COMPENDIUM TO

OPPRESSION UPON REFLECTION 1974

Peter de Waal

Compendium to:

Oppression Upon Reflection 1974

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It is often up to minorities to write their own history. But it is the nation's history that benefits from them doing so. That is the value of this compendium of CAMP's 1974 political action. Urgency for change is always very real for those who suffer the consequences of unjust treatment in society.

Attitudes normally reflect more than a moment's thought. They're connected to deeply rooted values and culture. It will always be left to the brave few to drive cultural change. These pages explain the burden of effecting change.

Despite a 1973 *Australian Journal of Psychology* opinion poll showing nearly half the Australian population supporting the legalisation of homosexuality, it took a decade before many states would reflect these attitudes in law. It was not until the 1992 *Toonen v Australia* decision that the final state in Australia decriminalised consensual sex between men. CAMP was vital to these victories; behind a single decision was a movement that had been building the case for decades. *Toonen* was the final sum, of parts.

CAMP was robust, aggressive and often antagonistic in its drive to decriminalise homosexuality in Australia, and particularly in New South Wales. It sought law reform when it was not popular. This compendium reveals the stunning efforts made by CAMP and its allies to pull every lever available: motions in Federal Parliament, opinion polls, surveys, seminars, media stories, grant funding applications, resolutions within political parties and grassroots political activism. More often than not, CAMP fought against incredible opposition from cultural, religious and political figures.

This history also emphasises the vital role of mainstream allies. In his motion to decriminalise homosexuality former Prime Minister, John Gorton, argued he could not "imagine it to have been a function of God's law to commit people who are differently built … to live a twilight life of guilt and fear."

The stories in these pages tell the tale of lived State-sanctioned discrimination. The blunt instrument of law didn't just punish sexual acts; it corroded the dignity enjoyed in all parts of life. Couples were forced into silence about their relationship. This led to pervasive institutional discrimination in all parts of life, from promotions in the work environment, to access to compensation schemes and superannuation. The tone was set well by a 1974 cartoon [see page 422] that included a person holding a banner that said "when loving is a crime only the hateful shall walk free".

A demonstration of how institutionalised discrimination can pervade all aspects of life is evident in an exchange around listing CAMP's telephone number in the Yellow Pages. CAMP wanted it listed as "Organisations – Homosexual", but the 'Headings Committee' was only prepared to list it as "Organisations – Miscellaneous", which guaranteed its relegation to obscurity.

These pages map important lessons for the future. This compendium demonstrates that laws are only the beginning. It is 'lived' behaviour and culture that promotes a culture of tolerance, respect and inclusion. These pages map history. They tell human stories; our community's stories, and ensures they cannot be forgotten.

Tim Wilson [1]
Human Rights Commissioner
September 2014

[1] Tim Wilson was appointed Australia's Human Rights Commissioner, February 2014.

Anyone who has tried to understand the changes in Australian society over the past half-century will be acutely aware of how difficult a process this can be. Even to narrow one's attention to a single issue – gay rights, say – hardly diminishes the size of the task. The sheer scope of the changes, their complexity, and the various levels at which they have taken place make this work of understanding an immense undertaking.

Just how immense is indicated by this *Compendium*. Here we have a volume which aims to capture a single year in the life of the Australian gay rights movement. In 1974, the co-presidents of the NSW branch of the Campaign Against Moral Persecution issued what amounted to their annual report, *Oppression Upon Reflection 1974*. In it they identified and discussed the key events of the previous year – the activities of the movement, and of its friends and its enemies.

The diversity of the matters raised in the report may surprise many. It is often imagined that the issues around gay and lesbian rights are broader today than they were in the past – and yet, superannuation, religious persecution, equality before the law, employment security are all here, having been brought onto the political agenda by 1974 by lesbian and gay activists.

Given this, merely to have reprinted *Oppression Upon Reflection 1974* would have been a worthy task. Peter de Waal has, however, gone very much further than that. He has set out to unearth the material which underlies the issues raised in the report; to find the research, the surveys, the letters and articles and manifestos and editorials which were such an important part of gay and lesbian activism in 1974.

It is a staggering achievement and, as a resource for historians, utterly invaluable. His patience and doggedness – and success – is awe-inspiring.

But the *Compendium* has a significance that goes beyond the gay and lesbian movement and its history. What we have here a snapshot that captures, in all its richness and complexity, just what social movements are. It shows us, too, what social change is – the outcome of a myriad of struggles, taking place through the efforts of hundreds of people, from all walks of life, at all levels of society. Those of us who have written about political activism and social change have tried very hard to capture all this. Peter's *Compendium* does so in a striking and remarkably successful way.

Dr Graham Willett [2], [2001]

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[2] Dr Willett is currently President of the Melbourne base Australian Lesbian and Gay Archives.

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The primary reason for putting together this Compendium was that the vast amount of political activities undertaken during 1974 by CAMP NSW, as documented in the original seventy-two page booklet entitled: *Oppression Upon Reflection 1974*, deserve much more detailed documentation and exploration.

Some of the issues which were current for CAMP NSW in 1974 (to name only a few: Superannuation rights for our partners; Legal recognition of relationships – see Family Register – and; a guarantee of our basic human rights) remain unresolved important issues for lesbians and gays despite continued political efforts by many since the mid 70s.

Another reason, and perhaps equally important, is that I feel very strongly about recording our history and making it publicly accessible. During my research it became apparent that after only a short period of twenty-five years a vast amonnt of materials are no longer available; this vindicates, I suppose, my obsession with recording our history.

This publication has a number of limitations. One of these was the inability to gain access to or the availabiity of government documents because of general thirty-year restrictions placed on them; many have in fact been destroyed already. Because of this the other side of the picture – the government's documents, its reasoning, deliberations, decisions, or no-decisions for that matter – which of course played a very major role in all of the CAMP NSW 1974 political activities – unfortunately are not included.

Some of the source materials included in this *Compendium …* are available in major libraries. These materials have been incorporated for the ease of future researchers in order to provide them with a stepping-stone to initiate more detailed research.

Basically what I have done in this *Compendium …* is reproduce the original *Oppression Upon Reflection 1974* booklet using the same chapter and section headings. Then I have included all the secondary source materials (if available) referred to in it. From there I have sometimes moved to a tertiary and even fourth level of source material.

Let me paint the picture using the Gorton/Cass October 1973 decriminalisation of homosexuality motion which is included in the original *Oppression …* Both John Gorton and Dr Moss Cass, in their parliamentary speeches supporting the motion, (these are the secondary source level) make references to various public opinion surveys. One of these is the Chappell and Wilson 1970 survey, (this becomes the tertiary source level). This, in tum, has extensive references included pointing to the proceedings of the 1970 University of Sydney, Institute of Criminology Seminar (these being the fourth level source) entitled: *Male Sex Offences in Public Places*.

The reason for choosing this multi-source-level method was that it gives, what I believe, a flavour of what was around at the time when these lesbian and gay issues or initiatives were discussed. Also this method provides an insight, albeit limited, into the information and knowledge upon which the current attitudes towards lesbians and gays were based.

Some of the original documents in this *Compendium …* are held at the Mitchell Library, Sydney, at ML MSS 6089/1-5, while the complete documents for *Oppression Upon Reflection 1974* were deposited with the National Library in Canberra at MS 6313. The materials accumulated to produce this *Compendium …* will be deposited with the Mitchell Library in Sydney.

PdW
April 2001

Text in the Compendium using this font – Arial – is that taken from the original publication entitled: *Oppression Upon Reflection 1974*.

Italic text in the Compendium are generally the names of newspapers, serials or other publications.

Text in [square brackets] is added by the author and usually not found in the original material.

Where possible print media article have been included in a two-columns format.

Sic is used in cases where a misspelling occur, for example: klemptomania [sic–kleptomania].

Text omitted, either deliberately or otherwise, is indicated using ellipsis, thus: …

In line with in the fifth edition of the *Style Manual for Authors, Editors and Printers* standards single quotation marks will in generally be used in this Compendium to identify exact words of a writer or speaker. Double quotation marks are used only for quotations within quotations.

The referencing system of various levels of sources used in this document is as follows:

- The prefix 1:– is used in this publication to indicate a chapter.
- 1:–1. – signifies the chapter number followed by primary sources number.
- Secondary sources are shown as follows: 1:–1 .1. –
- Tertiary sources are identified as follows: 1:–1 .1.1. –
- Finally, fourth level sources in this document are shown as: 1:–1 .1.1.1. –

… all minority groups suffer by being different. But sexuality and identity are so profoundly connected, and so profoundly important, that homosexuals in a dominant heterosexual society live under unique and potentially crippling psychological pressure. In Australia, they also have to cope with legal, social and institutional discrimination. Both sources of pressure, operating simultaneously every day, mean that homosexuals suffer double for their difference, they are victims of double jeopardy. Difficulties such as these, however, have not prevented homosexuality from enduring through the ages. Whether treated as an illness a crime, or an aberration, homosexuality has survived. As an expression of sexual preference, its validity has been confirmed by history.

The Hon Dr Moses Henry Cass, ALP MHR for the Vic seat of Maribyrnong and Minister for the Environment and Conservation, (see: page 7).

Sandra Fox, Administrator, Institute of Criminology, Law Faculty, University of Sydney. For her assistance in supplying a copy of the *Proceedings of the Institute of Criminology – Male Sex Offences in Public Places*.

Antoinette Buchanan, Archivist, Ferguson Memorial Library, Presbyterian Church of Australia for her assistance with finding information relating to the NSW and General Assemblies of the church.

Warren Gotley, Consultant, Anglican Diocese of Sydney for Church Acts and Ordinances.

Graeme Powell, Manuscript Librarian, National Library of Australia in Canberra, to providing access to the original documentation of *Oppression Upon Reflection 1974* deposited in September 1980. (MS6313, folders 9,10,11,12 and 13).

Staff at the Leichhardt Municipal Library and its Balmain Branch.

Guy Tranter, Assistant Archivist, ABC's Document Archives for his assistance in attempting to locate transcripts of various ABC TV programs.

Jean Walker, ABC's Radio Archives, for locating and providing various ABC Radio programs.

Brian Morris, Registrar, Anglican Diocese of Canberra and Goulburn for assistance with the text of the Diocese's 1971 homosexuality motion.

Karen Doyle, National Party of Australia – NSW. For permission to gain access to the 1974 Country Party of NSW's Annual Conference Proceedings.

Celia Blake and Paul Wood respectively of the Vic and NSW Offices of the National Archives of Australia for organising access to the transcripts of proceedings of the Royal Commission on Human Relationships.

The Board, Gay and Lesbian Counselling Service of NSW for access to their ML MSS 5836 collection at the NSW State library.

The Hon Dr Moses Henry Cass for permission to examine his personal papers.

Andrew Griffin at the Melbourne office of the National Archives of Australia for organising access to Dr Cass's papers.

The Hon Bill Hayden AO for permission to examine his Ministerial papers held at the National Library of Australian and the National Archives of Australia.

Malcolm I Cowan for providing information about the General Assembly of the Presbyterian Church in NSW, the NSW Methodist Conference and the Congregational Union of NSW.

Andrea McDonald, Morgan Poll Manager for details on bow to interpreted Morgan Gallup Poll No 41, August 1974.

Linda Macfarlane and John Pepper, National Archives of Australia, Canberra for their assistance in trying to locate CAMP NSW's correspondence with both Senator Don Willesee, Foreign Affairs Minister and Bill Hayden, Minister for Social Security.

Dr Graham Willett for his assistance with details of the February 1972 ANOP Poll and a copy of his interview with Dr Moss Cass.

ABC	Australian Broadcasting Commission/Corporation
ACOA	Administrative and Clerical Officers' Association
ACR	Australian Church Record, The
ACT	Australian Capitol Territory
ACT HLRS	Australian Capitol Territory Homosexual Law Reform Society
ACTU	Australian Council of Trade Unions
AGPS	Australian Government Publishing Service
ALP	Australian Labor Party
ANOP	Australian Nationwide Opinion Polls
AP	Australia Party, The
APS	Australian Public Service
AUS	Australian Union of Students
AWE	Average Weekly Earnings
BA	Batchelor of Arts
BLF NSW	Builders Labourers Federation of NSW
CAC	Chile Action Committee
CAE	College of Advanced Education
CAMP NSW	Campaign Against Moral Persecution (NSW Branch)
CAMP SA	Campaign Against Moral Persecution (SA Branch)
CAMP WA	Campaign Against Moral Persecution (WA Branch)
CASE	Christian Action Squads Everywhere
CLR	Commonwealth Law Reports
Cof E	Church of England
col(s).	Columns(s)
CP	Country Party
CPI	Consumer Price Index
CSR	Commonwealth Sugar Refineries
CT	Canberra Times, The
Cwlth	Commonwealth
DCC	Department of Christian Citizenship
DLP	Democratic Labour Party
FOI	Freedom of Information
FOL	Festival of Light
FRCP	Fellow of the Royal College of Psychiatrists
GPO	General Post Office
HLR	Homosexual Law Reform
HMSO	Her Majesty's Stationery Office
HRB	Homosexuals Report Back
hr(s)	Hour(s)
ILO	International Labour Organisation
IVP	Inter Varsity Press
IWY	International Women's Year
LP	Liberal Party
LLB	Bachelor of Law
MA	Master of Arts
MHR	Member of the Federal House of Representatives
MLA	Member of the Legislative Assembly
MLC	Member of the Legislative Council
MP	Member of Parliament
n.a.	No author
n.d.	No date
no.	Number(s)
n.p.	No page
NSW	New South Wales
NT	New Testament or Northern Territory
NZ	New Zealand
OBE	Order of the British Empire
OT	Old Testament
OUP	Oxford University Press
PAF	Phone-A-Friend
PMG	Post Master General
PP	Parliamentary Paper
QC	Queens Counsel
Qld	Queensland
R.	Rex (King) or Regina (Queen)
RAF	Royal Air Force (British)
ROH	Report on Homosexuality
s.	Section
SA	South Australia(n)
SCM	Student Christian Movement
ss.	Sections
SPCK	Society for the Promotion of Christian Knowledge
STD	Sexual Transmitted Disease
Tas	Tasmania(n)
TEV	Today's English (Biblical) Version
UK	United Kingdom
UN	United Nations
USA	United States of America
v.	Versus
VD	Venereal Disease
Vic	Victoria(n)
VLR	Victorian Law Reports
vol.	Volume(s)
WA	Western Australia(n)
WEL	Women's Electoral Lobby
WRAAC	Women's Royal Australian Army Corps

It would never be contested that the work performed by voluntary movements is left unsung and unknown much more often than it is bruited abroad. The simple reason is that the volunteers are too busy getting the work done to be able to find time to record their efforts. This has certainly been true of CAMP [3] [Campaign Against Moral Persecution] NSW since its birth in July 1970.

1974 has been a year which has seen more direct political activity by CAMP NSW than any year before, and it goes without mention that much of this work has been produced by a very few people.

The many hours of effort given freely by those who have been involved in Phone-A-Friend [4] and in the Coffee Shop [5] are not chronicled here – yet there can be few members of CAMP who are unaware that someone from CAMP can be reached either in person or on the telephone any day of the year.

This publication is the story of the direct political action which has been carried out right through the past year, and it has been written by two of the people most actively involved in this action. They are extraordinarily capable volunteers, for they have worked throughout the year, and now have created time enough to record this work. We share their enthusiasm that the story must be told to as many people as possible, so that the whole of society can learn about the task that lies ahead; and lend support and encouragement to CAMP NSW to get an with that task.

Margaret McMann
Peter Bonsall-Boone

Co Presidents
January 1975

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[3] In the late 60s and early 70s the word CAMP was used to describe a person who was homosexual. *The Macquarie Dictionary* describes camp as: 'to act in a camp manner', or 'to be a homosexual'.

[4] Phone-A-Friend was established in early 1973 at 16 Terry Street, Balmain as an outreach to the gay and lesbian community. The idea and translated name came from Sweden where such a service had been established the previous year by Christer Stahl. Phone-A-Friend was the predecessor to what is now the Gay and Lesbian Counselling Service.

[5] The CAMP NSW Centre at the time was at 33a Glebe Point Road, Glebe. Upstairs at the centre (see page 383) were meeting rooms, a library and a specific room for the Phone-A-Friend telephone service. Downstairs (see page 382) was a large room and kitchen the former was used as a drop-in-centre and was called the Coffee Shop.

1974 has seen CAMP, as part of its work, reaching into many areas in which the oppressors of homosexuals most clearly manifest this oppression, challenging the bases of their attitudes and the structures which express and give support to those attitudes. These moves are documented in the following pages.

Our oppressors have shown many faces: from clergyman Knox [see page 488] who thinks the matter is one for God to handle, to parliamentarian Wentworth [see page 536] who 'appreciates the difficulties in which we are placed', but cautions:

> The most import thing is that nothing you do should be allowed to encourage more people to involve themselves in these same difficulties [see page xxx],

to Prime Minister Whitlam who asserts that the Australian Government has used every administrative discretion available to prevent discrimination against homosexuals [see pages xxx, 212], but casts our demands to one side, to Minister for Social Security [Bill] Hayden who assures CAMP that its pioneer work amongst the homosexual community is well appreciated but both fails to do anything to ensure the continuance of that work and to support any of our initiatives [see pages xxxi, 374].

The most that has been achieved from the whole range of these activities has been sympathetic noises. **Nothing** positive has been achieved.

Challenging basic structures (and there are other ways to do this than those documented here) is not an acceptable activity and oppressors will do and have done all they can to ensure that liberation does not succeed.

What is needed, then, is that the oppressed take up the cry of liberation, that homosexuals shout 'We demand justice' and join together in the struggle to achieve this.

Sister and brother homosexuals, we will only shake off the chains of oppression and be truly free when we pressure the governments to recognise life-styles other than the nuclear family; when we have the courage to face family and friends with the fact of our homosexuality; when we reject the label sick; when we throw the label sinful back at the clergy and force them to re-read their bibles; when we refuse to allow people to exploit our oppression. When we realise that those who make the rules in our society do not have a monopoly on the truth, that there is nothing unchangeable about the System they have created.

Be strong and proud … demand change … struggle to obtain it.

mc [Michael Clohesy]
pdw [Peter de Waal]

A. Clergy man Knox [6]

I have received your letter [7] about the Report on Homosexuality with suggested actions I might take.

I think, however, the action urged by St Paul, namely, mourning before God acts of sexual aberrations in the church at Corinth is a more effective method since the sin is not so much against the congregation or the synod but against God and His mind so clearly made known to us in holy scripture and also, I would judge, made known through our consciences. And so it is to God that I intend to refer the anomaly to which you have drawn my attention but which I was aware of before I received your letter.

B. CAMP NSW Letter to WC Wentworth, 7 August 1974

I am enclosing a letter which I have sent to *The Manly Daily*, [8] in response to their editorial last Saturday, which followed an article in last Friday's edition.

Your attitude to homosexuals and homosexuality is well known and I would venture to state would probably be in accord with the Manly Daily. Can I persuade you to rethink your position? Like you, I am [Peter Bonsall-Boone] an Anglican, and I am a homosexual a practising homosexual I have known the Reverend John Drayton for over 16 years, and I remain a close friend of the Reverend Bruce Horton, neither of these men, for all their closeness to the Church which we both love, has seen fit to lower homosexuality to the level at which you wish to see it.

I can assure that the northern beaches of Sydney offer the homosexual the greatest chance of satisfaction and relief of all parts of society, and yet you choose to remain ignorant of this. If only the present tenor of society would change, and homosexuals would feel free to express themselves **as homosexuals** I am sure you would find your position rather less secure than it seems to be at the moment.

C. WC Wentworth Letter to CAMP NSW, 13 August 1974 [9]

Thank you for your letter of 7 August. Although I do not support your views I can appreciate the difficulties in which you are placed. The most important thing is that nothing you do should be allowed to encourage more people to involve themselves in those same difficulties.

[The letter concluded with]: Dictated by Mr Wentworth prior to his departure overseas yesterday.

D. Gough Whitlam, Prime Minister Letter to CAMP NSW, 22 October 1974

Thank you tor your further letter of 16 August [see page 212]. In that letter you say you fear that your original letter was not read. That is not so. It was in fact read but as you point out, not correctly. I regret very much that this occurred and also that it has taken until now for you to receive a further reply.

By this time, however, you will have had a reply, from the Department of Foreign Affairs, to your letter to Senator Willesee. Given that reply, which I have seen, I believe you will agree that the Covenant and indeed the guarantees which the Human Rights Bill will contain, could be jeopardized by any attempt by Australia to raise an amendment in the UN. This is not to suggest that the Government is now no longer sympathetic to the aims of your organisation or that these aims would not be reflected in future initiatives by the Australian Government as you seem to imply in your letter. It is, rather, the Government's view that the very real achievements of the current Conventions on Civil and Political Rights should not in any way be imperilled.

You refer to the commitment in the Prime Minister's 1974 policy speech to a better Australian society. The Prime Minister and his Government stand by that commitment. They also, incidentally, stand by their intention to try and remove **all** forms of discrimination in our society thought they are

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[6] See: 6:–2.3 page 488, 'DB Knox, Principal Moore Theological College Letter to CAMP NSW'.

[7] See: 6:–2.2 page 486, 'Clohesy and de Waal letters to Various Sydney Anglican Clergy'.

[8] See: 8:–1.10, page 536, 'Homosexuality: A Valid Life-style', *The Manly Daily*, letters, Saturday, 10 August1974, p. 4.

[9] The Hon William Charles Wentworth, LP MHR for the NSW seat of MacKellar.

well aware that the pettiness of political life which you lament has, in its parliamentary expression by the Opposition, slowed the pace at which such discrimination can be overcome.

Please be assured that your faith in the Prima Minister, and that of other groups, given in 1972 and 1974 was not misplaced. In the twenty-two months that have elapsed since December 1972 a great deal has been achieved. The Government has gone as far as possible in removing practical discrimination against homosexuals by the use of every administrative discretion available to it.

I think you will agree, however, that in the circumstances it would be unreasonable to expect that in such a short time the Government could reverse the discriminatory social attitudes and the associated legal codes that as you will be aware have their origins in British Criminal Law, dating back to 1885.

I regret that you did not receive this, as you should have, in reply to your letter of 24 July 1974.

E. Bill Hayden, Minister tor Social Security Letter to CAMP NSW, 21 November 1974

Thank you for your letter of 7 August [10] about an editorial in a Sydney newspaper. Your letter of 9 October concerning financial assistance to purchase the club centre and coffee shop used by your organisation, has also been received. I regret the delay in replying to your earlier letter.

Needless to say I am most concerned at evidence of continuing ignorance surrounding homosexual people in the community particularly when various kinds of discrimination is involved. In this regard, I have taken steps to ensure that no discrimination against homosexuals occurs in their dealings with the Department of Social Security.

You may be assured that your pioneer work amongst the homosexual community is well appreciated and I recognise the need for the continuation of the services and facilities which you are providing. However I regret that no program exists at present under which funds could be made available to your Organisation.

As you may know, the Australian Assistance Plan is current being developed on a pilot basis during which a certain number of Regional Councils are being set up. These Councils will be responsible for planning services for their regions, including recommending the provision of assistance trom the Government for Social Welfare developments.

When the pilot period has been completed, it is expected that legislation will be drafted to provide for the full implementation of the Plan. Regional Councils should then be established in all regions. When this occurs you may wish to present any proposal to the Council in your region for consideration.

Thank you for writing to me about these matters and I trust that you will be able to obtain the necessary finance to enable you to purchase the Glebe [33a Glebe Point Road] property.

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[10] Mr Bill Hayden was contacted on 24 November1998 to ascertain if he still had a copy of CAMP NSW's letter, dated 7 August 1974, in his possession. Mr Hayden, personal assistant, Yvonne Tully, responded on 27 November 1998 that: 'He does not have a copy in his possession but he is quite happy to grant his permission to access the appropriate Ministerial files [with the National Library] in your efforts to locate the letter.' Graeme Powell, Manuscript Librarian at the National Library of Australia was contacted on 3 December 1998 to check if the relevant correspondence was held. The manuscript librarian responded on 10 December 1998 stating that: '… the Hayden Papers housed at the National Library are essentially Hayden's own private records of his public career. The majority of papers documenting his official role as Minister for Social Security have been deposited in the National Archives of Australia.' Consequently Mr Hayden was approached on 14 December 1998 to gain his permission to have access to papers held at the Archives. Mr Hayden very promptly and positively responded on 15 December 1998. On 19 May 1999 Linda Macfarlane, Access Services, National Archives of Australia, was contacted to ascertain if CAMP NSW's letter dated 7 August 1974 held there. On 23 June 1999 John Pepper from the Archive's Access Services responded that he had '… conducted a search through the personal record collections of Mr Bill Hayden which are in the custody of the National Archives. Unfortunately, these records are dated around the time of Mr Hayden's ministerial appointment to the Department of Foreign Affairs …' Mr Pepper further stated that '… the letter you are looking for might be located in the general correspondence records of the Department of Social Security.' A search needed to be undertaken through the index cards held at the Archives. The result of that search, '… unfortunately failed to locate any reference to the letter that you refer to.' Mr Pepper further added that he had searched indexes A2961 – Subject index cards for correspondence files; A2962 – Organisation Index Cards for correspondence files; and A2964 – Name Index Cards for correspondence files. However, it is almost certain, seeing that he covered the Social Security portfolio, that the letter was about the following: 'Opinion – The Fairy Godmother', *The Manly Daily*, editorial, Saturday, 3 August 1974, p. 2. (see page 535).

CHAPTER ONE ≈ POLITICAL ARENA – AUSTRALIAN GOVERNMENT

1:–1. – Law Change

On 18 October 1973, John Gorton [11] moved in the [Federal] House of Representatives:

> That in the opinion of this House homosexual acts between consenting adults in private should not be subject to the criminal law. [12]

This motion was passed 64 votes to 40 [see page 13]. Most Australians obtained the false impression that as a result of this, the laws relating to homosexual acts had been amended. In fact, all the motion did was give voice to the opinion of the parliamentarians who voted on it. What the Australian Government needed to do to amend these laws in the ACT (the only area its laws in this regard affect) was implement an ordinance amending the laws. It has always had the power to do this.

From the time the favourable expression of opinion was given in the House, CAMP NSW pressed the Attorney-General's Department to draft the required ordinance, and frequently by letter and telephone requested a copy of it so that homosexuals through CAMP, would be in a position to comment on legislation affecting their lives, either directly, for those in the ACT, or indirectly, for those in the states who wish to use it as a model when pressuring state governments for action along similar lines.

Only in late August 1974 was the draft ordinance [see page 160] received. In a matter of days a reply was drafted and sent outlining CAMP's belief that 'the only satisfactory legal position would be a programme of sex law repeal' and its general dissatisfaction with the proposed ordinance.

Some of the more specific objections to the ordinance concerned incest (clause 3(2)(a)), clause 3(1) which indicated that sexual relations between more than two people would still be prosecutable, and fears that the sexual relations of homosexual women, previously not subject to the criminal law, would, with the implementation of this ordinance, become so subject.

After some time the Attorney-General's Department replied by telephone to the aforementioned questions. The senior officer responsible for the ordinance advised that an approach would need to be made to the Attorney-General to have incest abolished as a crime. Since the officer was not aware that sexual relations were possible between more than two homosexuals at any one time, our objections to clause 3(1) were not understood. He therefore also advised an approach to the Attorney-General on this matter. We were verbally assured by him that since the purpose of the ordinance was not to create new crimes but merely to abolish existing ones, women would not be affected by it. The recommended approaches to the Attorney-General were made immediately [see page 161].

In the ensuing weeks, numerous telephone calls were made in our endeavour to elicit a response to the approaches. Nine weeks passed before this verbal reply was received, at the beginning of December 1974. It was pointed out that while the belief was held by the Attorney-General that incest should be abolished as a crime, it was felt politically inadvisable to attempt this. We were also assured in this verbal exchange that the fact that clause 3(1) was phrased in the singular presented no difficulty since when charges are laid, they are laid against individuals and, in a situation where more than two people were charged, each individual could claim the consent of each other individual.

That is where the matter rests at the moment – fifteen months after the passing of the motion in the House of Representatives, there is still only words, no actions.

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[11] The Rt Hon John Grey Gorton, LP MHR for the Vic seat of Higgins.

[12] See: 1:–1.1 page 4, 'Parliamentary Debates – Law Change'. See also: *Parliamentary Debates*, House of Representatives, 18 October 1973, pp. 2327-35.

1:–1.1. – Parliamentary Debate – Law Change [13]

Mr GORTON [14] – (10.57) – 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; this 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 of or 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 no 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 [15] 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, [16] in full agreement with the Wolfenden Committee's report, that what I suggest this House should do should be done.

Mr Fulton [17] – The Wolfenden report stunned Britain.

Mr GORTON – 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 taken a position on it. I think it is neutral. However I do know that in *The Catholic Weekly* [18] 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 that 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 [19] has considered this matter and I should like to quote what Douglas Cole, the Convenor, had to say about that debate. He said:

The Assembly declared–

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[13] *Parliamentary Debates*, House of Representatives, 18 October 1973, pp. 2327-35.

[14] The Rt Hon John Grey Gorton, LP MHR for the Vic seat of Higgins.

[15] *Report of the Committee on Homosexual Offences and Prostitution*, HMSO, London, 1957. Membership of the Committee: Sir John Wolfenden, Chair; Mr James Adair; Mrs Mary G Cohen; Dr Desmond Curran; The Rev Canon VA Demant; The Hon Justice Diplock; Sir Hugh Linstead; The Marquess (Peter Francis Walter) of Lothian; Mrs Kathleen Lovibond; Mr Victor Mishcon; Mr Goronwy Rees; The Rev RFV Scott; Lady Stopford; Mr William T Wells; Dr Joseph Whitby.

[16] See: 7:–1.11.1.1. page 513, 'Roman Catholic Griffin Report (1956)'.

[17] William John Fulton, ALP MHR for the Qld seat of Leichhardt.

[18] See: 1:–1.1.1. page 16, 'The Case for Compassion', *The Catholic Weekly*, vol. XXXII, no. 1647, 4 October 1973, pp. 2-3.

[19] See: 1:–1.1.2. page 22, *The Responsibility of the Church Regarding Homosexuality*, Sydney 1968, Church and Nation Committee, NSW Presbyterian Assembly.

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 [William Allen] Jowitt testified that during the time that he was British Attorney-General, 95 per cent of all blackmail cases had a homosexual origin. [20]

In conclusion the spokes man for this Church quoted the words of WDG 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 [Melbourne Diocese] in its report on homosexuality [21] 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 Vic *Crimes Act* which renders criminal those homosexual acts committed in private between consulting males of 18 years or over be repealed. [see page 42].

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 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 500 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.

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[20] *Parliamentary Debates*, House of Lords, 19 May 1954, vol. 187, col. 745. Lord (William Allen) Jowitt said: 'It is twenty-five years ago that I became Attorney-General. I had a large practice in the commercial court and knew little about crime and criminals. When I became Attorney-General, I became oppressed by the discovery that there was a much larger quantity of blackmail than I had ever realised. I have no figures – I do not suppose one can get figures in a case of this sort – but I can certainly charge my recollection to this extent. It is the fact – I do not know why it is the fact, but it is the fact – that at least 95 percent of the cases of blackmail which came to my knowledge arose out of homosexuality, either between adult males or between adult males and boys.'

[21] See: 1:–1.1.3. page 37, 'Diocese of Melbourne Social Questions Committee Report on Homosexuality – 1971'.

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 [22] 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 [Lord Bishop (Arthur Mervyn) of Southwark] 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. [23]

According to those who have carefully gone into this matter, including representatives of the churches, it does no 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 [Rayner] Goddard [sic–Lord (Robert John Graham) Boothby] 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. [24]

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 immoral 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 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

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[22] See: 1:–1.1.4. page 52, 'House of Lords Debates'.

[23] *Parliamentary Debates*, House of Lords, 24 May 1965, vol. 266, col. 694. In the *Parliamentary Debates*, House of Representatives, 18 October 1973 there is a full-stop after the word 'revulsion' and a new paragraph commences with the words: 'But surely …' In the original House of Lords' debates this is all one paragraph as transcribed above.

[24] *Parliamentary Debates*, House of Lords, 24 May 1965, vol. 266, col. 670. Lord (Robert John Graham) Boothby spoke after Lord (Rayner) Goddard during the second reading of the Sexual Offences Bill debate. Lord (Robert John Graham) Boothby and **not** Lord (Rayner) Goddard said: 'There is a sharp distinction to be drawn – and I think that in saying this I may carry the noble and learned Lord, Lord (Rayner) Goddard, with me – **between conduct which may be held by some to be sinful and conduct which ought to be held by the State to be criminal**.' Emphasis added.

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 [25] – Committing suicide.

Mr GORTON – And sometimes committing suicide because of it. It is wrong and unjust in my opinion to impose on top of that the threat of goal, 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 will be the end of the matter. What happens here will affect 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 – I agree with all you have said, which is surprising.

Mr GORTON – 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 this 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 had 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 goal.

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 judgements 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.

Mr SPEAKER [26] – Order! The right honourable gentleman's time has expired. Is the motion seconded?

Dr CASS [27] – (11.17) Mr Speaker, I second the motion. Australia does not look favourable upon homosexuals. In our predominantly conformist, overly masculine society, fixed on the 2-child nuclear family mushrooming in suburban wastelands, the homosexual is an unwelcome outsider. Unmasculine by popular consensus, unmarried, non-fathering, anti-suburban, homosexuals are Australia's most obvious minority group. In this country the homosexual is not merely shunned as a moral leper or despised as a pervert, he is actively discriminated against. Our criminal penalties are severe, and our social sanctions savage. At a particularly barbaric level poofter-bashing is virtually a recognised national civilian team sport, while police harassment in some States is accepted as an office perk by the police and as an occupational hazard by the victim.

Of course, all minority groups suffer by being different. But sexuality and identity are so profoundly connected, and so profoundly important, that homosexuals in a dominant heterosexual society live under unique and potentially crippling psychological pressure. In Australia, they also have to cope with legal, social and institutional discrimination. Both sources of pressure, operating simultaneously every day, mean that homosexuals suffer double for their difference, they are victims of double jeopardy. Difficulties such as these, however, have not prevented homosexuality from enduring through the ages. Whether treated as an illness a crime, or an aberration, homosexuality has survived. As an expression of sexual preference, its validity has

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[25] Albert William James, ALP MHR for the NSW seat of Hunter.

[26] The Hon James Francis Cope, ALP MHR for the NSW seat of Sydney.

[27] The Hon Dr Moses Henry Cass, ALP MHR for the Vic seat of Maribyrnong and Minister for Environment and Conservation.

been confirmed by history.

There is still, of course, widespread basic concern in the community about the so called abnormal sexual behaviour of homosexuals. But then, heterosexuals have stretched the meaning of normal by their behaviour as well. The community's selective moral indignation is misplaced. Homosexuals are human beings whose sexual preference differs from that of heterosexuals. Neither group has a monopoly on so-called perversion. We accept the principle that, as long as it does not interfere with other people's civil liberties, heterosexual behaviour is a personal matter and ought to remain outside the interests of the state. It is now time for us to go one step further and recognise that there is no justification for society or the law to concern itself with any sexual activity – heterosexual or homosexual – which is otherwise legal and mutually acceptable to the people involved. Since most homosexuals are indeed law-abiding citizens, except in the expression of their sexuality, it is brutal for the rest of us to continue to impose the crushing institutional costs of being a sexually different human.

As politicians, of course, we are as concerned with public response as with general principles; and it is a fact that limited information is available on the attitudes of Australians towards homosexuality and the law. The Roy Morgan Research Centre has never conducted a survey on this subject. The Australian Nationwide Opinion Poll organisation had conducted only one usable survey [28] before this year. The Australian Sales Research Bureau has conducted 2 vague tests in recent years [29] [30]; and even a pair of academics, Drs Duncan Chappell and Paul Wilson, conducted limited, although well-phrased, surveys in 1967 [31] and 1970 [32] which unfortunately were not strictly comparable. What information we do have, however, suggests a surprising level of public liberality on the issue. The recent survey by the ASRB of attitudes to 10 social issues revealed that fewer people were willing to make moral judgements about homosexuals than about marihuana, poker machines, [33] capital punishment, abortion, censorship and communism. Twenty-eight per cent of 2,000 respondents felt homosexuals were neither right nor wrong, compared with a spread of between 8 per cent and 26 per cent for the other 6 issues. Only the firmly entrenched habits of cigarette and alcohol consumption and the question of hippies extracted a greater level of moral detachment. [34]

As well, the 1970 survey by Wilson and Chappell [35] of 900 people in Melbourne, Sydney and Brisbane showed that 56 per cent believed it should not be a crime for 2 adult males to engage in homosexual practices in a private home. Their previous survey in 1967, while not strictly comparable, indicated support for this move at only 22 per cent. Most recently, ANOP [36] conducted a national survey in August, asking respondents whether they believed homosexuality between consenting adults should be legalised. For the first time in such a poll, a majority were in favour – 48 per cent agreed, only 46 per cent disagreed and 6 per cent had no opinion. A roughly comparable survey in March 1972 [37] [38] [39] resulted in 50 per cent of respondents opposing the legalisation of homosexual behaviour between consenting adults in private. These responses suggest a high degree of tolerance – in both relative and absolute terms – which is clearly far more liberal than the laws of the

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[28] See: 1:–1.1.5. page 102, 'ANOP Poll, November 1971 – Permissiveness in Australia'.

[29] See: 1:–1.1.6. page 105, 'Age Poll, April 1971 – Women – A Separate Point of View'.

[30] See: 1:–1.1.7. page 107, 'Age Poll, July 1973 – We're Still A Conservative Lot'.

[31] See: 1:–1.1.8. page 109, 'Chapell and Wilson 1967 Survey – Public Attitudes to Reform of Law Relating to Abortion and Homosexuality'.

[32] See: 1:–1.1.9. page 115, 'Chappell and Wilson, 1970 Survey – Changing Attitudes Towards Homosexual Law Reform'.

[33] See: 1:–1.1.6. – Table 17 page 108, The results published in *The Age*, 5 April 1971, do not include those for 'poker machines', which was one of the ten social issues surveyed.

[34] See: 1:–1.1.6. page 105, 'Age Poll, April 1971 – Women – A Separate Point of View'.

[35] See: 1:–1.1.9. page 115, 'Chappell and Wilson, 1970 Survey – Changing Attitudes Towards Homosexual Law Reform'.

[36] See: 1:–1.1.10. page 142, 'ANOP Poll, August 1973 – Permissiveness In Australian Society'.

[37] Dr Cass's reference to the '… roughly comparable survey in March 1972 [see footnote 435] resulted in 50 per cent respondents opposing …' is inexplicable. The only poll results published around that time are those of the ANOP Poll which appeared in both *The Times* (Adelaide) (see Table 59 page 153) and *Daily Mirror* (see Table 55 page 151) on 1 February 1972. Furthermore, the disapproval rate (62%) found in this poll is considerably higher then that quoted by Dr Cass. The confusion about the date – not March but rather February – in Dr Cass's speech can perhaps be explained by the fact that the *Australian Public Opinion Newsletter*, the official publication of ANOP at the time, mentioned '… two successive opinion polls in November 1971 and March 1972 …' (see page 102). Also see: 1:–1.1.11(A). page 149, 'ANOP Poll, February 1972'.

[38] See: 1:–1.1.11(B). page 150, 'ANOP Poll, February 1972 – We're Not Galloping to Decadence!'.

[39] See: 1:–1.1.11(C). page 152, 'ANOP Poll, February 1972 – Abortion – Six in Every Ten of Us Agree'.

land. A few days ago the Federal Council of the Australian and New Zealand College of Psychiatrists approved a clinical memorandum on homosexuality [40]. It strongly condemned 'community attitudes and laws which discriminate against homosexual behaviour between consenting adults in private'.

Buggery and attempted buggery have been illegal for centuries in the English speaking world – regardless of the gender of the participants – ever since the offence was forbidden in ecclesiastical law. However, changes to Britain's criminal law in 1885 introduced the new and specifically homosexual serious offences of indecent acts and indecent practices even when performed in private between consenting male adults. Those changes remain enshrined in Australia's State and Federal laws relating to homosexuality, even though some were removed from the British original in 1967. Lesbian behaviour, which was deliberately excluded from the 1885 legislation and required no attention in 1967, consequently remains non-criminal in Australia.

The language of legal sanctions against homosexual behaviour is as interesting as the penalties themselves. In Qld, WA and Tas sodomy is referred to as 'carnal knowledge … against the order of Nature'. In the ACT, NSW and Vic the relevant statues speak of the 'abominable crime of buggery'. Only in SA is the offence referred to merely as 'buggery'.

Not surprisingly, the more colourful statues impose the heavier penalties. The ACT law provides for a maximum of life imprisonment and a minimum of 5 years; Tas allows a maximum of 21 years; Vic may impose 15 years imprisonment – or 20 years when violence or an under-age offence is involved; while NSW is content with 14 years. In NSW incidentally, it is possible for an abominable man to be guilty of indecent assault with consent.

Clearly, there is an urgent need for reform. But, Mr Speaker, it needs to be pointed out that to defend the rights of homosexuals is not to endorse or advocate homosexuality; it is simply to recognise that, as long as homosexuals abide by laws to which all citizens are subject, they ought equally to be free to express their sexual preferences. Genuine offences – such as rape, assault, indecent exposure, child molesting and other acts – occur amongst heterosexuals as well as homosexuals, and are capable of being dealt with by laws which apply equally to all. Similarly it is important to recognise that this motion does not seek to legalise homosexuality in the sense of issuing a licence or charter for homosexual activity, Rather, this motion supports the decriminalising of homosexuality – the removal of sexually selective legal discrimination. This is, of course, only the first step. Hopefully, the removal of legal insult will result in the abandonment of social stigma. Social pressures, police harassment, housing difficulties, and job discrimination exacerbate the intense pressures constantly felt by homosexuals in Australia. The passing of this motion would constitute a signal that the time has arrived for the end of sexually biased social oppression in Australia.

Sir JOHN CRAMER [41] – (11.27) I oppose this motion. I oppose it principally on the ground that I believe it will open the door to social recognition of homosexuality as a normal way of life. I cannot accept that proposition and I do not think that the Australian people want to accept it. I am surprised that a motion of this sort has been introduced into this House. I cannot understand what motivated the moving of this motion.

Mr Gorton – We just spent 20 minutes trying to tell you.

Sir JOHN CRAMER – One wonders what motivated the moving of this motion and also whether an ex-Prime Minister, the right honourable member for Higgins (Mr Gorton), could not think of more important matters to discuss. To me it is rather significant and extraordinary that this motion has been seconded by the Minister for the Environment and Conservation (Dr Cass) in the atmosphere which exists in the community today because I do not know of any subject that tends more to moral pollution than homosexuality. It is true, of course, that homosexuality exists. I do not know much about it. I believe it is completely distasteful to the average man and woman in this country who I think would prefer to have nothing to do with it. But as I said, homosexuality does exist. We can feel sympathy for these people because they are unable to control themselves. No one can deny that homosexuality is a twist in normality. It is unfortunate that there are many twists in normality in our community. Very often the actions of the people who are so affected are very unacceptable to society as a whole. I refer, for instance, to kleptomania – the urge to steal. These people cannot control themselves. But their actions are an offence and are punishable by law. It is a criminal offence. Drunkenness is an offence. Drug addiction which some people cannot avoid is an offence also. Violence in many ways and in many aspects, although some cannot help performing violent acts, is an offence. Prostitution is an offence in many countries. One could go on. These are all twists to normality. But there is no reason why society should

[40] See: 1:–1.1.12. page 154, 'Clinical Memorandum of the Australian and New Zealand College of Psychiatrists'.
[41] The Hon Sir John Oscar Cramer, LP MHR for the NSW seat of Bennelong.

have to accept them as the normal way of life.

