

Extract from Hansard

[ASSEMBLY - Wednesday, 9 September 2009]

p6657b-6669a

Mr Christian Porter; Mr Paul Papalia; Mr Tony O'Gorman; Mr Colin Barnett; Ms Adele Carles; Acting Speaker;
Mr Eric Ripper; Mr David Templeman; Mr Andrew Waddell; Mr Peter Watson; Ms Rita Saffioti; Mrs Liza
Harvey; Mr Mark McGowan; Mr Martin Whitely

EQUAL OPPORTUNITY AMENDMENT BILL 2009

Second Reading

Resumed from 13 May.

MR C.C. PORTER (Bateman — Attorney General) [4.00 pm]: I thank the member for Midland for presenting the Equal Opportunity Amendment Bill 2009. The government will not support the bill, but that is not because we think that breastfeeding should be disallowed in public. In fact, I found the circumstances that gave rise to this bill very interesting indeed, and I might go into those in a moment. I will simply say in summary that the reason that this side of the house will not support the private member's bill is that, given the terms of the existing legislation, we consider it to be unnecessary. I will explain why that is the case in a moment.

Mrs M.H. Roberts: I think that is outrageous.

Mr C.C. PORTER: The member might think it is outrageous and she might wish to characterise this as somehow being anti-breastfeeding mothers, but that is certainly not the case. The best legal advice available and, I think, a plain reading of the act indicate that, in all likelihood, even without a separate head of discrimination based on a mother breastfeeding, it would indeed be discrimination and contrary to the terms of the existing provisions of the Equal Opportunity Act to discriminate—in this case, to ask someone to move on —

Mrs M.H. Roberts: You are sending a very negative message to breastfeeding mothers. We are the only state in Australia that does not have an explicit provision.

Mr C.C. PORTER: Again, that is not true because there is another state. If what we are about is sending messages, so be it. But if what we are about is protecting people's rights not to be discriminated against, that protection exists. I think the message that might be sent out by virtue of the debate that will ensue on this bill is that that protection already exists. The belt-and-braces approach for the purpose of making a public point is not one that I personally favour in this instance because it is simply unnecessary. I will go through that in a moment.

I will start by talking about the situation, as I understand it to be, that gave rise to the bill that the member has presented. It was obviously the case that a nursing mother was breastfeeding. The member might remind me of the place she was at.

Mrs M.H. Roberts: It was at a major hotel in Perth.

Mr C.C. PORTER: It was a major hotel in Perth. I recall that it gained a lot of media interest at the time after some member of staff at the hotel asked the breastfeeding mother to stop and also, I understand, to move on—to leave, as it were.

Mrs M.H. Roberts: This was not a one-off instance. This kind of discrimination happens to women all the time.

Mr C.C. PORTER: I will get to that in a moment, but I will try to deal with the facts of this particular incident, because clearly this is the incident that was the genesis of the bill that the member has presented. Interestingly, my recollection—this is only a recollection and the member will correct me if I am wrong—is that the management of the hotel in question said, in effect, that it was a poorly trained member of staff, that the hotel in question did not have a policy of not allowing breastfeeding mothers and it certainly does allow it, that the mother should never have been asked to stop and move along, that an apology was given and that it was, if I can put it this way, a mistake by an overzealous member of staff who was acting without any imprimatur from the management of the hotel. Does that accord with the member's understanding of the response by the hotel in question?

Mrs M.H. Roberts: That is right.

Mr C.C. PORTER: It was, if we like, a mistake, but, nevertheless, it was a mistake that had an effect on the woman in question. It does not appear that the woman in question, who was asked by the errant staff member to move on, made a complaint to the Commissioner for Equal Opportunity in this jurisdiction. The points that I raise in response to the bill are that the woman in question could have done so had she wished and that she would almost certainly have been successful on the facts, as I understand them to be, in arguing that she had been discriminated against, either because of her breastfeeding representing a characteristic that appertains to her as a woman or because she was engaging in an activity intimately associated with being part of a family. They are both matters that are covered in the Equal Opportunity Act 1984 of this jurisdiction.

I will go into the status of the legislation as it presently exists. The member is right to the extent that the majority of states and territories have breastfeeding as an expressly prohibited basis or ground of discrimination. The Equal Opportunity Act in this state does not mirror those other pieces of legislation in that respect. The commonwealth Sex Discrimination Act 1984 and the legislation in New South Wales, Queensland, Victoria,

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Tasmania and the Northern Territory expressly prohibit discrimination on the ground of breastfeeding. Western Australia and South Australia are the two jurisdictions—we are certainly not the only one —

Mrs M.H. Roberts: Actually, South Australia passed legislation in July, so I suggest that you update your information.

Mr C.C. PORTER: I will do that and I thank the member for giving that information to me. I was not certain what the situation was with the South Australian legislation, but before July it did not have such a provision; it may well do now.

Mrs M.H. Roberts: It is just embarrassing. We will be the only state.

Mr C.C. PORTER: Legislation is important in its outcome and effect. The problem is that when legislation is drafted, it is always incumbent on us to consider whether we are trying to fix a problem that does not exist, because there are always unintended consequences of overdrafting. Constantly adding to legislation to specifically delineate individual acts of discrimination seems to be warranted when there is a reasonable doubt that this or that act of discrimination is not already covered by legislation. In these circumstances it appears to me, at least, that it would be covered by the relevant legislation. In this jurisdiction we would go to section 8(1)(b). Section 8(1) states —

For the purposes of this Act, a person (in this subsection referred to as the discriminator) discriminates against another person (in this subsection referred to as the aggrieved person) on the ground of the sex of the aggrieved person if, on the ground of —

- (a) the sex of the aggrieved person;
- (b) a characteristic that appertains generally to persons of the sex of the aggrieved person; or
- (c) a characteristic that is generally imputed to persons of the sex of the aggrieved person,

It seems to me that breastfeeding, or being a nursing mother, clearly falls under the provisions of paragraphs (b) and (c)—that is, a characteristic that appertains generally to persons of the sex of the aggrieved person or a characteristic that is generally imputed to persons of the sex of the aggrieved person. That is to say that a woman is generally characterised as having the ability and, at times, the necessity to breastfeed. Whether or not breastfeeding would fall under those provisions has not been tested in this jurisdiction, but I do not understand the member to be suggesting that she has a view or any advice to the contrary or that it is not simply logical on a plain reading of those paragraphs.

