

The Committee resumed at 10.02 am

**The CHAIRMAN:** I call the meeting to order. In doing so, for the benefit of those who are here today but who were not here yesterday, I repeat what I said at the beginning of yesterday's proceedings, that is, that the committee received well over 1 000 submissions. We have made it clear from the beginning that the committee regards written submissions as being the major aspect to submissions. But, of course, all submissions are important. We have invited along yesterday and today a total of 18 people representing organisations to put to us oral evidence in addition to written submissions that had been made.

Those people were called on the basis that we felt there was information in their submissions that needed to be expanded upon. As you would appreciate, the overwhelming percentage of submissions that we received were conclusive in themselves and therefore needed no additional expansion.

I might say also at the beginning that the committee has no views and won't have any views until these proceedings are completed. When that process is finalised, our report will be made to Parliament.

We invite forward as our first witness today Mr Phillip Tahmindjis. For the record, would you state your full name, address, profession, qualifications and positions?

**Mr Tahmindjis:** My name is Phillip Tahmindjis. I am acting associate professor of law at the QUT. I am also the legal consultant to the Queensland office of the Federal Human Rights and Equal Opportunity Commission and editorial consultant to CCH Australia for its literature on Australian and New Zealand equal opportunity law and practice. I would like to say in that regard that I am here in my own capacity as an academic and what I have to say does not necessarily reflect the views of either of the organisations for which I consult. My address is care of the QUT Law School, George Street, Brisbane. I can give a residential address if requested.

**The CHAIRMAN:** No, that is adequate. We have received a very substantive submission. Obviously we have read it and will study it in greater detail. I wonder if you would like to make a couple of introductory remarks and then we would like an opportunity to ask questions. As you would appreciate, we were very tolerant yesterday in terms of allowing people to speak to their submissions and time got away from us on a number of occasions. So we would appreciate it today, while we don't want to curtail anyone's submission, if people could restrict their introductory comments to as brief a period as possible and give us an opportunity to ask questions.

**Mr Tahmindjis:** Certainly. To begin with, I would like to inform the committee—and I will have to take directions from the chair as to precisely how to do this—of three endorsements of my written submission that I have received since it was handed in to the CJC. The first is from the Young Lawyers Association of Queensland, which is affiliated with the Queensland Law Society and the Bar Association, which says: we have read the submission prepared by Phillip Tahmindjis and concur with the jurisprudence

contained in that submission. I am not sure if the procedure is to hand that document up.

**The CHAIRMAN:** If you at the end of your evidence would hand those to Mr Woodyatt, please.

**Mr Tahmindjis:** Certainly. Secondly, I have a document which is in the form of a petition signed by the 21 members of the academic staff of the QUT Faculty of Law other than myself who are all in favour of the decriminalisation of homosexual practices in Queensland.

Thirdly, I have a verbal support but at the moment, unfortunately, not a written one, from Professor Tony Lee, who similarly endorses my submission. Professor Lee was formerly the reader in law at the University of Queensland, adjunct professor of law at the University of Western Australia and is currently visiting the QUT Faculty of Law.

**The CHAIRMAN:** I know him very well.

**Mr Tahmindjis:** My submission has been a fairly lengthy one. I am sorry that I have put the members of the committee to the task of having to read about 15 000 words and several pages of appendices. For the purposes of the proceedings this morning, what I have done is I have either summarised or highlighted what I consider to be the main issues arising therefrom. I have highlighted these into 15 points which I would like to briefly go through, being very aware that I don't want to take up a great deal of time with just me talking.

The first point I would like to make is one that does not in fact appear in my submission. It struck me yesterday when I was looking back through my own work and also the report of the CJC itself, that is, the title of the CJC report, which is *Reforms in Laws Relating to Homosexuality*. It struck me that, in reading the press this morning and listening to radio interviews, the media has picked up on this as well—"reforms in laws relating to homosexuality".

With the greatest of respect to the authors of the CJC submission, that is not really the reference of this committee. To consider it in those terms in fact marginalises or limits the very important work that this committee has to do. Homosexuality as such is not a crime in this State and, according to my research, never has been. It is homosexual practices which may be engaged in by homosexuals or heterosexuals alike, and therefore this committee is not looking at legalising homosexuality; it is looking at decriminalising certain practices which homosexuals, amongst others, can engage in.

That sounds as though I am a pedantic old academic. But I think it is a very important preliminary point to make because the discussion can slough off into areas that are not totally relevant to this committee.

Point two: as my submission points out on pages 3 to 5, in Britain the legislation did not traditionally reflect moral outrage of Parliament. By this I am not pretending by any means to say that homosexuality was ever condoned; it wasn't. What I am saying is that the original church jurisdiction over things like sexual practices, marriage and so forth was the province of the church. It was taken over holus-bolus by Henry VIII, not because he went

on a rampage against homosexuals but because he wanted to take over the power and wealth and influence of the Catholic church and introduced into British law the existing ecclesiastical law. There was no necessary moral repugnance in the law itself.

Indeed, the law in those days related only to anal intercourse. There are in fact reported cases in which men who had been charged with what we would now call gross indecency—acts less than anal intercourse—were acquitted because the law did not extend to those practices. That extension did not occur for about four centuries, until 1885 when the British Parliament introduced in that year the Criminal Law Amendment Act. This Act also, I would submit to you, does not necessarily reflect the moral repugnance as such of the Parliament in those days.

The history of the legislation clearly indicates that the original Bill to amend the criminal law in Britain did not say anything about homosexual practices, and that an amendment was inserted by one Henry Labouchere, MP, late at night, at about 2 o'clock in the morning, when presumably the House was half asleep. If you look at the *Hansard* reports, Labouchere only spoke to his amendment in one sentence. Nobody else said anything at all. It is highly likely that the parliamentarians had no real idea what on earth they were doing.

This was the law under which Oscar Wilde was convicted some years later. It was amended in the late 1960s, and in a delicious irony of history the Bill to amend those provisions was introduced into the House of Lords in the maiden speech by the young Marquess of Queensberry, the grandson of the very man who had doxed in Oscar Wilde all those years before. The times have certainly changed in Britain.

Ladies and gentlemen, this is not a lesson in legal history. The effect of this for you today is this: those same laws still exist in Queensland. Oscar Wilde would still be sent to gaol in Queensland. Most other jurisdictions in this country and overseas have since wiped those provisions from their books, but in Queensland Oscar Wilde would still go to gaol.

Point three: many of the bases for the law as it presently stands are moral. My respectful submission is that these moral bases are at the best unreliable. The references that are quite often made to the older books of the Bible such as Leviticus and Genesis I would submit—and this is in pages 5 through to 7 of my submission—should be looked at in their historical context, that context being Jews in the wilderness considering themselves the chosen people of God for whom the propagation of the race was uppermost. Therefore, of course, homosexuality was frowned upon because it didn't lead to procreation of children. Equally so was masturbation frowned upon. We do not have any laws in this State, however, with respect to masturbation.

Also, as the submissions that you have already heard from various religions indicate, there is no real religious consensus, I would suggest, as to what the moral bases with respect to homosexual practices are. I would suggest to you that considering what we are looking at here is an amendment to the Criminal Code—and the very crux of the criminal law in all civilised legal systems is that an accused person must be acquitted if there is

any reasonable doubt as to his guilt—I would suggest that, with respect to the moral bases of this area of the law, there is these days such a reasonable doubt as to whether they are in fact the dogma that we used to think that they were. I draw your attention to those pages 5 through to 7 in my submission.

Point 4—in any event, even if one accepts those moral bases as being incontrovertibly true, the effect is that, when they are translated into the criminal law of this State, they are done so in a highly selective and inconsistent fashion. Certainly there are provisions in the Bible which, on a plain reading of the words, say that homosexuality is a sin. Also, adultery, masturbation and fornication are equally sins within the Bible and are usually referred to with far greater frequency and vehemence than homosexuality.

I would also respectfully point out to you that one of the Ten Commandments is: thou shalt not commit adultery. There is no commandment that says: thou shalt not be a homosexual. Adultery is not a crime in this State, and in this country it is no longer even grounds for a divorce. To choose only one aspect of morality means that the criminal law is, in fact, perpetrating an injustice rather than doing a service to the society in which it exists.

Point 5—it is in my opinion inappropriate to enforce morals by the use of the criminal law. This is perhaps the very crux of the whole issue that you ladies and gentlemen of this committee have to consider. Whether you regard homosexuality to be contrary to morals or not, the real issue is whether those morals should be translated and enforced in society by means of the criminal law which, in one instance—section 208 of the Criminal Code—provides a penalty of seven years in gaol with hard labour.

I refer you particularly to pages 7 to 14 of my submission which deal with these issues. I would submit that there is a difference between private morality and public morality and that private morality—what two adult individuals do between themselves—is really the business of the church and is the business or the conscience of those people concerned and is not legitimately the province of the criminal law. I would suggest that the province of the criminal law legitimately is to preserve public rather than private order; to preserve public rather than private decency and also, of course, to protect the young, the weak or the vulnerable. In my submission, the criminal law has no place in attempting to regulate the activities of consenting adults in their own bedrooms. I particularly draw your attention to what I have written on pages 13 to 14 in my submission in that regard.

Point 6—it is my submission that people who are affected by laws with respect to homosexual practices are not a very narrow or limited group of people when one considers the effect of the relevant provisions of the Criminal Code. I have mentioned on pages 14 to 16 of my submission various reports, the most famous one perhaps being that of Kinsey in 1948, upon which I will not dwell because you will be having submissions—or probably perhaps have already had submissions—on that issue specifically from people who are far more expert than I am.

**The CHAIRMAN:** There is no real substantive updating, is there?

**Mr Tahmindjis:** As far as I am aware, no. There have been various pieces done, but to the best of my knowledge it remains the single most all-embracing report with respect to male homosexuality that there is. I draw your attention to Appendix A of my submission, which is on page 36. It illustrates in diagrammatic form what the Kinsey report was basically on about. That was this: that while there is a small percentage—about 4 per cent, but sometimes estimated at more—of people who are exclusively homosexual, and there is also a greater percentage of people who are exclusively heterosexual, between the two there is a sliding scale of sexuality. The really incredible thing that the Kinsey report brought down—specifically considering that this was done in 1948 and has been updated twice since then—was that there is an enormous amount of persistent bisexuality in any given society. That being the case, when we have as in Queensland a criminal law which does not say that homosexuality is unlawful but that homosexual practices are unlawful, that law is not directed to a relatively small proportion of the community. It potentially affects an enormous number of people at any given time. The extrapolation that I have made on Kinsey's figures with respect to the population of Brisbane—assuming for the purposes of the mathematics, to make it easy, that the population of Brisbane is 100 000—as a very minimum at any given time, the provisions of the Criminal Code will affect at least 60 000 people in the Brisbane area who are predominantly homosexual at any given time, and it will affect many more—those who are bisexual at various stages of their lives. As I said, I refer you to pages 14 to 16 of my submission.

My seventh point is very brief, but I think it is important. In my view, the word "homosexual" should be used as an adjective rather than as a noun. To say that somebody is a homosexual rather than that somebody is of a homosexual orientation is, in my opinion, implying two very different things. To say that someone is a homosexual—to use it as a noun—has the effect of completely subsuming all aspects of that person's life and personality to one which is that person's sexual orientation. What I would suggest we should really be talking about is the word "homosexual" as an adjective merely to describe one aspect of a person's personality, which may have absolutely nothing to do with their public persona—the way that they relate to other people, their colleagues in their jobs, their friends and neighbours generally in society. Nevertheless, the Criminal Code is perpetuating the myth that homosexuals are really incredibly different from the rest of society and that one aspect of a person's personality completely overrides, for all other purposes of their being, their very being itself.

Point 8—with respect to other jurisdictions in Australia and with respect to relevant Commonwealth legislation, it is my respectful submission that the Criminal Code is inconsistent. I am sure that I am not telling you ladies and gentlemen anything when I say that all other States and territories in this country, with the exception of Tasmania, have already decriminalised homosexual activities in private.

I would also draw to your attention—and I do this particularly at page 20 of my submission—Commonwealth legislation and, in particular, the Human Rights and Equal Opportunity Commission Act, especially the

regulations which came into force on 1 January this year. Those new regulations state that, in conformity with the International Labor Organisation Convention 111, to which Australia is a party, it is no longer permissible for any employer to refuse to hire or to fire or not to give equal opportunity to any employee or potential employee on the basis of the sexual preference of that employee. That is found in section 30 (b) of that Act and the new regulations made to that.

The anomaly to which that gives rise is that, in the public persona of a person's working life it is no longer possible for an employer to discriminate because a man is a homosexual person. Yet the Criminal Code says that, with respect to that man's private life, you can throw him into gaol. I would submit that there is an overwhelming anomaly and inconsistency between those two laws.

Further down on page 20 of my submission I draw to your attention the fact that, with respect to the Family Law Act and the jurisprudence of the Family Court of Australia, the Family Court has made it very clear as a matter of federal law—not as a matter of opinion—that a lesbian mother or a homosexual father will not purely and simply because of his or her sexual orientation be refused custody of his or her child. The Family Court has made it quite clear in the cases that I mention on page 20 that the sexual orientation of a parent is only one factor that needs to be taken into account. Of course, that does not mean that it is ignored—far from it—but it is not a disentitling fact. It means that the Criminal Code in that regard is completely contrary to federal law with respect to family law, and it indicates that the federal Family Court has said quite bluntly that homosexuals are not anti-family and are not generally child-molesters. Indeed, the statistics bear that out. The average child-molester is a heterosexual man who is usually related to the victim. The average child molester is more likely to be daddy rather than a marauding stranger who is a homosexual.

Point 9—I would submit that the current criminal laws in Queensland with respect to homosexual practices in private are contrary to Australia's international human rights obligations. Effectively they are bringing Australia as a nation into a collision course with its treaty partners, particularly under the International Covenant on Civil and Political Rights.

Article 17 of that covenant says that, without exception, all persons have a right to privacy. The European Convention on Human Rights, in a case called *Dudgeon v. UK*, interpreted a very similarly worded provision in the European Convention on Human Rights. You will find this on pages 22 to 25 of my submission. The European Convention on Human Rights found that the existence in Ireland of criminal laws which are almost exactly the same as those in the criminal law here in Queensland were contrary to an individual's right to privacy. The interesting thing, it seems to me, about the *Dudgeon* case is that it is very similar to two cases; one occurring at Nerang and another in Roma, which occurred within the past 18 months or so. The police found out that Mr Dudgeon was a homosexual. While they were conducting an otherwise lawful search of his premises they came across various compromising photographs and diaries. He was taken into the police station and questioned for four and a half hours. Eventually, the DPP decided not to

prosecute him and he received his diaries back. He was not charged, much less convicted. Nevertheless, the European Court of Human Rights said that the very existence of those provisions under which somebody may be charged and may go to gaol was an abrogation of Britain's duty under that charter to provide to all of its citizens a right to privacy. You will see from my description of the jurisprudence in that case that the majority of the court did say that limitations, of course, are permissible—any limitation that you must have as being regarded as necessary in a democratic society. But the court said that the overriding provision was that those limitations must be proportionate to the alleged harm that is being sanctioned against. Therefore, the court said that the laws in Ireland were not of such a proportionate nature.

Point 10—it has been suggested that the legislation which may be introduced—assuming that the recommendation to Parliament is one of decriminalisation—ought to include a preamble along the lines of the Western Australian model. I mentioned this very briefly on pages 25 and 26 of my submission. I did not dwell on it there very much for the simple reason that Queensland does not use preambles. After I heard a couple of the submissions that were made yesterday, I did some homework. I went to the law school library and pulled out every Act was passed by the Queensland Parliament in 1989. None of those Acts use preambles; they are generally not used in this State. Those Acts in 1989 included, amongst other things, the Criminal Code Amendment Act and the Criminal Law (Sexual Offences) Act. It is not the practice of the Queensland Parliament to use preambles. Of course, that does not mean that it is prevented from doing so, but it is not the practice.

The effect of that is that if you insert a preamble into any amending legislation, you are saying something very special with respect to homosexuals that you are not saying with respect to adultery, murder, rape or other forms of fornication. If the preambles are not worded in a sophisticated fashion, they will directly affect and impugn the self-esteem of a significant minority in this State. Preambles certainly may set out a parliamentary point of view; that is their purpose. However, there is a difference between Parliament acting as a social or moral leader and Parliament merely acting like a bully in a school playground.

I have taken the liberty of photocopying the preamble to the Western Australian legislation. It has been overlooked that one other jurisdiction also has a preamble—and that is Victoria—in its amending legislation in 1980. I wish to briefly compare the two if you think that that will be of any use to the committee.

**The CHAIRMAN:** If you could leave those with us, we will have a look at them. We have some material already.

**Mr Tahmindjis:** Briefly, I would suggest that if you read the wording of the two preambles, the one from Western Australia talks about disapproving homosexual behaviour—not condoning proselytising—and disapproving relationships between people of the same sex. The wording of the Victorian legislation on the other hand, is more in parliamentary terms. It talks of protecting all persons from harm and not intending, by the Act, to

condone immorality. I suggest that that is really what the preamble—should you choose to use one—is on about.

There is a doctrine in the rules of statutory interpretation which is usually referred to by a Latin tag, but translated it means "the express inclusion of one thing implies the exclusion of another". With respect to a preamble such as the Western Australian one which expressly relates only to homosexual practices and not to immorality overall, that implies that the Parliament is effectively saying, "We don't care enough about adultery to say anything about that. We don't care enough about fornication generally to say anything about that. We are only talking here with respect to homosexuality."

Not wishing to put too fine a point on it, I would submit that if the Parliament means in any preamble that it does not condone immorality, the most sensible thing to do is to say so without embellishing it. As soon as the embellishments arise, you give rise to all sorts of problems.

Other legal problems that may arise as a matter of interpretation of such a preamble as that in the Western Australian Act are that the preamble indicates that Parliament considers that homosexual liaisons, even in private, are contrary to public policy. That gives rise to all sorts of problems with respect to the law of charitable trusts and the voidness of contracts. For example, if two homosexual men enter into a contract to buy a house, it could be interpreted that that contract is void because if they are going to live together, it is for an immoral purpose. The contract therefore may be void. I leave those thoughts with you.

**The CHAIRMAN:** I refer to your initial point in relation to homosexual practices being illegal—not homosexuality. In essence, provided that the appropriate permits were obtained, what you are really saying is that gay mardi gras are not illegal under the existing law in Queensland?

**Mr Tahmindjis:** Basically, that is true, unless the parade itself were contrary to various traffic regulations and that sort of thing. The fact that someone parades down the street in a lawful parade, effectively saying, "I am a homosexual." and in other respects is not committing any other summary offences or breaching the Vagrants, Gaming and Other Offences Act, is perfectly possible, legally speaking.

**The CHAIRMAN:** I was asking from a legal point of view. You appreciate that a number of people have put to us their concerns about those issues?

**Mr Tahmindjis:** That's right. There is no necessary legal impediment to that under the existing law.

**The CHAIRMAN:** The preamble which you referred to us is a matter of some interest to the committee. Would you clarify whether, if the Western Australian preamble was introduced here—and I have taken on board all the things that you said about the history of it in this State—what are the exact legal ramifications of it, in your view?

**Mr Tahmindjis:** If the preamble was word for word the Western Australian version which talks about sexual relations between persons of the same sex, that automatically applies to lesbianism.



**The CHAIRMAN:** Which does not apply at the moment.

**Mr Tahmindjis:** Yes. It is not a criminal act at the moment. By putting in that preamble, you are not in fact amending the law; you are extending its ambit beyond what is the case now. You are introducing public policy against lesbianism where the effect of the law is completely neutral right now.

The other point is that, particularly in a State such as Queensland which does not use preambles, the effect of the law as it stands is to denigrate male homosexuals. The effect of a preamble is to turn that implicit denigration into the express decision of Parliament. In my opinion—and this is on page 26 of my submission—that would be unlawful as a matter of international law. At the end of the first paragraph on page 26, I state that it is my view that the Western Australian preamble is contrary to articles 2, 3, 7, 17, 18, 19 and 22 of the International Covenant on Civil and Political Rights, which is a binding legal obligation on this country.

**The CHAIRMAN:** What I am getting at is that it is not just a statement; it does have legal ramifications?

**Mr Tahmindjis:** Yes. Because it is the Parliament that is saying, "This is public policy.", it has distinct legal influences with respect to any other area of the law which relies upon public policy to determine whether various actions are valid or not. This will involve charitable trusts, for example. It will involve the law of voidness of contracts. It would also mean that national associations, when dealing with AIDS prevention, cannot promote safe sex in Queensland because it will be contrary specifically to the public policy of the Queensland Parliament.

**The CHAIRMAN:** I noticed on page 27 of your submission that you refer to a study conducted by Sinclair and Ross of two Australian States, South Australia and Victoria. It states as follows—

"This study indicated that the consequences of decriminalisation did not include an increase in the 'negative aspects' of homosexuality, such as public solicitation or sexually transmitted disease."

Would you briefly expand on that?

**Mr Tahmindjis:** What Sinclair and Ross are getting at in their study is the quite genuine—if perhaps misguided—concern that if the Queensland Parliament decriminalises homosexual activities, even in private, that that will have a very significant backwash on community standards generally and the way in which people who may be wavering between various forms of bisexuality may feel constrained to act or not to act. The study done by Sinclair and Ross indicates that those fears are largely misguided, that there is no significant increase in sexually transmitted diseases in the States where decriminalisation occurred and that there are no other negative aspects such as all of a sudden, overnight, marauding homosexuals descending upon various public toilets to solicit one another in an illegal fashion. It just has not happened.

With respect to AIDS in particular, it is a statistical fact that South Australia, which was the first jurisdiction in this country to decriminalise

homosexual practices in private, remains to this day the State with the lowest rate of AIDS in the country.

**The CHAIRMAN:** I must confess that I do not quite grasp your point in relation to Parliament providing some sort of leadership or being a bully. There is no sensitivity in my question, let me hasten to add. I just do not understand the point that you are making.

**Mr Tahmindjis:** What I am getting at is this: one can fully appreciate what I would say is the venal quality of the Western Australian preamble. If one reads it in this way: if you take out the word "homosexual", which is unquestionably a highly contentious issue in our society, and insert in its place a word and an issue which was contentious but is no longer regarded as such—"Jew", the Western Australian preamble would read as follows, "The Parliament disapproves of sexual relations between Jews. The Parliament disapproves of promotion or encouragement of Judaism. The Parliament does not by its action in removing any criminal penalty for sexual acts in private between Jews wish to create a change in community attitude to Jewish behaviour. In particular, the Parliament disapproves of persons with the care and supervision or authority over young persons urging them to adopt Judaism as a life-style." If any Parliament did anything remotely like that, there would be a howl of protest, and with respect to homosexuality, Western Australia has done precisely that.

**The CHAIRMAN:** Do you know what the age of consent is in all the Australian States?

**Mr Tahmindjis:** It ranges between 16 and 18, to the best of my recollection; but the CJC report has an appendix which tabulates it all.

**Mr GUNN:** In relation to the preamble, you would have to appreciate that in 1989, unless you have seen the new laws that were introduced, the late legislation is amendments to old Acts.

**Mr Tahmindjis:** Yes.

**Mr GUNN:** It is very hard to tell. In the 18 years that I have been a member of Parliament, preambles have not been uncommon. As you say, they are not illegal.

**Mr Tahmindjis:** Yes.

**Mr GUNN:** But in this day and age they are not common and they probably were not common in 1989, but they are there. A lot of legislation that goes through the Queensland Parliament is amendments to old Acts.

**Mr Tahmindjis:** Yes, I agree.

**Mr GUNN:** In the case of Western Australia, the preamble was satisfactory to all particular parties on that occasion.

**Mr Tahmindjis:** Yes. As I understand it, it was in fact inserted as a compromise position because Western Australia has an Upper House, unlike us, and the Government did not have a majority in the Upper House. To get the Bill through, the people who in effect held the balance of power insisted on this preamble being inserted, to the best of my knowledge.

**Mr GUNN:** I am not suggesting there was not horse trading; there is in lots of cases—probably not in Queensland.

**The CHAIRMAN:** No. We do other things with horses, I guess.

**Mr GUNN:** However, that happened. It was a private member's Bill. I believe that the member was a Liberal.

**Mr Tahmindjis:** I understand so, yes.

**Mr GUNN:** When we were in Western Australia, we spoke to another person who was involved. One of the main problems is the spread of AIDS. We found contradictory evidence from the experts both here and in Western Australia. In both areas, it was said that homosexuals are a small number of the community. You have said that there are probably a large number of the community.

**Mr Tahmindjis:** Yes.

**Mr GUNN:** I will read to you a portion of the view of an expert from the Department of Health. It states—

"The problem has been even greater among bisexual men who usually identify with the heterosexual community and guard their homosexual activity with the utmost secrecy"—

I have found that just in my electorate. It continues—

" . . . so that even their wives and children do not suspect anything."