It must be admitted that this is predominantly a Christian society. The right honourable member for Higgins mentioned the question of the Church. The Christian churches fundamentally are opposed to homosexuality which always has been an offence against normality. The Bible makes that perfectly clear. One need quote only from a report [42] which is currently being examined by the Church of England Synod. An article on the report states:

> The report warns that gay liberation and similar movements attack society in a fundamental way. That was real and not imagined.
> Previously society asked the homosexual to change his ways, now the homosexual demands that society change …

to suit the homosexual. The article continues:

> The significance of this change could not be clearer, the report says.
> This is why the Committee wants legal sanctions against overt homosexuality to remain. [43]

That is the view of the Church of England. I have no time to quote views from other churches.

It is quite true that in recent years as we are aware there has been a drift to a permissive society. This has encouraged the homosexual to come out into the open. He now demands not only the passing of a resolution such as this but official recognition by society. If this resolution is passed and its terms put into effect, the activities of homosexuals in certain respects will be made legal. It certainly suggests that they should be made legal. But the homosexuals do not want to stop at recognition. They want homosexuality to be accepted by society as a normal way of life. I cannot accept, and I do not believe that people will accept, that kind of approach. To legalise is to give the green light to promote, publicise and encourage homosexuality in all its forms. There are many people, I believe, who can be saved from this distorted way of life. It is a distorted way of life and it should be branded for what it is. Young people must be protected from being persuaded to drift into this obnoxious habit. I refuse to believe that many people who practice homosexuality could not refrain from doing so; they should be encouraged to refrain from these activities.

I do not want to take up too much time because I know that others wish to speak in this debate. But I have a letter with me. It came to me 2 or 3 days ago when I presented a petition to this House. It is si significant that I wish to read it. It is from a constituent. It deals with a petition in another matter. I will not refer to that now. A number of petitions of the type mentioned have been presented in the last few days. My constituent states:

> This letter and the enclosed petition is to protest against the increasing decline in the moral standards of our community.

I think that everybody accepts that this is so. The letter continues:

> A society in which sex-shops, phonographic literature and films, homosexuality, drug indulgence, sexual permissiveness and similar evils are encouraged, will decay and destroy itself.
> We have a Government–

I am not making this a Government matter but my constituent says this in her letter:

> … actually legislating to permit such things and at the same time religious education is being limited or eliminated and our children are being taught that even right and wrong are only relative.

This is ridiculous.

> How can a generation flower into decent manhood or womanhood with such teachings?
> TV could be a power for good, now it is being valued to propagate all that is worst in human nature. Our children are

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[42] Ethics and Social Questions Committee of the Church of England, Diocese of Sydney, *Report on Homosexuality*, 1973, p. 22.

[43] ibid. p. 22.

> subjected to the constant glorification of sex whilst only pitying sneers are given to the age-old ideals of integrity, national pride and self-sacrifice!
> The great majority of Australians–

And this absolutely true–

> Don't want to see magazine racks full of filth and phonography!
> Don't want to see films degrading womanhood, motherhood and marriage!
> Don't want to see our children exposed to drugs, sex, homosexuality and violence!
> We want a stable community, based on sound Christian ethics in which decency, truth, law and order are exalted and sordid filth relegated to the gutters where it belongs.
> It's time the Government took some responsibility for the decline in moral standards in Australia.
> It's time for the Government to act to save our young people from themselves and from those who exploit them.
> Keep on the way we are going and you can wrap Australia up in a neat little package and hand it over as a gift to our enemies …

I endorse every word that my constituent has written.

Mr Cohen [44] – Next year we will have Federation.

Sir JOHN CRAMER – It is all very well to laugh the thing off, but it is a serious matter. It seems to me that if the Government acted in accordance with the motion which has been moved by the right honourable member for Higgins, it would bring down on Australia a further advance of the permissive society that is so destroying the fabric of the moral rectitude of the Australian people. I think this is a terrible thing. I cannot understand any decent man or woman opening the door wider to these kinds of things. Therefore, I violently oppose the motion. I sincerely hope that the common sense and decency of honourable members in this House will prevail and that we will reject this motion, and indeed reject an amendment which has been foreshadowed. I do not believe that we should go any further in interfering with the law as it stands at the present time. I hope that this House will reject the motion and not open the door to depravity as a way of life.

Mr JAMES [45] – (11.38) Mr Speaker, as I did not expect to be called because of the limited time allowed for this debate, I did not do the homework that other speakers in this debate have done. Prior to coming to this parliament homosexual acts were as repulsive to me as they were to any man. But having read material of the Parliamentary Library and having conversed with men here who have made some study of the problem, I find myself now more tolerant to the homosexual than ever before. I applaud the right honourable member for Higgins (Mr Gorton) and the honourable member for Maribyrnong (Dr Cass) for bringing this matter before the Parliament. In my view, politicians usually shirk their duties concerning these very serious social questions because they say that there are 'no votes in homosexuals'. I believe that the legislation of homosexuality was first raised in the Mother Country, Great Britain, by the Wolfenden report which was referred to by the right honourable member for Higgins. To my mind, that report virtually stunned the British people when they were informed of the prevalence of homosexuality in their society.

Had it not been for a peer or the son of a peer in Great Britain being charged with the criminal offence of homosexuality [46], the Wolfenden Committee might never have been created to bring down its report. It was because someone influential in society was involved that the Wolfenden Committee was asked to investigate the extent of homosexuality in Great Britain. Because the British people were stunned, the legislators were not game to bring down legislation or to debate the matter in the House of Commons until many years after the

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[44] Barry Cohen, ALP MHR for the NSW seat of Robertson.

[45] Albert William James, ALP MHR for the NSW seat of Hunter.

[46] The police witch hunt against homosexuals during 1953-54 in the United Kingdom saw the arrest of four prominent citizens: Rupert Croft-Cooke, author; Lord Montagu of Beaulieu, third Baron of Beaulieu; Michael Pitt-Rivers, a country landowner; and Peter Wildeblood, diplomatic correspondent of the *Daily Mail*. Following the trials of the above victims the respected national *Sunday Times* on Sunday, 28 March 1954 published a leading article 'Law and Hypocrisy' (see: 1:–1.1.13. page 156) which was followed by the *New Statesman and Nation* 'The Police and the Montagu Case', on 10 April 1954 (see: 1:–1.1.14. page 157) demanding an inquiry into the methods used by both the Director of Public Prosecution and police. On 18 April 1954 the announcement was made in the House of Commons that a Departmental Committee would be established but that its membership and terms of reference would take a little time. The official announcement of the Wolfenden Committee and its membership was made on 26 August 1954. For further reading see Hyde, H Montgomery, *The Other Love*, London 1972, Mayflower Books.

Wolfenden report was submitted. Since then psychiatrists and different sections of people in our society have made a study of the prevalence of homosexuality in the United Kingdom and Australia. It is estimated that one male in 20 is afflicted with homosexual tendencies. [47] In other words, if those figures are correct – I believe them to be correct – there are 6 people with homosexual tendencies among honourable members in this House and 3 in the Senate.

On the serious side, to any decent thinking man, blackmail should be more repulsive than any other crime. I have never been blackmailed. No attempt has ever been made to blackmail me. But I know that people with this unfortunate affliction have been blackmailed for many years. That in itself sways me to support the liberalisation of the homosexual laws. Another point that was omitted by the right honourable member for Higgins and the honourable member for Maribyrnong is that our police forces are brought into disrepute when they have to enforce an unpopular law in something with which a person at any level of society could be afflicted. Invariably judges reprimand police officers in court when they enforce the law. We are the ones who should be ashamed because we have not had the courage, the spunk or the guts to liberalise the law and to remove this unpleasant phase of police duties which is repulsive to every decent policeman in the country who has to enforce this law. [48]

Why is it not enforced today, as has been pointed out? It is enforced today by the police forces of Australia only on the complaint of some citizens. The police feel that, if they do not investigate a complaint, disciplinary measures may be taken against them which may affect their careers in the police force. Reluctantly, they have to enforce this very unpopular law. As we all know, homosexuality is prevalent in Australian today. Many of us live in our ivory towers and never go to the rendezvous frequented by homosexuals. Homosexuals congregate in certain toilets in Sydney and certain meeting places in public parks. I do not believe, as the honourable member for Bennelong (Sir John Cramer) has said, that if this law is passed it will accentuate the growth of homosexuality in our community. I believe to the contrary – that it may induce the habit-forming homosexual to leave the public parks and the toilets knowing that he cannot be blackmailed when he goes to a room to carry out and practice the weakness that he has, and which, in many cases, homosexuals have ought to overcome.

It is also true, as has been pointed out by the honourable member for Maribyrnong (Dr Cass), that many homosexuals throughout their life fight against the affliction. A very high suicide rate exists among homosexuals because of their inability to overcome this affliction that is either hereditary or which has been brought about by environment. I think there are conflicting opinions on this particular aspect of the subject. I find the homosexual today more to be pitied than criticised. I should like to see a more moderate liberation of the law. I should not like to see homosexual acts removed from the law altogether because from my own personal experience, in my previous profession, I have had to go and knock on the door of decent homes and say to the parents that their 10 or 14-year old son had been found with an old man in the Sydney domain. I have had the personal experience of having to do that and therefore I should not like to see the homosexual liberated altogether. I do not intend to take up the full time allotted to me in this debate. To those who laugh and to those who criticise we who support this amendment to the law, I want to say that one day they may have a son, a brother, or a near relative afflicted with homosexual tendencies. I am positive that steel bars and grey walls are no place for those unfortunate people who are so afflicted. [49]

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[47] See: 1:–1.1.15. page 159, 'Prevalence of Homosexuality in the UK and Australia'.

[48] 'Bert' James was a police officer in his previous occupation.

[49] The following is quoted from an interview Dr Graham Willett did with Dr Moss Cass in Melbourne on 7 June 1995 explaining the very important role Mr 'Bert' James played getting this motion passed: 'And then to my utter amazement Bert James got up. Now he could have spoken against – there'd been two for, he could easily have spoken against, so I didn't know which way he was going to speak and I actually felt sure he was going to oppose it. I mean he was sort of gruff – I don't want to sound patronising, but in some ways very unsophisticated, spoke loudly and he was a sort of rabid leftist in a way, a sort of flag waving type. And he was an ex-policeman. One wouldn't have thought terribly sensitive to anything much about people's feelings. He got up to speak and, unlike his usual style where he was loud and gruff and shouted, he was quietly spoken and there was even a feeling that he was a bit nervous in the way he spoke. And he talked about how as a policeman he hounded these poofters – I don't whether he used the word but homosexuals – and – I think he may have used the word poofter, I don't know, it was sort of a shock to begin with – and I thought he was just building up to say, you know, with great passion that he wouldn't have a bar of it and then he said, having described some of the dreadful things that they, the police, had done, he said 'I think that was awful and we should – and it was dreadful

(continued...)

Mr WENTWORTH [50] – (11.47) Mr Speaker–

Motion (by **Mr Daly**) [51] proposed:

That the question be now put.

Mr Wentworth – I am sorry about this, Mr Deputy Speaker. I should like to speak to this motion. Nothing was heard against the motion except from the honourable member for Bennelong.

Mr DEPUTY SPEAKER [52] – Order! The honourable gentleman will resume his seat.

Question resolved in the affirmative.

Mr DEPUTY SPEAKER – The question is 'That the motion be agreed to'.

Mr McLeay [53] – Mr Speaker, I rise on a point of order. I wish to draw to your attention and ask you to ask the Speaker to consider that we have had less than an hour's debate on this particular subject.

Mr DEPUTY SPEAKER – Order! There is no point of order.

Mr McLeay – We will not have a chance to debate this matter again.

Mr DEPUTY SPEAKER – Order! The honourable member will resume his seat. There is point of order. The House made a decision that the question be now put.

Mr McLeay – The Leader of the House made a decision.

Mr DEPUTY SPEAKER – It is not competent for the Speaker or any Presiding Officer to alter the will of the House. I think that it is time that honourable members stopped taking that sort of point of order. There is too much of it.

Mr Daly – I rise on a point of order, Mr Deputy Speaker. It was mentioned, by way of interjection, that the Leader of the House had decided that the question would be put. That is not correct, of course. The position is that a function has been arranged in Parliament House in connection with the visit of Her Majesty the Queen. Like many other members, I should have liked this debate to have continued for a considerable time, but it is one day of the year–

Mr DEPUTY SPEAKER – Order! I think the honourable gentleman should make his point of order.

Mr Daly – I suggest regard might be had to the circumstances.

Question put:

That the motion (**Mr Gorton's**) be agreed to.

The House divided.

(Mr Deputy Speaker – Mr GGD Scholes)

Ayes	64 [54]
Noes	40 [55]
Majority	24

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[49](...continued)
the way we behaved' and justified his feeling that we should agree with the motion. Well, as he spoke and people got the point of what he was saying a hush fell because people were chatting and – people started to listen. People started to actually come into the Chamber from their rooms. And he sat down and no one else wanted to speak – I mean we had lined no one else up to speak for it and no one else was prepared to speak against it and the bells were rung and the bloody House nearly filled up, which you wouldn't have expected. And the vote – I noted about 60 voted for it and 40 against. Now that was a rough estimate, I don't exactly know. So most of the Members of House sort of turned up and voted. And I heard people commenting and – I don't remember who it was, but I feel it was someone from the front bench of the CP I heard saying to Bert 'cause in the division I went and sat next to Bert to thank him and compliment him and congratulate him because I thought it was an excellent speech' – and someone came up and said 'you know Bert, I wasn't taking much notice, I wasn't even going to come and vote and if I had come I was going to vote against it and I heard you and I'm voting with you. And that – he undoubtedly swung the vote.'

[50] The Hon William Charles Wentworth, LP MHR for the NSW seat of Mackellar.

[51] The Hon Frederick Michael Daly, ALP MHR for the NSW seat of Grayndler and Leader of the House.

[52] Gordon Glenn Denton Scholes, Deputy Speaker and ALP MHR for the Vic seat of Corio.

[53] The Hon John Elden McLeay, LP MHR for the SA seat of Boothby.

[54] 40 ALP, 6 CP and 18 LP members voted in **favour** of the motion. See Table 1, page 14, for state and party analysis.

[55] 18 ALP, 9 CP and 13 LP members voted **against** the motion. See Table 2, page 15, for state and party analysis.

Table 1: Ayes Tally Sheet, Legalisation of Homosexuality Motion, House of Representatives, 18 October 1973

HOUSE OF REPRESENTATIVES							
Date: 18/10/1973			*Division* no. 179		*Ayes* 64		*Noes* 40
Bill: Motion re Homosexual acts				*Question – That*: motion be agreed to			
Mover: Mr Gorton				The House divided (the Deputy Speaker, Mr Scholes, in the Chair)			
AYES/~~NOES~~ 64							
Member	**Electorate**	**State**	**Party**	**Member**	**Electorate**	**State**	**Party**
~~Adermann, Albert Evan~~	Fisher	Qld	CP	Hurford, Christopher John	Adelaide	SA	ALP
Anthony, Rt Hon John Douglas	Richmond	NSW	CP	Innes, Urquhart Edward	Melbourne	Vic	ALP
~~Armitage, John Lindsay~~	Chifley	NSW	ALP	Jacobi, Ralph	Hawker	SA	ALP
Ashley-Brown, Alfred	Mitchell	NSW	ALP	James, Albert William	Hunter	NSW	ALP
~~Barnard, Hon Lance Herbert~~	Bass	Tas	ALP	Jarman, Alan William	Deakin	Vic	LP
~~Beazley, Hon Kim Edward~~	Fremantle	WA	ALP	Jenkins, Dr Henry Alfred	Scullin	Vic	ALP
Bennett, Adrian Frank	Swan	WA	ALP	Johnson, Leonard Keith	Burke	Vic	ALP
~~Berinson, Joseph Max~~	Perth	WA	ALP	Johnson, Hon Leslie Royston	Hughes	NSW	ALP
Birrell, Frederick Ronald	Port Adelaide	SA	ALP	~~Jones, Hon Charles Keith~~	Newcastle	NSW	ALP
~~Bonnett, Robert Noel~~	Herbert	Qld	LP	~~Katter, Hon Robert Cummin~~	Kennedy	Qld	CP
Bourchier, John William	Bendigo	Vic	LP	~~Keating, Paul John~~	Blaxland	NSW	ALP
~~Bowen, Hon Lionel Frost~~	Kingsford-Smith	NSW	ALP	Kelly, Hon Charles Robert	Wakefield	SA	LP
Bryant, Hon Gordon Munro	Wills	Vic	ALP	~~Keogh, Leonard Joseph~~	Bowman	Qld	ALP
Bury, Lesley Harry Ernest	Wentworth	NSW	LP	Kerin, John Charles	Macarthur	NSW	ALP
Cairns, Hon Dr James Ford	Lalor	Vic	ALP	~~Killen, Hon Denis James~~	Moreton	Qld	LP
~~Calder, Stephen Edward~~	NT	NT	CP	King, Hon Robert Shannon	Wimmera	Vic	CP
Cameron, Hon Clyde Robert	Hindmarsh	SA	ALP	~~Klugman, Dr Richard Emanuel~~	Prospect	NSW	ALP
Cameron, Donald Milner	Griffith	Qld	LP	Lamb, Anthony Hamilton	La Trobe	Vic	ALP
Cass, Hon Dr Moses Henry	Maribyrnong	Vic	ALP	Lloyd, Bruce	Murray	Vic	CP
Chipp, Hon Donald Leslie	Hotham	Vic	LP	~~Luchetti, Anthony Sylvester~~	Macquarie	NSW	ALP
Coates, John	Denison	Tas	ALP	Lucock, Philip Ernest	Lyne	NSW	CP
Cohen, Barry	Robertson	NSW	ALP	~~Lynch, Hon Phillip Reginald~~	Flinders	Vic	LP
~~Collard, Frederick Walter~~	Kalgoorlie	WA	ALP	MacKellar, Michael John Randal	Warringah	NSW	LP
~~Connor, Hon Reginald Francis X~~	Cunningham	NSW	ALP	~~Maisey, Donald William~~	Moore	WA	CP
~~Cooke, Nelson Marshall~~	Petrie	Qld	LP	~~Martin, Vincent Joseph~~	Banks	NSW	ALP
~~Cope, Hon James Francis~~	Sydney	NSW	ALP	Mathews, Charles Race Thorson	Casey	Vic	ALP
~~Corbett, James~~	Maranoa	Qld	CP	McKenzie, David Charles	Diamond Valley	Vic	ALP
~~Cramer, Hon Sir John Oscar~~	Bennelong	NSW	LP	McLeay, Hon John Elden	Boothby	SA	LP
Crean, Hon Frank	Melbourne Ports	Vic	ALP	~~McMahon, Rt Hon William~~	Lowe	NSW	LP
Cross, Manfred Douglas	Brisbane	Qld	ALP	~~McVeigh, Daniel Thomas~~	Darling Downs	Qld	CP
~~Daly, Hon Frederick Michael~~	Grayndler	NSW	ALP	Morris, Peter Frederick	Shortland	NSW	ALP
~~Davies, Ronald~~	Braddon	Tas	ALP	Morrison, Hon William Lawrence	St George	NSW	ALP
~~Doyle, Francis Edward~~	Lilley	Qld	ALP	~~Mulder, Allan William~~	Evans	NSW	ALP
Drummond, Peter Hertford	Forrest	WA	LP	~~Nicholls, Martin Henry~~	Bonython	SA	ALP
~~Drury, Edward Nigel~~	Ryan	Qld	LP	~~Nixon, Hon Peter James~~	Gippsland	Vic	CP
~~Duthie, Gilbert William Arthur~~	Wilmot	Tas	ALP	Oldmeadow, Maxwell Wilkinson	Holt	Vic	ALP
Edwards, Harold Raymond	Berowra	NSW	LP	Olley, Frank	Hume	NSW	ALP
Enderby, Hon Keppel Earl	ACT	ACT	ALP	~~O'Keefe, Frank Lionel~~	Paterson	NSW	CP
~~England, John Armstrong~~	Calare	NSW	CP	~~Patterson, Hon Dr Rex Alan~~	Dawson	Qld	ALP
Erwin, Hon George Dudley	Ballaarat	Vic	LP	~~Peacock, Hon Andrew Sharp~~	Kooyong	Vic	LP
Everingham, Hon Dr Douglas	Capricornia	Qld	ALP	Reynolds, Leonard James	Barton	NSW	ALP
~~Fairnbairn, Hon David Eric~~	Farrer	NSW	LP	~~Riordan, Joseph Martin~~	Phillip	NSW	ALP
Fisher, Peter Stanley	Mallee	Vic	CP	Robinson, Eric Laidlaw	McPherson	Qld	LP
~~Fitzpatrick, John~~	Darling	NSW	ALP	~~Robinson, Hon Ian Louis~~	Cowper	NSW	CP
~~Forbes, Hon Dr Alexander James~~	Barker	SA	LP	Ruddock, Philip Maxwell	Parramatta	NSW	LP
~~Fox, Edmund Maxwell Cameron~~	Henty	Vic	LP	~~Scholes, Gordon Glen Denton~~	Corio	Vic	ALP
~~Fraser, Hon John Malcolm~~	Wannon	Vic	LP	Sherry, Raymond Henry	Franklin	Tas	ALP
~~Fulton, William John~~	Leichhardt	Qld	ALP	Sinclair, Hon Ian McCahon	New England	NSW	CP
~~Garland, Hon Ransley Victor~~	Curtin	WA	LP	~~Snedden, Rt Hon Billy Mackie~~	Bruce	Vic	LP

Member	Electorate	State	Party	Member	Electorate	State	Party
Garrick, Horace James	Batman	Vic	ALP	Staley, Anthony Allan	Chisholm	Vic	LP
~~Giles, Geoffrey O'Halloran~~	Angas	SA	LP	~~Stewart, Hon Francis Eugene~~	Lang	NSW	ALP
Gorton, Rt Hon John Grey	Higgins	Vic	LP	~~Street, Hon Anthony Austin~~	Corangamite	Vic	LP
~~Graham, Bruce William~~	North Sydney	NSW	LP	Thorburn, Ray William	Cook	NSW	ALP
~~Grassby, Hon Albert Jaime~~	Riverina	NSW	ALP	~~Turner, Henry Basil~~	Bradfield	NSW	LP
Gun, Dr Richard Townsend	Kingston	SA	ALP	Uren, Hon Thomas	Reid	NSW	ALP
~~Hallett, John Mead~~	Canning	WA	CP	~~Viner, Robert Ian~~	Stirling	WA	LP
Hamer, David John	Isaacs	Vic	LP	Wallis, Laurie George	Grey	SA	ALP
~~Hansen, Brendan Percival~~	Wide Bay	Qld	ALP	~~Wentworth, Hon William Charles~~	Mackellar	NSW	LP
Hayden, Hon William George	Oxley	Qld	ALP	Whan, Robert Bruce	Eden-Monaro	NSW	ALP
~~Hewson, Henry Arthur~~	McMillan	Vic	CP	Whitlam, Hon Edward Gough	Werriwa	NSW	ALP
Holten, Hon Rendle McNeilage	Indi	Vic	CP	~~Whittorn, Raymond Harold~~	Balaclava	Vic	LP
~~Hunt, Hon Ralph James Dunnet~~	Gwydir	NSW	CP	Willis, Ralph	Gellibrand	Vic	ALP
Tellers for the Ayes: Mr Nicholls, Mr Peacock				Wilson, Ian Bonython Cameron	Sturt	SA	LP
Note: Members ~~marked thus~~ might have abstained from voting or were absent. Source: Photocopy of the original House of Representative's division sheet.							

Table 2: Noes Tally Sheet, Legalisation of Homosexuality Motion, House of Representatives, 18 October 1973							
HOUSE OF REPRESENTATIVES							
Date: 18/10/1973			*Division* no. 179		*Ayes* 64	*Noes* 40	
Bill: Motion re Homosexual acts				*Question – That*: motion be agreed to			
Mover: Mr Gorton				The House divided (the Deputy Speaker, Mr Scholes, in the Chair)			
~~AYES~~/NOES 40							
Member	**Electorate**	**State**	**Party**	**Member**	**Electorate**	**State**	**Party**
~~Adermann, Albert Evan~~	Fisher	Qld	CP	~~Hurford, Christopher John~~	Adelaide	SA	ALP
~~Anthony, Rt Hon John Douglas~~	Richmond	NSW	CP	~~Innes, Urquhart Edward~~	Melbourne	Vic	ALP
Armitage, John Lindsay	Chifley	NSW	ALP	~~Jacobi, Ralph~~	Hawker	SA	ALP
~~Ashley-Brown, Alfred~~	Mitchell	NSW	ALP	~~James, Albert William~~	Hunter	NSW	ALP
Barnard, Hon Lance Herbert	Bass	Tas	ALP	~~Jarman, Alan William~~	Deakin	Vic	LP
Beazley, Hon Kim Edward	Fremantle	WA	ALP	~~Jenkins, Dr Henry Alfred~~	Scullin	Vic	ALP
~~Bennett, Adrian Frank~~	Swan	WA	ALP	~~Johnson, Leonard Keith~~	Burke	Vic	ALP
~~Berinson, Joseph Max~~	Perth	WA	ALP	~~Johnson, Hon Leslie Royston~~	Hughes	NSW	ALP
~~Birrell, Frederick Ronald~~	Port Adelaide	SA	ALP	Jones, Hon Charles Keith	Newcastle	NSW	ALP
Bonnett, Robert Noel	Herbert	Qld	LP	Katter, Hon Robert Cummin	Kennedy	Qld	CP
~~Bourchier, John William~~	Bendigo	Vic	LP	Keating, Paul John	Blaxland	NSW	ALP
Bowen, Hon Lionel Frost	Kingsford-Smith	NSW	ALP	~~Kelly, Hon Charles Robert~~	Wakefield	SA	LP
~~Bryant, Hon Gordon Munro~~	Wills	Vic	ALP	Keogh, Leonard Joseph	Bowman	Qld	ALP
~~Bury, Lesley Harry Ernest~~	Wentworth	NSW	LP	~~Kerin, John Charles~~	Macarthur	NSW	ALP
~~Cairns, Hon Dr James Ford~~	Lalor	Vic	ALP	Killen, Hon Denis James	Moreton	Qld	LP
~~Calder, Stephen Edward~~	NT	NT	CP	~~King, Hon Robert Shannon~~	Wimmera	Vic	CP
~~Cameron, Hon Clyde Robert~~	Hindmarsh	SA	ALP	~~Klugman, Dr Richard Emanuel~~	Prospect	NSW	ALP
~~Cameron, Donald Milner~~	Griffith	Qld	LP	~~Lamb, Anthony Hamilton~~	La Trobe	Vic	ALP
~~Cass, Hon Dr Moses Henry~~	Maribyrnong	Vic	ALP	~~Lloyd, Bruce~~	Murray	Vic	CP
~~Chipp, Hon Donald Leslie~~	Hotham	Vic	LP	Luchetti, Anthony Sylvester	Macquarie	NSW	ALP
~~Coates, John~~	Denison	Tas	ALP	Lucock, Philip Ernest	Lyne	NSW	CP
~~Cohen, Barry~~	Robertson	NSW	ALP	Lynch, Hon Phillip Reginald	Flinders	Vic	LP
~~Collard, Frederick Walter~~	Kalgoorlie	WA	ALP	~~MacKellar, Michael John Randal~~	Warringah	NSW	LP
Connor, Hon Reginald Francis X	Cunningham	NSW	ALP	~~Maisey, Donald William~~	Moore	WA	CP
Cooke, Nelson Marshall	Petrie	Qld	LP	Martin, Vincent Joseph	Banks	NSW	ALP
~~Cope, Hon James Francis~~	Sydney	NSW	ALP	~~Mathews, Charles Race Thorson~~	Casey	Vic	ALP
Corbett, James	Maranoa	Qld	CP	~~McKenzie, David Charles~~	Diamond Valley	Vic	ALP
Cramer, Hon Sir John Oscar	Bennelong	NSW	LP	~~McLeay, Hon John Elden~~	Boothby	SA	LP
~~Crean, Hon Frank~~	Melbourne Ports	Vic	ALP	~~McMahon, Rt Hon William~~	Lowe	NSW	LP
~~Cross, Manfred Douglas~~	Brisbane	Qld	ALP	McVeigh, Daniel Thomas	Darling Downs	Qld	CP
Daly, Hon Frederick Michael	Grayndler	NSW	ALP	~~Morris, Peter Frederick~~	Shortland	NSW	ALP

Member	Electorate	State	Party	Member	Electorate	State	Party
Davies, Ronald	Braddon	Tas	ALP	~~Morrison, Hon William Lawrence~~	St George	NSW	ALP
Doyle, Francis Edward	Lilley	Qld	ALP	~~Mulder, Allan William~~	Evans	NSW	ALP
~~Drummond, Peter Hertford~~	Forrest	WA	LP	~~Nicholls, Martin Henry~~	Bonython	SA	ALP
Drury, Edward Nigel	Ryan	Qld	LP	~~Nixon, Hon Peter James~~	Gippsland	Vic	CP
~~Duthie, Gilbert William Arthur~~	Wilmot	Tas	ALP	~~Oldmeadow, Maxwell Wilkinson~~	Holt	Vic	ALP
~~Edwards, Harold Raymond~~	Berowra	NSW	LP	~~Olley, Frank~~	Hume	NSW	ALP
~~Enderby, Hon Keppel Earl~~	ACT	ACT	ALP	O'Keefe, Frank Lionel	Paterson	NSW	CP
~~England, John Armstrong~~	Calare	NSW	CP	~~Patterson, Hon Dr Rex Alan~~	Dawson	Qld	ALP
~~Erwin, Hon George Dudley~~	Ballaarat	Vic	LP	~~Peacock, Hon Andrew Sharp~~	Kooyong	Vic	LP
~~Everingham, Hon Dr Douglas~~	Capricornia	Qld	ALP	~~Reynolds, Leonard James~~	Barton	NSW	ALP
Fairnbairn, Hon David Eric	Farrer	NSW	LP	Riordan, Joseph Martin	Phillip	NSW	ALP
~~Fisher, Peter Stanley~~	Mallee	Vic	CP	~~Robinson, Eric Laidlaw~~	McPherson	Qld	LP
Fitzpatrick, John	Darling	NSW	ALP	Robinson, Hon Ian Louis	Cowper	NSW	CP
Forbes, Hon Dr Alexander James	Barker	SA	LP	~~Ruddock, Philip Maxwell~~	Parramatta	NSW	LP
~~Fox, Edmund Maxwell Cameron~~	Henty	Vic	LP	~~Scholes, Gordon Glen Denton~~	Corio	Vic	ALP
~~Fraser, Hon John Malcolm~~	Wannon	Vic	LP	~~Sherry, Raymond Henry~~	Franklin	Tas	ALP
Fulton, William John	Leichhardt	Qld	ALP	~~Sinclair, Hon Ian McCahon~~	New England	NSW	CP
~~Garland, Hon Ransley Victor~~	Curtin	WA	LP	Snedden, Rt Hon Billy Mackie	Bruce	Vic	LP
~~Garrick, Horace James~~	Batman	Vic	ALP	~~Staley, Anthony Allan~~	Chisholm	Vic	LP
~~Giles, Geoffrey O'Halloran~~	Angas	SA	LP	Stewart, Hon Francis Eugene	Lang	NSW	ALP
~~Gorton, Rt Hon John Grey~~	Higgins	Vic	LP	Street, Hon Anthony Austin	Corangamite	Vic	LP
Graham, Bruce William	North Sydney	NSW	LP	~~Thorburn, Ray William~~	Cook	NSW	ALP
~~Grassby, Hon Albert Jaime~~	Riverina	NSW	ALP	~~Turner, Henry Basil~~	Bradfield	NSW	LP
~~Gun, Dr Richard Townsend~~	Kingston	SA	ALP	~~Uren, Hon Thomas~~	Reid	NSW	ALP
Hallett, John Mead	Canning	WA	CP	~~Viner, Robert Ian~~	Stirling	WA	LP
~~Hamer, David John~~	Isaacs	Vic	LP	~~Wallis, Laurie George~~	Grey	SA	ALP
~~Hansen, Brendan Percival~~	Wide Bay	Qld	ALP	Wentworth, Hon William Charles	Mackellar	NSW	LP
~~Hayden, Hon William George~~	Oxley	Qld	ALP	~~Whan, Robert Bruce~~	Eden-Monaro	NSW	ALP
Hewson, Henry Arthur	McMillan	Vic	CP	~~Whitlam, Hon Edward Gough~~	Werriwa	NSW	ALP
~~Holten, Hon Rendle McNeilage~~	Indi	Vic	CP	Whittorn, Raymond Harold	Balaclava	Vic	LP
~~Hunt, Hon Ralph James Dunnet~~	Gwydir	NSW	CP	~~Willis, Ralph~~	Gellibrand	Vic	ALP
Tellers for the Noes: Mr England, Mr Hansen				~~Wilson, Ian Bonython Cameron~~	Sturt	SA	LP
Note: Members ~~marked thus~~ might have abstained from voting or were absent. Source: Photocopy of the original House of Representative's division sheet.							

1:–1.1.1. – Review the Law Against Consenting Adults [56]

The Case for Compassion

This is a position-paper delivered to the St Thomas More Association of Law Students. Its author, Philip Esler, an Arts/Law student at Sydney University, espouses one point of view, that the laws against consenting homosexuals should be reviewed. This is not necessarily the view of The Catholic Weekly.

* * * * *

The Community – It is relevant to stress the difference between abortion and homosexual law reform, so often unintelligently yoked together.

ss. 79-81 of the NSW Crimes Act describe various *unnatural offences* and their penalties – up to 14 years in goal.

The law does not discriminate between willing and unwilling homosexuals – its ferocity touches both.

Faced with such legislative severity against certain forms of homosexual behaviour we may ask ourselves the following questions:

Is this legislation a viable response to the problem of homosexuality in our society?

Does it deter individuals from such behaviour, are the men convicted under its provisions changed in any

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[56] Esler, Philip, 'The Case for Compassion', *The Catholic Weekly*, vol. XXXII, no. 1647, 4 October 1973, pp. 2-3. Original emphasis.

way?

Or again is it disadvantageous? Does it lead to the victimisation of a harmless minority, does it encourage blackmail and police corruption?

The case argued here is that criminal sanctions against homosexual acts of consenting adults in private should be removed from the Statute Book. Nothing worthwhile results from their presence. ss. 79 and 81 are a remnant of the primitive human urge to repress whatever is not understood, even if such repression merely aggravates the condition.

While homosexuality is a psychological aberration and its physical expression an objective moral evil, homosexuals themselves are, in varying degrees, prisoners of their personality. Those who recognise their individual responsibility in the teeth of psychological damage deserve not shocked condemnation but tolerance.

These claims need some substantiation, and since ir is possible to espouse homosexual law reform in a legalistic vacuum, as it is pre-eminently a social and ethical issue, psychological and theological discussion must also be introduced.

Understanding Homosexuality

'Out of the closets and into the streets!' cry the Gay Liberationists, as one minority group finds its voice, even if it is a little strident. But the propagandist homosexuals now common in our universities should not be taken as typical.

Homosexuality does not determine personality, it is only one facet of it, and may be shared by individuals with widely varying social background, intelligence and vocation. Contrary to the popular myth, homosexuals, if discreet, are not easily identifiable; most of them have no obviously distinguishing features, either in appearance or manner.

While there are often on homosexuals signs of underlying insecurity, such as abnormal sensitiveness and quickness to feel slighted, investigations have revealed 'no general tendency to severe personality disturbance' [57] among them.

Their sexual proclivities, then, are not at all obvious. This largely led to their numbers in the community being greatly underestimated. Indeed it was not until 1948 and 1953, when Kinsey and others published the results of their monumental studies into the sexual mores of American men and women, that the incidence of homosexuality could be estimated with a fair degree of accuracy. [58]

Almost from the start of their survey Kinsey and his associates were astonished at the amount of homosexuality in the USA. But these early results were amply verified as different sample groups were chosen, upon which careful checking and rechecking was made.

They concluded that by the age of 45, 37 per cent of men and 13 per cent of women hah had some homosexual contact.

Later studies, some of them in England, affirmed the surprising extent of homosexuality revealed by Kinsey. No research as thorough as this has yet been carried out in Australia, but it seems unlikely that our position would differ drastically.

It may be justly suggested, then, that in NSW there would, in any given year, be many thousands of males engaged in sexual practices proscribed by the *Crimes Act*. When we learn that in 1971 NSW police accepted 267 reports of homosexual offences and cleared up 213 of them, [59] we begin to wonder whether, as regards stopping these offences, the Statutes has any more than a symbolic significance.

Homosexuality is not a single-natured phenomenon, but is rather a collective term for various sexual drives, countenanced neither by the Church, nor the Law, nor overtly, by society. While its causes are complex and resist too tight a categorisation, some generalisations can be made regarding them.

First, it is firmly established that inversion (a less well-known term for homosexuality) does not result from a biological anomaly, such as hormonal imbalance.

Hormones do influence sexual behaviour, either by stimulating or restraining it, but only in a direction psychologically pre-determined. This is to say, a dose of male hormone given to a homosexual thought to be deficient in this commodity might sharpen his sexual appetite, but only towards others of his own sex.

Secondly, homosexuality does not seem dependent on hereditary factors. The principal evidence for this

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[57] West, Donald J, *Homosexuality*, Penguin Books, Ringwood, Vic, 1968, pp. 50-4.

[58] Kinsey, AC, et al. *Sexual Behaviour in the Human Male*, Saunders, London, 1948. Kinsey, AC, et al. *Sexual Behaviour in the Human Female*, Saunders, London, 1953.

[59] See: 1:–1.1.1.1. page 20, *Report of the* [NSW] *Police Department 1971*, p. 34. [NSW, PP, no. 41, 1972].

relies on studies of identical twins, whose upbringing has been different.

Caution must be used with this method, but if such twins show wide behavioural discrepancies, the this cannot be due to their genetic structure (which is identical), but to the environment in which they were raised.

This introduces the third and most convincing explanation, a psychological one, in particular that of Freud, in which the early treatment a child receives is seen as crucial in shaping his personality.

Freud postulated that all humans are potentially bisexual and pass, whether they realise it or not, through a homosexual phase.

While most move away from this toward sexual normality, homosexuals fail to make the transition. This failure stems largely from their inability to cope with the Oedipus complex.

What is meant here is that an invert is very often found to have an unusually intense relationship with his mother and quite unsatisfactory one with his father who may, for example, have been weak and ineffectual, or absent from the home for long periods.

The child with no father figure to emulate and too strong a mother figure, becomes psychologically damaged. (A widow often instinctively avoids this danger by keeping alive for the children their father's presence in memory.) [60]

Parental behaviour, therefore, emerges as of primary importance in the causation of homosexuality.

Here, then, is a prime example of the ill effects consequent upon imbalanced family relations.

Sincere attempts to prevent homosexuality should be addressed to the fostering of a strong family life, rather than to a reliance on the highly questionable deterrent effects of the criminal law.

Thus, inversion is a type of sexuality kept at an immature stage through an ingrained environmental distortion. Now the consequences of this distortion differ in intensity and this influences the prospects of cure, of growth to sexual maturity.

Research has shown that long accustomed and intense homosexual drives are almost impossible to displace, even after years of psychoanalysis. [61] Nevertheless, where an individual has not been exclusively homosexual for long periods and has had even sporadic heterosexual contacts, some possibility of change exists.

The Moral Dimension

With this information in mind, we may now examine the moral aspects of homosexuality. There must be made, initially , a fundamental distinction between objective acts of homosexuality and the subjective, personal responsibility for those acts. While the absolute moral evil of these practices will, I hope, be adequately shown below, the person(s) involved need not necessarily be incurring moral censure.

For although the invert might disapprove of the habit and try to overcome it, the psychological pre-programming he has received might render his efforts ineffectual. Clearly the exercise of his capacity to choose (his freedom) is seriously restricted and the likelihood of his sinning by acting so correspondingly reduced.

It should be stressed that freedom is only gradually acquired in its entirety; we grow into it. Jacques Maritain calls this process 'the conquest of freedom'. The very worst thing for someone who successfully fights against homosexuality is to have a sense of guilt.

In this situation, as in many others, guilt feelings are counter-productive. They also often lead us to forget that the natural moral law is not, as popular mythology would have it, a list of Don'ts!, but 'the internal law of the growth and harmonisation of our native tendencies or inclinations to love well, as befits a man'. [62]

For St Thomas the moral law, as I quoted above, is essentially endogenous, it is 'the internal law of growth and harmonisation of our native tendencies or inclinations to love well, as befits a man'.

It is the internal law of man's being, and by adherence to it is obtained fulfilment and happiness. Immediately, the problem arises, however, of deciding what is *fitting*, and here reliance must be placed on the understanding man can acquire of his own nature.

In this task there are no easy solutions readily at hand. Opponents of natural law often point to statistics showing the frequency of homosexual acts and deduce that it is a *normal* feature of the nature of man for there to be a percentage of people homosexually inclined.

While their evidence will persuade everyone, Catholics can advance, in favour of an authentic human nature, evidence drawn from anatomy and psychology, as well as from observations as to how unsatisfying and finally impermanent are most homosexual relationships.

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[60] West, op. cit. p. 173.

[61] ibid. pp. 220-6.

[62] Ple, A, OP [OP – Ordo Praedicatorum – The Dominican Order], *Le Supplement*, September 1972.

Freud, in particular, posits a very definite sexual normality for man. I have mentioned above his view that homosexuality is a species of sexual immaturity. Added to this, he says explicitly and repeatedly that the essential end of sexuality is procreation. Consider the following quote from his Introduction Psychoanalysis (1917): 'We describe as perverse every sexual activity which, having renounced procreation, seeks pleasure as an end independent of procreation.'

This supplies a useful basis upon which man might come to a knowledge of himself.

If this seems a little doctrinaire, one may observe the unfulfilling results of homosexual relations.

In contrast to normal marriage, male partnerships rarely last a lifetime. They may continue for some years but generally both partners seek promiscuous satisfaction with other males.

Older homosexual are often abandoned altogether and for this reason they have a very real dread of growing old. The unnaturalness of such couplings is revealed by the lack of a deep and abiding personal commitment, which is so strongly fostered in a genuine marriage by the presence of children.

In view of which it seems unwise, to say the least, to sanction proposals that homosexual pairs should be allowed to adopt children.

The Bible

The Bible supplies the second base for asserting the objective wrongness of homosexual acts. In view of some recent controversy as to whether they are explicitly condemned in the Bible, we, in Australia, are fortunate in having recently heard one of the world's leading biblical theologians, Father E Hamel, SJ, on this very issue, as it is dealt with by St Paul. [63]

Father Hamel draws attention to the Jewish context of Paul's thought.

The Old Testament displayed a basic orientation toward fecundity, in view of which the Jews were struck by the sterility of the homosexual relationship. (The often celebrated homosexuality of classical Greece should be seen as the product of a social system where women were rigorously excluded from all activities save those of the home and were seen as unfit objects for the highest love!).

But Paul condemns not the tendency to inversion, but its actuation, for in this the body is not used in conformity with 'a divine order positively revealed by God (Genesis) and accessible to human conscience'. Activities opposed to man's physical and theological pre-structuring are against nature (para physin).

If homosexual have moral responsibilities, so too do others dealing with them. While maintaining that homosexual behaviour is evil per se, they must not condemn the homosexual.

The need to deculpabilise the conscience of such a person, whose freedom may be much restricted, was mentioned above. With this perspective, we may now assess the worth of essays by the Criminal Law into so sensitive an area.

Here we take up the vexed and vexing question as to whether the Criminal Law should concern itself at all with morality, public and private, or whether it should only penalise actions resulting in harm to others.

Interestingly enough, however, even Lord (Patrick Arthur) Devlin supported the proposal of the Wolfenden Committee (established in Britain in 1958) that legal penalties should be abolished for homosexual acts between consenting adults in private.