Mrs M.H. Roberts: I canvassed that issue in my second reading speech and said that it would be a matter of determination by the State Administrative Tribunal.

Mr C.C. PORTER: It certainly would, but it is incumbent upon us to make some kind of logical —

Mrs M.H. Roberts: To take the lead, rather than leave it up to the State Administrative Tribunal to come to a conclusion.

Mr C.C. PORTER: I am sure that the State Administrative Tribunal can be trusted to engage in a plain, commonsense interpretation of those issues.

Mr A.J. Waddell: You're big on judicial discretion, aren't you?

Mr C.C. PORTER: In fact, I am big on judicial discretion.

Several members interjected.

Mr C.C. PORTER: I have the member's comments, but I will save those because he has said some kooky things lately.

Mrs M.H. Roberts: Are you aware that the Premier is on record as saying that he would support the bill if it were introduced?

Mr C.C. PORTER: Sorry?

Mrs M.H. Roberts: The Premier is on record as stating, on 29 April 2009, that he would support the bill if it were introduced.

Mr C.C. PORTER: It may well have been the case that the Premier was not aware that the bill seeks to do something that the Equal Opportunity Act already does. It is just unnecessary legislation. With all due respect, it

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has been brought on to make a point, and the member will no doubt make her point, but as Attorney General it seems that it is not worthwhile amending an act to cover a situation that the act already plainly covers.

Mrs M.H. Roberts: It doesn’t plainly cover it.

Mr C.C. PORTER: It does, on any commonsense interpretation of the words in the act, which have been better drafted than in other jurisdictions by leaving it open to judicial discretion to work out whether or not breastfeeding is —

- (b) a characteristic that appertains generally to persons of the sex of the aggrieved person; or
- (c) a characteristic that is generally imputed to persons of the sex of the aggrieved person,

It seems to me almost reasonably impossible and fanciful that anyone would come up with an interpretation that determined that breastfeeding did not fall within either one of those two heads.

Mr A.P. O’Gorman: Why don’t you just accept the legislation?

Mr C.C. PORTER: Members opposite do not honestly think that those definitions are unclear, do they?

Mrs M.H. Roberts: The report of the Commissioner for Equal Opportunity highlights the lack of clarity and recommends that it be clarified. The member is aware of that.

Mr C.C. PORTER: Yes, I am aware of that, and I must say that I disagree insofar as those provisions, it seems to me, are absolutely and plainly obvious.

Mrs M.H. Roberts: If different lawyers can have different opinions, then it is not clear.

Mr C.C. PORTER: I think the equal opportunity commissioner expressed an opinion about whether or not she would prefer the change; it is not an opinion about whether or not this would result in an unsuccessful action under the act as it stands for the type of situation that was recently encountered.

Mrs M.H. Roberts: That is the point; it is not clear whether it would be successful or unsuccessful.

Mr C.C. PORTER: The lady involved in the recent situation would have been quite within her rights to bring an action, but she chose not to do so. I have no doubt that had she brought that action, it would have been found that there had been discriminatory conduct.

The act contains another provision that would also, in my view, quite plainly cover these circumstances. Again, breastfeeding is not a separate ground of discrimination in this jurisdiction, as it is in most other jurisdictions. The alternative basis for discrimination against a breastfeeding woman under the Equal Opportunity Act is that of family status. I have the case law for one Victorian case. I do not disagree with the member that this sort of thing happens on a daily basis—I do not know—but there is very little case law on matters of breastfeeding having been taken to equal opportunity commissioners that I have been able to locate.

Mrs M.H. Roberts: It is not something women want to get engaged in.

Mr C.C. PORTER: That may well be the case, but there is not an enormous amount of case law.

Mr A.P. O’Gorman: They suffer in silence.

Mr C.C. PORTER: What case law there is supports the position that I have adopted, which is that this situation is already well and truly covered by the provisions of the act. I have located a case called *Whitehead v Criterion Hotel, Geelong*, from 1985, so it was some time ago, but the then Victorian Equal Opportunity Board held, according to my notes, that —

To discriminate against a person breastfeeding her baby in a hotel dining room was unlawful discrimination on grounds of parenting, that being nursing mother status.

That, of course, is another possible ground of discrimination that we have in our act. It would seem to me that there is at least one case that provides very persuasive precedent to inform our courts, if a matter such as this ever went before the State Administrative Tribunal, that there are two heads of discrimination: that of family status and that of being a woman and having characteristics that generally appertain to being a woman.

The Victorian Equal Opportunity Board held that to discriminate against a person breastfeeding her baby in a hotel was unlawful discrimination on the grounds of parenting, which again is a matter of such intrinsic commonsense, based on the provisions of the legislation, that it does not require further amendment. That submission will not be made more palatable to the member by repetition, but in the circumstances of this matter, the lady in question could have taken a complaint to the equal opportunity commissioner to have a decision

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made. If the lady had been dissatisfied with that decision, she could have appealed to SAT. I find it fanciful, based on the interpretations that could be rationally and reasonably applied to the two relevant provisions of the act, that, firstly, the equal opportunity commissioner would not have determined those circumstances to constitute discrimination; and, secondly, that SAT, following precedent in similar matters, would not have also made a decision that what happened was not discriminatory. The operation of the act is not a matter of major importance to the member's legislation, because the situation and the mischief that it is meant to cover is already clearly and plainly covered.

MR P. PAPALIA (Warnbro) [4.15 pm]: I rise to speak briefly in support of the legislation.

Mr P.B. Watson interjected.

Mr P. PAPALIA: No, I will be brief.

I want to place on record my support of the bill and my support of the concept that we should be utilising this opportunity, one that will be clearly missed by the Attorney General because he is choosing not to take the opportunity, to convey a very clear message to the community of Western Australia that the perfectly natural and laudable act of breastfeeding a baby is acceptable anywhere in our society. I recall at the time of the particular incident that led to this legislation being drafted that there were a number of different responses from people with different leadership positions in the state. Those responses were not clear and they were not wholly in support of the mother being able to breastfeed her baby in that public place.

