

## From conflict to convergence: the evolution of Tasmanian anti-discrimination law

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The enactment of the *Anti-Discrimination Act 1998* (Tas) was seen as a significant achievement in the state of Tasmania with respect to anti-discrimination legislation.<sup>1</sup> Although the Tasmanian Anti-Discrimination Commission, headed by Dr Joscelyne Scutt, was established by Parliament on 10 December 1999, much of the groundwork was laid some 20 years ago with its inception in the Tasmanian Parliament in 1978. During this period, Tasmania, unlike other Australian jurisdictions,<sup>2</sup> was characterised by intense public debate and lobbying between political parties and community groups over the merits of anti-discrimination laws.

The purpose of this article is to chronicle and explore the social, political and economic environment surrounding this intense debate. By exploring the dynamics of this debate, the article seeks to highlight the notion that anti-discrimination laws have a distinctive historical significance, developing from the complex interactions between and within political parties, as well as their interaction with community groups. Moreover, the focus on how conflict evolved into convergence on the issues of anti-discrimination law in Tasmania, including gay law reform, becomes all the more relevant in demonstrating the positive change which disadvantaged groups, through active engagement with the political and legislative process, may advance the ideals of social justice.

### First attempt: 1978-81

The early 1970s saw the reformist Whitlam Government moving to ratify international instruments on human rights. In 1973, the State Tasmanian Labor Government

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1 The *Anti-Discrimination Act 1998* (Tas) received Royal Assent on 18 December 1998.

2 Margaret Thornton in *The Liberal Promise: Anti-Discrimination Legislation in Australia* (OUP, Melbourne, 1990) p 43 finds that, apart from Tasmania, Australian anti-discrimination legislation was largely a bipartisan matter without significant controversy.

announced that it supported the action taken by the Federal Government to meet the requirements of the International Labour Organisation Convention aimed at removing discrimination in employment on grounds of race, sex and religion.<sup>3</sup> The State Government's Chief Secretary, Mr Bratt, while not strongly advocating the introduction of anti-discrimination legislation, admitted the need to amend any legislation that was found to be discriminatory and to investigate the necessity for establishing a formal body to deal with any alleged discrimination in employment.<sup>4</sup> With 1975 heralding the International Year for Women, the Attorney General, Mr Neilson, appointed an advisor on women's affairs, Ms Kim Boyer, to report on proposals for anti-discrimination legislation. Taking the lead from the Federal Government, the State Government also, established a State Committee on Employment and Occupation to investigate complaints of discrimination in employment.<sup>5</sup> The State Cabinet set out terms of reference for the Tasmanian Law Reform Commission to examine sex discrimination in Tasmanian and other Australian jurisdictions, and to report with recommendations on the need for anti-discrimination legislation.<sup>6</sup>

With an agenda for reform in place, and a preliminary investigatory network established, state discriminatory legislation was targeted, especially in the area of sex discrimination. The Government was aiming to remove legislation and practices that discriminated against female employees.<sup>7</sup> Within the State's public service, an officer for equal employment opportunity was established.<sup>8</sup> Vivienne Stolp, co-ordinator of the Women's Electoral Lobby, viewed the changes as significant but basically procedural and lacked the force of legislation to make them effective.<sup>9</sup> For instance, she noted that the Tasmanian State Government's Committee for Employment and Occupation '[is] unable to compel employers to furnish information on working conditions and policies [with the] only avenue open to the [Committee] an annual report to Parliament which names employers who have been guilty of discrimination'.<sup>10</sup>

Although there was agreement within the State Government and its advisors over the elimination of discriminatory laws, differences of opinion began to emerge as to the best possible approach. The Tasmanian Law Reform Commission's *Report on*

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3 'Move toward equality of employment' *Mercury* 9 May 1973.

4 Above note 3.

5 'Sexual bias in State review' *Mercury* 27 February 1975.

6 *Tasmanian Law Reform Commission Report on Discrimination on the Grounds of Sex* No 58 (1977) p 3.

7 'Law on sexual bias aim: submission to State Cabinet' *Mercury* 20 February 1976.

8 'Moves to cut down on discrimination' *Mercury* 17 February 1977.

9 'WEL backs party moves' *Mercury* 10 December 1976.

10 Above note 9.

*Discrimination on the Grounds of Sex*<sup>11</sup> in late 1977 comprised a majority and minority report. While the majority report isolated discriminatory statutes and practices, and recommended the decriminalisation of homosexuality between consenting adults,<sup>12</sup> it advised that discrimination could be adequately addressed through present legal mechanisms.<sup>13</sup> Restrained in their approach, the majority recommended against passing specific anti-discriminatory legislation, stating that:

... the courts are the appropriate forum for testing the rights of persons in this field and for granting the appropriate remedies. We do not consider that, in a place the size of Tasmania, there is any need to set up additional offices or tribunals to deal with such matters.<sup>14</sup>

In contrast, the minority report urged government 'to take the initiative to prevent discrimination'.<sup>15</sup> It recommended the enactment of anti-discriminatory legislation and the establishment of a sex discrimination commissioner.

Community groups were quick to express disapproval of the majority report. Mrs Margaret Percival, convenor of the Women's Electoral Lobby, found the view of the majority report 'untenable'.<sup>16</sup> Also, with anti-discrimination reform now part of the public domain, there were calls for extending the law to protect other minorities. Michael Mansall, President of the Tasmanian Aboriginal Centre, added his voice to concerns on the prevalence of racial discrimination in Tasmania.<sup>17</sup> The Federal Committee on Discrimination in Employment and Occupation in its meetings in Tasmania further spoke for the need for broad based anti-discrimination laws.<sup>18</sup> By late 1979 that Committee had received over 200 formal complaints concerning discrimination in the workforce.<sup>19</sup> Responding to the need for overarching anti-discrimination law, the Government demonstrated its reformist intentions by signalling coverage for the 'mentally retarded'.<sup>20</sup> Attorney General Brian Miller declared that the legislation was to be 'the most progressive of its type in Australia

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11 Above note 6.

12 Above note 6, p 5.

13 Above note 6, pp 8-9.

14 Above note 6, p 8.

15 Above note 6, p 10.

16 'Sex report criticised' *Mercury* 27 September 1977.

17 'Tasmanian racial prejudice probe to be sought' *Examiner* 6 January 1978.

18 'Job bias talks in State soon' *Mercury* 14 February 1978.

19 'Complaints mount on job strife' *Mercury* 30 November 1979.