A group appointed by Cardinal Griffin [64] to advise the Wolfenden Committee on Catholic views also favoured the proposal. [65] The Wolfenden recommendations were finally put into effect by the *Sexual Offences Act 1967*.

While the law should take account of homosexual acts perpetrated upon unwilling parties or upon minors, there are few good reasons for punishing willing adult offenders. (Dangerous or psychopathic homosexuals are comparatively rare, compared with their heterosexual counterparts, except in prison populations.)

Comparing the large percentage of males who indulge in the vice with the number convicted, 213 in 1971 [see Table 3, page 21] and many of these would have been for the types of deviant behaviour it is agreed should be proscribed) indicates of what little deterrent force the current legislation is. The suggestion that the numbers would increase if the law were loosened is pure speculation. There is hardly likely to be a multitude of people in the state just waiting for the law to be relaxed so they can safely activate their homosexual tendencies.

Its is correctly advanced that the timing of reform is important, but with the issue so topical, this seems not the time to tarry, even if the public has to be educated as to the difference between morality and legality.

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[63] Esler, Philip, 'The Case for Compassion', *The Catholic Weekly*, vol. XXXII, no. 1642, 30 August 1973, pp. 14-5.

[64] See: 7:–1.11.1.1. page 513, 'Roman Catholic Griffin Report, 1956,'.

[65] St John-Stevas, Norman, *Law and Morals*, Hawthorn Books, London, 1964, p. 120.

Here it is relevant to stress the essential difference between abortion and homosexual law reform, so often unintelligently yoked together and attacked by those hostile to the *permissiveness* allegedly rampant in our society.

Abortion destroys an innocent third party, while homosexuality affects only the parties involved. Thus it is not inconsistent to urge protection for the foetus, but to advocate reform of the law regarding homosexuals, which at present often causes a greater evil than what it seeks to eliminate.

The rounding up of wayward homosexuals is a likely field for police corruption and although this might not be very common, it cannot be doubted that police energies so expended could be used more profitably elsewhere. In 1971 the NSW police solved 80 per cent of reported homosexual offences [see Table 3, page 21] and 11 per cent of house burglaries. [66] (Satis dictum.)

Conclusion

ss. 79-81 of the NSW *Crimes Act* do little good and a great deal of harm. They should be amended so that willing, adult homosexual acts in private are not punishable by law.

One might readily suppose that these ss. owe their existence to antique intolerance and the hypocritical desire of society to make an obvious minority group the scapegoat for its own inadequacies.

What's Your View?

This article is published to stimulate discussion. Write us a letter.

1:–1.1.1.1. – Report of the NSW Police Department for 1971 [67]

In my annual report for 1970, I advised of the introduction of an entirely new statewide system to be observed by police in recording and reporting crime and offences. The new procedure, known as the Crime Intelligence and Information System (CIIS) came into operation on the 1 January 1971, and requires the central checking, classification, and recording on computer of all crimes and certain types of lesser offences brought to the notice of police, together with pertinent and relevant information regarding the identity of the person or persons suspected for the commission of such crimes and offences, the method and manner used by the suspect, the nature of property involved and particulars of the persons, bodies, groups, or companies upon whom the crime or offence was committed.

As was expected introduction of the new system brought with it many technical and human difficulties and much remains to be done in both areas before total efficiency can be attained.

Appendix D [see Table 3, page 21] to this report is a summary of those crimes and lesser offences which were recorded on computer by the CIIS during 1971. The total number of such crimes and offences is 143,007 of which 37,419 or 27 per cent are classified as having been cleared up. This figure does not include motor vehicle thefts, details for which are given later in this report.

Appendix F [see Table 4, page 22] has been compiled in a form designed to meet the requirements of the Police Department in the preparation of statistics to which the appendix refers and to co-ordinate with the procedures which it is anticipated will be followed in the analysis of crime statistics for this State by the Bureau of Crime Statistics and Research recently established within the Department of the Attorney General and Justice. The appendix, therefore, includes figures relating to certain classes of offences not previously included in the statistics published in the annual reports of this Department.

The *up-curve* shown in the number of certain crimes and offences which were previously included in the annual reports of the [NSW] Police Department can be said to be one of the direct results of the introduction of the CIIS which, as I have stated, requires the recording on the computer of '… all crimes and certain types of lesser offences brought to the notice of police …'.

I am advised that similar increases in crime figures have shown up in overseas police force records immediately following the introduction of total crime reporting. Therefore, the overall increase in the figures shown in the summary in respect of certain crimes and offences as compared with those set out in the annual report of this Department for 1970 should not be interpreted as necessarily establishing that more such crimes and offences were committed during 1971 than in 1970, but that a proportion of the increase is due to the new system of total crime reporting. It is not possible to measure this proportion but I am confident that a

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[66] See: 1:–1.1.1.1. page 20, [NSW] *Report of the Police Department for 1971*, p. 34. [NSW, PP no. 41, 1972].

[67] *Report of the* [NSW] *Police Department for 1971*, p. 5, 'Appendix D' p. 34, 'Appendix F' p. 37, [NSW, PP no. 41, 1972].

comparison of the *crime figures* for subsequent years will support my submission.

Prior to the introduction of total crime reporting the clear-up rate was assessed upon figures relating to what were then described in annual police reports as serious crimes. In this report the clear-up rate and percentage figures is shown in respect of each class of crime and offence contained in appendix D. This in my view is a more efficient method and provides a ready means of determining the success or otherwise of police action in respect of particular crimes and offences and gives a far better appreciation of the work of the Force in the detection and investigation of crime.

The offences of breaking, entering, and stealing, stealing from dwelling houses and other places, and larceny of various types are among the most prevalent crimes committed, not only in this State but throughout Australia and overseas countries, and they present considerable difficulties in their effective investigation.

Table 3 : Statewide [NSW] Summary of Crimes and Lesser Offences Recorded on Computer by Crime Intelligence and Information System in 1971 (Appendix D)

Offence	Accepted Reports	Cleared Up	% Cleared
Abduction	34	22	65
Abortion and Attempts	33	31	94
Armed Hold-up	298	121	41
Assault and Rob	1124	251	22
Assault–Aggravated	727	577	79
Assault–Non-aggravated	1661	893	54
Demand Money with Menaces	66	22	33
Manslaughter	82	80	98
Murder	74	72	97
Murder–Accessory to; Conspiracy to	2	1	50
Murder–Attempts	39	37	95
Culpable Driving	124	118	95
Hetero-sexual offences, lesser	1468	1228	84
Homosexual Offences	**267**	**213**	**80**
Indecent Assault on Child	183	135	74
Offences against Public Decency or Sexual Morality	152	63	41
Rape	162	109	67
Rape–Attempts	41	26	63
Breaking, Entering, and Stealing from Dwelling Houses of every Type and Description	21168	2312	11
Breaking, Entering, and Stealing from Other than Dwelling Houses	16603	2400	14
Breaking, Entering, and Stealing–Attempts; All Premises	8203	846	10
Housebreaking Implements in Possession	109	109	100
Stealing from the Person including Attempts	1123	164	15
Stealing–General including Attempts	68546	13831	20
Fraudulent Acquisition of Property, including Attempts (False Pretences, Embezzlement, Conspiracy, etc.)	11075	8290	75
Drugs, Manufacture Unlawfully	18	18	100
Drugs, Obtain Unlawfully	681	667	98
Drugs, Supply	176	172	98
Drugs, Use	796	785	99
Drugs, Other Offences	57	55	96
Arson	210	76	36
Bigamy	5	5	100
Carry Cutting Instrument	78	76	97
Conspiracy–General	17	17	100
Escape from Lawful Custody	129	102	79
Goods in Custody	797	788	99
Malicious Injury and Damage to Property	4455	833	19
Offensive Telephone Calls–Not Amounting to Indecent	98	40	41
Perjury	4	4	100
Possession of Property Stolen Outside the State	219	211	96

Offence	Accepted Reports	Cleared Up	% Cleared
Receiving	951	945	99
Steal by Finding	79	35	44
Stock Stealing–Includes Cattle of all Kind, Sheep and Wool	243	153	63
Unlicensed Pistol	218	217	99
* Offences not coming within classified headings of this Summary	412	269	65
Total	**143007**	**37419**	**27**
* These offences include a number which were the subject of secondary charges preferred in conjunction with the charge of either felony or indictable misdemeanour. In addition there are a number of offences of various types for which a programme coding had not yet been determined.			

Table 4: NSW Police, Return of Cases Dealt with by Courts of Petty Sessions for the Year Ended 31st December 1971 (Appendix F)

Offences	Total	Total for Previous Year	Increase	Decrease	Arrests		Summons Cases		How dealt with									
									Committed for Trial		Disposed of Summarily						Withdrawn or Discharged	
											Fined		Imprisoned		Otherwise dealt with			
					M	F	M	F	M	F	M	F	M	F	M	F	M	F
F Sexual Offences– Rape and attempts	183	125	58		183				127				4		22		30	
Bestiality and attempts	1	7		6	1								1					
Buggery and attempts	43	52		9	43				35						4		4	
Carnal knowledge	1125	955	170		1123		2		509				38		336		222	
Indecent act between males in public or private	27	29		2	27				7		2		2		15		1	
Indecent act–male person party to in public or private	10	11		1	10				4						1		4	
Indecent act–male person procuring or attempting to procure in public or private	24	28		4	24				2		2		1		13		6	
Indecent act–male person soliciting or inciting in public place and attempts	5	7		2	5				1		1				2		1	
Indecent assault on females	485	432	53		485				237				31		141		76	
Indecent assault on males	180	169	11		180				91				3		35		51	
Other sexual offences	20	16	4		18	2				2	2		2		11		3	
F Total	2103	1831	296	24	2099	2	2	–	1013	2	7	–	82	–	580	–	398	–

1:–1.1.2. – The Responsibility of the Presbyterian Church Regarding Homosexuality [68] [69]

Foreword – Douglas Cole, NSW State Moderator, 1967-68.

The 102nd Session [May 1967] of the General Assembly of the Presbyterian Church in NSW, over which I presided as Moderator, agreed, after debate, to three significant resolutions:

1. The Assembly declared 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 well-being and happiness, it nonetheless supports the Wolfenden Report [70] that homosexual behaviour between two consenting adults in private should no longer be a criminal offence, and that the appropriate authorities be advised accordingly.
2. The Assembly requests the State Government to make a substantial sum of money available for research into the causes and treatment of homosexuality.
3. The Assembly instructs the committee to print and issue to all members of the Assembly a transcript of the

[68] This seminar was conducted on 17 March 1967.

[69] NSW Presbyterian Assembly, Church and Nation Committee, *The Responsibility of the Church Regarding Homosexuality*, Sydney, 1967.

[70] *Report of the Committee on Homosexual Offences and Prostitution*, HMSO, London, 1957.

Seminar on Homosexuality arranged by the Church Life and Work Committee.

As a result of this latter decision the four papers presented at the seminar have now been published, and I commend this material for study as a means of opening up discussion and initiating action. We are no longer entitled to dismiss the problem as unpalatable, or simply to label it as sin. Both attitudes contribute nothing to solve the frustration and tragedy inherent in the practice of homosexuality, just as the law as it stands at present appears to be judgmental and punitive rather than understanding and constructive.

The contributors to this publication plead rightly for a revised understanding of the homosexual and a greater degree of vigilance in the home and family life on the part of parents as a preventive measure against potentially deviant sex behaviour. The responsibility of the Church regarding homosexuality is cogently set out and the committee responsible for the arrangement and publication of the lectures deserves the thanks of all whose Christian concern is not deflected by, but shapes public opinion towards positive and therefore helpful courses of action.

The Responsibility of the Church Regarding Homosexuality – The Rev A North, BA, BD, Convener – Church and Nation Committee.

One could almost be excused from concluding on the basis of evidence provided by the Minutes of the NSW Presbyterian Assembly over the last 50 years, that the Presbyterian conception of the nature of man is that he is non-sexual. Turn over the records of the Assembly deliberations as you will, and you will find scant recognition of the revolution that has been taking place in sexual ethics and sexual practice.

This state of affairs can no longer be tolerated. The sometimes almost inarticulate cries of countless numbers of individuals both inside and outside the Church are demanding that the Church recognise the whole realm of sex as a problem area for many people.

The subject of this particular seminar is *The Responsibility of the Church regarding Homosexuality*. Responsibility is an important word here. Brunner [71] asserts that 'Human existence, as such, is existence in responsibility' and that responsibility 'is not an extra, alien element in life, but (that) it constitutes our human life itself.' [72] The essence of Christian love is to accept responsibility for any person in need, and the homosexual is such a person.

A simple definition of homosexuality is that it is the sexual attraction of a person to one of the same sex. I do not mean to infer in anything that follows that there is any specific type of person that we can call the homosexual. All of us have homosexual tendencies, whether conscious or unconscious, and all of us, in the course of our development have passed through a stage of homosexual relationship with others.

The responsibility of the Church regarding homosexuality can be investigated under three distinct headings.

1. – The Church is responsible to God

The Church is here concerned that she might truly declare the authentic Word of God for human life, meanwhile distinguishing between the timeless and the purely contingent. Our doctrine of the Word of God as contained in the Scriptures of the Old and New Testaments forbids us ending discussion by merely quoting biblical texts, and involves us in the further responsibility of penetrating beyond law to the spirit behind the law.

2. – The Church has a responsibility to the community

The Wolfenden Committee came into being as the result of pressure upon the British Parliament by the Church of England Moral Welfare Council. One of the controversial recommendations of the committee was 'that homosexual behaviour between consenting adults in private should no longer be a criminal offence'. In recent months, a bill passed by the British Parliament has implemented this recommendation.

A *Sydney Morning Herald* [73] editorial makes the following observation: 'The absence of informed discussion explains to some extent the state of the law on homosexuality and sex offences. Changes in the law on sexual offences must be related to public opinion. Legislators have a ready excuse for inaction when there is no obvious consensus in favour of reform. It is not merely that a strong public opinion is necessary to being politicians to the point of change on these difficult questions. They are in fact entitled to be given the clearest

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[71] Brunner, Emil, *The Divine Imperative*, Lutterworth Press, London, 1951.

[72] Brunner, Emil, op. cit. 'Bibliography 1', p. 295.

[73] See: 1:–1.1.2.1. page 37, n.a. 'Homosexuality', *The Sydney Morning Herald*, editorial, Friday, 21 October 1966, p. 2.

possible guidance on the community's attitude to problems which are hardly political and which are certainly beyond party formulas.'

The Church has a responsibility to assist in the development of an enlightened community conscience which will balance the needs of the community to protect itself against the requirements of justice, and compassion.

3. – The Church has a responsibility to the homosexual

(a) First there is the responsibility of understanding the condition of the homosexual. Undoubtedly the issues concerning homosexuality are unduly clouded because of the existence of certain irrational fears based upon ignorance. We must welcome reliable information on the subject from any and every source.

(b) We have a responsibility to see that justice is done to the homosexual. We ought not to condemn all because of the misbehaviour of some. Many are decent upright human beings who are tormented by the crushing burdens a legal guilt and social ostracism to which they are subjected. Later in this paper I will indicate some reasons why the Church should support the Wolfenden recommendation concerning homosexual behaviour between consenting adults in private.

(c) We have a responsibility to offer help through acceptance of the homosexual and his problems, and to encourage the development within the community of those resources which will assist his rehabilitation and personal development. John Robson, Director of the Father and Son Welfare Movement, in a paper delivered some years ago emphasised the need for society to accept its share of responsibility for the homosexual: 'As a community we must provide greater facilities in our churches, our schools, our clubs and other organisations to more adequately meet the needs of growing youth and adult.'

(d) We have a responsibility to the adolescent who becomes aware of his or her developing homosexual feelings. It would seem that we must find a way to lighten the heavy burden of the combined sections of religion and law against all homosexual behaviour if we are make it possible for the adolescent to recognise his own problem and to seek the most effective forms of aid available. We do not help such a person by magnifying his guilt and denying him a place in the fellowship of the Church.

Now I wish to give some reasons why the Church and the community should support the Wolfenden recommendation concerning homosexual behaviour between consenting adults in private.

1. It recognises the distinction between various levels of homosexuality and homosexual behaviour. There is a great deal of difference between the behaviour of the person who can only attain heterosexual orgasm by means of homosexual fantasy, and the person who seduces small boys. Surely the private behaviours of consenting adults is much closer to the first than the second form of behaviour.

2. The prognosis for the homosexual is notoriously uncertain. The Wolfenden Report indicates that 'there may be good grounds from the medical point of view, for not attempting any fundamental reorientation of the sexual propensity of a homosexual who is already well adjusted and is a useful member of society'. (Par. 194) A British MP is quoted as having recently said that sending consenting adults to prison was 'as therapeutically useless as incarcerating a sex maniac in a harem'.

3. Many would agree with one of the central contentions of the Wolfenden Report, viz. That it is not the function of 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. JS Mill *On Liberty* writes: 'The notion that it is one man's duty that another should be religious, was the foundation of all the religious persecutions ever perpetrated, and if admitted, would fully justify them.'.

4. The law as it is presently constituted discriminates unfairly. There is surely no moral difference between the behaviour of consenting adult lesbians and that of consenting male homosexuals. Four forms of sexual activity are regarded as immoral – adultery, fornication, (male) homosexuality and lesbianism. But of these, only homosexuality between males is illegal.

5. 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 (William Allen) 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 I believe that the Church can do most towards fulfilling its responsibilities regarding homosexuality if it endeavours to fulfil its mission as a reconciling community. The words of WG Cole in *Sex and Love in the Bible* [74] are helpful here. He asks:

[74] Cole, William G, *Sex and Love in the Bible*, Associated Press, New York, 1959, p. 371.

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 a 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?

Appendix Lib State of the Law in Australia the Crimes Act

s. 80. Whosoever attempts to commit the said abominable crime, or assaults any person with intent to commit the same with or without the consent of such person, shall be liable to penal servitude for five years.

s. 81. Whosoever commits an indecent assault upon a male person of whatever age, with or without the consent of such person, shall be liable to penal servitude for five years. (In order to establish the offence of indecency between males, it is not essential to show actual physical contact … it is sufficient if the persons charged have placed themselves in such a position that an indecent exhibition is going on between them. Whipping may be ordered.)

s. 81a. Whosoever, being a male person, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any Act of indecency with another male person shall be liable to imprisonment for two years.

s. 81b. (1) Whosoever, being a male person, in any public place Lib

(a) solicits or incites; or

(b) attempts to solicit or incite, in any manner whatsoever and male person to commit or to be a party to the commission of any offence under section 79, 81 or 81a of this Act, shall be liable to imprisonment for 12 months.

(2) A person shall not be convicted of an offence under this section upon the testimony of one witness only, unless such testimony is corroborated by some other material evidence implicating the accused in the commission of the offence.

(3) This s. does not exempt any person from any proceeding for an offence which is punishable at common law, but so that no person shall be punished twice for the same offence.

(4) An offence under this section shall not be prosecuted and punished under the *Crimes Prevention Act 1916*.

Psychiatric Aspects of Homosexuality, **Homosexuality Seminar** – Dr Fabian Bryant, MB, MANZCP, DPM, Psychiatrist-in-Charge, Fraser House, North Ryde Psychiatric Centre.

I will touch on some findings bearing on the causes of homosexuality and review the treatment.

A few words about the frequency of this problem. The most reliable study is that of Kinsey, although there are a number of problems associated with it. He suggests that one in twenty adult males are exclusively homosexual. This figure may be high, but one in 100 would not be too high. So this is a very common form of behaviour in some form or another among males.

Causes

There are a number of people who have explained this in terms of genetics. Some twin studies have supported a genetic basis. Kallmann found 37 pairs of identical twins in which one member was homosexual, and in each pair the opposite number was found to be homosexual. With a series of non-identical twins he found that only 12% of the other twins were homosexual. Sanders found that in six out of seven identical twin pairs both were homosexual. These findings are not accepted by some. They are criticised on the grounds that there are great problems about gaining reliable data about the sexual practices. Often Kallmann relied on hearsay.

There are a number of people who consider hormone imbalance as being at least partly a causse of homosexuality. Experiments on rats have shown some results supporting this. Where hormones were injected into foetal rats after the sexual differentiation was complete, the results was that the rats were born as physical males, but yet adopting female sexual behaviour. They adopted female sexual behaviour and they also adopted female nesting behaviour. So this evidence does suggest, that at least in rats, even thought they can be physically, definitely male, their behaviour can be determined by very early hormone levels. How far one can generalise from behaviour of animals to behaviour of humans is an open question. There is some suggestion that changes in the mother's hormone level have had some influence on adult sexual behaviour – and it has been found in many women that it is the later children in the birth order that turn out to be homosexuals. So possibly there is some change in the maternal hormone balance, which causes this effect. Those who have looked into the physique or the hormone levels of homosexuals have found no difference at all with the findings of normal average men. The present trend is to disagree completely with physical explanations and to seek the answer in the environment.

Far the most important part of the environment of any child is of course its mother. There are common

features in the mothers of homosexuals – at times they tend to have a rather seductive approach to their male children – this includes sleeping with the male child when father is way, sometimes until the child is quite old; taking an inordinate interest in the bathing and genital cleansing pf the male child. Coupled with this seductive tendency in the mother is a frustration of the aroused sensuality in the child towards the mother. This early overstimulation may result in a tendency to dislike any form of contact with women. Similar relationships are found with lesbians. Not uncommon there is an early history of a seductive relationship with the father, or some male relative. They turn away from this person of the opposite sex to a person of the same sex for intimacy.

Other features found fairly regularly in the mothers of homosexuals are that they tend to be hostile, dominant, demanding. They have difficulty in accepting their own maternal role in being the feminine creature our society would like to think mothers should be. They have difficulty also in accepting the wifely role. Often the father is absent and in various ways rejected by the mother. She may denigrate him considerably, so that the child is taught from quite an early age that the father is a bad, demanding, unreliable person. The male role is seen as unacceptable. The result of this early relationship with the mother is that she tends to teach the child a feminine role in life. One finds that some mothers dress the child in girl's clothes, organise the child to take ballet, not football, and other feminine pastimes – e.g. mother may encourage the child to take an interest in girls' and not boys' games.

Fathers, too, are certainly extremely important people in the upbringing of children. Recently a woman in London investigated the lives of a number of homosexuals. She found that often the fathers presented more difficulty than the mothers. Common findings with the fathers are that they are absent, weak, ineffectual, hostile at times, or rejecting, brutal, overbearing, sometimes alcoholic. They also failed to teach the child to be a man. They tended to make the child disown their masculinity.

Often during childhood, there is rigid puritanical suppression of all things sexual. Sex is never discussed in any form in the home. Any expression of sexuality in the child is subjected to extremely harsh punishment, usually by the mother who perhaps fears her own relationship with the child.

Later in the child's development he passes through numerous crisis situations, then he has an intense need of support and closeness. If he cannot really get this from either father or mother, he turns to someone else. Often it is an older man in whom he finds these aspects of emotional support he cannot get at home. Here is someone to talk to, someone who is prepared to listen to his problems – someone who is able to give him the sort of support that a mother usually gives her children, after school. This background provides a biased view about the nature of the world, or the nature of the family. These attitudes tend to come from an isolated man away from the home situation.

Seduction of the child is often considered a factor. However, on an investigation of the children who had been the victims of sodomy in their early life, it was found that only a very small proportion of these children grew up with any marked homosexual problem – either in activity or in terms of recurring homosexual thoughts. This factor of childhood seduction is now considered to be very much less significant in the origin of homosexuality than was once thought.

Frequently homosexuals have avoided women socially. This is probably because they become anxious in the company of women. Later on they may avoid women so as not to upset their mothers who may be loth to share their son. This factor of simply not knowing how to develop either social or sexual relationships with women is quite a common problem.

Sexual segregation also plays a part. This is found in single sex boarding schools, in the navy, army, in prisons, in the informal groupings within society – the homosexual ghettos, where those who feel rejected by society tend to go for mutual support and protection. These single sex situations certainly tend to increase homosexuality. This is evidenced by the increase in the presentation of homosexuals after wars. Experimental findings supporting the factor of segregation in the development of homosexuality are the findings that rats, when reared alone, had to be taught their sexual roles, whereas animals lower on the phylogenetic scale can be reared alone and spontaneously develop their sexual patterns. The indication in this is that the more highly developed the creature, the greater is the reliance on the learning of sexual roles and the less is it innate. The greater is the extent to which they depend upon their upbringing, and their environment, rather than on their genetic pre-disposition. Rats, when reared together with only male rats, developed homosexual relationships. When female rats were introduced some developed heterosexual behaviour, but some continued their homosexual relationships. These experiments suggest that it depended very much upon the age at which the rates first had contact with the female rats as to whether they were likely to continue in their homosexual

behaviour or not.

These findings suggest both hereditary and the environmental bear on the development of the adult sexual role, but that the contribution of environment seems far the most important. The family relationship during development of children is probably of the utmost importance.

Treatment

The outcome of treatment depends on many things. Important determinants on the approach to treatment are as follows:

The earlier a homosexual is treated, the better seems to be the outcome. This includes children who show obviously inverted behaviour, such as young boys who cannot seem to adopt male roles, for example, boys who will only play girls' games, and those who seem to identify with girls in other ways. Intervention at the age of five is probably advisable if there are marked problems in the sexual orientation of a child, and this should be brought up, at least for discussion, with the psychiatrist.

The strength of drive is another factor. Some homosexuals have very little sexual feeling. In many there is the suggestion that they think that they might like to indulge in homosexual activity, but they never actually have the drive to do so. It has been suggested that only about half of the homosexuals actually have any physical homosexual behaviour, but that it is strictly an emotional problem. If the strength of drive is very marked, sometimes this produce great problems. If this is less strong, then treatment is perhaps easier. The strength of drive can of course be somewhat modified in various ways by drugs, or in some countries, by castration. However, this provides no guarantee of avoiding anti-social or criminal behaviour.

Another factor is the nature of deviation. Kinsey produced a seven point scale ranging from complete heterosexuality through bisexuality to complete homosexuality. Many homosexuals are probably almost completely homosexual, though there is a large proportion who are in-between. The Wolfenden Report suggests that if a person is completely homosexual (that is about 6 on the Kinsey scale) then they tend to be untreatable. However, there is some recent evidence that this is not so.

Is the deviation a static thing or is it changing? In some homosexuals the first homosexual feeling may not appear until fairly late in life. It may not appear is some until 35 or in some people later. Sometimes there is a steady transition from heterosexuality to homosexuality or vice versa. If there is a progressing situation, this has of course, quite a marked bearing on treatment. Treatment of someone who has not experienced changes in many years may be more difficult than in one whose feelings are subject to fluctuations.

Other personality factors have a bearing. These include intelligence. About 8% of homosexual offenders are mentally defective. These, of course, could not be treated by accepted methods. A large proportion of homosexuals have other neurotic symptoms. If they do have some neurotic symptoms such as intense anxiety, particularly in relationship with women, this does bode rather well for their treatment. If they are subject to impulsiveness, particularly in the form of criminal activity – this does not bode well. Not a small number of homosexuals are also drug addicts, and about 4 % of homosexuals charged are psychotic, usually schizophrenic.

Desire for change is a most important factor in deciding forms of treatment. Most homosexuals, of course, have not any particular desire to change. They accept their difficulties. They accept their adjustment to a life situation. One cannot expect a psychiatrist to do anything about someone's sexual orientation unless the person himself wishes to change. This creates problems when someone is on probation, on the condition that they seek treatment. Legal sanction can provide some motivation for treatment, but unless the patient seeks treatment on his own behalf there are great difficulties encountered in the doctor-patient relationship. Similar difficulties are encountered if a patient is forced to treatment by family pressure. A patient should be in treatment to help himself, not just to please the family or to avoid prison. Intense feelings of guilt or depression are not infrequent, and this often bodes well. There is frequently a period of transition between the losing of their homosexual need and developing heterosexual ones.

The life situation of the homosexual is important. Is he married? Does he have a family or friends? Does he have a stable job or a stable position in society? If the homosexual is a female impersonator, or a male prostitute, or someone else deriving their living from their homosexuality, this would usually remove them from the realms of either having strong motivation for change or from being successfully treated.

Social forces have a bearing on the outcome of treatment. In England there was the death penalty for sodomy, which is of course not enforced. In some societies there is a strong condemnation of homosexuality. In other societies, for example, in both ancient and modern Greece, it is fare more acceptable. In some countries, in some Siberian tribes, and among some American Indians, it was quite an accepted form of behaviour.

Where societies accepts homosexuality, even if it is only a sub-grouping of society, it is extremely hard to treat.

If one of the many factors mentioned change, then there is a tendency for all the other factors to change. Thus if a patient is older, then the strength of drive will change. If the strength of drive changes, then perhaps the nature of the deviation may change. If the anxiety level changes, or if he is subject to depression, then again the deviation may change.

The point of this is that the prospect of successful treatment as well as the forms of treatment offered depend very much upon many aspects of the patient.

Prevention

As a Public Health psychiatrist, my emphasis is that prevention is better than cure. There are three approaches to prevention: Primary prevention aims at reducing the incidence of a condition within the community. This means that one hopes to stop conditions from developing at all. The principle is for society to organise itself so that each person has adequate supplies of needs for normal physical and emotional growth and development. This notion of Caplan who considered that society must make greater efforts to look into the developing needs of children by ensuring that the upbringing is as satisfactory as possible by encouraging parents to be effective models, and be affectionate to children and to fully accept one and other. Then in this situation, the likelihood of homosexuality developing is diminished. Thus the role of marriage guidance and support is extremely important in the primary prevention of homosexuality.

In one's ordinary contact with people in crisis each of us has a part to play. This is by helping people to develop satisfactory coping mechanisms. Crises are important because at this one must look for new ways of coping, one must find a new way of doing things. When one is in crisis, one tends to seek neighbours and friends who give help in various ways. In a crisis situation one is able to be influenced by other people. At this time if we are able to increase understanding of the problem, or help expression of emotional difficulties, or perhaps suggest various avenues for exploration, then, by increasing various channels of communication, or y guiding these people it is possible to help sort out the difficulty within the home, within the marriage, within the upbringing of children, so that the children themselves are able to develop as society would hope them to do so.

Secondary prevention is the lowering of the prevalence of a condition in society. This is the process of shortening the duration of the condition by early and effective treatment. That is, if a homosexual does present suffering from this condition, then that suffering can be diminished and shortened. This can be achieved by early diagnosis and early effective treatment, so that friends, parents, and others can help by pointing out that a child is in some ways abnormal, or that a youngster is having more than the ordinary difficulties in growing up or accepting his sexual role.

Education and explanation have a place in treatment. Some with mild homosexual tendencies can be educated to develop normal heterosexual relationships. Environmental manipulation at times can be helpful, and if someone has strayed into an exclusively homosexual society then it is at times possible to encourage them to go somewhere else where they might adjust to a normal mixed sex society.

Psychotherapy has an important place. Freud felt that the result can never be predicted with certainty and this still underlines our present difficulties. The Wolfenden Report pointed out that no cases were presented in the literature at the time with a successful outcome of treatment. Raymond Curran suggested that there was no difference in those treated with psychotherapy and those not treated at all. However, since this time, there have been a number of reports of successfully treated homosexuals. Probably the most interesting is that of Bieber who reported for the Society of Medical Psychoanalysts, a study of 106 patients treated, 27% of those treated were exclusively heterosexual after psychoanalytic treatment. 19% of those in Kinsey's group 6, that is, those considered untreatable in the Wolfenden Report were exclusively heterosexual after treatment. Of those who were bisexual, 50% of them were heterosexual at the end of treatment. There are a number of other reports in the literature. A Sydney psychiatrist using analytic psychotherapy reported treating eight patients and has found that three of the eight are exclusively heterosexual after the treatment, five of the eight have undergone considerable modification in the way of becoming heterosexual. I think there is enough evidence in the literature now to suggest that psychotherapy can modify the sexual orientation, in certain people. This has been my experience in practice too.

Other methods used in treatment now include conditioning. It has been found in one study that 15% of those treated after one year show no homosexual responses, and 15% show greatly diminished tendencies towards homosexuality. So 30% of those undergoing brief conditioning do have a marked modification of their sexual orientation.

In considering imprisonment as a form of management, it is found that gaol and probation in one report were shown to have the same effect so there is no definite therapeutic advantage in gaoling a homosexuals. On the other hand there is probably a positive disadvantage in gaol, from the treatment point of view, in that the homosexual loses contact with any heterosexual friends that he may have, and he has only homosexuality to resort to in prison. One mathematically inclined person suggested that only one in thirty thousand of those practising homosexuality were charged and that this is unlikely to make a great difference to the problem. The use of prison as I see it, apart from its deterrent function, is in keeping those who are untreatable, and also a danger to society, out of society. Society is entitled to protection against assault, rape, violence, but for the homosexual who confines his activities to private, who does not intrude into society in general, and who behaves in other respects as a very proportion of his fellowmen do, then I do not think that we as representatives of society have any right to make him a criminal, by declaring this activity to be criminal. A clear distinction must be made between necessary social legislation and personal morality.

If marriage is suggested to a homosexual as a cure, then this is a disastrous thing. It frequently results in such problems as impotence, often in an increase in neurotic behaviour in both homosexual and perhaps in his mate, suicide, alcoholism, and often in a very unhappy home for children.

Tertiary prevention is the notion that the defective functioning in society is due to this disorder should be minimised. This is related to the notion of rehabilitation – but does not apply to the person concerned. It applies to society. What we should aim to do is not only aim to have the homosexual functioning satisfactorily in other dimensions in society, but also we should aim to make society not suffer quite so much from the homosexual.

This we can do by changing public opinion – by decreasing the alienation and isolation of the homosexual due to prejudice, by continuing the homosexual in jobs, by making women socially available to him, by not avoiding him, but by helping him to be a useful member of society. Many homosexuals, indeed, have a great contribution to make. We must avoid a closure in the ranks of the social network and give him a place, so that the homosexual is not put in the same isolated position by the prejudices of society as other racial or religious minority groups have been placed throughout history.

In Summary

We are uncertain of the exact causes of homosexuality, but there is evidence that environment, genetics, and other factors may also contribute, and in particular, the family. The place of the Church as I see it is primarily to help society to continue the stability and support to family life, so that love, respect and security can be provided for growing children, particularly in times of crisis.

The Church and the Homosexual – The Rev WG Coughlan, BA, ThL, Director of the Marriage Guidance Council of NSW 1951-67.

Behind any law, and certainly behind these laws on homosexuality, there is always an attitude. You notice that in the first of these legal enactments, homosexual activity between males is described in what you would call emotional rather than legal or descriptive terms. It is called this abominable crime, and the other references to it are at least partly emotional in that the word indecent occurs regularly and frequently. Although by derivation the word indecent simply means that which is not thought to be fitting in our society, it has come to be used almost exclusively with a sexual connotation, and it has quite strong emotional overtones. All this is written into what should be objective law. Behind the law there lives an attitude.

This attitude about male homosexuality in particular, is deeply ingrained in our western society, and in all its offshoots in every part of the world. So long as this deeply ingrained attitude persists I think it will be pretty well impossible for those in whom it persists as individuals and for the institutions, such as the Church, in which they congregate to do anything effective about the laws. In other words, I want to concentrate for quite a while on the attitude which I am saying is characteristic of our Christian-Western world.

What is the origin of the attitude, and of the laws? I think the answer very briefly is that in the tradition of the Christian churches the attitudes is one of abhorrence, of condemnation, and of insistence on punishment.

In the Old Testament there is the story of the men of Sodom. First of all we are told that they were vicious – a general term. Later we are given only one example of their viciousness, and this is in the story of the men of Sodom who wanted to have Lot bring out his two male visitors, in order that (as the Hebrew words said and as the AV translates) ‘we may know them’. We are aware, of course, that the word ‘know’ is used quite regularly for male-female sexual coitus. (Adam knew his wife, Eve.) But here it is used of homosexual physical activity and conjunction.

Moffatt [75] translates it: 'Bring them out that we may rape them.' Whether this is a legitimate rendering of the Hebrew, scholars might argue, but certainly it emphasises the homosexual element which was, in the Old Testament view, the vicious element. Did you know that it was largely if not conclusively because of this sort of thing that Sodom was destroyed?

When I was trying to be sure of my biblical material in regard to this, somewhere in a little corner of my mind something said to me: 'There shall be no Sodomite …' So I looked it up in Cruden's, [76] and sure enough it was in Deuteronomy. What does this seem to mean? Modern translations render it either 'Cult-prostitute-male' or 'Temple-prostitute-male'. So you have a most significant thing here. You have got the fact that some of the tribes among whom the Hebrews settled in Canaan had a number of practices, one of which was this one of temple-prostitution of men as well as women. This was regarded by the Prophets, and condemned roundly by them here and there, as being an abomination to Israel and God, and a thing to be avoided and to be punished. But the translation called them 'Sodomites' thought the original doesn't give them any reason for doing so, thus linking sodomy again with this particular kind of male homosexual activity.

Now this ancient association of male homosexuality with religion and with punitive law is very important. When one comes to the New Testament, Paul knew that in the Graeco-Roman world both male and female homosexuality, especially male homosexuality, were widespread. As a Jew he loathed it. As a man who never resolved his inner sexual conflicts he loathed it, and perhaps he feared it. In several of his letters he condemned it in harsh language, and included it among the activities which, in his view, automatically excluded the doer from the Kingdom of God.

There are passages in Romans, in I Corinthians, in Galatians, and perhaps in Ephesians, which testify to this attitude on the part of Paul. This is the verdict of the Apostle who from very early times has held quite a place as the inspired authority on Christian morals as well as Christian doctrine. These elements of Paul's teaching were reinforced by the most influential fathers of both the Latin and the Greek churches during the first five or six centuries of our Christian era, and they have always been assumed to be the law and the demand of God Himself.

In the many centuries when the criminal law of western Europe reflected the attitudes of the western Church, male homosexuality was consistently branded and punished as an abominable crime.

Many psychologists would suspect, and I would agree with them, that the roots of this Judaeo-Christian horror of homosexuality go very deep into the dynamics of human personality, being linked with unconscious, repressed desires, and unresolved conflicts about sex. In particular, the Christian tradition is permeated with the notion that decent uses of the sexual organs are few, being restricted in effect to penis-vagina coitus for the purpose of reproduction. These are decent. Other activities of the sexual organ are indecent in varying shades of indecency, until you get down to, well, this and that.

The anal and indeed the whole posterior area, partly because of its nearness to the primary sexual organs, partly because of the sensitivity and stimulability of the skin surface – the anal and the whole posterior area have been regarded with distaste in our respectable Christian culture, and have been excluded from polite conversation. How difficult it is sometimes to name what part of us we have fallen on, or sat on, without causing at least a little bit of pain to other people!

It is not surprising that the activities known to be part and parcel of male homosexuality in particular: i.e. sodomy (which is anal conjunction), fellatio (which is penis-mouth conjunction), have seemed to merit the maximum abhorrence and condign punishment. It is even true to manual stimulation (masturbation) whether of the individual by himself, or of one male by another.

To me therefore it seems clear that the churches' first and most difficult step is to abandon this attitude, and to reject the punitive legislation which reflects it. I say this is difficult, just because the attitude has such hallowed and supposedly authoritative sanction.

Much more is required of the Church than even Mr North suggests on page 2 of his excellent introductory paper, where he says, 'Our doctrine of the Word of God as contained in the Scriptures of the Old and New Testaments forbids us ending discussion by merely quoting biblical texts.' I put it to you that far more is involved than quoting biblical texts. What is involved is the further responsibility of penetrating beyond the law to the spirit behind the law; and this is thoroughly true in the sense in which Mr North means it.

But when the spirit behind this particular law is the sort of spirit that it is, then it is not a matter of

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[75] Moffatt, James, *The New Testament: A New Translation*, Hodder & Stoughton, 1935.

[76] Cruden, Alexander, *Cruden's Complete Concordance to the Bible*, Lutterworth Press.

penetrating to it – it is a matter of getting rid of it.

Can the churches be expected to make this fundamental first step? To do this will require not only a radically new assessment of Pauline authority, but also a resolution to the deep-going sexual repressions which have been educated and conditioned into so many Christians in our culture.

In recent times some Church leaders and members have become dissatisfied with this scriptural traditional basis, and with the underlying psychological dynamics, and the resulting Christian attitudes and legal enactments. I think it is more important for me to point out that this dissatisfaction is part of the widespread reaction to the great new flood of light being poured on everything pertaining to human nature and relationship, and not least in the field of human sexuality.

Some of this new light has been given us, and referred to by the Dr already this evening, but the homosexuality section of it is just a section. Now a major part of this growing dissatisfaction, under the influence of this new light, has been the gradual move from a blanket horror and condemnation, with its appropriate punitive legal enactments, towards some understanding of how homosexuality develops in a male or female person.

The same kind of move issuing from the same kind of enlightenment is taking place in regard to other, formerly, just simply condemned activities, called anti-social: klemptomania [sic–kleptomania], compulsive gambling, alcoholism, sexual promiscuity, exhibitionism, prostitution, masturbation, pre-marital and extra-marital sexual activity; all of these and a number of others.

I am saying that in the very slow but real reaction to the flood of new light coming to us from quite modern fields of scholarship and research, some Christian members and leaders have moved from the old blanket horror and condemnation towards some understanding, and the homosexual part is only part of this widespread are of enlightenment and change of attitude concerning sex. Gradually we are coming to see that all sexual need, attitude and expression is inseparable from the total personality, and reflects that personality with remarkable faithfulness.

This is one of the most tremendously important insights of the whole new approach. Once we have grasped what seems now to be an indisputable fact: that one's sexual attitudes and behaviour and wishes and impulses and repressions, and all the rest of it, are part and parcel of our total personality in a dynamic kind of way, and that they reflect the health or unhealth, the balance, or the imbalance of our total personality; once we have come to see this, the whole view of things is in for a sea-change.

Now if the churches can increasingly adopt this new understanding and approach, what practical results might follow? I have listed seven:

1. The churches might take their place in exerting positive influence in pioneering activity in education for parenthood, from the late teens, through engagement, marriage, pregnancy, child-birth, and child-training, because of some of the things (about which I need only remind you) which the Dr has told us concerning the importance of the parent-child relationship. There are some agencies and lots of techniques that could be brought in here, and the churches are making pretty well no use whatever of these agencies and these techniques.
2. A positive influence aimed at amending the law, and co-operate with other in this endeavour. Some leaders and members of the churches in Britain got shouts of approval and hoots of denunciation from many others, when they supported the recommendations of the Wolfenden Committee in regard to a change in the law concerning male homosexuality. I am wondering what will happen in NSW and what the Church Assembly, Synod or Conference will have to say about it. It will be a most revealing situation.
3. The recognition of the personal and social worthwhileness of many adult homosexuals who will not ever be anything other than homosexuals. I do not know whether any of you have ever met these personally and socially worthwhile male adult homosexuals. I have, and I am quite sure that they are not unrepresentative of a great number of others that it hasn't been my privilege to meet and to know. We ought to recognise this.
4. The creation of a continuing dialogue between the churches and homosexuals. At present we have, I suppose, no dialogue at all. I mean between various groups, within the churches themselves – that is, between homosexual and non-homosexual groups, and those who would revise Church concepts and those who are traditionalists. Let them get together and let them try to find the truth.
5. A promotion of the study of homosexuality by appropriate persons and groups, and the promotion of a research programme with specific emphasis on the possible causes and treatment of homosexuality – and this links up with some of the other things that Dr Bryant said in his references to Dr Caplan, and so on.
6. A re-consideration of ethics, morality and sexuality by the churches, and the establishment of a training

programme to prepare selected persons for counselling homosexuals.

7. The fostering of a different attitude among church congregations and members, directed towards the building up of a readiness to welcome homosexuals into a creative, redemptive Christian fellowship.

Presbyterian Seminar on Homosexuality – The Rev R Maidment, Presbyterian Court Chaplain.

Firstly, I would like to say something about the attitude of the Church toward the sex problem as a whole; secondly, I would like you to give some consideration to deviation; thirdly, to examine the attitudes of society toward deviations – and, fourthly, the attitude toward the homosexual as an individual and the responsibility of the Church toward him.

