

HOUSE OF REPRESENTATIVES

Supplementary Order Paper**Wednesday, 5 March 1986**

HOMOSEXUAL LAW REFORM BILL

Proposed Amendments

Hon. F. D. O'FLYNN, in Committee, to move the following amendments:

Proposed new clause 7A: To insert in Part I on page 5, after clause 7, the following new clause:

7A. Savings in respect of Armed Forces—(1) Nothing in this Part of this Act shall affect the interpretation or application of section 42 (b) of the Armed Forces Discipline Act 1971 (which relates to behaving in a disgraceful and indecent manner), and any behaviour that would have constituted an offence against that provision before the passing of this Act shall constitute an offence against that provision notwithstanding the passing of this Act.

(2) Every person who commits any act that, but for the passing of this Act, would have constituted a civil offence within the meaning of section 74 of the Armed Forces Discipline Act 1971 shall be guilty of an offence against that section notwithstanding the passing of this Act, and shall be liable to the same punishment as that person would have been liable to under subsection (2) of that section had this Act not been passed:

Provided that, in the case of an act that, but for the passing of this Act, would have constituted a crime against paragraph (b) or paragraph (c) of section 141 (1), or section 142, of the principal Act, the maximum punishment that may be imposed shall be 3 years' imprisonment

To insert on page 6, after clause 9, the following clauses:

10. Armed Forces, Police, traffic officers, and officers of penal institutions—Section 16 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Nothing in subsection (1) or subsection (2) of section 15 of this Act shall apply in respect of anything done or omitted to be done in relation to the recruitment, treatment, or dismissal of any person as a member of the Armed Forces or of the Police by reason of the sexual orientation of that person.”

11. Vocational training bodies—Section 22 of the principal Act is hereby amended by adding the following subsection:

“(4) Nothing in subsection (1) of this section shall apply in respect of anything done or omitted to be done in relation to the training of any person who is or is seeking to become a member of the Armed Forces by reason of the sexual orientation of that person.”

12. Educational institutions—Section 26 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) Nothing in subsection (1) of this section shall apply in respect of anything done or omitted to be done by any educational establishment conducted by the Armed Forces in respect of any person who is or is seeking to become a member of the Armed Forces by reason of that person’s sexual orientation.”

EXPLANATORY NOTE

Clause 7A, relating to the Armed Forces Discipline Act 1971, will be moved only if *clauses 3 to 5* of the Bill are carried.

Section 42 (b) of that Act makes it an offence against that Act to behave in a disgraceful and indecent manner. It is possible that the proposed changes to the civil law would result in the term “disgraceful and indecent” being held to exclude homosexual conduct that no longer constituted a crime.

Subclause (1) of the proposed *clause 7A* is designed to preserve the present ambit of that term.

Subclause (2) relates to section 74 of that Act. Subsection (1) of that section makes it an offence against that Act to do or omit any act, whether in New Zealand or elsewhere, that would, if done or omitted in New Zealand, be an offence against any other Act. Thus, those acts of a homosexual nature that presently constitute crimes may be prosecuted under section 74. Conversely, if they cease to constitute crimes, they will not be subject to prosecution under that section.

Subclause (2) is designed to avoid this consequence of any change in the civil law. In short, those homosexual acts that can be prosecuted under section 74 at present will remain within the ambit of that section. However, the present maximum punishments of 7 years (for sodomy) and 5 years (for indecency) are reduced to 3 years in each case, because they will now apply only to consensual acts.

The amendments to Part II of the Bill will be moved only if *clause 9* is carried. They would allow the Armed Forces and the Police to discriminate on the grounds of sexual orientation in respect of employment (proposed *clause 10*), and, in the case of the Armed Forces only, to discriminate on that ground in respect of vocational training (proposed *clause 11*) and education (proposed *clause 12*) offered by the Armed Forces to any person who is or is seeking to become a member of the Armed Forces.