**Mr Tahmindjis:** That is correct. I would agree with that.

**Mr GUNN:** With the introduction of AIDS into the heterosexual community, we could develop—this is where the danger lies—the African pattern where whole communities can be wiped out, which is one of the grave problems that we have.

**Mr Tahmindjis:** Precisely. I completely agree.

**Mrs EDMOND:** Firstly, I congratulate you on your submission. I found it educational and readable, which is not always the case with legal people. I also found it helpful to clarify many of the relationships between our Criminal Code and the Federal and international law. It did not leave many questions to ask. In commenting on that, I would also like to point out that I am not a lawyer. Contrary to what was said yesterday, only one member of the committee is a lawyer. I come to this committee as a middle-aged mum with a background in health. So I find some of the legal arguments confusing and almost pedantic, but I appreciated your illustrations. There has been a suggestion that the law should remain to show a moral stance but that it should not be enforced by invading privacy. Would you like to comment on that?

**Mr Tahmindjis:** It seems to me that that is a somewhat bizarre suggestion, because it brings into disrepute the very function of Parliament in passing laws in the first place. I would consider that no parliamentarian would think that his or her job was merely to sit in Parliament to make legislation which was doing nothing more than promoting a moral stance with the express intention that you were not really going to back up that moral stance in any way, shape or form. It seems to me that, if Parliament wishes to make

statements of a moral nature, it can do so, but it can do so in ways other than legislation; it can correct problems such as those related, for example, to a preamble, if you are not very careful in the way in which such a preamble is worded. It also seems to me that the general intention or perception behind that point of view is that the law generally—and the criminal law in particular—can really do the job of the church, that it can do the job of the person's individual conscience. Quite often we expect the criminal law to do far more than it reasonably can. We expect it to do our own moral work for us. As a result, we become morally lazy. We ignore the real moral issues which as individuals we should confront.

**Mr HARPER:** I assume that you would appreciate that it is not the role of members of this committee to enter into debate, however tempting that may become. Would you comment on a statement having regard to your reference to Kinsey and the conclusions that he and others reached in 1948, some 40 years ago? The statement is—

"The prevalence of homosexuality is probably around 3 per cent, lower than the Kinsey estimates, which are scientifically unsound. The prevalence of bisexuality is thought to be about the same."

That is a point that has been put to this committee. Would you care to comment on it?

**Mr Tahmindjis:** I must preface my comments by saying I am a mere lawyer.

**The CHAIRMAN:** I must say that I do not know too many mere lawyers.

**Mr Tahmindjis:** Therefore, I do not pretend to this committee that I am an expert in psychology and/or psychiatry. What I would say, however, from the point of view of one who, because of his interest in the overlap between the law and morals, of which this issue is a significant one, that in the extensive reading in the area that I have tried to do—I am not sure where that quotation comes from—it is my impression that, despite the fact that Kinsey's findings have been tinkered with upwards, downwards and whatever, I have not come across any significant study—because Kinsey was a significant study and thousands of men were studied over a lengthy period—and I have not found a similar lengthy broad-based study which has completely knocked the Kinsey figures on the head. I am afraid that is as far as I could say.

**Mr HARPER:** Thank you. In interpreting his figures, we have to consider the lapse of time and the change in the medical situation.

**Mr Tahmindjis:** Certainly. What we should also remember is that, regardless of whether the Kinsey figures are right or wrong, assuming that homosexual activity of any kind is, for example, only indulged in by one percent or less of the community, my respectful suggestion is that that is no reason for the law to in effect discriminate against that minority. The notion of a democracy is not simply that the majority rules. Certainly, that is its basis, but a democracy does not mean just that the majority rules, because it is a different thinking from saying that the majority rules as opposed to that

majority being able to make whatever laws it likes with respect to any particular minority. That is what Nazi Germany did to the Jews.

**Mr HARPER:** Of course, that is the whole basis of a democratic society; the people who make the laws place themselves before the whole community at a period of every three years.

**Mr Tahmindjis:** Yes.

**Mr HARPER:** In the case of Western Australia, irrespective of how the decision was arrived at, it was the expression of the opinion of the Parliament, for instance, that a preamble should be included. In your written submission, you were referring to the laws as they presently stand and you stated—

"Attempted enforcement of them diverts police resources and public money away from the control of activities which substantially harm society."

To what are you referring there and on what basis do you make that claim?

**Mr Tahmindjis:** I am referring in general. I understand that the DPP is talking to you later today.

**Mr HARPER:** The Director of Prosecutions is speaking to us.

**Mr Tahmindjis:** Those representatives could give you the exact figures. In general terms, what I am talking about is this: if, for example, the captain of a particular police station says, "We have got to boost our monthly conviction rates, so we are going to go out and entrap some homosexuals", what, as a matter of criminal procedure, generally has to be done is that it is not enough just to seek one policeman to do that. You have to have at least two, because for the purposes of evidence before a criminal court you really need corroboration, otherwise it is one person's word against another's. If you have laws which are on the books and which the police themselves might not particularly want to enforce, when the police are faced with a clear breach of the Criminal Code, they have no option but to enforce the law. They are sworn to do that. In the two cases recently in Queensland to which I referred, one in Roma and the other in Nerang, the information came before the police as in the Dudgeon case, not because they specifically went out to search for evidence of homosexual behaviour but because of their inquiries in totally unrelated matters. When they found that there were those breaches of the Criminal Code, they had no option but to add to their existing workload capturing, what I would call, real criminals this technical breach of the Criminal Code which they are bound to enforce.

**Mr HARPER:** So the statement that you have made in your written submission refers to police activity not in private but in public?

**Mr Tahmindjis:** It refers basically to both, yes.

**Mr HARPER:** But you are not explaining both. You just made the statement that it is extremely difficult, if not impossible, to take action in private.

**Mr Tahmindjis:** That is right.

**Mr HARPER:** You are referring to action that an officer in charge of a police officer decides. So you are referring to public action?

**Mr Tahmindjis:** Yes.

**Mr HARPER:** Are you then suggesting, through that reference, that it is actions of homosexual behaviour? Might I point out that the commission's report refers to homosexual behaviour. You made the point that it is wrong in its title, but, if you read the submission, it refers specifically to the decriminalisation of homosexual behaviour.

**Mr Tahmindjis:** Yes, I agree with that.

**Mr HARPER:** Which is consistent with what you were saying.

**Mr Tahmindjis:** Yes. What I was saying was that a lot of people do not read past the title.

**Mr HARPER:** There is an inference from what you have said that you were really advocating the decriminalisation of homosexual behaviour in public.

**Mr Tahmindjis:** No. What I am advocating in my paper is that it is my opinion that, should this committee and the Parliament decide to decriminalise homosexual behaviour, the best and the easiest way for the Parliament to do that is to completely equalise homosexual and heterosexual behaviour. If you mean by homosexual behaviour that that would include two men walking down the street holding hands, then, yes, I am advocating the decriminalisation of that public behaviour which potentially under the Criminal Code could be regarded as offensive behaviour between males, when if a man and a woman did the same thing, or perhaps in some circumstances even two women, it would not be regarded in the same light by the criminal law, but only to that extent.

**Mrs WOODGATE:** I am interested in your comments about the Western Australian preamble. You are pretty strong that they will have some basis in law. I am wondering how that lines up with the discussion I had last evening with a barrister who said they would have no effect whatsoever in a court of law in Queensland.

**Mr Tahmindjis:** I would have to respectfully disagree with that opinion. While a preamble is not a part of the substantive provisions of any Act, it is not binding as is section 1, section 2, etcetera. It is a matter of statutory construction that those very substantive provisions can and should be interpreted in the light of the preamble because it is the indication of what the intention of those words was with respect to Parliament.

I can only reiterate my view that what such a preamble would do is it would set up that area by matter of parliamentary legislation which in other respects is left to the discretion of any court, namely, the determination of what amounts to public policy in an issue relating to the private activities between two people of the same sex. It in effect says public policy in Queensland with respect to homosexual acts in private is this: we don't condone them. I think that will have a tremendous potential impact on all sorts of areas of the law.

**Mrs WOODGATE:** That is your opinion?

**Mr Tahmindjis:** That is my opinion.

**Mrs WOODGATE:** You haven't had any QCs' opinions on it; that is your own opinion?

**Mr Tahmindjis:** Yes, that is correct.

**Mr SANTORO:** I want to explore a little bit further your views on preambles. I have to say that I do concur with Mr Harper's opinion that there is a very big difference between the political situation and the whole concept of representative democracy that existed in Germany, as referred to by yourself, and what exists in Queensland—in fact, throughout Australia.

You mentioned before, and others who have appeared before you have suggested, that the preamble in the Western Australian legislation was inserted because of a compromise. Other people have put a different point of view and they have argued that in fact it was inserted to reflect what is in Western Australia overwhelming community views and opinion.

I think I know your answer to this question, but I still want to ask it to have it on the record and to perhaps get a little bit more out of you. In a democracy, cannot the protection of minority rights—as I think and as it has been suggested the Western Australian legislation seeks to protect minority rights—be complemented by the duty and the responsibility that the duty of representation places on representatives? In other words representatives may be—and I realise that single issues don't always result in election outcome; it is a complex situation which enables members to get elected—but can't the protection of minority rights be complemented by expressions of overwhelming majority view? Does the promotion of moral stance, as you put it, necessarily come into conflict in those situations with the representation of majority views?

What I would like to ask you is what principle of representative democracy would you quote—and others have quoted principles—that would support your particular view? In other words, why can't the overwhelming community views be complemented within legislation by a compassionate treatment of minority rights?

**Mr Tahmindjis:** I would say at the outset, number one, I do not regard the Western Australian preamble as being in any way compassionate. I would like it on the record that I consider respectfully that it is the exact antithesis of anything remotely like compassion.

Secondly, what you have said, Mr Santoro, a couple of times is "the overwhelming majority view". In using that term, you as parliamentarians must be very sure that what indeed you do have is the overwhelming majority view rather than in fact the view of a very loud-mouthed minority which is able to grab media attention, for example.

I am not sure that there is any such thing as an overwhelming majority view on a morals issue like homosexual activity in private. I think what is closer to the point is that in Australia we live in a society which is morally pluralistic. We have some people who quite genuinely and reasonably consider that homosexuality is in fact a sin. We have other people who equally genuinely consider that it is exactly the reverse. I think that Parliament

cannot afford the luxury of trying to sniff the wind and bring down legislation which is going to remain on the books for many, many years.

The Criminal Code was passed in 1899. These provisions that we are talking about today are largely unchanged since then. What this committee is going to do is something that may remain the law for many years to come. So simply to sniff the currents of the way the wind is blowing right now is not necessarily the way to go.

With respect to the question of the duty of any parliamentarian, I think it was the English philosopher and parliamentarian Edmund Burke who pointed out that, as a parliamentarian, there is a difference between being a representative and a delegate. That difference, he said, is this: it does not mean that every time a parliamentary representative sits in Parliament to discuss and either pass or reject legislation that he or she is incontrovertibly bound by what he or she perceives to be the majority opinion in the electorate; that the purpose of being a parliamentarian involves necessarily much more of a leadership function than that. Otherwise, being a parliamentarian means nothing more than weighing up—doing in effect, a quick referendum—each particular issue, inserting none of your own abilities or thoughts for which you were elected into the legislation. I do not think it necessarily follows that just because the majority says we should do X that a parliamentarian is automatically bound.

As Professor Hart said in his book with respect to the law and morals, the phrase that is usually used in English law for the man in the street is "the man on the Clapham omnibus". He said that it is one thing to say that the majority rules; it is quite another thing to say that we take that man, plonk him on top of the Clapham omnibus and say if he just feels sick enough about something that we ought to make, unquestioningly, laws with respect to that issue. And no parliamentarian should do that, in my opinion.

**The CHAIRMAN:** Thank you, Mr Tahmindjis, for your submission.

The Committee adjourned at 11.8 a.m.



The Committee resumed at 11.15 a.m.

**The CHAIRMAN:** I welcome the representative from the Presbyterian Church. Would you please give your name, address and church for the record.

**Rev. Percy:** My name is Lester James Percy. I live at 1476 Sandgate Road, Nundah. I am an ordained minister of the Presbyterian Church of Australia, the pastor of the Nundah/Kalinga Presbyterian Church. I am the convenor of the Public Questions and Communications Committee of the Queensland State Assembly of the Presbyterian Church of Queensland.

The committee has before it the submission forwarded from the Commission of Assembly of the Presbyterian Church of Queensland together with an appendix from the session of the Bald Hills Presbyterian Church. Included in that was a pamphlet, *Medical Facts About AIDS*, produced by the Christian Medical Fellowship. This is the statement embraced by the Presbyterian Church Assembly as its position on matters relating to AIDS.

I wish to make it clear to the committee that while the written submission is the submission of the Assembly of the Presbyterian Church of Queensland, my comments before this committee, while I hope that they reflect the thinking of the church in this State, are my comments. Admittedly, as one requested to appear on behalf of the Presbyterian Church of Queensland in an official capacity, but because of the structure of our church courts, I cannot speak officially formally for the decisions of the church courts.

**The CHAIRMAN:** We understand and respect that. That is normal for a number of churches. We understand that.

**Rev. Percy:** The Presbyterian Church of Australia has as its supreme standard the scriptures of the Old and New Testaments which, as the revealed word of God, are binding in all matters of faith and practice. Because God has spoken, all mankind is subject to his revealed will. God has created man in his image and his likeness, and placed in families. God has ordained that the family be the basic unit in society, where a man and a woman complement each other in the raising of children and the populating of the earth to the glory of God. Because of man's fall into sin, the nature of man in the image of God has been marred. God has, therefore, shown man what is forbidden in human relationships. Acts of bestiality and sodomy are acts which are absolutely condemned by the word of God.

The English common law on which our civil and criminal law is based finds its source, to a great extent, in Biblical law. Our Parliaments operate on the recognition of their accountability to the Lord God Almighty, who had revealed Himself in scripture. Our State Parliament is opened in prayer. The Constitution of Australia in its covering clauses states—

"Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established."

The Presbyterian Church of Queensland declared, without dissent, that all homosexual practice is an utter defiling abomination before the holiness and the goodness of God, never in any circumstances to be justified. The Presbyterian Church of New South Wales has rescinded the resolution referred to on page 2 of the Criminal Justice Commission's information paper and has adopted the following statement in 1984, which I understand was at the time of the New South Wales changes to the law. Its statement is: that the Assembly expresses opposition to any changes to the law which would convey approval of homosexual attitudes or regard homosexuality as a valid alternative to heterosexuality, or which would place homosexuality on the same basis in law as heterosexuality, especially in relation to the teaching of schoolchildren and welfare systems.

The Presbyterian Church of Tasmania this year issued the following statement. It said that the Presbyterian Church of Tasmania has a responsibility to assert and maintain that God's moral and ethical standards historically have been and, to this day, remain to be the only proper, trustworthy and reliable standards for a well-ordered, healthy and happy society. The Presbyterian Church of Tasmania declares that God's revealed will, recorded in the Bible, is applicable to and binding on all people without distinction or exception. The Presbyterian Church of Tasmania understands that, according to the Bible, homosexual activity originates in a person's mind and is therefore a chosen and wilful behaviour. It is therefore on this basis that erotic acts between persons of the same sex are explicitly, implicitly and unconditionally prohibited and condemned.

The Presbyterian Church of Tasmania contends most strongly against the notion that homosexual acts are victimless. The real victim of homosexual activity is society itself, because sodomy is destructive of heterosexual relationships, demeaning and insulting to the other sex, does not result in offspring and is a symptom of a decay, not progress. More than that, ample and increasing evidence shows that homosexual activity has a detrimental psychological and physiological impact on individuals—for example, AIDS.

The Presbyterian Church of Tasmania understands that the purpose of the criminal law is to safeguard the standards of society by forbidding and punishing actions contrary to the best interests of society in general as opposed to actions contrary to an individual's interests, which are dealt with in the civil law.

The Presbyterian Church of Tasmania cannot endorse the proposition that a moral wrong could be the basis of a civil right, and calls on all elected representatives not to pass the proposed amendments. The decriminalisation of sodomy will result in its acceptance as a legitimate life-style and lead to its active and vigorous promotion by a vocal and militant minority to the detriment of the majority. The Presbyterian Church of Tasmania declares God's and its own compassion and offers encouragement and help to any who struggled against all temptations, homosexual or otherwise. The challenge is issued to all practising homosexuals and lesbians to consider earnestly not just God's condemnation but, better still, Christ's mercy, grace and power to save people from their sins and, through God's word and spirit, effect their personal transformation.

I would endorse that statement and I would expect that the Presbyterian Assembly would have no problems at all in carrying a similar resolution. In fact, it has done so.

These positions are not the ravings of a right wing fundamentalist Christian group, as may be implied if the statement in the Criminal Justice Commission's report was extrapolated or if such an emotive statement was made there regarding Christians opposing sodomy being recognised as a legitimate life-style. Rather, they are the considered statements of the courts of a mainline protestant denomination.

The legalising of homosexual acts between consenting adults in private is more than recognising the existence of personal preference. It is the legitimising of a philosophical and even a religious position of rebellion against the holiness of the God of all creation who has instituted human marriage to reflect the mystery of the union between Christ and his bride, the church.

At the basis of this discussion are the issues as to the origin of man, the source of knowledge and the source of authority. The Presbyterian Church holds that God is the creator of the universe and all that is in it, including man, and that he is the source of ultimate knowledge, and that all mankind, including governments, is accountable to Him. The alternative religious position which allows for homosexual activity to be a legitimate life-style is that man is no more than the product of his constituent atoms and that the mind of man is the ultimate judge of both knowledge and authority.

Our great concern is that Australia as a nation has reached a stage in its rejection of the holiness of God; that God is judging us in society. The adoption of homosexual practice as a legitimate life-style, acceptable in society, is more than an affront to God. As difficult as it may be to accept and to understand, it is a judgment of God on our society as to where it is at this stage.

To be consistent, I would see the next logical step would be for the decriminalisation of bestiality and also the decriminalisation of paedophilia if there is a departure from the absolute standards that are declared in the word of God.

There is no such thing as safe sex apart from the narrow definition of chastity before marriage and fidelity within the marriage of one man to one woman, faithful until death. I state that the Biblical view expressed by the Assembly is—

"The Old Testament in the Mosaic law specifically condemns all homosexual behaviour as an abomination"—

before God. The reference given is Leviticus Chapter 18 Verse 22 and Chapter 20 Verse 13. It states also—

" . . . its punishment has no qualification such as is found with rape . . . or killing . . . The act of homosexuality, like bestiality, has no excuse."

In the New Testament, the Lord Jesus Christ does not specifically mention homosexuality. However, we do know that he did not take away from the

force of the Old Testament law but strengthened it. In the sermon on the mount He pointed out quite clearly that it was the attitude of the heart as well as the commission of an act which was the breaking of the law of God. In the sermon on the mount there are such statements as this in relation to murder and adultery. These must be considered.

The apostle Paul, in writing to the church in Romans Chapter 1, condemns homosexuality as a shameful lust. In 1 Corinthians Chapter 6 Verse 9 it is condemned without qualification. In the first book of Timothy Chapter 1 Verse 10 it shows that the law was made to restrain, among others, homosexuals whose actions are contrary to sound teaching. In the book of Revelation, homosexuals are listed among others as the immoral ones who are left out of the heavenly city of God.

I must say at this stage that it is not only homosexuals who are mentioned in these descriptions. It is others such as murderers, liars and thieves.

For the early church, homosexuality was the unnatural sin which characterised a world lost in shame. History declares that there were civilisations that practised homosexuality quite openly. The point that is important to bring forward includes that homosexuality is not a mental illness; it is a learned characteristic. It is a socially learned process, as are the processes of theft and murder. Homosexual activity is a rebellion against God. Homosexual activity should be recognised as sin, as too should all other kinds of sinful feelings. Homosexual activity must firmly be disapproved of. Our response should be seen against this background.

We stand against all legislation that would allow its free spread as a legitimate lifestyle. We would reach out with compassion to the homosexual with the loving, transforming power of the Lord, who is able to cleanse the penitent of sins and to renew in holiness. We would warn against the dangers, especially to young boys and girls, of being corrupted by homosexuals and lesbians whom they may meet. We would urge Government authorities to prevent the appointment of, and to remove, known active homosexuals and lesbians from teaching and tutoring positions.

As an expansion on that, I express a concern as to the philosophical base of the human relationship education curriculum being developed at the present time, which, as its basis, is encouraging the development of a personal morality on no other ground than the individual considering that that action is right for himself, apart from all authority—whether it be the church or the State.

The 1989 State Assembly affirmed that all homosexual practice is an utter defiling abomination before the holiness and goodness of God, never in any circumstances to be justified. The Assembly, in its submission to the committee, has formally set out its requests. It is asking that the State Parliament ensure that any recommended legislative reform upholds and conforms with the following principles—

- that homosexual activity is condemned of God;
- that homosexual activity should not be permitted to spread freely as a "legitimate life-style";

- the vital ministry of the church to homosexual men and women through conversion and life-changing counselling;
- the protection of others, especially the young, from homosexual influence and activity.

We would ask you to uphold the concerns expressed by the Session of the Bald Hills Church, which were included in Appendix A.

I will comment briefly on law reform, because the submission does recognise that there is room for reform in the law in the area of rape. I must say that these comments are my own comments. They have not been put before the Assembly of the church.

**The CHAIRMAN:** That is understood.

**Rev. Percy:** The law should recognise the area of rape, the rape of a male or a female by sodomy or by penetration by the penis of any body orifice, and should also recognise that in sections such as 210, a care-giver who indecently deals with a child could be a female, because the way I read that section, it seems to be particularly directed at males only.

At the risk of being misunderstood, if we are consistent, we should also ask for the law to be revised in order to take into account acts of women in a lesbian relationship as being of a similar nature—destructive to the position of family life within the State.

**The CHAIRMAN:** Is there any biblical reference to that?

**Rev. Percy:** There is a reference in Romans Chapter 1 which would be open to interpretation.

**The CHAIRMAN:** Order! Everyone is entitled to put his view before the committee without interruption, regardless of what he is saying.

**Rev. Percy:** As I said, it is open to interpretation.

**The CHAIRMAN:** I was reading Leviticus. It says that thou shalt not lie with mankind as with womankind and that it is an abomination. It makes no reference to——

**Rev. Percy:** I acknowledge that, but I draw your attention to Romans Chapter 1, Verses 18 to 32. In the passage beginning at Verse 24, the statement was made that wherefore God also gave them up to uncleanness through the lusts of their own hearts, to dishonour their own bodies among themselves, who changed the truth of God for the lie, and worshipped and served the creature rather than the Creator, who is blessed forever. Amen. For this cause God gave them up to vile passions, for even their women exchanged the natural use into that which is against nature. Likewise also the men, leaving the natural use of the woman, burned in their lust for one another; men with men committing what is shameful, and receiving in themselves that penalty of their error which was due.

That statement in Verse 26, "For this cause God gave them up unto vile passions: for even their women did change the natural use into that which is against nature:" can be taken to mean one of two things. The first is that women accepted sodomy upon themselves as acceptable sexual expression, whether it was for birth control or for other reasons. The second is

that women were engaged in sexual relations with women—lesbian relationships. I must admit that I cannot exegete that passage absolutely.

**The CHAIRMAN:** Are there any other remarks that you wish to make?

**Rev. Percy:** The only other remark arises from comments that I have heard with regard to self-esteem. I would like to draw a parallel between the claim that homosexuals, because they are described in the criminal law, suffer a problem with self-esteem and the fact that those who are described as thieves, murderers or drug dealers would also feel a self-esteem loss. I believe it is the responsibility of the Government in filling its God-given right as set out in Romans Chapter 13 to so frame the laws that all citizens are aware that certain acts are sinful in the sight of God.

In Romans Chapter 13 Verses 1 to 4, there is the statement that every soul is subject to the governing authority, for there is no authority except from God and that the authority that exists is appointed by God. Therefore, whoever resists the authority and resists the ordinance of God and those who resist will bring judgment on themselves. For rulers are not a terror to good works, but to evil. Do you want to be unafraid of authority? Do what is good and you will have praise from the same. For he is God's minister to you for good. But if you do evil, be afraid, for he does not bear the sword in vain, for he is God's minister, a revenger to execute wrath on him who practises evil.

I believe that the role of the Government is to be God's minister and to include in the criminal law God's revealed standards and, as part of preventing the breaking of that law, to bring a feeling of guilt and loss of self-esteem upon those who break the law.