Mr C.C. Porter: That was 1984.

Mr P. PAPALIA: No, I am talking about the incident in Perth, and I am talking about the Western Australian community response and the messages that were conveyed to mothers about how appropriate or otherwise it was to breastfeed their babies in public. I was concerned about some of those responses. Breastfeeding is still a little stigmatised; it is still a little subject to personal prejudices by some people. I heard some of the comments made on talkback radio and some public commentary at the time, and they were not all necessarily from older generations who may have felt that it was inappropriate to breastfeed in public. They were from different age groups and different parts of society, and there were suggestions by a number of people that it was not appropriate. I can only speak—not from personal experience of breastfeeding but from having gone, not that long ago, through early fatherhood—from the experience of my wife having breastfed both of our sons at that time and in places where it was not necessarily always considered to be acceptable by all the people who were present. She would always do it in a modest fashion and use a bunny rug, or something like that, to cover herself, but she would breastfeed because we believed, having educated ourselves, that it was the best possible means of preparing our babies for their future lives. I think that the evidence is irrefutable that it is best, if a mother can, to breastfeed. I know that not everyone can and that it will not always be possible, but I think the evidence is very clear. We should be doing everything we possibly can to encourage any mother to breastfeed.

It is a fact that even today, when a mother chooses to breastfeed in public places, there will be people who are prejudiced against that, even women. I heard women ringing talkback radio and criticising this woman for acting inappropriately by feeding her baby in a restaurant. That is, frankly, unacceptable; it is outrageous. Anyone who has either breastfed or been the partner of someone who is breastfeeding knows that, particularly in the very early stages, it is sometimes quite a challenge for a mother to learn the skill of being able to breastfeed a baby. It takes persistence, it takes a fair amount of resilience, and it can even be quite painful at times. Those sorts of things need to be overcome if mothers are going to endure, continue on and stick with the good intention, which they might have set out with prior to the baby's arrival, of breastfeeding their baby. Any sort of criticism of or negativity towards a new mother can have a very serious consequence and could easily deter her from going through with her good intention of breastfeeding her baby.

Invariably, many new mothers suffer some degree of stress and, in some cases, depression immediately post-delivery of their babies. If they are going through that and receive a negative response to their breastfeeding in a public place, not only will they be likely to concede defeat and stop pursuing the objective of breastfeeding, but also the state of their mental health could suffer. That would be a terrible outcome. We have an opportunity in this place to demonstrate some leadership. I do not think that leadership was demonstrated in the incident that triggered the public debate and the drafting of this legislation. I thought that a number of members of the public made comments on that incident that indicated they were harbouring some resistance to the belief that breastfeeding was positive and was something that should be supported. I am not criticising those women who find it impossible to breastfeed, but I am commending those women who try to pursue breastfeeding their babies. At the time of that incident some negative comments were made, and, without referring to anybody in particular, this is an opportunity for the Parliament to demonstrate that Western Australia, like every other jurisdiction in

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Australia, believes it appropriate that a public statement in support of breastfeeding mothers be made. I certainly support this bill.

MR A.P. O'GORMAN (Joondalup) [4.22 pm]: I support the Equal Opportunity Amendment Bill 2009. This is one of those situations in which society has not moved forward. In some respects, society has not moved forward since probably the 1950s. I am basing my comments on when my children were young and my wife breastfed our children—my oldest daughter in Australia and my youngest daughter in Ireland. In Ireland my wife was feeding my youngest daughter in my parents' house. It was not a public area, which is what this legislation is seeking to deal with. I am just highlighting the fact that people's prejudices have not moved on. My wife was sitting discreetly in an armchair, again using a bunny rug—I am glad the member reminded me what it is called, because I could not remember. She was appropriately covered while breastfeeding our youngest daughter, Samantha. My grandfather was also in the room and had no idea what was going on. He was watching TV or whatever. One of my aunts walked into the room and made a big scene about how disgraceful it was that my wife was breastfeeding. She carried on to such an extent that my wife had to take our child upstairs to a cold bedroom to continue breastfeeding. Members can imagine that winter in Ireland is cold. It caused huge distress to her and to the child. It also caused continued stress because my wife did not want to go back to my parents' house, particularly at times when the baby would be feeding. That drove a bit of a wedge for some time. We did not return to the house until the child was older.

The Attorney General said that this circumstance is covered in the Equal Opportunity Act. It is, but given the way he described it, it is embedded in the act. He is a legal person and he can decipher the act. We are talking about legislation for, generally, young women and young couples who decide that their child will be breastfed. We must send a strong message. It is not just about legislation; it is also about sending a message to the community that it is okay for young mums to breastfeed in public. Restaurants are generally good hygienic areas to be in, because no smoking is allowed in restaurants. A young women can sit quietly in the corner or at a table and breastfeed her baby.

As the member for Warnbro said, we all know that breastfeeding is the best way forward for our children. Breastfeeding builds up the child's immunities and it helps the mother to lose weight and assists in her connection with her baby. I support this bill. It is a lot more about getting the legislation right. It is about sending the right message to the public and supporting young women in our community who wish to breastfeed.

MR C.J. BARNETT (Cottesloe — Premier) [4.25 pm]: The member for Midland was correct when she said that when she proposed this legislation I said that we would support it.

Mrs M.H. Roberts: First you said you would not, then you said you would and now you say you will not.

Mr C.J. BARNETT: Let me explain. When the member for Midland made the point about a mother being able to breastfeed in a hotel or other potential scenarios, I agreed with her. A mother should be able to do that. I hope that a woman would behave discreetly. There is no reason to suggest that the woman who prompted this bill did not behave in that way. That is the test.

Mrs M.H. Roberts: It is a very chauvinistic attitude to say that there are some women out there who will bare their breasts while feeding their babies.

Mr C.J. BARNETT: I would hope that a breastfeeding mother and, indeed, the father too, if he is there, would be discreet. With rare exception, that is what happens. I would also hope that any public body, any establishment, would respect the right of a mother to breastfeed her child in the appropriate way and consider that to be an accepted community standard. I believe it is.