20 'Mentally retarded study ordered' *Mercury* 19 October 1978.

and further evidence of the State Government's concern for the welfare of all members of the Tasmanian community'.<sup>21</sup>

The key sections of the Labor Government's first Anti-Discrimination Bill,<sup>22</sup> including the definition of discrimination,<sup>23</sup> the prohibited grounds of discrimination,<sup>24</sup> and enforcement provisions, which established an Anti-Discrimination Board,<sup>25</sup> were closely modelled on existing Australian anti-discrimination laws.<sup>26</sup> Its coverage of 'unjustifiable discrimination' included the grounds of race, colour, nationality or national origin, reflecting current State and Federal laws. However, unlike the other jurisdictions it included as a prohibited ground 'personal handicap'. 'Personal handicap' was defined to cover past, present or subsisting conditions, both physical and mental.<sup>27</sup> This definition also included reliance on 'a guide dog, wheelchair, or any remedial appliance or device',<sup>28</sup> epilepsy was specifically covered.<sup>29</sup> Considering the Federal Government did not implement disability discrimination legislation until 1992 (with the States following), this inclusion was radically forward-looking for its time.

Yet, although the Bill was reformist, much of it was given over to exemptions for 'legitimate discrimination'. Small business establishments, which employed no more than five people, would have the right to refuse to employ a person on the ground of sex or marital status.<sup>30</sup> With regard to persons who have a 'personal handicap', employers would not be discriminatory if the complainant would be 'unable to adequately do the work' or 'if special services or facilities which would be necessary for the disabled person cannot reasonably be made available'.<sup>31</sup> Following a pattern set by other States, it allowed discrimination in employment by religious bodies or

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21 'Discrimination be outlawed: Miller tells of legislation' *Mercury* 11 February 1978.

22 Tasmanian Anti-discrimination Bill 1978 (No 131).

23 *Sex Discrimination Act 1975* (SA) s 16; *Racial Discrimination Act 1976* (SA) s 5; *Anti-Discrimination Act 1977* (NSW) ss 7, 24, 39.

24 *Racial Discrimination Act 1976* (SA) ss 3, 4; ; *Anti-Discrimination Act 1977* (NSW) ss 4(1), 6; *Equal Opportunity Act 1977* (Vic) ss 3(1), 6.

25 *Sex Discrimination Act 1975* (SA) ss 7-10; *Anti-Discrimination Act 1977* (NSW) ss 71-74; *Equal Opportunity Act 1977* (Vic) ss 7-9.

26 It is noted that each clause of the Bill was heavily annotated with references made to the corresponding sections in NSW, South Australian and Victorian legislation as cited above.

27 Tasmanian Anti-Discrimination Bill 1978 cl 6(5).

28 Tasmanian Anti-Discrimination Bill 1978 cl 6(5)(e).

29 Tasmanian Anti-Discrimination Bill 1978 cl 6(5)(f).

30 Tasmanian Anti-Discrimination Bill 1978 cl 16(1).

31 Tasmanian Anti-Discrimination Bill 1978 cl 24.

churches on religious grounds,<sup>32</sup> and allowed clubs to restrict their membership to people of a 'particular group'.<sup>33</sup>

The Bill, however, met sustained political opposition. The State's Governor, Sir Stanley Burbury, was guarded on the issue emphasising the natural differences between the sexes which anti-discrimination laws overlooked.<sup>34</sup> However, Parliamentary Liberal Party (PLP) representatives were less discreet. PLP member, and future Premier, Ray Groom, had attacked anti-discriminatory laws stating that 'while those involved in feminist movements should help this cause, they should be very careful not to denigrate the traditional role of women ...'.<sup>35</sup> Another PLP member, Mr Bushby, likened the Government to the 'Gestapo which was taking Tasmania back to the days of Nazi Germany'.<sup>36</sup> He believed that the Bill 'was an unwarranted intrusion into people's affairs and a reminder of the situation under Adolf Hitler'. The PLP's shadow Attorney General, Mr Baker, stated that the Bill 'was ultra-trendy, anti-business and was "snoopers" legislation'.<sup>37</sup> On the powers of the proposed Anti-Discrimination Board, he observed 'what an opportunity for a little South American dictatorship'.<sup>38</sup> In an article published in Tasmania's major daily newspapers Baker argued that the Bill would undermine the English common law of social contract between citizens replacing mutual agreement and voluntary acceptance with bureaucratic enforcement.<sup>39</sup> 'Why should he [an employer] be compelled to ... employ a person he intensely does not want?' he asked. 'Heaven help us if the people of Tasmania do not resist this proposed massive intrusion into their private, commercial, religious and political lives,' he added. He advised that the best that can be done is 'to throw out this extraordinarily stupid and counter-productive bill ...'. However, in his reply to Baker's critique, Tasmanian University law lecturer, Mr M Sarmarajah, observed that while Baker began his article by referring to the position in England, 'he conveniently omitted to mention that discrimination in employment is made unlawful by the *Race Relations Act* and by the European Convention on Human Rights which forms part of the law of England'.<sup>40</sup>

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32 Tasmanian Anti-Discrimination Bill 1978 cl 31.

33 Tasmanian Anti-Discrimination Bill 1978 cl 32.

34 'Patience, tolerance women's qualities' *Mercury* 12 August 1980.

35 'Women urged to protest' *Examiner* 20 June 1975.

36 'Gestapo government: Bushby' *Mercury* 23 November 1979.

37 'Going too far?' *Advocate* 15 May 1979.

38 'Bill fit for a Dictator — MP' *Examiner* 19 May 1978.

39 'Planned Bill is stupid' *Examiner* 1 June 1979; 'A Liberal view on Tasmania's Anti-Discrimination Bill' *Mercury* 1 June 1979.

40 'Argument for Anti-Discrimination Bill' *Mercury* 11 June 1979.