**The CHAIRMAN:** On page 7 of the attachments to your submission, you say that the church condemns sexual acts between people of the same sex and upholds chastity before marriage and fidelity and life-long commitment within marriage. In the first part of the submission on page 2, you say that part of the church's position is to reach out with compassion to the homosexual with the loving, transforming power of the Lord, who is able to cleanse the penitent from sins and renew in holiness. One of the biggest problems with which the committee must deal is the issue of AIDS. Everyone on this committee obviously respects the views of all churches who give evidence here, but not everyone has the same moral position. As legislators, we have to examine the community as a whole. We therefore have to deal with AIDS which is, as I have said, a major problem. If we are going to educate all sections of the community, not just the heterosexual community, we have to have direct education campaigns aimed at the homosexual community. What would your view be in relation to those education campaigns and how do we deal, as legislators, with the issue of AIDS? I know that this is opposed to the view of your parishioners, and I respect what you have said here. But you understand that the whole community does not consist of your parishioners or the parishioners of any other church.

**Rev. Percy:** Sure. I must say that the definition in the media of safe sex is really the definition of unsafe sex because condoms are not protection against conception and I allege that they are no protection against

contracting AIDS. So I would see a need to clearly state what is the only safe sex, which is chastity before marriage and fidelity within marriage.

At the practical level, I believe that the individual visiting his or her doctor under the protection of a confidential consultation is a way, at present, for those who are concerned to seek testing and medical advice. I am pessimistic as to the effectiveness of an education program, because as far as the testimony I have heard so far is concerned, even those who know what so-called safe sex is concerning the use of condoms, elect not to use them—whether they are taking the bomber pilot's approach that, "It is not going to happen to me", or for whatever reason. I am pessimistic as to the effectiveness of any education program in preventing the spread of this disease.

**The CHAIRMAN:** I do not want to interrupt you, but I think I have some idea of what you are saying. Like many people sitting here, I have young children. I have a daughter who is five years of age. As a father, I am concerned about her future. She might well end up holding Christian views, which obviously our family would hope she does. But in her life she might well meet a partner who has AIDS without any knowledge of that at all and end up going through the agony of that. What I am trying to say is: as one of the legislators in all this, we have to assume the public responsibility. How do we deal with it in a realistic way, because not everyone in the community will have your values? You can see the dilemma with which we are confronted as legislators?

**Rev. Percy:** Yes, I can see your dilemma. I have got to be honest and say that, unless a person has such moral values, has a life based on ethical standards which are absolute, there is nothing to prevent a person from having all the technical information and saying, "I couldn't care about what happens to other people. I am not worried about being irresponsible in actions which may spread a disease."

**The CHAIRMAN:** But if we get to a stage at which there are now treatments that can assist people with AIDS or delay the process, people who find they have AIDS would—I think the normal human reaction would be—want to be treated and counselled and would want to prolong their life. That is a basic instinct that we all possess. What I am saying is: if an education campaign was directed at all sections of the community, but obviously in different parts and in different sections of the community such as the homosexual community, and if it was in terms that they understood, are they not more likely to be tested and to then start programs that would in some way safeguard their health as long as possible? There will always be irresponsible people in all sections of the community, be they homosexual or heterosexual, and nothing you or I could ever do will change that. What I am trying to say is: we are trying to get the majority of people to change behaviour. Do you know the question I am trying to seek your views on?

**Rev. Percy:** Right. I think there are two parts of it. There are people who are irresponsible because they have lack of knowledge. An education program can give them the knowledge. But there are also people who are irresponsible because they, of a conscious decision, decide that they will not act upon the knowledge. One of the problems we have with AIDS is its slow

development. Unlike other diseases, it could be ten years, and a person can consciously say, "I am not going to be bound by ethical constraints apart from what is best for me. I apologise." I can see the dilemma, but, apart from a person adopting an absolute or high ethical standard which, I would say, can only find its full expression in biblical ethics, all the knowledge in the world can do no more than give them the information to do what they want to do, anyhow. Their will will not be what is best for the community; it will be what they think is best for them.

**The CHAIRMAN:** We have to worry about what is best for the community.

**Rev. Percy:** I do not think there is a simple answer to it. I do not think that human relationship education, in giving more information about sexual practices, is going to compel people to act in "a responsible way". It will let them know what people think they should be doing, but it will not make them do it.

We have the criminal law, which the police enforce. The reason people break the law is because they consciously decide they want to, even though they know the penalties. I think there is a parallel. Even though people are educated about actions that will put them in gaol, they still go ahead. Whether they think they can beat the system or for whatever reason, they will still act contrary to what they are told is the right thing to do.

**Mr GUNN:** In the final paragraph of your submission, you say, "We do not desire to see police overly deployed." Would you say that they have been overly deployed?

**Rev. Percy:** This is the paper from the board?

**The CHAIRMAN:** Yes, the attachment, page 8.

**Rev. Percy:** To my knowledge—and I have limited knowledge in this matter—I do not think that they have been overly deployed, from the limited knowledge that I have.

**Mr GUNN:** This is an observation as a former Police Minister: police seem to be always the whipping boy in cases such as this, yet the same people in society who use the police as a whipping boy are the first ones to call on them in times of need, unfortunately. My observation as a result of letters written to me is that on a number of occasions the police have been accused of not being active enough. You might agree that one of the greatest problems facing society today is the spread of AIDS and the drug issue, which is another issue. Would you agree?

**Rev. Percy:** I would agree that they are great problems in society, but I would also say that they are symptomatic of a change in society's values. They are a reflection of a departing from absolute moral and ethical standards to relative standards. If we look back to the change in 1972 where the divorce law was changed and where social security legislation was changed, society as a whole is saying, "We will liberalise our structures in society." I believe what we are seeing is an out-working of decisions of the past bearing fruit at the moment, including the drug abuse and including AIDS as a disease.



**Mr GUNN:** We have to appreciate, too, that once a problem has been established in society—there is no doubt that those two problems are well established in society—all we can do as legislators is not solve it overnight—there is no hope of doing that—but to minimise it; would you agree with that?

**Rev. Percy:** I would agree with you that you have a most difficult job. Legislation of itself will not change anything.

**The CHAIRMAN:** We find other adjectives to describe the job that we have been given on this committee.

**Rev. Percy:** It is only a transformation of the attitude of the individual which will change behaviour. I would claim as a minister of the gospel that it is only the transforming power of God's holy spirit that changes the actions of an individual.

**Mr SANTORO:** Other representatives from the churches have suggested that homosexuality is, as you suggest on page 2 of your submission, a mental illness and that, therefore, through counselling it can be cured and people with homosexual tendencies, from your perspective, can be cured of those tendencies. Do you totally exclude a genetic reason for homosexuality? In the experience of your church, have you been able to convert people from either partly or purely homosexual lifestyles to a, from your point of view, fully recovered and heterosexual lifestyle?

**Rev. Percy:** You will have to help me if I forget some of the questions. First of all, I must say that we do not say that homosexuality is a mental illness. We say the opposite: it is not a mental illness. We would claim that it is a learned behaviour. We draw the parallel to theft. My background is in agriculture and I agree that our inheritance—our genetics—predisposes us in certain ways. The Bible does recognise specifically those who are effeminate and condemns it, and the condemnation is that of a learned lifestyle. I would acknowledge that genetically we may be predisposed in a direction, but I would deny that homosexuals are born homosexuals. I would claim that it is a learned behaviour.

**Mr SANTORO:** And has the church, in your experience——

**Rev. Percy:** I personally am in an older congregation. I have no personal contact with the conversion of a homosexual. Because of lack of time to survey widely and because of the confidential nature of a person dealing with a minister in a church, I have no figures and I personally have not had ministers come to me and say that Joe Bloggs was a practising homosexual. So I cannot help you.

**Mrs WOODGATE:** On the first page of your submission you say in respect of homosexuality "While some review is undoubtedly needed". I wonder would you care to expand on that statement?

**Rev. Percy:** Yes. I have already commented in that area. I believe in the area of the definition of what is rape, to include specifically sodomy of a man or a woman, to include rape by—to be consistent, as I said before, I must say that the area of lesbian behaviour would also lend itself to

legislation if I am going to be consistent with the absolute standard that I have presented.

**Mrs WOODGATE:** So you are really calling for a tightening-up, not a liberalisation?

**Rev. Percy:** Yes, I would. Although, if I may explain, I would not see the area of rape as being a tightening-up. I would see it as being a clarifying.

**Mrs WOODGATE:** But you do not see any areas at all for liberalisation or decriminalisation?

**Rev. Percy:** No, I do not, because of the philosophical attack upon the ethical standard of the family and the absolute standard of the scriptural statements.

**Mrs WOODGATE:** At page 6, you state—

"Sixthly, some argue that since a number of church groups and leaders have spoken in favour of legalizing homosexual acts in private then the church is setting a new and more enlightened position than formerly. It needs to be said in response that those of us in the christian church who remain faithful to the Bible as God's true word are grieved and alarmed at the declension from some who have lapsed. They have caused the name of Christ to be mocked."

Do you not think that that is a little bit strong? We are talking about the Catholics, the Anglicans, the Uniting Church and the Lutheran Church. Do you think that is a little bit strong in condemnation of your fellow Christian churches?

**Rev. Percy:** It is a strong statement. It is the statement of the session of the Bald Hills charge. I personally concur with that statement. It is a statement based on a desire to declare the absolute standards set forth in scripture, and I would acknowledge that not all would interpret the application of the scripture in that light. If people take offence to it, I acknowledge that. But it is a strong statement, and it is meant to be a strong statement.

**Mrs WOODGATE:** As Mr Harper said, we are not here to debate; our position is to listen. I was a little bit disappointed yesterday, as I was with this statement, that a couple of the people coming before us took it on themselves to comment on the statements of other people. That is not the role as I see it. The people are to come here and give their statements. Our position is to listen, take it all in and read it. But I am disappointed and I would like to place on record my disappointment with such a strong statement.

**Mr HARPER:** I appreciate the firmness of views that you have expressed. As my colleague said, they are diametrically opposed to the views of a number of other organisations, including some church groups. You would appreciate that the decision to establish this particular committee is a flow-on from Fitzgerald QC's recommendations. I will quote a clause from those recommendations—

"Laws should reflect social need, not moral repugnance. Generally speaking, those who take part voluntarily in activities some consider morally repugnant should not be the concern of the

legislature unless they are so young or defenceless that their involvement is not truly voluntary."

I believe that the role of this committee is to consider everything that is put before it and to give weight where appropriate. You express a degree of concern at some of the language used in the report of the Criminal Justice Commission. I respect your right to do that, but I think you and your church should realise that this committee will be making its report and it will be using the report of the commission as a basis. I believe that it forms a very fair basis for discussion.

Likewise with Fitzgerald. From what you have said both verbally and in writing, your church is diametrically opposed also to the comments made by Mr Fitzgerald in that report. Am I incorrect or am I correct in that?

**Rev. Percy:** You would be correct, because we would see Mr Fitzgerald's ethical philosophical basis being one of relativism rather than one of the absolutes of the scriptural injunctions. In no way has the Bald Hills session in its submission, or the Assembly, deliberately set out to denigrate other viewpoints, and the comments that Mrs Woodgate made about the Bald Hills session's reflections on submissions to the commission I am sure were intended not to reflect on the commission but on the arguments on the submissions gathered by the commission. So if there has been any offence to this committee or the commission, I apologise.

**Mr HARPER:** To get back to this particular point, the point that I would like to bring out is that your church finds fault with that particular recommendation of Fitzgerald?

**Rev. Percy:** Yes, we would.

**Mr HARPER:** The other point that is relevant to it is a comment made by another church group—and I won't go into any more detail than that. In a submission to this committee, a major church says that churches do not need, nor should they seek, the compulsion of the law in order to uphold their moral position. That is basically what Fitzgerald was saying, I guess, in more words because he is a lawyer.

**Rev. Percy:** I guess the angle I am coming from is that while I acknowledge that the church has a responsibility internally to discipline its own members, I am also coming from the position of the development of Australia out of England and the development of English law out of biblical law and seeing the change in society as society changes and adopts a more relativistic position over time. As a matter of integrity, all we can do is say the standards have been departed from. We must declare what the standards are and, even if they are departed from further, still declare what the absolute standards are.

**Mr SCHWARTEN:** I am rather fascinated by some of the statements that you made. But the idea that I have formed—and it may be a misconception that I have arrived at—is that you are of the view that if something is sinful then we as legislators ought to prepare legislation and ask for the Parliament to make it unlawful. Am I right in that assumption?

**Rev. Percy:** It is probably an oversimplification. What I am really saying is really what I said before: we have had a change in society where things which were absolutely declared sinful in scripture, which were once declared criminal in the criminal law, have now been decriminalised. I understand in matters such as adultery that in the past that was a criminal matter. It was a criminal matter in South Africa up until 1914. Such matters have been decriminalised. In the sight of God, it is still sinful. But the first responsibility of the church is to its own members in ethical and moral guidance. But it is also the responsibility of the church to call upon the Government to frame laws within the standards of God's absolutes as God's minister in administering His laws in society. That passage I read from Romans chapter 13 says just that. I see the role of Government as God's minister and agent upholding His standards in society.

I recognise that in practice the Government will not frame legislation to cover everything which is considered a sin. But the criminal law does cover such things as lying. If you lie on oath, you are guilty of perjury. If you lie in a matter of a contract you can have the contract reviewed. So in practice the law is framed to act on matters which the scripture does declare sin. I know I have rambled a lot, but I have seen a change in the direction of society.

**Mr SCHWARTEN:** The next question arises out of what I regard as an irrelevancy that you raised in the whole issue and that was where you spoke about teachers and persons in charge of children as being homosexuals and those people interfering with their charges, as it were. Have you any idea of what percentage it is of homosexuals who interfere with children as opposed to heterosexuals who interfere with children?

**Rev. Percy:** No, I wouldn't. I must say I have read the Sturgess report and I was shocked by it and the dealings with children by heterosexuals and homosexuals. But, no, I haven't any idea.

**Mr SCHWARTEN:** Let me tell you what it is. It is 85 per cent heterosexual and 15 per cent homosexual. To follow your corollary, shouldn't we be looking at heterosexuals being removed from the class room rather than homosexuals?

**Rev. Percy:** I would agree with you that any person, homosexual or heterosexual, who is in a position of trust—and that is covered in the appendix in the Criminal Code——

**Mr SCHWARTEN:** But the point that you made was that anybody who is a homosexual should not be teaching children. If you take that to its logical conclusion, then no heterosexual should be teaching children.

**Rev. Percy:** I would agree, too, that anyone who was an adulterer or anyone who is a fornicator, who is known to be such, who is placed in a position of trust with children is in an equal category, yes.

**Mr SCHWARTEN:** The point you made was someone who is diecast as a homosexual should not be in charge of children. Yet the statistics say that it is heterosexuals who, for the main part, interfere with children. The point I am making is that one jumps to these generalisations. I think it is relevant to keep to the point.

**Rev. Percy:** But even if it was 1 per cent rather than 15 per cent, at this stage homosexual acts are illegal in the State. It is a declaration of an alternative life-style, which is an attack on marriage in the family.

**Mr SCHWARTEN:** Heterosexual activities against children are also illegal.

**Rev. Percy:** Yes.

**Mr SCHWARTEN:** If we went the way that you suggest and actually tightened the screws in terms of the law, what do you think the result would be? Would we have fewer homosexuals?

**Rev. Percy:** My honest answer is no, I don't think we would.

**Mr SCHWARTEN:** There appears to be a group of people saying that we ought to decriminalise. If we go that way, what do you think?

**Rev. Percy:** I see an open promotion of homosexuality, homosexual union and lesbian union promoted as equally valid. I see in the long term not only an increasing spread of AIDS but other venereal diseases. I see it as a continuing decline in the stability and structure of society as marriage comes under attack, the birth rate would decrease, and a breaking-down of the fabric of society.

**Mr SCHWARTEN:** You talked before about the family. I have two sons, one aged 5 and one aged 2. I think we are a fairly reasonable family. If we pass a law through the State Parliament to decriminalise homosexual behaviour, what effect do you think that will have on my family?

**Rev. Percy:** I think in the education system it will mean that homosexuality as a life-style will be able to be openly and fairly promoted. I think it gives a greater possibility of those sons themselves electing to engage in homosexual activity without any feeling of restraint or guilt.

**Mr SCHWARTEN:** You obviously are firmly convinced—you said it before—that homosexual behaviour is something that is learned. Other people who have been before this committee don't share your view.

**Rev. Percy:** I appreciate that.

**Mr SCHWARTEN:** What evidence have you got to suggest that that is the case?

**Rev. Percy:** I haven't got psychological surveys and whatever. I guess I have to be honest and say that I am coming from a theological position. There are no qualifying statements in scripture regarding homosexual behaviour as there are with things like manslaughter. But apart from those type of statements, I can't substantiate my statement further than that.

**Mrs EDMOND:** In the 1 000-odd submissions that we received and in these two days of hearings we have heard a wide diversity of attitudes regarding this question from religious groups. How far should the Criminal Code go in enforcing the religious and moral codes of various sects? If we do take that attitude, which sect do we follow? Given that all of the ones we have heard from in these two days have been basically Christian sects—and there has been a wide diversity there—if we start looking at a few of the other

religious groups around, the diversity is enormous. Should we be trying to enforce every single one of their moral and religious coda in our criminal Act?

**Rev. Percy:** As legislators, you are now in a very difficult position that we are living in a pluralistic society. It is not only those who call themselves Christians who would be wanting their ethical standards enforced in law, but it would be those who would call themselves non-Christians. I believe that the homosexual group are doing just that from their "religious position", as with the Moslems and the Buddhists and the others who are now significant minorities in Australia.

**The CHAIRMAN:** There are churches, of course, which are supporting changes to the existing law, too.

**Rev. Percy:** Yes, I am not wanting to depart from that. To be consistent, I would ask the Parliament that it acknowledges the God of scripture in its prayers and in its history to uphold the clear moral and ethical absolutes of scripture. I can be provocative and say that the theological position that I embrace is expressed in the confession of the Presbyterian church, the Westminster standards. I would say to the Parliament the scriptures, as clearly read and read in the light of the confessional statement of the Westminster confession of faith of the 39 articles of the Anglican church, but I would also say others have a different opinion.

**Mrs EDMOND:** When you were talking about safe sex, you obviously had only considered as safe sex sodomy using a condom. You do know there are other forms of safe sex, don't you? Have you looked at that or thought about it?

**Rev. Percy:** I have thought about it a lot, and if you haven't already got it, I will leave that with you. It is from the Christian Medical Fellowship. Maybe you need to expand a little.

**Mrs EDMOND:** In my understanding of educating the gay community on different life-styles, some of the issues that have been raised are that there are alternatives to anal sex and they are promoting those as part of safe sex. I am quite assured by the medical fraternity that you cannot get AIDS and it is totally safe to have mutual masturbation, for instance. Whether or not you use a condom is irrelevant. There are other aspects that I am told can be used—other modifications to behaviour that they are trying to put to the gay community. If we concentrate only on whether or not a condom is effective in anal sex, we are limiting that education process within the gay community. I think that is one of the areas that we have to tackle if we are going to fight the AIDS problem.

**Rev. Percy:** You are really saying what Mr Beattie was saying before, namely, how is an education program going to be effective in the homosexual community and the wider community?

**Mrs EDMOND:** If we cannot discuss it. For many years this country did not talk about teenage sexuality. We did not allow sex education in schools or even remotely considered the fact that 15-year-olds might be sexually active. What did we have? We had 15-year-old girls who were pregnant. I don't know whether it was a divine interception.

**Mr GUNN:** It could have been a family fault, too.

**Mrs EDMOND:** Yes, but by not discussing something does not mean that it goes away and does not happen. I am saying that we have to be realistic and say that this is happening and how can we best handle it and educate the community that is at risk.

**Rev. Percy:** There is a difference between saying that this is what is happening and saying that this is what is happening and we only endorse chastity before marriage and fidelity within marriage. It comes back to the problem that Mr Beattie raised about education. I claim that education of itself—knowledge giving—is only part of the influence that people use to base their actions.

**The CHAIRMAN:** Thank you very much. Could you leave that material for us?

**Rev. Percy:** Yes, certainly.

**The CHAIRMAN:** Would you state your names and addresses?

**Ms Bredt:** My name is Betty Bredt. I live at 26 Union Street, Taringa, 4068.

**Mr Sawkins:** My name is Roger Sawkins. I live at 2 Challinor Street, Auchenflower.

**Ms Daws:** My name is Leonie Daws, 31 Conifer Street, Alderley.

**The CHAIRMAN:** You represent?

**Ms Daws:** The Queensland Regional Meeting of the Religious Society of Friends. I represent them in my capacity as clerk. Betty is an elder of the Meeting and Roger is a member of the Meeting. If we may, we would like to start by giving a brief introduction to who the Quakers are, because we are known by name but perhaps not by anything else.

**The CHAIRMAN:** Unfortunately, this has to be said at this time, but it is not directed at you. During these proceedings we have been incredibly tolerant—and perhaps overtolerant—about opening statements. I notice that you have been here for the past two days.

**Ms Bredt:** Ours will be very short.

**The CHAIRMAN:** If you could help us, it would be of considerable assistance, bearing in mind that we will read all of your material. Perhaps you could provide additional material. I do not want to be offensive, but you can understand our time problem.

**Ms Bredt:** The Society of Friends was founded in the seventeenth century. The leader, George Fox, reminded all Christians that the gospels clearly proclaim God's message as one of love and that all people, women, men, children and adults have that of God within them. The belief that all people have that of God within them has led Quakers throughout the centuries to be concerned about other human beings; about people suffering in various circumstances, such as during the abolition of slavery. We have been interested in prisons throughout the 300 years of our history. We believe that one should open one's mind to all possibilities without prejudice, and we also believe in constant revelation from the Holy Spirit. We have laboured with the question of homosexuality in Australia through the years. In 1975, the Australian Quaker Yearly Meeting issued a statement calling for the decriminalisation of homosexual acts. This was not done lightly and it was not done with 100 per cent agreement of our members. I have to say that in all honesty. However, we believe that, in looking at society as it is today, we should try to understand what has come to form the various patterns of people's behaviour. I would just like to finish by saying that we have, after all of this, encapsulated in our own handbook of practice and procedure a short statement saying that we do recognise in our midst homosexual couples who are in what we consider to be fairly stable and loving relationships.

**Ms Daws:** The submission which we made to the committee is very brief. I do not intend to speak to that, just to take five simple points which I think amplify some of the implications in terms of the legislation. Basically, the practical implications of our position are these: that we support the decriminalisation of homosexual acts and all other sexual acts between



consenting adults in private; that there is support for the retention of those provisions which provide for the protection from exploitation in relationships and, particularly, for the protection of minors; that there is support for the principle of equality before the law of all persons, and we would see that as including equality with regard to matters such as the age of consent, equality with regard to the determination of offensive behaviour in public, and equal right to protection from discrimination and harassment; that we would support the provision of better access to accurate information about homosexuality and for greater tolerance of the diversity of human sexual and affectionate expression and that we do affirm the worth of loving, non-exploitative relationships.

**The CHAIRMAN:** I notice in Attachment B to the major submission that Margaret sent—and I guess that this is directed at you, Roger, more than anyone else—it talks about private and public.

**Ms Daws:** I think you might be referring to a personal submission from Roger Sawkins. That is not a submission from the Society of Friends. If you would like Roger to speak to that, you may do so, but you must understand that it is his personal statement and not one from the society.

**The CHAIRMAN:** I will direct the question to Roger. Is it correct that Attachments A and B are yours?

**Mr Sawkins:** Yes. I'm sorry, I don't understand how it got attached to this submission. It was sent in quite separately. It represents my own personal views and has nothing to do with the Quakers.

**The CHAIRMAN:** You are a member of the Quakers, but you are here in your own individual capacity now?

**Ms Daws:** No, that is not correct. He was asked by the Meeting to come as a representative of the Meeting. It needs to be very clear for the record that his submission is not a submission from the Society of Friends.

**The CHAIRMAN:** We understand that an individual submission was made by Roger. Let me ask you this: if the law is changed in the way that you outline, do you think that it would work; that it would not provide discrimination?

**Ms Daws:** I am not quite sure what you are suggesting.

**The CHAIRMAN:** In the individual submission that has been put in, Roger says in relation to private and public—

"Simply changing the criminal law to allow homosexual acts in private would be discriminatory and unworkable. The law should simply not concern itself with consensual sexual acts."

My reason for asking the question was that I was not quite sure what it meant.

**Ms Bredt:** I think that what our Meeting decided was that, where one has people engaging in homosexual acts as a result of a close relationship—and I would not want to define that for you, because we know that close relationships can break up—in our understanding of a close relationship, people should not be treated in a criminal fashion because of

that relationship. I think that Leonie has outlined what was said about indecency in public and exploitative relationships. I don't know if that is the answer that you want.

**Mr Sawkins:** In relation to that comment in my personal statement, the distinction I was trying to make was between a change to the Act which says that homosexual activity is still illegal but that there is a defence if it takes place in private, and a change to the Act which simply removes the clause and says that it is no longer illegal.