When the member for Midland introduced this bill, I said the government would support it because we support the principle that a woman should be able to breastfeed a child anywhere she chooses, so long as she does it in a discreet way. That should be respected and understood in our community. As the Attorney General pointed out, the right for a woman to do that is covered under the existing legislation. When he says—I agree with him—that we do not support this bill, it is not because we do not agree with the principle that a woman should be able to breastfeed, and the community should respect and understand that. It should be a universal principle, which we agree with. We do not see a need to legislate. As the member for Warnbro said, it is not about making a point. We do not legislate to make a point. Legislation is putting a statute in the law of Western Australia. If it is not needed, we should not legislate just to make a point. That is not the proper use of Parliament and it is not our role as legislators and parliamentarians.

If members opposite can make a substantive case that the existing law does not cover this situation, we will listen to it. The opposition has not demonstrated that the existing equal opportunity law fails to cover this situation. If there is an element of —

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Mr P. Papalia: The Attorney General could not find a case.

Mr C.J. BARNETT: What is the point of taking part in this Parliament? Members opposite have raised an issue of significant interest to young mothers in this state. We are trying to treat with some respect what the member for Midland has raised as a serious issue. All we are getting from members opposite is an incessant prattle. I repeat my point: we support the principle. A breastfeeding mother should be able to feed her child in a way that is courteous and discreet to the rest of the community, and that is invariably what happens. People in charge of public premises should recognise and respect the right of a mother, or parents, for that to happen.

When the issue was raised by the member for Midland, I assumed that perhaps the law was deficient. I did not doubt that. Therefore, I said that we would support the amendment that the Labor Party was proposing. On examination by the Attorney General—I very much respect his point of view—he made the point strongly and soundly that the terms of the amendment were clearly covered under the existing law. If someone refused a breastfeeding mother the right to feed her child, that would clearly be discriminatory and could be actioned under the existing law. Therefore, we should not be bringing in additional legislation if it is covered.

The point I make is that it is up to the member for Midland and her colleagues to demonstrate to the house that the law is lacking or deficient. If she can do that and demonstrate that there is a deficiency, we are prepared to look at the legislation and help fix that deficiency but at the moment she has not demonstrated a deficiency in the law. We are not disagreeing with the principle of what she is talking about; we are just saying that she has not demonstrated a deficiency in the law. If she can do that, I am sure the Attorney General would be prepared to look at it. At the moment we cannot see a deficiency in the law. We support the principle of this legislation but it is not needed. It is superfluous and it does not further the interests of breastfeeding mothers as we understand the law. I ask the member to demonstrate the deficiency in the law. If she is unable to do that today, we should adjourn the debate so she can come back and demonstrate to us that the equal opportunity law is somehow deficient because we do not believe that it is.

MS A.S. CARLES (Fremantle) [4.32 pm]: I rise to support this bill. I speak as a woman and as a mother who has breastfed three children. I would like to put on the record that I found the comments of the Attorney General offensive and his interpretation of the legislation offensive and mean-spirited. We are going to waste all afternoon trying to deny a simple legislative right. I know what it is like to sit in a restaurant very discreetly breastfeeding a baby and then be asked to go to the public toilet. A woman should not have to do that. We should have protection in legislation. It just involves a few simple words. I am shaking. This is why we need women in Parliament.

Mrs M.H. Roberts: Hear, hear. That's why they've got only two Liberal women in Parliament.

Mr C.J. Barnett: The member for Fremantle is a lawyer. Let's hear the case. I want to hear the case.

Mrs M.H. Roberts: It is not that she is a woman; it's that she's a lawyer that makes her remarks worth listening to.

The ACTING SPEAKER (Ms L.L. Baker): Members! Member for Fremantle, please continue.

Ms A.S. CARLES: It is a legal issue and it is also an emotional issue, as members can see. I will rise to speak again in a few minutes.

Point of Order

Mr E.S. RIPPER: It would appear that the member for Fremantle would like to resume her speech. Perhaps we can find a way for that to happen rather than give someone else the call. I am taking my point of order as slowly as I can.

Debate Resumed

Ms A.S. CARLES: There are just men sitting in this Parliament.

The ACTING SPEAKER: Member for Fremantle, I mistakenly thought that you had finished. You can have the call again.

Ms A.S. CARLES: I will resume my remarks. I would like to ask the Attorney General whether he consulted with women in the Liberal Party about their position. Did he seek their advice?

Mr C.C. Porter: This did not go to the party room. As the Premier said, if you can make a case that the situation we have encountered is not discrimination under the act, I will simply take it to the party room.

Ms A.S. CARLES: Does the Attorney General accept that this is women's business and that perhaps he is not the best qualified person to give us a legal interpretation on something that he does not understand?

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Mr C.C. Porter: It is everyone's business. The idea that somehow you attempt to paint me as anti-women or anti-breastfeeding is nonsensical. The message I am sending out is that that situation is actually unlawful.

Ms A.S. CARLES: The Attorney General is not answering my question. Did the Attorney General consult with the women in the Liberal Party?

Mr C.C. Porter: I have answered that question. This is not a matter that went to our party room because there is not a difficulty under the terms of the act.

Ms A.S. CARLES: The Attorney General made a unilateral decision. He does not have children and he did not consult with any breastfeeding women. He came into this place and gave a literal interpretation.

Mr C.C. Porter: It is the correct interpretation.

Ms A.S. CARLES: I find it so mean-spirited. It almost leaves me speechless that we are fighting about a couple of words that would protect women's rights. It is not often that we get the opportunity to do that in the Legislative Assembly.

Mr A.P. O'Gorman interjected.

Ms A.S. CARLES: Exactly. That is why we do not have case law. Women just go to the toilets in restaurants so they can get over the embarrassment and deal with their baby. Women do not want to breastfeed in public. If a baby starts crying in a situation, the mother has to deal with it. Babies stop crying when they take the comfort of the breast. That is what women do to stop that embarrassment. They should have the right to do that.