Owing to the limitation of time imposed, I decided to dispense with any introductory remarks about the Church's attitude toward sex, except in so far as to say, that more work will have to be done on this dangerous and complex task; the task of getting some kind of general acceptance within the Church, of the existence of such a thing as the sex instinct; to acknowledge that sex has its place in the life of the individual just as hunger has; that it is the highest point of pleasure in human personality and that it ought to be enjoyed, even by adolescents, even at the dawn of puberty, without feelings of guilt.

Also, the Church must break through the commonly held, but impossible belief, that everybody is alike sexually, and that it is a simple matter for all, to confine their sexual behaviour, to the single pattern which Christian morality dictates.

This is the jungle in which the Church at the present is trapped.

All vital relevant questions on this matter I must leave unexamined and so I proceed directly at the question set before us: 'The Responsibility of the Church Regarding Homosexuality.'

The Rev A North opened his remarks with the emphasis on responsibility. Please grant me permission to work along my own lines. Homosexuality is only one of many perversions or deviations of sexual behaviour. The very mention of the word must only be whispered with bated breath. We are dealing with the world of myth, if we think it is going to be an easy problem, to get the Church to look at and/or accept some form of responsibility for this problem. If you so much whisper the word homosexuality in the Church, it creates a reaction of shock, horror, fear. The homosexual is considered the despair of law. Morality regards him as an untouchable leper – outside the pale of decent society, and the company of respectable people. He has no place inside the membership of the Christian Church. (I am not satisfied with that last sentence as a statement of fact, because there are plenty of both overt and covert homosexuals inside the Christian Church, but we do not know anything about them.) In theory, however, the homosexual is one to be avoided and shunned, he is the object of censure, condemnation, with the clear implication that he is the object of wrath of God, under judgment and certain to go to hell. He can have no place in the worship of the Church as a communicant. All this is wrong. Does anyone know anything about the private sexual life of the ordinary member of the Church? And for that matter should he? And the same with homosexuality, we are here in the realm of guesswork and not in the realm of the factual.

Definition: I have no intention of falling into the trap of attempting to give a definition of homosexuality. It has so many shapes and forms, that it has defied all attempts to frame a statement that would be comprehensive, accurate and simple, and survive criticism. I would, however, break in on our approach tot this formulation of the question by stating that homosexuality is as old as humanity. It was common in the ancient world, i.e. Greece, and is common in the modern world, both east and west. I do not think that we will ever succeed in stopping it, any more than we can stop prostitution. It has been found helpful in understanding prostitution to make a distinction between prostitution and the prostitute, they cover two separate fields, so I find it helpful to distinguish between homosexuality and the homosexual. One aspect is social and the other is individual and personal. The question then takes on two phases, the question of the Church's responsibility as a social problem, and then its responsibility to the homosexual as an individual.

Benjamin and Masters, in a book entitled *Prostitution and Morality*, [77] show how impossible it is to define prostitution. So when similar attempts have been made to define homosexuality, they have all proved to be just as unsatisfactory.

In a series of essays, edited by Sandor Lorand and Michael Balint, they put this title to the papers: *Perversions: Psychodynamics and Therapy*. [78] It is the psychodynamics of homosexuality, rather than a definition that is required. The sexual instinct, whether you talk about it from the standpoint of the genitalia or

[77] Benjamin, Harry, and Masters, Robert EL, *Prostitution and Morality*, Souvenir Press, London, 1965.

[78] Lorand, Sandor, and Balint, Michael, *Perversions: Psychodynamics and Therapy*, Random House, New York, 1956.

the sex zones (pubertal and pre-pubertal), has an aim. The instinct, to whatever stage or form it has developed, seeks objects by which it achieves gratification. It is the dynamic nature of this quest for objects which sets us our tasks.

Freud in his famous book :*Three Essays on the Theory of Sexuality* [79] says: 'It comes as a great surprise therefore to learn that there are men whose sexual objects is a man and not a woman, and vice versa. These people have contrary feelings and are called inverts …' He classifies them into three groups:

1. Absolutes, those whose outstanding mark is exclusiveness. Their sexual objects are exclusively those of their own sex.
2. Amphigenic inverts (I would call them amphibians – like frogs), they can live in two realms. They are both homosexual and heterosexual, and can find gratification in either or both these areas.
3. Contingent, i.e. occasionals, those who have accidental experiences. Gratification is cut off from any heterosexual relationship and occasionally they turn towards members of the same sex.

Freud's other great contribution is contained in volume two of his collected essays, number 19, [*Some*] *Neurotic Mechanisms in Jealousy, Paranoia and Homosexuality*. [80] In it there are six points on homosexuality with which all psychoanalysts work. From my experience in counselling I am not satisfied with these classifications, any more than I am satisfied with the elaborate forms of the Kinsey ratings found in the *Sexual Behaviour of the Human Male* and later in *Sexual Behaviour of the Human Female*. [81]

I am grateful to Freud. Kinsey, the Wolfenden Report, Richard and Hepzibah Hauser, also to Edmund Bergler in his book *Counterfeit Sex*, [82] to Wilhelm Stekel's *Psychosexual Infantilism* [sic] *Patterns of Psychosexual Infantilism* [83] and to many others whom I could quote.

I am glad that Dr Derrick S Bailey wrote his scholarly book, *Homosexuality and the Western Christian Tradition*. [84] With him, I strongly object to the terrific Judaic hangover, which is in Christianity and am almost wishing that we could get rid of more of it. His book helps the Christian mind to face up to this matter and have another look at it. But he leaves much to be desired.

DJ West's [85] masterpiece on *Homosexuality* in the Pelican paperbacks, leads us a bit further, but he leaves us in confusion worse confounded. I am glad that Bergler made his statement, insisting that there was no such person as an absolute homosexual, but he does not give us any satisfying clues on which to work for therapy.

Mr North's framing of the question places a limit on the discussion which I feel it is not his intention to place … 'The Church's responsibility regarding homosexuality.' That would seem to make it a problem mainly for society. I do not think that that is his intention. For purposes for thought and discussion, I feel we must make a distinction between homosexuality and the homosexual, even though the problems are involved in one another. One is homosexuality as a social problem, and the other as an individual and personal problem. The question then is divided into two parts: (1) the responsibility of the Church as a guide to society on this question, and secondly, the responsibility of the Church to the homosexual. I propose to discuss the questions in this order.

The Responsibility of the Church to Homosexuality As A Social Problem

Because I work in the maw courts and try to help these people, one is confronted with the attitude of the

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[79] Freud, Sigmund, 'Three Essays on the Theory of Sexuality', *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, vol. VII, The Hogarth Press, London, 1953, pp. 136-8.

[80] Freud, Sigmund, 'Some Neurotic Mechanisms in Jealousy, Paranoia and Homosexuality', *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, vol. XVIII, The Hogarth Press, London, 1955, pp. 221-32.

[81] Kinsey, AC, et al. *Sexual Behaviour in the Human Male*, Saunders, London, 1948. Kinsey, AC, et al. *Sexual Behaviour in the Human Female*, Saunders, London, 1953.

[82] Bergler, Edmund, *Counterfeit-Sex: Homosexuality, Impotence, Frigidity*, Grune and Stratton, New York, 1967.

[83] Stekel, Wilhelm, *Patterns of Psychosexual Infantilism*, Liveright Publishing Corp, New York, 1952, (Subsidy of WW Norton Co Inc). In a desperate search for publication details the author contacted the Offices of the Presbyterian Church in NSW to make contact with the author of this article the Rev R Maidment. Unfortunately Rev Maidment had died some years ago. The next step in getting publication details was a letter to the editor of the *Sydney Star Observer*, Thursday 5 November 1998, p. 13; this did not produce any results either. Finally, a brain-wave made the author consult *Books in Print*.

[84] Bailey, Derrick Sherwin, *Homosexuality and the Western Christian Tradition*, Longmans, Green and Co Ltd, London, 1975.

[85] West, Donald J, *Homosexuality*, Penguin Books, Ringwood, Vic, 1969.

law, which treats the homosexual as a criminal, punishes him, and one watches morality and its sanctions at work. In the eyes of the law and the public, homosexuality is first and foremost a social question, an offence against moral standards, and as such does harm and damage to society.

I disagree with this contention, so constantly reiterated, that the first responsibility of the Church is the protection of society and specially our young people from this deviant form of sexual behaviour. I feel that the second part of our discussion should be our primary concern.

It has been said, so constantly as almost to become an aphorism, that homosexuality has always hastened the decay of civilised society. However, this statement has been questioned again and again because of lack of sound proof.

Society and the Individual: The relationship between society and the individual is not a simple, but a complex problem, from whatever standpoint it is approached. When, however, you concern yourself with homosexuality as a problem for society and then try to clarify this relationship you are caught in the tangle of a jungle, with booby traps all around you. As such you are immediately confronted by the law, i.e. the criminal code and the sanctions of morality. But where does the individual and his rights stand? Should not the private rights of the individual be recognised? I agree with the Wolfenden Report on this matter. I know it is hard for us Christians to approve of this, but I think we should. Section 62 reads: 'We accordingly recommend that homosexual behaviour between consenting adults **in private** should no longer be a criminal offence.' I heartily approve of that, still I feel it hardly touches the fringe of the problem.

Paedophilia: This also involves the question of the seduction of children by adult males and is known as paedophilia. There are booby traps here and we must walk carefully. Against this menace society must be protected and our children safeguarded. This is the fear that haunts us and we invoke law and morality, and we insist that the offender must be punished severely as a deterrent I have interviewed the parents of such children, given sex education to juveniles, and counselled the adult offenders. I agree, that I stand for the Church's responsibility in dealing with this aspect of the problem. Permit me to pay a tribute to magistrates, judges, police and press. I acknowledge that they are always willing to give a helping hand rather than damn a person everlastingly.

Firstly, the main point at issue seems to be the protection of our young people against seduction. One must not oversimplify the issue – the protection of the boy against a social menace. Kinsey reports, that there are plenty of boys and girls who have been seduced and have grown up into normal men and women.

Secondly, a closer study ought to be made of Freud's essay, [sic] *Collected Papers* vol. II, *Psycho-analysis and the Ascertaining of Truth in Courts of Law.* [86] Why did the child permit seduction? Did he have a pre-disposition toward it? Why did he not run away?

Thirdly, who does the damage here? Let me quote from Dr Anthony Storr's excellent little book in the Penguin series, which surveys the whole of this problem, entitled *Sexual Deviation*; [87] dealing with paedophilia [page 105] he says:

> Some of the more experienced students of juvenile problems have come to believe that the emotional reactions of the parents, police officers, and other adults, who discover that a child has had such a contact, may disturb the child more seriously than the sexual contacts themselves.

After a fairly long experience with children's courts I have come to believe that as a statement of fact. Through counselling I have watched very closely the devastating effect on the emotional life of children caught in the toils of social and legal pressures in situations like these. In England there is a suggestion that instead of children being brought into a court and having to face a magistrate, police and officials, even if it is a closed court, there should be a commission appointed, consisting of people, not clothed with the August authority of a magistrate, but possessing certain humane qualities, who would deal gently and in a specific way with the individual. There is one facet which is a distinct challenge to the responsibility of the Church. Sex belongs to the private life of the individual. The moment that details of what has been done are read out in the court and made public, something private made public, the emotional disturbance can be devastating and traumatic in its

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[86] Freud, Sigmund, 'Psycho-Analysis and the Ascertaining of Truth in Courts of Law', *Collected Papers*, vol. II, The Hogarth Press, London, 1950, pp. 13-24, translated by Ethilde BM Herford, Quoted in Grinstein, Alexander, *Sigmund Freud's Writings: A Comprehensive Bibliography*, International Universities Press, New York, 1977, p. 85.

[87] Storr, Anthony, *Sexual Deviation*, Penguin Books, Mitcham, Vic, 1964.

consequences to the individual. Can the Church assuage guilt and shame, and adequately mediate forgiveness? This I feel is its responsibility.

Main social aspects: I have not yet met many cases where two adults, in private acts of homosexuality, have been indicted before the court. I have met with many cases of indecent homosexual acts at the Central Criminal Court, Liverpool Street, Sydney. I think section 62 of the Wolfenden Report is as important here in Australia as in England, and if embodied in our laws, would minimise many social aspects of homosexuality such as the street nuisance, soliciting in public, and organised male prostitution.

You should be aware of what is known as the Vice Squad and what are some of its duties. Entrapment Duty should continually come under review, for this in itself can be dangerous. I have seen cases brought before the court, where it has been very dubious, whether the person was guilty or whether his arrest was not due to an over-zealous policeman. It is cheaper to plead guilty rather than not guilty and pay the heavy costs of defence. But I must say that by and large both police and magistrates are always most helpful.

Institutional life: One of the most prolific breeding grounds of homosexuality is institutional life. This is the most tantalising predicament of homosexuality as a social problem. Organised institutions are a necessary part of life – public schools, private schools and colleges, Child Welfare departmental institutions, army, navy, gaols, etc. I sit down in counselling with boys and girls and get exactly the same answer every time. These are the places where they learn, or at least begin their first homosexual contacts.

Blackmail: If section 62 of the Wolfenden Report were introduced into our legal code it might do something to break up the scourge of blackmail. I have seen some shocking cases of blackmail, some of it has been terrific! Some of my most distressing experiences have been the counselling of the blackmailer and the blackmailed. I did not think it can ever be stopped, but I think something can be done to relieve it.

Camp life: I think we ought to know something of the meaning and scope of camp life. I deal very often with those who are involved in the swirl of it. I could list the names of places where it exists, where you could always get male prostitution and pick-ups, and not only at the Cross.

One of the things we must face up to is the punishment of these offenders. We make it a matter of law and morality. Undoubtedly moral standards and the law must be preserved for the good of the society. But I feel strongly that it is not the Church's responsibility as a church to punish.

I was almost tempted to seek a private interview with Mr Bridges, the Minister for Child Welfare and Social Services, because of political pressures being brought to bear upon him to open children's courts to the press and the public. All children's courts dealing with offenders up to eighteen years are closed, but because of certain happenings, Mr Askin has said that he is going to make certain regulations, to open up children's courts especially covering the sixteen to eighteen group, as a deterrent against delinquency. This I feel is a retrograde step. I know that others share with me this feeling. Dr Maddison, Psychiatrists, University of Sydney, an avowed Freudian, has expressed his concern over this again and again. So also have some children's court magistrates. I think that the Church should pick this matter up. It is the publicity, the making of something public that is private, that is so emotionally devastating, that drives these people further into crime.

The Church's Responsibility to the Homosexual

This leads me o the second part of our discussion; the Church's responsibility to the homosexual as an individual. Here we are confronted as Christians by a totally different set of problems and answers.

In counselling I have sat and listened to the cry and hunger of human souls, involved in this predicament, predicament worsened by the fearful demands or law and morality, demanding savage punishment and treating him as an untouchable leper.

Psychoanalysis recognises two basic factors here which have their origin in infancy; insecurity and guilt. Dr Bryant mentioned something about the well-adjusted homosexual. I have yet to find one. Facts show that the adjustment is never lasting. These infantile forces are part of the dynamics in the making of a homosexual.

Psychoses: One has to be terribly careful in the counselling of the homosexual, because of the part it plays in the development of the psychoses, i.e. insanity. There are plenty of homosexuals who are not schizophrenics, but I think it can be safely said that every schizophrenic is a homosexual.

Neuroses: Another set of problems is its relationship to the neuroses. When a person comes to me for counselling and I find homosexuality part of huis pattern, I feel it is necessary to put my work on a sound scientific basis. Are there hysteroid formations, obsessional neuroses? Is he a psychopath with delinquent or criminal tendencies? Is he suffering from paranoia? The homosexual is most frequently to be found from paranoia. I have a strong conviction that both criminology and delinquency are involved in this sex problem.

Here is the case of a married man with a wife and one child, who is continually having sex relations with young males 12 to 14 years of age. For that man psychometric tests and psychiatric assessment are essential. In both tests the presence of a psychosis, schizophrenia was indicated. Something could be done by psychiatry for him.

Absolutes: Freud's essay '[Some Neurotic Mechanisms in] Jealousy, Paranoia and Homosexuality' [88] is very important here. I have the temerity, however, to contradict Freud. There are no such people as Absolutes. This ought to be repeated over and over again. I certainly was indebted first to Edmund Bergler in his book *Counterfeit Sex*, [89] for this conviction, and it has been supported by many other outstanding writers on this subject. I would, however, like to quote this from Bergler: 'The last word has not yet been said by science.' I counselled two men who at first called themselves absolutes. They both had psychometric tests and psychiatric assessments, and the strangest part is that after six years they are both moving away from homosexual relationships. One is about to be married and the other has a lady friend. Undoubtedly he will meet with emotional trouble. He may be very sick mentally before he can make a proper adjustment with a female.

Therapy of homosexuals: Sandor Feldman in *Perversions, Psychodynamics and Therapy* [90] gives invaluable suggestions here:

(1) Unless demonstrable pathology is present, human beings are born, by and large, with such equipment as to fulfil their biological, social and ethical tasks in life.

(2) Because homosexuals would like to have a close personal contact with a love object of the same sex, and because their aim is orgiastic genital gratification, it is comparatively not difficult to show them that something alien has inserted itself between them and a heterosexual object. The individual was compelled to place a defence structure over the biological determined natural foundation. By means of the defence mechanism he was compelled to make a detour.

(3) The main question to be asked of the homosexual is not, how did you become like this; but what does this experience mean for you? In answering this he will have to come to the defence mechanisms which he has erected, and have forced him to make the detour. These mechanisms are unconscious, kept there through repression and resistance. Patience in counselling can help to make them conscious. If the individual can be helped to overcome the resistance, and work them over in his mind, he is well on the way to a mature, normal heterosexual life.

The Church's responsibility here needs to be clearly defined, and I will briefly outline it in this order:

(1) Family life; it is a dictum that insecurity leads to deviation, and guilt to the neuroses. In the background of nearly every homosexual you will always find some sort of family disturbance, if not a broken home. As a Christian say that the greatest gift that parents can give to any child is not money, he needs as much money as he can get. The greatest gift you can give to any child is not education, he needs as much education as he can get. Do not fall into the trap of saying that the greatest gift you can give to any child is love; it isn't. The greatest gift you can give to any child is that mother and father love one another, and this is where the Christian responsibility lies, to deal with this aspect of love in the family life.

(2) The contribution which the Christian Church can make to the problem of homosexuality and to the homosexual, is to restore faith, hope, love and forgiveness. The homosexual is penitent, but to find these things is no easy task. And no one can really give them, especially the last, except the Christian Church. I am sure that Dr Bryant would agree with me in this though I did find one psychiatrists objecting strongly. It is dealing with emotional insecurity and guilt. In the final issue, forgiving myself for being me, inward peace of mind and soul, can only come through God, Christ, the Cross and the Church.

(3) Let me outline the Christian principle which I use in this work of counselling homosexuals:

(a) Should a homosexual be given up as lost? When can we say that any man is lost? 'No failure of any man is final for God', and therefore it should not be final for the Christian. A judge who did not work in the Criminal Court jurisdiction, but who was interested in criminology, when I made that statement in a public address, came up to me, literally swore at me and called me all abusive things, and because of it, tried to humiliate me, but I still stand by it and feel that this should be the attitude of the Church. No man should be given up as lost.

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[88] Freud, Sigmund, Vol XVIII, pp. 221-32, op. cit.

[89] Bergler, Edmund, op. cit.

[90] Feldman, Sandor, in Lorand, Sandor and Balint, Michael, *Perversions: Psychodynamics and Therapy*, Random House, New York, 1956.

(b) The sacredness of the human personality. Mark 2:27 – Jesus said, 'The sabbath was made for man and not man for the sabbath.' No matter how bad a man is, it is our responsibility to help him to achieve his own insights, make his own decisions and find maturity of character.

(c) Another sound guiding principle is that of non-condemnation. John 8:3-11 – Jesus said to the woman taken in the act of adultery, when her accusers would have killed her: 'Neither do I condemn thee – go and sin no more.' It is not the task of a Christian as a Christian to punish. We must get this over not only to the Church but to the homosexual, that our task is healing, saving, forgiving not punishing. I wish that when ministers were ordained they would take an oath, the same as a doctor, that he would never under any circumstances reveal those things told to him in the counselling period.

(d) The good that is in the evil. I often use the parable of Jesus and the tub: 'The Kingdom of Heaven is like unto leaven which a woman took and hid in three measures until the whole was leavened.' Most homosexuals know and feel that they are caught in the toils of a diabolical power. It is an involvement in an evil, with which they are helpless to do anything. They hunger for freedom. I know they are hungering. I have listened to too many of them, have watched them crying over their guilt, shame and insecurity. The only escape from the torture of an accusing conscience and insecurity is the oblivion of drunkenness, drugs or insanity, but the parable of Jesus assures us that God is not a do-nothing god. There is in the evil a good waiting to be released. It is the responsibility of the Church to help release that good. The Cross is not the defeat of love. It is the failure of force. Punishment is not the answer. Only kindness and understanding can mediate that forgiving love which suffers to the uttermost.

There is a psychology which has no religion. There is a religion which has a very inadequate understanding of the working of the human psyche, an inadequate psychology. We must get a religion which has an adequate psychology and can speak the word of divine forgiveness to the craving for peace which is deep within the soul of the homosexual.

1:–1.1.2.1. – NSW Methodist Conference – Homosexuality, 21 October 1966 [91]

The decision of the NSW Methodist Conference to examine homosexuality and the law in this State is bold and enlightened There has been too little public of the problem not only of homosexuality but of our attitude to all sexual deviants and their treatment. When there is discussion, too frequently it takes place in the emotionally charged aftermath of a particularly notorious offence or heated public campaign about one or other type of sex crime. This is not the way a cool, rational appraisal of the issues can be made.

The absence of informed discussion explains to some extent the state of the law on homosexuality and sex offences. Changes in the law on sexual offences must be related to public opinion. Legislators have a ready excuse for inaction when there is no obvious consensus in favour of reform. It is not merely that a strong public opinion is necessary to bring politicians to the point of change on these difficult questions. They are in fact entitled to be given the clearest possible guidance on the community's attitude to problems which are hardly political and which are certainly beyond party formulas.

After long years of debate, Britain at last has decided to legalise homosexual acts between consenting males in private (lesbianism has never been a criminal offence either in Britain or here). This does not mean that we should duplicate the new English provisions. No doubt they could be improved. But it is time for us to recognise, along with most other countries, that homosexuality between consenting adults, whatever our moral view, has nothing to do with the law.

A pleasing feature of the Methodist Conference's decision is that the commission will include clergy, doctors, psychiatrists and psychologists. The presence of these experts can be expected to result in a report which focuses attention on the possibilities for treatment and prevention. Abolishing futile terms of imprisonment for homosexuality between consenting adults in private will be one thing; ensuring treatment and the necessary research another.

1:–1.1.3. – Diocese Of Melbourne Social Questions Committee Report On Homosexuality – 1971 [92]

During the 1970 Melbourne Diocesan Synod it was moved:

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[91] n.a. 'Homosexuality', *The Sydney Morning Herald*, editorial, Friday, 21 October 1966, p. 2.

[92] Social Questions Committee of the Church of England, Diocese of Melbourne, *Report on Homosexuality*, 1971.

> That this Synod urges the Government of Victoria to review the laws of the State relating to homosexuality with a view to:
> (i) Bringing the laws intended for the protection of minors and others into line with informed opinion, and
> (ii) Removing the penalties for homosexual acts in private between consenting males of 18 years and over.

Although the motion was not carried as introduced, Synod acknowledged the importance and difficulty of the questions whether the law should attach criminal consequences to all physical sexual acts between male homosexuals and whether Christians were under a duty to support the maintenance of existing laws. The matter was referred to the Social Questions Committee of the Diocese for report.

Terms of Reference

The Committee was not specifically directed as to the breadth or narrowness of its terms of reference, and our first task was to define a proper area for our enquiry and our report. As a group, we could claim no peculiar expertise which would give us special insight into the medical, psychological or social problems besetting the homosexual and the society of which he is a member. As members of that society, however, we acknowledged our communal responsibility for allowing laws to persist which single out the homosexual for special penalties. The terms of the motion put to Synod thus suggested to us that we should endeavour to inform Synod and the Diocese of:

(i) The present law in Victoria relating to homosexuality,
(ii) Such changes to the existing law as we consider socially desirable.

Our task was made more difficult, rather than simplified, by the one common characteristic shared by each member of the Committee. We were all Christians and were acutely aware of the biblical and moral foundations on which the Church's traditional condemnation of homosexual acts and associations were based. We discovered a wide difference in moral and theological viewpoints amongst members of the Committee and those with whom we talked. But, as we refined our opinions and objectives, we found that it was possible for us to disagree on questions of faith and conscience in relation to the personal moral duties of individual Christians, without affecting the unanimity of our recommendations.

This experience reinforced and further shaped an emerging attitude of the Committee as to its proper task in tackling problems of this kind. As this attitude imposes important limitations on our terms of reference and as it is an attitude which we believe Synod itself should share in making pronouncements on social problems in the world at large. it must be clearly stated.

Our Approach to Social Questions

The Synod and the Church it represents have two significantly different functions. One function is to speak out as a body concerned with social injustice and freedom of conscience in the community at large. We are, by our beliefs, fundamentally dedicated to compassionate and active concern for the social well-being of all men, whether or not they share our own beliefs or morality. Historically, when the Church has spoken out on public issues, it has often done so out of the belief that it had a duty to influence society to its own way of thinking by imposing its perception of the Divine will on the community at large through the law. Modern philosophers, both Christian and non-Christian, tend to stress that moral views held as a matter of faith are personal, subjective rules of conduct and that we, as a church, must never deny to others the freedom to follow their own consciences merely because they conflict with our own beliefs. If we acknowledge this, our task is clear. We must rise to the challenge of secularism in the manner envisaged by the Archbishop in his memorable address to Synod in 1967. His Grace there pointed to the secular waves rocking the Christian boat with a vengeance. The authority of scripture is being questioned, even denied. The ideas of the sacred, the religious life, the miraculous are under attack. Almost worst of all, because all are intimately concerned, is the undermining of what had been thought to be fixed moral standards, valid for all time and in all places. Now he, (the Christian), is told that moral standards – all of them, Christian included – are relative and are newly invented by every age to suit the new situation in which men find themselves. The Christian, he said, might very well feel sea-sick. But this is not the authentic Christian position. The prophets of Israel were able to see that the world – experienced as the enemy nations around, the conquering, exiling nations – were instruments in the hands of God. We may do the same.

We may tell ourselves and our people in their fear, not that we need have no worries, not that we can complacently wait for the position to be re-established by divine intervention: but rather that our very disquiet is a gift of grace; that we should thank God for this disquiet which has already brought us a long way towards a new reformation; and that we should accept it that our Lord is speaking to us from the world, where he is the

Lord, though unrecognised and crucified … And as to the World writing the agenda for the church, let us not be too sure that the Lord, the Giver of Life, is not holding the pen. If, indeed, the Lord is working from outside to clear the Temple of irrelevancies, we must face that challenge. We must work for the renewal of our own faith. We are to steady the boat not by dropping the anchor, but by obedience to the Master of the Ship who is telling us how to trim it and to equip it to shoot the rapids.

Even if our consciences as Christians would not condone certain behaviour within our own circle of family, we must allow our consciences to be questioned, perhaps to be informed. Certainly, we must recognise and defend the freedom of others who, equally conscientiously, do not share our views.

The second function of the Church and Synod is to preserve and defend the faith of its members. It is therefore our duty to ensure that Christians do not misinterpret statements made by the Social Questions Committee, Synod or any other organ of the Church whose task it is to pronounce on matters of public concern. There is a danger that recommendations made to the Government to change laws which, say, penalise certain homosexual acts, could be misinterpreted as reflecting the faith and practices to which the majority of Anglicans adhere. This manifestly is not so. The English report on *Putting Asunder*, commissioned by the Archbishop of Canterbury in 1966, stressed that anyone speaking on behalf of the Church who fails to distinguish between what we may call the public and private roles of the Church 'is asking to be misunderstood, both within the Church and the Society at large … This can hardly be repeated too often.' [93] Again, the report of the 1935 Joint Commission on *The Church and Marriage* made the same point.

> [W]hatever may have been the case in earlier times, we have at least now to consider not only what the Church is bound to require of its own members but also what the Church thinks should be the law of the land in the 20 century … These two aspects should be carefully distinguished. [94]

In this Report, the Committee has made every attempt to dissociate these two different problems. We are primarily concerned with the public role of the Church. As Christians, we have tried to approach the evidence dispassionately to determine whether, apart from the emotional reservations – even abhorrence – which many will have towards homosexual acts between adults or between adults and the young, the criminal sanctions presently applied in our community can be justified on rational grounds.

Scope of the Report

This report does not purport to be a detailed analysis of the social, psychological, medical and theological problems attending homosexuality. This is not to say that the Committee, in tackling its commission, did not seek to inform itself as best it could on these matters. Its first step was to establish a steering committee whose task was to formulate a research plan. In the event, each member of the full committee was assigned a special area of study and the steering committee itself undertook a co-ordinating function. The Report as presented to Synod, however, reflects only a portion of the research of the Committee on a problem which emerged as having a multitude of facets. The final editing of material gleaned from extensive reading, participation in seminars and consultation with psychiatrists, lawyers, theologians, sociologists and others, we hope will be better understood in the light of the following stated objectives.

1. We have attempted to state the Victorian law imposing penalties on homosexual activities as it stands in 1971.
2. We have tried to discern the reasons which led to the passing of such laws and to discover whether modern psychological and sociological learning indicate that they are either effective in controlling the incidence of homosexual acts, protecting persons from harm, or consistent and just in their operation.
3. Our primary objective has been to recommend to Synod those changes in the existing law which we consider socially desirable in the light of the evidence before us.

Our conclusions obviously will rest on facts and opinions which it would be impossible to state exhaustively in a report of this nature. Whilst we consider that the primary function of the Report is to present to Synod the fruits of our enquiry, we are also conscious of another task. That is to guide Synod and other members of the Diocese in their own reading. An eminent Australian New Testament Scholar, in speaking of the abortion question, recently expressed a sentiment which is equally true of homosexuality.

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[93] *Putting Asunder: A Divorce Law for Contemporary Society*, Report of a group appointed by the Archbishop of Canterbury [Michael Ramsay], SPCK, London, 1966, p. 8.

[94] ibid.

> Christians are divided on this issue and I don't think there's a very great deal to be said for trying to pretend that they aren't at odds. What worries me is the time lag: between the thinking of the specialist groups in the church and that of the ordinary church member. It worries me because it is a reflection of how little the church's own fundamental message and attitudes really count in the lives of lots of its members. A lot of church life seems to be carried on just within the framework of its own conventions and does not have that openness to the world and to new situations which is supposed to be the very heart of Christianity. [95]

Accordingly, the Committee has attempted, albeit briefly, to summarise certain theological positions, not only to demonstrate the diversity of possible views as to the morality of homosexual associations but to show that, whatever our personal position, we may still be unanimous in our attitudes as to what the law, itself, should contain. Again. it has attempted a brief review of certain psychological studies. not only as a necessary background to its conclusions but to provoke members of Synod and the Diocese to further reading and a better understanding of the problem.

We offer a bibliography, not with the customary statement that it is intended for the interested reader who may care to pursue the matter further. We offer it in the firm conviction that any person wishing to evaluate our recommendations, with a view to eventually agreeing or disagreeing with them, must first attempt to inform his own conscience to the limits of his abilities.

The Nature of the Problem

There have been many attempts to define homosexuality and to establish categories of persons who may be regarded as homosexuals. As with most definitions of social groups, these tend to vary according to the purpose for which the group is being identified. Thus, at one end of the scale, there is the clinical statement that:

> Homosexuality means the experience of being erotically attracted to a member of the same sex, and men or women who habitually experience strong feelings of this kind are called homosexuals. [96]

This definition, it will be noted, concentrates on the erotic attraction which may exist between members of the same sex and is to be distinguished from erotic attraction to members of the opposite sex. At the other end of the scale, it is sometimes even suggested that the quite commonly observed phenomenon of mateship between men. or the close emotional ties between some women friends, manifest tendencies of a homosexual character.

The criminal law, however, rarely concerns itself with people's tendencies or attractions. It is concerned, rather, with the commission of particular **acts**, often called overt acts. which it seeks to discourage by attaching penalties to them. Consequently our discussion is concerned primarily with homosexual acts, for the law, unlike morality or religion, is not concerned with judging the state of a man's mind unless it has led to some external conduct which is prohibited. Thus it may be seen that we are really concerned only with the tip of the iceberg and there may be many moral or religious reservations about close associations between people which are not the concern of the law.

Furthermore, there are a number of sexual activities which may be objectionable on moral or religious grounds which the law has never seen fit to punish. Thus fornication or adultery are not criminal offences, nor are homosexual activities carried out between women. Again, a person who masturbates alone is not subject to criminal sanctions. It is not enough, then. to assume that because an act is regarded by many as immoral or contrary to religious principles it must necessarily be a criminal offence.

There is a recent, learned and continuing debate concerning the extent to which society is justified in using law as a tool to enforce the moral values of some members of a community – they may, or may not be in the majority – on those who do not share their views. At the risk of oversimplifying a most complex and sophisticated debate, the views put are basically two. [97] One view is that an immoral act should only be punished by the law where it is directly injurious to other members of the community. If two persons of mature age agree to commit an immoral act between them, it is argued that provided the act is done in private, and does not involve minors or persons judged incapable of consenting to the act, there is no justification for

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[95] McCaughey, Rev Prof JD, 'An Interview' *Ormond Papers*, vol. II, no. 2, Melbourne, 1969, p. 11.

[96] West, Donald J, *Homosexuality*, Pelican, London, 1960, p. 12.

[97] See, e.g. Hart, HLA, *Law, Liberty and Morality*, OUP, London, 1963; Devlin, P, *The Enforcement of Morals*, OUP, London, 1965.

making the act criminal. The opposite view, in essence, is that the character of a given society depends in no small part on the moral behaviour of its members. Every society is entitled to make laws which are necessary to its survival, and it may therefore make laws reflecting moral principles which, if they were allowed to decay, would result in a changed society.

This latter argument has a natural appeal to Christians who hold that the obligation to carry the Gospel into the world justifies laws which, on their surface, reflect moral standards to which many Christians would cling. A natural result of such reasoning might, for some people, be to encourage laws which prohibit fornication. adultery, lesbian acts, even, perhaps, contraception, on the grounds that this would lessen sexual promiscuity. Certainly they would not wish to see any relaxation in the laws which presently enforce their own moral standards.

Yet the supposition on which this argument rests is that the existence of criminal penalties for immoral acts actually reduces the incidence of immorality and conversely, taking away criminal penalties would noticeably increase immorality in the community. These propositions are extremely difficult to prove.

The Committee implicitly accepted as its fundamental point that, wherever possible, the freedom and liberty of the individual must be preserved. Before adjudging that a particular act should carry criminal penalties it required compelling evidence to show **either** that the act may be harmful to other persons and that those persons had a legitimate interest in being protected by the law **or** that general moral decline would be an inevitable outcome of relaxing the existing law. From this starting point, the Committee examined the evidence available to it and came to the conclusion that certain alterations to the existing law were desirable.

There are, in fact, a number of offences which can be employed to punish the homosexual and discussion of the relationship between them is necessarily a technical matter. These who wish to examine the details of our recommendations may do so in Attachment 1 to this report. It is, however, possible for us to summarise the common threads of our reasoning and our recommendations in brief.

Whilst present and past penalties express the severe abhorrence which many have for homosexual acts based, presumably, on the unnatural qualities they possess, we have been disturbed by the number of sociological studies which indicate the comparative frequency with which such acts occur in societies similar to our own. We are also impressed by the fact that a significant percentage of all males, after the onset of adolescence, are apparently drawn to homosexual activities for varying periods and at different stages of life, as a transient phase of their existence. The severity of the existing law does not seem to have stamped out homosexual practices and one can only speculate whether it may have reduced them.

Examining what evidence we could find concerning the development of homosexual tendencies and the possibility of adult males being seduced away from heterosexual to bisexual or homosexual activities, we were unconvinced that the incidence of such happenings would be notably increased by allowing consensual homosexual acts between adult males.

Furthermore, we were impressed by psychological evidence which tended to show that many homosexuals, by virtue of their psychological development can genuinely only find emotional and sexual satisfaction with others of their own sex. Insofar as these drives are foreign to the impulses of the majority of men, they may be regarded as deviating from ordinary behaviour.

Yet, given his psychological make up, the homosexual often seems inevitably drawn towards his own kind. Christian and moral counsellors differ as to whether the proper guidance for such a person is to suggest that he endeavour to remain continent, or whether he should be permitted to use his homosexual associations as an avenue for human love, both emotional and physical, which may emulate the advantageous elements of an heterosexual relationship. This difference of opinion is not, however, important when considering what it is about homosexual acts which should render them criminal offences. The traditional attitude that such people have a choice in their sexual preferences, that they could, if they chose, be equally satisfied by heterosexual relationships as homosexual, and that they wilfully choose to indulge their unnatural homosexual desires out of some perverse desire to flaunt the ordinary values of society, seems misguided in the majority of cases. We cannot see, therefore, that homosexuality constitutes a deliberate, wilful attack on the moral standards of the community and that it should be punishable on those grounds alone. Nor, from what we have said about the apparent incidence of male seduction, do we think that the moral behaviour of the community at large is indirectly endangered by permitting consensual acts between adults in private. If this be so, the only remaining ground for punishing such acts is that one section of the community may feel disgusted by the idea that other members of the community are doing things in private of which they disapprove. We are unable to accede to laws which invade the privacy of an individual merely because the thought of his private practices causes

moral outrage to other members of the community.

This does not mean that all homosexual acts should be legalized. In our recommendations we have distinguished two situations where we think criminal penalties should apply. If the act is committed forcibly on an unwilling partner, or on a young person whose actual consent is regarded as ineffective, we think it should be punishable. This parallels the distinction drawn by the law in regard to heterosexual acts. Consensual adultery or fornication are not criminal, but rape and carnal knowledge of minors are offences which carry severe penalties. The second situation in which we think penalties are justified is where homosexual acts are carried out in public in a way which may cause visual affront to innocent members of the community.

Summary of Conclusions

1. It is the legitimate and necessary function of the criminal law to protect citizens from violent assault. A separate offence is thus justified which punishes assaults with intent to commit some homosexual act on an unwilling partner.

We therefore recommend the retention of the crime of indecent assault.

2. It is equally the function of the criminal law to protect those who are deemed by society not to be capable or not of sufficient age to make responsible decisions for their own welfare. To fix an age of consent is necessarily arbitrary, but there is a noticeable trend in other fields of law to fix the age of legal responsibility in our community at 18 years.

We therefore recommend that:

(a) *any overt homosexual act with a person under 18 years should remain a criminal offence*;
(b) *the making of indecent or improper suggestions to any person under the age of 18 years with a view to committing homosexual acts should be a criminal offence*;
(c) *it should be statutorily specified that no person under the age of 14 may be convicted for a homosexual offence*;
(d) *no prosecution of a person under the age of 18 years for such an offence should be instituted without the consent of the Attorney-General*;
(e) *it should be a defence to a charge of indecent assault on a male person under 16 years to prove that –*
    (i) *the accused honestly believed on reasonable grounds that his partner was a person of 16 years or over; and*
    (ii) *the person consented in fact to the commission of the act*;
(f) *that it should be a defence to a charge of gross indecency committed in private on a male person under the age of 18 years to prove that*:
    (i) *the accused honestly believed on reasonable grounds that his partner was a person of 18 years or over; and*
    (ii) *the person consented in fact to the commission of the act*.

3. Citizens in our society have a certain interest in being protected from unwittingly coming into contact with activities which may cause them emotional distress. This interest is, however, one of the most difficult to justify, and to define in terms which do not permit abuse of the reasonable rights of others. Having said this, we are nevertheless of the opinion that the law should protect individuals from being unreasonably outraged in public by being unwittingly exposed to activities of which they were not forewarned and had no reasonable opportunity to avoid. Yet a tight rein must be kept on offences framed in such terms for they may be easily abused.

We therefore recommend that:

(a) *any act of gross indecency committed in public;*
(b) *soliciting in public for homosexual purposes; and*
(c) *indecent exposure in public should be retained as criminal offences*.

4. The present crime of offensive behaviour has an indefinite content and may be used indiscriminately to penalise activities which, though not intended to be deliberately insulting and not grossly indecent, nevertheless may offend the heightened sensitivities of some members of the community. We are of the opinion that the possibility of indiscriminate and unreasonable use of this offence outweighs the interests it seeks to protect. The offence of gross indecency in public would appear adequately to protect innocent passers-by if they are. at the same time, protected from deliberate insults.

We therefore recommend that thought be given to re-defining the existing crime of offensive behaviour and that it be confined to acts which are, indeed, genuinely insulting and that, if necessary, other offences be

created to prohibit specific acts which are to be regarded as criminal.

5. We are unable to accept the view that immoral acts committed in private between consenting adults, such as fornication or adultery, should be viewed any differently by the law than homosexual acts committed in similar circumstances. On the evidence, we are not satisfied that to permit such acts would cause harm to innocent members of the community, nor that a general decline in moral standards would inevitably result. Nor does the evidence establish that the existence of criminal penalties is an effective deterrent or has a reformative effect on homosexuals who act in private.

We therefore recommend that the present provisions of the Victorian Crimes Act 1958, which render criminal those homosexual acts committed in private between consenting males of 18 years or over, should be repealed.

6. We can see no rational reason for differentiating between acts of sodomy and other homosexual acts. Such acts would remain punishable in the circumstances envisaged in Recommendations 1, 2 and 3 above.

We therefore recommend that the special offences for sodomy and attempts to commit sodomy, which presently carry higher penalties, be repealed.

Our recommendation on this matter does not include recommendations as to the abolition or preservation of sodomy between a man and a woman or bestiality, which are presently treated by the same section of the *Crimes Act*. Our terms of reference were confined to homosexual acts alone and we did not feel justified in making recommendations as to other sexual offences.

7. We accept that the armed services present a case for special treatment because of the need to maintain discipline and mutual respect. This is, of course, a matter for Commonwealth rather than State legislation.

We therefore recommend that all homosexual acts between servicemen should be illegal.

Although the matter strictly falls beyond our terms of reference, the Committee feels that an important footnote concerning pastoral counselling is justified. More than most perhaps, the homosexual in his loneliness and isolation, deserves the warm acceptance and understanding of the Christian community. Whether or not the law is changed, parish priests will inevitably find themselves called upon to advise and assist homosexuals in coming to terms with themselves and the society in which they live. We therefore encourage the clergy to inform themselves as best they can of the complexities of the homosexual's situation and the many difficulties which may be encountered in offering him helpful counsel. Medical opinion indicates that, whilst some homosexuals will remain primarily attracted to members of their own sex throughout their lives, there are many who, with proper medical and psychiatric assistance, may find heterosexual adjustment possible. We therefore strongly urge that clergy, whilst recognising the importance of their own role as counsellors, should avail themselves of medical and psychiatric help wherever possible.

Attachment I: The Law in Victoria – Detailed Recommendations

Homosexual acts in Victoria may, according to the type of act and circumstances in which they are committed, offend one of a number of statutory provisions. We propose to set out the various elements which must be proved before conviction is possible, to point out the penalties for each offence and to offer comments where necessary on the difficulties surrounding each offence.

I. *Buggery*: *Crimes Act 1958*, ss. 68(1), 68(2). This section embraces more than mere homosexual acts. The offence consists of sexual intercourse which is either

(a) committed *per anum*
  (i) between two males;
  (ii) between a male and a female; or
(b) committed in any manner by either man or woman with any animal or bird.