Disappointing for the Labor Government was the opposition the Bill received from its own ranks. Secretary, Bob Watling, of the Tasmanian Trades and Labor Council (TTLC) moved that, although the Council believed in the principles of the Bill, it opposed anti-discriminations laws since they would only add to the proliferation of discrimination bodies.<sup>41</sup> Moreover, Watling stated that he 'didn't believe discrimination can be eliminated by the introduction of harsh laws'.<sup>42</sup> On this issue at least, the Labour Council was in agreement with the Tasmanian Chamber of Industries, which also opposed the Bill as 'unrealistic'.<sup>43</sup>

Despite the voices of protest from without and within its ranks, the Labor Government retabled the Bill in 1979<sup>44</sup> and it passed through the House of Assembly. However, given that Labor held only a minority in the Legislative Council, the Bill met renewed opposition there and stalled. Michael Hodgman, PLP Member of the Legislative Council, was successful in having the Legislative Council agree that the Bill be sent off to a select committee for comment.<sup>45</sup> The terms of reference included the need for such legislation and its potential effect. After meeting on 16 occasions and considering 65 submissions, the Committee determined that the legislation was an aggressive promotion by a minority without regard to the interests of the community as a whole. In arriving at this conclusion, the Committee interpreted the legislation as extending needlessly the power of bureaucracy. It noted that with redress available through the civil courts and the State Ombudsman, and the amendments already made to current statutes, there were facilities already in place for the control of discriminatory practices and so the 'legislation is superfluous'.<sup>46</sup> Moreover, it found no impediment to women in employment and observed '... like all ambitious persons, women must progress on merit and not as creatures of statute'.<sup>47</sup> Ironically, given that the Committee's report was tabled in 1980, the International Year of the Disabled, it rationalised that since 'in the ordinary conduct of human affairs, the prizes go to those without handicap ... it does not follow that the handicapped are therefore discriminated against'.<sup>48</sup> In relation to the disabled, the Committee argued the proposed legislation would undermine employment practices based on the conditions of suitability, good health and merit.<sup>49</sup>

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41 'TTLC hits State on discrimination laws' *Mercury* 29 February 1980.

42 Above note 41.

43 'Chamber joins TTLC stand' *Examiner* 3 March 1980.

44 Tasmanian Anti-Discrimination Bill 1979 (No 79).

45 *Tasmanian Parliament Legislative Council Select Committee Anti-Discrimination Legislation* No 51.

46 Above note 45, p 7.

47 Above note 45, p 7.

48 Above note 45, p 8.

49 Above note 45, p 8.

The Committee's conclusions were rejected by representatives across a spectrum of community interests. Michael Mansell, speaking on behalf of the Tasmanian Aboriginal Centre, stated that the 'report was ... conducted by people with an obvious bias and disdain for the rights of minority groups and the underprivileged'.<sup>50</sup> He noted that the report made no reference to racism in Tasmania, and failed to take into account the evidence his Centre had compiled in their submission. The Rev David Webster, secretary of the Tasmanian Council of Churches, expressed disappointment at the Committee's findings.<sup>51</sup> Spokesperson for the Women's Electoral Lobby, Mrs Majorie Levis, expressed a lack of surprise in the Committee's rejection of anti-discriminatory legislation, stating that Tasmania 'would be a laughing stock around Australia as a result of the decision'.<sup>52</sup> Mrs Kim Boyer, the State Government's advisor on women's affairs likewise expressed her disapproval, noting that 80 per cent of the documentation submitted supported anti-discrimination.<sup>53</sup> The Legal Workers' Group agreed with community concerns and its spokesperson, Mr D Chalmers, observed that the Committee's report 'by rejecting the need for anti-discrimination legislation in Tasmania, ran contrary to the experience of every other common law system'.<sup>54</sup> He publicly stated that his group would continue to pressure the Government to proceed with the legislation.<sup>55</sup> At a broad based community meeting at the University of Tasmania, hosted by the Tasmanian Council for Social Services, representatives were told that the Committee's report had been written not on evidence but on personal prejudice.<sup>56</sup> Professor J H Tisch, the chairperson of a voluntary community relations committee which had handled cases of discrimination for three and half years, told the meeting he would testify under oath to many more cases of discrimination.<sup>57</sup>

For the Bill's critics, the Committee's findings supported their position that the Government withdraw the Bill. State PLP Opposition Leader, Mr Pearsall, informed the media that 'after a great deal of time and money has been wasted on it by this Government, it is now going to end up in the waste paper basket where it belongs'.<sup>58</sup> In response to Michael Mansell's claim that the Committee had not given regard to

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50 'Ignore it as discrimination — Aboriginals' *Mercury* 28 August 1980.

51 'Anti-bias finding angers, lauded' *Mercury* 29 August 1980.

52 Above note 51.

53 Above note 51.

54 'Legal body condemns report by Council' *Mercury* 2 August 1980.

55 'Equality Bill backed' *Mercury* 12 September 1980.

56 'Prejudice in legislation council reports claim' *Examiner* 30 August 1980.

57 Above note 56.

58 'Pearsall calls on Government to axe bill' *Examiner* 29 August 1980.

the evidence provided, Mr Hodgman, replied that Mr Mansell had reported an average of three cases of discrimination a year. Most of them were based on 'schoolyard comments'.<sup>59</sup> As to submissions concerning sex discrimination, he raised doubts over the reliability of the evidence presented.<sup>60</sup> The Director of the Tasmanian Chamber of Industries, Mr EC Illes, approved the Committee's findings, stating that they supported arguments of business and industry that such legislation would be 'an added burden to industry and create an unnecessary bureaucracy'.<sup>61</sup>

### Legal limbo: 1981-91

Frustrated by the Legislative Council, the Bill lapsed on prorogation on 14 December 1981. With the Federal Government ratifying the UN Convention on the Elimination of All Forms of Discrimination Against Women, the Tasmanian Labor Government, hamstrung by the Legislative Council, could only promise that it would take the necessary steps to conform.<sup>62</sup> However, whereas the Federal Liberal Party favoured anti-discrimination legislation, the Tasmanian PLP, on taking office in late 1982, ensured that such legislation was to remain off the legislative agenda until 1991 when a new Labor Government was returned to office.

Believing that discrimination could be best addressed through education and legislative amendments, the new Tasmanian Liberal Government renewed the term of the Committee on Discrimination in Employment and Occupation in 1982,<sup>63</sup> but abolished the post of women's advisor. Following the enactment of the Federal *Sex Discrimination Act* in 1984, Senator Susan Ryan, Federal Minister assisting the Prime Minister on the Status of Women, addressed an audience of community representatives in Hobart. She criticised the State Government for refusing to enact similar legislation.<sup>64</sup> The criticism was repeated by the Federal Sex Discrimination Commissioner, Ms Pamela O'Neil.<sup>65</sup>

Despite protests from Canberra, the State's Public Administration Minister, Mr Evans, was confident that Tasmania was not suffering from the absence of sex discrimination

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59 'Attacks on bias laws unfounded' *Examiner* 4 September 1980.

60 Above note 59.

61 'Anti-bias finding angers, lauded' *Mercury* 29 August 1980.

62 'Tasmania ready to adopt stand on women's rights' *Mercury* 15 January 1981.

63 'Discrimination body re-appointed' *Examiner* 25 November 1982.

64 'Ryan hits Gray Government' *Mercury* 27 May 1985.