Mr C.C. Porter: But I do have case law. I have pointed out a case in which, based on the family care provisions and family status provisions, the situation that we are debating today gave rise to the situation and would represent discrimination. It is covered.

Ms A.S. CARLES: Why should a woman have to try to find that? Why can she not say in the restaurant, "I have a right to do this by statute, so leave me alone"?

Mr C.C. Porter: With respect, irrespective of whether we do it this way or leave it the way it is, someone still has to make a complaint to the Commissioner for Equal Opportunity to start the process. The law is quite clear.

Ms A.S. CARLES: It is not quite clear. It would be clear if we passed this amendment today. Right now it is not clear and that is why the opposition has raised this matter. It is a matter of a simple word. I ask the Attorney General to stop being so mean-spirited. On behalf of women, I ask the government to allow this amendment to go through today.

MR D.A. TEMPLEMAN (Mandurah) [4.37 pm]: I rise to support the opposition's motion and congratulate the member for Midland for bringing this amendment to the Equal Opportunity Act to the house. I also want to compliment the contribution made by the member for Fremantle and the member for Midland, who introduced the bill.

I find this situation quite amazing. In his attempt to prove his legal capabilities, the Attorney General has gone too far this afternoon. I think he has embarrassed himself because he has not considered the intention of this bill introduced by the member for Midland. He has already admitted to the fact that he did not consult his party room and get a response to this matter, which I find quite amazing. I would have thought that the first people he would have consulted would have been the women from his side of politics. I find it outrageous that he failed to do that. I think he has been caught out in his attempt to gloss over the intention of the bill before us and the amendment before us in his attempt to prove himself, as he seems to like to do in question time and at other times in this place. He has stumbled very badly. By stumbling in the way that he has this afternoon, he has exposed his government and his side of politics to perhaps wear an appropriate label; that is, a label of chauvinism. The government is certainly mean-spirited. In my view, in his response to this bill, he has not responded in the appropriate way.

It is important as men that we do not purport to understand the issues that impact on mothers in our community. We can have great empathy and we can seek to understand, but we do not have a right to believe that we understand exactly what it is like to be a breastfeeding mother in the Western Australian community. I do not have that right. My partner breastfed my son, my firstborn, and she will breastfeed our twins when they are born in a few months, and I will support her to the best of my ability as a partner, but I can never, as a man, purport to understand the implications that breastfeeding has for a mother. The only people who understand that are mothers themselves. They are the people who understand what it means and the importance of breastfeeding. Therefore, when a bill of this nature is brought before this house, the last thing we need is pontificating legalese from a man. What we need is an understanding that this is an issue that this community, this society, has to

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understand must be addressed, and that may mean amending the current laws so that we clearly send a message to our society, our community, that breastfeeding is not only an important function of motherhood and an important function of raising infants, children, but also an important, essential part of the nurturing of new life. We must listen to those very people who know about this business, and that is women; it ain't men.

I sincerely hope that the Attorney General will very carefully reconsider not only the words that he uttered this afternoon, but also the approach which he has taken and which it now seems that his government is taking to this bill. I hope that he will now reconsider the intent of it. I do not agree with the Premier's comments that Parliament can or cannot do certain things. Parliament can ultimately do what Parliament decides to do. We pass motions in this place for a whole range of laws. We pass motions expressing our outrage about appalling things that happen in our community or in the nation. We pass motions in this place that highlight to the community that we will not stand for certain things because they are against the nature of Western Australian life or lifestyles. Of course we have the right, in my view—and I ain't no lawyer—to bring forward and ultimately pass amendments such as these that determine and highlight to the community of Western Australia that we recognise the importance of breastfeeding in the nurturing of our young Western Australians, and that the best people we can seek for advice on that are in fact mothers—women.

I take on notice the member for Fremantle's comments. I will never stand in this place and purport to understand what it is like to be a mother, because I am not one. I accept what the member said. I respect what the member for Midland said. I think that unless the Attorney General and the Premier very seriously reconsider their heartless response to this bill and to what the opposition has raised as an important issue, they will be condemned. The Attorney General has stumbled badly this afternoon. He was the rising star. He was the big stallion waiting in the stable behind the Premier, but now I reckon he is lame. He has lamed himself. He might even be gelded after this, but I will tell members what —

Ms M.M. Quirk: The glue factory!

Mr D.A. TEMPLEMAN: Yes, the knackers factory might not be too far off. The member for Girrawheen is right. She is out of her seat, but I will not go into that.

This is a serious issue. Therefore, I urge the Premier to do what he has done in this place on a number of occasions and override his minister and recognise that this is a serious issue for Western Australians and a serious issue for mothers. We, as a Parliament, should recognise that and look at the clear intent of what the member for Midland is presenting to us through this amendment bill.

MR A.J. WADDELL (Forrestfield) [4.44 pm]: I come to this debate with two distinct disadvantages: firstly, I am evidently a man; and, secondly, I am not a lawyer. However, I have a contribution to make. Two weeks ago in the local newspaper, the *Hills Gazette*, there was a front-cover story entitled "Breast is best, say mums". It was all about a call on local businesses to become far more tolerant towards breastfeeding. These mothers felt that they were being discriminated against; there was a lack of places where they could feed their babies.

As a man, I have had the advantage of also becoming a father, and I experienced the breastfeeding story through my wife. Unfortunately, that is a story that was cut very short, and I have given that story before in this place. However, I saw firsthand the heartbreak that a mother suffered when she was denied the ability to breastfeed her child, when she was denied the ability to bond with and to provide probably the most basic requirements for her baby—she was really denied the very essence of being a mother. I do not think that we in this place have any right to stand between a mother and her baby in any way whatsoever.

I disagree with the government in the sense that it says that this is not a place to send messages. I have sat in this place for a year now, and it seems to me that we have done very little but send messages. We have sent messages on mandatory sentencing and we have sent messages on graffiti. We have sent messages on a variety of things because we want to make clear to the community the way that we feel, because we see that we are the leaders of the community. We need to show leadership on this matter. I take the Attorney General's point that perhaps the legislation already covers this circumstance. However, if we step that through, what the Attorney General is saying is that if a mother suffers discrimination, she should decide to take action, go to a tribunal and suffer the anxiety of going to that tribunal so that the tribunal can determine whether the words that exist in the act as it stands today have the effect of the words that we are proposing today in this bill.

