Mr GORTON (Higgins—) (NaN.NaN pm) - I move:

That in the opinion of this House homosexual acts between consenting adults in private should not be subject to the criminal law.

This is one of those rare occasions - those all too rare occasions - when the Parliament can act as it was originally theoretically intended to act; that is, to act as a collection of men, representing sections of the community, able to listen to a case and to make up their minds as to what is right without the constraints of party or of faction. The proposition which is before you, Mr Speaker, is that we should say that homosexual acts between consenting adults in private should not be punishable by the criminal law. The operative words which we all should have clearly in mind are 'consenting', 'adults' and 'in private'.

The motion says nothing about homosexual acts committed with minors. It says nothing about homosexual acts which are the result of constraint. It says nothing about public soliciting in the streets or creating a public nuisance. It having said nothing about that, those acts which are offences will, if this motion is carried, not be affected; they will continue to be offences. Therefore, agreement with the motion leaves the offences as they are. We are concerned with one question and one question only. That question is, I repeat: Should homosexual individuals who are adults, who both wish a homosexual relationship with each other, who do not flaunt it but who act in private, withdrawn from the public gaze, be dubbed criminals and be subject to punishment by the criminal law? I suggest to the House that they should not be treated in that way.

If the House agrees with such a suggestion, it is in no way approving homosexual acts; it is in now way condoning homosexual acts. It is merely asserting that such acts under such conditions ought not to be subject to prosecution and long terms of imprisonment. I have noted a number of arguments which have been advanced against the proposition which I have put before the House. I think the House should have these propositions against my ideas put before it and should judge those propositions and the answers which I suggest can properly be made to them. In the first place I have been informed that in moving such a motion or in suggesting such a course of action I am acting contrary to God's law. I do not know that I am qualified to interpret God's law. I have no hot line to the Almighty but I do know what those who are spokesmen for the relevant churches and the major churches in England and Australia - who presumably are interpreters of God's law - have to say on this matter. The original Wolfenden Committee in the United Kingdom - the United Kingdom Parliament passed a resolution such as I want this House to pass - was advised from the Roman Catholic Church, by a body set up under Cardinal Griffin, in full agreement with the Wolfenden Committee's report, that what I suggest this House should do should be done.

Mr Fulton (—) (NaN.NaN pm) - The Wolfenden report stunned Britain.

Mr GORTON (—) (NaN.NaN pm) - At the moment I am dealing with whether it is against God's law, not against your ideas. The point I make is that Cardinal Griffin did set up this committee. I do not know the situation in Australia. I do not believe that the Roman Catholic Church has take a position on it. I think it is neutral. However I do know that in the 'Catholic Weekly' of 4 October this year there is a strong and compelling argument printed as to why what I am suggesting to the House should be done should be done. I do not wish to suggest to the House that this is the opinion of the 'Catholic Weekly' but I suggest that if the 'Catholic Weekly' puts such a case prominently in its paper it is clear that the church is not opposed to it. The Presbyterian Church has considered this matter and I should like to quote what Douglas Cole, the Convener, had to say about that debate. He said:

The Assembly declared-

That is, the Presbyterian Assembly- that, while it believes that homosexuality is contrary to man's ethical development, that homosexuality is productive of personal moral disintegration rather than any true personal wellbeing and happiness, it nonetheless supports the Wolfenden report that homosexual behaviour between 2
consenting adults in private should no longer be a criminal offence and that the appropriate authorities should be advised accordingly.

In commenting on this the following relevant words were used:

Many would agree with one of the central contentions of the Wolfenden report, viz., that it is not the function of the law to intervene in the private morality of citizens. Nor is it the duty of the Church to try to impose Christian standards, or any other religious standards upon people by means of law. . . . The present law encourages blackmail, and may also encourage the seduction of children by those who would otherwise prefer adult contacts, but who imagine that child seduction is less risky.

Lord Jowitt testified that during the time that he was British Attorney-General, 95 per cent of all blackmail cases had a homosexual origin.

In conclusion, the spokesman for this Church quoted the words of W. D. G. Cole. He asked:

Is the Church a fellowship of reconciliation, of love and accepting forgiveness, or is it made up of self-righteous Pharisees, gossiping and judging and rejecting? Does it surround the sinner with hostility and threaten him with harm; or does it welcome him into the community of those who know themselves to stand in need of forgiveness, who cannot cast the first stone because they, too, fall short of the demands of a righteous God?

This aspect has been put succinctly in the old jingle that some members of this House may have heard about people who compound the sins they are inclined to, by damning those they have no minds to. The Church of England in its report on homosexuality in 1971 reached the same conclusion. It said:

We recommend that the special offences, sodomy and attempts to commit sodomy, which presently carry higher penalties, be repealed and that the present provisions of the Victorian Crimes Act which renders criminal those homosexual acts committed in private between consulting males of 18 years or over should be repealed,

I suggest to the House that if the argument is advanced that considering this matter is against God's law, those speaking for the major churches in Australia do not agree with that contention but rather, I would think, agree with me. I cannot imagine it to have been a function of God's law to commit people who are built differently in some way from ourselves to live a twilight life of guilt and fear.

I have heard it advanced as a suggestion why this should not be done that there will be an upsurge in homosexual activity if this resolution is accepted and translated into law. Country after country in Europe - country after country throughout the world - has changed its laws from those which used to apply 600 years ago, as these laws used to, and there is no evidence from any one of those countries that there was any upsurge in homosexual activity as a result. There being people who are strongly opposed to this suggestion, that evidence would have been forthcoming if that evidence had been in existence. We have been told that this has been a law for 600 years, and indeed it has. It used .to be subject to death in early Britain As late as 1861 in Britain the law made it not only a punishable offence - a gaolable offence - but laid down that the minimum term of imprisonment for it must be 10 years.