65 'Endemic varsity discrimination against women' *Mercury* 1 July 1985; 'Equal sex rights law in limbo' *The Sunday Examiner* 1 June 1986.



laws.<sup>66</sup> He added that the merit principle governing hiring and promotion itself enshrines anti-discrimination measures.<sup>67</sup> However, Michael Hodgman interpreted the push for anti-discrimination laws as a female conspiracy. At a meeting at the Tasmanian Registered and Licensed Clubs Association he claimed that 'frenzied feminist extremists' would be using the federal sex discrimination legislation 'to force their way into every male bastion'.<sup>68</sup> However, not all State Liberal members shared this extremist view. Kim Young, President of the Sandy Bay Branch in a letter to the editorial of *The Mercury*, reminded its readers that 'there is a growing proportion of moderate Liberals within the party who advocate and support equality and equal opportunity for all'.<sup>69</sup>

Yet, while the conservatives within the State Liberal Government balked at enacting anti-discrimination legislation, the mounting evidence for the need for such legislation was proving to be an embarrassment to the Government. Utilising the Federal *Sex Discrimination Act*, women were taking their complaints to the Federal Human Rights Commissioner, later the Human Rights and Equal Opportunity Commission (HREOC). At one of its first hearings, HREOC ruled that the Transport Workers Union acted unlawfully in attempting to prevent a mining company from employing a woman as a truck driver.<sup>70</sup> Actions by women against the Royal Hobart Yacht Club and the RSL, forced clubs to abolish discriminatory membership rules.<sup>71</sup> Given the lack of any State redress, it meant that HREOC had in the words of Federal Senator Gareth Evans 'plenty of work to do'.<sup>72</sup> Yet, while there were successes, federal legislation did not, as Commissioner Ms Pam O'Neill observed, afford protection to State employees. This shortcoming in the law was acknowledged by the State's Commissioner for Public Employment, Mr David Hawkins, in his annual report for 1986-87 where he found that sexual harassment was more widespread than recognised.<sup>73</sup> On other discriminatory fronts, there were public instances of racism against Aborigines. Again it was a HREOC hearing and ruling against a Hobart hotel for refusing to serve Aboriginal patrons, which not only focused public

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66 'No discrimination hang-ups' *Examiner* 22 November 1988.

67 Above note 66.

68 'Extremist sexists cop a mouthful' *Examiner* 14 April 1985.

69 'Equal rights supported' *Mercury* 23 May 1985.

70 'Commission to rule on strike' *Examiner* 22 July 1986; 'Union agrees to woman truckie' *Examiner* 24 July 1986.

71 'Val may sail into the RYTCT over bar on women' *Mercury* 15 December 1984; 'Commissioner to sail to the aid of women?' 4 August 1985; 'Defiant Denise! She may take the town to court' 17 June 1990.

72 'Plenty of work for new rights office' *Examiner* 20 November 1986.

73 'PS sex case warning' *Mercury* 5 October 1988.

attention, but also exposed the inadequacy of State laws.<sup>74</sup> Public attention was also drawn to unchecked discrimination against homosexuals,<sup>75</sup> and people with disabilities.<sup>76</sup>

## Second and subsequent attempts for legislative reform: the 1990s

On returning to office at the 1989 elections, the State Labor Government committed itself to tabling anti-discrimination legislation.<sup>77</sup> In her second reading speech, Mrs Bladel, Minister for Administrative Services and Consumer Affairs, emphasised the Bill's human rights underpinnings. The Bill's purpose, she stated, was to 'introduce into Tasmanian law basic human rights legislation similar to that enacted in Australia ...' <sup>78</sup> and fulfil 'Australia's obligations under various international covenants'.<sup>79</sup> When discussing the prohibition of discrimination on the grounds of race, not only was reference made to the Federal *Race Discrimination Act 1975* but also Australia's ratification of the United Nations Covenant on Civil and Political Rights '[which] constituted a promise of protection of rights, irrespective of race, colour or ethnic origin; a promise which this Government supports'.<sup>80</sup> Because of this underlying emphasis on human rights the Bill went further than existing Commonwealth legislation and extended the prohibited grounds of discrimination to include 'sexual orientation',<sup>81</sup> 'impairment',<sup>82</sup> 'parental status',<sup>83</sup> 'social status',<sup>84</sup> and 'trade union activity'.<sup>85</sup>

The inclusion of sexual orientation, which under the definition of the Bill covered transsexuality, bisexuality and homosexuality,<sup>86</sup> was a significant development for Tasmanian law reform. Decriminalisation of homosexuality had been vigorously opposed by the Tasmanian PLP. Prior to the tabling of the Anti-Discrimination Bill, a

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74 '\$5,000 to Aboriginals for Hobart hotel's race ban' *Examiner* 16 September 1987.

75 'Salamanca controversy' *Mercury* 2 December 1988.

76 'Diabetics face jobs prejudice' *Mercury* 1 November 1988.

77 Anti-Discrimination Bill 1991 (No 42).

78 House of Assembly *Hansard*, 17 October 1991, p 4711.

79 Above note 78.

80 Above note 78, p 4713.

81 Anti-Discrimination Bill 1991 16(1)(d).

82 Anti-Discrimination Bill 1991 Id cl 16(1)(h).

83 Anti-Discrimination Bill 1991 Id cl 16(1)(g).

84 Anti-Discrimination Bill 1991 Id cl 16(1)(b).

85 Anti-Discrimination Bill 1991 Id cl 16(1)(i).

86 Anti-Discrimination Bill 1991 Id cl 3.

conservative dominated Legislative Council had blocked the Labor Government's attempt to amend the *Tasmanian Criminal Code Act 1924* (the Code). Sections 122 and 123 of the Code made gay sexual intercourse a criminal offence.<sup>87</sup> In his opposition to gay law reform, Legislative Council member George Brookes led what one major newspaper editor at the time described as 'the beginning of a new era of poofter bashing'.<sup>88</sup> Brookes was unapologetic when he stated:

[The police need to] ... track down and wipe out, like murderers, drug addicts and deviant AIDS carriers ... when I hear a Minister of the Crown making reference to the decriminalisation of homosexuality I feel sick in the guts — when I hear these people [that is, homosexuals] talking about human rights, my blood boils.<sup>89</sup>

Watching this debate from the parliamentary gallery, Rodney Croome, spokesperson for the Tasmanian Gay and Lesbian Rights Group, later recalled '[how] he felt physically sickened by the debate, and other observers could do nothing but weep as the legislative Council tore our lives to shreds'.<sup>90</sup> It was against this homophobic backlash that the Labor Government introduced its Anti-Discrimination Bill. If the Government could not directly have the offending parts of the Tasmanian Criminal Code repealed, then at least, it could have them declared discriminatory, that is, if the Bill was to pass into law.