**The CHAIRMAN:** I understand. That is all I was getting at.

**Mr Sawkins:** That is not something that Quakers have looked at.

**The CHAIRMAN:** You support the age of consent being the same for men as for women?

**Ms Daws:** Yes.

**The CHAIRMAN:** Do you have a view on what age that should be?

**Ms Daws:** No, we have no expertise in that area.

**The CHAIRMAN:** What is your view about a preamble to legislation similar to Western Australia?

**Ms Daws:** I don't think we could support a preamble that expresses disapproval on the behalf of Parliament. It certainly would not be a position which is supported by the statement which we have given. In fact, the statement in our handbook expressly makes provision for approval of homosexual relationships which are committed, that is being in a respectful relationship. We could not endorse a statement such as the one which appears in the Western Australian legislation.

**The CHAIRMAN:** You are talking about changes in the law in relation to acts in private?

**Ms Daws:** Yes.

**Mr GUNN:** Are you conversant with the AIDS problem that exists and which we face in the future?

**Ms Daws:** Yes, we are, and have been active as a society in supporting the work that is being done to educate the community.

**Mr GUNN:** What would you suggest in education? Counselling?

**Ms Daws:** There is a whole range of activities that need to be involved. It is certainly not an area where we have any expertise as individuals. Members of our society have been represented on the various committees. One of the basic premises for an effective education campaign is that there has to be an atmosphere of freedom in which all of the issues can be discussed fully, frankly and openly. I guess that the concern I have is that any official statement of disapproval from Parliament and, particularly, any statement against proselytisation would be something which would diminish the possibilities and the options for that open and frank discussion. It is only in that climate that we will really reach those who are most at risk from the spread of the infection of AIDS.

**Mr GUNN:** Has your church been involved with counselling at all?

**Ms Daws:** Individual members have, yes.

**Mr GUNN:** You appreciate that counselling has been of great value in a lot of cases. It worked well in alcohol abuse. We all acknowledge that. Would you agree that it is very difficult to get a lot of people to present themselves for counselling by virtue of the fact that a number of the people involved in homosexual activities are bisexual and they are apt to keep that particular secret away from their families? Therein lies the grave risk.

**Ms Daws:** Yes, indeed.

**Mr GUNN:** You acknowledge that?

**Ms Daws:** Yes.

**Mrs EDMOND:** We have heard what a threat to the community the gay community is. With your counselling and your experience in the religious movement, have you come across that as a result of homosexual activity?

**Ms Daws:** It has certainly not been something in our experience beyond the detrimental effects which come because of social disapproval of homosexuality and the impact that that has when someone identifies as homosexual and the barriers that that places between them and their families. That is the only experience that I have had personally of any negative impact of homosexuality on family life.

**Mr Sawkins:** I am speaking from my personal experience of being involved with homosexual organisations and counselling young people for over 20 years, and also with the Lifeline family therapy and gay counselling service. In that period, I have seen the break-up of families resulting from the current attitudes to homosexuality which are underpinned by things such as the law. I have seen people who have been thrown out of families because they are homosexual. I have seen people who have been physically abused by parents because they said that they were homosexual. More importantly, I have seen very many instances of secrets being maintained within families, particularly between children and parents. There are situations where children are unable to discuss their potential homosexual feelings, or their actual homosexual feelings, with their parents, and elaborate secret situations are set up. That does enormous harm to the families concerned, because it breaks down the necessary honesty between family members. I know also of a number of people who are in quite prominent positions in gay organisations who are not able to appear in public because of the fear that their families may find out their involvement. My personal view is that this legislation is very damaging to families.

**Mrs EDMOND:** We have also heard that counselling can counter homosexual tendencies and turn a gay straight. Has that been your experience with counselling?

**Ms Daws:** No.

**Mr Sawkins:** No. There are people who have given you submissions from psychological and psychiatric points of view. My knowledge of those studies is that they do not indicate that that is very successful, except in a very small proportion of people who have a very high willingness to change. In those cases, it may be more the individual's willingness to change rather

than counselling that has resulted in that change. I would also question the extent to which such a change is necessarily permanent for the rest of their lives. There are very few long-term studies that have looked at those who have tried to change their sexual orientation.

**The CHAIRMAN:** Thank you for your submission. We have a very clear impression in our minds of the difference between your personal submission and those that have been made by the Quakers generally.

**Mr Sawkins:** May I make a correction to something that was said yesterday? I am the immediate past secretary of the Homosexual Community Welfare Service. In a question from the committee in relation to bribery and blackmail, Nick Ward from the Queensland Association for Gay Law Reform said that the Homosexual Community Welfare Service submission had not been received by the committee. I checked with the secretary, and there was a confusion on the part of Nick Ward. Our submission has in fact been sent to the committee. I raised that because I have actually spoken to individuals who have been subjected to blackmail. That is mentioned in our submission as being one of those things that happened. I can assure you that those sorts of situations have occurred. I just wanted to correct that.

**The CHAIRMAN:** We understood that that was the position. Indeed, a number of people have referred to it, including Mr Tahmindjis. He did not refer to it in his formal submission, but it is in his written material. Thank you again. We appreciate it.

**Mr Sawkins:** Thank you.

**The CHAIRMAN:** We now call representatives from the Anglican church. Thank you for your tolerance and understanding. Our program was getting a little behind. Could you give your names, positions and addresses for the record, please?

**Rev. Burnett:** I am Archdeacon Ross Burnett. My postal address is Post Office Box 50, East Brisbane.

**Dr Morgan:** I am John Morgan, and my address is St John's College, St Lucia, 4067.

**The CHAIRMAN:** If you could start with a few introductory remarks, and we will proceed from there.

**Rev. Burnett:** The social issues committee of the Diocese of Brisbane has presented this submission. We were asked to provide leadership and some guidance in this situation, and we recognise the volatility of it.

Anglicans are divided on the subject, and this committee has sought advice from people with different views. The essence of the submission is to present a rational view. Dr Morgan has assisted in this and, as a consultant to the committee, may have some more to say later.

I do not want to deal with the preamble to the submission, but I will go straight on to the conclusions on page 5 and following. With regard to the first conclusion, we want to state that the emphasis in the New Testament is on grace rather than on law. The Christian church has prospered, although it has had no influence on the laws of the land. However, there are those who desire to make obedience and law the basis of faith, rather than grace and faith. It seems to us that hard laws are the easy option. One of the results of that is that it makes the police the guardians of morality in society.

The second of the submissions relates to the law as it exists now which does not do what it purports to do. People are reporting that they have experienced harassment and blackmail and that they have been set up. If the law cannot do what that law was intended to do, then that law ought to be changed. The way to go, we feel, is to make matters which are of morality legally neutral. It is amazing, in reference to this, how morality is so often equated with sexual morality. There are other moral issues which face our society, such as greed and dishonesty, which receive no such treatment under the law.

In fact, we probably conclude on page 7, where we say—

"In conclusion, the committee recommends that the present law be repealed and that private homosexual acts between consenting adults cease to be a criminal offence. It recommends further that the Act of repeal carry with it an introductory statement indicating that such removal from the statute books is based upon the principle of equal treatment of all before the law."

We conclude as follows—

"On such matters, the law in Queensland, as in most other parts of the Commonwealth and in other parts of the world, should be neutral on this matter."

**The CHAIRMAN:** Dr Morgan, do you wish to say anything at the outset?

**Dr Morgan:** In as much as these groups have an input into this question, it was historically the case in the development of English law that the formulation of law in this area was the responsibility of the church until approximately 1553. I am sure that you have all been acquainted with that. Finally, by the twentieth century in England, the matter was removed from the sphere of criminal law and brought back to be the responsibility of those bodies who were directly concerned with the inculcation of moral behaviour and moral principles; namely, the voluntary societies of the church, and so on. The State ceased to have a direct role in, as it were, the bedrooms of its subjects.

**The CHAIRMAN:** I thank you for the succinctness of your submission, both in the written and in the oral sense. What is your view as to the age of consent in relation to males and females? Should it be the same?

**Dr Morgan:** That is something upon which we are not entitled to speak on behalf of the social issues committee. I understand that the present age is 16. Is that correct?

**The CHAIRMAN:** Yes, for females.

**Dr Morgan:** I do not think we would want to see it lowered. I personally would not want to see it lowered.

**The CHAIRMAN:** What about if the law is changed, as you suggest on page 7, to allow homosexual acts between consenting males in private? What would your view be there?

**Dr Morgan:** In regard to the age of consent, it depends upon whether you are speaking in an ideal way or in relation to what actually is the practice. One is not necessarily concerned with endorsing the practice. One must first consider that nobody should be pressed or coerced into a life-style which they will later come to regret. That is a matter for debate and discussion. I have no clear view about 16 or 18 at this point. Most of us would probably favour a conservative view in terms of the age of consent; it should certainly be no lower than 16.

**The CHAIRMAN:** In the Western Australian legislation that was passed at the end of last year and proclaimed in March of this year, there is a preamble to the Act with which you may or may not be familiar. It basically states an opposition to homosexuality itself. It states—

"WHEREAS, the Parliament does not believe that sexual acts between consenting adults in private ought to be regulated by the criminal law;

AND WHEREAS, the Parliament disapproves of sexual relations between persons of the same sex;

AND WHEREAS, the Parliament disapproves of the promotion or encouragement of homosexual behaviour;

AND WHEREAS, the Parliament does not by its action in removing any criminal penalty for sexual acts in private between

persons of the same sex wish to create a change in community attitude to homosexual behaviour;"

That is the preamble. The Act goes on to decriminalise it between consenting males, and it states different age groups. I wonder whether you support a similar preamble?

**Dr Morgan:** That would go further than any preamble we would like to see. We made a suggestion that there should be a preamble and an introductory statement indicating that the concern was for equal treatment of all before the law. In essence, that is a declaration of neutrality so far as the State is concerned, all other things being equal. I understand that the Victorian Act has a preamble also. I was involved in discussions in Victoria regarding that. I think it is a shorter preamble. Do you have that with you?

**The CHAIRMAN:** No, but we are aware of it.

**Dr Morgan:** It points out the neutrality of the Parliament in regard to neither approving nor disapproving. So far as public policy at that level is concerned, that is possibly the position that we are putting forward as being a realistic and proper one for the State to take; that is, one is not concerned with either the promotion of a homosexual life-style or its demotion. So far as this legislation is concerned, we have addressed ourselves to one, and one only, aspect of it.

**The CHAIRMAN:** I appreciate that. Obviously, we have to deal with the other issues as well, which is why we are taking the opportunity to ask you all these questions.

**Dr Morgan:** I think that parliamentarians have done that because of the stigma which might attach to them, having been the authors of the Bill which decriminalised something which was previously a criminal activity, which carries with it a lot of heat and moral opprobrium. But I think that the Victorian one is, if I might say so, a much gentler approach.

**The CHAIRMAN:** If we change the law as you indicate, is there any view about what impact that would have on society? Is it your view there would be changes or no changes?

**Rev. Burnett:** I think that the changes that will occur from that are matters for the State in the sense of education and giving people opportunities. We have not followed those through.

**Dr Morgan:** Historically, there have been huge differences in the enforcement of laws relating to homosexual behaviour between both sexes. As you are aware, in England, homosexual acts of certain kinds carried the death penalty for a considerable period, but the death penalty was rarely imposed in the life of most of those Acts. Indeed, in the nineteenth century, following the Logoshire amendment, again there was the possibility of the sanctions being applied, as it were, at a convenient level. If people chose to take notice of it, they did; if they did not, they did not. By and large, there was little prosecution over many decades. This depends very much on what fashions are at any given time. I do not think that there would be any great change, because things become issues for various reasons from time to time. What happens in one area sometimes leads to outrages in other areas.

In the exploitation of children there is always properly a time for occasion of outrage; but, unfortunately, some of it washes in the opposite direction and people who are not concerned with that, such as members of the homosexual community who are not involved with pederasty get caught up in the same net of condemnation and of active prosecution of the law.

**The CHAIRMAN:** Does the social issues committee have any view on how to deal with the AIDS problem in general?

**Rev. Burnett:** I would think that the first issue that we would take with that is that the AIDS epidemic, as it is being called, is not just a matter for the homosexual community; it is a matter for the whole of the community, and that the whole of the community should be addressed and not have the homosexuals singled out as some kind of scapegoats.

**Dr Morgan:** I think there is a feeling—there is no official policy so far as the social issues committee is concerned—that because homosexual acts—not homosexuality, but the carrying out of homosexual acts between consenting adults—is in fact a crime in this State, it makes the treatment of AIDS and testing for HIV antibodies that much more difficult. It helps create a double stigma or prejudice against them. So it might actively inhibit the possibility, for example, of widespread AIDS antibody testing, which of course is in the interests of public health. We are interested in anything that will promote the public health in that regard.

**Mr GUNN:** Did you suggest that police should not be the guardians of morals in society? Many immoral acts are committed. Are you suggesting that the police should ignore all those acts?

**Dr Morgan:** No. I think the suggestion was that, in this particular area of personal relationships between adults in private which do not have immediate ramifications or positive harm can be demonstrated as stemming from them, that is not the proper sphere of the police. Obviously, there are many things which are both crimes and are immoral, but there are some things which we believe that may or may not be immoral or may partake in the nature of sin which should not be crimes. That was the position of the Church of England when it first addressed itself to the whole policy of reform of the law concerning homosexual acts.

**Mr GUNN:** You are not concerned at all that these consenting males could be bisexual?

**Dr Morgan:** That is a different problem, and that again is a problem for the individuals concerned.

**Mr GUNN:** No, I think that it is for all society.

**Dr Morgan:** Well, that is a matter on which we could have a dialogue on this issue if you wish. I would say it is not the task of the police to be interfering in the personal relationships between either husband and wife or wife and a third person or husband and a third person.

**Mr GUNN:** No, I am talking about society. We will exclude the police. That was my little preamble. I am talking about the whole society.



**Dr Morgan:** I think that is a concern for morality in general, and the church stands for complete fidelity so far as personal sexual relationships are concerned.

**Mr GUNN:** You have got me wrong. I am talking about the spread of AIDS into the heterosexual community because of bisexual relationships.

**Dr Morgan:** Obviously, that is a matter of concern for the public health and it is a matter of concern for the responsibility of the individuals concerned. At the moment, it may be the case that, if people find themselves to be bisexual, they are reluctant. If they are bisexual, they may in fact be bisexual without actively indulging in homosexuality. But there is no way that, by virtue of having the police, as you put it, as guardians of morality, that is going to relate to that. I do not think it will discourage the commissioning of homosexual acts any more or less.

**Mr GUNN:** I think that it is more serious than you might think. The Deputy Director-General of Health, Dr Tucker, has stated that the problem has been even greater amongst bisexual men who usually identify with the heterosexual community and guard their homosexual activity with the utmost secrecy so that even their wives and children do not suspect anything.

**Dr Morgan:** It could be the case that, because the police are involved at the moment, that makes it much less easy for them to be honest; and if they were honest, it might lead to them not contracting AIDS.

**Mrs EDMOND:** You are saying that you do not want legislators to step in and enforce your religious morals?

**Dr Morgan:** We are not concerned with it. That is the job of the particular church to which people belong. We are concerned with general moral standards in the community across a wide range of issues. Although it might be the desire of the church that all people should remain in certain states of life etcetera, it is not our understanding of the way in which contemporary society operates that it is the task of the State to enforce that.

**Mrs EDMOND:** We have heard a lot about how the homosexual community is a threat to the stability of the family. Have you found that in your work, or would you like to comment on that?

**Dr Morgan:** That is a very difficult and vexed question. Obviously, so far as both male and female homosexuals are concerned, they have different understandings and views of the nature of the family. By and large, the Christian churches—I am giving a rough generalisation—stand full square in favour of what we understand is normal family life. But it does not mean to say that we do not have a great deal of sympathy and understanding for those who are not able to partake of that.

**Mrs EDMOND:** I was thinking more in terms of the effect it has on the family surrounding an individual, whether it causes damage to that family.

**Dr Morgan:** There is all kinds of anecdotal evidence both for and against that. But the church does not stand in favour of the construction of an alternative view of the family at this stage, or at any stage. That does not mean to say that it is not tolerant or accepting to a degree of people in other

kinds of relationships, because a wide variety of relationships are found within modern western communities.

**Mr SANTORO:** In your experience during your general counselling of homosexuals, those who indulge in homosexual activity, are you able to claim a success rate, if I could choose those words advisedly, in terms of converting people from a homosexual to a heterosexual lifestyle? Do you seek to do that? If you do, have you enjoyed any success in that pursuit?

**Rev. Burnett:** No. I have not for a long time counselled anybody who has been homosexual. The only time I have, it was a person who was in a married situation. If you mean by "conversion", was that man able to continue a normal lifestyle in the church, the answer is "yes". However, there are many homosexuals who do not, as far as I know, have physical homosexual relationships with other people who are just as much part of the church as I am and who play just as big a role in the church. They are certainly not discriminated against. At least, I had better say they are not consciously discriminated against. I think it is a reaction to people who declare themselves to be homosexuals which often causes the breakdown in relationships.

**Mr SANTORO:** In your opinion, do you think that homosexuality is genetically induced or the result of environmental factors such as pressure from various people?

**Dr Morgan:** It is difficult to answer that. In relation to counselling of people who come for counselling because of a problem regarding homosexuality, the most difficult one is the area which Mr Gunn referred to, that of a bisexual, usually male, who is having difficulty in keeping his marriage vows. Of course, the teaching of the church is quite clear, that marriage is a relationship entered into voluntarily and for life to the exclusion of all others. That, in part, is the line that one must take as a clergyperson. But it does not mean to say at the same time you do not listen to the problem and seek to counsel or help the person in order to keep their vows, which might include sensitive pastoral discussion of their particular homosexual or bisexual orientation.

In counselling, I have found it very difficult from time to time with people who are homosexual because many of them carry a huge load of guilt as a result of community attitudes. That prevents one, perhaps, from getting to discuss the full nature of what their problem is. They do not usually present with one problem; they present with a large range of problems. Often they are people who are first—if one is working amongst adolescents, for example, one is working with people who are questioning a whole lot of things in their lives at that stage, of which their sexuality is only one aspect. So far as the etiology of homosexuality is concerned, it is very difficult. The American Psychiatric Association, for example, dropped from its list of psychiatric maladies a couple of years ago homosexual disposition as any form of psychiatric malady. So far as changing people concerned with psychiatric treatment, a psychiatrist named Bancroft reported on his work at Oxford with what is called aversion therapy and found that in regard to people who wished to be changed from a purely homosexual orientation, he reported a very limited success rate indeed. I have no expertise in that area. I

am only reporting what others have said. I have seen people and have heard of people who have said "I was an active homosexual but I am not any longer" as a result of conversion to a particular viewpoint. There are all kinds of people, both heterosexual and homosexual, who decide for various reasons to become completely celibate in their lives.

**Mr SANTORO:** I will place a scenario before you. There are, or there have been, and I suspect that there will be before the public hearings are completed, some representatives of the churches who advocate a decriminalisation of homosexual practices, but in doing so they do not condone homosexual activity as a moral practice. I am only painting a scenario for you; I am not necessarily expressing personal opinion. At the same time, surveys tell us that the majority of people in the community equally favour decriminalisation but feel uneasy about homosexual practices.

Do you think that if the churches adopt the attitude that it should be legally acceptable for people to indulge in homosexual activity in private, that the churches should then, bearing in mind their stated moral attitude, take on a very pro-active, for the want of a better expression, remedial activity in terms of homosexuals that either identify themselves or can be identified?

**Rev. Burnett:** The supposition is that we are in the business of changing people who are homosexual to another orientation. I think we would have to begin by saying that we accept homosexuals as homosexuals, if that is their orientation, and they are comfortable in that.

**Mr SANTORO:** It is just that representatives of churches have come before the committee, and also within the media, and have expressed views that they do not regard homosexual practices as being morally right and in accordance with the dictates of doctrine. But they still say that they would prefer to see the whole area of homosexual activity decriminalised. What I am suggesting to you is that some people in the community would feel more comfortable in accepting your viewpoint if they saw a very pro-active attitude by the churches in relation to addressing what they perceive and claim to be something not necessarily moral according to the teachings.

**Rev. Burnett:** I would say that members of the church already involved in that would feel freer to continue that work. That is already happening.

**Dr Morgan:** If people, for example, are bothered by any matter of conscience, it is always up to them to come and talk to their pastors or to seek specialist help regardless of their sexual orientation. We would view this as one of a number of things which might lead them to come to counselling.

**Mrs WOODGATE:** One of the gentlemen who came before us this morning from the Presbyterian church said in his submission that there is no such thing as a genuine Christian homosexual; that they are mutually exclusive terms. I wonder whether you would care to comment on that?

**Rev. Burnett:** I could introduce you to some Christian homosexuals, I suppose.

**Mrs WOODGATE:** So you don't agree with that statement, I take it?

**Rev. Burnett:** I couldn't in conscience, from the homosexuals that I know who are Christians.

**Mr HARPER:** Might I congratulate you on what I see as a very balanced concise submission to the committee. Your views are pertinent to the issues that have been raised, and that is with respect.

I would like to ask Dr Morgan a question, following on from a response that you gave in regard to the homosexual who has considerable mental difficulties and stress in a bisexual relationship. The committee has spoken with homosexuals interstate who are well respected in the community, who have detailed exactly what you said—that they have great difficulty in adjusting to accepted marriage standards, which leads to stress and strains that almost inevitably break up the legitimate marriage, for want of a better term.

Do you believe that by decriminalising the act of homosexuality in law, that problem is overcome? Do you believe that those same stresses and strains won't still be disruptive, or do you believe that that person will simply have a relationship with a homosexual and not with a female person.

**Dr Morgan:** Yes. That is a very moot point, of course. I think possibly the latter, that there is possibly, given the present state of the criminal law, an element of social coercion so far as certain people who might be more on the homosexual side of bisexual than the heterosexual entering marriage and subsequently undergoing the stresses and strains of which you have spoken, inevitably leading to a marriage break-up.

If homosexual behaviour was decriminalised, it might lead to a lessening of that sort of thing. I think that is a possibility. But I have no evidence for that.

**Mr HARPER:** No, but you have obviously considerable expertise in the field. You say that you believe that decriminalising would lead to a lesser probability of that person marrying a female partner?

**Dr Morgan:** I think we can't discount that. That may be an effect. If so, that would lessen the burden of suffering all around. In counselling situations in which I have been involved where that has happened, there has been such enormous bitterness it has affected, as any marital break-up does, not only the adult partners concerned but has had a terrible effect on the children.

**Mr HARPER:** Have you found in those cases that the admission to homosexuality has always been a post-marriage admission, or is it something that was known?

**Dr Morgan:** No, it has not always been admitted post-maritally. Sometimes the female partner has known of it from the outset.

**Mr HARPER:** But it has still led to disruption?

**Dr Morgan:** Not always.

**The CHAIRMAN:** I join with Mr Harper in thanking the Anglican church for what was a very well balanced submission both orally and in a written form. We thank you, Rev. Burnett and Dr Morgan. We appreciate it.

**Dr Morgan:** Thank you.

**The CHAIRMAN:** We call Dr Jim Rodney from the Australian and New Zealand College of Psychiatrists. We extend our same apology to you as we did to the Anglican representatives. Would you please state your name and position for the record.

**Dr Rodney:** Jim Rodney. I am a psychiatrist. My address is Silverton Place, 101 Wickham Terrace, Brisbane.

**The CHAIRMAN:** We have your submission before us. I wonder if you would like to make a few introductory remarks, bearing in mind that you and we have time-frames, and then we would like to ask you some pertinent questions.

**Dr Rodney:** Perhaps the first thing that I should make very clear is that the college of psychiatrists that I am here representing today in fact do not have a policy statement concerning homosexuality. So what I am actually going to talk about—and what you have invited me to talk about—is somewhat personal views. But I would be quite happy in saying that I am sure my fellow psychiatrists would concur with the majority of the feelings. Why I say this is I have a special interest in dealing with people with sexual problems. I think my opening gambit really to the whole board today is to make quite clear that psychiatry and psychiatrists don't consider that homosexuality is a mental illness, a mental aberration, an emotional problem or any type of psychiatric difficulty. I think that is a very primary statement in the sense that I think one needs to take into account that there are a lot of misconceptions about homosexuality. I would be happy to expand on those. I would be happy to look at a number of areas of looking at aetiological factors, which I noticed you asked before. I have a special interest in paraphilias, namely the whole area of sexual abnormalities or deviancies, which often unfortunately gets confused with homosexuality. I would be happy to look at those areas as well.

I guess my primary statement is that, as a practising psychiatrist—and my colleagues would, I think, feel quite strongly about this—I feel that homosexuality should be decriminalised. I am happy to expand on that in some detail if you wish me to.

