. I would imagine that my staff might also wish not to be in that situation, and I may have a duty as an employer to protect them.

Senator ELLISON—Could you make a distinction there between public and private behaviour?

Mr Gethin—It is conceivable that if someone engages in acts, even in private, which you think are gravely depraved, I think that you have some sort of right not to associate with them if you wish. Someone might smoke drugs at home, or something like that, and you might consider him, just on that basis alone, to be of bad character, even though he is not going to come to work stoned. Again, I am certainly saying that in most cases I would not see that people who are discreet about their sexuality are going to have a problem. But if there is someone who is, perhaps, camp or effeminate at work, then that is going to create offence to me, and possibly to clients and staff and that is a situation where I might wish to retain a discretion. Certainly, if someone is involved in militant attacks on the Christian faith in public, then I would consider it my moral duty not to further that person's career, at least not in my employ.

Let me give a brief quote of an incident which apparently occurred in the gay mardi gras in New South Wales this year. There was a caricature of the Reverend Fred Nile in which he was basically depicted as a naked animal in a cage. Now, based on my own religious beliefs, I regard anyone who makes that kind of attack on a Christian leader as being certainly someone I would not wish to employ. I would regard either the person directly involved in that, or perhaps someone who participated in that, or who approved of that spectacle and generally supported it, as being someone I would not wish to associate myself with in an employment setting. Perhaps, I will finish there. There is a large body of material I could go over but that, I think, covers the main points.

CHAIR—Thank you very much, Mr Gethin, for that. It seems to me that your submission has leaned a lot on the fact of your Catholicism to support your moral position. Would you not see that your personal position—which you have got every right to have, and I am not objecting to that—would be somewhat in conflict with that of the Catholic Bishops Conference? Are you aware of the submission that the Catholic Bishops' Conference has made to this committee?

Mr Gethin—I have not read their submission, no.

CHAIR—They certainly are opposed to discrimination and, generally, are supportive of respect for human rights which possibly might not be coming through from the depth of your submission.

Mr Gethin—In general terms, I just wonder whether they have, for example,

referred specifically to the Jobling case. I would be remarkably surprised if they thought that Mr Jobling was not somebody who could be denied employment on the grounds of his previous homosexual activism, certainly, at least, in a school setting.

The Archbishop of Perth has issued a press release, I think, in relation to the state bill where he says that the church does not approve of unjust discrimination against homosexuals, but not all discrimination is unjust. He specifically refers to an accommodation setting. I can undertake to table a copy of that press release, if you like.

CHAIR—We already have it. But thank you for the offer, in any case.

Mr Gethin—I think that he refers to accommodation. He says that, for example, that a Catholic landlord might not wish to rent a house to somebody whom he thought was going to use it for acts to which he was seriously opposed.

Senator ELLISON—He mentioned de facto couples.

Mr Gethin—I think that would include a homosexual couple. I think he may have specifically mentioned them.

Senator ELLISON—He was trying to broaden the base, I think.

CHAIR—Our attention is also drawn to the joint statement that was issued by the heads of the Anglican, Catholic and Uniting Churches in Western Australia on 29 June 1991 which in part said:

Basic human rights for gay, lesbian and bisexual people are important and to be encouraged.

In a different part it also says:

We should be able to distinguish always between people whom we must love and respect, and any behaviour which we might not endorse.

Mr Gethin—Certainly the Christian church makes a distinction between a person and a person's acts, but it never suggests that we condemn a person because of that person's orientation, but we can nevertheless say that we seriously disapprove of the acts which they engage in. But the church never says to a Christian, 'You must go and associate eight hours a day with a person who is strongly opposed to the Christian lifestyle.' It encourages us to not associate with, and in fact to avoid contact with, people who are promoting a lifestyle which is contrary to the church's teaching. The Anglican and Uniting Churches certainly now have diverged substantially from what the Catholic church's position on this is, and I believe that in 1991 the previous archbishop, Archbishop Foley—since deceased—held a position on this issue which was a deal more liberal than the position of the present archbishop.

Senator ELLISON—If the bill were to be passed—and I understand from your initial statement that you are opposed to the bill in its entirety—would you agree that there should be exemptions allowed for religious and educational areas?