Labor's Anti-Discrimination Bill also incorporated provisions from the International Labour Organisation Convention, which outlawed discrimination on the grounds of trade union activity and social status. Moreover, in addressing failings in its 1979 predecessor, it provided prohibitions against sexual harassment, victimisation and racial vilification.<sup>91</sup> Maintaining the 1979's Bill proactiveness on disabilities, the Bill imposed a duty to assist people with special needs, which arise because of their disability.<sup>92</sup> In terms of remedies offered, it ensured that tribunal orders become enforceable once registered in the Supreme Court.<sup>93</sup> However, in addition to the

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87 Clauses 43 and 44 of the HIV/AIDS Preventative Measures Bill 1990 repealed ss 122 and 123 of the Tasmanian Criminal Code. These clauses were rejected by the Legislative Council in late 1991. For a detailed discussion see Morris M *The Pink Triangle: the gay law reform debate in Tasmania* (UNSW Press, Sydney, 1996).

88 Quoted from Morris, above note 87, p 99.

89 Legislative Council *Hansard* 2 July 1991, p 1246.

90 Quoted from Morris, above note 87, p 99.

91 Anti-Discrimination Bill 1991 cl 18; cl 19.

92 Anti-Discrimination Bill 1991 cl 20.

93 Anti-Discrimination Bill 1991 cl 30.

prohibited grounds noted, the Bill created a non-enforceable category of attributes<sup>94</sup> covering mental or psychiatric disability, religious belief, political opinion, age and criminal record. In effect, the Bill created two classes of complaint. On the one hand it recognised that complaints falling within its prohibited grounds would receive the full force of law, with the proposed anti-discrimination tribunal capable of making enforceable orders.<sup>95</sup> On the other hand, for complaints which fell within the non-enforceable category, the tribunal would be given no power to make orders but could only make a declaration (for example, a published apology or restriction) or, if appropriate, make recommendations.<sup>96</sup> According to Fran Bladel, the rationale behind this division was to encourage conciliation, which is the focus of the grievance procedures under the Bill.<sup>97</sup> Yet, this apparent weakness in providing limited relief for complainants falling within the non-enforceable grounds (for instance those with 'mental or psychiatric disabilities') was overlooked in the parliamentary debates. Another major concern in the Bill's drafting was that it afforded charities and religious<sup>98</sup> institutions a general exemption. Thus, for instance, allowing such institutions to lawfully discriminate on the ground of sexual orientation.

During the parliamentary debates, Ray Groom, PLP Opposition leader, supported the Bill's underlying philosophy.<sup>99</sup> While there was agreement between his party and the Labor Government over the grounds of gender, impairment, and the provisions concerning vilification, Groom sought to amend the ground of 'race' to 'nationality', and 'union membership' to include 'affiliations'. He also objected to the inclusion of 'social status', which he claimed was driving the legislation into the area of 'social engineering'.<sup>100</sup> On the prohibited ground of 'sexual orientation', Groom believed that the Bill was 'going too far'. 'Equality and conduct are distinct',<sup>101</sup> he explained. 'I personally believe everyone is innately equal ... but when we look at conduct, no, these things are not equal. Some conduct can be offensive and wrong.'<sup>102</sup> Homosexuality fell into the latter category. As to the administration of anti-discrimination laws, Groom stated that while his party did not oppose the establishment of an anti-discrimination tribunal, he was uneasy with its broad

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94 Anti-Discrimination Bill 1991 cl 66.

95 Legislative Assembly *Hansard* 5 November 1991, p 4712.

96 Above note 95.

97 Above note 95.

98 Anti-Discrimination Bill 1991 cl 24; cl 25.

99 Above note 95, p 4717-8.

100 Above note 95, p 4726.

101 Above note 95, p 4728.

102 Above note 95, p 4728.

powers since such powers could be misused and 'because it could almost be a blank cheque for someone who wants to be vexatious to abuse the system and cause trouble to an employer, body, organisation or school ...'.<sup>103</sup> In contrast to the PLP, Tasmanian Green MP, Rev Lance Armstrong, welcomed the Bill as 'a significant piece of social reform legislation'.<sup>104</sup> Given Labor's majority in the House of Assembly, the Bill passed without significant amendment.

Yet the Labor Government, not having a majority in the Legislative Council, was to find itself re-visiting the same conservative opposition as it experienced in 1979. George Brooks, MLC, in his address to the Assembly, echoed the words of his party's previous leader, Mr Pearsall, when he called 'on all members of this honourable House to commit this Bill to the wastepaper basket as quickly as possible'.<sup>105</sup> Brooks claimed that the Bill would usher in a 'nightmare for the State'<sup>106</sup> with employers finding themselves forever in vicious litigation.<sup>107</sup> Moreover, the Bill's protection of homosexuals would encourage 'an unacceptable lifestyle'.<sup>108</sup> Brooks cautioned against allowing minority groups far too great a say. 'Unfortunately', he reasoned, 'they [minority groups] do not want only a say; they want their way and in our democracy ... We are getting to the stage where they hijack democracy in this country ...'.<sup>109</sup> Theatrically, he then threw his copy of the Bill into a wastepaper bin.

One minority group, the Tasmanian Gay and Lesbian Rights Group (TGLRG), did not wait for the State Labor party to initiate yet another attempt at legislative reform. On 25 December 1991, Australia became a signatory to the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). In effect individual Australians were now able to take cases of human rights violation directly to the United Nations Human Rights Committee (UNHRC), providing that domestic remedies for redress had been exhausted. Given that the complaint had to be lodged by an individual and not a group, it was decided that it would be inappropriate for the TGLRG's spokesperson, Rodney Croome, to be the complainant. Instead, Nick Toonen, a Tasmanian gay activist, volunteered.<sup>110</sup> Nick Toonen's UN appeal was

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103 Above note 95, p 4723.

104 Above note 95, p 4731.

105 Legislative Council *Hansard* 27 November 1991 p 4200.

106 Above note 105.

107 Above note 105.

108 Above note 105.

109 Above note 105.

110 See Morris, above note 87, Chapter 9 'Toonen v Australia: the International Debate' pp 99-112.

lodged on Christmas day, the first day that a submission could be made under the ICCPR, and became not only the first case lodged from Australia, but also, the first sexuality discrimination case before the UNHRC. The UNHRC was asked to determine whether the anti-gay provisions of the Tasmanian Criminal Code prohibiting sexual behaviour between consenting male adults in private were discriminatory.<sup>111</sup> Almost three years later, the UNHRC found that the relevant sections were discriminatory against Nick Toonen's right to equal protection under the UN covenant.<sup>112</sup> The decision had significant domestic implications for it allowed the Federal Government under the external affairs powers of the Federal Constitution to override the anti-gay Tasmanian laws.<sup>113</sup> However, rather than act directly against the State of Tasmania, the then Federal Labor Government decided that it was more politically expedient to entrench the right to sexual privacy in *The Human Rights (Sexual Conduct) Act 1994*.<sup>114</sup> The opportunity was therefore in place for the TGLRG to constitutionally challenge the validity of the offending sections of the Tasmanian Criminal Code in the Australian High Court.