Some of us have been around for some time. I do not count myself as being around for that long yet, but certainly as a result of my work on committees and so forth I have become very aware of how important the expression of the Parliament's intent is in the determination of the meaning of the laws that we pass. There seems to be no better way that we can express our intent on this matter than by standing up today and saying unequivocally, without any question, that we believe women have the right to feed their babies in public, and we believe that there is nothing to be ashamed of in their doing that. I do not feel the need to make a call for

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discretion. I do not feel the need to tell mothers that they should be discreet and hide in corners and so forth. I say that they should be proud of the fact that they are feeding their babies and that they are giving them the best start that they possibly can. We have the opportunity to put clarity into law. That may exist right now—I do not know—but it seems to me, as a non-lawyer, that those who are lawyers in the chamber and outside have some doubt about whether that clarity exists. The old joke is: ask two lawyers, get three opinions. I think we might be facing that here. I call on the government to live up to that and say, “Well, in fact, there is a problem with this because it is not absolutely clear. Let’s put that clarity in and let’s support the bill.”

MR P.B. WATSON (Albany) [4.50 pm]: We are talking about human beings. We are not talking about lawyers or a piece of paper; we are talking about mothers. The Attorney General can talk about the law, but when a mother wants to breastfeed her child in a public place, she is not wondering whether she is permitted to do so under, say, section 23(2)(c)—she wants to feed her baby. It is the most natural and healthy thing for a mother to breastfeed her child. I was just looking at the minister’s earlier speech about how healthy it is for mothers to breastfeed their children. All three of my children were breastfed. They all bonded with their mother. I am not saying that mothers who give their babies formula for various reasons will not bond with their children. When my daughter had her child and I saw her breastfeeding, I had tears in my eyes. It is the most natural thing.

I must applaud the member for Fremantle. Sometimes when we are in Parliament we forget about the human side. As she said, it is good to have women in Parliament. It is good to get a woman’s point of view. Sometimes we get caught up in the cocoon of Parliament when we look at legislation. The fairly new Attorney General has probably been caught up in the same way. He is looking at the lawful side of things but we must also look after the human aspect as members of Parliament. We must look after the mothers and their children. Members can say that breastfeeding will be covered by this legislation or that, but all a mother wants to do when she goes out is to feed her child. Members who have been out with children know that when they want to be fed, they want it done right away. They do not tell their mother that they want to be fed in 15 minutes when they get home or when they are out the back. When they want to be fed, they want to be fed right away. There is nothing better than a contented child but there is nothing worse than an unhappy child. In the future, the Attorney General might have a family and be out at a restaurant and his wife might want to feed her baby. She might not want to do that either, but she should have the opportunity to do that. Most mothers will cover their baby when they breastfeed when they are out because they realise that there are prejudiced people around. They should have the opportunity to be able to breastfeed their child.

I strongly support the member for Midlands for introducing the Equal Opportunity Amendment Bill. I have been told not to talk about them, but I must congratulate the Australian Breastfeeding Association group in Albany. It is a very good group. Every year I help sponsor the group for the national conference. I have a photograph of them in my office. I am the skinny guy in the middle. They are tremendous people and they should have the opportunity to breastfeed in public. I have been in Parliament for nine years, member for Fremantle, and I have heard all the maiden speeches that have been made in that time. The member for Fremantle’s speech is the one that pulled at my heartstrings the most. I fully support this bill.

MS R. SAFFIOTI (West Swan) [4.52 pm]: I was not going to speak on the Equal Opportunity Amendment Bill because I have a conflict of interest, which is quite obvious! However, I felt compelled to speak on it mainly because of the member for Fremantle’s contribution. She has highlighted that in recent years and months, women who breastfeed in public sometimes feel an enormous pressure to move to another place to do it. The key point is that if there were specific legislation for breastfeeding, it would be very easy for women who breastfeed in public to point to that legislation or to just know that the Western Australian Parliament had recently passed legislation to allow it to happen. Although I am not a lawyer, I am sure that the Attorney General is legally right. I am sure that there are relevant clauses throughout various pieces of legislation. As the member for Albany highlighted, the Attorney General is possibly correct to say that a woman is covered under, say, section 7(2) of a particular act or by the definition of a family or of a woman. However, a statement by the Parliament that the breastfeeding of an infant is allowed and is something that society approves of is quite important.

It is important also to realise that society has changed and that breastfeeding mothers are more likely to be in the workplace and in the community. That probably differs from when some government members had children, which would have been a number of years ago. Possibly that was not the case at that time. I believe that society has changed. Breastfeeding mothers are more likely to be in society and in the workplace. I congratulate the member for Midland for introducing this legislation into Parliament. She has demonstrated that by introducing specific legislation, we can demonstrate to the Western Australian community that breastfeeding is not only approved of, but also legal. It is recommended by most health professionals. As I said, I was not going to speak on the bill, given my situation, but I thought that the member for Fremantle’s contribution was quite significant. She demonstrated her personal experiences. I have never gone through that. I hope to breastfeed. Her example of

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being forced to move from a restaurant to a public toilet to breastfeed her child is enough to demonstrate that the existing law does not work. I do not want to attribute any motives to the Attorney General. I think he took a lawyer's point of view and gave us legal advice. It is quite surprising that there was little or no consultation with his party room about this legislation. Again, I will not make a judgement about that. In future, issues of this sensitive nature probably should be discussed more in the Liberal party room —

Mr P. Papalia: And with women.

Ms R. SAFFIOTI: Possibly with women too. The Attorney General gave a lawyer's response to what is a bigger issue. It is an issue about women and mothers in society.

Mr C.C. Porter: I think you are right. Mine is a legal perspective on it. I am not a father. It is a matter that I am happy to take to the party room. There might be different views on it. I cannot anticipate what the variety of views might be.

Ms R. SAFFIOTI: We are debating this legislation now.

Several members interjected.

The ACTING SPEAKER (Ms L.L. Baker): Order, members! The member for West Swan has the call.