**The CHAIRMAN:** Perhaps we can do that in the form of questions and at the end if there is a matter we haven't covered you may make some closing remarks. You say in your submission—

"There is no evidence that homosexuality is a mental illness, nervous condition or aberration of the mind. Sexual orientation is a complex multifactional phenomena which is still not totally understood."

Do you know at what age sexual orientation takes place?

**Dr Rodney:** Yes. Again, some of this is scientific research. Getting the cause and effect is difficult because, as I said, making the point, these are areas that are very complex. But there is research evidence to suggest that sexual orientation per se is influenced right from the word go, right from intra-uterine life, early childhood, through the whole of childhood up to adolescence. I think most research areas would consider that by adolescence—around puberty time—sexual orientation per se, which is

different from sexual roles and sexual identity; maybe I need to clarify some of these areas as well—sexual orientation by puberty time tends to be fairly fixed, tends to be fairly immutable by that stage.

**The CHAIRMAN:** Just peeling back the reason for my asking the question, it is basically this: it is relevant to the age of consent. In your view, in terms of sexual orientation, when boys and girls reach the age of 16, for example, what, in your understanding, is the position of sexual orientation.

**Dr Rodney:** By far the very vast majority would have quite fixed ideas about their sexual orientation. If you look at studies, studies will indicate the vast majority, 90 to 95 per cent. Obviously there is this area of polymorphic sexuality, if I can expand on that. I think we can all understand the word. No-one, I don't think, is purely heterosexual or purely homosexual. You can toss around the ideas of continuums and so on and so forth, and there are some difficulties in doing that. Perhaps I won't go into those.

I think the point that I am making is that the vast majority of people, by the age of 16, will be quite fixed in their sexual orientation. They are really a small group because of this polymorphic drive that we all have. They might have some doubts, they may have some confusion. But they are a very small group. I think they tend to often get overrepresented—this whole idea of sexual seduction by the same sex and so forth. Much of that is fallacy when you look at the literature. There is very little evidence that people going through these areas, if they are seduced at times, are going to end up changing their sexuality.

**The CHAIRMAN:** You say that that simply isn't true?

**Dr Rodney:** It is not true. There is very little evidence for it. Sure, people who go through seduction may have that effect. But if you follow some of these groups they will end up going back to the sexual orientation they tend to be, except for a very small group.

**The CHAIRMAN:** In other words, those people who have put before us submissions in that area—what you would say in response to that is that if someone did go through the stage of seduction, if their orientation was heterosexual, it doesn't mean they would come out homosexual?

**Dr Rodney:** Precisely. That's what I am saying.

**The CHAIRMAN:** I am trying to get to the nub of the matter, if I can put it in those terms. One of the groups who put a submission before us said that they had indeed had programs—and I guess they saw them as rehabilitation; I certainly don't see them in those terms—where people who were homosexuals went through some church program and then went to being heterosexual and lived a life-style accordingly. Is that change a reality?

**Dr Rodney:** I would have very serious doubts about that. Reading all the literature and having worked in the sexual area for a long time with a lot of people who have doubts and so on and so forth, the evidence I think is that it is very doubtful that people can produce significant changes in sexual orientation. It doesn't matter what type of therapy they undergo—analytic, behavioral, cognitive, religious, aversive therapies; I know them all. I have been in studies included in them. The outcomes are very, very poor. The

results are very poor if one thinks that you are going to take someone and change their sexual orientation. Modern psychiatric thinking is such that (a) very few homosexual people present for any sort of change. They are usually a very small minority group and the psychiatric effect and the therapeutic effect on that sort of level is to help them to adjust to be able to accept and live with that sexual orientation.

**The CHAIRMAN:** You say in your submission that homosexuality is not a mental disease. Do you know the cause of it?

**Dr Rodney:** Again, there are a lot of different theories, but there seems to be a lot of research that is going on and there is considerable evidence now for a biological element—considerable evidence. Again, I would be happy to talk about that if you wish to. The evidence comes from twin studies. If you look at twin studies—adoption studies of taking people away from families, bringing them up in another family, obviously to try to sort out this intriguing nature versus nurture dilemma that we often face in psychiatry. Twin studies show quite a higher, what is called, concordance rate of homosexuals in identical twins—monozygotic twins. It has been reproduced in several studies. The suggestion is that there is quite a biological element that predetermines all this. We know that. It has been repeated. There are other suggested familial studies. If you look at homosexual siblings, there is a higher incidence in families where there is one homosexual member. Again, that is suggestive of some basic, biological element. I personally see it as a normal biological variant. If you look at any bell-shaped curve you will get different changes—be they hormonal, constitutional or genetic. The way that the distribution appears to be, it seems very likely that that plays a very important role. I am not excluding environmental causes as well. Psychiatrists work with environmental causes all the time. What I am saying is that there does seem to be very good, strong evidence that there is a biological element, but then perhaps environmental factors may either condition or change as one goes along.

**The CHAIRMAN:** So what you are saying, in essence, is that it is not necessarily a life-style by choice; it is a determination generally?

**Dr Rodney:** There is no choice. Homosexuals don't choose to be homosexuals when they become adults.

**The CHAIRMAN:** In terms of self-esteem, the representatives from the gay reform group put to us the question of self-esteem and what the law does. I want to go one step further on the question of AIDS in a minute. In your professional view, does the existing law seriously affect the psychological or psychiatric well-being of homosexual people?

**Dr Rodney:** Yes, most certainly. I have no doubt whatsoever. When this very subject was discussed at our college meeting, which I was asked to attend, the overwhelming feeling from the meeting was that not only is it not a psychiatric condition but we should be there to represent the feeling of the victimisation and the secondary psychological problem that is occurring in this State with the way that legislation is concerning homosexuality. We feel that many of our patients have been seriously victimised. Any psychological problems that they may have—which is no greater than the rest of the



population—may, in fact, be quite magnified by the fact that they are made to feel guilty and criminal. As a general principle, we feel strongly that the current laws very much victimise homosexual people in this population. Subsequently, that can produce psychological problems.

**The CHAIRMAN:** Does it follow then that self-esteem is fundamentally important to people listening to AIDS education, having themselves treated and taking appropriate action in that quarter?

**Dr Rodney:** Yes, certainly. It is all causality. It is all connected. If you are feeling good about yourself, you can express your sexuality. If there are risks of AIDS, you are more likely to be educated in the roles of safe sexuality. As well, you are more likely to go to counselling if there is some dilemma or problem about this. One of the problems with homosexuality being hidden away is that we cannot be up front, we cannot assist and cannot go along with educational programs. People feel victimised. They feel poor self-esteem and they feel lesser people—lesser beings—because somehow they are made to feel different or guilty or dirty. This is a societal thing; it is not just a legislative thing. However, our society has let this group remain like this. This is one way we can change it; to produce decriminalisation.

**The CHAIRMAN:** Can I merge two concepts with you and ask you a question from that? Bearing in mind what you have just said about self-esteem and AIDS, assuming for the moment a hypothetical case—and the committee has no view on this yet—assuming that we were to recommend the following on the Western Australian model, which has the preamble, what effect would that preamble have, in your professional view, on self-esteem? Would it have an effect in relation to people being treated for AIDS?

**Dr Rodney:** My interpretation of the preamble was one of neutrality and protection. I would go one step further and say that I feel that is unnecessary in legislation, because in some ways neutrality seems to indicate some sort of discrimination in this case. It would be like having people who are below five foot and saying to them, "You can't go into subways." There is some discrimination by being neutral. I don't personally necessarily agree with the neutrality in that preamble.

**The CHAIRMAN:** What about professionally?

**Dr Rodney:** Professionally, too, I really feel that my social conscience says that neutrality is discriminatory. The answer to your question, I think, is that undoubtedly if decriminalisation occurred there would be a whole change of emphasis. I believe that the AIDS problem would become less of a problem. Being illegal, it makes it so difficult for people to come forward to have blood tests, to talk to counsellors and be identified as homosexuals with the possibility of some criminal action. I realise that that has not occurred, but there is the possibility and the societal attitude that homosexuals are doing these sorts of things that are spreading AIDS, which is extremely victimising. To change it around, I think if you made it legal it would help to educate and minimise the difficulties of AIDS.

**The CHAIRMAN:** Can I be quite tedious, because I guess that I am one of those boring lawyers. In terms of what I was saying about the Western

Australian preamble—and I want to make this absolutely clear in my mind—if there was a preamble in the legislation, in your professional opinion what sort of an impact would that be likely to have on the self-esteem of homosexuals?

**Dr Rodney:** I think it will affect their self-esteem—diminish their self-esteem.

**The CHAIRMAN:** And therefore from that, the issue of AIDS and the willingness to be treated follows.

**Dr Rodney:** Ipso facto.

**The CHAIRMAN:** One of the people who appeared before us—a doctor—said that his organisation felt that because AIDS at this stage was terminal in that there was no final treatment for it, people would be unlikely to seek help. What is your professional view about that?

**Dr Rodney:** Again, I would disagree with that. I have seen a number of people with AIDS and I have referred a number of people with AIDS. I think that people with AIDS frequently seek out treatment. They can see all sorts of possibilities. Sure, it may not be treatable in the sense of a magic drug; that perhaps may come. However, I believe that those people, like other groups that I work with—cancer groups and so forth—need considerable psychological support not only from psychiatrists but also from all sorts of helping professions. I think just the opposite; that if people are allowed to feel normal and be normal, they will seek out treatment like anybody else would, just as if you had a cut foot or if you had cancer; you would seek out treatment. I am involved with running leukemia groups and so forth. Those groups are very useful in assisting people in those areas. They seek it out. They very much want it. It is more difficult in the current light.

**The CHAIRMAN:** In other words, it is not likely that they would try to hide it and then spread the disease in an irresponsible way?

**Dr Rodney:** I don't believe so. In some way, homosexuals have shown the way in educating themselves and realising the dangers inherent in that. Sure, I also agree that there may be difficulties with bisexuality, but that issue is very poorly researched. We don't know a lot about bisexuality. It is not in the literature.

**The CHAIRMAN:** That was actually my last question, because it is big in our minds. We are concerned in the sense that there are organised groups in the heterosexual community and the homosexual community that deal with the AIDS issue. One of our concerns is bisexual men who frequent beats, who are often in a marriage situation or in a relationship with a woman, obviously, and we are concerned about the likelihood of AIDS being spread from that point of view. The likelihood seems very high because of unsafe sex—putting aside the drug issue for a minute. I guess the real issue is: how do you communicate with people in that position? How willing are they to seek treatment?

**Dr Rodney:** I find that difficult to answer. It is an area that I have clinically come across, with people in marital situations where one partner has contracted AIDS. It is a very difficult professional area to deal with. I have an intuition or a gut feeling—I am not sure how I can describe it, because there

is very little research that can help us to answer these questions about bisexuality. I wish I could assist you, but it is very difficult to find them. I have a gut feeling or an intuition that if homosexuality was allowed to be quite up front and normal and to be seen as a normal biological variant, I suspect that quite a large proportion of bisexual people would identify early in the piece that their needs are bisexual and are unlikely to get into that type of fixed, bonding relationship where they would actually spread AIDS. I mean that longitudinally. I don't mean immediately, but over quite a period. I think with education and so forth that is a possibility. It is very difficult to answer that. I am afraid that I don't have the answer to that.

**The CHAIRMAN:** In your professional opinion, you would think they would be less likely to?

**Dr Rodney:** I think they would be less likely, and I think it would be more likely that we would see better identification of the whole problem.

**Mr GUNN:** If I look confused, it is because I am confused. It has been put to us that it is a genetic aberration.

**Dr Rodney:** A contributory term, Mr Gunn, not totally. I think I made the point that it is a contributing factor.

**Mr GUNN:** By other people, I am saying. This is what makes it confusing. Others have suggested that it is a chosen activity. I have a daughter who is a biologist. I have talked to her about it, and after speaking to her I am more confused than ever. May I suggest to you that there is a lot more work to be done in this area and the bisexual area before we can come to any conclusion whatsoever as to the truth of the matter?

**Dr Rodney:** Ideally, yes, I agree that there is a lot more work to be done and a lot of things that we don't know about it.

**Mr HARPER:** I have no questions, but I thank you for the contribution that you have made. It was most beneficial to our deliberations.

**The CHAIRMAN:** When we get into our considerations, if we find that we have other matters that we wish to raise with you, I assume that you would be only too willing to assist?

**Dr Rodney:** Wherever I can assist I would be very happy to.

The Committee adjourned at 1.26 p.m.

The Committee resumed at 2.33 p.m.

**The CHAIRMAN:** I call the hearing to order. I ask the representatives from the Public Sector Union to come forward. Could you please state for the record your name, organisation and address?

**Ms Buchan:** My name is Tanja Buchan. I am the joint branch secretary of the Public Sector Union. Our address is 26 Wharf Street, Brisbane.

**Mr Weir:** My name is Gregory Weir. I am a member of the Public Sector Union, and my address is 12 Latrobe Terrace, Paddington.

**The CHAIRMAN:** Could you give the committee some idea of the number of members of the Public Sector Union?

**Ms Buchan:** We represent the Australian Government employees. We are a union of some 90 000 members.

**The CHAIRMAN:** We have your submission, for which we thank you. Would you like to make some introductory remarks? Bearing in mind that we will read the material, and in most cases will have read it, there is no point in going over what is in the written submission.

**Ms Buchan:** On behalf of the Public Sector Union, I thank the committee for allowing us to address our submission. We will deal with it in two parts. I will handle the introduction, and Mr Weir will handle the policy point of the submission.

Firstly, the PSU considers that both the quality of life and industrial equity of our membership will be greatly enhanced by law reform. The Public Sector Union supports the abolition of discrimination, including discrimination of homosexuals. We have taken policy positions which have sought to protect individual homosexual members from discrimination and counter-discriminatory laws as they relate to homosexuality in general.

Homosexuals are vulnerable to victimisation in a number of areas, including employment. In giving an example of the employment situation, we have employees that work in small towns who are prepared to suffer victimisation silently rather than report through the normal, available processes for fear of possible backlash from the community upon recognition of his or her homosexuality.

The Queensland Government has a responsibility to address the problem of victimisation encountered by homosexuals through similar legislation to that in other Federal and State jurisdictions. An individual's sexual preference has no bearing on the social and industrial participation rights and responsibilities. Therefore, laws should be enforced to ensure that individuals and organisations that are in positions of authority and power are not able to justify discrimination in situations where sexuality is of no concern.

The PSU represents Australian Government employees and believes that it is only reasonable to expect equity of legal entitlements for its members in Queensland. The Commonwealth law already provides for some protection to homosexuals under the Commonwealth Public Service Act. Australian Government employees are employed on the basis of equal

employment opportunity legislation and are expected to abide by the Public Service Act that states in section 56—

" . . . an officer shall be taken to have failed to fulfil his duty as an officer if and only if . . .

(ea) the officer engages in conduct (including patronage, favouritism or discrimination) in breach of section 33."

For the benefit of the committee, section 33 addresses appointment, transfer and promotion, and it states that this will be exercised as follows—

" . . . without—

(a) discrimination on the grounds of political affiliation, race, colour, ethnic origin, social origin, religion, sex, sexual preference, marital status, pregnancy, age or physical or mental disability."

The effect of criminality under the law in Queensland has the effect of disadvantaging homosexuals with respect to their industrial rights. Queensland law therefore should not now contradict principles of anti-discrimination as shown in the Public Service Act, and law reform in Queensland is the only answer to addressing this anomaly.

**Mr Weir:** As you can see, the submission is basically divided into two areas. We have given major reference to the effect on our homosexual members and the suffering that they face because of the law. The previous submissions that the committee has heard have included examples of the sorts of victimisation that has gone on in terms of homosexuals. The incidence of that is well documented in previous inquiries, both at Federal and State levels. They date back many years. I point out that there have been numerous inquiries into the problems faced by homosexuals in terms of scapegoating, unjustified stereotyping, sensationalism and a disrespect for what are basically, we believe, the rights of people in our society.

One consequence that worries me when Governments make laws is that when those laws are unjust on a community, the people that the laws are directed against develop a disrespect for the whole system. This has been highlighted by both Phillip Tahmindjis and a couple of the people who made submissions yesterday. The union believes that the law does create this, and it also stops homosexual members from reporting more serious crimes. In our submission, we give particular reference to a case of theft. In that case, because a member was homosexual and had bad experiences with the police, that member feared that his homosexuality would be cross-examined and would be of more importance than the crime against him. We have had cases reported to us and the gay community welfare agencies where people have been bodily beaten and have refused to go to the police for the same reason. The consequences of the law are severe on a section of the community that has done nothing more than what comes naturally.

I will now move on to section 2. We believe that society has a number of responsibilities, and one of those is to respect the integrity of minority groups. It has been voiced that, surely, a majority opinion should override the

rights of a minority. When it comes to a situation where there are victims, where there is a degree of harm, then, yes, perhaps it does. But in the case of the homosexuals, there is no victim; there is no violence; there is only a relationship between two people.

It has been quite evident from what has happened in other States that public attitude is changing, that people are now seeing homosexuals as more than just the deviants or immoral stereotypes that they were thought to be in the past. It has been interesting to listen to the psychologists and psychiatrists and how even those institutions have changed. I remember many years ago talking to homosexual men and women who remember the times when surgery was the resort of the psychiatric profession to try to cure homosexuality. Aversion therapy was the resort of that helping fraternity.

Now, after scientific study, the complexity of homosexuality and homosexuals in society is being understood. This is being reflected in the sorts of changes that are being instituted at both Federal and State levels.

There have been many myths concerning homosexuals. Probably the one that is often cited and which has arisen numerous times during this hearing is the threat to children and the changing of their sexuality. Our union, along with other sections of the community, believes that there should not be violence against children. There should be no sexual abuse. However, people who do violate children are not homosexual. They may have homosexual relationships in terms of acts, but there is a different sort of mental condition, as was indicated earlier.

When dealing with children, I want to highlight the judgment handed down by Justice Evatt of the Family Court. It is important to consider that in your deliberations on homosexuals in society. She basically says at page 18 that homosexuality is just part of the considerations when looking at cases of homosexuals in custody. As in society, the sexual activity of homosexuals is just a part of the way they operate in society. People from the family association know homosexuals, and they said that they respected them. There are homosexuals across society that fulfil rewarding and fruitful lives.

What the law does, in effect, is to try to extend their sexual behaviour into all other facets of their lives. The union believes that that inhibits the fruitfulness that can be gained from their talents and their contributions to society. One of the important points made by Justice Evatt is that human relationships are complex; the interrelationship between groups is complex. Homosexuals are in all parts of society, as the churches have said today, and should be respected as such. A sexual act should not override the way they operate.

When dealing with the preambles, I would suggest that to put in a preamble along the Western Australian model would give the opinion to homosexual and lesbian people that their sexuality is an overriding factor in how society deals with them. This will limit the sorts of freedoms and perceptions of their freedoms that they have within society.

When it comes to public decency, it is a very complex issue. Yesterday, we had rather vivid images of people in high heels going around lobbying parliamentarians to change the law. We also have visions that

homosexuals spend most of their lives in gay mardi gras. In fact, that is not the case. Most homosexuals in fact live a diverse form of social relationships, as Evatt points out.

I believe there is a place for anecdotal evidence in this committee. There are two pieces of anecdotal evidence that might highlight the complexity of gays' relationships. A number of people from the church, if they were to describe the situation, would come to a conclusion I will draw later. Imagine two homosexuals standing in a congregation holding hands. The result, you would say, would be outrage. But if details of that situation were outlined, then there might not be the moral outrage. This is in fact a true story. Two homosexual men who had lived in a relationship for 14 years looked after and nursed an ailing father of one of the couple. Over that period of time, the respect of the community in which that couple lived, the respect of the community of the family in which that couple operated, approved to such an extent that that partner, at the time of death—which is very much a leveller when it comes to people—invited the gay partner to join the family. This continued to the side of the grave of the father who, seven years previously, said, "Dogs don't even do it." As a touching concern of the sensitivity at the time, the men just gently squeezed each other's arms. That shows the complexity when we are talking about expressions and moral outrage.

Another case was even more recently. I cite this in terms of religious people trying to come to terms with a developing understanding of homosexuality. I think that the churches have in their submissions shown a progressive understanding of what it is to be a homosexual. I have noticed that the Catholics, for example, last year put in a submission on law reform and AIDS and said that there should be no reform. This year they have changed their mind.

To return to another anecdotal story, a fairly well-known clergyman in Brisbane had the privilege of looking after someone who was terminally ill. During that time, the clergyman saw the sort of relationship, the valid moral relationship that those people had, one who faced life and the other who faced death. Unfortunately, during the funeral service, the person was not invited to join the family. However, this clergyman, who was from a more conservative area, as he was walking out behind the coffin took the lover by the hand and led him out. There was a clear expression of the sorts of sensitivity that churches and moral people are now facing as a greater understanding of homosexuality is realised. I think that public opinion is moving, as is apparent from the evidence before us. I also think that the media is changing.

It was reported in the royal commission on human relationships that we should not only accept public opinion as is but also make sure that public opinion is based on accuracy. Government, churches and the media have an important role to play in consideration of recommendations you come up with. There are three things that I think we would endorse: firstly, equity under the law, that homosexuals be granted the same rights as other people who have faltered in Queensland society; secondly, the freedom from victimisation and discrimination over various areas; and, thirdly, a program that seeks to

enlighten and development people's understanding of a much misunderstood and abused group.

**The CHAIRMAN:** You dealt with blackmail on page 5 of your submission by saying—

"The issue of blackmail has been well documented both in Australian and overseas inquiries.

Former Prime Minister, John Gorton, when moving a resolution on Homosexual Law Reform stated—"A law which is sometimes applied and sometimes not, and which gives opportunity for blackmail, is the worst law of the lot."

You go on to say at the bottom—

"The extent of blackmail within the homosexual community is hard to ascertain in Queensland as there has been little extensive research in this area. However the Homosexual Community Welfare Service has indicated in their submission to the Criminal Justice Commission that blackmail does occur."

It continues further down—

"The Union believes that the alleviation of the problem of blackmail will be significantly enhanced by changes to the law that ensure there is no distinction between homosexuals and heterosexuals."

Are there any industrial experiences that you are aware of that have taken place in the workplace?

**Ms Buchan:** No, I could not answer that. I suppose it comes down to the problem that we have in Queensland that we as a union still suffer the problem that the gay community at times feel that they cannot come to us with their problems. Apart from the examples that have been cited, there have not been any known cases that I know of of blackmail.

**The CHAIRMAN:** What about discrimination in terms of employment? Have there been any industrial experiences of that?

**Ms Buchan:** Yes, there has, to the extent that the person concerned has actually left the public service. The person left and then notified the union later about the problem. The person was prepared to leave because he could not suffer the victimisation that was occurring.

**The CHAIRMAN:** Your submission would be that, if the law was changed, that area of discrimination would be removed?

**Ms Buchan:** As I said in my introduction, we do have the Commonwealth Public Service Act, the Equal Employment Opportunity and Human Rights Commission and everything like that that protect people. However, in Queensland, we find that because of the fact that people have had to be closeted—I hate using that word—they do not like to come forward with their problem. I believe that if there was law reform in Queensland and recognition given to the homosexual community, we would not have that problem in our industry.



**The CHAIRMAN:** You think that it is largely hidden. Even though it is there in reality, because of the law, a large part of that discrimination is hidden in the public sector.

**Ms Buchan:** Yes, I do. To give an example, recently when the union gave a donation to an organisation that supports law reform, there was obviously some concern from the membership. On speaking to various workplace delegates, I personally knew what the situation was. One delegate could turn around and say, "He's a great bloke. She's a great chick", the whole bit, and little did they know that those two people were actually homosexual.

**Mr GUNN:** You stated one known case of discrimination in the public service. Is that the only case you have.

**Mr Weir:** No. A number of other cases have been reported. One of the effects of the Commonwealth Government legislation is that people are wary of discriminating in the area of the public service. We have had reports of discrimination in interviews for the State public service, and also just with promotion there has been a case of restricting duties of a homosexual because he was sort of inappropriate in a certain area.

**Mr GUNN:** In my 18 years in Parliament, nine years in Cabinet, I have never struck that. I have struck objections in some areas to religious discrimination.

**Mr Weir:** That is the point we are making in terms of the criminal law. People fear coming forward because of the criminal sanction that is now operating in Queensland.

**Mr GUNN:** It surprises me very much that this has gone on, because quite a number whom I knew were homosexuals were treated exactly the same as the others; in fact, some of them reached very high positions in the public service.

**Mr Weir:** Yes, there are people who achieve, but lots who do not.

**Mr GUNN:** You mentioned additional police activity against homosexuals. During my time in Cabinet, none of those cases were ever reported to me. I am against any of that type of thing. I would have liked to have come across it.

**Mr Weir:** I believe that the committee has received a number of submissions about police activity.

**Mrs EDMOND:** You have taken a very non-judgmental and non-discriminatory line. Does that mean that you believe that Government has no role in setting and maintaining public morals?