The State PLP returned to power following an election in early 1992 and it was generally expected within human rights circles, that given the support which the new Deputy Premier, Ray Groom, had shown in opposition, anti-discrimination legislation would be introduced in his term of government. Expectations for reform were further heightened when anti-discrimination laws were placed on the agenda at a meeting to decide the Liberal Government's legislative agenda. However, with internal dissension between moderates and conservatives spilling into the public domain, Groom, to deflect public criticism, announced that the party was not convinced that such legislation could overcome discrimination and that he had asked the Tasmanian Council of Social Services (TasCOSS) to undertake further study.<sup>115</sup>

Although Ray Groom was to later state that the question of discrimination against homosexuals did not form a large part of the debate, it would appear, from public clashes between reformist minded members and conservatives, that it played a

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111 For details of Nick Toonen's UN submission see Morris, above note 85; TGLRG web site <[www.tassed.edu/tasonline/tasqueer/tasqueer.html](http://www.tassed.edu/tasonline/tasqueer/tasqueer.html)> 'UN Case'; Joseph S 'Gay rights under the ICCPR: commentary on *Toonen v Australia*' (1993) 13(2) *University of Tasmania Law Review* 392.

112 *Toonen v Australia*, Communication No 488/1992, UN Doc CCPR/C/50/D/488/1992 (1994).

113 Morris, above note 85; TGLRG website, above note 111; Joseph, above note 111.

114 TGLRG website, above note 111, 'The High Court and Gay Law reform'; Morris, above note 85, 'Afterword' pp 113-117.

115 'Libs in reverse on two promises' *Mercury* 30 October 1992.

significant role in further delaying any anti-discrimination legislation.<sup>116</sup> Labor representative Mrs Bladel observed that 'Mr Groom had bowed to the homophobic forces within the Liberal party'.<sup>117</sup> Rodney Croome noted that he understood the Liberal Party had been lobbied strongly by small businesses which wanted to retain the wider rights to hire and fire people.<sup>118</sup>

TasCOSS was quick to reply. Its report, based on a statewide telephone survey of Tasmanians, found that there was overwhelming support for anti-discrimination legislation with strong support for such legislation to include sexual orientation, age and disability.<sup>119</sup> TasCOSS Executive Director, Peter Nute, stated that the report demonstrated that 'there are certain people in the Parliamentary Liberal Party (PLP) who put their prejudices before the rights of the community'.<sup>120</sup> When pressed on the issue, the head of the Government's Committee on Anti-Discrimination Legislation, Mrs Napier, although in favour of reform, admitted that the legislation was not high on the Liberal agenda.<sup>121</sup> Asked whether the Government's lack of action over sexual harassment and discrimination was a deep concern, she replied: 'I do find it disturbing because we know that sexual harassment and sexual discrimination is a problem within the community ... unfortunately, we are dealing with a male dominated government'.<sup>122</sup>

The TasCOSS study was reported at a time of renewed criticism over the lack of sex discrimination laws in Tasmania. Federal Sex Discrimination Commissioner, Sue Walpole, called on the Government to introduce State legislation to cover Tasmanian workers still vulnerable to sexual harassment and discrimination.<sup>123</sup> She observed that Tasmania's State and local government employees, about one-third of the State's workforce, were not protected by the Federal Act.<sup>124</sup> The Tasmanian Greens and Labor supported Ms Walpole's call. PLP MP, Sue Napier, also called on her Government to bring Tasmania in line with the rest of the country.<sup>125</sup>

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116 Above note 115, also, 'Libs go cold on reform' *Examiner* 28 October 1992 'Libs axe controversial reforms' *Examiner* 30 October 1992.

117 'Groom cops blast over decision to axe reform' *Examiner* 31 October 1992.

118 'Libs axe controversial reforms' *Examiner* 31 October 1992.

119 *Anti-Discrimination Legislation: Tasmania's Response. A Report on a survey conducted by the Tasmanian Council of Social Service Inc* December 1992.

120 'It's going to be a long wait for the legal equaliser' *Sunday Tasmanian* 20 February 1993.

121 Above note 120.

122 'MP slams failure to protect women' *Examiner* 14 July 1993.

123 'Demand to end sex law vacuum: commissioner' *Mercury* 18 September 1993.

124 Above note 123.

125 'Call for laws on sex bias' *Examiner* 8 May 1993.

The high public profile civil case of Karina Barker<sup>126</sup> poignantly brought this omission to the fore. Ms Barker, a local government employee, was forced to take a common law claim of sexual assault to the Tasmanian Supreme Court. Her successful case received State and national attention with Prime Minister Keating recognising her fight against sexual harassment with a special award to commemorate the 10th anniversary of the Commonwealth's *Sex Discrimination Act*.<sup>127</sup> For the Tasmanian Regional Director of HREOC, Robert Henderson, the case highlighted the personal and financial cost to the community of the lack of State sex discrimination legislation.<sup>128</sup> Elsewhere, he alerted the community to the prevalent evidence of sexual harassment and of active discrimination within the State by employers against pregnant women.<sup>129</sup>

Unable to ignore the vociferous protests for legislation to outlaw sexual harassment and discrimination, Peter Hodgman, Minister for the Status of Women in June of 1993 supported a phone-in to be conducted by the Tasmanian Women's Consultative Council. The subsequent report *Women and Sex Discrimination: Report on the results of the Statewide phone-in*<sup>130</sup> revealed widespread and serious instances of sexual harassment in the workplace. Tabled in Parliament, the report called on the Government to introduce legislation as a matter of priority. The weight of evidence, however, did not stir Mr Hodgman into immediate action. While stating that the Government would consider the results, he defended the fact that Tasmania was the only State to not have sex discrimination legislation. He suggested that other State legislation was deficient and it could be better addressed through overarching federal legislation.<sup>131</sup> Visiting Law Reform Commissioner, Chris Sidoti, found the comment extraordinary, saying that despite shortcomings in anti-discrimination laws, there remained a real need to promote the strengthening of the laws, and in Tasmania's case their introduction.<sup>132</sup>

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126 *Karina Barker v The Lord Mayor, Alderman and Citizens of the City of Hobart Paul Barret, Bruno Gentile and James Stacey and C E Health Community (Workers' Compensation Pty Ltd)* Serial No B 18/1993 List 'B' file No 1501/1990.