Ms R. SAFFIOTI: I know that there have been some discussions across the chamber. I do not know what will happen but the legislation is in front of us. We are debating it now and we may be about to vote on it. If we vote on this legislation today, I encourage members on the other side—not just women—to seriously consider what they are voting for and about what statement the Western Australian Parliament is making today.

MRS L.M. HARVEY (Scarborough) [4.57 pm]: I will speak against the Equal Opportunity Amendment Bill. My reasons for doing so are wide and varied. I believe that we have a problem in this state, which is that we move too quickly to legislate and regulate to solve social problems. Quite often the legislative and regulatory approach to solving social problems is not necessarily the right approach. Often it does not achieve the goal that it intended to achieve.

Mr M.P. Whitely: You are undermining the Attorney General's argument. He is saying that the solution is a legal solution. What you are saying is undermining the response of the Attorney General.

Mrs L.M. HARVEY: With respect, member for Bassendean, I have made one statement and the member is pre-emptively telling me what he thinks I am saying.

Mr M.P. Whitely: I am just pointing out that you are undermining the Attorney General's argument.

Mrs L.M. HARVEY: I will not take the member's interjection, and I believe that I have the call.

The ACTING SPEAKER: The member for Scarborough has the call.

Mrs L.M. HARVEY: Thank you for your protection, Madam Acting Speaker. As I was saying, I do not believe a legislative and regulatory response to an issue of women experiencing perhaps some degree of discrimination when they breastfeed in public is necessarily the right approach. I, like other members in this house, have nursed children—two children in my case. I have four sisters, and between us we have breastfed 15 babies. Most of my friends went down the course of breastfeeding their children. The only time I have ever experienced any discrimination or been requested to stop nursing my baby has been in a shopping centre at the request of a female security guard. There is a very pragmatic, simple solution to someone approaching a woman in a shopping centre, restaurant or any other place and saying, "I don't like what you're doing nursing your baby there." The approach I took, as have many of my friends and my siblings, was to ask, "What would you prefer—a quietly suckling baby or a screaming baby outside your office, right in front of the phone you are trying to speak through?" It is a very simple, pragmatic solution.

Women are not victims. I get fed up and very frustrated in this place when we look to a legislative solution that basically undermines the rights of women by turning them into victims. Women do not need a leg up. We do not need some kind of legislative backing to verify our existence. We can stand on our own two feet, thank you very much. We can stand up for the rights of our children to be suckled wherever they need to be suckled if we happen to be nursing them. I find it highly offensive that we think that we need to create in this state a special law to protect women from some perceived discrimination. I have no doubt that mothers have experienced moments of discrimination and have been requested to move on because there are people who feel uncomfortable when they see women breastfeeding their children in various situations. I do not believe legislative protection is necessarily the right thing to deal with this. We have an Equal Opportunity Act. If people feel they are being discriminated against, they can go to the Equal Opportunity Commission and say, "I have experienced discrimination." I have to say that my experience out there in the real world —

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Mr P. Papalia: Will you take an interjection?

Mrs L.M. HARVEY: I will.

Mr P. Papalia: You are clearly a strong woman who is comfortable with it. Will you concede that there are women who are suffering potentially from depression post the delivery of their baby who are trying to breastfeed and may be quite significantly impacted on by a similar attitude to what you experienced and managed to deal with, but because of their mental state—it is not calling them a victim; it is a fact of life—they may suffer far more than you did?

Mrs L.M. HARVEY: I suggest to the member for Warnbro that if a new mother trying to breastfeed her baby is perhaps suffering the effects of post natal depression, the correct way to assist that woman is to provide the right kind of support mechanisms through a child health clinic or a midwife in the home to help her find the courage she needs to stand up for her rights and feed her children.

Mr P. Papalia: Would you not concede that the Parliament of Western Australia saying that this is a good thing and that it supports it is a positive thing and will support women trying to breastfeed in public?

Mrs L.M. HARVEY: I think every single member of Parliament should immediately release a media statement saying that we do not accept that women should be discriminated against when breastfeeding their children in public, and that we are leading the way and do not need some kind of legislative agenda to back up what may well be a non-existent problem.

Mr P. Papalia: We will just disagree.

Mrs L.M. HARVEY: I do not have much more to say on this. I felt that I needed to speak. I get really tired as a female, particularly a female Liberal member of Parliament, hearing people berating my colleagues and accusing them of being chauvinists and being unsympathetic to the needs of women in this state. It is utterly ridiculous. Many of the male members of Parliament on this side of the house, like the male members opposite, are married, have mothers, sisters and female colleagues, and they have come from backgrounds in which they have worked with women. It is quite appalling and quite out of order for them to come into this place and seek a legislative response to a problem that may not even exist and would perhaps be better solved by an educative process. That is all I have to say on the matter. Thank you for your time, Madam Acting Speaker.

MR M. McGOWAN (Rockingham) [5.05 pm]: I have followed this debate since March or April when this matter came to public attention. I saw it on the television and saw the Premier's response at that time when the member for Midland announced she would be introducing legislation. The Premier's response was that the Liberal Party would not oppose it. He said he had some reservations but he said that he would be crazy to say that he did not support protection for breastfeeding mothers, or words to that effect. They were the words he used. I heard him on the radio and saw him on the television saying words to the effect that, of course, he would not oppose legislation to protect breastfeeding mothers. I consulted someone I know who is breastfeeding—my wife. She has been breastfeeding for the past four months and will be for the next eight or so months. For those members who have not experienced it, it is regular and relentless; it does not stop—it is demanded all day and all night. That is why it is an issue. It is not as though a mother can just say, "I'll do it when I get home" or "I'll do it after work."

Mr C.J. Barnett: You presume on your side of the house that you have some sort of monopoly on parenthood. The attitude you take is extraordinary.

Mr M. McGOWAN: The Premier is the one who said that he would support legislation but is now saying that he will not support it.

Mr P. Papalia: Keep your word.

Mr M. McGOWAN: Exactly; the Premier should keep his word.

Mr C.J. Barnett interjected.