Because a law has been in existence 300, 400 or SOO years, is anybody to argue that therefore that is necessarily a good law? If it was we would still be hanging people for sheep stealing or transporting them for stealing a silk handkerchief.

The question is posed: What will happen in the armed Services if this is done. Will discipline not be completely destroyed? There are 2 answers to that. One is that the Services are able, and always have been able, to write their own laws and denote their own offences. If in fact this were to be found in the Services to be destructive of discipline the Services can themselves, even if we pass this resolution, take the action necessary to overcome that. There is perhaps another answer which in the House of Lords debate was advanced, and that is that homosexuality between females is not an offence now. Does anybody suggest, therefore, that the women's Services have no discipline and are completely destroyed because they are not subject to this law. It has been suggested that personal abhorrence can persuade many people to object to passing such a resolution - that because a person himself shrinks almost in horror from the concept of a homosexual relationship applying to himself; that because he finds it disgusting, therefore it is reasonable to punish it by civil law. I call to my assistance on this argument words which were used in the House of Lords debate and which are much better and much more cogent than words I could use myself. The words are these:

The third point to which I would draw Your Lordship's notice - and it is an argument which seems to me to be quite irrational - is that based on the revulsion which people feel at the behaviour of the homosexual. Many, who want the law changed share this revulsion.
But surely no one sincerely believes that everything which he personally feels to be unpleasant or disgusting should for that reason be a crime. The fundamental point at issue here is not whether we can or cannot stomach the thought of this or that type of sexual behaviour; it is whether or not we believe that true morality and the best way of cultivating personal responsibility is to be found through freedom or through compulsion, and whether or not we believe that the present law on this subject does more harm than good.

According to those who have carefully gone into this matter, including representatives of the churches, it does do more harm than good. We have always been careful over the years to get rid of the confusion between the ecclesiastical idea of what is sin and the State's idea of what is a crime. Lord Goddard said:

We must draw distinction between conduct which may be held by some to be sinful and conduct which ought to be held by the State to be criminal.

That is the distinction which I seek to draw now. There is one other argument that has been advanced and that is: Why change the law? It is not usually applied. It is only infrequently applied. Therefore, leave it as it is, I would regard that argument as unморal and indeed as a completely wrong argument from the point of view of any member of Parliament. It is immoral because it seeks to shelve the question and to say: A man is subject to this sort of threat but the threat is rarely carried out so I can salve my conscience by just letting it go because rarely is the threat carried out. But it is wrong from the point of view of a Parliament or anybody with a vestige of interest in the legal position because it is clear that a bad law is a law which is not applied, which has fallen into desuetude. A bad law is a law which is not applied. It must be bad, and a law which is applied in a discriminatory way - sometimes applied and sometimes not - must be a worse law. A law which is sometimes applied and sometimes not and which gives an opportunity for blackmail must be the worst law of the lot. Yet this is precisely the law as it stands at present. It is occasionally applied, not often. It gives great opportunity for blackmail and it gives an opportunity for some bashing because quite often the victim who is bashed knows that complaint might lead to a charge against him under the law as it exists. All this in my view must completely counter the suggestion that the law should be left as it is because it is rarely applied.

Having dealt with the reasons that have been advanced against this proposition I now want to deal with the reasons for it. First, I believe that it is unjust and wrong to dub as criminals people who in some way are built differently from ourselves, who may not be able to help themselves, who in many cases I believe live lives of desperation and pain because of the way in which they were constructed.

Mr JAMES (HUNTER, NEW SOUTH WALES—) (NaN.NaN pm) - Committing suicide.

Mr GORTON (—) (NaN.NaN pm) - And sometimes committing suicide because of it. It is wrong and unjust in my opinion to impose on top of that the threat of gaol, the threat of being dubbed a criminal. Do not forget that every person sitting in this House is not just going to cross the floor or sit in his seat and that will be the end of the matter. What happens here will affect not thousands or tens of thousands but quite possibly hundreds of thousands of individuals. It will leave them, of course, with the social condemnation which this country has for them. It will leave them with that desperation of which I spoke and on which the honourable member for Hunter agreed with me.

Mr James (—) (NaN.NaN pm) - I agree with all you have said, which is surprising.

Mr Gorton (—) (NaN.NaN pm) - Good. It will remove from them one overriding fear of state laws applied against them. That fear should not be allowed to remain.

I do not know that there is much more for me to say, on the matter. I have sought to indicate to this House the arguments which can be advanced against those who say that this is wrong. Everyone sitting here ought to consider himself at this moment as a judge. He ought to say to himself: 'If I were sitting in a seat and before me was brought a man who has been convicted of, in private, committing homosexual acts with some other adult who wanted him to, would I, if I bad to make the law, send that man to gaol? Would I happily do that? If honourable members would not do that, it is equally wrong to vote that the law should continue as it is because they are then acting as judges, to say that this man can be sent to gaol.

Basically, this is a matter for each individual. It is not a matter to be decided on emotion; it is a matter to be decided on justice. It is a matter which, in the ultimate, is what this Parliament is all about because every action we take, however important in the national field, has one ultimate justification - the welfare of the individual.
citizen of Australia. That is what we all want and this is an occasion on which we can make up our minds and cast our judgments as to whether, because something has continued for a long time, it should continue still; as to whether unfortunate people should have their lot made yet more unfortunate; as to who would be hurt or harmed by private actions. Let us put out of our minds what sometimes is' in mine - the thought of people walking hand in hand down the street or with their arms around each other or in other ways acting in ways which we find objectionable. Let us think instead of the thousands of men who are not like that, who could not be discovered in an ordinary glance at the population, who hurt no one, harm no one and yet have this hanging over them.