**Mr Weir:** Yes, in terms of homosexuality, for the reasons I outlined earlier, there are moral things which Government is responsible for. One would say that liberty is one, as well as freedom of speech and all that sort of thing. If you look at the Western Australian preamble, those sorts of things are in fact contradicted. In the area of morals, the Anglican church today probably pose the best line in terms of what I agree with morally. But it is up to the churches to do that, not the State. That is the way society is going. In the early days of legislation, we did not recognise ourselves as a multicultural,

pluralistic society, but our legislators and judges are now recognising that there is a great diversity. When it comes to specific moral questions, as this is really a specific moral question, it is probably not an area.

**Mrs EDMOND:** Having heard from several of the churches, I am of the view that the State probably has not kept up with some of its churches in this area.

We have heard from some areas that there will be a rapid increase in the number of homosexuals coming to Queensland, coming out of the cupboards or changing over from heterosexual behaviour to homosexual behaviour. Do you have queues of people within union ranks waiting to come to Queensland?

**Mr Weir:** No. We are always told that the climate is lovely, but there have not been, and I am sure there will not be. There probably will be an increase in terms of what was outlined by the previous person, that is, people will not have to hide in certain areas like marriage and so on. As that witness said, that is probably a good thing in terms of AIDS prevention and also stability of relationships and reducing the sort of stress that goes on in living a double life.

**Mrs EDMOND:** Getting down to serious economic problems, what about productivity? What effect does the present law, or the changing of it, have on general working conditions and productivity?

**Mr Weir:** I think that probably, if people are in a confrontationist situation and have to hide themselves, they are wasting a lot of energy. In terms of productivity, that is a question I find hard to answer.

**Mr SANTORO:** In your introduction you say—

"Recently the Queensland Branch of the Queensland Public Sector Union passed the following resolution".

Who actually passed that resolution? Was it delegates?

**Ms Buchan:** Branch executive.

**Mr SANTORO:** And you are confident that this reflects the majority view of all people employed within the affiliated unions?

**Ms Buchan:** Yes, our branch executive at the present moment is fairly large and it is due to the fact that the Public Sector Union is an amalgamated union of three unions. We actually have a branch executive of some 32 members and obviously very diverse areas of our membership. Yes, it does, because it was carried unanimously.

**Mr Weir:** It should be pointed out that that union, along with a number of other unions, over a great number of years has dealt with the areas of homosexual rights and so on. It isn't a new issue on the agenda of the Labor movement.

**Mr SANTORO:** I appreciate that. My second question relates to a statement which appears on page 10 which states—

"The consequences of the present laws in Queensland, along with the social stigma often associated with homosexuals, have been

cited as reasons for behaviour development that is seen as socially unacceptable."

By inclusion of this quote within your submission it would seem to me that you give it some validity. I will read it to you. It states—

"As a Lifeline Social Worker observed—'if people can't express their sexuality in normal meeting places they are forced into toilets'."

You seem to suggest that that is the result of the current laws. Why would the current laws force some people at least out of, say, the privacy of their bedroom, which your submission was asking us to respect, into toilets? Do you think that that really is the result of the current laws? If so, how do you think that is made to come about? Do you think that the change in the laws as requested by you in your submission would have any significant impact on that practice?

**Mr Weir:** Firstly, under the law, there isn't anything about the privacy of the bedroom. The laws, as you have heard submission on, in fact deal with the private area of the bedroom. The laws in Queensland don't make sacrosanct the bedrooms of homosexuals.

**Mr SANTORO:** But it is my understanding, and we have heard throughout these public hearings, that one of the major reasons why homosexual practices in private should be decriminalised is really because the law can't be enforced and therefore presumably homosexuals who practise homosexuality have no difficulties in practising in the privacy of their bedroom. But yet you seem to—and please correct me if this is not the intention or the impression you are wanting to get across in this submission—by including this quote from an unidentified Lifeline social worker, that because of the laws which really can't be enforced, according to expert opinion, churches, homosexual lobbies, etc., people are being forced into toilets to conduct their homosexual practices.

**Mr Weir:** Yes.

**Mr SANTORO:** Do you get the drift that there seems to be an incongruity there that I can't come to grips with?

**Mr Weir:** I think as we have indicated in other areas of our submission, the change to the law is one step. As other people have said, and as our submission says, the law is the first step towards getting a rational approach. I think what that Lifeline representative was saying was that homosexuals who are able to develop reasonable, well-balanced fulfilling relationships don't have to resort to the sort of covert encounters that are both health risks and also, I think, risks to the ethical values that homosexuals have.

**Mr SANTORO:** To date I have refrained from making a personal view, but I would like it to on the record that I would think that people could express that sort of sexuality with great ease and with an environment being at least as equally conducive as it would be in a public place for that sort of loving and caring relationship between two homosexual people to be allowed for development and that really it need not need a public place for it to be

developed, because I reiterate that the submissions to date suggest that the law cannot be enforced because in the privacy of the bedroom, let alone in the privacy of the living room or a more private environment than a public place, such relationships do prosper, and we have heard that they prosper in a full, caring and a reciprocal manner.

**Mr Weir:** I appreciate your comment.

**The CHAIRMAN:** Thank you for your submission. We appreciate it very much.

**Mr Weir:** Thank you.

**The CHAIRMAN:** We would now like to call representatives of the Uniting Church. For the record, would you like to state your name, position and address?

**Dr Mavor:** Reverend Dr Ian Mavor. I am a minister of the Uniting Church. My address is King's College, St Lucia, 4067.

**The CHAIRMAN:** We have the formal submission under the hand of Mark Young. Naturally, we have read all of that. We invite you to make a couple of introductory remarks and then you will be questioned. In the submission itself, as my colleague Mr Harper pointed out to me earlier, it states in the fifth line—

"I would request that the submission be treated as confidential."

Could you confirm the status of that in the sense that clearly under the Standing Orders we are not legally permitted to release submissions until the report is published. Some people have provided copies of their submission to other people; some of them have provided them to the media. We have not sought to intervene in that or to enforce that particular Standing Order to that extent. But we as a committee of the Parliament have not provided people with copies of submissions, because the Standing Orders are very clear.

However, we may choose at the appropriate time to publish extracts or, indeed, even the whole document. We have made no decision on that. But I would be a little concerned if indeed we overlooked your request for confidentiality if you don't want it published. We have had a number of pages of material provided to us that is confidential and we would respect that. But it wouldn't seem to me, with all due respect, on the surface, a need for confidentiality, from what I have read of it.

**Dr Mavor:** I think the willingness of the committee to be represented here today would answer that concern, as it were. If I could explain, the social responsibility committee of the Queensland synod of the Uniting Church didn't want to be seen to be speaking for the whole Uniting Church. The Uniting Church membership comes from the whole range of society and reflects the diversity of views that the committee would be well aware of within society. A very touchy issue, you might say, within the Uniting Church is who claims to speak for the church and to what extent a particular point of view as perceived as representing the voice of the church.

At the same time, the social responsibility committee was appointed by the Uniting Church to do research into particular issues and it felt that it had a responsibility to contribute to this process. But in a sense, I guess, the confidentiality statement was a way in which the committee sought to speak to its own membership of the church saying: we weren't trying to make a public statement on behalf of the whole church. But certainly my being here today on behalf of the committee indicates that we have entered the public forum with this statement.

I bring apology from Mr Young who is actually in Sydney for the AIDS conference, because that is a particular area of concern for him.

**The CHAIRMAN:** You have clarified that. Thank you. We didn't intend to do anything that was a discourtesy to the church.

**Dr Mavor:** I appreciate that and I appreciate your checking.

**The CHAIRMAN:** If you would like to make some introductory remarks?

**Dr Mavor:** The submission made by the social responsibility committee is in relationship to its areas of expertise. You will note from reading it that it is not attempting to be so much a theological statement as a comment on a social issue in the nature of the committee to whom we were addressing that statement. If the submission had been being made to the membership of the church, it would have had a rather different shape, as it were.

The social responsibility committee of the Uniting Church has been very involved in the issues for a number of years and particularly was very supportive of the Fitzgerald inquiry. So in this report we have quoted from the Fitzgerald report, as was noted in the information paper sent out earlier. The concern is that the legislative process only act as necessary to protect the community, particularly individuals with special needs. So it is felt by this group within the Uniting Church that at the moment there are aspects of the law that go beyond what is necessary within the law and that in the process it puts the very functioning of law to some extent at risk: that laws are there that speak to moral concerns. The church would share some of those moral concerns, but this particular group within the church does not think that the present legal structure is the most helpful way to deal with that moral concern within society.

It believes that in fact it is putting the law itself to some extent at risk by trying to legislate in areas where it does. Particularly the committee quotes from the statement by Mr Justice Kirby quoted in a book called *AIDS and Compassion*, which is a study of the whole AIDS issue. The AIDS question is a very serious concern to our social responsibility committee. The committee shares the concerns expressed by Mr Justice Kirby that—

" . . . the criminal law in particular is not only relatively ineffective as a mechanism for modifying the behaviour stigmatised—it is also likely to produce in its train consequences which are very damaging for society and for its respect for the law and legal institutions."

That is an issue that can be argued back and forth. But that was the feeling of this group: that the law as it stands is having a counterproductive effect without really achieving the intent for which it was established.

Within the life of the church we would want to discriminate between what some would call a sin and what might be validly called a crime. I am sure that this has been raised in other ways. This group would certainly want to support that. Within the Uniting Church, as I said, there is a diversity of views. Part of that diversity goes to the diversity of ways of interpreting scripture. For example, there are passages in the Old Testament that strongly condemn homosexual activity and yet many of those references refer to sexual practices associated with fertility cults in the ancient world, where in ancient temples it was common to have male and female temple prostitutes

and people would take part in sexual activity as a way of making sure the crops grew. The thing is that some of the most powerful condemnations of sexual practices were to do with cult practices. So the scriptures were dealing with religious practices, not with sexual behaviour as we might think of it today. They were dealing with ways of people's worshipping God, which gods people would worship and so on.

Similarly in the New Testament, the references there to homosexuality were in a society where it was quite common for a person who was married to also be involved in homosexual activity in a way that would be still not regarded as acceptable today in any circumstance. The whole issue of what today we have come to regard as a person's personal style; they are someone who is, by nature, homosexual for whatever reason and nobody has a real explanation for that. That issue, in my belief, is not dealt with in the scriptures in any direct way.

The issue then is how do people interpret and understand the teachings of the Bible. That is something that Christians deal with. But it seems to us that it is not an issue that needs to be taken up in the criminal law and that to recommend decriminalisation of homosexual activity is not the same as saying therefore it is quite acceptable, there is no moral issue involved.

This committee of the Uniting Church would want to encourage a change in the law without saying that the church is favouring this practice or not. In fact, when the Uniting Church has grappled with the question of whether, for example, someone should be accepted as a member of the clergy who is a practising homosexual, the decision of the Queensland synod was that that was not an acceptable life-style for a minister of the church. So the church has tried to take a stand on those issues that are relevant to its own life and its own community life. Following on that comment from Mr Justice Kirby, one of the concerns about the damaging consequences is that it is our belief that if the law actively discriminates against particular groups within society, there are serious social repercussions. I think that there is a time of upheaval in some parts of the world in terms of the whole movement for recognition of homosexuals in a different way. I personally think that is very similar to the upheavals of the 1960s and the American civil rights movement. In some ways I think that the mardi gras in Sydney is not unlike the black power movement and the civil rights marches of the sixties in the United States. It is part of a transitional time; a time of turmoil where people who have been oppressed and whose behaviour has been regarded as lower than other people's suddenly find themselves able to express themselves more freely. For a while there is a time of transition. However, that is well past in terms of the civil rights movement, and people are now much more readily accepted in their own right. The kinds of things such as the black power movement are no longer a necessary presence and have ceased to have any impact. I think that the same thing would happen. My belief is that the mardi gras of Rio is an example of a society that is sexually repressive letting its hair down. I believe that the gay mardi gras of Sydney is a similar reaction to repression of sexuality leading to perhaps extreme reaction and that that will pass when social attitudes change. Changing the law does not change

social attitudes. However, while the law is in place it is hard to change social attitudes. That is why it is a significant step to be taken.

**The CHAIRMAN:** I congratulate you on a very succinct and clear submission. I think you have conveyed very clearly your position. I have no questions.

**Mr GUNN:** I just agree that there is a great diversity of views in the church, at least in my electorate.

**Dr Mavor:** I am sure.

**Mrs EDMOND:** We have heard from a wide variety of churches in written and oral submissions. How far do you think Governments should go in enforcing religious beliefs and morals in a community?

**Dr Mavor:** I think that it should not be enforcing religious beliefs and morals as religious. If morals are part of the standards and life of the community—for example, our submission would see the Government as having a very important role in protecting the safety of children and protecting people from coercive sexual activity—as in any other violent activity. There is a very important protective role of Government. As to the area of sexual practice—what are so-called victimless crimes—in that sense it has to be able to be seen that a particular law serves a particularly important social purpose before it should be established.

**Mr SCHWARTEN:** I, too, must congratulate you on a very succinct submission. You obviously know what you are talking about. A number of groups who oppose any sort of liberalisation of laws as they pertain to homosexuality have indicated that, should we proceed with the passage of such legislation through the Queensland Parliament, ultimately that will sound the death knell of the family as we know it in Queensland. Do you have any comment on that?

**Dr Mavor:** Yes. I think that the word "family" is being used as a propaganda tool at the moment. That is okay for some purposes, but I do not think that there are any sociological or other grounds for saying that a change of the law of this kind is some kind of an attack on the family. I believe that the nature of the family is a very strong part of our culture in society. We have to recognise that there are many diversities of family life and that the relationship between parents and their homosexual son, for example, is also part of family life. There are aspects of family life that, I believe, can be made easier by some changing of this kind. The heterosexual dimension of our culture is so powerfully established that the recognition that some people do not conform to that is not going to undermine that in any way. That is my belief.

**Mr SANTORO:** Most of the mainstream churches that have appeared before us have advocated the decriminalisation of homosexual practices, yet they still regard homosexual practices as immoral and against the teachings of the holy scripture and doctrine. I raise the very same hypothetical situation that my colleague at the other end of the table raised, namely, that we move to decriminalise homosexual practices, what sort of role would you see the churches playing in such a situation?



**Dr Mavor:** This gets back to the previous question. There are aspects of family life, such as adultery, marriage and divorce, that are very important for the churches and yet someone getting divorced is not some kind of criminal action; but churches have never encouraged that process. They have recognised that as something that happens to people, and churches have differing views on that. Some will remarry divorced persons, and some will not. In other words, it becomes part of how churches deal with their own teachings within their own communities. Similarly, an issue such as heterosexual adultery is certainly not encouraged by any church, and most would regard it as a sin, but I do not think that the law attempts to view that as criminal behaviour even though it is a danger to family life and so on. I would see that this is in a sense treating the homosexual community on the same basis as the heterosexual community and leaving the churches able to do their own teaching in regard to whether something is sinful or not.

**Mr SANTORO:** I attend church most Sundays. Within sermons and within the teachings that I listen to there is often reference to adultery, stealing, misrepresentation and the whole range of the Ten Commandments. However, there is very little mention made of what the church could possibly consider an equally immoral act. From their own statements before this committee, they regard it as such. In a decriminalisation situation, do you see the churches taking a more pro-active stance in their teaching and in bringing the church's view to the attention of its flock?

**Dr Mavor:** I think it would leave them scope to do that in a more free way than at the moment because of the social stigma attached to homosexuality. I would think that a lot of churches are reluctant to take up that issue in a direct way because it is seen, in a sense, as bashing somebody who is already down, as it were, and it makes it hard for the churches to deal with people in an open and healthy way. There are some people who have a sense of being homosexual who would dearly like to change that, but because of the stigma and secrecy factor it is very hard for them to seek counselling. Others are in that pattern of life and that is where they want to stay. That is the choice they make. It is still quite possible, and in some ways it might be more possible, for the churches to deal with this in their own way if it is separated from the Criminal Code. I am not sure how you would prove that, but that is certainly my perception.

**Mr SANTORO:** In common with my other colleagues, I found your submission and your comments particularly helpful.

**The CHAIRMAN:** We certainly did. Thank you very much. We appreciate your assistance.

**Dr Mavor:** Thank you.

**The CHAIRMAN:** Would you state your name, position and address?

**Mr Miller:** My name is Royce Noel Miller. I am the Director of Prosecutions for Queensland. My address is George Street, Brisbane—State Law Building.

**The CHAIRMAN:** I should say for the information of everyone present that Mr Miller has not made a submission to us. However, because of his position we have asked him to come here today to provide us with valuable information which we think will assist us in our deliberations. There are a few technical questions that we would like to ask. It has been said to us that the laws relating to homosexuality are applied selectively and inconsistently in Queensland and cannot be properly enforced.

**Mr Miller:** I agree with the second part, but I won't agree with the first part.

**The CHAIRMAN:** Do you agree with the proposition and, if so, what effect does this have on the administration of the criminal law here? These are not the committee's views, these are views that have been put to us.

**Mr Miller:** That there is a selective prosecution, as it were?

**The CHAIRMAN:** Yes.

**Mr Miller:** I can't answer that question, because I am not in the field of going out and investigating. I am in the field of prosecuting once there has been a charge laid and the case comes to the office of the Director of Prosecutions. That is when we begin our task. What motivates police officers to investigate particular cases, I have got no idea.

**The CHAIRMAN:** What about the question of enforcement?

**Mr Miller:** I would think that a very small proportion of cases would ever come to the notice of the police, in the same way as I am sure that very few cases of adultery are ever discovered.

**The CHAIRMAN:** In terms of making an assessment of whether or not to proceed with a prosecution, presumably the evidence would be very difficult to obtain?

**Mr Miller:** Very difficult.

**The CHAIRMAN:** What sort of things would you take into account in making that assessment?

**Mr Miller:** You have got to understand the role of the office of the Director of Prosecutions. He only comes into it once a charge has been laid. He may be asked for advice by the Police Department before a charge is laid, as to whether there is sufficient evidence to warrant the laying of a charge. If there is not sufficient evidence, no charge is laid. If there is sufficient evidence in the eyes of the magistrate who conducts the committal proceedings, then there will be a committal for trial. The matter will be then considered by my staff and myself. If there is sufficient evidence, we will go to trial.

**The CHAIRMAN:** On 19 December last year, Western Australia passed an Act called the Law Reform (Decriminalization of Sodomy) Act. Do you know very much about that?

**Mr Miller:** No.

**The CHAIRMAN:** That Act basically decriminalises sodomy between consenting males.

**Mr Miller:** It does not go so far as decriminalising it between male and female?

**The CHAIRMAN:** It is neutral, so it does cover both. I want to particularly ask you a question in relation to the preamble. It says—

"Whereas, the Parliament does not believe that sexual acts between consenting adults in private ought to be regulated by the criminal law;

And whereas, the Parliament disapproves of sexual relations between persons of the same sex;

And whereas, the Parliament disapproves of the promotion or encouragement of homosexual behaviour;

And whereas, the Parliament does not by its action in removing any criminal penalty for sexual acts in private between persons of the same sex wish to create a change in community attitude to homosexual behaviour."

**Mr Miller:** I read that just before I left my office.

**The CHAIRMAN:** I would like your advice as a professional. If this committee made a decision—and I stress that we have not yet made a decision—but if we made a decision to change the law to make it legal for consenting males in private to practise homosexual acts, including sodomy, but we had a preamble such as that to the front of the Act, what legal ramifications could that have?

**Mr Miller:** I read page 40 before I came here. In the second-last paragraph it says—

"The potential for uncertainties in interpretation in this preamble is obvious."

Not to me. If the sections which decriminalise the act are clear enough in their terms, it is not going to be whittled down in any way by the preamble. I can't see any problem at all. I thought it was advantageous to have that in the preamble, because it sets forth the views of the Parliament. All it is doing is decriminalising. It is not seeking to encourage that sort of conduct.

**The CHAIRMAN:** You cannot foresee that having any legal effect at all?

**Mr Miller:** None at all, if, in fact, the sections which decriminalise are clear in their terms. A lot will depend upon what is said in the Act itself.

**The CHAIRMAN:** What would happen then—again obviously this is hypothetical—if there was some ambiguity in the section itself? What would the court do then? Would it look to the preamble?

**Mr Miller:** Yes.

**The CHAIRMAN:** What you are really saying is that the preamble would have legal effect only if the sections themselves were in some way open to interpretation by the court?

**Mr Miller:** Yes.

**The CHAIRMAN:** But if they were clear, the preamble would not have any legal ramifications?

**Mr Miller:** That's right. That is my view. Perhaps the parliamentary counsel might have a different view, but that is my view.

**The CHAIRMAN:** In other words, we would have to get it right the first time, otherwise it would be irrelevant.

**Mr Miller:** If the Parliament expresses its intention in the clearest possible terms, there would not be any ambiguity. There would be no need to read down what is in the body of the Act by reference to the preamble.

**Mr HARPER:** Would you agree that in the past, the courts have been very reluctant to read down comments made by the Parliament in any case, and would much prefer to strictly address the matters in the body of the law?

**Mr Miller:** I suppose that over 20 years ago, courts never had reference to what is said in the Parliament. The High Court has now said that it, itself, may do that and that appellate courts may also do that. I am not quite sure just how far that goes, but my view is that if you express in clear terms your intention, where there is no ambiguity and no room for argument as to the meaning of the section, then the preamble will not have any effect at all in diminishing or expanding the content of the section. It is only where there is a need to resort to some other means in order to determine the intent of the Parliament that one will resort to those means.

**Mr HARPER:** Where there is a lack of clarity?

**Mr Miller:** Yes.

**Mr HARPER:** There are two areas upon which I would like you to express an opinion. One relates to the present, which is basically—and I use the word "basically" deliberately—a matter of fact, and the other relates to the future which, of course, is a matter of some conjecture. You have indicated to the chairman that the bringing of charges, particularly for acts of homosexual behaviour in private, is almost impossible in two years. Two people were being questioned in relation to some unrelated matter and, in the course of that questioning, each of them disclosed that he was engaged in homosexual acts in private. They were prosecuted and I think that they were given a very, very small punishment.

**Mr GUNN:** That is the Nerang case. They were given good behaviour bonds.

**Mr Miller:** There would be other cases where quite by chance, someone has come across a videotape or photographs which have led to prosecution. I cannot give you any numbers, but it would be very rare, because most people who take photographs manage to secrete them, anyway. There have been a few cases where the fact of the matter has come to light because photographs have been discovered.

**Mr HARPER:** And you believe that there have been prosecutions as a result of that?

**Mr Miller:** Yes. There have been cases involving minors.

**Mr HARPER:** You are probably referring to some of the matters mentioned in the report of your predecessor in office?

**Mr Miller:** I have read his report, yes.

**Mr HARPER:** He refers to that type of activity. For the benefit of the committee, the matters to which you referred of video or photographic evidence having been taken implied—but it may not necessarily be the case—that there would have been a third party present?

**Mr Miller:** There may have been a third party present to take the photographs.

**Mr HARPER:** Yes.

**Mr Miller:** I think it might be very difficult to engage in an act—I am no expert in this field at all—of homosexuality at the same time as one has a camera in his hand.

**The CHAIRMAN:** I take it that that is registered in your legal opinion?

**Mr Miller:** Yes. That was a disclaimer, anyway.

**Mr HARPER:** In our discussions with the authorities in Western Australia, we went into considerable detail. The consistent view that was expressed by everyone was that "private" means two people, and the presence of the third party abrogates any defence that the act was in private.

**Mr Miller:** Yes.

**Mr HARPER:** So the point I am making is that even where a charge is brought as a result of visual evidence, that immediately indicates that the act was not in private.

**Mr Miller:** It has been viewed by somebody else.

**Mr HARPER:** So it loses the defence of being in private.

**Mr Miller:** That is if it is made clear in the legislation that if there is a third person present, it is not to be regarded as being in private. There is a need for clarity in respect of that.

**Mr HARPER:** In your experience, could you tell the committee what charges have been laid against persons for having engaged in homosexual behaviour in public?

**Mr Miller:** You must remember that I became Director of Prosecutions only in May and, before that, I held a different position and I was not concerned with the numbers of people who came before tribunals. I really cannot answer your question. In fact, at the moment, I would not even know what charges are outstanding against what persons in Queensland—even in Brisbane.

**Mr HARPER:** Would you be in a position to say that they are rare?

**Mr Miller:** Yes, they would be rare.

**Mr HARPER:** Because of the difficulty of obtaining evidence?

**Mr Miller:** That's right.

**Mr HARPER:** If we turn to the future, I refer you to the views expressed by Mr Sturgess, which were that there should be a scale of penalties aimed at protecting the young. In laymans terms, you could summarise it by saying that there should be some acknowledgment of the value of privacy, but once you go outside that field, the law should take a maximum attitude to discourage that sort of behaviour. Could you express an opinion as Director of Prosecutions on that type of attitude being adopted with regard to decriminalisation of homosexual behaviour in private and the increasing of penalties for abuses outside that area?