127 'Tassie sex-case fighter's award' *Mercury* 30 July 1994.

128 'State canned on sex laws' *Mercury* 13 July 1993.

129 'Sex hassles for working women rife' *Sunday Tasmanian* 27 June 1993.

130 Tasmanian Women's Consultative Council *Women and Sex Discrimination: Report on the results of the Statewide phone-in* February 1994. See also 'Phone-in shocks' *Advocate* 20 September 1993.

131 Above note 130.

132 Above note 130.



Feeling the public fallout over the discrimination issue and trying to control the PLP's own internal divisions, the Premier, Ray Groom, decided to arrive at a political resolution. A compromise was reached between the reformist MPs, including Sue Napier, and conservatives led by the Attorney General Ronald Cornish, with the Sex Discrimination legislation supported, but the State continuing to rely on federal laws to cover sexual orientation, race and disability. During the Parliamentary debates, Ray Groom, while justifying the decision on the ground that the federal legislation covered 'a fair part of the field', admitted that there are 'some gaps in it [that is, in federal coverage] and we are looking carefully at that to see what needs to be done to address the gaps'.<sup>133</sup> Spokesperson for the Government, Sue Napier, took up this argument by holding that the relevance of State based comprehensive anti-discrimination legislation had been overtaken by 'the number of reforms that have been instigated at Commonwealth level through the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*' with their own conciliation processes within the Human Rights Commission and links to the Federal Court.<sup>134</sup> She acknowledged, however, that the then federal coverage was limited, with coverage not provided for age and protection of sexual orientation 'to be very weak'.<sup>135</sup> Nevertheless, explained Napier, since where there is a conflict between State and Commonwealth legislation, Commonwealth legislation prevails in areas of race, sex and disability anti-discrimination laws, many States which have pursued comprehensive anti-discrimination legislation have exposed themselves to a constitutional 'minefield'.<sup>136</sup> 'Quite honestly', she ruefully stated, 'if the State had brought forward this kind of legislation back in the seventies when it was being talked about, the Commonwealth probably would not have bothered to do it [that is, introduce anti-discrimination laws] and that might have solved the problem'.<sup>137</sup> Ironically, two decades prior, it had been Napier's own party which had opposed anti-discrimination laws.

In reply to such arguments, Labor spokesperson, and future Tasmanian Attorney General, Peter Patmore stated that the constitutional arguments raised were irrelevant since 'in Australia anti-discrimination laws have been enacted federally and in all mainland States and Territories. There are similar laws in Britain, Canada, New Zealand and the United States. Most Western European countries have them.

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<sup>133</sup> House of Assembly *Hansard* 6 May 1993 p 2200.

<sup>134</sup> Above note 133.

<sup>135</sup> Above note 133, p 2201.

<sup>136</sup> Above note 133, p 2201.

<sup>137</sup> Above note 133, p 2201.

China does not. Neither does Tasmania.’<sup>138</sup> Ms Putt for the Greens was more direct holding that ‘the real reason the Government is mouthing all these mealy-mouthed excuses ... is its reluctance to deal with homosexual law reform’.<sup>139</sup> Under pressure to justify why the Government had refused to implement comprehensive anti-discrimination law reform, Sue Napier conceded that an underlying reason for the Government’s position was a Conservative dominated Upper House. She frankly admitted in Parliament:

One of the difficulties I had about taking anti-discrimination through was that, even if our party and the Lower House agreed to the range of areas, we still had to ensure that the legislation did not run into the brick wall in the upper house ... I think the concept of targeted legislation [that is, sex discrimination] is a more realistic way of dealing with the political parameters that we have operating in this State, in this Parliament, right now.<sup>140</sup>

In the end the underlying reasons for opposing comprehensive anti-discrimination legislation had less to do with State versus Federal rights, or even human rights, but political expediency.

In his second reading speech on the tabling of the Sex Discrimination Bill 1994, Peter Hodgman, PLP Minister for the Status of Women, unashamedly stated:

by being the last State to introduce sex discrimination legislation, we now have the best. This State has had the opportunity to reflect on the limitations of legislation and procedures in other jurisdictions and to improve on what exists elsewhere.<sup>141</sup>

Modelled closely on the Federal *Sex Discrimination Act*, the State Act extended the grounds of sex discrimination to include parental status.<sup>142</sup> Ironically, although the PLP Government had resisted such legislation its Bill actually went further than similar Commonwealth or other State legislation by incorporating anti-bullying provisions. The prohibited grounds therefore covered ‘conduct which offends, humiliates, intimidates, insults or ridicules any person on the basis of gender, marital status, pregnancy, parental status, and family responsibilities’.<sup>143</sup> To enforce the Act, a Sex Discrimination Commission with Tribunal powers was proposed.

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<sup>138</sup> Above note 133, p 2205.

<sup>139</sup> House of Assembly *Hansard* 9 August 1994, p 1520.

<sup>140</sup> Above note 139.

<sup>141</sup> Above note 139, p 1480.

<sup>142</sup> Above note 139, p 1481

<sup>143</sup> Above note 139, p 1481.

In response, but without effect, the State Labor opposition together with the support of the Greens moved that the PLP Government's Sex Discrimination Bill be 'withdrawn and redrafted' to extend the grounds of prohibited conduct to parallel the defeated 1991 Anti-Discrimination Bill.<sup>144</sup> In moving this motion, Labor's Fran Bladel argued that 'what we need to do in this State is to send out a clear message that all those discriminatory practices and adherence's will not be validated by this Government'.<sup>145</sup> She concluded that gross failure to do so made the Sex Discrimination Bill 'a lame bill; it is a bill without enough substance to give relief and hope to a lot of people ...'.<sup>146</sup> Green member, Ms Diane Hollister, in supporting the Labor amendment to the Government's Bill, ironically observed 'I suppose it is a case like that of Oliver Twist who said, "Sir, I want more"'.<sup>147</sup>

As soon as its *Sex Discrimination Act* was passed, the PLP Government found itself again pressed to extend the grounds of discrimination. The appearance of 'hate literature' against the Jewish community and homosexual community, with posters declaring 'Ethnic cleansing is God's will' and 'Stop AIDS, Execute a Homo', reignited the debate for sweeping human rights law.<sup>148</sup> In Parliament the Green member, Rev Lance Armstrong, called for anti-vilification legislation.<sup>149</sup> The success of Nick Toonen's appeal before the UNHRC added pressure on the State Government to decriminalise homosexuality. Gay activist Rodney Croome appealed before the High Court,<sup>150</sup> which granted him the legal standing to pursue a declaration that the discriminating provisions of the Tasmanian Criminal Code were in conflict with the Commonwealth's *Human Rights (Sexual Conduct) Act 1994*. Adding to this momentum for decriminalisation was the Federal Senate's decision to investigate the issue nationally, with Tasmania a major focus.<sup>151</sup>

Although returned to office at the 1996 election, the PLP found itself in minority government. This weakness was to be exploited by human rights groups through the Greens and Labor parties to force the Government to not only decriminalise

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144 Above note 139, p 1481.