The first type of offence is generally referred to as sodomy, the second, as bestiality. As our terms of reference are confined to homosexual acts, we are primarily interested in acts of sodomy committed between two males. There are different penalties prescribed, depending on the circumstances of the act. If it is committed with a person under the age of 14 years or is carried out with violence and without the consent of the other party, the penalty is 20 years' imprisonment. Any other act without these aggravating elements attracts a penalty of up to 15 years' imprisonment. The sole requirement for sodomy is that penetration per anum occurs. It is no defence to a charge to show that either the other party consented to the act, [98] or that there was no orgasm or emission of sperm. [99] Again, the accused can be convicted, even though he did not

[98] *R. v. Vincent* [1924] SASR [SA State Reports] 466; *R. v. Redden* (1885) 11 VLR [Vic Law Reports] 501.
[99] *Crimes Act 1958* (Vic), s. 70; *R. v. Wardle* [1947] VLR [Vic Law Reports] 389.

know the nature of the act. [100] However, a boy under 14 cannot be convicted of the offence, [101] even if it is proved that he in fact had intercourse *per anum*. [102]

Comment: The difficulty with this offence is that it may be committed even though the participants both consent to the act. This is unusual in the criminal law, except in cases, say, of sadistic beatings. Generally. the presence of genuine consent by parties capable of consent at law, i.e. adults of sane mind. removes an act from the reaches of the law. Thus consent is a defence to a charge of rape and doctors often take the precaution of obtaining the written consent of patients to operations which might otherwise give rise to civil liability. So stringent is the crime of buggery, however, that it even invades the privacy of marriage which, for other purposes, the law regards as beyond its legitimate concern. Thus, whilst a woman could not be forced to give evidence against her criminal husband, and was not liable for harbouring him, they would both be guilty of buggery if they had intercourse together *per anum*. [103] For reasons already explained, evidence as to the prevalence of homosexual practices in the face of such severe penalties the transience of many men's commitment to homosexuality, and the genuineness and exclusiveness of the sexual preference amongst other males tend to show that this law may be unduly repressive and unjust. The possibility of seduction of adult males seems to be largely exaggerated and provided innocent citizens are protected from forcible or public affronts, we cannot see that the present offence serves any useful purpose.

Recommendations:

1. Acts of sodomy between male persons should be criminal if:
   (a) they are committed forcibly or without consent;
   (b) they are committed with persons under the age of 18 years;
   (c) they are committed in public.
2. As these acts would all be punishable under the offences of gross indecency or indecent assault discussed below, the only reason for retaining a separate offence of sodomy between males is to enable the imposition of a higher penalty. We can see no logical reason for singling out sodomy between males from other homosexual acts as deserving specially severe punishment. Accordingly, we recommend that the provisions concerning buggery should be repealed insofar as they relate to sodomy between males.
3. Acts of sodomy between consenting adults of 18 years or over which are committed in private should not be criminal offences.
4. We note most strongly that although English law has effectively followed a line similar to the one we recommend in relation to sodomy between males, sodomy between man and female, even if committed in private and with consent. remains in England a criminal offence punishable by life imprisonment. There is no logic in this distinction and the anomaly seems to have arisen because the terms of reference of the Wolfenden Committee were limited to homosexual acts. The terms of reference of the Social Questions Committee are similarly limited, but in view of the English experience we feel justified in stating that any enquiry undertaken by a Government with a view to changing the terms of section 68 should have power to make recommendations concerning acts of sodomy committed between male and female.

II. *Attempts to commit buggery*. *Crimes Act 1958*, section 68 (3). Generally under the criminal law an attempt to commit a criminal act is itself an offence. The courts distinguish between an actual attempt to commit a crime and mere preparation for an attempt. The distinction is simply one of degree. In the case of attempted buggery the penalty is up to ten year's imprisonment and consent is again no defence. [104]

Comment: The primary reasons for specifying attempts as statutory crimes are to render such attempts felonies rather than misdemeanours (as they would be under the general law) and to assign specific penalties. The distinction between a felony and a misdemeanour is no longer of practical importance and is in the process of being discarded. The matter of penalty, in the case of attempts, we think is best left to the discretion of the judge. These matters are, however, unimportant. Our observations concerning the main offence of buggery in relation to acts between male homosexuals are equally applicable to attempts. If sodomy between males is abolished as a specific offence it is logically necessary to do away with the lesser offence.

Recommendation:

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[100] *R. v. Wardle* [1947] VLR [Vic Law Reports] 389.
[101] *R. v. Allen* 1 Den. [Denison, 1844-1852] 364; *R. v. Young* [1923] SASR [SA State Reports] 35.
[102] *R. v. Packer* [1932] VLR [Vic Law Reports] 225.
[103] *R. v. Jellyman* (1838) 8 C. & £. [Crompton & Meeson] 604.
[104] *R. v. Redden* (1885) 11 VLR [Vic Law Reports] 501.

An attempt to commit sodomy between males should no longer be a separate statutory offence.

III. *Indecent assault*. *Crimes Act 1958*, section 68(3). This is the next most serious charge which can be used to punish homosexual acts although, again, it is not confined to acts committed between males. An indecent assault is an assault accompanied by circumstances of indecency on the part of the accused against the person alleged to be assaulted. An essential element is that the assault included a threat or hostile act. [105] An indecent suggestion, followed by a push, constitutes an indecent assault, even though the push in itself is not indecent. [106] The penalty for indecent assault is imprisonment for a period of up to 10 years.

Comment: The use of the word assault in this context is a loose one. Assault strictly consists of the apprehension of harm by the victim, the subsequent physical contact being technically a battery. Both elements are involved in this offence. By its very nature, an assault cannot be committed on a person who has consented to the act, and for this reason consent is a good defence to the charge, [107] except where the person assaulted is under the age of 16 years. Indecent assault is thus an offence which protects a person from violent affronts committed against his will. We have no hesitation in condemning such acts whether they be committed in public or in private. At present the defence of consent applies if the person assaulted is of the age of 16 or over. We have already recommended that all homosexual acts committed against persons under the age of 18 years should be criminal. We would not recommend a change in the present offence of indecent assault, however, and the resulting inconsistency is more apparent than real. If a person over the age of 16, but under 18 in fact agrees to the commission of a homosexual act upon himself, we do not think that consent should be entirely inoperative at law. We think it should be allowed to negative the aggravated nature of what would otherwise be a forcible assault, but should not relieve the actor of all criminal responsibility. He would, in our opinion. be more properly convicted of a lesser offence.

Recommendations:

1. The present offence of indecent assault should be retained.
2. It should be a defence to a charge for indecent assault on a male person under 16 to prove that:
   (i) the defendant honestly believed, on reasonable grounds, that the person was of the age of 16 years or over; and
   (ii) the person in fact consented to the act.
3. Subject to our recommendations concerning the offence of gross indecency discussed below, the present offence concerning acts of gross indecency should be retained to cover acts of gross indecency committed in private on male persons under the age of 18 years.

IV. *Gross indecency*. *Crimes Act 1958*, section 69(4).

It is an offence for any male:

(i) to commit;
(ii) to attempt to commit;
(iii) to procure the commission of; or
(iv) to attempt to procure the commission of an act of gross indecency with another male. There is no statutory definition of what renders an indecent act grossly indecent, and the practice is to leave to the jury the decision whether the facts amount to a grossly indecent act. It appears. however, that gross refers to the gravity of the indecent act, not the number of times it is performed. [108] The requirement that the act be with another male person does not mean that it must be with that person's consent., it is sufficient that the act was against or directed towards another male [109] or that two males acted in concert. [110] No physical contact is necessary, [111] nor need there be an intention to

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[105] *R. v. Burrows* (1951) 35 Cr. App. R. [Criminal Appeal Reports] 180; *Fairclough. v. Whipp* (1951) 35 Cr. App. R. [Criminal Appeal Reports] 138.

[106] *Beal. v. Kelley* (1951) 35 Cr. App. R. [Criminal Appeal Reports] 128.

[107] *R. v. Vincent* [1924] SASR [SA State Reports] 466; *R. v. Shore* (1893) 19 VLR [Vic Law Reports] 45.

[108] *R. v. Whitehouse* [1955] QWN [Qld Law Reporter & Weekly Notes] 76, 77 *per* Philp J. – a typical charge to a jury is quoted in full.

[109] *R. v. Hall* (1963) 47 Cr. App. R. [Criminal Appeal Reports] 253.

[110] *R. v. Hornby* (1946) 32 Cr. App. R. [Criminal Appeal Reports] 1.

[111] *R. v. Hunt* (1950) 34 Cr. App. R. [Criminal Appeal Reports] 135.

penetrate. [112] When the offence alleged is one of procurement, a letter may be sufficient [113] and the procurer may also be the other male with whom the act is to be done. [114] The prescribed penalty is imprisonment for up to 3 years.

Comment: It is impossible to set out definitively those acts which may or may not be – grossly – indecent. This is partly because the question is one of fact for the jury and partly because the law reports frequently omit the details of the allegations made. The offence is undoubtedly a wide one, and it has been found proven where a man made a single suggestive gesture to a boy and offered him some money 'to watch'. [115] Presumably it would cover any act between males involving genitals and probably is even wider. We have already indicated our belief that not all homosexual acts between consenting adult males should be criminal. We do believe, however, that if such acts are committed on persons below a certain age or are committed in circumstances which unreasonably offer offence to other members of the community, who are exposed to the commission of such acts with no reasonable opportunity of avoiding them, they may properly be discouraged by criminal sanctions.

Recommendations:

1. The offence of gross indecency between males should be retained in all cases where the act of gross indecency is committed *in public*.
2. For the reasons advanced in our discussion of indecent assault, and subject to the reservations concerning honest and reasonable belief as to age there expressed, the offence of gross indecency should be retained to cover all acts *in private* committed on persons under the age of 18 years.
3. For reasons set out in our discussion of the offence of soliciting for homosexual purposes, we do not believe that a separate offence of procuring the commission of acts of gross indecency should be retained.
4. We note that there is a jurisprudential argument that it is impossible to be convicted of as attempt to commit either an indecent assault or an act of gross indecency, for the elements which must be proved to show the act is indecent or grossly indecent logically require that the course of events must have proceeded beyond the stage of a mere attempt. We recommend that, in any revision of the law, due account be taken of this difficulty.

V. *Indecent exposure*. *Vagrancy Act 1966*, section 7(1)(c). Any person who 'wilfully and obscenely exposes his person in a public place or in the view thereof' is guilty of an offence punishable by up to 2 years' imprisonment for the first offence or up to 3 years for second and subsequent offences. Until 1949, such a person could be also whipped. His person is, of course, a euphemism. It is not necessary to prove that a person charged was actually seen by anyone in the public place; it is sufficient that he was in view and could have been observed. [116] There must be an intention to behave in a manner which an ordinary person would regard as obscene. [117] A public place is often difficult to define but the essential element is that the public in fact have access. even though they may have to pay for it. [118] Apart from the *Vagrancy Act*, there is some authority that indecent exposure in a private house in the presence of others is an indictable offence at common law. [119]

Comment: This offence is again not exclusively confined to acts between males. As it seeks to protect the innocent passer-by from affront and specifically relates to acts committed in a public place, we would argue for its retention.

Recommendation:

The present offence of indecent exposure in a public place should be retained.

VI. *Soliciting in a public place for homosexual purposes*. *Summary Offences Act 1966*. section 18. This section has only been extended to soliciting for homosexual purposes since 1966. It is an offence if any person 'for homosexual purposes solicits or accosts any person in a public place or loiters in a public place.' There is little authority on the meaning of soliciting though it may be that there would have to be evidence that the

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[112] *R. v. Barron* (1914) 10 Cr. App. R. [Criminal Appeal Reports] 81.
[113] *R. v. Cope* (1921) 16 Cr. App. R. [Criminal Appeal Reports] 77.
[114] *R. v. Jones* [1896] 1 QB. [Queen's Bench, Law Reports] 4.
[115] *R. v. Horwood* (1969) 53 Cr. App. R. [Criminal Appeal Reports] 619.
[116] *R. v. Benson; ex parte Tubby* (1882) 1 VLR [Vic Law Reports] (L.) 2.
[117] *R. v. Lowe* [1953] VLR [Vic Law Reports] 381.
[118] *Howard. v. Murphy* (1907) 28 ALT [Australian Law Times, Vic] (Supp.) 10.
[119] *R. v. Black* (1921) 21 SR (NSW) [State Reports, NSW] 748; *contra R. v. Udod* [1951] SASR [SA State Reports] 176.

accused did actually attract the attention of someone [120] and attempt to persuade him to participate in homosexual activities. The maximum penalty for a third or subsequent offence is 6 months' imprisonment or $500 fine.

Comment: There appears to be a potential overlap between this offence and the present crime of procuring or attempting to procure the commission of an act of gross indecency. There is also some confusion as to the distinction between soliciting and procuring. It will be observed that gross indecency, at least from the point of view of penalty, is regarded as a more serious offence for reasons which are not apparent to us.

The offence of soliciting relates to activities in a public place and for reasons we have already explained in connection with other public offences we would wish to see it retained. There is difficulty, however, in regulating the making of homosexual propositions in private. Although we imagine that the making of overtures to a man who is not a homosexual in private would not be a pleasant experience, we are doubtful whether the act would be so offensive to a man of reasonable fortitude to justify the imposition of a gaol sentence. We are concerned, however, at the possibility of propositions being made to persons under the age of 18. In the structure we envisage, if affairs proceeded any further a criminal offence would certainly be committed; yet, although there is doubt on the evidence whether the danger of seduction of an adolescent is a grave one, we are inclined to err in this matter on the side of caution. Thus we would favour an offence which penalized the making of indecent propositions to persons under the age of 18 years.

Recommendations:

1. The present offence of soliciting in a public place for homosexual purposes should be retained.
2. The confusion and overlap between this offence and procuring an act of gross indecency should be remedied, preferably by abolishing the latter offence.
3. It should be a criminal offence, punishable in the same way as the crime of soliciting in a public place for homosexual purposes, to make indecent or improper suggestions whether this be called soliciting or procuring for the purpose of homosexual activities, to any male person under the age of 18 years. Again, it should be a defence to such a charge to prove that the defendant honestly believed on reasonable grounds that the person was of the age of 18 years or over.

VII. *Offensive or indecent behaviour*. *Summary Offences Act*. section 17(1)(d). It is an offence 'in or near a public place or within the view or hearing of any person being or passing therein or thereon' to behave 'in a riotous, indecent, offensive or insulting manner', punishable by 2 months' imprisonment or $100 fine. This offence is not confined to homosexual activity, but clearly could include it. To be offensive, a person must intend to wound the feelings and arouse disgust or outrage in the mind of a reasonable person. [121] It is not enough that the conduct was in any way blameworthy [122] or had a prurient motive. [123] Thus it is no offence for a male simply to be seen walking on a footpath dressed as a female, [124] unless his action would have appeared prurient or objectionable to a reasonable passer-by.

Comment: Whilst this is the state of the law, in practice this offence gives rise to many difficulties. It is an offence of vague content and often subjects the liberty of one individual to the particular sensitivities of another. Many lawyers comment on the ease with which an apparently strong, healthy policeman, giving evidence in such a case, can find himself offended. The provision tends to be used as a catch-all offence under which those people who cannot be charged with anything else may still be prosecuted. We express our dissatisfaction with this offence and its administration in relation to homosexual activities. We regard it as an offence which is subject to abuse and which should be more carefully controlled.

Recommendation:

Thought should be given to redefining the crime of offensive behaviour in such a way as to ensure that it can only be successfully employed to punish acts which are, indeed. genuinely insulting. If necessary, other offences may be created to punish particular anti-social acts. They should be defined, not in general terms, but by identifying the specific acts which are to be regarded as criminal.

VIII. *Consequential penalties*: Apart from the mere fact of conviction and a gaol sentence or a fine. the homosexual upon conviction is subsequently debarred from certain vocations. He cannot be registered as a

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[120] *Horton. v. Mead* [1913] 1 KB [King's Bench] 154.
[121] *Worcester. v. Smith* [1951] VLR [Vic Law Reports] 316.
[122] *Anderson. v. Kynaston* [1924] VLR [Vic Law Reports] 214.
[123] *Hannaberry. v. Cowther* [1945] VLR [Vic Law Reports] 158.
[124] ibid.

doctor, [125] psychologist, [126] or architect, [127] and cannot practice law. [128] He cannot be employed by the Education Department. [129] He is further debarred from holding certain public office and cannot, for example, be a local councillor. [130] In many cases he is penalized in this consequential manner not specifically because his offence was of a homosexual character, but because it is assumed that he has the same moral deficiencies as a man convicted of murder, rape, incest, robbery, burglary or other serious offences. We would not wish to be taken as indicating our agreement that all murderers, etc., should be subject to such consesequential [sic–consequential] penalties. Certainly, however, we do not feel that these laws are sensible in their operation with respect to the homosexual.

IX. *The law overseas*. In England, in 1855, homosexual acts of almost every kind were made criminal offences when committed between males. Victorian criminal law, as has been its general pattern, followed suit although not hastily in all cases. Thus it was not until 1919 that gross indecency became a crime in Victoria. In recent years there has been a tendency in many countries to relax the stringent provisions of laws, particularly in the light of modern sociological and psychological studies. This has been particularly true of offences relating to moral behaviour, including homosexuality. English law no longer prohibits homosexual acts committed in private between consenting males of 21 years or over. Victorian law remains virtually identical with the provisions prevailing in England prior to 1967. The division between the English and Victorian law is reflected in the wide range of attitudes taken by other countries on this subject. One survey, the results of which are reproduced below. showed that, for forty-seven countries, homosexual acts in private between males above a specified age are not illegal in 25, but are illegal in 22. In the more liberal countries, the age limit under which acts are illegal varies greatly. In Argentina it is 22, in eight countries, including England, it is 21. In Switzerland and Hungary the limit is 20; in Denmark. Iceland, Sweden and Czechoslovakia, 18; in Greece, 17; in the Netherlands, Italy, and China, 16; in Turkey, 15 and in Japan the limit is 13. The number of countries which retain penalties for homosexual offences as strict as those presently in force in Victoria has decreased significantly over the past decade. The following Table 5 [page 49] summarises the results of this survey:

Attachment II: Theological Considerations

There are a number of Biblical passages which directly refer to homosexual acts. The main references in the Old Testament are found in Leviticus.

Chapter 18, verse 22 states: 'You shall not lie with a male as with a woman; it is an abomination.'

Again, Chapter 20, verse 13 states: 'If a man lies with a male as with a woman, both of them have committed an abomination; they shall be put to death, their blood is upon them.'

Traditionally, the account of the destruction of Sodom in Genesis, Chapter 18, has been interpreted as showing Divine punishment for unnatural vices and it is from this account that the word sodomy finds its way into our language. One line of biblical criticism, however, argues that a proper reading of this passage indicates that the offence was really one of inhospitality rather than homosexuality. [131]

Nevertheless, the Old Testament clearly condemns the commission of homosexual acts. There were, however, various cultures in the ancient world which allowed for ritual and social homosexual practices. In some cultures, male homosexuality was viewed as part of the total sex life of the community, alongside heterosexuality. This was not so of the Jewish culture, and the proscription of homosexual behaviour was part of the cultural division which separated Jewish culture from the heathen.

The New Testament continues the same line of thought as the Old. Reference to homosexual practices is found in Romans 1:26-32; I Corinthians 6:9-10; I Timothy 1:8-11; 2 Peter 2:4. These passages generally list homosexual behaviour among other forms of moral depravity or excess which mark off the behaviour expected

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[125] *Medical Act 1958* (Vic), ss. 8 and 12.

[126] *Psychological Practices Act 1965* (Vic), s. 17(1)(b).

[127] *Architects Act 1958* (Vic), s. 11(1)(c).

[128] *Legal Profession Practice Act 1958* (Vic), s. 84(1)(b).

[129] *Education Act 1958* (Vic), s. 41.

[130] *Local Government Act 1958* (Vic), s. 52. See also *Public Service Act 1958* (Vic), s. 58 and *Water Act 1958* (Vic), ss. 133(2) and 185(7).

[131] Bailey, Derrick Sherwin, *Homosexuality and the Western Christian Tradition*, Longmans, Green and Co Ltd, London, 1955, pp. 9-28. See also 'Homosexuality and Homosexualism' in Macquarie, J, (ed), *A Dictionary of Christian Ethics*, SCM, London, 1967.

of Jews and Christians from that of the heathen.

Table 5: Law in Other Countries Regarding Homosexual Acts in Private Between Consenting Male Adults, 1971

Countries	Punishable for all males	Punishable only where youth involved	Age limit	Countries	Punishable for all males	Punishable only where youth involved	Age limit	Countries	Punishable for all males	Punishable only where youth involved	Age limit
Argentina		yes	22	Eire	yes			Poland		yes	?
Austria	yes			England		yes	21	Portugal	yes		
Belgium		yes	21	Ethiopia	yes			Puerto Rico	yes		
Brazil		yes	?	France		yes	21	Rumania	yes		
Bulgaria		yes	21	Greece		yes	17	Scotland	yes		
Canada		yes	21	Hungary		yes	20	Spain	yes		
Chile				Iceland		yes	18	Sweden		yes	18
China		yes	16	India	yes			Switzerland		yes	20
Columbia	yes			Italy		yes	16	Syria	yes		
Costa Rica	yes			Japan		yes	13	Turkey		yes	15
Cuba	yes			Lebanon	yes			USA (except Illinois) *	yes		
Czechoslovakia		yes	18	Luxembourg		yes	14				
				Mexico		yes	?	USSR	yes		
Denmark		yes	18	Netherlands		yes	16	Western Germany		yes	21
Eastern Germany		yes	21	Norway		yes	21				
				Pakistan	yes			Yemen	yes		
Egypt	yes			Panama	yes			Yugoslavia	yes		

Note: * In the State of Illinois, the age limit is 21. The result s of this survey were submitted to the Committee by a member of staff of the University of Melbourne Law School and reflect the known situation at the beginning of 1971. Source: Anglican Diocese of Melbourne, Social Questions Committee, *Report on Homosexuality 1971*, pp. 23-4.

The reasons for thus prohibiting homosexual activities do not appear on the face of the documents, but rest, rather on interpretation. There are two reasons commonly advanced. Homosexual acts were unnatural, in the sense that they involved a turning away from man's more usual attraction for womankind. Secondly, homosexuality held an inherent threat to the family ties so important in Jewish tradition. Biblical evidence thus leads many to conclude that homosexual activity is to be regarded as prohibited to the Christian.

Contemporary theology is trying to come to terms with emerging sociological and psychological facts about homosexuality. There are many possible emphases, many different attitudes, which a Christian may bear to the problem of homosexuality both within and outside the Church – depending on the starting point of one's argument. It is not possible to list them all, but two positions are worth stating, merely to show that, although they diverge widely, they lead to the same result when answering the question of what should be the Church's attitude towards law reform.

At one end, it is possible to view biblical passages as determining the issue. For Christians the moral question is closed; homosexual acts are explicitly forbidden. Such a view is implicitly based on the assumption that an individual with homosexual tendencies could, if he chose to exercise his will, neutralize those impulses, channel himself into a normal life and live according to Holy Writ. Failure to do so must be a wilful act of self gratification and necessarily sinful.

At the other end of the scale is the view put forward by Pittenger, Keeling, Robinson and others. [132] Their starting point is the proposition that the end of man is to love and be loved, as God loves him. As man comes to know love, so he comes closer to a knowledge of God and the realisation of himself as a person. Insofar as a person is deprived of the right to be loved, he is deprived of an essential part of his personality.

On this view, the Christian should accept that there are persons whose needs for self-realisation lie neither along the path of celibacy nor ordinary heterosexual relationships. Schofield writes:

> Many people are surprised to learn that most homosexuals seek companionship and community of interest as well as sexual satisfaction. Some homosexuals do develop relationships as loyal and as closely knit as the best kind of

[132] Pittenger, Norman, *Time for Consent*, SCM Press, London, 1970; Keeling, M, *Morals in a Free Society*, SCM, London, 1970; Keeling, M, *What is Right?*, SCM, London, 1969; Robinson, JAT, *Christian Freedom in a Permissive Society*, SCM, London, 1970.

marriage. [133]

In Keeling's opinion, '[s]ociety will have to come to a time when it is able to accept these relationships openly and calmly as an ordinary part of human life. The acceptance of one another which the Gospel requires of us certainly demands this.' [134] On this view, the Church should seek to change the community's outlook and to remove artificial barriers, such as stringent legal prohibitions, which deter homosexuals from realising full, deep, meaningful human relationships to the limits of their capacities.

In between full acceptance and total rejection of the homosexual there are many other possible moral positions. Some view homosexuals as incomplete creatures, nevertheless deserving of compassion. Others regard the Christian obligation as being to endeavour to reform the homosexual; to obtain a medical or psychiatric cure.

In our opinion, whatever the view taken by individual Christians as to the propriety of homosexual behaviour for Christians, they must be cautious of imposing their moral views on society at large. For the Christian himself, it should make no difference to his ability to adhere to his own moral standards whether a sinful act is criminal or not criminal. At one time, certainly, the Church believed that society should prohibit any act which the Church held to be contrary to morals or religion., if the act was sinful, it should be put down and stamped out with all the vigour of the law. In our opinion, however, a distinction must be drawn between those acts which the community at large views as damaging to society and those acts which the Church condemns for its own members, but which society does not comprehend to be damaging to itself.

It is thus possible for Christians who may disagree as to the propriety of homosexual behaviour among Christians to agree on one thing. Homosexual acts, like fornication or adultery, need not be criminal merely because they do not accord with Christian values. Before the Church, or any other body, is justified in demanding that an immoral act be made a crime, there must be evidence of injury to others or to society as a whole.

Attachment III: Some Sociological and Psychological Findings

The Committee, in its investigations, was surprised to find how many commonly held attitudes about homosexuality have been exploded or held up to serious question by recent surveys and studies. A summary of some of their findings may be useful to others in understanding the considerations on which our recommendations are based.

There is a consensus of professional opinion as to the incidence of homosexuality which indicates that:

(i) there is a significant number of adult men in the community who, so far as can be predicted, will be exclusively homosexual throughout their lives;

(ii) a much higher proportion of men, after the onset of adolescence, pass through periods of varying duration, when they experience powerful homosexual urges;

(iii) of this latter category, a considerable proportion seek and find an outlet for their sexual energies during that period with another adult male.

One of the most revealing studies was that carried out by Kinsey with the collaboration of some 12,000 white Americans. He made the following general conclusions. [135]

- Thirty-seven per cent of the total male population has at least some overt homosexual experience to the point of orgasm between adolescence and old age. This accounts for nearly two males out of every five one may meet.
- Fifty per cent of the males who remain single until age 35 have had overt homosexual experience to the point of orgasm, since the onset of adolescence.
- Fifty-eight per cent of the males who belong to the group that goes into high school but not beyond, fifty per cent of the grade school level. and forty-seven per cent of the college level have had homosexual experience to the point of orgasm if they remain single to the age of 35.
- Sixty-three per cent of all males never have overt homosexual experience to the point of orgasm after the onset of adolescence.
- Fifty per cent of all males (approximately) have neither overt nor psychic experience in the homosexual

[133] Schofield, Michael, *Sociological Aspects of Homosexuality: A Comparative Study of Three Types of Homosexuals*, Longmans, Green and Co Ltd, London 1965, cited in M. Keeling, *What is Right?*, p. 101.

[134] Keeling, M, *What is Right?*, pp. 59-60.

[135] Kinsey, AC, et al. *Sexual Behaviour in the Human Male*, Saunders, London, 1963, pp. 650-1.

after the onset of adolescence.

- Thirteen per cent of the males (approximately) react erotically to other males without having overt homosexual contacts after the onset of adolescence.
- Thirty per cent of all males have at least incidental homosexual experience or reactions over at least a three-year period between the ages of 16 and 55. This accounts for one male out of every three in the population who is past the early years of adolescence.
- Twenty-five per cent of the male population has more than incidental homosexual experience or reactions for at least three years between the ages of 16 and 55. In terms of averages, one male out of approximately every four has had or will have such distinct and continued homosexual experience.
- Eighteen per cent of the males have had at least as much of the homosexual as the heterosexual in their histories for at least three years between the ages of 16 and 55. This is more than one in six of the white male population.
- Thirteen per cent of the population has more of the homosexual than the heterosexual for at least three years between the ages of 16 and 55. This is one in eight of the white male population.
- Ten per cent of the males are more or less exclusively homosexual for at least three years between the ages of 16 and 55. This is one male in ten in the white male population.
- Eight per cent of the males are exclusively homosexual for at least three years between the ages of 16 and 55. This is one male in every thirteen.
- Four per cent of the white males are exclusively homosexual throughout their lives, after the onset of adolescence.

The techniques and deductions of Kinsey have been subject to criticism [136] and it would be plainly unjustifiable to assume that the position in Australia is necessarily reflected in these figures. Nevertheless, if we accept the findings of a Swedish survey that only one per cent of all men were exclusively homosexual and that four per cent had both homosexual and heterosexual impulses – which were the lowest figures presented to the Wolfenden Committee – we would conclude with them that the incidence of homosexuality is large enough to present a serious problem. We have discovered no survey of the occurrence of homosexuality in Australia, but we understand that Australian psychiatrists generally regard the finding of Kinsey that four per cent of males are exclusively homosexual as applicable.

The precise accuracy of this figure is unimportant for present purposes. The significant fact is that homosexual impulses play a part in the lives of many more males than might be supposed. Many adult men who on every other count may be normal, law abiding and respected citizens, do at some stage have homosexual impulses which come to the surface, and this must be taken into consideration in any rational discussion of the response which the law should exhibit to homosexual conduct.

There is much debate as to what exactly causes homosexuality. One of the major differences of opinion concerns the extent to which homosexual tendencies depend on innate characteristics. Is a man born with some characteristic which will ultimately determine his sexual preferences? Is there something in all men which develops in some as they grow older but remains dormant in others? Alternatively is there no identifiable, innate seed of homosexuality but merely a universal capacity for development in a homosexual direction? [137] And, if such development does occur, is it generally due to a childhood environment substantially beyond the subject's control? [138]

Each of these propositions receives some support from the material to which we have been referred; but we do not find it necessary to choose between them. Whatever is regarded as being the cause of homosexuality, we have discovered in the material more or less common agreement on the following propositions:

1. By the time a male has reached puberty his character as homosexual or heterosexual has been determined.
2. The occurrence of a phase in which an adolescent male has one or even a number of homosexual contacts does not of itself mean that he will be a homosexual adult.
3. By the time a male has reached his twenties and is identifiable as heterosexual he is unlikely to become homosexual.
4. A man who has established a pattern of exclusively homosexual conduct by the time he is in his mid-

[136] Eg. Berg, C, and Krich, AM, *Homosexuality*, George Allen & Unwin, London, 1958, pp. 273-299.

[137] West, Donald J, *Homosexuality*, Pelican, London, 1968, p. 17.

[138] Marmer, J, (ed) [sic] Marmor, Judd, (ed), *Sexual Inversion: The Multiple Roots of Homosexuality*, Basic Books Inc, New York, 1965, pp. 248 *er seq*.

twenties is unlikely to change that pattern; though there may be some men who in their 20s or 30s go through an isolated phase of homosexual conduct.

5. The affection which a homosexually disposed man feels towards another may be of the same order of feeling, in terms of gentleness, admiration, pride and self-denial as the affection of a man for a woman – all these qualities being reinforced by a sexual drive, just as they may be in the case of a man and a woman.
6. Although a sense of guilt or shame often follows the commission of a homosexual act (and this is commonplace even with those who are exclusively homosexual and follow a pattern of life with frequent homosexual contacts), it is nevertheless possible for a homosexual who lives in a community where he feels he is accepted, or who is able to disregard social taboos on his conduct, to be as well adjusted as any heterosexual.
7. There is no established connection between a propensity to homosexual relations and any other form of anti-social behaviour.
8. Prolonged psychiatric treatment is sometimes claimed to have cured individual homosexuals, yet the possibility of such treatment – or of any other treatment – being available generally or, if available, having more than isolated success, is so remote as to be neglible [sic–negligible].
9. There is no clear conclusion whether a more tolerant attitude on the part of society would reduce or increase the incidence of homosexuality. It is possible that a more tolerant attitude would break down prejudices which presently isolate the homosexual and offer him no alternative other than continuing as a homosexual. On the other hand, it is possible that greater tolerance would lead some to give free rein to propensities which they presently hold in check for fear of the social consequences.

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1:–1.1.4. – House of Lords Debates

Homosexual law reform in the United Kingdom was a very long and drawn out process. What follows are snippets taken from the debates in the House of Lords only. Debates about homosexual law reform of course also toke place in the House of Commons and for greater details about both these debates in the Lords and Commons and further historical details and perspective can be found in Stephen Jeffery-Poulter's book *Peers,*

Queers and Commons: The Struggle for Gay Law Reform from 1950 to the Present. [139]

Overall the House of Lords were to spent about twenty-seven hours, made up of some eighty-two speeches, debating this subject, which would only be up to and including the 28 October 1965 third reading debate. [140]

1:–1.1.4.1. – House of Lords Debate on Proposed Committee on Laws Relating to Homosexuality, 19 May 1954 [141]

The first debate, in the House of Lords, on homosexuality toke place on 19 May 1954 when the government of the day had announced in the House of Commons on 28 April 1954 the establishment of a committee (later to become the Wolfenden Committee) to study the law relating to homosexuality.

The majority of speakers in this debate saw homosexual urges as some sort terrible affliction and curse which the proposed committee might find some way of alleviating or curing, and in general even those who supported homosexual law reform emphasised their strong disapproval of this behaviour.

The debate included the following summarised and poignant points:

- The Number of Convictions: [see Table 6, page 53]

Earl (Edward) Winterton stated that: [142]

> … unnatural offences known to police rose from … [143]

Earl (William Allen) Jowitt added the following:

> No one can see the statistics which he [Earl (Edward) Winterton] quoted without realising that a grievous danger confronts this country. … I find myself completely at one with the noble Earl in realising how grave, how desperately serious, are these figures, … [144]

- Lesbians Are Not Criminals:

Earl (Edward) Winterton stated that:

> It is said that unnatural vice between women in not punished, and that it is therefore illogical and unfair to punish it among men. My comments are that two wrongs do not make a right. It seems to me to be carrying the principle of sex equality too far, …[145]

Table 6: Comparison of Homosexual Offences in United Kingdom Between 1938 and 1952

	1938	1952
Unnatural offences	134	670
Attempts to commit unnatural offences (including indecent assaults)	822	3087
Gros indecency	320	1686
Source: *Parliamentary Debates*, House of Lords, 19 May 1954, vol. 187, col. 738.		

- Blackmailers Charter:

Earl (Edward) Winterton stated that:

> The point … which is made is that the existing law is the blackmailers charter. I wonder whether that is really so. … Is a homosexual more liable to blackmail than men or women who break the law in certain other directions … [146]

Earl (William Allen) Jowitt added to this:

> When I became Attorney-General, I became oppressed by the discovery that there was a much larger quantity of blackmail than I had realised. … at least 95 per cent of the cases of blackmail which came to my knowledge arose out

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[139] Jeffery-Poulter, Stephen, *Peers, Queers and Commons: the Struggle for Gay Law Reform From 1950 to the Present*, Routledge, London, 1991.

[140] *Parliamentary Debates*, House of Lords, 28 October 1965, vol. 269, col. 684.

[141] *Parliamentary Debates*, House of Lords, 19 May 1954, vol. 187, cols. 737-67.

[142] See also 10:–5. page 565, 'Nicholas Winterton MP Cannot Let Go', for some further details regarding Winterton's attitude attributed to him in the 1998 Commons on the age of consent debates to permit gay sex at age 16.

[143] *Parliamentary Debates*, House of Lords, 19 May 1954, vol. 187, col. 738.

[144] ibid. col. 746.

[145] ibid. col. 739.

[146] ibid. col. 739.

of homosexuality … [147]

- Legality of Homosexuality in Other Countries:

Earl (Edward) Winterton stated this regarding legality:

> [The] point made by the advocates of change is that in many countries there is no law against homosexualism between adults. I would submit – and I think that several of your Lordships, on both side of the House will agree – that this argument is valid only if the absence of the law in countries with a moral outlook similar to ours has reduced the number of adult homosexual offences against juveniles. One of the contentions made in connection with this matter is that by permitting what I may call adult homosexualism, it reduces the danger of attacks upon children. [148]

Earl (Edward) Winterton further stated that:

> … on the comparison with other countries … some countries regard homosexualism at all male ages as harmless. I would say – and here I think I shall have assent from everyone in this House, however much they disagree with some of the things I have said – that neither the moral climate nor the position which those countries occupy in the world is one that we want to emulate. [149]

- Age of Consent:

Earl (Edward) Winterton regarding this issue stated:

> The supporters of the change of law, of course, admit that juveniles must be protected against homosexualism. The Church Council for Moral Welfare pamphlet suggests that the age of consent should be twenty-one, so as to exclude National Servicemen. … the opponents of any change would say it meant telling the male public that when they reach the age of discretion they may commit a filthy act without punishment. [150]

Lord (Robert Gilbert) Vansittart added to this:

> The customers of lust, if I may put it that way, are always searching for younger material and paying for it. If we smooth the path of the adult evil-doer, we automatically increase the prospect of the perversion of the young. [151]

- Historical Factors and Justification for Punishment:

Earl (Edward) Winterton stated that:

> I should like to put before your Lordships what I believe to be an historical fact. There was a considerable amount of homosexualism at Oxford University in the early 'nineties. It may be said that the 'fontes et origines mali' [152] were Oscar Wilde and his associates. As it happens, the noble and learned Earl, Lord (William Allen) Jowitt, and the noble and learned Lord, the Lord Chancellor and I, and one or two other Members of your Lordships' House, were at Oxford in the early 1900s. I think they will confirm that then, ten years after this horrible series of attacks had occurred at Oxford, this vice was never, to our knowledge, discussed or practised. In the Oxford of our day it was wholly taboo, and such undergraduates as had practised unpleasant sexual vices at their public school concealed and were heartily ashamed of the fact. What caused this change? In the opinion of some well calculated to judge, it was the conviction of, and sentence upon, Oscar Wilde. [153]

Lord Ritchie (John Kenneth) of Dundee added his contra view:

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[147] ibid. col. 745.
[148] ibid. col. 740.
[149] ibid. col. 741.
[150] ibid. col. 740.
[151] ibid. col. 756.
[152] Assistance was sought regarding an appropriate translation of 'fontes et origines mali', from one of Australia's Latin scholars, the Hon EG Whitlam AC, QC, on 19 April 1999. Mr Whitlam responded on 21 April 1999 with the following translation: 'The sources and origins of the evil.'
[153] *Parliamentary Debates*, House of Lords, 19 May 1954, vol. 187, cols. 741-2.

> We have been for seventy years been trying to administer a law which came into force as a result of what is generally admitted to have been a mischance … [see page 72] [154]

- The Irresistible Urge Theory:

Earl (Edward) Winterton had this to say:

> … the advocates of change would regard as the strongest argument of all, what I would describe as the irresistible urge theory. Its supporters contend that, because of heredity, environment, physical condition or mental outlook, some men just cannot help being homosexual … If homosexualism is a form of obsessive, uncontrollable mania, then presumably it is on a par with kleptomania … the irresistible urge argument is being carried to dangerous lengths by the advocates of penal reform generally. [155]

The Lord Bishop (Frank Russell) of Southwell added to this:

> Certainly the Church, like nearly everyone else, would vehemently repudiate what I might call the behaviourist plea – the suggestion that a man in this condition is not a free and responsible moral agent, so that he simply says. 'I am made this way; it is not my fault; I cannot help it'. [156]

Lord (Robert Gilbert) Vansittart, using Oscar Wilde, further added that:

> So we came perceptibly nearer to Wilde's own lessen, that the only way to get rid of a temptation is to yield to it. [157]

Lord (Charles George) Ammon concluded that:

> In my youth they used to call things of this sort sin; now they call them complexes. [158]

- United Kingdom's Loss of World Influence:

Earl (Edward) Winterton concluded his speech as follows:

> I am convinced that the majority of British people agree with me that a few things lower the prestige, weaken the moral fibre and injure the physique of a nation more than tolerated and widespread homosexualism. … I think … we should lose our influence for good in the world, and we should go the way of other countries in the past, who were once great but became decadent through corrosive and corrupting immorality. [159]

Lord (Robert Samuel Theodore) Chorley contradicted by stating that:

> … if we were to bring our laws more into accord with the laws of almost every other civilised country in the world, we should lose our influence for good in the world. That seems to me a most exaggerated statement. [160]

Lord (Robert Samuel Theodore) Chorley further stated that:

> … if we brought our laws into conformity with the laws of those civilised countries we should lose our influence for good in the world is quite absurd. In fact, in this particular branch of our criminal law we have a reputation for being completely hypocritical. Our position and influence in the world would improve if we were to deal with this matter in a more civilised and sympathetic manner. [161]

- Increase/Decrease in Homosexual Activity:

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[154] ibid. col. 758.
[155] ibid. col. 743.
[156] ibid. col. 753.
[157] ibid. col. 755.
[158] ibid. col. 759.
[159] ibid. cols. 744-5.
[160] ibid. col. 765.
[161] ibid. col. 766.

Lord (Charles George) Ammon said that one point had been rather overlooked in the debate:

> … the great increase in this beastly crime has occurred in post-war years, following a time when there was a great emotional stir-up and a disregard of the moral and legal law, coupled with the mixing of numbers of our own people with others to whom this is not an offence. [162]

Lord (John Theodore Cuthbert) Brabazon of Tara added the following:

> What we must do, if we are to diminish the increase in homosexuality, is to look into the far complicated question of breeding, environment, education and that sort of thing. [163]

Lord (Robert Samuel Theodore) Chorley attacked Earl (Edward) Winterton regarding this matter as follows:

> The noble Earl who introduced … made all sorts of statements about how this crime was practically unknown when he was a young man. In fact, it is quite obvious that that was not so at all; it has always been fairly prevalent. It is probably more prevalent now than it was then, but we really do not know; we have not the material on which to form a view about it. [164]

1:–1.1.4.2. – House of Lords Debates the Wolfenden Committee's Recommendations, 4 December 1957 [165]

Once again the House of Lords proved unwilling to follow the Government line and on 4 December 1957 they held a full-scale debate on the Wolfenden Committee's recommendations. [166] This was despite the fact, according to the *Daily Express*'s political correspondent statement, that:

> With a general election now less than two years away Ministers are reluctant to get the Government involved in a major moral controversy. [167]

The debate included the following summarised and poignant points:

- Protection of the Young:

Lord (Patrick Berkeley) Moynihan in his introduction stated that:

> Although the report divides itself into two main parts, certain of the principle relate to the whole question. The first is that it is our duty in every way possible to protect the young from immorality of every kind; and the second, I think, is that immorality in public places, so far as is possible, must be suppressed … in our aim to protect children their knowledge these days is infinitely greater than it used to be – and (though modern educationists will probably not agree) not always to the children's benefit – particularly as a result of co-educational schools. [168]

The Marquess (Peter Francis Walter) of Lothian add to this that:

> … it is increasingly necessary to shield and protect the young people of our country, even more than they are at present, from the dangers of this degenerating vice. [169]

- Immorality in Public Places:

The Lord Bishop (Thomas) of Carlisle concluded his rather short speech by supporting the one member of the Wolfenden Committee who favoured retention of the current law by stating that:

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[162] ibid. col. 759.
[163] ibid. col. 762.
[164] ibid. col. 763.
[165] *Parliamentary Debates*, House of Lords, 4 December 1957, vol. 206, cols. 733-50, 753-832.
[166] See: 1:–1.1.4.3. page 59, 'Wolfenden Committee's Recommendations, Corresponding Paragraphs and Reservations'.
[167] n.a. *Daily Express*, 4 September 1957, n.p.
[168] *Parliamentary Debates*, House of Lords, 4 December 1957, vol. 206, col. 745.
[169] ibid. col. 783-4.