**Mr Miller:** I can't tell you from memory just what the maximum penalties are that are prescribed by the Criminal Code at the moment. However, the courts are not really bound by the maximums that are set forth. Cases are decided on the facts of a particular case, that is, the objective facts, which are the facts that relate to the commission of the offence, and the subjective facts, which are the facts that relate to the offender. Cases are also decided on the harm that has been done to the victim, the length of time for which it has gone on, whether it is an isolated act, whether it has been going on for a long period of time, the age of the victim and the age of the perpetrator of the deed. These are all variables, and one cannot determine with any degree of certainty what sort of sentence will be imposed. One has to resort to what are called comparable sentences. However, even they are very difficult to find. It is difficult to find another case where the facts are very, very close indeed to any particular case that the judge has to decide. It might be easy to decide that a custodial sentence will have to be imposed or that it should not be imposed in a particular case. Beyond that, it is very difficult to say.

**Mrs WOODGATE:** I have no questions. Thank you for coming. It was most helpful. I was particularly interested in your comments about the preamble in Western Australia.

**Mr SANTORO:** You have covered this question in part, but I will ask it again. Do you believe that it is good parliamentary practice to preamble legislation?

**Mr Miller:** I will let that question pass. That is a question that would be better addressed to the parliamentary counsel who has this field of expertise. It is not my field of expertise. I do not think that my opinion would be worth twopence.

**The CHAIRMAN:** That is only on that particular question, of course.

**Mr HARPER:** It is a question of weight, isn't it?

**Mr SANTORO:** Do you believe that the Parliament should express moral and social views in legislation, including in preambles? I hope you do not feel that I am coming at you again in the same way but from a different angle.

**Mr Miller:** Personally, I cannot see any objections to a Parliament setting forth in a preamble to a Bill what its views are on a certain matter. I cannot see any harm in that. In fact, when I read that on page 40 before

coming here, I thought that was a jolly good idea, because the Parliament decriminalises a certain act or acts, but at the same time it maintains a stance which it thinks is the stance that it should maintain with a view to the betterment of the population. Why should it not say what it has on its mind, if that is in fact what it has on its mind?

**The CHAIRMAN:** In your legal experience, are preambles used very much in Queensland?

**Mr Miller:** I would have to pass on that question, too. One does see them from time to time. I would imagine that they are used fairly frequently.

**Mr GUNN:** Western Australia apparently thinks the same. As Director of Prosecutions, you know by now that you get all the hard cases. The police have their own legal section, and when there is a breakdown, they hand over to you for advice, naturally enough. That is done very, very often. There are a terrific number of reported cases that would never get to you because of lack of evidence. If there is no evidence, there is no hope of a conviction, so the police do not go ahead with it. But they are reported cases. I have seen a lot of them over a period of time.

**Mr Miller:** As police minister?

**Mr GUNN:** Yes. The only times that I approached the Director of Prosecutions was when we had a very curly problem. It might be of some comfort to you to know that we had convictions on all of those occasions on which we were given advice to go ahead with the case.

I was very interested in the preamble, because it was the first time that we had any information that was definite on that point. I was thinking along exactly the same lines as you. On many occasions, I have sat as Chairman of Committees. Clauses in a Bill are passed at the Committee stage, and then the preamble is put before the Parliament. The Parliament always passes the preamble. So you are 100 per cent correct.

**Mrs EDMOND:** Have any licensees lost their licence for serving known deviants and child molesters, to your knowledge?

**Mr Miller:** I have no idea.

**Mrs EDMOND:** You do not know if that law has been enforced at all, or why it has not been enforced?

**Mr Miller:** It does not come within my jurisdiction. I have enough to do.

**Mrs EDMOND:** I just wondered whether it had ever been enforced?

**Mr Miller:** I do not know.

**Mrs EDMOND:** It has been put to us that we should leave the law as it exists to show a moral stance, but that we should not enforce it. Do you have an opinion on that?

**Mr Miller:** I think that is silly. You get into trouble when you have laws on the statute books that are not enforced. Police officers have a clear duty to enforce the law. I think that if there is a law on the statute books that you think should not be there—it is wrong—then you should have the courage to legislate to take it off the statute books.

**Mrs EDMOND:** So if the law is not enforced and is not enforceable, you say that it should be taken off the statute books?

**Mr Miller:** Parliament should have the courage to take it off the statute books. There are dreadful dangers inherent in the situation where the Parliament does not want a law to be enforced.

**The CHAIRMAN:** I think that we all agree with you on that. I do not know if you want to make any other comments as a result of the questions that were asked. It is a bit like being put in a pressure cooker. We asked you to come along and give your personal opinion, and then we bluntly and rudely ask you questions. However, you can understand why we needed your opinion?

**Mr Miller:** Yes.

**The CHAIRMAN:** Are there any other matters you would like to raise?

**Mr Miller:** I think that I have made my views clear without expressing any personal view. It is for the Parliament to decide what the law should be.

**The CHAIRMAN:** We respect that. Thank you for attending.

The Committee adjourned at 3.45 p.m.



The Committee resumed at 3.54 p.m.

**The CHAIRMAN:** I now call the representatives from the Queensland AIDS Council.

Could you indicate your name and address for the record?

**Mr North:** My name is Peter North. My address is 111 Dornoch Terrace, Highgate Hill.

**Ms Reid:** My name is Elizabeth Reid. I work for the United Nations Development Program in New York. My position there is Director of the Division for Women and Development and adviser to the administrator on the AIDS epidemic and development. My address is United Nations Development Program, 1 UN Plaza, New York. I am senior council to the Queensland AIDS Council in this committee of inquiry.

**The CHAIRMAN:** We have received the very detailed submission from the AIDS Council which we have read at some length. We would appreciate it if you would give us a summary as succinctly as you can of the material, because we are fairly keen to ask you questions.

**Prof. Raphael:** I am Professor Beverley Raphael. I am a professor of psychiatry at the University of Queensland and director of the national centre for HIV research. I have a further written submission that I could offer, if you are prepared to take it.

**The CHAIRMAN:** Yes. You could leave that with Mr Woodyatt.

Perhaps you would like to make some introductory remarks. We are keen to ask a number of questions.

**Ms Reid:** The contentions of the Queensland AIDS Council with respect to this inquiry are contained on page 35 of the submission. Basically, the sections are underlined. There are three contentions: firstly, that all relevant legislation, including the Criminal Code, the Queensland Liquor Act and the Vagrants, Gaming and Other Offences Act should be reviewed as they refer to homosexuals and that those laws that discriminate and prosecute on the basis of consensual homosexual activity should be repeal in their entirety; secondly, that the same legislation should apply to homosexual acts as applies to heterosexual acts; thirdly, that appropriate anti-discrimination legislation should be immediately introduced to promote and consolidate the positive social effects which the decriminalisation of homosexual acts will have.

The arguments for the decriminalisation of homosexuality fall into two broad categories: firstly, those relating to privacy, anti-discrimination, human rights and social justice. These arguments explore the relationship between men who have sex with men and the society of which they are an intrinsic part. They are dealt with in the Queensland AIDS Council submission in the first part, in particular pages 1 to 12, and perhaps are best summarised by a most unlikely quote contained on page 12 from Phillip Adams.

**The CHAIRMAN:** I was interested that you included him.

**Ms Reid:** Exactly. This part, which relates to the arguments in general—the arguments about privacy, discrimination, social justice—for

decriminalisation, can be summarised by the quote on page 27 of the submission. At this stage, I would like to read it into the record, as there is an important correction to the submission. It is the contention of the AIDS Council that the retention—not the repeal—of legislation criminalising homosexual acts not only violates civil liberties, discriminates against other law abiding citizens but reinforces and sustains negative and hostile public perceptions of homosexual persons which are also unfortunately held by and acted upon by persons engaged in the helping and other professions.

The second set of arguments in this submission are those relating to the decriminalisation of homosexuality as an effective public health measure in our response to the HIV AIDS epidemic. This can best be summarised by saying that the most effective HIV AIDS strategies enlist the cooperation of all people involved in or affected by the epidemic. Laws criminalising homosexuality minimise cooperation and maximise hostility on the part of the homosexual community. HIV education and prevention programs are most effective when undertaken in an open and non-judgmental environment. If homosexuality is unlawful, this effectiveness is placed in jeopardy.

I would like therefore to conclude this very brief summary by first of all, if you would accept it, tabling a letter from the Honourable Michael Kirby in his capacity of commissioner of the WHO global commission on AIDS which, in its final paragraph, also supports the contention which says—

"If people at risk are criminalised, alienated and driven underground by the law, our society will not be successful in getting messages to them vital for their own protection and for the containment of the epidemic."

I would like to table that letter in full.

For the information of the committee, I table a document which shows the work program and achievements of the Queensland AIDS Council from 1 July 1989 to 30 June 1990.

**The CHAIRMAN:** Thank you. You could leave that with Mr Woodyatt. Does anyone else want to say anything at this stage, or would you like us to simply ask you some questions?

**Prof. Raphael:** I would like to support Ms Reid's comments fully. I speak from a public health point of view as well as from a humanitarian one. The brief submission I have presented adds to the material put forward by the AIDS Council and was not available at the time of their submission. It covers points which I will outline very briefly for you. The first is the frequency of homosexual behaviour, if we wish to call it that, across all cultures in society, the estimate that it is highly prevalent in Australian society as part of this spectrum of human response.

Secondly, the origins of homosexuality which, according to the most up-to-date scientific reviews, are a complex set of origins involving both biological factors in brain biochemistry prenatally and the social and communication development of the child and adolescent.

Thirdly, I would like to emphasise that homosexuality is not a mental disorder. The American Psychiatric Association representing psychiatrists in

America, followed by the Australian Psychiatric Association group of psychiatrists in 1974, removed the diagnosis of homosexuality, which people had previously held, from the diagnosis of mental disorders. There is no good epidemiological evidence which shows the homosexual population to have any different level of mental disorders from people of other sexual orientations.

More particularly, it is clear that some people within both heterosexual and homosexual groups seek professional assistance and many people in the homosexual group may be more compelled to do so because of the distress engendered by criminalisation and stigmatisation in association with it.

The fourth point I would like to make briefly relates to homosexuality and AIDS. While much of the presentation of AIDS in Australia is related to homosexual behaviour, there is evidence from the data presented in the submission that there is an increasing risk to people who are not only IV drug users, but in the heterosexual population. If homosexual behaviour is criminalised, there is a much greater risk that the denial of risk and spread will be perpetuated and we will be unable to address the scientific and public health issues relevant to defeating this epidemic.

While we have been fortunate in the relative containment of the epidemic to date, there is considerable concern that we are now at risk of much more substantial spread.

To fully understand and deal with the epidemic, it is clear that there is not going to be a vaccine in the near future. We must understand the prevalence and nature of risk behaviours in the community. We can only do that if we can scientifically research and investigate these to protect the population as a whole. The population as a whole is at risk, increasingly the youth of our society.

Finally, it is extraordinarily difficult to change human behaviours to the promotion of researchers throughout the world, particularly in the United States where they have poured massive resources into changing human behaviour and found it to be extraordinarily difficult, particularly in any behaviours which are biologically driven, as sexuality is.

The achievements of the gay community in being able to produce some health-related behaviour change are very significant. We need to know and understand those further. They are quite extraordinary in comparison to many of the other attempts at behaviour change. I believe we need to be able to understand the details of these to extend them to those members of the gay community who have not as yet been able to take those steps for a variety of reasons and also to incorporate an understanding of them in the public health approach to the general community.

In conclusion, I would like to point out that evidence everywhere is that an open and honest discussion and access to issues related to sexuality is only helpful and, indeed, in issues such as adolescent pregnancy, for example, the less open education and discussion in relation to at-risk and high-risk behaviour, the more difficulties arise. The more open and honest

discussion and education is, the better prognosis for help, not only of the affected group but the community as a whole.

**The CHAIRMAN:** I wonder if I can put a number of things to you which have been submitted to us either in writing or orally. I stress they are not the committee's views but they have been submitted to us and I would appreciate your comment. It is argued by some people that in Australia in particular the spread of AIDS has been basically in the homosexual community. One, can you comment on that? Two, can you give us an indication of world trends? I know, Professor, you referred to some of it. I wondered what the latest American experience is, particularly from your New York experience.

**Ms Reid:** Perhaps if I can handle that. Whilst it is the case that within Australia most of those who are HIV positive have become so through anal intercourse, this is certainly not the case globally. The most recent WHO analysis of how people have become infected—and the estimate at present is that there are about 8 million people in the world who are presently infected with the virus—the analysis is that of these 8 million, 60 per cent were infected through vaginal intercourse, 15 per cent through anal intercourse—this would of course include both women and men—and 15 per cent through intravenous drug use. The remaining 10 per cent is other known modes of transmission.

What we have is an epidemic in which at present the estimate is of those 8 million, 3 million are women and 5 million are men. So we have an epidemic which is primarily, in global terms, transmitted through vaginal intercourse. It therefore is an epidemic which is going to affect all of those who are sexually active—men and women.

**The CHAIRMAN:** In other words, it would be to some extent a naive view to believe that it was a homosexual problem in the long term in Australia?

**Ms Reid:** Yes. I think what we have—initially the WHO identified three different patterns of transmission. Australia fitted classically into the first pattern, which was that the virus entered into a homosexual community and spreads through the homosexual community, which is to a great extent sexually closed. That is, a homosexual would transmit to another homosexual but not very often outside the group. This pattern was seen in Australia, Europe and the United States.

The second pattern that the WHO identified was the pattern that is known in Africa where there are equal numbers of women and men infected where probably the estimate is that 80 per cent or more of those infected were infected through vaginal intercourse—for Africa.

What is happening globally now is that we are seeing all countries and all patterns gradually move towards the pattern we have seen already in Africa. So that gradually the heterosexual or, as we should more strictly call it, vaginal, intercourse is becoming the primary mode of transmission throughout the world and in most communities and subcommunities.

**The CHAIRMAN:** Because of the sexual activity obviously of the community generally but young people in particular, are you saying that

Australian families are indeed in as much threat as any families throughout the world?

**Ms Reid:** Yes, I think that is the case.

**Interjector:** If the laws are changed, they are.

**The CHAIRMAN:** If you don't mind, this is a public hearing and we aren't about to take interjections from anybody. This is the first time it has happened in two days. We have listened to all evidence. Anyone who seeks to interject will be removed.

**Ms Reid:** We have seen this epidemic identified in Africa as a family epidemic. That has been done just to counterbalance the way it has been described in the rest of the world, particularly in the Western literature where it has often been described in terms of anal intercourse or intravenous drug use. What it means to say it is a family epidemic is that both men and women and their children are now at risk if they undertake certain behaviours. Those behaviours are very common in the community; it is the expression of sexuality in particular.

**The CHAIRMAN:** One of the people who gave evidence before us yesterday in terms of the African situation was suggesting that there was a high incidence of anal intercourse practised amongst Africans which is part of the reason for the spread of the disease. Is there any truth in that?

**Ms Reid:** No. In fact, the epidemic is at its most virulent in Africa in central, eastern and southern Africa. Here, although there is some, the incidence of either anal intercourse or of intravenous drug usage is so small as to be virtually negligible in terms of the transmission of the virus. The virus in these parts of Africa has been transmitted, as I said, predominantly through vaginal intercourse and then, secondly, up until now, through the blood supply and through the use of unsterile needles. But more and more, and tragically—and this is the future pattern for Australia—the vertical transmission from an infected woman to her child is beginning to become an even more significant mode of transmission than transmission through the blood supply and by unsterile needles.

**The CHAIRMAN:** The question of education about AIDS is obviously fundamental to solving the problem. In terms of AIDS education, a number of people have obviously suggested that it needs to be very frank and realistic in how it is dealt with. How much, in your view, is the existing law in Queensland an impediment to AIDS education?

**Ms Reid:** Perhaps I will ask Professor Raphael to answer that.

**Prof. Raphael:** Every evidence you get from any systematic evaluation of education and its effectiveness is that this must be openly discussed, including all the details of behaviour.

Secondly, that people learn most about particular issues such as high-risk situations and the danger thereof and quite frequently by seeing presentations by people who have either suffered from the disease or who know more about the risks of behaviour. This adds to the likelihood that the educational message will be effective. If behaviour is considered a criminal activity, to discuss it publicly creates a situation of conflict both for the

educator and those hearing it and does not allow a free appraisal of the necessary information to take educational steps.

**The CHAIRMAN:** How important is self-esteem to people in the homosexual community being willing to be tested for AIDS?

**Prof. Raphael:** Self-esteem is extremely important. Indeed, in studies being carried out in my department, we have found that the fall of self-esteem in infected people creates greater difficulties for them in maintaining safe sexual practices. The low self-esteem of many members of the homosexual community has been well established in community-based studies, particularly in association with the level of stigma and discrimination.

**The CHAIRMAN:** Are you saying in that sense that self-esteem is fundamentally important to stop the spread of AIDS?

**Prof. Raphael:** Self-esteem is important at every level in the community. It would be wrong of me to suggest it is only in one group.

**The CHAIRMAN:** Sure, and I am not wanting to.

**Prof. Raphael:** But I believe it is a vitally important fact. Someone who feels that the world has rejected them has little reason to make a commitment to either their own self-care or a responsibility for others.

**The CHAIRMAN:** One of the groups represented here suggested to us—and again, I stress that I am putting this to you for comment—that because AIDS was a fatal disease in the sense that there is no cure—and you have indicated yourself that there is no vaccine—there would be an unwillingness for people to be tested for AIDS and to take any appropriate medical assistance or counselling. Would someone like to comment on that?

**Mr North:** Anecdotally, the point is borne out that people who are facing discrimination under legislation will be reluctant to disclose those activities which may label them as criminal. Over the years, we have seen in Queensland persons testing interstate. Our own statistics show that a number of persons are testing interstate and have moved interstate and established themselves there. In fact, one of the difficulties facing the Queensland Health Department is funding for those persons who have lived interstate, have become infected interstate and are coming back to Queensland to die. Of course, the Commonwealth is not funding those persons hospital bed-wise in Queensland because their notification and registration is interstate.

On an anecdotal level, the whole educational process itself is made more difficult in country towns—1985, '86 and '87—whereby the general community will not participate in educational programs surrounding AIDS because it is seen that only certain groups are at risk. Therefore, the Queensland AIDS Council has adopted a low profile strategy in terms of education in country areas.

The actual testing issue, I think, is probably not the most significant one. Testing in itself is not the solution. The adoption of safe behaviours is the solution. One of the difficulties we find is that the people who have low self-esteem and who feel threatened are not prepared to identify themselves with those programs and the groups of persons who are operating programs for high-risk groups. My observations would be that homosexual and bisexual

men may find it difficult to identify and publicly come forward to participate in behaviours to establish and maintain safe sexual behaviours. I would hate to think that testing would be the benchmark as to whether a program is successful, or not. More importantly, it is the acceptance, adoption and maintenance of safe sexual behaviours.

**Ms Reid:** If I could just pick up on that comment, I think that we need to be careful about describing HIV infection as fatal. What we are talking about is somebody who becomes infected and who will, on average, have ten years of full, healthy and productive life ahead of them. They are also capable of infecting others during those ten years. It is in the best interests of public health officials in Australia that contact be taken with those people as soon as possible and that the immediate point—it is nothing to do with testing or educating or anything else—the first point of contact is to assist them in learning to live with the information that they are infected with HIV; that they are going to remain well, but ultimately may well become sick. That is the first and most important point of contact.

What we are learning is the following: that the earlier contact can be established between the infected person and somebody who is assisting them, the better for the quality and probably the length of life of that person. Secondly, the earlier that the contact can be reached with that individual, the better in terms of increasing the effectiveness of public health measures to stem further transmission of the virus. I make the latter statement in the general context that it is not up to the infected amongst us to prevent the rest of us from becoming infected. The only person who can prevent anybody from becoming infected through sexual behaviour or drug use is the individual himself or herself. If one is protecting oneself from infection, one cannot be infected by an infected person.

**The CHAIRMAN:** I accept that. Notwithstanding what you have said, I ask: is the existing law in Queensland discouraging people from being tested?

**Ms Reid:** Yes.

**Prof. Raphael:** I would like to add to that. We are contacting many people as part of an ongoing study of the issues faced by HIV positive people in this community. It is quite clear that there is enormous anxiety and concern about the effect of the criminalisation of their activity both in seeking help, in receiving ongoing help and being identified as someone with HIV infection and, therefore, possibly someone who has engaged in criminal behaviour, and in maintaining their contact with the counselling services which would facilitate their ongoing maintenance of safe sex practices.

**The CHAIRMAN:** I guess that this question is ancillary, to some extent, to the expert evidence that you are giving. Do you have any views in a sense on the age of consent and any preamble to legislation as they would affect people in terms of their willingness to be tested, how they feel with their self-esteem and all those relevant questions? I am not interested in a technical legal answer, I am just interested in how those issues would directly impact on people in that community?

**Ms Reid:** I wonder if I could begin the discussion on that on both the age of consent and the preamble. The submission proposes and, according to the AIDS Council, would like to argue that the age of consent for homosexual acts amongst adults should be the same as the age of consent for heterosexual acts amongst adults. However, there are no grounds for making any difference in those two. What we are talking about is sexual activity between consenting adults. Whatever the way that sexual activity is expressed, the age of the persons is not relevant. Therefore, it is not in a sense legitimate to make that distinction in this context.

I am much more seriously concerned about the sort of preamble that has occurred in terms of the Western Australian legislation. We are not qualified to put to you legal arguments in relation to its interpretation or usage. However, I think that the wording of that preamble is such that it would go against everything that you are hearing in evidence from us. First of all, we are saying that men who have sex with men are an intrinsic part of our society. Their sexuality and the way it expresses itself is one part of them as human beings. As human beings, they are as you and I are—parts of the society within which we live.

Secondly, in terms of the HIV epidemic, from the research that has been carried out in Queensland, New South Wales and other parts of Australia—that is, we are not going overseas for this research—what we have shown is that men who have sex with men, who feel at ease with that sexuality and are able to talk about it and interact with others who may have a similar sexual orientation are the very same people who have changed their behaviour and have adopted safer sexual practices within our community. Let us not forget that they have become key educators for the general population. They are the people who have accepted an obligation to make known to all of us the potential impact of this epidemic on our lives.

If a wording were adopted in the preamble similar to that of Western Australia, this would absolutely undermine all of the efforts to create an environment within which we can both acknowledge the humanity of these people and allow us and them to enter into a dialogue to prevent further transmission of this virus.

**The CHAIRMAN:** Do you have any views on the Victorian preamble?

**Ms Reid:** No, I am afraid we don't.

**The CHAIRMAN:** On page 12 of the submission you say—

"It is interesting to note that South Australia which had decriminalised homosexuality in 1973 had as at 18 May 1990, 394 notifications of persons testing HIV antibody positive while Queensland on the same date had 892 persons registered as testing HIV antibody positive. On a per capita comparison South Australia has a .028% infection rate while Queensland has a higher infection rate at .032%. It is obvious that decriminalisation of homosexuality has not increased the spread of AIDS in South Australia."

Do you want to make any comments on that? Are there any other factors that would influence those statistics? Are they objective and, on the face of it, do they appear as clear as they do?



**Ms Reid:** I think it was many centuries ago that somebody said there are statistics, statistics and damn statistics. I think we need to look more carefully. I think that both the decriminalisation in New South Wales and the decriminalisation in South Australia—the relationship between these legal acts and new infections or past infections in States is a very complex one. What I am trying to say is that the act of decriminalisation may not have a direct causal impact immediately on the statistics relating to infections. If you look at the Queensland statistics on those who are newly found to be infected, many of these are not new infections.

**The CHAIRMAN:** Because of the incubation period?

**Ms Reid:** And because, for all sorts of reasons, people are delaying in coming to be tested.

**The CHAIRMAN:** So, in fact, the figures in Queensland could be worse?

**Ms Reid:** Yes, of course. Let me say straight away that the WHO clearly acknowledges that, in every country and State in the world, the reported figures are significantly lower than the actual case figures, both for AIDS and HIV infection.

**The CHAIRMAN:** But notwithstanding the fact that they would be lower—if I can use that word; you know what I am saying—we could still have a disproportionately lower figure because of the law; is that what you are saying?

**Ms Reid:** This is exactly the case. Decriminalisation plus the other associated changes in Queensland—one has to look at a package of legal reform and legal change together with other social changes and social interventions. What could happen after decriminalisation is an increase in the number of known HIV positive people. That would be a sign of immense success. It would mean that you have gone further along the road of creating a community within which people would feel free to come forward to be tested. Therefore, your public health measures and your ability to contact a greater number of these people will be significantly increased.