Mr Gethin—I would submit that the exemptions as presently drafted are much too narrow. They are contained in section 28. There is a general principle, and it is illustrated by three examples. As Senator Ellison would know, there is a principle of statutory interpretation which says that when there is a general concept followed by listed examples, the general concept is read now to include examples of the type included within the general statement. The general statement says that the divisions 'do not affect an act or practice of a body established for religious purposes' but then it goes on to state what that relates to, including 'ordination and employment of priests, training of people seeking ordination and selection of people to perform duties in connection with a religious observance or practice.' I submit that that exclusion is far too narrow. At the very least, it would need to say 'without limiting the generality of the foregoing'; and I think one could come up with some better examples, too. It does not mention education specifically, but I think that the Victorian approach is perhaps the best approach. I do not know if senators have seen the exemption in the Victorian Equal Opportunity Act which essentially allows each individual a right to freedom of conscience.

The church is a coalition of individuals who have beliefs. That is why the church is itself, for legal purposes, not a thing. The individuals in the church who have that faith and who set up those institutions are entitled to protection because they represent the faith of a large number of individuals. If it is licit for the organisations that those people set up to discriminate in a certain way or to take certain things into account, then it should be licit for those individuals themselves to do it in circumstances where their conscience dictates that they not associate with particular persons.

Senator ELLISON—Thanks. The question I asked previously of someone was whether you think there is sufficient protection in the law for individuals who are on the receiving end of the sort of behaviour of Mr Marinkovic. For instance, you mentioned the restraining order situation. As I understand from previous evidence, the victim of his behaviour had an order and Mr Marinkovic was fined \$100 for offending that order, but it does not seem to have worked—not from what the reports say anyway. You say that that should possibly be strengthened. Have you got any ideas of what could be done there?

Mr Gethin—I suppose with restraining orders it is a matter which one would approach on an ad hoc basis and perhaps tighten up the penalties. I would imagine that the breach of a restraining order is a contempt of court, and courts do have the power to gaol people for contempt in a sufficiently extreme circumstance. I would think that, where a person had threatened violence against another person and had then breached a restraining order, there may be a need initially for a short deterrent gaol sentence or a substantial fine. And then, if that proves ineffective, on a subsequent breach of the restraining order, I would think quite a severe penalty could follow. There needs to be flexibility based on the

case but, certainly, if \$100 was all that court could have given out, then it seems quite inadequate, as it was not effective. Whether the court in that case went to the extreme of its discretion, I do not know, but I suspect not.

Senator ELLISON—Superannuation has been a point that has been raised. Do you think that the passing on of superannuation benefits upon your death should only be confined to spousal or bloodline recipients—that is, only family gets the benefits? Or should you be allowed to leave it to anyone you like? Or should we include people who are dependent on each other through a relationship of any sort?

Mr Gethin—It is a question I have not given a lot of thought to. It is perhaps on the cutting edge of these issues. Employment is really at the cutting edge. I suppose my general objection to anti-discrimination law is that any attempt by the state to put homosexuality within anti-discrimination provisions is in effect a very strong public statement—and you can never under estimate the educative value of an act of parliament—to the effect that homosexuality is the equivalent of gender or race, when there is a coherent body of opinion to the effect that it is not. It is a psychiatric condition.

The paper I submitted by fax on Friday is a submission to a New Zealand commission inquiring into this issue, which seems to fairly convincingly demonstrate that it might be strongly held but that it is not an inherent or innate condition and it can be treated. I object generally to any statement that homosexuality is the moral equivalent of, say, race or gender; for the simple reason that, once you say that, you then are on very difficult logical ground, if you yourselves wish to go and say that the state should not confer some benefit equivalent to marriage on homosexuals.

Once you have said that homosexuality is equivalent to race or gender, what better basis does the Senate have for denying homosexuals the right to marry than it has for denying an Aboriginal the right to marry? If you look at it from the other way, the whole concept of homosexuals being allowed to marry is repugnant to most Australians. They would not want to go that far, and yet you are moving towards a line where you have got no logical basis for not going that far, if you pass this kind of bill.

Senator ELLISON—In relation to coronial matters, it has been put to us that, where you have two men living in a homosexual relationship, there have been problems where one has died and the other has wanted to have a say in disposal of the body and visitation rights, et cetera, but the family have superior claims. In some cases, the family might have fallen out with the deceased. Do you think that there should be any recognition there of any relationship between the deceased and his or her partner?

Mr Gethin—Again, I have not given that particular issue any significant thought. I would tend to think that a coroner should perhaps have a general discretion. It is an issue which I have not got a strong opinion on, one way or the other.

CHAIR—We have run out of time. I am supposed to be somewhere else now. Mr Gethin, thank you very much for coming in here this afternoon and giving us the benefit of your views on the issue that is before the committee. Thank you for the information you have also provided for us.

Committee adjourned at 5.42 p.m.