> This kind conduct between consenting males is not simply private and personal. No man can engage in it without bringing another into it, and when another is brought in it is not merely personal and private; it becomes something like social. The removal of the legal penalties from this offence must mean that the law would tolerate in future what it before condemned. Condonation and not condemnation would be the attitude of the State as reflected in its legislation. [170]

- Age of Consent:

Lord (Patrick Berkeley) Moynihan wanted the age of consent raised:

> When one comes to look at the definition of youth, I find myself in some difficulty, I have never understood, for instance, why the age of consent for a girl is 16, whereas the age of call-up is 18, and the age for voting 21. If the law is to be changed – and I sincerely hope it will be – I think we should straight away at the question of raising the age of consent to these young girls. [171]

The Lord Bishop of Carlisle added to this age of consent argument the following:

> Why should the age of consent for homosexuality be fixed at twenty-one if it is no worse an offence than fornication? Why should young men of twenty, nineteen and eighteen, be protected against approaches by a homosexual if no protection is given to young women of sixteen, seventeen, eighteen, nineteen and twenty for an offence that is no better or no worse than that to which the young man is subjected? It seems to me that if the [Wolfenden] Committee had been logical, it was bound to fix the age of consent, whatever it might be, as the same for all. [172]

- Contagious Homosexual Practice:

The Lord Bishop (Christopher Maude) of Rochester said:

> There is no more baneful or contagious an influence in the world than that which emanates from homosexual practice. It makes a life of leprosy. The most reverend Primate [The Lord Archbishop of Canterbury] was quite right: there are such things as sodomy clubs. There was one in Oxford between the wars, and I am informed that there was another in Cambridge which even shamelessly sported a tie. And these clubs are plague-spots wherever they exist. They draw in those who would otherwise be immune and turn them themselves into corrupters of their fellows. I cannot believe … that the best way of getting rid of these clubs is to indulge them and allow them to exist. We have had the examples which the most reverend Primate gave – those haunting examples – of how men were sucked in and held onto, as it were, by an octopus of corruption. The made me favour the idea that here the State ought to come in and help those men in every way possible and fight those who would encircle them with their corrupting chains. [173]

- Sinful Homosexual Behaviour:

Lord (Francis Aungier) Pakenham widened the argument about sinfulness of sexual behaviour by stating that:

> We must go further forward from the that point as Christians, and particularise. We must attach the label of grievous sin to all sexual intercourse outside marriage, whether between men and men, between men and women or between women and women; and I suppose that I must mention bestiality as well.
>
> In approaching sexual offences the Christian, surely, rejects, on the one hand, any kind of crude vindictiveness expressed by some coarse-minded person in such words as, 'Hanging is too good for them'. We recall … that in the 1830s two men, at least, were hanged on a separate scaffold as homosexuals so that they should not contaminate the ordinary recipient of capital punishment. [174]

The Marquess (Peter Francis Walter) of Lothian added to this sinful argument, that:

> A further implication has been drawn by some people that the Committee, because it did not specifically condemn homosexuality, has therefore undermined important moral values which the nation should preserve and upon which our laws are fortunately based, and that by so doing we [the Marquess (Peter Francis Walter) of Lothian was a member of

[170] ibid. col. 814.
[171] ibid. cols. 745-6.
[172] ibid. col. 815.
[173] ibid. col. 797.
[174] ibid. col. 735-6.

> the Wolfenden Committee] have recommended that a most valuable restraining influence should be removed. It is often argued that homosexual behaviour should be treated differently, as it is a graver moral offence. I entirely agree that it is a graver moral offence, in that it offends more radically the law of nature ordained by God, but I am not convinced for that reason that the criminal law can be based on a precise grading of moral or ethical failings. [175]

- Retain Sodomy as an Offence:

The Lord Archbishop (Geoffrey Francis) of Canterbury stated that:

> The principle here is that what man is made of in his instincts by nature is less important than what he is made for, and can be shaped to by the influence of the community, by training and, if necessary, by the process of law.

The Archbishop further added that:

> I know many people have grave hesitation about this recommendation. They think it will lead to an increase in offences. Their information may be different from mine, and it is not at all easy to be dogmatic; but, like the Church Assembly itself, I feel that if there is a doubt that the risk should be taken. I would add only this one further reflection: that if it proved legally possible – I do not know whether it is – to separate what the noble Lord, Lord (Francis Aungier) Pakenham, called the extreme offence, and to leave that still a crime, I should wish to leave it a crime still. The Report goes so far as to say this: "We believe that there is some case for retaining sodomy as a separate offence." I believe that if that could be done, it would relieve the anxieties, fears and indignation of a great number of people; and, more than that, I believe that this crime does stand in a class by itself and in almost different in kind from other homosexual offences. [176]

- Misinterpretation of Sodom and Gomorrah:

Lord (John Theodore Cuthbert) Brabazon of Tara said that:

> Dr [Derrick Sherwin] Bailey, of the Church of England Moral Welfare Committee, deals extremely well in his book, *Homosexuality and the Western Christian Tradition,*[177] with the savagery which takes place in legislation against the homosexual, based on the story of Sodom and Gomorrah. According to him, the Jews did not put the disaster down in any way to homosexuality. That idea was started many hundreds of years later and was based on the curious fact that someone elected to translate the word meaning know as having carnal intercourse with. I venture to say that if we are going through history reading the word know as having carnal intercourse with, we are going to get some curious results. [178]

- No Prospect of Early Reform Legislation:

Viscount (David Patrick Maxwell) Kilmuir (Lord Chancellor) stated the Government's intentions clear that:

> Her Majesty's Government do not think that the general sense of the community is with the Committee in this recommendation, and therefore they think that the problem requires further study and consideration. Certainly there can be no prospect of early legislation on subject.
>
> The argument has been put forward very forcibly in different forms from different quarters that for the State to remove sanctions of the criminal law from homosexual behaviour, even between consenting adults in private, and even with the limitations mentioned by the most reverend Primate for the full offence, would be tantamount to suggesting that there is nothing socially harmful in such behaviour and would inevitably have as its consequence that young people would be encouraged to indulge in it, and that society would be corrupted. [179]

- Homosexuals are Outcasts:

The Earl (Francis John Clarence Westenra Plantagenet) of Huntingdon stated with compassion that:

> This is a problem which exists not only in Britain but throughout the world and has existed through all time. I must

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[175] ibid. col. 781.
[176] ibid. cols. 755, 757.
[177] Bailey, Derrick Sherwin, *Homosexuality and the Western Christian Tradition*, Longmans, Green and Co Ltd, London, 1955, pp. 1-28.
[178] *Parliamentary Debates*, House of Lords, 4 December 1957, vol. 206, col. 773.
[179] ibid. col. 773.

> confess that I can feel only pity for these unfortunate people. They must feel themselves to be aliens, to be outcasts, because their natural instincts can be satisfied only through breaking the law and committing deeds for which most people would feel strong repugnance and which make them liable to extreme penalties. I think that is a dreadful position for them. [180]

- Strong Reasons for Law Alteration:

The Earl (Francis John Clarence Westenra Plantagenet) of Huntingdon thought that:

> … there are … strong reasons why the law should be altered. First – and this is the thing which must give us a feeling of horror – it would prevent the use of the police as agents provocateurs. I know that the Report says that the police instructions have been not to do this, but I know, from good information, that in fact the police do so, and must do so in many cases. The idea of policemen dressing up and trying to trap men into this kind of behaviour is a horrible one. Secondly, the alteration of the law would bring relief to thousands of men in positions of prominence, trust and responsibility whose lives are frustrated and under a continual cloud. Thirdly, and I think this is very important, it would prevent the danger of blackmail. That is a crime we all deplore – a most odious one – and homosexuality is a most rewarding field for the blackmailer. [181]

- Justifiable Violent Response as Defence:

Lord (Alfred Thompson) Denning foreshadowed that law change might make assault a justifiable defence when he said:

> … consider the case where the homosexual approaches a man and the man repels him with indignation. Many is the case I have tried where the normal man repels with a fist such a approach. At the moment he is justified by the law in doing so, because it is a criminal offence to solicit a person for immoral purposes. But if this offence were abolished, I do not know that the man who strikes the blow would have that defence, because it might be said to be an unjustifiable assault. [182]

1:–1.1.4.3. – Wolfenden Committee's Recommendations, Corresponding Paragraphs and Reservations, 12 August 1957 [183]

We recommend: [184]

I That homosexual behaviour between consenting adults in private be no longer a criminal offence (paragraph 62).

Paragraph 62: We accordingly recommend that homosexual behaviour between consenting adults in private should no longer be a criminal offence.

Reservations by Mr James Adair Regarding Paragraph 62:

Homosexual Acts Between Consenting Adults In Private

1. It is with regret that I find it necessary to dissociate myself from the other members of the Committee on what is undoubtedly the most important recommendation in Part Two of the report – to take homosexual acts committed in private by consenting male adults out of the realm of the criminal law. I feel this regret the more deeply because of my recognition of the vast amount of care and thought bestowed by them on the question.
2. As I look at the matter, we are investigating in this part of our inquiry a course of conduct which is contrary to the best interests of the community, and one which can have very serious effects on the whole moral fabric of social life. It is one of those forms of conduct falling within the group to which the words of the Street Offences Committee, quoted in paragraph 227 of our report, apply as being 'conduct it has always been thought right to bring within the scope of the criminal law on account of the injury which they occasion to the

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[180] ibid. col. 804.
[181] ibid. col. 805.
[182] ibid. col. 809.
[183] *Report of the Committee on Homosexual Offences and Prostitution*, HMSO, London, 1957.
[184] The recommendations of the Wolfenden Committee are preceded by **bold** upper-case Roman numerals. Each recommendation includes a reference to the paragraph(s) of the report the text of which is placed after the recommendation. Where appropriate the various reservations of committee members are placed after the report's paragraph(s). Not all the paragraphs of the Wolfenden Report are reproduced here; only those which specifically refer to the Committee's homosexuality recommendations.

public in general.' The influence of example in forming the views and developing the characters of young people can scarcely be overestimated. The presence in a district of, for example, adult male lovers living openly and notoriously under the approval of the law is bound to have a regrettable and pernicious effect on the young people of the community. No one interested in the moral, physical or spiritual welfare of public life wishes to see homosexuality extending in its scope, but rather reduced in extent, or at least kept effectively in check.

3. Existing homosexual trends and tendencies are currently the cause of much public concern and disgust, and the case for relaxing legal restrictions does not appear to me to be a compelling one. The more serious phases of such conduct have been recognized by our law as criminal for a continuous period of not less than 400 years, and, a very heavy onus therefore rests on the advocates of the change now proposed to demonstrate by cogent evidence that the withdrawal of hitherto criminous conduct from the realm of criminal law is clearly justified.

4. I have studied carefully the evidence led before us, and find that it came in the main from four sources – official, medical, legal and sociological, and on the threshold I feel compelled to say that in each group there is in varying degrees a diversity of opinion on the proposal. Nor is it without significance that in those instances where it might be said that the majority of the group favored the change now proposed, that majority was proportionately markedly smaller than that in the Committee now making this recommendation.

5. In much of the evidence we beard, particularly in the fourth group, I detect a marked degree of sentimentalism – a deep-rooted sympathy with and for the individual who is by nature homosexual and, therefore, considered of necessity a subject for medical and not legal attention. These considerations have been allowed to obscure the other type who, in the absence of any innate tendency, whether from monetary or other reasons, takes up this type of behaviour, and have tended, too, to obscure also the interests of the public in general and the decent self-disciplined citizen in particular. It seems to me significant that in the deliberations of a large proportion of organizations which made representations – including the two Churches – psychiatrist members or advisers played a prominent part.

6. While I have acquired over a long period of years the utmost confidence in the ability and opinions of many mental specialists, I have frequently found the views of others, as expressed on occasions, quite inexplicable and in not a few cases manifestly indefensible. When it is clear from evidence given before the Committee that many psychiatrists hold the view that the vast majority of criminal offenders, whatever the nature of their criminal acts, should be medically treated rather than be dealt with by the law, I may be excused if I look critically at such evidence and require corroboration from convincing sources before accepting a view which, though not without idealistic content, is scarcely compatible with the realities of communal life as now constituted.

7. Furthermore, it appears clear to me that many of those who considered the matter and were parties to the representations made to us were under the belief that if the individuals involved in homosexual practices were handed over to the medical profession this would be an adequate answer to the problem. They were apparently unacquainted with the very limited powers of the medical profession in the bringing about of a change in either outlook or behaviour.

8. I feel obliged to make the following observations on some aspects of the course proposed by my colleagues:

(i) If the sanctions of the criminal law are removed, there is also removed one, if not the main, motive which at the present time influences homosexuals to consult medical advisers. The proportion of homosexuals who today consult medical advisers with regard to either their state or their behaviour is admittedly small. Of those who do, there is a considerable proportion who do so either because they have already found themselves in the hands of the police and have been sent for examination by the court, or because they desire expert evidence that may influence the court's outlook, or because circumstances have arisen that cause them to anticipate police attention. It appears, therefore, that even the small number who attend for medical examination will be reduced considerably if the proposed change be carried out.

(ii) If the sanctions of the criminal law are removed, there are also removed from the police opportunities to carry out important preventive work of social benefit to the community. It may be that my training and experience as a Procurator-Fiscal in Scotland, acting in close association with the police in the detection and investigation of crimes of all kinds, has coloured my view on the importance of such sanctions. It has certainly led me to take a different view from that of my colleagues as expressed in paragraph 58 of the report, and this view has not been modified by what has been a conscientious effort on my part to weigh impartially and without bias the relevant evidence submitted to the Committee. I have found on many occasions that in the knowledge that unlawful conduct was in contemplation a police officer could prevent it by a word in season or

by making his presence known; this has been particularly so in the case of sexual offenders. To accept the recommendation here made is to take away from the police the only justification they have for operating in this practical and preventive fashion.

(iii) If the recommendation be adopted, the moral force of the law will be weakened. I am convinced that the main body of the community recognises clearly the moral force of the criminal law of the land. Many citizens, it must be admitted, regard the prohibitions expressly imposed by law as the utmost limits set to their activities and are prepared to take full advantage of any omission or relaxation. It would be surprising if there are not considerable numbers with this philosophy among those with whom we are concerned in this inquiry, and the removal of the present prohibition from the criminal code will be regarded as condoning or licensing licentiousness, and will open up for such people a new field of permitted conduct with unwholesome and distasteful implications.

What this may mean by way of increase in the behaviour can only be matter for speculation, but one thing seems to stand out-homosexual, like most practices, propagate themselves. To my mind enquiries as to what has occurred following a similar or other change in other countries gives but very slender ground for comparison and deduction. Not only have we differences of background, social philosophy, tradition, etc., but if the behaviour is made lawful the police authorities are freed from responsibility for investigating and assessing the volume of the conduct and, indeed, as has been pointed out, have largely lost their rights to enquire. In the result, the very nature of such conduct would tend to conceal itself from police notice, and might readily occur to an increasing extent without official recognition.

I think these comments are applicable to the reply given by the Swedish authorities, to which reference is made in paragraph 59 of the report. To my mind, the significant fact in relation to what has occurred in Sweden is that within such a short time there is already a move to raise the age for the consenting adult from eighteen to twenty-one – a move towards more, and not less, legal control.

Neither do I attempt to draw any deduction from the position in Scotland before and after adultery ceased to be a criminal offence, or to compare it with today's position.

(iv) If the recommendation be adopted, it will deprive young adult employees in those professions and occupations where the practices are particularly rife from a strong defence against corrupt approach by superiors and elders. Although it was not possible to assess from the evidence available the extent of homosexual practices in the theatrical profession and in some other occupations, it was clearly established that in certain of these quarters there were decided dangers of advances and influences having to be met and overcome. So long as the individual so approached knows that any compliance is a criminal offence, there are those who on this account will not only decline but who will feel in a stronger defensive position by having this answer.

(v) The present state of medical and mental science, and the limited knowledge and powers of the medical profession under existing circumstances to deal with homosexual patients, make the change recommended by the Committee premature and inopportune. I respectfully refer to the observations in the report on the limitations of present-day treatment and the need for enlightened research as adopted by medical and other members. I only add in this connection:

(a) Unless future research can evolve some course of treatment that will hold out much more hope to the individual there is little likelihood of patients seeking medical advice in such numbers as to lead one to expect any marked decrease in homosexual practices;

(b) Those who are not medically recognisable as homosexuals but who, for one reason or another, behave as such, are unlikely to attend for treatment; and

(c) Dealing as we are in this recommendation with persons over the age of twenty-one (or if the earlier age favored by some members be accepted, eighteen), the pattern of each individual has become for all practical purposes immutable, and most are unlikely to be responsive to ready alteration. Many will, in fact, come within the category when little beyond advice as to conduct can be tendered.

(vi) The current relaxed attitude toward moral conduct and relationships, so prevalent everywhere, makes the present an inopportune time for loosening bonds and removing restrictions. A period so soon after two world wars, with the varied and abnormal conditions that are generally agreed as having contributed to the present state of affairs, not only in this but in other moral standards, is not a time when any suggestion which in the eyes of many signifies an approval of homosexual conduct should be introduced. So, too, when we see a definite and general increase in the number of offences being prosecuted and there is a general acceptance of the fact that this is but one of various evidences of a marked growth of homosexual practices, the time cannot

be regarded as opportune for removing restrictions as recommended.

(vii) The fact that activities inherently hurtful to community life are carried out clandestinely and in privacy does not adequately justify the removal of such conduct from the criminal code. It is indisputable that many acts committed in private may be contrary to the public good and as such fall under the criminal law. In my view, homosexual acts are of this class, and the mere fact that the discrimination made by the majority of the Committee by which freedom from control is not recommended for persons between eighteen and twenty-one years of age is a definite recognition of this principle.

It is of the essence of most crimes that they are committed in privacy and secrecy, if for no other purpose than to avoid detection. In this connection, it is difficult to think of in act committed with more regard for privacy than the crime of incest, about which Blackstone, in a generic statement, quoted with approval by Hume, a distinguished Institutional writer on Scottish criminal law, said that it conflicted with 'the due regulation and domestic order of the Kingdom, whereby the individuals of the State, like members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood and good manners, and to be decent, industrious and inoffensive in their respective situations.'

The fact that the proportionate number of homosexual acts committed brought to the knowledge of the courts or the police is small is not an adequate reason for making the acts lawful. I would again quote Blackstone and Hume: 'What though the forfeit of the law is not exacted in every instance? It no wise follows that it is, therefore, a useless law or without salutary influence on the masses of the people.'

II That questions relating to consent and in private be decided by the same criteria as apply in the case of heterosexual acts between adults (paragraphs 63, 64).

Paragraph 63: This proposal immediately raises three questions: What is meant by consenting; What is meant by in private; What is meant by adult?

So far as concerns the first of these consent, we should expect that the question whether or not there has been consent in a particular case would be decided by the same criteria as apply to heterosexual acts between adults. We should expect, for example, that a consent which had been obtained by fraud or threat of violence would be no defence to a criminal charge; and that a criminal charge would also lie where drugs had been used to render the partner incapable of giving or withholding consent, or where a partner was incapapble for some other reason (for example, mental defect) of giving a valid consent.

We are aware that the quality of the consent may vary: consent may amount to anything from an eager response to a grudging submission. We are aware, too, that money, gifts or hospitality are sometimes used to induce consent. But these considerations apply equally to heterosexual relationships, and we find in them no ground for differentiating, so far as the behaviour of adults is concerned, between homosexual and heterosexual relationships.

Paragraph 64: Our words in private are not intended to provide a legal definition. Many heterosexual acts are not criminal if committed in private but are punishable if committed in circumstances which outrage public decency, and we should expect the same criteria to apply to homosexual acts. It is our intention that the law should continue to regard as criminal any indecent act committed in a place where members of the public may be likely to see and be offended by it, but where there is no possibility of public offence of this nature it becomes a matter of the private responsibility of the persons concerned and as such, in our opinion, is outside the proper purview of the criminal law. It will be for the courts to decide, in cases of doubt, whether or not public decency has been outraged, and we cannot see that there would be any greater difficulty about establishing this in the case of homosexual acts than there is at present in the case of heterosexual acts.

Reservations by Mr James Adair Regarding Paragraph 64:

The Definition of in Private

I find it necessary to supplement my dissent from the recommendation in paragraph 62 by commenting that if the recommendation is to permit acts in all places and circumstances in which heterosexual acts are outwith [sic] the provisions of the criminal law, it will make legal acts which have in the past been the subject of some notorious and highly objectionable cases. I refer to acts in rooms and cubicles of hotels, lodging houses and hostels where even the owner, occupier or manager may be a principal participant.

III That the age of adulthood for the purposes of the proposed change in the law be fixed at twenty-one (paragraph 71).

Paragraph 71: There must obviously be an element of arbitrariness in any decision on this point; but all things considered the legal age of contractual responsibility seems to us to afford the best criterion for the definition of adulthood in this respect. While there are some grounds for fixing the age as low as sixteen, it is

obvious that however mature a boy of that age may be as regards physical development or psycho-sexual make-up, and whatever analogies may be drawn from the law relating to offences against young girls, a boy is incapable, at the age of sixteen, of forming a mature judgment about actions of a kind which might have the effect of setting him apart from the rest of society. The young man between eighteen and twenty-one may be expected to be rather more mature in this respect. We have, however, encountered several cases in which young men have been induced by means of gifts of money or hospitality to indulge in homosexual behaviour with older men, and we have felt obliged to have regard to the large numbers of young men who leave their homes at or about the age of eighteen and, either for their employment or their education or to fulfil their national service obligations, are then for the first time launched into the world in circumstances which render them particularly vulnerable to advances of this sort. It is arguable that such men should be expected, as one of the conditions of their being considered sufficiently grown-up to leave home, to be able to look after themselves in this respect also, the more so if they are being trained for responsibility in the services or in civil life. Some of us feel, on various grounds, that the age of adulthood should be fixed at eighteen. Nevertheless, most of us would prefer to see the age fixed at twenty-one, not because we think that to fix the age at eighteen would result in any greater readiness on the part of young men between eighteen and twenty-one to lend themselves to homosexual practices than exists at present, but because to fix it at eighteen would lay them open to attentions and pressures of an undesirable kind from which the adoption of the later age would help to protect them, and from which they ought, in view of their special vulnerability, to be protected. We therefore recommend that for the purpose of the amendment of the law which we have proposed, the age at which a man is deemed to be an adult should be twenty-one.

IV That no proceedings be taken in respect of any homosexual act (other than an indecent assault) committed in private by a person under twenty-one, except by the Director of Public Prosecutions or with the sanction of the Attorney-General (paragraph 72). * [185]

Paragraph 72: If our recommendation is accepted, any indecent homosexual act committed by a male person under twenty-one will continue to be an offence, wherever and with whomsoever it is committed. It is not, however, our intention to suggest that criminal proceedings ought to be taken in respect of any and every detected homosexual offence committed by a person under that age. Where the offender violates public decency or otherwise causes a public nuisance, for example by persistent importuning, proceedings should continue to be taken as they are at present. And where his behaviour is such as to constitute an indecent assault, that is to say where a homosexual act is carried out against the consent of the partner. or with a partner who is incapable by reason of age or mental defect of giving consent, then clearly the law should continue to deal with it. But, short of this, it is our view that no proceedings should be taken unless the behaviour has been accompanied by conduct of a patently criminal or vicious nature, as for instance bullying at a school or institution, the abuse of his position by a superior in one of the Services, or an element of prostitution or blackmail. We hope that the responsible authorities, as well as parents or others under whose care the young man concerned might be living. would be ready to distinguish between conduct of this kind and behaviour which is often no more than the physical expression of a transient phase. Cases of the latter sort ought, in our view, seldom to reach the courts, though there may occasionally be cases where the offender would benefit from being placed on probation with a view either to treatment or to supervision of a more general kind.

In order to ensure uniformity of practice, we recommend that the law be so amended as to provide that except for prosecutions instituted by the Director of Public Prosecutions, no prosecution for a homosexual offence committed in private, other than in indecent assault, should be commenced in England and Wales against a person under the age of twenty-one without the sanction of the Attorney-General. [186] As regards Scotland, we are satisfied that the necessary uniformity of practice is ensured by the fact that prosecutions can be commenced only by the Procurator-Fiscal, acting in the public interest.

V That the law relating to living on the earnings of prostitution be applied to the earnings of male, as well as female, prostitution (paragraph 76).

Paragraph 76: We wish to make it perfectly clear that our recommendation that the law should no longer regard as criminal offences homosexual acts between consenting adults in private is not intended to countenance any forms of behaviour approximating to the objectionable activities associated with female prostitution with which we deal elsewhere in this report. In accordance with our conception of the functions of the criminal law as expressed in paragraph 13 above, we should expect that the law would continue to make

[185] * Denotes: These recommendations have application only in relation to England and Wales.

[186] *Cf. Punishment of Incest Act 1908* (UK), s. 6.

provision for the preservation of public order and decency, the protection of the citizen from what is offensive or injurious and the suppression of the exploitation of the weaker members of society. The question of solicitation by males is dealt with in paragraph 116 below. Conduct approximating to living on the earnings of prostitution will be covered to some extent by our recommendation (paragraph 115) that procuring or attempting to procure the commission of homosexual acts by third parties should continue to be an offence; but as an added safeguard, we recommend that the law relating to living on the earnings of prostitution should be made to apply, so far as may be practicable, to the earnings of male prostitution as it does to the earnings of female prostitution. Finally, we recommend that, if necessary. the law should be amended so as to make it explicit that the word brothel includes premises used for homosexual practices as well as those used for heterosexual lewdness.

VI That the law be amended, if necessary, so as to make it explicit that the term brothel includes premises used for homosexual practices (paragraph 76).

See paragraph 76 above

VII That there be introduced revised maximum penalties in respect of buggery, gross indecency and indecent assaults (paragraphs 90, 91).

Paragraph 90: We appreciate that in determining the appropriate sentence the courts have regard to the circumstances of the particular case, and in practice it is most unlikely that the courts would ever contemplate imposing life imprisonment for offences committed between consenting parties, whether in private or in public. But it is apparent from the figures in Table VI in Appendix I that the courts inflict heavier sentences for buggery than they do for gross indecency even where the offences are committed between consenting parties; and as long as the law provides the maximum penalty of life imprisonment for buggery without any regard to the circumstances in which the offence is committed, this is likely to be the case. We feel, therefore, that although it may be appropriate that the law should distinguish in some way between buggery and other homosexual acts, and although there may be a case for retaining the present maximum penalty for buggery in certain circumstances, the law ought, in defining the offences, and in prescribing the penalties to be attached thereto, to have regard to their gravity as measured by the circumstances surrounding their commission, and not merely to the nature of the physical act. An offence by a man with a boy or youth, for example, is a more serious matter than a similar offence with a partner of comparable age-, and an act committed with an unwilling partner is more serious than one carried out by mutual consent. There is no new principle involved here: sexual intercourse with a girl under 13 is punishable with life imprisonment, while sexual intercourse with a girl over 13 but under 16 carries only two years' imprisonment; breaking and entering a dwelling house with intent to commit a felony is punishable with life imprisonment if committed by night, but with seven years' imprisonment if committed in the day time; and so on.

Paragraph 91: We recognise that it would not be practicable to provide in this way for every conceivable set of circumstances in which a homosexual act could take place, but it is possible to devise a few broad categories, each carrying a maximum penalty within which the courts would be able to pass sentences commensurate with the gravity of the particular offence. We accordingly recommend that the following offences should be recognised, and we suggest the maximum penalties for them:

Table 7: Wolfenden Committee's Proposed Maximum Penalties for Homosexual Offences

Offence	*Suggested Maximum Penalty*
(a) Buggery with a boy under the age of sixteen	Life imprisonment (as at present)
(b) (This would embrace all acts of buggery or gross indecency committed against the will of the partner, whatever his age; it would also cover, except for the special case mentioned in the footnote to paragraph 114 below, all acts of gross indecency committed with boys under sixteen.)	Ten years' imprisonment (as at present in England and Wales)
(c) Buggery or gross indecency committed by a man over twenty-one with a person of or above the age of sixteen but below the age of twenty-one, in circumstances not amounting to an indecent assault.	Five years' imprisonment
(d) Buggery or gross indecency committed in any other circumstances (that is, by a person under twenty-one with a consenting partner of or above the age of sixteen; or by any persons in public in circumstances which do not attract the higher penalties; or the special case mentioned in the footnote to paragraph 114.	Two years' imprisonment

Reservations by Dr Joseph Whitby Regarding Paragraph 91:

Maximum Penalties for Homosexual Offences

1. I find myself unable to subscribe to the table of penalties suggested in paragraph 91 of the report. In my view, there should be only two categories of offence under these headings, namely:

(a) Indecent assault; to include the offences described in (a) and (b) of paragraph 91, with a maximum

penalty of ten years' imprisonment, and

(b) Gross indecency; to include the offences described in (c) and (d) of paragraph 91, with a maximum penalty of two years' imprisonment.

2. The reasons for not making a special offence of buggery with a boy under sixteen, as proposed in paragraph 91(a), have already been given in the reservation also subscribed to by Mrs Cohen, Lady Stopford and Dr Curran.

3. Whilst I share the desire of the Committee as a whole to protect the young man between sixteen and twenty-one from the undesirable attentions of older men, I do not feel it to be just to separate acts of gross indecency with this age group from acts of gross indecency with older men, as suggested in paragraph 91(c). My reasons are as follows:

(a) As pointed out in paragraph 67 of the report, it is hard to believe that a young man needs to be protected from would-be seducers more carefully than a girl. Seduction per se of a girl over sixteen is not a criminal offence at all;

(b) Our medical witnesses were unanimous in stating that the effects of homosexual seduction in youth have been greatly exaggerated. As pointed out in paragraph 68 of the report, the main sexual pattern is generally fixed by the age of sixteen, and whatever moral damage may be done, the effect of seduction over this age is unlikely to be that of producing a homosexual deviation in one who is predominantly heterosexual;

(c) The possibility of psychological damage or moral corruption must clearly be taken into account, but this is equally possible in the case of females, where the maximum penalty, even in cases of indecent assault – a graver offence – is only two years' imprisonment.

(d) With no penalty for homosexual behaviour between consenting adults in private, two years' imprisonment should be a sufficient deterrent to the older man contemplating a more youthful partner, especially as the offence of gross indecency would still remain a crime if committed with a young man between sixteen and twenty-one even in private;

(e) Where offences with several partners or victims are involved, the courts have power to award consecutive sentences Where the penalty proposed fails to act as a sufficient deterrent and the offender persistently repeats his offences, the provisions of the criminal law relating to persistent offenders should apply to him as they apply to other offenders;

(f) Whatever views may be held as to whether the adult homosexual who prefers a younger partner is more or less treatable than one who prefers another adult as partner, it has been pointed out in paragraph 179 of the report that the duration of sentence should not be fixed by reference to any estimate of the time which the treatment is likely to take.

4. The very fact that an offence with a young man may attract a heavier sentence would serve to invest it with a disproportionate seriousness in the minds of parents and relatives, and so lead to unnecessary fuss and concern over something which, from the point of view of the victim, is best forgotten as quickly as possible.

Reservations by Dr Desmond Curran Regarding Paragraph 91:

Maximum Penalties for Homosexual Offences

1. I agree with Dr Whitby in his reservation, and with his reasons, except on one point. I should like to go further and make the maximum sentence for indecent assault two years instead of ten years.

2. I agree with the opinion expressed by the Committee in paragraph 100 of the report concerning the lack of justification for the disparity in the maximum sentence for indecent assault on males (ten years) and females (two years). But to assimilate the maximum sentences by increasing the maximum sentence for indecent assault on females would seem to me to be a retrograde step.

3. The justification for heavy sentences rests doubtless upon a variable mixture of considerations and objectives, often summarised under the headings of retribution, deterrence and reformation.

4. Views on the justification of the retributive theory of punishment vary. Like many others, I do not regard retribution as a principle that is justified in itself or one that should properly guide decisions, whilst not doubting the importance of retribution as a motive. As Professor Weihofen put it in his recently published Isaac Ray Lectures, 'The human thirst for vengeance, the human instincts of hate and fear, need no encouragement from the law. So long as they exist, we must of course take them into account, but we need not reinforce them and give them dignity by legal endorsement.' [187]

5. I agree with the important opinion expressed in paragraph 58 of the report: 'It seems to us that the law

[187] *The Urge to Punish*, Henry Weihofen, Victor Gollancz Ltd., London, 1957, p. 143.

itself probably makes little difference to the amount of homosexual behaviour which actually occurs; whatever the law may be, there will always be strong social forces opposed to homosexual behaviour.' These strong social forces are, I believe, specially operative in the case of paedophiliacs, whose conduct is universally reprobated, not least by other homosexuals. Paedophiliacs act in isolation from the homosexuals, and are not accepted in homosexual coteries or groups.

6. I understand it has long been common ground in the opinion of those best qualified to judge that it is not the severity of the punishment that is most important for deterrence; it is the certainty – or high degree of probability – that punishment will actually result. If correct, this principle has special application to all homosexual crimes owing to the vast discrepancy between the number of criminal acts and the conviction rate. To say this is not to doubt that the possibility of imprisonment can have deterrent value. But I see little reason to suppose that the possibility of the maximum punishment of ten years as opposed to two years would have much, if indeed any, appreciable effect on deterrence. Only a small minority of the population know what is the maximum punishment for indecent assault. Only a minute fraction of the population know their criminal statistics and what punishments are awarded; and if more did, they would know that the chances of getting sentences of more than two years for indecent assault would be small (about 1 in 18). Can it seriously be supposed that those who are guilty of indecent assault work out betting odds of this kind before they indulge in their acts? And if they did, what deterrent effect would it be likely to have?

7. As regards treatment as a ground for the length of sentence, I have nothing to add to paragraph 179 of the report.

8. It seems to me that the sole, and very proper, justification for long sentences is to keep out of harm's way those who have repeatedly shown themselves to be public menaces and concerning whom nothing else, in the present state of knowledge, can be done. This could, when necessary, be achieved (as Dr Whitby suggests) by making sentences for multiple offences run consecutively; or, when applicable, by the imposition of preventive detention. The number of homosexual offenders so dealt with in 1955 was five (cf. paragraph 166), of whom two were convicted of buggery and three of indecent assault or attempted buggery.

9. An analysis of the 54 men who, in 1955 (Appendix I, Table IVa) received prison sentences for indecent assault, &c., in excess of two years, reveals the interesting point that 29 of them had no previous convictions for similar offences, and 21 of them no previous conviction for any indictable offence. Further, 32 of these 54 men had no similar offences taken into consideration, and 30 of them had no other offences of any kind taken into consideration. This suggests that in awarding these sentences, other considerations were involved than the protection of the public from sexual or other recidivists: and, of course, if, for example, the retributive view of punishment is justified, why not?

VIII That buggery be re-classified as a misdemeanour (paragraph 94). *

Paragraph 94: In English law, buggery is classified as a felony. A person who knows that a felony has been committed himself commits a criminal offence, known as misprision of felony, if he fails to reveal it to the proper authorities. In practice, prosecutions for misprision of felony are extremely rare; there is, indeed, now some doubt about what the ingredients of the offence are. But it has been suggested to us that a doctor who fails to report to the proper authorities an act of buggery disclosed to him by a patient is technically liable to such prosecution, and that this fact may make some homosexuals reluctant to confide in a doctor. We think that anything which tends to discourage a homosexual from seeking medical advice is to be deprecated. Further, it is important that doctors called upon to furnish medical reports for the information of the courts should enjoy the full confidence of the person under examination if an accurate prognosis is to be made. This is not likely to be the case if the person being examined feels, rightly or wrongly, that the doctor is under an obligation to reveal to the court every act of buggery disclosed in the course of the examination. We accordingly recommend that buggery, if it is retained as a separate offence, should be re-classified as a misdemeanour.

IX That except for some grave reason, proceedings be not instituted in respect of homosexual offences incidentally revealed in the course of investigating allegations of blackmail (paragraph 112).

Paragraph 112: There is the further point that men who complain to the police of being blackmailed for participation in homosexual offences are sometimes, in consequence, charged with those offences, The following case is an example:–

Case I

A., aged 49, met B., aged 35, in a cinema. Afterwards they went to A's flat and committed buggery.

For a period of about seven years B. visited A's flat regularly, and the men committed buggery together on

each occasion.

B. then commenced to demand money from A., from whom, in the course of about three months, he obtained some £40.

A. finally complained to the police. The facts were reported to the Director of Public Prosecutions, who advised that no action should be taken against B. for demanding money by menaces, but that both men should be charged with buggery.

Both men were thereupon charged with two offences of buggery committed with each other, and, after pleading guilty, were sentenced to nine months' imprisonment. Neither man had any previous convictions, nor were any other offences taken into consideration.

If the law were to be amended in the sense we propose, acts such as those which took place between A. and B. would no longer be criminal offences, and men in A's position could accordingly go to the police without fear of prosecution. It is, however, interesting to note that A. said in his statement to the police:–

'I sent the money because I thought from his letters that if I did not do so he would tell the people at the shop and where I live that I had had sexual intercourse with him.'

In this case, therefore, the fear of social exposure was uppermost, though as we have suggested above, this is probably conditioned by the present law. Blackmail is a pernicious social evil, and we regret that any unnecessary obstacle should be put in the way of bringing it to light. We feel that, except for some grave reason, proceedings should not be instituted in respect of homosexual offences incidentally revealed in the course of investigating allegations of blackmail.

X That s. 29 (3) of the *Larceny Act 1916*, be extended so as to apply to all homosexual offences (paragraph 113). *

Paragraph 113: At present, extortion by a threat to accuse of buggery and certain other crimes carries a specially heavy penalty. From the point of view of blackmail, we see no reason why the law should differentiate between buggery and other homosexual acts, and we accordingly recommend that s. 29 (3) of the *Larceny Act 1916*, be extended so as to apply to all homosexual offences.

XI That the offence of gross indecency between male persons be made triable summarily with the consent of the accused (paragraph 114). *

Paragraph 114: At present, in England and Wales, all cases of gross indecency must be tried on indictment (that is, before a jury) when the offence is committed by a person over seventeen. Many of these cases are, in our view, of a nature suitable for trial in a magistrates' court. Moreover, as will be apparent from Table IVa in Appendix I, by far the greater proportion of offenders convicted of gross indecency by the higher courts receive sentences which would be within the competence of a magistrates' court. In 1955, the 831 persons so convicted were dealt with as follows:–

Table 8: UK Persons Convicted of Gross Indecency and Their Various Sentences, 1955

Sentences	No.
Absolute discharge	28
Conditional discharge	114
Bound over	45
Fine	316
Probation	148
Imprisonment for not more than six months	71
Imprisonment for more than six months and up to one year	56
Imprisonment for over one year	40
Borstal [a custodial institution for young offenders]	7
Otherwise dealt with	6
Total	831

It will be seen that no less than 722 (87 per cent) of the offenders were dealt with in a way which would have been open to a magistrates' court. It is possible also that of the 56 offenders who received sentences of imprisonment of over six months but not over twelve months, some were convicted of more than one offence, so that a similar sentence could have been passed in these cases by a magistrates' court. Provided that the accused has the right to claim trial by jury if he so wishes, we feel that the offence of committing an act of gross indecency with another male person should be triable summarily. We accordingly recommend that the offence be added to the first schedule of the *Magistrates' Courts Act 1952*. [188] Adoption of this recommendation would serve also to remedy an anomaly to which we call attention in

[188] Our attention has been called to a decision of the English courts (*Fairclough. v. Whipp* (1951) 35 Cr. App. R. [Criminal Appeal Reports] 138) that an invitation to another person to touch the invitor does not, even if accepted, amount to an assault on the invitee. If therefore, a man persuades a child to touch his person (and Such cases are not uncommon), he is not guilty of an indecent assault. if the invitee is a boy, the man can clearly be charged with gross indecency. If our recommendation in paragraph 114 is adopted, such cases could be dealt with in magistrates' courts in the same way as

(continued...)

paragraph 126 below.

XII That male persons charged with importuning for immoral purposes be entitled to claim trial by jury (paragraph 123). *

Paragraph 123: As a general rule, a person charged in England and Wales with an offence for which he is liable to imprisonment for more than three months may claim to be tried by a jury. Male persons charged with importuning are, however, excluded front the benefit of this rule. We see no reason why a person charged with this offence should not enjoy the general right. On the contrary, we see every reason why he should. Frequently, conviction of this offence has serious consequences quite apart from any punishment which may be imposed. Moreover, behaviour which seems to establish a prima facie case of importuning and so leads up to an arrest may occasionally be attributable to innocent causes; and in cases such as this, where actions are susceptible of different interpretations, it is clearly right that the defendant should be entitled to have the issue put to a jury. We recommend accordingly.

XIII That except for indecent assaults, the prosecution of any homosexual offence more than twelve months old be barred by statute (paragraph 135).

Paragraph 135: If an offence comes to the notice of the police, it is their duty to investigate it and to prosecute it if their investigations produce the necessary evidence. As the law stands at present, they may lay themselves open to criticism by the courts if they fail to do so. But we do not think that any public interest is served by pursuing stale offences such as those we have mentioned above. We would not go so far as to say that proceedings should never be taken in respect of a stale offence. Cases may occur, for example, in which a person who has committed a serious assault or a series of assaults successfully conceals his whereabouts and so evades proceedings for a substantial period. In such cases, it is right that proceedings should be taken despite the lapse of time. But we recommend that, except for cases of indecent assault (and offences committed with boys under 16 will, except for the special case mentioned in the footnote to paragraph 114 above, always come into this category), the prosecution of any homosexual offence more than twelve months after its commission should be barred by statute.

XIV That subject to any necessary special safeguards, managers and headmasters of approved schools be allowed the same measure of discretion in dealing with homosexual behaviour between inmates as that enjoyed by. those responsible for the management of any other educational establishment (paragraph 147).

Paragraph 147: We see no reason why the physical nature of the act should be the criterion by which the question whether or not to report to the police should be decided. We are informed that the requirement to report such cases to the police is not intended to secure that approved school boys are necessarily prosecuted for indecency committed by them; its purpose is to ensure that boys are not shielded, by reason of their being in approved schools, from the legal consequences of their actions, and that managers do not usurp the functions of the police. But it seems to us that the police have no greater (and no less) duty to concern themselves with what goes on in an approved school than they have in relation to any other establishment, and we feel that subject to any special safeguards necessitated by the circumstances in which the inmates are there, the heads and managers of approved schools should enjoy the same measure of discretion as those responsible for the management of any other educational establishment. The fact that such cases must be reported to the Home Office seems to us to be sufficient to ensure that boys who are likely to be a menace, or who have been a menace, to others are properly dealt with, either by transfer to another approved school or by prosecution where necessary, and to safeguard the interests of boys whose parents or guardians cannot remove them and who are victims or potential victims of other boys.

XV That the organisation, establishment and conditions of service of the prison medical service be reviewed (paragraph 180).

Paragraph 180: In the latter connection, one important point has been brought to our notice. The prison medical service is understaffed and incompletely integrated with the national health service. Its members do much valuable and devoted work. But there are not enough full-time prison medical officers, not enough of them have had an adequate psychiatric training-out of the forty-six full-time doctors at the time of our enquiry, only six held the Diploma in Psychological Medicine, though another twenty-two had had experience in mental hospitals or other fields of psychiatric medicine before joining the prison service – and in many parts of

[188](...continued)
indecent assaults, instead of having to go for trial as at present.

the country it is not possible for them to call on enough help from the psychiatric consultants of the national health service. There is a national shortage of psychiatrists; and it is to be expected that a substantial proportion of those who elect to take public appointments will prefer the wider and more varied experience offered by the mental hospitals and other psychiatric services within the national health service. If the most effective use is to be made of the limited supply of qualified psychiatrists, it is essential that there should be a two-way flow between the prison medical service and the national health service through the Regional Hospital Boards. This would be for the mutual benefit of both. We accordingly recommend that the organisation, establishment and conditions of service of the prison medical service be urgently reviewed with these considerations in mind.