**Mrs EDMOND:** I would like to check up on the effects of the preamble. Dr Raphael, we have shared health commissions.

**Prof. Raphael:** Yes, we have.

**Mrs EDMOND:** You will understand my concerns on the health aspects of this, I am sure. We have talked at some length about the morals situation and the legal situation. I keep coming back to this problem of self-esteem and its effect on AIDS treatment and testing. I understood that interventional drugs that are now available are more effective when used in the early stages of HIV infection and, in fact, when it is pre-symptomatic; is that correct?

**Prof. Raphael:** That is correct. There is a beneficial effect from AZT. This was recently reported at the international meeting held in San Francisco.

**Mrs EDMOND:** So there is a definite bonus for people to come forward?

**Prof. Raphael:** That is correct. We don't know what the ultimate impact of that will be on the disease. At this stage it gives a better and longer quality of life. Of course, it may make people live longer for ultimate effective treatments and, potentially, a cure.

**Mrs EDMOND:** That is a line taken with leukaemia patients.

**Prof. Raphael:** Yes, and indeed, many patients have achieved what has been the equivalent of a cure.

**Mrs EDMOND:** Do you share Ms Reid's concern about the effects of the preamble that exists in Western Australia, which effectively says, "We think you are a disgusting lot, but we won't lock you up."?

**Prof. Raphael:** I don't agree with the preamble, and I think it could be a way of adding to issues of low self-esteem even though you make a change in the law. Certainly a change in the law is not of itself the most important thing, but the preamble does this in a very half-hearted way and is likely to leave ongoing stigma and discrimination. Studies in the United States have indicated that.

**Mrs EDMOND:** It is not likely to encourage homosexuals to change their sexuality patterns?

**Prof. Raphael:** No, and the evidence is that it is extraordinarily difficult to change one's sexuality. One of the scientific papers before you will review that. It is not easy for people to change once that is a consolidated identity.

**Mrs EDMOND:** We have actually had evidence to the contrary during these hearings. We had somebody say that his church has been quite successful in changing people's sexual orientation.

**Prof. Raphael:** It would be essential to investigate the scientific validity of such claims, and the scientific rules of evidence would need to apply. I would be very happy to review such data should it be presented, in terms of the scientific basis. We are interested and concerned with all these areas. However, even amongst homosexual people who are dissatisfied with their sexual status and actively seek treatment to change it, the levels of change are about 25 per cent, even in people who are highly motivated.

**Mrs EDMOND:** So you think that the existence or the bringing in of a preamble similar to the Western Australian one would be counter-productive to changing sexual habits, including such things as safe sex?

**Prof. Raphael:** I do, indeed. Could I add that there is recent survey data, which has not yet been totally analysed, from surveys carried out on behalf of the Queensland Health Department that indicates that the level of homosexual activity and anal intercourse is as high in Queensland as it is commonly quoted in the Kinsey studies. So that is high-risk behaviour, amongst other high-risk behaviours, delineated which exist in the community but which people are going to find difficult to bring forward in order to seek help.

**Mrs EDMOND:** We have received a submission from a psychiatrist in the Health Department who indicated figures of something like 3 per cent, which seems to differ from Kinsey's figures. Have studies been done since Kinsey's?

**Prof. Raphael:** Yes, there have been, but not exactly the same study. I have quotations here. They were in the two papers presented to you, and they cover the level. However, most of the studies suggest between 5 and 10 per cent. There is no evidence in the data available from this most recent survey that the level is any less than that. More than 10 per cent of Queenslanders, both male and female, acknowledge having had anal intercourse.

**Mr GUNN:** In the past, drugs have not been very successful against the virus, have they?

**Prof. Raphael:** No, they haven't.

**Mr GUNN:** The first work done in Australia in the drug area was done by Sir Macfarlane Burnet.

**Prof. Raphael:** Yes.

**Mr GUNN:** We have done very little work in that area because we have not done much research.

**Prof. Raphael:** There is a very active national centre for research in the virology of HIV. The national centre in Sydney is actively engaged in clinical trials. Dr Kemp, here in Brisbane, is the head physician at the Royal Brisbane Hospital. He is involved in national and international studies.

**Mr GUNN:** Is it true that they found more virulent strains of it than there have been in the past? Some of the strains have been stronger?

**Prof. Raphael:** The AIDS virus rapidly changes, and it is very difficult to find a drug with an ongoing effect, although the drugs that are currently used are significantly effective.

**Ms Reid:** This also has implications for the development of vaccines. Because we have a very mutable virus, any vaccine that may be developed may quickly become ineffective as the virus changes its nature.

**Mr GUNN:** We have had problems in developing a vaccine for the common cold for the same reason.

**Ms Reid:** Exactly.

**Mr GUNN:** But there is a wide diversity of opinion, not only in this room but also right throughout the world, on AIDS and the way to handle it. It is one of the greatest problems that we have ever had to face. I am talking worldwide. Mention was made of a screening process, but Mr North did not consider it of any consequence. But would it not be of some consequence in letting you know just how widespread the problem really is?

**Mr North:** The knowledge that you are infected may or may not change your behaviour. A commitment to practise safer sex is very much dependent upon how you see yourself, what value you place upon your own well-being and the well-being of others with whom you come into contact. So I am saying that, yes, while it may help initially, it gives you a knowledge. Of course, to act upon that knowledge is sometimes difficult, just as I find it very difficult to give up smoking even with the knowledge that it is damaging my lungs. But I have to be motivated to commit myself to behavioral change.

Therefore, to commit myself to behavioral change, I have to be good enough and get into a group that is going to motivate me.

**Mr GUNN:** Do they still use a glutination test?

**Prof. Raphael:** Yes.

**Mr GUNN:** The glutination tests in the past have never been 100 per cent successful, have they?

**Prof. Raphael:** No. The nature of the test is one of the problems with the testing. Their use in the population requires extensive epidemiological discussion to highlight the issue of false positives and false negatives. That is not to say that there is no value in testing, but the value for the individual with respect to a disease which, at present, is not of high prevalence in the Australian community, creates a critical importance that anyone carrying out or seeking the test knows and understands the meanings of the findings and knows that there are further tests to be done.

**Mr GUNN:** In other words, it could be negative on this occasion, but a month later it could be positive?

**Prof. Raphael:** That is quite true. That is the nature of the response to this virus.

**Mr North:** It is the person who is returning the negative test who is probably more at risk. Some young people may use it as a magic talisman. Of course, they do not necessarily change their behaviour. They think, "I have managed to get by this time. I do not need to change my behaviour." I think that if you check with the Health Department, you would find some people who are possibly using testing as a magic charm to ward off becoming infected. Their behaviour does not necessarily change, but they test on a regular basis. One would suspect that if they need to test on a regular basis, their behaviour has not changed.

**Mr GUNN:** You claim that it is in epidemic proportions.

**Ms Reid:** Yes. WHO describes it as a pandemic, that is, an epidemic that is occurring in every part of the world.

**Mr GUNN:** I challenge you on one point. You claim that it has been contained. Did I read your submission wrongly?

**Ms Reid:** No. I may have said that the virus first entered Australia into the homosexual community, which was sexually closed. What that meant was that the transmission occurred from one homosexual to another homosexual rather than moving out through bisexuality or through intravenous drug use with known homosexuals into the broader community. But there is clear evidence in Australia that the virus is being transmitted in the general community itself.

**Mr GUNN:** I am surprised that you did not mention, as we have a report from the Queensland Health Department, the great problem faced by the bisexual community.

**Ms Reid:** What I mentioned was men who have sex with men. Men who have sex with men may have sex only with men or they may have sex

with men and women. Of course, your laws apply to men who have sex with men, whether or not it is exclusive or otherwise.

I want to briefly refer to bisexuality in Australia. Very many people identify bisexuals as "the channel" into the general population and have focused in on them. We do not know who are bisexuals in Australia. We do not know their behaviour patterns or anything else. But they are not the only risk group. WHO has identified those who are mobile—those who travel, those who leave home and go elsewhere—as being a significant group at risk. There are plenty of people in Australia who are moving around the world and going by themselves to parts of the world where there is quite a high incidence of HIV infection, particularly amongst those with whom they would have casual sex. So there are a lot of ways in which the virus is entering and spreading into the general community in Australia.

**Mr GUNN:** And it could get into the heterosexual community in that way?

**Prof. Raphael:** It is already there.

**Ms Reid:** WHO now acknowledges that as soon as you have identified risk groups, the virus is already in the general population. In other words, it takes us so long to single out particular groups that, by that time, the virus has already passed from them into the broader community and is being transmitted within the broader community.

**Mr GUNN:** We need to do a lot more research into the virus, don't we?

**Prof. Raphael:** Yes. We need a lot more research into the virus and into the behavioral patterns associated with its transmission. The most recent evidence in Australia is that more than 10 per cent—perhaps 11 per cent—of cases may be of heterosexual origin.

**Mr HARPER:** On page 12 of the submission, you refer to the statistics from South Australia compared with the statistics from Queensland. That is a reference taken from the Australian HIV Surveillance Report of 18 June 1990. Does that surveillance report deal with other factors? The statistics have been referred to previously during these two days.

**Mr North:** There was not any great mention of other factors. However, I believe that a significant factor was the way in which the decriminalisation had taken place some time previously to the entrance of the epidemic. That permitted much more successful education of the high-risk community. In Queensland, unfortunately, education of the high-risk groups has been clandestine. Many of the educational materials have been covert and there have been moves against certain legislation. I can anecdotally refer to a poster that was in an AIDS display at the Social Work Department's display at the University of Queensland careers expo. Some administrators came and asked us if we could remove the poster because we might be inciting homosexual activity and we might have police action against us. So administrators took objection to a poster that was used in all other States showing two men in bed, who were covered, and which said, "Have sex safely." So in Queensland, we have not had the same kind of education program. It has not been public enough. In Queensland, our health workers

have had to work very, very carefully, keeping within the law. But in South Australia, the education programs were promoted very strongly by the Health Department. There was a recognition of a viable gay community. I believe that that was an important factor in the low numbers that are shown there in those statistics.

**Mr HARPER:** You may be missing the thrust of my question. Communication may have been of assistance in the ease of education to which you referred. But my question is whether the surveillance report in particular—because you took your statistics from that—dealt with other factors. There are a lot of factors between two States that are as divergent as South Australia and Queensland that could have an effect. I wonder whether that was taken into consideration?

**Mr North:** My question remains: what other factors might there be? My personal experience has been that in Queensland, particularly in country areas, on education programs, we are finding considerable numbers of bisexual men travelling 100 kilometres or so in order to identify themselves. The only way that they can survive in a country town is to marry and have children. But their concerns are along the lines of, "Should I tell my wife? How do I introduce safe sex into my marriage?" These men have gone to Sydney, probably had unsafe sex and then come back. They may have had sexual activity with a commercial traveller. So there would be a group of men who would have hidden themselves and got by in the country towns. I believe that our figures for Queensland do not really represent anywhere near the tragedy that we will face in the future. I believe that South Australia will never show the same figures. From my personal experience of working in education in AIDS in Queensland, we are going to be in for a bad time.

**Prof. Raphael:** In response to your question, the answer is that we do not have adequate data, because many of these things have not been able to be systematically assessed and compared. That is one of the things that we are extremely anxious to do, because it is only by comparison of the patterns of sexual behaviour and other social and relevant variables between the two States that we can come to final conclusions.

**Mr HARPER:** I think that Mr North accidentally touched on some of the factors to which I was referring. For instance, he mentioned the country towns. Queensland has a greatly decentralised population with a large number of country towns compared with South Australia, which has a congregated population. The ethnic mix of the population in Queensland is very diverse; whereas, in South Australia it is far less so. So there are other factors which I believe require consideration with regard to statistics. I wonder whether that surveillance report that has been mentioned referred to those other factors? I appreciate the contribution that each of you has made. Ms Reid mentioned something to the effect that if one protects oneself from infection, then he or she cannot become infected. I think that that is very logical. No one else has said that in such clear terms to us in the course of our questions. That being the case, what effect will decriminalisation have? I know there are other reasons for decriminalising. However, in regard to the spread of AIDS, accepting the logic of those words, what effect will

decriminalisation have on encouraging people to protect themselves from infection?

**Ms. Reid:** The main effect is that, for as long as we single out a certain group, make them marginalised or alien or different from, we can always say it has got something to do with them and nothing to do with me. What we see consistently—it occurs in this State also—is a widespread belief that this virus is being transmitted only amongst homosexuals, or that it has something only to do with homosexuals and not to do with the sort of activity that I personally engage in. The critical thing about this epidemic is to actually change the terms. You will notice that I talk about anal intercourse, vaginal intercourse and oral intercourse. This is what transmits. What transmits is: if you have anal, vaginal or oral intercourse with the infected person you are at risk of infection sexually. This is the message we have to get across, and it is the important message. If you say it that way, people will say, "Well, how can I know if somebody else is infected that I am about to have intercourse with?" The answer is, "You can't, not even by testing." So it becomes clearer to each individual that it is his responsibility, and nobody else can change that person's behaviour and do it for him. It is up to him. That is the world that we now live in since the virus entered our world.

**Mr HARPER:** I appreciate that, but I persist with the question. How does that relate to decriminalisation of homosexuality in private?

**Ms. Reid:** Through decriminalisation you achieve a number of things. One is that you are not singling out homosexuals as a different group just because of their sexual orientation. So that, through that act in itself, you refocus our discussion of the epidemic, because up till now, as a criminal activity, men who have sex with men have somehow been described or thought of as if they were not part of our community. Hence we look for bridging groups that somehow bring the virus in to us from them or something. Firstly, we have to reconceive the epidemic, and decriminalisation will help that. Secondly, decriminalisation will help public health officials in establishing contact with men who are infected who have sex with men, because there are two sides. Although at the same time I might be protecting myself, or should need to be, it is also the case that those who are infected will, and all of them—most of them—it is very rare that it is not the case that they act responsibly, too. Once you know you are infected, you can act responsibly and ensure that that infection is not passed on to others. Thirdly, it does not relate to education; it relates to those people who are infected—men who have sex with men—remaining as an integral and productive part of our community as long as possible. There are three ways in which decriminalisation would assist.

**Mr SANTORO:** I wish to follow up some of the comments that have been made on the South Australian experience. Yesterday, we heard in evidence that it was reported in the *Medical Journal of Australia* of March 1987 that in the State of South Australia, where the indulgence in homosexual practices is not a crime, only 28 per cent of all homosexuals surveyed practiced safe sex, 32 per cent observed this occasionally, and 39 per cent did not observe safe sex practices at all. When further questioned,

the sample of 172 homosexual men admitted that they had heard of safer sex and understood what it meant.

It has been claimed at this hearing that the decriminalisation of homosexual acts between consenting adults in Queensland would greatly assist in the successful implementation of homosexual practices within the homosexual community. I suggest to you that the South Australian experience would in fact indicate otherwise. Even though I am still trying to come to grips with it, if that is the case, why do we have the figures quoted in the submission by the AIDS Council. Perhaps you could try to explain the incongruency? Are you aware of the South Australian experience? If so, why do you think that it has come about, given that homosexual behaviour has been decriminalised and education programs in fact implemented? Is the South Australian scene and experience repeated anywhere else in the world? By that, I mean safe sex not practised by the majority of homosexuals in a decriminalised situation. I have another question after you answer those.

**Ms. Reid:** I might say that 172 is a very small sample. We would need to know more about it, so I will not deal with the figures per se. However, I will deal with the questions that you asked. The steps are as follows: decriminalisation leads to increased contact. It enables people to come forward, to go voluntarily for testing, to come in for education—to that whole array of interventions that we know are essential to establish contact. It is that contact which, hopefully, leads to the sustained practice of safe sexual behaviour. It is a two-step process. Decriminalisation is the key in the first step. It is the quality of the relationship between government and, in particular, health officials and the infected communities as to whether the second step occurs or not, that is, that contact leads to sustained change—a change in sexual behaviour. What we are seeing now in the research is that perhaps that which is most effective in getting sustained sexual behaviour is, first of all, that political context where public officials are working with the trust of and together with the homosexual community; but, secondly, where you have support for community-based groups that provide peer support and counselling to sustain that behavioral change. So we need those two steps. Decriminalisation leads to increased contact and to an increase in trust between the two communities. Then we need to move on in terms of safer sex.

I think that there is other South Australian research that has supported exactly what Professor Raphael and Mrs Edmond have been talking about today, research carried out by, for example, Dr Michael Ross, that has looked at the people who are practising and sustaining safe sexual behaviour and those who are not. Here we have, as you are all interested in, a State that in 1973 decriminalised homosexuality. They do not legally separate men who have safe sex with men as criminals. That was 10 years before the epidemic hit South Australia. They were legally an integral part of the community. That is a background condition rather than necessarily a direct variable affecting what is happening. Secondly, what Michael Ross' research is showing is that those men who have sex with men who have come out, who have disclosed, who can tell their families, who have social activity with other men who have sex with men, as well as others in the



community, are sustaining the behavioral change. So that that research is South Australian-based. We would need to look at that sample of 172 as to how it was gathered and other things.

**Mr SANTORO:** What does the new research show in relation to the practice of safe sex? Was that question asked in the research that you are referring to? It was in 1987. I agree with you that 172 is a small sample, depending on how large the homosexual community is. In political surveys, people predict election outcomes and public opinion on samples of 205 or 250 and, depending on how those samples are extracted and the way that the questions are researched and asked, you may end up getting a representative result. I do not see the smallness of that sample size as being indicative of a fault in the research. What does the new research show about safe sex practices in South Australia, if it does show anything?

**Prof. Raphael:** Further research has been released since that, including studies at the Macquarrie University and in Sydney and studies reviewed in one of the review papers which I have included with the submission which highlight the fact that there is an increasing level of safe sex practices in those groups who are attached to the gay community and identify with it and are able to do so openly. Secondly, there is a greater failure to achieve safe sex practices in those who are most deprived, disadvantaged and least well educated in the community. Those variables also come in. There is concern about the ongoing maintenance of safe sex practices over the years that go on, and that is all the more reason why it becomes critically important for this to be a matter of open discussion and ongoing research. There has never been a suggestion in any of the data that every member of the gay community, on knowing the diagnosis, has pursued safe sex practices, but even the achievements that have been made in terms of limiting the level of unsafe sex have been substantial. That is evidenced by a recent publication in the *Medical Journal of Australia* which indicates a massive fall-off in the level of other sexually transmitted diseases in Sydney to a level which is a minuscule proportion of what it was several years ago. I could provide that reference for you.

**Mr SANTORO:** I would be most grateful, as I am sure other members of the committee would be also.

**Prof. Raphael:** That is an indication that unprotected sexual behaviour in terms of anal intercourse has certainly diminished as the other mark of disease has clearly substantially lessened.

**Mr SANTORO:** I am sure you would appreciate that one of the major reasons why the case for decriminalisation is being pushed is because it will enable the implementation of better and more successful education programs, which in turn will lead to the practice of safer sex within the higher-risk communities.

**Prof. Raphael:** Yes.

**Mr SANTORO:** The question of what happens in a State such as South Australia where it has been in operation since 1973 is important. If you can supply those facts and figures at your earliest convenience, it certainly will be appreciated by me and other members of the committee.

**Ms. Reid:** Yes, we can do that. Dr North believes that the sample of 172 was chosen from people who frequent public toilets. If that is the case, that is one of the most extraordinary examples of successful education that you can imagine. We have to be very careful in looking at data. We have seen a lot of data that shows amongst the certain groups in the general homosexual population that 80 per cent or 70 per cent of that population are sustaining safe sex. What gets looked at is the 20 or 25 per cent who are not, and that gets advertised, printed and talked about. What is really amazing in this epidemic is that 75 or 80 per cent of people have changed their behaviour in a sustainable way.

**Mr SANTORO:** But this survey in fact suggests——

**Ms. Reid:** No. On the contrary. This would be one of the most difficult groups in society to get sustained behaviour change from. It is illicit, it is on the street, it is in toilets, it is furtive—they are very difficult people to come in contact with and to reach by any form of education. Your figures show that 28 per cent of them said that they practised safe sex regularly or always. That is extraordinary. If you add to that the 32 per cent who at least sometimes do it, like most of us sometimes do it, not all the time, then it is amazing that in South Australia they got that sort of positive result from their education campaigns. The education campaigns are reaching those people, yet they are the most difficult group to reach.

**Mr SANTORO:** It would be a matter of some debate between yourself and other people.

**Mr HARPER:** That is accepting Dr North's assertion that that group was taken from the beat.

**Mr SANTORO:** We have asked for a copy of the survey results to be supplied to us. Part of my question was—perhaps you can answer it by supplying statistics from the overseas scene—as to what the impact of education programs in overseas countries such as the United States has been. If you want to comment briefly on that, please do. If you have any statistical details as to what is happening overseas, I would be grateful for that also.

**Ms. Reid:** The main studies in that respect are from San Francisco. The Australian studies rank amongst the best in the world. The other good ones are San Francisco-based, where they show a very good increase in safe sexual behaviour amongst the community of men who have sex with men, which, I must say, has plateaued and which is now oscillating a little. The interpretation of that data is that there is no single intervention that will create sustained sexual behaviour. This is actually something that we have to keep the contact up and going over time in these communities. The San Francisco data shows that.

The other thing about the San Francisco data which is relevant to this inquiry is that that which most affected behaviour change, that which was most significant in bringing about behaviour change, was knowing the life history and stories of others who were infected. In this State, with present law as it is, to stand up and say, "I am infected and this is how I became infected—I was infected through my sexual relationships with another man"

leaves that person open to criminal prosecution. You won't have those first-person stories here with the law as it stands. Yet we know that films like *Suzy's Story* in Australia and other examples where people have stood up and talked about themselves as an infected human being are the most important ways of changing other people's behaviour and bringing about safe sex and stopping the epidemic.

**Mr SANTORO:** In preambing my last and brief question, I should say to you that at least I have seen very graphic descriptions of the effects of AIDS on individuals published in the major dailies here in Brisbane. So I think the individual case studies are probably more commonly published here in Queensland than what would be your experience. I have seen many double-page features on the effects that AIDS has on individuals. My last question was: what is the latest scientific opinion as to the origins of AIDS?

**Ms Reid:** I can tell you the WHO's stand on that, which is based on, as they are, the depositary of bio-medical expertise in this field, and that is that it is unknown. There is no analogue to this virus in the animal kingdom. The assumption has always been that because the epidemic has spread so widely in Africa that that was the place of origin. What data released yesterday and the day before at the conference in Canberra on AIDS in Asia and the Pacific is showing is that you can go from zero per cent or virtually zero per cent of your population infected to up to 40 or 60 or 70 per cent of the population being infected within 12 to 18 months. We have those sorts of infection rates now, not only in Africa but in a number of Caribbean countries, in various parts of Latin America, in Thailand and in India. The fact that it is spread widely does not indicate origin just because of the speed within which it can be transmitted.

**Mrs EDMOND:** I wanted to follow that up and ask: could it be like the measles epidemic in the Pacific, with the coming of white man, that some communities have less resistance than others and that is why you had a massive spread in parts of Africa?

**Ms Reid:** There is no evidence that that is the case. If we look at the Asian data now—just leave Africa—if you look at the data from either the sexually active population in Thailand or the intravenous drug using population in Thailand or the sexually active population in Bombay or in other parts of India, the data shows that there is nothing to do with susceptibility or anything else, it is just sexual activity in these cases or intravenous drug using activity and then coupled with sexual activity the transmission of the virus. Data from Africa shows that there is virtually no difference in transmission rates between different ethnic groups. We are not looking at something where genetically or otherwise you might be more susceptible.

**Mrs EDMOND:** It is not groups who are immuno depressed or——

**Ms Reid:** No. It is all of us.

**The CHAIRMAN:** On behalf of the committee, I thank the AIDS Council for their submission.

In closing the two days of public hearings, I indicate that we will obviously prepare our report to Parliament as soon as we possibly can. It will take us a considerable time to do that because of the weight of submissions

that we have received. I am not talking about just the oral submissions over the last two days but the 1 000 or more submissions that we have received. We would hope to be doing that some time in October this year, but that will depend on how much work it takes between now and then.

On behalf of the committee, I thank the public for their overwhelming response to our call for public submissions, both in terms of their oral submissions and written submissions.

I thank the groups who have appeared and given evidence before us over the past two days.

I also thank the Hansard reporting staff, the parliamentary attendants, the police officers, the officers of the Parliament including those of the committee, Tony Woodyatt and Don Bletchley, and the committee members.

Since we have taken submissions in relation to both the poker machine report and the report in relation to homosexuality we have received an overwhelming response from the community. Some of us have received an overwhelming response from particular groups. I would hope now that, as we have reached the stage at which those public submissions have completed, those people who have been kind enough to provide us with their opinions would accept that we have now received them and we will deal with them accordingly and take them into account when they are presented. In other words, please, no more mail. I thank you for your submissions.

The Committee adjourned at 5.05 p.m.