Mr M. McGOWAN: If I can finish what I was saying, Premier! The demand for breastfeeding is relentless. The reason a lot of women are required to breastfeed in public places is that babies are demanding and demand to be fed even in public places. A woman with a small child whose spouse might be working, who might not have a lot of family support or assistance—even if she does—is required to go shopping and to drop other children at school, and the requirement to breastfeed is always there. It is my experience that it is a relentless process—all day, all night. Women in this position are very vulnerable, not just because they might need to feed a baby in a public place where other people might be nearby and might be watching, but because her state of mind and state of body leave her a little bit more vulnerable than at other points in her life. After a woman gives birth, she is a

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little more vulnerable. That is why the issue of postnatal depression is real. It happens because the vulnerabilities and the physiological changes that occur after having a baby affect her.

I consulted my wife and asked her directly what she thought as a breastfeeding mother about legislative reform of this sort. She said, and I agree with her, "Although it will very rarely be necessary to impose this law because 95 per cent of the population accept the reality that women need to breastfeed in public, you need to send a message." I agree with that. We need to send a message, and to stick to the legalistic response that it is already covered by broad parameters that other states do not accept because they have specifically examined this issue and specifically legislated for it, does not send that message. To say that it is broadly covered does not send that message to people who might discriminate against a woman in that vulnerable state. I accept that argument. The strictly legalistic approach is not the right approach. To cover this specific event by a specific legislative mechanism sends the message. It does not infringe the existing law; it does not create, in my view, any problems with the law, considering other states have done so, but it sends a message to the people who might think that they can take advantage of or act in an offensive way towards a breastfeeding mother. I thought that the Premier accepted that. I heard him say on a number of occasions that he accepted that, and that is true and verifiable. If I could be bothered, I would go and get the transcripts. Everyone knows that is true—that the Premier accepted that. This legislation has been on the notice paper since 13 May—four months ago. The government has had four months to put this through the party room.

Mr C.J. Barnett: Did you raise with the Attorney General that you were going to bring it on this week?

Mr M. McGOWAN: The government has had four months to deal with the legislation and now the government is saying that it cannot examine it, even though the Premier said that he supported it. That is not good enough.

Mr C.J. Barnett: Did you raise with the Attorney General that you were intending to bring it on for debate?

Mr M. McGOWAN: It was on the notice paper for four months.

Mr C.J. Barnett: I know; I take the point.

Mr M. McGOWAN: We have introduced the legislation. The Premier understands the way the rules of this place work. He has been here for 20 years; he understands exactly how they work.

Mr C.J. Barnett: I do, but I am just asking you a question. Did you raise with the Attorney General that you were bringing it on for debate this week? Clearly, you did not.

Mr M. McGOWAN: I advised the Premier's staff, as required, what was on the agenda for today.

Mr C.J. Barnett: Yesterday.

Mr M. McGOWAN: The Premier understands. The Premier does not appear to understand —

Mr C.J. Barnett: I'm just making the point that you advised us yesterday that you wanted to debate it today. That is your right. But if you were serious about getting this legislation through, you would have raised with the government that you wanted to bring it on for debate, as every political party does on important legislation.

Several members interjected.

The ACTING SPEAKER (Mrs L.M. Harvey): Order, members!

Mr M. McGOWAN: I am sure the Premier remembers—he was Leader of the House for some years—that the usual practice is that legislation sits on the notice paper for three weeks and after that it can be brought on for debate. During that three-week period it is considered, as we do when caucus considers all the government's legislation. In the government's case, the party room should have considered the legislation during that three-week period and then it would have been ready for the legislation to be brought on. The Premier knows that is the way this place works. All the experienced members in this place know that is the way this place works.

The Premier's insensitivity and the insensitivity of the Attorney General are on show here today. The things the Premier said today about that poor family in Roebourne and the things he said about this issue show extreme insensitivity towards vulnerable people. The Premier should vote for this legislation.

MR M.P. WHITELY (Bassendean) [5.12 pm]: I will make a very brief contribution to the Equal Opportunity Amendment Bill 2009. First, I will pick up on the speech made by you, Madam Acting Speaker, as the member for Scarborough. You asked why we needed a response like this to a problem that might not even exist. The problem does exist. The problem exists because in the minds of certain sections of the public, they have a right to move on women who breastfeed their babies. We would not be debating this bill if the example that was highlighted earlier of the woman who was moved on in the hotel had not arisen. You also made the point, Madam Acting Speaker, that we do not need a legislative response, a point that actually undermined the Attorney General's defence. He stated that protection under the law exists already. He made the point that we do not need

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to do anything to address this situation because legal protections are already in place. His very rationale for not having this legislation was a legalistic argument. This debate has very clearly highlighted to me something about the Attorney General. I think the member for Fremantle either called him a chauvinist or hinted that he is a chauvinist. I do not think that that is true. I think the fundamental weakness in his approach to this legislation is that he thinks like a lawyer rather than a legislator. We are in this Parliament to do things to increase the public good. We are in this Parliament to make this state a better place in which to live. We are not in this Parliament to debate technical points about legal purities.

The ultimate test of the need for this legislation is that a minority in the public sphere—obviously the hotel worker is in that minority—believes that that woman did not have a legal right to breastfeed in public. What we can do as a Parliament is send a very clear message that she does in fact have that right and that we, as representatives of the public, believe that that is appropriate and that she has every right to do so. Ultimately, the test of this legislation must be: would it do damage and would it do good? Clearly, by the Attorney General's own admission, this legislation would do no damage, because all it would do is clarify a position that he has said is already established at law—that is, that women have a right to breastfeed in public. Clearly, it would not do any damage. Would it do good? Yes, of course it would, because it would make the situation absolutely crystal clear in the minds of the public. The Attorney General is being touted as the obvious replacement for the Premier when his tenure ends, but I think his approach to this legislation has flagged a fundamental weakness. He may have a good, precise and logical legal mind, but being a good legislator and being a good leader in the public's opinion—we all have a responsibility to do that—requires that he have the capacity for empathy. Frankly, I think he has displayed an absence of empathy. He would do well to think a little more like a human being and a little less like a lawyer when he approaches these sorts of issues.

Debate adjourned, on motion by **Mr J.E. McGrath**.