XVI That a court by which a person under twenty-one is found guilty of a homosexual offence be required to obtain and consider a psychiatric report before passing sentence (paragraph 187).

Paragraph 187: There is a case for requiring the courts to obtain a medical report in respect of every young person convicted for the first time of a homosexual offence. So far as treatment is likely to be effective, the probability of success is greater among young persons; indeed, this is one of the considerations that have weighed with us in leaving as a criminal offence homosexual behaviour by young persons under twenty-one. As we have said earlier, we do not contemplate that all such cases should come before the courts. If our recommendations are accepted, persons under twenty-one will be charged with homosexual offences only where their homosexual behaviour has been accompanied by conduct of a patently criminal or vicious nature, or where it is apparent that the offender would benefit from being placed on probation with a view either to treatment or to supervision of a more general kind. In these cases, it is likely that the conduct or environment of the offender will have been such as to suggest some maladjustment which a course of treatment opportunely undertaken might remedy, and in any event a talk with an experienced doctor may well be salutary. We accordingly recommend that a court by which a person under twenty-one is found guilty of a homosexual offence should be required by law, before passing sentence on that person, to obtain and consider a psychiatric report.

XVII That prisoners desirous of having oestrogen treatment be permitted to do so if the prison medical officer considers that this would be beneficial (paragraph 211).

Paragraph 211: We have made careful enquiry about two particular points in connection with oestrogen treatment: (i) the possibility of ill-effects of the treatment, and (ii) the permanence or transience of its effect upon sexual desire. On the former point we have been reassured by the evidence of doctors who have used this treatment in practice outside prisons. They were able to tell us that they had encountered no definite case of lasting impairment of general health. On the second point, the answer was the one that might have been expected, that the permanence of the cure depends on the regularity, continuity and persistence of the patient's obedience to his doctor's instructions. If he abandons the treatment as soon as he finds it to be temporarily effective, or as soon as he is freed from the threat of a criminal charge, the results are, naturally, transitory. If he perseveres with it, the relief from desire will persist. There are certainly cases in which this form of treatment is helpful to a patient who is undergoing psychiatric treatment. We have therefore come to the conclusion that the ban on oestrogen treatment which is at present in force in prisons in England and Wales should be removed. We accordingly recommend that where a prisoner desires to have oestrogen treatment, he should, if the prison medical officer considers that this would be beneficial either as treatment per se or as an element in other forms of treatment, be permitted to do so.

XVIII That research be instituted into the aetiology of homosexuality and the effects of various -forms of treatment (paragraph 216).

Paragraph 216: We therefore recommend that the appropriate body or bodies be invited to propose a programme of research into the aetiology of homosexuality and the effects of various forms of treatment. The actual carrying out of such research would necessarily be in the hands of those directly concerned with the treatment of the homosexual, since it is only from observations carried out over long periods by doctors treating individual cases that results can be established. These should include both prison doctors and psychiatrists working outside the prisons. The organisation of the research suggests the establishment, on the pattern familiar to the Medical Research Council, of a research unit which would include, for example, psychiatrists, geneticists, endocrinologists, psychologists, criminologists and statisticians. This unit could well be based on some establishment (for example, a University Department) experienced in socio-medical research and having access to prisons, psychiatric clinics and other centres where homosexuals are undergoing treatment. We hope that such work will form part of a wider study of forensic psychiatry, not confined to homosexuality, for which this country has fewer facilities than some others. Research of this kind would also

increase the two-way flow between the prison medical service and outside psychiatrists, which, as we have said earlier, we consider to be desirable.

1:–1.1.4.4. – House of Lords Debates the Inaction on the Implementation of the Wolfenden Reports's Recommendation, 12 May 1965 [189]

This debate was brought about by Lord (Arthur Kattendyke Strange David Archibald) Arran as a result of the inaction on the implementation of the Wolfenden reports's recommendation by various governments.

The end of the legal persecution of homosexual men was supported by 17 of the 22 speakers who contributed to the debate – including the Archbishops of Canterbury and York.

The following main points were covered in the Lords' debates

- How Many Homosexuals Are There in Great Britain:

The Earl (Arthur Kattendyke Strange David Archibald) of Arran stated:

> How many homosexuals are there in Britain? Again, no-one knows, but the best guess is somewhere between 500,000 and 1 million men – at the lest, one-twenty-fifth of the whole male population. A minority, if you like, but a great, a frighteningly great, number of souls – and I mean souls. How do they live? In shame if they restrain themselves; in fear if they practise their homosexuality. They are the odd men out; the ones with the limp. Can they help it? [190]

The Earl (Francis John Clarence Westenra Plantagenet) of Huntingdon added to this:

> Take, for instance, the question of statistics. No one really knows how many male or female homosexuals there are. The figure has been given as somewhere near a million, and the fact certainly remains that there is a strong minority of homosexual males and females in this country who have an extremely difficult life. [191]

- Blackmail of Homosexuals:

The Earl (Arthur Kattendyke Strange David Archibald) of Arran stated regarding blackmail of homosexuals the following:

> About ten years ago the Attorney-General of the time said that he found that 95 per cent of the blackmail cases that came his way were of one man threatening another because of his homosexual activities.
>
> It is a sorry state of affairs when the Homosexual Law Reform Society, that most learned and respectable body, write: "In our view it still remains impossible to advise anyone who has committed a homosexual offence to seek police protection if they are blackmailed or robbed."
>
> Personally, I find blackmail worse than buggery, and I find assassination of the soul far worse than assault upon the body. At this moment perhaps a hundred, perhaps a thousand, perhaps 10,000, men are living in fear and allowing themselves to be bled to death least their world fall about them. Should we not listen to the things they cannot tell us and give them piece? [192]

Lord (Victor John) Stonham (Home Office spokesman) further indicated that:

> Indeed, it is argued further that the present law inevitably creates furtiveness, ultimately neurosis, and sometimes suicide, with, as has been mentioned in this debate and as the Wolfenden Committee so clearly demonstrated, a considerable risk of the miseries of blackmail. [193]

Lord (Robert Samuel Theodore) Chorley added to this:

> The difficulty in relation to Government servants who are entrusted with secrets, and the possibility of the foreign agent getting to know about this and bringing pressure to bear, has, very properly, been emphasised by several

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[189] *Parliamentary Debates*, House of Lords, 12 May 1965, vol. 266, cols. 71-172.
[190] ibid. cols. 72-3.
[191] ibid. col. 141.
[192] ibid. cols. 75-6.
[193] ibid. col. 98.

> speakers this afternoon. I was for a time during the war working in the Home Office, and if there was any question of making an order gainst a man under the Defence Regulations, it was indeed a strong element in the case against him that he was known to be a homosexual. Many men spent time during the war shut up, for very little other reason. Here again, if our law were not as it is, this would not be the situation; and this another reason, I think, why we ought to change the law. [194]

Lord (Gerald Austin) Gardiner (Lord Chancellor) further stated regarding blackmail of homosexuals:

> What the Director [of Public Prosecution] can do, and has done, is to ask chief constables to report these classes of case to him. He cannot enforce that if they do not do it, and he can only give them advice which they are under no obligation to make. Now in the case of a homosexual reporting blackmail, he has advised chief constables not in ordinary circumstances to prosecute for the homosexual offence. There may, of course, be exceptional cases. A case of blackmail may be reported when it is not really a case of blackmail. [195]

- Support for Law Reform From Major Religious Bodies:

The Earl (Arthur Kattendyke Strange David Archibald) of Arran stated regarding religious support for reform:

> Surely, my Lords, it cannot be mere accident that the Wolfenden Committee's recommendations on homosexuality have been supported by the Church Assembly, The Church of England Moral Welfare Council, The Roman Catholic Advisory Committee set up by the late Cardinal Griffin, the Methodist Conference and an influential group of Quakers. These are great bodies and their views cannot be taken lightly … [196]

Lord (Alick Drummond) Balerno added the following:

> … in the letter which appeared in *The Times* [197] yesterday, there is a formidable list of Churches and other organisations which support the proposal which we are debating, that homosexual behaviour between consenting adults should no longer be a criminal offence. [198]

- Curing and Treatment of Offenders?:

The Lord Archbishop (Arthur Michael) of Canterbury recalled that:

> The Wolfenden Committee were rather pessimistic in what they said about the curing of offenders. they were no doubt naturally cautious about claiming too much for psychological methods and the evidence then before them compelled this caution. Perhaps, if the Report were being written to-day, it might be a shade less pessimistic about this. [199]

Lord James (Eric John Francis) of Rusholme stated that:

> One of the initial difficulties, of course, in discussing it [homosexuality] rationally is that we still know so little of the causes and treatment of homosexuality. We tend so often to confuse the issue – the word homosexuality so often presents itself to our minds in its most harmful form – and concentrate on the compulsive molestation of boys; which is as logical as if we envisaged heterosexuality in terms of offences against small girls. Again, we are only now beginning to understand that complete homosexuality and complete heterosexuality are not hard and fast conditions but opposite ends in a spectrum of attitudes. [200]

- Wolfenden Committee's Recommendation is Only to Remove the 1885 Labouchere Amendment:

The Earl (Henry James) of Dundee gave some background as to why homosexual behaviour became a criminal offence:

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[194] ibid. col. 149.
[195] ibid. col. 166.
[196] ibid. cols. 79-80.
[197] See: 1:–1.1.4.5. page 75.
[198] *Parliamentary Debates*, House of Lords, 12 May 1965, vol. 266, col. 145.
[199] ibid. col. 83.
[200] ibid. col. 108.

> … my Lords, if changes in the law are often recommended and supported with a certain amount of bad science and bad reasoning, the same criticism can quite properly be made of a great deal of our existing law, as it stands now, and of the way in which it was enacted. If any of your Lordships care to read the reports in *Hansard* of the *Criminal Law (Amendment) Act 1885*, I think you will agree with the strictures contained in the Wolfenden Report about the Labouchere Amendment to that enactment. The Bill was introduced in your Lordships' House. It was entirely concerned with offences against women and young girls. It went through all its stages here, and went to another place. There they had a Second Reading and the Committee stage, and it was not until very near the end of the Report stage that Mr Labouchere suddenly got up and moved this new clause. Until then, sodomy had been the only kind of homosexual act which came within the range of the criminal law. This new Labouchere clause brought every other kind of homosexual act within the range of the criminal law. An honourable Member raised a point of order to know whether it was in order to bring in an Amendment in a Bill whose title contained no reference to this. The Speaker ruled that it was in order. But if your Lordships will read Mr Labouchere's speech, which takes up only one-third of a column in *Hansard*, [201] you will see that, to all appearances, he had not much idea at all what the subject of his Amendment was.
>
> After a subsequent discussion, which took up only a quarter of a column, the new clause – a pretty wide clause – was accepted without Division. But it came back to your Lordships' House on 10 August (leaving a rather short time in which to deal with the Commons Amendments), and there was a fairly lengthy discussion. But nobody mentioned this Labouchere clause. In moving that the House agree with the Commons Amendment, the Paymaster General, Lord Beauchamp, said that he thought it would be more convenient that they should be agreed en bloc.
>
> Lord Fitzgerald said that he 'preferred very much the structure of the Bill as it left the House and he found himself in great difficulty in dealing with the Amendments made by the Commons, because they went very far indeed, and also the law of evidence, in several material respects.'
>
> But he did not say anything about the Labouchere Amendment, and perhaps, owing to the exaggerated deference which your Lordships so often pay to the vagaries of the other place, no one disagreed with this innovation introduced by Mr Labouchere, so hastily accepted by the House of Commons. [202]

Lord (Robert John Graham) Boothby further elaborated that:

> … the Labouchere Amendment, which is really all we are discussing to-day, was passed in an empty House of Commons on an August night without any speech being made at all; and it was a Amendment to a Bill which was called 'A Bill for the Protection of Young Girls.' All we are talking about is the Labouchere Amendment, and that is all that the Wolfenden Committee wants to be removed. [203]

- How Effective is the Current Law Enforcement and Police Spying?:

Lord (Victor John) Stonham (Home Office spokesman) provided statistics about the ineffectiveness of law enforcement:

> It must be remembered that any sexual act between males is an offence and that over half the homosexual offences known to the police are cases of indecent assault or importuning. These would still be offences if we accepted the main Wolfenden recommendation. For the other offences – buggery and gross indecency – the statistics for England and Wales show that the number of offences known to the police has remained fairly constant, over the past ten years, at around 2,000 a year, with the number of prosecutions also fairly constant at around 1,300 a year. My Lords, if permanent homosexuals number 500,000 … it is clear that these figures of offences known to the police represent only a small proportion of the number of offences committed against the present law.
>
> … we know from a special inquiry over a three-year period conducted for the Wolfenden Committee that only about 100 convictions a year relate solely to homosexual offences committed in private with a consenting adult … Of the 100 persons, who were persecuted each year for private acts, only 40 were sent to prison. We have to consider this tiny number in relation to half a million men, if we are to put the effect of Wolfenden in its true perspective.
>
> There has, however, been a steady reduction in custodial sentences, and receptions under sentence for homosexual offences declined from 781 in 1954 to 370 – that is, less than half – in 1963. Wolfenden recommends that we should now remove from this total the very small number of men who are sentenced for acts in private.
>
> It is eleven years since they began their deliberations. Meanwhile, the numbers of men who are arraigned for private acts has dwindled to a comparative handful, but for an unhappy half-million the threat and its consequences

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[201] *Parliamentary Debates*, House of Commons, 6 August 1885, col. 1397.
[202] *Parliamentary Debates*, House of Lords, 12 May 1965, vol. 266, cols. 86-7.
[203] ibid. col. 131.

remain. [204]

Baroness (Anna Dora) Gaitskell questioned the integrity of the police by asking:

> What kind of loyalty can we expect from these people [homosexuals] towards a society which hounds them, often in such a humiliating way? What can be more squalid than the police spy in the public lavatory? No blame on the police officer, for he is carrying out his instructions. But what of the general public, the doctors, the psychologists, the priests – are they to be informers, too? The whole business of being an informer is most repulsive in a democracy. How can we maintain such rigid attitudes in this day and age when sex is treated with candour? The argument is used that these laws are four hundred years old, and so are good because of this. On this premise we should bring back prison for adultery or hanging for theft. [205]

Lord (Robert John Graham) Boothby provided an example of police spying in a public lavatory:

> Five years ago I was about to enter a public lavatory; there was a policeman on duty just outside, a man who for many years had been in the House of Commons and who knew me well. He said, "Don't go down there, unless you must". I asked him, "What on earth are you talking about?" He said, "We have two plain-clothes policemen working down there, and when that happens anything can happen – so keep clear." That supports the noble Lady's argument completely. [206]

- Lesbians Are Outside the Current Criminal Law:

Lord (Victor John) Stonham (Home Office spokesman) pointed out the current position regarding lesbian behaviour and the criminal law:

> They [Wolfenden Committee] pointed to other sexual acts generally considered sinful, morally wrong, or objectionable, such as adultery, fornication and Lesbianism – and there are grounds for thinking that the proportion of homosexual women is no lower than the proportion of homosexual men. All these are outside the existing criminal law. [207]

- Neutrality of Her Majesty's Government on this Matter!:

Lord (Victor John) Stonham (Home Office spokesman)

> I have done my best to expose the arguments to your Lordships as impartially as I can. It may be that my own personal views have coloured the way I have set them out (neutrality does not come very easily to me), but, in case that is so, I must now make it crystal clear that the Government regard this as a moral issue which is essentially a matter for the personal judgment of each one of us.
>
> This Administration will not attempt to drive your consciences into one lobby or another on this issue. If a change in the law is to be made, I say frankly to your Lordships that it must be by a Private Members' Bill, with the decision left to a free vote of Parliament. [208]

The Lord Bishop (Arthur Mervyn) of Southwark strongly attacked the Government for its neutrality stance by saying:

> I was really most disappointed with the Government intervention we have had to-day. Very often in the past the Church has been accused by members of the [Labor] Party now in power of dragging its feet, of not being socially aware, of being timid and of being cowardly.
>
> All those charges I throw on to the Government, and I accuse you now of what you have accused us. I really mean that. I think noble Lords on this side just cannot wash their hands in this matter like Pilate. You have got to face facts. You have got to give a lead. If I may say so with respect to a Party which frequently talks about justice and the fulness of life, I think that to say the things that you did this afternoon is sheer humbug. From the last Government we had a lead so far as part of the Wolfenden Report was concerned. Noble Lords on this side of the House know what my personal political convictions are. I whole-heartedly applaud the lead that we got from the Party opposite when they

[204] ibid. cols. 95-6, 102, 106.
[205] ibid. cols. 128-9.
[206] ibid. col. 130.
[207] ibid. col. 96.
[208] ibid. cols. 105-6.

> were in power. To me, it is a sad matter that the Party which I personally support and which is now in power should have given such a sad and dismal impression this afternoon; and I sincerely hope that they will have second thoughts and be more courageous, and do what I am quite sure they know in their hearts to be right. [209]

The Earl (William Francis) of Listowel further supported the Bishop's plea by asking:

> I would ask the Government whether they cannot move from a position of neutrality. I am not asking them to move to a position of support for the Wolfenden Committee, but I am asking whether the Government could move from a position of neutrality to a position of benevolent neutrality. What I mean is this. My noble friend Lord (Victor John) Stonham said that if legislation is required by Parliament it must take the form of a Private Member's Bill on which the Government would allow a free vote, presumably both in this House and in another place. But my noble friend knows as well as I do that a Private Member's Bill has no earthly chance in another place if it does not happen to catch the fancy of a Member who has the luck of the draw in the ballot – unless the Government are prepared to allow Government time for its discussion.
>
> I would ask the Government whether they would consider in the next Session of Parliament – clearly it could not be in the present Session – allowing Government time for a Private Member's Bill to implement the Wolfenden Report. [210]

The Marquess (Hugh Edward Conway) of Hertford was one of the Lords who also strongly supported the long over-due change in the law, when he stated:

> It is nearly eight years since the Wolfenden Committee made its recommendations. In those eight years yet more unfortunate men have been sent to prison, yet more men have committed suicide, yet more unnecessary misery has been caused. Still the law has not been changed. Why not? Is it because we have no sympathy for those whose sins are not ones we ourselves find tempting? Is it because we no longer care at all for the freedom of the individual? Or can it be that both the last Government and the present one think that public opinion is still against a change? [211]

- Protection of Minors and Age of Consent:

Lord James (Eric John Francis) of Rusholme stated that:

> It may still be argued that the deep psychological roots make it the more necessary to discourage it by the force of law. But do we discourage it? Where is the balance of advantage? What are we really seeking to enforce? Not the protection of youth – for the amendments to the law proposed by the Wolfenden Report strengthen, rather than weaken, the law in this respect. [212]

The Earl (Francis John Clarence Westenra Plantagenet) of Huntingdon added that:

> … the question we are really considering is that of consenting adults, and here I heartily agree with the suggestions contained in the Wolfenden Report, except in one particular. I think it would be worth considering whether the recommendation of 21 years is the right age. It seems to me that something like 18 would be more reasonable. In these days I think that people mature much earlier, and to consider men of 18 or 19 as infants or children seems to be unreasonable. When one thinks that the age of consent for girls 16 it seems to me that the age of 21 for men would be taking it too late and I should have thought 18 would be a much wiser age to choose. That, o f course, would be a detail to be considered if anyone produced a Bill. [213]

Lord (Arthur Ronald Nall) Brocket warned that:

> We know that the proposed relaxation may be only a small one but many people in the Church of England – and also laymen – feel that if boys who are in favour of this practice, and indulge in it when they are young, can then say "Ah,

[209] ibid. cols. 115-6.
[210] ibid. col. 161.
[211] ibid. col. 159.
[212] ibid. col. 109.
[213] ibid. col. 143.

ha! When we are 21 it will be all right", that will encourage them to go on with their practice. [214]

- Positive Emotional, Cultural and Social Contributive Aspects of Homosexuality:

The Earl (Arthur Kattendyke Strange David Archibald) of Arran stated that:

> We talk about homosexuality as unnatural; but the truth is that whatever a man or woman does, unless they are paid for their services, is natural to him or to her. They would not do it if it were not. There is no ultimate standard of natural behaviour. Nothing is more unnatural than Nature herself. In defiance of her own laws, she delights in producing sports and deviations; she does it with plants, with flowers and with animals; and, most cruelly – and most incomprehensibly, if one is a Christian – she does it with human beings. [215]

Lord (Robert Samuel Theodore) Chorley continued that:

> … this sort of relationship is capable of giving obvious satisfaction to those who have resort to it, and often has in it an element of beauty. Human beings are, thank goodness! capable of creating out of their very animality something of the gold from which are and poetry are made; and the great literature of the world is full of beautiful descriptions of friendship of man and man from the time of David and Jonathan onwards, without which our literature would be very much poorer.
>
> The world really is in deep debt … to many of the men who have been definitely homosexuals. The heritage which we have from the past is in no small measure due to what they have handed down to us. We have never in the past had either the courage or the understanding to be grateful for what we have received from them … Let us start by making amends with a small act of penitence … [216]

The Earl (Francis John Clarence Westenra Plantagenet) of Huntingdon questioned why society was threatened by homosexuality, and said:

> Some societies, like the Arabs or the Eastern, accept it; others react strongly against it. I always think that there must be some reason for this, and I am wondering whether the strong reaction that we have in this country stems originally from the fact that we were facing great dangers from outside with only a very small population. We have always been threatened by rivals, whether Spain or France, and the thought that homosexual elements would not be producing children, particularly at times of tremendous infant mortality, and not providing the absolutely necessary soldiers and sailors, would obviously induce the Government to use all their influence to discredit homosexual tendencies. I wonder whether that was the origin. [217]

1:–1.1.4.5. – Strongly and Consistently Advocated the Reform [218]

Law on Homosexuals

SIR,—In 1957 the Wolfenden Committee recommended, after three years' study of the evidence, that homosexual behaviour between consenting adults in private should no longer be a criminal offence.

This proposal has been endorsed by the British Council of Churches, the Church Assembly and the Moral Welfare Council (now the Board for Social Responsibility) of the Church of England, a Roman Catholic Advisory Committee appointed by the late Cardinal Griffin, the Methodist Church, and leading spokesmen of many other Christian denominations, as well as by prominent humanists. It has received the support of the Howard League for Penal Reform and the Institute for the Study and Treatment of Delinquency, and also of other experts in criminology, including several judges, as well as of very many doctors, psychiatrists and social workers.

The great majority of national daily and weekly newspapers have strongly and consistently advocated the reform. In February of this year a resolution calling for its enactment was passed by the LP Council, and it has also been supported by many individuals and groups in both the Labour and Conservative Parties.

Seven years ago a distinguished list of signatories wrote in your columns that the existing law clearly no

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[214] ibid. col. 163.
[215] ibid. cols. 74-5.
[216] ibid. cols. 152-3.
[217] ibid. col. 142.
[218] n.a. 'Law on Homosexuals', *The Times* (London), letters, Tuesday 11 May 1965, p. 13.

longer represented either Christian or liberal opinion in this country, and that its continued enforcement would do more harm than good to the community as a whole.

We hope that in response to the Motion calling attention to the Wolfenden Committee's recommendations which Lord (Arthur Kattendyke Strange David Archibald) Arran is to move in the House of Lards on 12 May [1965] Her Majesty's Government will now recognise the necessity for this reform and will introduce legislation.

Yours faithfully, [John] Leonard [Bishop of] Birmingham; Oliver [Stratford Bishop of] Bristol; Robert Exon; Robert [Wright Bishop of London] London; [Edward] Michael [Gresford Bishop of] St Albans; [Lord Walter Russell] Brain; [Lord Patrick Arthur] Devlin; [Lord Lionel Charles] Robbins – House of Lords.

1:–1.1.4.6. – House of Lords's First Reading of the Sexual Offences Bill, 13 May 1965 [219]

The Earl (Arthur Kattendyke Strange David Archibald) of Arran:

> My Lords, I beg leave to introduce a Bill to amend the law of England and Wales relating to homosexual acts in private. I beg to move that this Bill be now read a first time.
> Moved, That the Bill be now read 1ª. – (The Earl of Arran).
> On Question, Bill read 1ª, and to be printed.

1:–1.1.4.7. – Second Reading of the Sexual Offences Bill in the House of Lords, 24 May 1965 [220]

The House of Lords votes in favour of Lord [Earl (Arthur Kattendyke Strange David Archibald) of] Arran's Sexual Offences Bill to decriminalise homosexuality between consenting adults over the age of 21. The majority of Lords 94 to 49 [see Table 9, page 89] voted in favour at the end of the second reading debate.

Some of the salient points of the Lords' debate are summarised below.

- Youth and Age of Consent Issues:

The Earl (Arthur Kattendyke Strange David Archibald) of Arran indicated at the beginning of his second reading speech that:

> It may be suggested, that the Bill disregards young people, inasmuch as it makes no mention of them. My Lords, it makes no mention of them because it in no way weakens or alters the present law in regard to their protection. For an older man sexually to interfere with a youth under the age of 21 would remain a criminal offence. The Bill does not say this because it does not need to be said: because the law remains as before, because it is implicit – and I going to ask the noble Lord, Lord (Victor John) Stonham [Joint Parliamentary Under-Secretary of State, Home Office], to confirm that what I am saying is correct.
>
> But some of your Lordships may still feel that this is not enough; that there should be some strengthening; that the penalties for homosexual acts with the under 21s should be made direr still, as indeed the Wolfenden Committee itself suggested; that it should be stated positively and forthrightly that nothing in the proposed changes would in any way imperil the present safeguards for youth. [221]

Lord (Victor John) Stonham [Joint Parliamentary Under-Secretary of State, Home Office] provided a response regarding the age of consent issue raised:

> The Bill is clearly limited to acts committed in private between consenting adults. All other homosexual acts would remain criminal. This means that any man who interfered sexually with minors, whether in public or in private, would be guilty of a criminal offence and liable to precisely the same heavy penalties as he is now. The addition of a clause to the Bill specifically declaring this to be so would be redundant and would serve no more than a propaganda purpose. [222]

Viscount (Bernard Law) Montgomery of Alamein contributes on the human side of the problem, as follows:

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[219] *Parliamentary Debates*, House of Lords, 13 May 1965, vol. 266, col. 268.
[220] *Parliamentary Debates*, House of Lords, 24 May 1965, vol. 266, cols. 631-712.
[221] ibid. cols. 632-3.
[222] ibid. col. 639.

> I agree very much with what was said by the noble Lord, Lord (Thomas Godfrey Polson) Rowallan, and the noble Lord, Lord Brocket, on May 12. I cannot reconcile with my own beliefs what was said in their speeches by the most reverend Primates. To condone unnatural offences in male persons over 21, or, indeed, in male persons of any age, seems to me utterly wrong. One may just as well condone the Devil and all his works. I am entirely opposed to this Bill, and I return the courtesy of the noble Earl by telling him so now. I am against any suggestion that we should weaken the law as it stands at present. My main reason is that a weakening of the law will strike a blow at all those devoted people who are working to improve the moral fibre of the youth of this country. And heaven knows! it wants improving.
>
> With your Lordships' permission, I should like to develop this theme and I will take three categories of young about whom I know a great deal. Do not let us forget that it is the present young generation who will have to handle the problems that lie ahead in this distracted world of politics, war and mixed-up values. They will need all the help and guidance that we older ones can give them. The first category I take is the boys and young men in our schools and universities, whom I suppose number some millions, although I would not know the exact figure. What influence on their minds and characters will follow if they know that their masters and tutors are indulging in these unnatural practices, and if they know that the law of the land allows it? What effect will this have on the moral fibre of these boys, some of them quite young and under 21? The practices are illegal; and yet suddenly, on the morning of their 21st birthday, they can do what they like, and they are legal. [223]

The Earl (Arthur Kattendyke Strange David Archibald) of Arran interjected:

> My Lords, with great respect to the noble and gallant Viscount, does this not apply equally to the age of consent for girls? Suddenly, over the age of sixteen, it is all right. [224]

Viscount (Bernard Law) Montgomery of Alamein responded to the interjection as follows:

> I am not very expert on girls. No doubt the noble Earl knows more about that than I do.
>
> The second category I take is the youth organisations throughout this country … In Canning Town in the East End of London you have David Sheppard and his Mayflower Centre. Many London gangs come from that area. I have been there. I have sent boys from that centre to the Outward Bound schools. magnificent places for the building of character. A boy is taken from his home area where the atmosphere may be bad and spends a month having his character developed in an entirely different atmosphere by the sea, in the mountains, and so on. I sent one boy from that school who was a leader of one of the worst London gangs, I saw him before he went; I saw him when he came back, and he was a changed boy. [225]

Lord (Thomas Godfrey Polson) Rowallan stated what this Bill would do regarding young people:

> The real argument in other words, is: never mind if we have an increase in homosexual behaviour; it is all in the good cause of making it easy and respectable for those who have already fallen into those habits to carry on and gather to themselves a number of other young people as well. That is the real argument. [226]

Lord (Ian George) Auckland reiterated Field Marshal (Bernard Law) Montgomery's lament about the danger for our youth:

> … the noble and gallant Viscount Lord (Bernard Law) Montgomery of Alamein, dwelt on the subject of youth and I propose to follow this line of argument. Next Saturday I have been asked to take the chair for the twenty-fifth anniversary celebrations of our local Boys' Brigade. My Lords, I could not face these lads in all conscience without at least having registered my protest against this Bill. I am quite well aware that steps can be taken, and no doubt will be taken, to increase the penalties for offences against boys and youths, but I remain to be convinced that a confirmed homosexual, who may well practise his offences against men of 21 and over, will not also attack small boys. [227]

The Earl (Francis John Clarence Westenra Plantagenet) of Huntingdon made a very pertinent point about equal age of consent for both sexes:

> My own feeling is that the age of 21 is a little too late, and that the age of 18 would be far better. The idea that our

[223] ibid. cols. 645-6.
[224] ibid. col. 646.
[225] ibid. col. 646.
[226] ibid. col. 674.
[227] ibid. col. 696.

> men of 18, 19 and 20 can be regarded as children and not to know their own minds seems to me extreme particularly when you get the opposite point of view, that young girls are deemed to be fully knowledgeable at the age of 16. [228]

- Armed and Other Services Including NATO:

The Earl (Arthur Kattendyke Strange David Archibald) of Arran raised the issue of lesbianism in the United Kingdom's armed services and that of homosexuality in the armed services of NATO countries:

> … I think that there may be some objections in relation to the Armed Services. I note that the noble and gallant Viscount, Lord (Bernard Law) Montgomery of Alamein, is to speak to us this afternoon, and no doubt he will hit me for six. I recognise that there are special problems in this field. The Wolfenden Committee recognised this too; it is the major question of discipline. But the Committee pointed to s. 66 of *Army Act 1955*, which provides for punishment of disgraceful conduct, or conduct of an unnatural kind. I understand that this s. is still effective. Quite relevantly, I think, I might ask the noble Lord, Lord (Edward Arthur Alexander) Shackleton, who looks after Service matters in this house, this question: Lesbianism not being a criminal offence, has discipline in the Women's Services suffered because of it? And would Her Majesty's Government advocate a change in the law making Lesbianism a crime, so that order may be maintained? And, to the noble Viscount, Lord (Bernard Law) Montgomery of Alamein, may I put this question? Will he tell us, from his NATO [North Atlantic Treaty Organisation] experience, whether he found that discipline in the contingents from the other European NATO countries (which, with the exception of West Germany, do not treat homosexual offences as a crime) was the worse because of it? And if not that, does he think that we have a special propensity in this country towards homosexuality which calls for special legislation? [229]

Lord (Victor John) Stonham responded about lesbianism and conduct in the Women's Services as follows:

> The noble Earl, Lord Arran, also asked me whether the fact that Lesbianism is not a crime has had any effect on conduct in the Women's Services. I am not able to answer that precise question, but as regards the Armed Forces, I would draw your Lordships' attention to the fact that in their Report, in paragraph 144, the Wolfenden Committee recognised that it might be necessary for the Service authorities to continue to treat homosexual acts in private between adults as offences under Service law. We have consulted the Minister of Defence on this particular point, and apparently the Service authorities are inclined to agree – this is just a view – that the Wolfenden Committee might be right. But the position of the Services arouses different considerations which require study, and the passage of this Bill, as it stands, on this issue will not prejudice the position of the Services or of the Ministry of Defence one way or another. Service law creates offences and it could, if necessary, be used to deal with this matter irrespective of your Lordships' decision on this particular Bill. [230]

Viscount (Bernard Law) Montgomery of Alamein spoke about his comrades-in-arms as follows:

> The third category 1 should like to take is the Armed Forces of our nation. It may be that some of your Lordships will think that on the first two categories I have no mandate to speak. On this category, I do not think you could say that. The fighting men of Britain have been my comrades-in-arms for over half a century. What is the greatest, single factor making for success in battle, or for efficient and well-trained Armed Forces in peace? It is morale. And what is the very foundation of morale? It is discipline. If these unnatural practices are made legal, a blow is struck at the discipline of British Armed Forces at a time when we need the very highest standard of morale and discipline, with those forces serving throughout the world. Take an infantry battalion. Suppose the men know that their officers, perhaps, are indulging in these practices, and it is legal and nothing can be done. Take a large aircraft carrier, with 2,000 men cooped up in a small area. Imagine what would happen in a ship of that sort if these practices crept in. No action could be taken; it is legal. How can good order – [231]

The Earl (Arthur Kattendyke Strange David Archibald) of Arran:

> My Lords, I really must interrupt the noble and gallant Viscount again. Under s. 66– [232]

Viscount (Bernard Law) Montgomery of Alamein continued about order and discipline:

> How can discipline and good order be maintained in such circumstances? Surely, it must not be. Is it going to be said

[228] ibid. cols. 697-8.
[229] ibid. col. 634.
[230] ibid. col. 640.
[231] ibid. cols. 646-7.
[232] ibid. col. 647.

> throughout Britain that the House of Lords gave the lead in striking a blow at the moral fibre of the youth of our land, or at the discipline or morale of our Armed Forces? [233]

Lord (Edward Arthur Alexander) Shackleton (The Minister of Defence for the Royal Air Force):

> My Lords, will the noble and gallant Viscount permit me to intervene, because he has made a statement which seems to me to be slightly misleading the House? The noble Viscount will know that the Government are taking an impartial view, but s. 66 of the *Army Act* will still apply. If it does not apply, as the noble and gallant Viscount knows, it is open to the Services to get rid of any undesirable person who practices disgraceful conduct – and I think there can be no argument on the subject that these practices are disgraceful conduct. I do not think we ought to allow it to be suggested that these practices could possibly be condoned in the Services. I hope the noble and gallant Viscount will reconsider his remarks. [234]

Several Noble Lords: Hear, hear!

Viscount (Bernard Law) Montgomery of Alamein responded to the Royal Air Force Minister:

> My Lords, I do not reconsider anything I have said about it. [235]

A Noble Lord: Never retreat!

The Earl (David Patrick Maxwell) of Kilmuir supported the earlier restrictive view on homosexuality in the Armed Services:

> This is a point which is of vital importance to the Government – namely, are we or are we not going to provide that in the Armed Services buggery between officers will continue to be an offence? I agree with my noble and gallant friend Lord (Bernard Law) Montgomery of Alamein that if you legalise buggery you still cannot expect other ranks to have any respect for officers who are known to go to bed together. [236]

The Earl (David Patrick Maxwell) of Kilmuir had further fears about discipline and morale in the various services:

> Even if my noble friend Lord Arran and the Government wore prepared to give this undertaking, which they obviously are not, what about other disciplined services, like the police forces and the prison service? They are not covered by the *Army Act*. Are your Lordships going to pass a Bill that will make it lawful for two senior officers of police to go to bed together? If that is the position, do your Lordships think that they would get any respect from the men under them? Of course they would not. The same applies to the Prison Service. [237]

Lord (Arthur Ronald Nall) Brocket supported Field Marshall Montgomery's beliefs on homosexuality in the Armed Services by stating:

> … I should say that the noble and gallant Viscount Lord (Bernard Law) Montgomery of Alamein, knew far more of what was going on in the armies which he commanded than Lady [Baroness] (Anna Dora) Gaitskell might have known in those days. I will take it from him that he really did know about these things and that he also knew the risks which might be run. [238]

Lord (Edward Herbert) Jessel emphasised that homosexual soldiers under Field Marshall Montgomery were just as brave as heterosexual soldiers:

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[233] ibid. col. 647.
[234] ibid. cols. 647-8.
[235] ibid. col. 648.
[236] ibid. col. 658.
[237] ibid. col. 658.
[238] ibid. col. 687.

> The noble and gallant Viscount, Lord (Bernard Law) Montgomery of Alamein seemed to think that people who wanted to be homosexual were inherently wicked. I feel sure that he had a good many homosexuals under his command in the war who were just as brave and just as good soldiers as the others. [239]

The Lord Bishop (Arthur Mervyn) of Southwark pleaded that the voice of the priest and pastors' experience be heard:

> I wonder whether those who theorise about the role of the law in upholding moral standards in this matter have ever had to deal with its results in shattered lives. It is right that your Lordships should ponder the advice of a soldier and of a judge. but I hope – and I say this with humility – you will ponder also the experiences of the priest and the pastor. For more than a quarter of a century, both in the confessional and in my study, I, like my brother Bishops, have listened to the tragedies and heartbreak of weak human nature. I gave your Lordships two illustrations two days ago. I could give the noble and gallant Viscount illustrations from men who, under his leadership, gave of their best to the Forces and died in the service of their country, and yet were faced with this grave problem in their own lives. [240]

- Shifts in Public Opinion:

Lord (Charles Frank) Byers welcomed the proposed sexual offences bill and highlighted a considerable shift in public opinion:

> … I think that we should recognise that there has been a distinct shift in public opinion over the last few years. Of course, we are always told that public opinion is not ready or would not approve; but in the ultimate, it must be the collective wisdom of Parliament which bears on this problem and it is Parliament, in both its Houses, which must amend or refuse to alter the law.
>
> No one can deny that, as I have said, there has been a considerable shift in public opinion, and I think that to a large extent it is because of the excellent work done by the Wolfenden Committee. That Committee of eminent people studied this problem for three years, and they reported with a 12 to 1 majority. That, surely, must be an important factor in any consideration of this sort. But one must also notice the significant change in the opinions, of for instance, many Church leaders, of teachers, of dons of university and of others who are in continual and constant contact with young people. And this to me is a very significant change of opinion.
>
> In the newspaper world there has already been the approval of *The Times*, *The Guardian*, the *Daily Telegraph*, the *Daily Mirror*, the *Sunday Times*, the *Observer* and many others.. In February of this year – and I am making this a Party point – the Liberal Council, which lays down the policy of the Party in time for the Annual Conferences, passed a resolution in favour of the Wolfenden recommendations, with nobody dissenting. This is something which would not have happened five years ago. [241]

The Earl (David Patrick Maxwell) of Kilmuir said the following about following public opinion:

> Many of your Lordships have noted already the degree to which public opinion has in these last few years crystallised in favour of reform. We may be, in some sense, seeking to lead public opinion; we are also alive to its voice. [242]

Lord (Robert John Graham) Boothby asked can we really tell if public opinion has changed:

> Mr Henry Brooke said on television the other night that, as Home Secretary, he did not like having to administer the present law, but that he thought that public opinion was not yet ready for a change. My Lords, I do not think we can really tell; at any rate, not without a plebiscite, which is alien to our practice in this country. Public opinion may be ahead of us or it may be behind us, or it may disagree with us – we do not know. What we do know in our hearts is that a change of some kind in the law is bound to come. Some noble Lords may not agree, but, in my opinion, it is overdue. If we say, "No", to the principle of such a reform in the law – and that is what we are being asked to vote about to-day: I am sure that the noble Earl will concur – it will simply mean that the miasma of misery, squalor, tainted evidence, robbery and blackmail, which darkens the lives of too many people, who in other respects are good and often valuable citizens, will continue for a few more years or months. Therefore, it is my sincere hope that your Lordships will give the leadership and show the courage for which the right reverend Prelate the Lord Bishop (Arthur Mervyn) of

[239] ibid. cols. 690-1.
[240] ibid. col. 693.
[241] ibid. col.. 636.
[242] ibid. col. 660.

> Southwark pled [243] so eloquently in the recent debate on the noble Earl's Motion. [244]

Viscount (Reginald Edward) Dilhorne warned the House about the gravity of the situation it was voting on:

> If this Bill receives a Second Reading to-night it will be taken throughout the country that this House approves in principle of sodomy between adult consenting males. That is what we shall be voting for. [245]

- The Effectiveness of the Current Law:

Lord (Victor John) Stonham stated, regarding the ineffectiveness of the current law, the following:

> If we take 500,000 as the best minimum estimate of the number of adult males in this country who are and will remain all their lives exclusively homosexual, then, even allowing for the fact that a large number of them will stay continent all their lives, the remainder may well constitute the largest class of criminals (except for motoring offenders) in the country; scores of thousands of persistent criminals; they have to be; most of them were born or became that way in childhood, and, as yet, medical science cannot materially change their condition.
>
> Against this large number of offenders, consider the number of prosecutions. Figures over the years show that, although the number of offences known to the police has continually increased, the number of offenders prosecuted has not increased in so high a proportion. In the 1900s, for every five cases known to the police, the police prosecuted two persons. I will not speculate on the reasons but. knowing our police, they would be ones which we should respect. Last year, the total of prosecutions for all homosexual offences, whether in public or private and whether committed against an adult or minor, was 1,300, out of we know not how many scores of thousands. The conviction rate is only a fraction of one per cent.
>
> I hope your Lordships, whether you support or oppose the main Wolfenden recommendation, will agree with me that this situation, is manifestly unsatisfactory. If private homosexual acts are to be crimes, then the criminals should he brought to justice. A decision to keep the existing law is tantamount to a decision that you want it enforced. This would mean that more policemen would spend their time prying into the private lives of individual citizens – for unless they do this, there is little prospect of catching those who commit their crimes in private, except perhaps through blackmail confessions, and your Lordships have agreed that this should be ruled out. If your Lordships are not prepared to instruct the police in this way, the alternative is to change the law as the noble Earl, Lord Arran, proposes. This would mean toleration of a certain amount of private vice. There is no getting away from this. But it certainly need not mean an indiscriminate acceptance of it. Indeed, one of the consequences of allowing limited toleration might well be that the police would be able to devote more of their energy to pursuing and prosecuting those real menaces to the health of our society, the homosexuals who interfere with boys. At present, we have an all-embracing criminal law which neither society nor the police are really united or whole-hearted about enforcing. If we restrict the scope of the criminal law to that area of vice which, I hope, we are firmly agreed should be relentlessly attacked, it might contribute to the strengthening of morality in general. [246]

The Lord Bishop (Roger Plumpton) of Chichester concluded his speech by seeking support for the Bill:

> I can only reiterate, my Lords, my own conviction, without diminution in any degree of our support in principle, that there is all too much evidence of the difficulties under the present state of the law in helping homosexuals to reform and overcome their difficulties, once they have committed an offence within the reach of the law. It is for this reason alone that it is our earnest hope from these Benches that the House will give a Second Reading to this Bill. [247]

- Moral Fibre of Youth, the Nation, Minimum Standards and Proselytisation:

Viscount (Bernard Law) Montgomery of Alamein concluded by saying:

> Far from helping these unnatural practices along, surely our task is to build a bulwark which will defy evil influences which are seeking to undermine the very foundations of our national character – defy them; do not help them. I have heard some say – and, indeed, the noble Earl said so himself – that such practices are allowed in France and in other

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[243] 'Pled' – 'especially USA and Scotland, dialect'. Turner, George W, (ed), *The Australian Concise Oxford Dictionary of Current English*, OUP, Melbourne, 1987, p. 836.

[244] *Parliamentary Debates*, House of Lords, 24 May 1965, vol. 266, cols. 672-3.

[245] ibid. col. 701.

[246] ibid. cols. 641-2.