145 Above note 139, p 1488.

146 Above note 139, p 1487.

147 Above note 139, p 1492.

148 'Are we in a State of hate?' *Sunday Tasmanian* 7 April 1995.

149 Above note 148.

150 *Rodney Croome v The State of Tasmania* (1997) 91 CLR 119. Once standing was given the Tasmanian PLP Government did not wait for a High Court challenge and passed the *Criminal Code Amendment Act 1997* which repealed the anti-gay provisions within the Tasmanian Criminal Code.

151 'Tasmanian gays hail discrimination inquiry' *Advocate* 1 June 1996.

homosexuality, but also introduce sweeping anti-discrimination laws. The urgency for the legislation became more apparent with further evidence emerging of discrimination against people with disabilities<sup>152</sup> and with a series of racist attacks on Asian tourists and students in Hobart and Launceston.<sup>153</sup> With Premier Rundle signalling that the PLP had allowed the issue of anti-discrimination legislation to be one of conscience,<sup>154</sup> the scene was set for reform.

Holding the balance of power in Parliament, the Greens hoped to achieve a tripartite agreement on anti-discrimination legislation. Although there was general agreement between the Government and Labor and the Greens on the grounds of anti-discrimination which were to be covered (that is, race, age, disability, religious or political beliefs, irrelevant medical or criminal records) there were also major differences. On the issue of homosexuality, the Government proposed 'lawful sexual activity' with Labor and the Greens advocating 'sexual orientation'. Responding to the Government's definition of 'lawful sexual activity', Chris Sidoti, HREOC Commissioner, noted that it not only perpetuates unfair stereotypes but also provides much more limited protection for the complainant since the discrimination must be linked specifically to sexual behaviour.<sup>155</sup> Moreover, the Government's proposed Bill sought to exempt discrimination on the ground of 'lawful sexual activity', in relation to people dealing with children. The TGLRG spokesperson, Rodney Croome, warned that the Bill 'would encourage discrimination against gay and lesbian teachers, youth workers and child carers by fostering the myth that they are a threat to children'.<sup>156</sup> Furthermore, unlike Labor, the Government opposed 'social status' as a ground and in place of Labor's protection to 'trade union affiliation', it adopted 'industrial activity'. Another point of difference was that whereas the Government sought to maintain its *Sex Discrimination Act*, Labor proposed that all discrimination laws be included within a single Act and therefore planned to repeal the Government's 1994 Act.

Given its anti-gay basis, the Government's Bill faced vigorous opposition from the Greens and Labor. The support provided by the Greens' enabled Labor to move

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152 'No funds to help disabled tourists' *Mercury* 3 October 1995; 'Horror holiday for blind man' *Advocate* 20 October 1995; 'Airline faces claim of discrimination' *Examiner* 7 August 1996.

153 'Tassie race attack fear' *Mercury* 11 January 1997; 'State blasts racists' *Sunday Tasmanian* 12 January 1997; 'Sad reflections our leaders' *Mercury* 16 January 1997.

154 'Lib call to end gay-law battle' *Mercury* 26 March 1997.

155 Quoted by Mr Aird MLC, Legislative Council *Hansard* 8 December 1998 p 54.

156 'Croome slams reform bill exclusions, terms' *Saturday Mercury* 29 November 1997.

amendments to change 'lawful sexual activity' to 'sexual orientation'.<sup>157</sup> Once amended, the Bill passed the House of Assembly, but again, was to be thwarted when its passage through the Legislative Council was delayed until the legislative Council returned from its winter recess. The recess proved, however, to become another election period. This time Labor was swept into office.

### The passing of the Act: 1998

The Labor Government's Anti-Discrimination Bill<sup>158</sup> reflected much of the amended previous Liberal Government's Bill. 'Social status' and 'trade union activity' as prohibited grounds were dropped, with the latter replaced by 'industrial activity';<sup>159</sup> and areas of activity were expanded to include State activities<sup>160</sup> and awards, enterprise agreements and industrial activities.<sup>161</sup> One lobby group, which opposed the legislation's employment provisions, the Tasmanian Chamber of Commerce and Industry (TCCI), again sought urgent consultations with the Legislative Council in the hope of securing favourable amendments.<sup>162</sup> Taking up the TCCI's concerns, the Upper House forwarded the Bill to a committee stage. However, the delay was avoided with the House unanimously passing the Bill, with the exception of a minor amendment.<sup>163</sup>

On its passing into law, Rodney Croome, one of the veteran activists for the legislation, was to hail the *Tasmanian Anti-Discrimination Act* as 'one of the best pieces of anti-discrimination legislation in the country [and] reflects and enshrines the tolerant, inclusive and diverse society which Tasmania has become'.<sup>164</sup> Mr Croome's observation captures the narrative behind anti-discrimination law reform in the State, with resistance changing to acceptance and support, and conflict to agreement. However, this shift in perspective occurred as the discourses generated by the political debates on anti-discrimination legislation increasingly moved into the public domain where they were taken and driven by representatives of minority groups, and their supporters, who were able to achieve a recognition for greater social equality. ●

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157 House of Assembly *Hansard* 28 May 1998 p 110.

158 Sex Discrimination Bill 1994, No 46 of 1998.

159 Sex Discrimination Bill 1994, No 46 of 1998, s 16(l).

160 Sex Discrimination Bill 1994, No 46 of 1998, s 22(1)(f).

161 Sex Discrimination Bill 1994, No 46 of 1998, s 22(1)(g).

162 'TCCI urges bill rethink' *Examiner* 9 December 1998.

163 Originally cl 89(1)(a) of the Bill allowed the Tribunal to make 'an order that the respondent must employ, re-employ or promote the complainant'. The Upper House had this amended to state only an order to 're-employ the complainant' which is now found under s 89(1)(c) of the *Tasmanian Anti-Discrimination Act*.

164 'Historic Bill on the way' *Examiner* 10 December 1998.