



Doug Parkinson MLC

Legislative Council

Date: 26 July 1994

Electorate: Hobart

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## STATE'S RIGHTS

### Matter of Urgent Public Importance

**Mr BROOKES** (Westmorland) - *Mr President, I move -*

*That the Council do now adjourn for the purpose of discussing a definite matter of urgent public importance - namely that this Council registers its deep concern that the Federal Government has announced its intention to legislate to overrule the State's criminal laws and views such Federal action as another step towards centralising all government power in Canberra.*

**Mr PARKINSON** (Hobart) - Thank you, Mr President. I rise as the second voice against this motion, if only to keep the honourable member for Derwent company in this debate. In my mind this debate is not about States' rights at all, it is more about human rights. This debate is not really about whether the Federal Government should be permitted to override the Parliament of Tasmania, it is really about the Federal Government joining in to enforce human rights, which apparently the Parliament of Tasmania has shown a reluctance to do.

We have only to go to the sections themselves - and, Mr President, I acknowledge that I have not been party to previous debates in this Chamber and therefore I do not wish to stand here and give honourable members a lecture in the law in any way - but section 122, which has been mentioned, is worth looking at. It outlaws any person, not just homosexuals, who has sexual intercourse with another person against the order of nature and, secondly, any person who has sexual intercourse with an animal and any person who consents to a male person having sexual intercourse with him or her against the order of nature. The order of nature is defined in the common law, and it is clear from Carter's Criminal Law of Queensland. Mr Carter is a very learned gentleman who summarises -

*Members laughing.*

**Mr PARKINSON** - I note that respect has been paid to learned gentlemen in this Chamber tonight, and Reginald Frances Carter in Criminal Law of Queensland, Seventh Edition, is cited as a retired judge of the district courts of Queensland, formerly Chief Crown Prosecutor of Queensland, lecturer in criminal law at the University of Queensland, and author of 'The Law Relating to Search Warrants'.

At the risk of running out of time, Mr President, I continue. Carter points out, citing various old cases in doing so, that as far as section 122 of the Criminal Code is

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concerned ignorance of the sexual functions of one's own organs is no defence to a charge laid under that section. He further points out that the offences detailed in the equivalent, as it then was, of our section 122(a) and (c) are generally known as sodomy and buggery - that is no news to any of us - and can only be committed 'in ano', which may not be appreciated by everybody here tonight. Section 122 therefore deals only with anal intercourse and in effect it outlaws anal intercourse between husbands and wives, and that ought to be appreciated as well.

It is little wonder that the section is never enforced and it seems to me, Mr President, that the enforcers of the law are streets ahead of those who would debate the laws in this Parliament because they know that it ought not be enforced. That is why it is not enforced, because of the type of investigation that would be involved in uncovering acts not only between homosexuals but between husbands and wives who choose to participate in that particular form of intercourse, which of course I do not condone.

As well as that, under this particular section it is no defence that one or both parties consent to the act. So again it is a rather innocuous law which catches not only homosexuals but other men and women in the privacy of their own homes, whether they be homosexuals or not.

Section 123 simply outlaws gross indecency between males. It is discriminatory from the outset because it says nothing about females. Indecency, by the way - again under common law - is quite simply defined. It has no definite legal meaning and must be taken therefore in its modern and popular acceptation. It is defined as anything that is unbecoming or offensive to common propriety.

**Mr Ginn** interjecting.

**Mr PARKINSON** - My thanks to the honourable member for Newdegate for reminding me that the time is about to run out.

**Mr Ginn** - If you don't sit down we have to adjourn.

**Mr PRESIDENT** - The honourable member has two minutes.

**Mr PARKINSON** - Thank you, Mr President. I rise on this occasion to remind members of those few points about these sections. It is little wonder in my mind that the Federal Government is moving to amend the law, which the Parliament of which I am now part has declined to do, not only because it discriminates against the homosexual community but also because it discriminates against ordinary men and women. If our Parliament unfortunately cannot move into the twentieth century in relation to these laws, to my mind it is little wonder that the Federal Government is doing so.