[247] ibid. col. 663.

> NATO countries. We are not French, and we are not other nationals. We are British, thank God!
>
> Expressed in the simplest terms, I suggest that the issue is this: Is this House, or is it not, to give the lead to the British people by agreeing to a Bill which will have the effect of undermining the moral fibre of the youth of the nation? *Hansard* tomorrow morning will tell us who wishes to give that lead. In conclusion, let me say this. When the time comes to vote on the Second Reading of this Bill, I would appeal to all noble Lords who have at heart the best interests of the young men of Britain, to go with me into the Not-Content Lobby, and knock this Bill for six right out of the House. [248]

Baroness (Anna Dora) Gaitskell observed the following regarding the lack of moral fibre expressed by Field Marshall Montgomery:

> … I refer to the speech of the noble and gallant Field Marshal, Lord (Bernard Law) Montgomery of Alamein. I think he performed a great disservice to the Forces when he suggested a collapse of morale if this Bill became law. He knows perfectly well that s. 66 of the *Army Act* ensures that homosexual behaviour, even with consulting adults, is dealt with by court martial. Lord (Edward Arthur Alexander) Shackleton pointed this out, but still the noble and gallant Field Marshal did not withdraw.
>
> I rather deplore the views expressed by the noble and gallant Field Marshal about the moral fibre of the young. I think there is too much nonsense talked these days about this lack of moral fibre in the young, and even in the middle aged and the old. Of course, our affluent society has its problems – we know that; but I sometimes wonder whether there is not more crime simply because there are more people. It seems a fairly reasonable explanation.
>
> As for the Armed Forces, and the foundations of morale being only in discipline, I think that this is perhaps too simple a view of morale. The Field Marshal was in brilliant command of millions of men, and he did a wonderful job. I am amazed that he did it with, in a way, so little knowledge of the sex habits of the men under his command. He asked, "How can we maintain discipline if the men know that two officers are committing homosexual practices somewhere or other?" But how can we maintain the morale of the troops when, after all, his men might know that two officers were committing all sorts of heterosexual but undesirable practices somewhere or other? [249]

The Earl (David Patrick Maxwell) of Kilmuir rambled-on about minimum standards and proselytisation:

> … one of the duties of Government is to maintain minimum standards in every field of life where that is right, and that the necessity to maintain minimum standards is the dividing line which permits the infringement of personal liberty which is so dear to most of us. Long experience in, for example, the fields of safety and public health has proved that these minimum standards can be maintained only by the sanction of the criminal law. If you take the whole period from Lord Shaftesbury's first Factory Bills to the present time, you win find that that is one of the necessities of Government: that these minimum standards must be maintained by the sanction of the criminal law. The same, in my view, applies in the field of decency.
>
> I am not going to deal with any technical matters or any defects which the noble Earl has thought of since he produced his Bill; I want to deal with this general problem. That is what I start from. But it is even more important to pause and consider when one is proposing to remove the sanction from something which has been a criminal offence for many centuries. I believe that the result would be, and must be, after 432 years, that if people find that the view is changed, then, in the eyes of many of them, this behaviour will have a respectability that it never had before. I also believe that many of those who now keep and silent and discreet about their desires will feel free to proselytise, and this is a matter which is well known. It is no help on this point for the noble Earl to say that importuning would still be an offence. That is not the proselytisation I have in mind. I have in mind the proselytisation which goes out from sodomitic societies and buggery clubs, which everybody knows exist. [250]

- Seduction of Youth and Others:

The Marquess (David Harrington Angus) of Queensberry pointed out the low rate of youth seduction by homosexuals:

> Mr Schofield, the sociologist, whose book *The Sociological Aspects of Homosexuality* [251] is to be published in the autumn, assured me that in his research he has found very little to suggest that homosexuality in the adult is connected

[248] ibid. col. 648.
[249] ibid. col. 685.
[250] ibid. col. 654-5.
[251] Schofield, Michael, *Sociological Aspects of Homosexuality: A Comparative Study of Three Types of Homosexuals*, Longmans, Green and Co Ltd, London, 1965.

> with seduction in youth. The majority of homosexuals, I believe, have no particular wish to corrupt youth; in fact I would say that in this respect they are often very much more responsible than the average heterosexual. As an interesting indication of the irresponsibility of the normal man one could take the statement which appeared in the recent report of the Central Council for Health Education on the sexual behaviour of Britain's teenagers, that 38 per cent of the teenage girls who were approached on this subject indicated that they had had sexual intercourse for the first time with men over the age of 21. [252]

The Earl (Francis John Clarence Westenra Plantagenet) of Huntingdon made a very enlightened point about homosexuals corrupting others:

> Homosexuality is to a large part innate; it is not something one chooses to be. That seems fairly certain. I myself believe. having read the Wolfenden Report, and having talked to doctors and to one psychiatrist on the subject, that the idea of corruption is exaggerated in many people's minds. It can exist; but the number of people who turn homosexual through being corrupted, or are induced by a favourable picture, is really very small – no greater, in fact, than the number of young girls corrupted into a way of life that is very undesirable. [253]

- Homosexuals in Prison:

The Earl (David Patrick Maxwell) of Kilmuir stated the following about a prison report:

> … when I was Home Secretary I asked for a report on 96 cases of men who were in prison for homosexual offences. The report covered a psychiatric examination. According to the report given to me, only 15 out of the 96 were genuine inverts. The remaining 81 carried out their homosexual practices for other reasons, such as boredom with women, desire for sensation and for money. Neither this Bill nor any other piece of legislation which I can think of can distinguish between the genuine 15 and the 81 who were simply not standing up to wickedness. Although I agree that blackmail is a horrible crime, and that the stiffest sentences should be given for blackmail, even in 1965 we should not forget that one way of avoiding being blackmailed is not to commit the offence. [254]

- History of the Criminality of Homosexuality and How Many There Are:

The Marquess (David Harrington Angus) of Queensberry in his maiden speech provided the following positive input into the debate:

> It seems to have been generally agreed that there are a sizeable minority of men in all countries who are homosexual, and certainly most countries in Europe do not have laws which penalise homosexual acts between men in private. Nobody has so far suggested that these countries have a worse problem over this issue than we do. In Sweden, where in 1944 the law was amended along the lines of the Wolfenden recommendations, there is nothing to suggest that homosexual behaviour has increased. It has been suggested that in Sweden one man out of 100 is homosexual, whereas in the United States of America, where in most States there are laws comparable to our own. Dr Kinsey estimated that four men out of 100 are probably homosexual. This may well mean that the Americans have a greater propensity to homosexuality than the Swedes. But it might also be looked at in a different way, and one might say that it indicates that the laws in the United States are not acting as a deterrent. I do not believe that our laws on this subject, as they relate to adults, are in any way a solution. They have, if anything. helped to produce a nasty, furtive, underworld that is bad for society and bad for the homosexual.
>
> According to the noble Earl, Lord Arran, it has been suggested that in this country possibly one man in 25 is homosexual. [255]

The Earl (David Patrick Maxwell) of Kilmuir resisted changing the ancient laws:

> I know, my Lords, that there is a point of view today which has some popularity and which would say that because it is 432 years since the passage of the Act of Henry VIII on buggery, it is therefore a good thing to change it. I respectfully ask your Lordships to consider the more modest and humbler but more democratic point of view put forward by a great friend of mine. It is worth remembering that the dead are the great majority, and many of the dead were not fools. I ask

[252] *Parliamentary Debates*, House of Lords, 24 May 1965, vol. 266, col. 650.
[253] ibid. col. 698.
[254] ibid. col. 656.
[255] ibid. col. 649.

your Lordships to reject this Bill. [256]

Lord (Rayner) Goddard provided the following detailed historical account of anti-homosexual legislation:

> We are asked to give a Second Reading to a Bill which, in three lines, takes out of the category of criminal law a crime which has always been treated in this country as one of the gravest crimes that can be committed, and which has been before Parliament for discussion on several occasions.
>
> I hope it will not be thought unnecessary to remind your Lordships of the history of this matter. Sodomy and buggery has been an offence in English law ever since there has been law, but until the reign of Henry VIII it was dealt with in the ecclesiastical courts. The ecclesiastical courts were not notorious for long sentences, at any rate on those classed as clerks, and the benefit of clergy was given very freely – so freely, indeed, that in Henry VIII's reign Parliament intervened and passed a law against buggery and made it a felony. All felonies were capital, so it was punishable by death. The penalty for felony remained in that state until the year 1829, when, under Sir Robert Peel, the great revision took place of capital felonies, and so forth. Buggery, however, was kept as a capital felony, and it remained so until 1861, when the great consolidation of the criminal law took place.
>
> In that year, in the *Offences Against the Person Act*, it was made an offence punishable by penal servitude for life, but with the exceptional provision that the sentence had to be not less than 10 years. So down to 1861 Parliament was treating buggery as an exceptional offence deserving exceptional penalties. The penalty of penal servitude for life, and certainly for not less than ten years, remained until 1891, when there was again a revision – a very beneficial revision – of the criminal law with regard to sentences. From then, any sentence of imprisonment imposed could be for two years only, after which the sentence had to be of penal servitude. Sentences of penal servitude could be for anything between three years and life, unless, of course, a particular offence carried a maximum of fourteen years or seven years. But no minimum sentence was provided.
>
> Your Lordships are now being asked to give a Second Reading to a Bill which wipes that away and does not distinguish between that offence and the offence of gross indecency, which came into existence almost, one may say, by accident. In 1885, the *Criminal Law (Amendment) Act* was before Parliament. That was the Act which, following on WT Stead's great campaign, generally known as the Maiden Tribute to Modern Babylon, was introduced to protect young girls. It is under that Act that so many prosecutions are now brought. No Assize or quarter sessions goes by without there being prosecutions for carnal knowledge of a girl under 16. That was the Bill where, on the Report stage (no one had discussed any homosexual offences before then), Mr Labouchere managed to get a clause inserted which dealt with the offence, as it is now called, of gross indecency. I quite agree that prosecutions for that offence might deserve a great deal of consideration now. The extraordinary thing is that if you consult *Hansard* you will find that that clause was accepted without any discussion at all, except as to whether it was competent to be put into the Bill because the Bill dealt simply with women and children. The Speaker ruled that it was, and so that matter went in really without any discussion in Parliament at all. [257]

Lord (Robert John Graham) Boothby too provided historical details of homosexual offences:

> The law as it stands, and as the noble and learned Lord, Lord (Rayner) Goddard, pointed out, derives from the ecclesiastical doctrines of the Middle Ages, and therefore from the Israelites, with the inevitable emphasis upon the reproduction of a race struggling for survival against overwhelming odds. Solomon could have a thousand wives, but homosexuality in Israel was punished by death. So, as Lord (Rayner) Goddard has reminded us, it continued in this country: death in the Ecclesiastical Courts until the reign of Henry VIII; death again by a Statute of 1533, which was repealed in 1547 and 1553, but reenacted in 1548 and 1562.
>
> But, my Lords, the law we are considering this afternoon, directly as a result of the noble Earl's Bill, is s. 11 of the *Criminal Law Amendment Act 1886*; and that, I would remind my noble and learned friend Lord (David Patrick Maxwell) Kilmuir, was very much less than 400 Years ago. Upon this, it seems to me, the final authoritative word has been said by Sir Travers Humphreys; and, for the sake of the record. I propose to quote it in full. It will not take long, because I shall read it very fast, and then hand it in to the Official Reporters. This is what Sir Travers Humphreys said:
>
> "Until that Act came into force, on January 1, 1886," – he was referring to the *Criminal Law Amendment Act* – "the criminal law was not concerned with alleged indecencies between grown-up men committed in private. Everyone knew that such things took place, but the law only punished acts against public decency and conduct tending to the corruption of youth. The Bill in question, entitled 'A Bill to make further Provision for the Protection of Women and Girls, the Suppression of Brothels and other Purposes', was introduced and passed by the House of Lords without any reference to indecency between males. In the Commons, after a Second Reading without comment it was referred to a Committee of the Whole House. In Committee Mr Labouchere" – an eccentric gentleman – "moved to insert in the Bill

[256] ibid. col. 659.
[257] ibid. cols. 663-5.

the clause which ultimately became s. 11 of the Act, creating the new offence of indecency between male persons in public or private. Such conduct in public was, and always has been, punishable at common law. There was no discussion except that one member asked the Speaker whether it was in order to introduce at that stage a clause dealing with a totally different class of offence to that against which the Bill was directed. The Speaker having ruled that anything could be introduced by leave of the House, the clause was agreed to without further discussion, the only amendment moved being one by Sir Henry James with the object of increasing the maximum punishment from 12 to 24 months, which was also agreed to without discussion."

"It is doubtful whether the House fully appreciated that the words in public or private in the new clause had completely altered the law; but as soon as the Royal Assent had been given and the Act was published, there began a spate of correspondence in the newspapers, both legal and lay, and references to the subject on various public platforms, which were duly reported. A learned Recorder dubbed it 'The Blackmailer's Charter'; and an eminent QC prophesied that juries would refuse to convict where the alleged acts were in private and not visible to any member of the public. On the other hand those interested in the welfare of girls welcomed the Act as a whole so warmly (and indeed it was an excellent Act, apart from s. 11), and it was so clearly impossible to do anything except let the law take its course, that after a few weeks the clamour died down and the public interest became centred upon some more savoury topic."

I think it is important to get those words into the Official Report, because I do not think they can be challenged; and the main object of the noble Earl's Bill this afternoon is to delete what has become known as the Labouchere Amendment to the Act of 1886. [258]

Viscount (Reginald Edward) Dilhorne said that for over 400 years now sodomy had been against the public good:

For 400 years or so the State has regarded sodomy as so contrary to the public good as to justify its being regarded as a most serious crime. And I believe it is for those who advocate a change now to show that that view is wrong. [259]

- Some Peers Know About Buggery Clubs:

Lord (Rayner) Goddard mentioned buggers' clubs and coteries:

There is one thing the Wolfenden Committee did not deal with and did not even mention I n their Report; and it is something, I think, which would be greatly assisted if this Bill goes through. There is no judge who has to go on circuit, as I did for many years, who does not from time to time find that in various parts of the country – in quite different parts of the country – there are what are generally referred to among the people who practise these things as buggers clubs' or associations or coteries of people who are given to this particular vice. They are often careful to see that they keep out young boys, because they know that they get very heavy sentences if they are found out; but at these coteries of buggers, the most horrible things go on. As a judge, one has to sit and listen to these stories which make one feel physically sick. [260]

The Earl (Henry Stafford) of Iddesleigh spoke about privacy and buggery clubs:

No attempt has been made in the course of this debate to tell us what in private means. I am a mere layman in these matters, but I looked up Lord (William Allen) Jowitt's *Dictionary of English Law*, and I found that there was no entry under private at all. All he dealt with was Private Bills and private chapels. There seems to be no clear legal definition of what privacy means. For example, is a club a private place? I do not know the answer, and I have not been supplied with any answer. It will certainly have to be raised in connection with the buggery clubs, of which the noble and learned Earl, Lord (David Patrick Maxwell) Kilmuir, and the noble and learned Lord, Lord (Rayner) Goddard, have spoken.

I must say that it surprised me very much that the witness of those two noble Lords, one of whom was Home Secretary and the other Lord Chief Justice, should be doubted, and there is little that I can add to it I can only recall that when I was a young man I walked through Soho with a knowledgeable friend who pointed out to me the door of a well known buggery club, and if the noble Earl, Lord Arran, were present I would tell him that the evidence of my then friend who made that statement to me cannot be disregarded. since he was a member of the staff of the *Evening News*. It is obvious that if we pass this Bill we shall have an increase of these clubs, and we shall have to consider the question whether the club in which men dance with male partners and see the kind of cabarets that homosexuals want

[258] ibid. cols. 669-70.
[259] ibid. col. 703.
[260] ibid. col. 665.

> to see is, or is not, a private place. We shall have to face similar questions about hotel rooms. Are they private? We shall have to ask difficult questions to which the supporters of this Bill have provided no answer at all. [261]

- Blackmail:

Lord (Rayner) Goddard expresses his different views about blackmail:

> I should now like to say a few words about blackmail. It is always said that these acts facilitate blackmailers. Let us suppose that this law goes through. Have we come down to such a state in England that a threat to expose a man to his friends as a bugger will have no effect? May not the blackmailer threaten to expose a man, not to the police, but to his friends and to decent society – and I am thinking of all ranks of society – so that he will be ostracised from decent society? They will not have buggers. I do not think. therefore, that blackmail need enter into our considerations at all. Blackmail can exist now, with the law as it is; and it is certain to exist with the law as it is to be. [262]

Lord (Arthur Ronald Nall) Brocket quoted part of a letter he had received from a vicar regarding blackmail:

> People take this subject very seriously from both sides. I should like to read an extract from the letter written by the vicar …
>
> "Then again we are told that if the above became legal, it would reduce blackmail. To the contrary – it would multiply blackmail over and over again and a much worse kind of blackmail. It would not be blackmailing the guilty for money. It would be blackmailing the innocent for sin. In our dictionaries we are told that 'blackmail is extortion through intimidation'. There are many employers of labour that are not Christian men, they have dirty minds, but are kept within certain bounds through fear of the law. Remove that fear and they will try to extort consent through intimidation, namely threatening unemployment if consent is not given … If our national laws with regard to women am not satisfactory, by all rightful means, let us rectify them, but that is no reason why our present laws governing the behaviour of the men should be altered – laws which have made the Englishman honoured and respected throughout the world." [263]

Lord (Ian George) Auckland returned to consent and blackmail:

> There is, too, this question of consent. It has frequently been said that if this Bill becomes law the problem of blackmail will be largely solved. But will it? Suppose an act occurs with the consent of the two partners and physical damage is done. What is to prevent litigation taking place? And are not the courts going to be faced with some insuperable problems here? [264]

Viscount (Reginald Edward) Dilhorne virtually condoned blackmail of homosexuals:

> While these [blackmail] practices are condemned by social opinion, the possibility of blackmail still exists. But there is the possibility of blackmail for many other forms of human misconduct. If it were the case that the repeal of the Labouchere Amendment, the alteration of the law as proposed by this Bill, would materially reduce the risks of blackmail. I myself would still say that that is not an adequate reason for such a radical change in the law. [265]

- Causation:

Lord (Edward Francis) Francis-Williams stated the following:

> Can it really be suggested that the standards of the youth of this country are falling, failing, falling, in this horrifying fashion? Can it be suggested that if an alteration of the law as is now proposed were to take place we should have an immediate rush on the part of tutors, lecturers, professors and Army officers into a sort of mass buggery? All the evidence suggests that those who are affected by homosexual tendencies are so affected for physical and psychological reasons, of which we do not know the cause and for which we do not know the cure; and that, on the whole, when they have reached the age 21 and beyond they are, poor, unfortunate, creatures set in their habits and cannot change them: and they cannot change them because we do not know whether there is any cure or any way in which this condition can

[261] ibid. col. 680.
[262] ibid. col. 666.
[263] ibid. cols. 688-9.
[264] ibid. col. 697.
[265] ibid. col. 708.

be altered. [266]

The Earl (Henry Stafford) of Iddesleigh added the following about causation:

> Even in this debate we have had the most astonishing differences of regarding the causation of homosexuality. The noble Earl considers that it is entirely a matter of pre-natal influences – that homosexuals are born, and not made. Others consider that it is a hangover from adolescent homosexuality; others again profess, as I do, that there appear to be a multiplicity of causes. I noted that the noble Earl, Lord (Francis John Clarence Westenra Plantagenet) Huntingdon, himself a member of the Council of the Homosexual Law Reform Association, professed considerable doubts as to the origin of this unfortunate condition in adults. I do not know, but I shall know when this Report is issued. I suggest that we should be wise to postpone any legislation on this topic until we do know. [267]

- The Sexual Behaviour Spectrum:

Lord (Walter Russell) Brain introduced the sexual behaviour spectrum:

> The recommendation of the Wolfenden Committee on which this Bill is based sprang from the view that it is not proper for the law to concern itself with what a man does in private unless it can be shown to be so contrary to the public good that the law ought to intervene in its function as the guardian of that public good.
>
> … the whole proposition. 'Do I believe it to be right?' is essentially a negative one, and it is clear that many of your Lordships are in favour of a change in the law for a much more positive reason: that the law as it stands inflicts much suffering which can be justified only if it can be shown to be in the public interest, and that this is not the case; indeed, the way we deal with homosexuality tends to make this social problem more difficult than it otherwise would be.
>
> I approach this question as a doctor. Why should homosexuality concern the doctor? As we have heard, it is not a disease but a disorder of emotional development. Nevertheless, it impinges on medicine at many points. Doctors, and especially psychiatrists, are necessarily concerned with emotional problems, and it is easy to imagine the emotional stresses to which homosexuals are exposed in our present society. But perhaps the most important thing is that homosexuality is not something which is either there or not there. Sexual behaviour is a spectrum. At one end are the normals, the heterosexuals, the large majority of the population; at the other end are the hard-core homosexuals, a very small percentage. But in between there are gradations, people who are in some sense both, perhaps married and with children but with homosexual tendencies which may or may not be given overt expression. These people may be of either sex, and they may have married without realising fully their own natures. Such marriages obviously may create difficult problems and the doctor is often called in as an adviser.
>
> … the public impression of homosexuality, derived almost solely from the reports of prosecutions in the courts, is quite inadequate and very misleading. There are homosexuals in all walks of life, many of them valuable citizens, and there are many who themselves would regard the kind of offences which bring some of their numbers to court is immoral and vicious. Though it may seem strange to normal people, I think one can say that at the other extreme from the courts homosexuals are as capable as heterosexuals of tender feelings and mutual devotion. But it is a paradox of the present law that it makes stable homosexual relationships almost impossible, for men but not for women, while it clearly cannot prevent, and may indirectly encourage, casual relationships and prostitution. [268]

Lord (Arthur Ronald Nall) Brocket used the rainbow spectrum analogy to describe homosexuality and the criminal law as its deterrent:

> [The] eminent doctor [Lord Brain] has confirmed what I have always heard about homosexuals. He used the term that I use; that is to say, the different colours of the rainbow are applicable as analogy. At one end one gets somebody who is born a homosexual and has homosexual views altogether; at the other end one gets the heterosexual; in between one gets the different colours of those people who may be convinced one way or another. I feel that a good many of those in the middle of the spectrum will be influenced by what I call the deterrent of the present law as it stands. I feel that, if Lord Arran's Bill becomes law, these young boys, when they become 21, may very well say, "Now we are 21, everything is all right. We can do this to our heart's content." I think it is a very serious matter and it would be a very reprehensible thing if that encouragement were given to them. [269]

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[266] ibid. cols. 676-7.
[267] ibid. cols. 678-9.
[268] ibid. cols. 682-3.
[269] ibid. col. 688.

- Compassion, Tolerance and Understanding:

Baroness (Anna Dora) Gaitskell stated the following about compassion, tolerance and understanding:

> As for the idea that, with the relaxation of the laws against consenting adult male homosexuals, there would be a sudden and large defection from heterosexual ranks to join homosexual brigades, surely that is ludicrous.
>
> Those of us who are in favour of tempering the harsh attitude of the law against adult homosexuals and its incidental green light to blackmailers, feel as we do because, among other things, we cannot subscribe to the universal conspiracy of illusions about sex. These illusions snare and lure us into believing that everything about sex begins and ends with boy meets girl. The State does not pry into the private behaviour between men and women, between women and women, but only between men and men. Here, the law is based primarily on feelings of intolerance, disgust and indignation – natural feelings, you may say. But surely our laws are not based entirely on such instinctive feelings. Surely we endeavour continuously to scrutinise our laws and subject them to the light of reason and compassion. When this happens, I submit that many of our feelings of disgust and indignation are transmuted into understanding and tolerance. [270]

The Lord Bishop (Arthur Mervyn) of Southwark emphasised the current immorality, viciousness and evilness of the law by stating that the:

> … argument which deserves serious consideration is that by removing existing prohibitions against the private behaviour of homosexual adults we are weakening social support for morality. But surely, my Lords, in the sphere of personal behaviour morality means freedom to choose between right and wrong in the context of personal responsibility. Male homosexuals, unlike adulterers, fornicators and Lesbians, do not have freedom at this moment. For them the law provides not morality but something less, because it draws no distinction between public and private behaviour or between sexual acts committed between adults or with minors. All are equally criminal. Not only is the existing law immoral in this negative sense; it is immoral in a positive sense, leaving a trail of unhappiness and sometimes tragedy, not only among those homosexuals whom it directly affects, but also among their families. [271]
>
> My Lords, it is the opinion of many of us on this Bench that the law as it stands is one of the most misguided, the most vicious and the most evil in its consequences of any law upon our Statute Book. [272]

Viscount (Reginald Edward) Dilhorne stated that all forms of homosexuality should be treated as criminal with compassion:

> I want to be strictly accurate. This Bill does not legalise all forms of sodomy. Sodomy with a woman or animal will remain a criminal offence Such crimes are committed but not in sight of the public, and their commission does not depend on whether they are done in public or in private. All forms of homosexuality are wrong, … but surely some forms of sexual misbehaviour are more wrong than others, and surely some forms are so abominable as to merit condemnation by the State, So I believe that they should be regarded and treated as criminal. [273]

- Does the Church of England Really Support This:

Lord (Arthur Ronald Nall) Brocket said the following about the lack of support for reform in the Church of England:

> I noticed that the two Archbishops, during the, last debate on Lord Arran's Motion (and also we have had a speech from one right reverend Prelate this afternoon) were in favour of Lord Arran's Bill. I should not like it to be thought that the Church of England as a whole supports these two Archbishops and other Bishops. I happen to be an ordinary member of the Church of England. I am a church warden at my own church, and since I made my few remarks the other day 1 have had many letters from, and opinions expressed by, members of the Church of England who are not in agreement with their leaders on this subject. [274]

On Question, Whether the Bill shall be now read 2nd time? Their Lordships divided: Contends, 94; Not-Contends, 49.

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[270] ibid. col. 686.
[271] ibid. col. 693.
[272] ibid. col. 694.
[273] ibid. col. 703.
[274] ibid. col. 688.

Table 9: House of Lords' Division: If the Sexual Offences Bill Should Be Now Read A Second Time, 24 May 1965

CONTENTS	Colyton, L.	Killearn, L.	Stamp, L.	Hobson, L.
Addison, V.	Craigton, L.	Kinross, L.	Stonham, L.	Horsbrugh, Bs.
Ailwyn, L.	Cranbrook, E.	Lincoln, L. Bp.	Strabolgi, L.	Howard of Glossop, L.
Airedale, L.	Darwen, L.	Listowel, E.	Strang, L.	Hylton, L.
Amherst, E.	De La Warr, E.	Longford, E. (*L. Privy Seal*)	Strathcarron, L.	Iddesleigh, E.
Amulree, L.	Drogheda, E.	Merthyr, L.	Ward of Witley, V.	Ingleby, V.
Archibald, L.	Effingham, E.	Mitchison, L.	Wilberforce, L.	Kemsley, V.
Arran, E. [*Teller.*]	Elliot of Harwood, B.	Monson, L.	Wootton of Abinger, Bs.	Kilmuir, E. [*Teller*]
Attlee, E.	Emmet of Amberley, B.	Mottistone, L.	**NOT-CONTENTS**	Leatherland, L.
Barrington, V.	Faringdon, L.	Napier and Ettrick, L.	Albemarie, E.	MacAndrew, L.
Bedford, D.	Ferrers, E.	Norwich, V.	Aldington, L.	Milverton, L.
Beswick, L.	Fleck, L.	Phillips, B.	Alport, L.	Monsell, V.
Blackford, L.	Francis-Williams, L.	Ponsonby of Shulbrede, L.	Auckland, L.	Montgomery of Alamein, V.
Boothby, L.	Furness, V.	Poole, L.	Blyton, L.	Morton of Henryton, L.
Boston, L.	Gaitskell, B.	Queensberry, M.	Brocket, L.	Netherthorpe, L.
Bowden, L.	Gardiner, L. (*L. Chancellor*)	Radcliffe, V.	Champion, L.	Northchurch, Bs.
Brabazon of Tara, L.	Gifford, L.	Rea, L.	Chelmer, L.	Peddie, L.
Brain, L.	Gladwyn, L.	Reay, L.	Clwyd, L.	Rowallan, L.
Bridgeman, V.	Goschen, V.	Redesdale, L.	Daventry, V.	St. Aldwyn, E.
Brockway, L.	Greenway, L.	Ripon, L. Bp.	Denning, L.	St. Helens, L.
Burden, L.	Haire of Whiteabbey, L.	Ritchie of Dundee, L.	Dilhorne, V. [*Teller*]	St Oswald, L.
Burton of Coventry, B.	Harvey of Tasburgh, L.	Robbins, L.	Erroll of Hale, L.	Shannon, E.
Byers, L.	Henderson, L.	Royle, L.	Exeter, M.	Shepherd, L.
Chelmsford, V.	Henley, L.	Runciman of Doxford, V.	Forster of Harraby, L.	Somers, L.
Chichester, L. Bp.	Hertford, M.	Sainsbury, L.	Goddard, L.	Strange of Knokin, B.
Chorley, L.	Huntingdon, E.	St. Davis, V.	Granville-West, L.	Stuart of Findhorn, V.
Chutter Ede, L.	Jellicoe, E.	Segal, L.	Grenfell, L.	Swansea, L.
Cohen, L.	Jessel, L. [*Teller*]	Shackleton, L.	Grimston of Westbury, L.	Wigram, L.
Colgrain, L.	Kennet, L.	Southwark, L. Bp.	Hawle, L.	Wolverton, L.

Note: B.–Baron; Bp.–Bishop; Bs.–Baroness; E.–Earl; L.–Lord; M.–Marquess or Marchioness; V.–Viscount.
Source: *Parliamentary Debates*, House of Lords, 24 May 1965, vol. 266, cols. 711-2.

1:–1.1.4.8. – House of Lords's Third Reading of the Sexual Offences Bill, 28 October 1965 [275]

The House of Lords voted 116 in favour to 46 [see Table 10, page 90] to read a third time Earl of (Arthur Kattendyke Strange David Archibald) Arran's Sexual Offences Bill. Eventually the Bill was passed by the Lords with 96 for and only 31 against [see Table 11, page 101] and accordingly the Bill was sent to the House of Commons.

The third reading debate comprised of 17 speeches and toke two and half hours. Fourteen speakers spoke in favour of the proposed Bill with only 3 against and none expressed any doubt about the proposed reform Bill.

Resolved in the affirmative, and Bill read third time accordingly.

- A Social Reformers Lament:

The Earl (Arthur Kattendyke Strange David Archibald) of Arran states some of his personal anguish and repercussions because of his involvement in introducing this kind of legislation:

> What has happened since we last talked about these matters, in terms of action? Precisely nothing. The law is not changed; the anxieties remain; blackmail still goes on. I fear that most people no longer consider it an interesting business. It has gone oft the boil; other things, perhaps more important, occupy our thoughts to-day. One is tempted to wonder whether we should not give up and whether this Bill, even if it is approved, by your Lordships to-day – and I repeat that I am far from taking that for granted – will not completely disappear … Frankly I admit that many times I would gladly have been shot of the whole wretched business. There is no fun in it, and sometimes one feels desperate

[275] *Parliamentary Debates*, House of Lords, 28 October 1965, vol. 269, cols. 677-730.

at some of the letters one receives. Most of my post is anonymous nowadays and such letters do not exactly encourage one to continue. They are full of the most fearful condemnation. Curiously enough, they all seem to quote Deuteronomy and Leviticus but never the Sermon on the Mount; except one letter from a man who calls the Sermon on the Mount that masterpiece of appeasement. The obscenity of some of these letters passes all belief. No doubt others of your Lordships have had similar communications. These we can laugh off but others, more serious, are also more wounding and make one wonder sometimes whether one is doing the right thing. I suppose in any matter of social reform there must be doubt. But then, just as one is thinking of chucking it, one gets another of those ghastly letters from some man who is being blackmailed or who is facing criminal prosecution, … [276]

Table 10: House of Lords' Division: If the Sexual Offences Bill Should Be Now Read A Third Time, 28 October 1965

CONTENTS	Cromartie, E.	Latham, L.	Southwark, L. Bp.	Ferrier, L.
Addison, V.	Darwen, L.	Leathers, L.	Stonham, L.	Forbes, L.
Airedale, L.	Denham, L.	Lilford, L.	Strabolgi, L.	Forster of Harraby, L.
Amherst, E.	Devonport, V.	Listowel, E.	Strang, L.	Fortescue, E.
Annan, L.	Dinevor, L.	Lloyd of Hampstead, L.	Strange of Knokin, Bs.	Grenfell, L.
Archibald, L.	Drumalbyn, L.	Longford, E. (*L. Privy Seal*)	Strathcarron, L.	Gridley, L.
Arran, E. [*Teller*]	Dudley, L.	Lucas of Chilworth, L.	Swansborough, Bs.	Grimston of Westbury, L.
Ashbourne, L.	Effingham, E.	Margesson, V.	Swinton, E.	Hobson, L.
Asquith of Yarnbury, Bs.	Elliot of Harwood, Bs.	Merthyr, L.	Terrington, L.	Hodson, L.
Attlee, E.	Exeter, L. Bp.	Milford, L.	Thurlow, L.	Horsbrugh, Bs.
Audley, Bs.	Falkland, V.	Mitchison, L.	Twining, L.	Hurcomb, L.
Bedford, D.	Ferrers, E.	Molson, L.	Vernon, L.	Iddesleigh, E.
Boothby, L. [*Teller*]	Fleck, L.	Mottistone, L.	Wade, L.	Ilford, L.
Boston, L.	Gardiner, L. (*L. Chancellor*)	Napier and Ettrick, L.	Walston, L.	Leatherland, L.
Bowden, L.	Gifford, L.	Newton, L.	Ward of Witley, V.	Lindgren, L.
Bowles, L.	Gladwyn, L.	Norwich, V.	Wellington, D.	Long, V.
Boyd of Merton, V.	Glasgow, E.	Ogmore, L.	Williams, L.	MacAndrew, L.
Boyd-Orr, L.	Greenway, L.	Plummer, Bs.	Wise, L.	Massereene and Ferrard, V.
Bridgeman, V.	Hankey, L.	Ponsonby of Shulbrede, L.	Wootton of Abinger, Bs.	Merrivale, L.
Brockway, L.	Haire of Whiteabbey, L.	Queensberry, M.	Worcester, L. Bp.	Milverton, L.
Brown, L.	Hamilton of Dalzell, L.	Rea, L.	**NOT-CONTENTS**	Monsell, V.
Burden, L.	Hastings, L.	Reay, L.	Aberdeen and Temair, M.	Morton of Henryton, L.
Byers, L.	Henderson, L.	Ripon, L. Bp.	Alexander of Tunis, E.	Northchurch, Bs.
Caccia, L.	Henley, L.	Royle, L.	Allerton, L.	Rathcavan, L.
Canterbury, L. Abp.	Hertford, M.	Russell of Liverpool, L.	Alport, L.	Remnant, L.
Chichester, L. Bp.	Howard of Glossop, L.	St. Albans, L. Bp.	Ampthill, L.	St. Helens, L.
Chorley, L.	Inchyra, L.	St. Davis, V.	Barnby, L. [*Teller*]	Selkirk, E.
Citrine, L.	James of Rusholme, L.	St. Just, L.	Brocket, L. [*Teller*]	Shannon, E.
Clwyd, L.	Jessel, L.	Sandford, L.	Champion, L.	Simonds, V.
Colwyn, L.	Killearn, L.	Shepherd, L.	Clitheroe, L.	Somers, L.
Cottesloe, L.	Kinross, L.	Soper, L.	Coleraine, L.	Soulbury, V.
Cranbrook, E.	Kinnoull, E.	Sorensen, L.	Crathorne, L.	Westminster, D. *L. Steward*
			Douglas of Barloch, L.	Yarborough, E.

Note: Abp.–Archbishop; B.–Baron; Bp.–Bishop; Bs.–Baroness; D.–Duke; E.–Earl; L.–Lord; M.–Marquess or Marchioness; V.–Viscount.
Source: *Parliamentary Debates*, House of Lords, 28 October 1965, vol. 269, cols. 677-8.

Lord (Victor John) Stonham [The Joint Parliamentary Under-Secretary of State, Home Office] indicated that social reform comes at a personal cost:

The path of a social reformer is not an easy one. Abuse, contempt, ridicule – usually anonymous, as the noble Earl said – are often his only reward. This, I believe, is especially true when the subject is as distasteful as that of homosexuality. Most of us prefer not to talk about it, not to know about it, and certainly not to legislate about it. It takes courage for anyone to insist on discussing this subject, and to that virtue Lord Arran has added a dogged

[276] ibid. cols. 681-2.

persistence which has brought success. [277]

- Public Opinion and Polling:

The Earl (Arthur Kattendyke Strange David Archibald) of Arran informed the House about two recent positive opinion polls:

> In the past two months there have been two polls on homosexual law reform, a Gallup Poll and a National Opinion Poll. Both give the same result. Put simply, they indicate that, by a majority of five to three, the people of this country no longer regard homosexual practices by consenting adults in private as criminal. My Lords, that is to me a deeply encouraging thing.
>
> I would recall to your Lordships the words of the noble Lord, Lord Butler of Saffron Walden, on this subject in 1958 when the Wolfenden Report was published. He said:
>
> "In my opinion, education and time are needed to bring people along to understand the Wolfenden Committee's point of view. I do not think we have yet with us a general sense of opinion which would regard … it as right to alter the criminal law in the sense suggested by the Committee."
>
> Again these words of Mr Henry Brooke when he was Home Secretary:
>
> "This is a very important matter, but it is essentially a matter in which the Government must take note of the climate of public and Parliamentary opinion."
>
> At the time, frankly, they seemed to me to be rather pusillanimous utterances, but all the same one saw the point . That point is now no longer valid. We in this House are no longer in the van of public opinion; we are in fact almost precisely with it. [278]

Lord (Noel Gilroy) Annan stated the following regarding recent public opinion polls:

> But still there may be many people who feel that though no law can deter criminals, it can express the horror and revulsion which society feels against acts of this kind. I am sure that when the noble Earl [of Arran] introduced his Bill most people thought that it was a highly courageous act because it flew in the face of public opinion. That it was a courageous act none of us, whatever our opinions, I am sure doubts. But he himself this afternoon has questioned whether he did fly much in the face of public opinion.
>
> We have heard the evidence of the polls, and it is most striking that in the Gallup Poll, I think, 27 per cent of the people, although they condemned these acts as immoral, nevertheless thought that no criminal proceedings should be brought against consenting adults; while 36 per cent actually tolerated such acts and therefore were, of course, entirely opposed to criminal proceedings. On the whole, the Press is overwhelmingly in favour of this Bill. So are the majority of ecclesiastical authorities. But also I think there is evidence that the young are overwhelmingly in favour of this Bill. This is not a symptom of beat behaviour among the young; it is a symptom that on this moral issue they think that injustice is being done. [279]

Lord James (Eric John Francis) of Rusholme talked about the strength of the recent public opinion polls as follows:

> … may I say a word about the argument based on public opinion? It has, of course, often been claimed that the feelings of the vast majority of ordinary men and women are so strong that it would be wrong to flout them. I believe that that argument will continue to be used, in spite of the results of the public opinion polls to which the noble Earl, Lord Arran, drew our attention. There is a certain strength in that argument, that the law cannot be too remote from what most citizens believe right. He has told us that on this public was changing; and no doubt that is right. But even if it were not, I should still say that we here in this House should support the Bill. For if we in this House are not able and willing to be a little more rational, a little more knowledgeable, even a little more humane, than the majority of people, what is our justification for existence? There, it seems to me, is a straightforward example of that principle. [280]

The Marquess (David Harrington Angus) of Queensberry indicated that the public opinion of youth most certainly supported this reform:

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[277] ibid. col. 725.
[278] ibid. col. 683.
[279] ibid. col. 689.
[280] ibid. col. 700-1.

> I am convinced that if we do not do anything about this issue, the younger generation certainly will do so. This brings me to the problem of youth and the opinion of youth. which has up to a point been admirably expressed by the noble Lord, Lord Annan. Although I am half way through the allotted span, perhaps, in your Lordships' House. I can speak as a relatively young man. In the previous debates a number of your Lordships who opposed this Bill were particularly concerned about the youth of this country. As a teacher in an institution of further education I have a great deal to do with students who are in their late teens and early twenties. There is absolutely no doubt that the intelligent youth of to-day are entirely in favour of reform. For your Lordships' information, over the last three or four years, there have been debates in nearly all the leading universities and the motion for reform has never been defeated. [281]

Lord (Victor John) Stonham [The Joint Parliamentary Under-Secretary of State, Home Office] expressed almost disbelief in the sudden advance towards homosexual law reform:

> I can think of no similar example of a major controversial social reform which has made virtually no progress for eight years and then, in a mere six months, has made such an extraordinary advance. Whatever our views about its merits. I think that we should acknowledge that this success reflects great credit on the noble Earl, Lord Arran. [282]

Lord (Victor John) Stonham [The Joint Parliamentary Under-Secretary of State, Home Office] needed more time to examine the very recent public opinion poll results:

> I myself should like time to examine the figures in the poll published this morning. But if they are accepted, one can no longer argue that public opinion is against this Bill. If, however, the poll suggests that public opinion, like your Lordships' House, is decisively in favour of reform, we know that opinion in another place appears to be marginally against it, because that is the inference we must draw from the recent decision in the Commons refusing leave to introduce a Bill. [283]

- History of Homosexual Criminality:

Lord (Noel Gilroy) Annan elaborated on what in fact the Labouchere's amendment had done for the homosexual cause:

> … our Victorian ancestors believed in sexual purity. They thought that sexual purity was vitally important for the good of society. Anyone who contravened the code, anyone who was, even if innocent, involved in a case in which sexual morality appeared to have been contravened, was subjected to social ostracism; and also they legislated, as we well know. Speaking as a social historian, I wonder whether they did not really defeat their own object. Leaving aside the misery which the Victorian divorce laws produced, Mr Labouchere's Amendment had, I think, the effect of increasing interest in homosexuality, because the direct result of that Amendment was the famous trial of Oscar Wilde. That trial created a furore. A violent outburst occurred against homosexuality, and that, in turn, set up a reaction against the law, because there were people who thought that this brilliant, though self-indulgent, man had been persecuted, and there was possibly even a reaction in favour of his way of life. The Wilde trial made homosexuality and gave it glamour. If any thing did, it created a cult. So I greatly doubt whether the legislation had the effect that it was expected to produce. Indeed, it may well have done something to make people feel that homosexuality seemed a heroic defiance of hypocrisy. [284]

- Law Enforcement and Government Inertia:

The Earl (Arthur Kattendyke Strange David Archibald) of Arran castigated the Government about its political impartiality concerning homosexual law reform:

> Will the Government not, if only as at courtesy, grant us the simple thing for which we ask – namely, time and facilities in the other place? They gave them, after all, to that other measure of social reform, the abolition of hanging, even though the opinion polls were two to one against abolition and the number of people actually hanged annually since the 1957 Act was passed have been under a dozen, whereas to-day we are talking in terms of hundreds of thousands. Will they not give us these same facilities, too? The fact that the Bill originates in this House does not necessarily make it a bad Bill. Indeed, technically it is unexceptionable, for it has been drafted by Parliamentary draftsmen.
>
> My Lords, political impartiality on an issue of this kind is all very well, but if it means that the people's

[281] ibid. col. 709.
[282] ibid. col. 725.
[283] ibid. col. 726.
[284] ibid. cols. 688-9.

> representatives are not to be given the chance to speak and vote on an important measure of social reform introduced in the form of a full Bill, that is no longer impartiality; it is prejudice. Speaking for myself only, it is not what I should expect from a Government which prides itself on its progressive attitude in matters of law reform. [285]

Lord (Noel Gilroy) Annan outlines points made in the Schofield Report [286] regarding homosexual acts in private being punished more severely; doubts on the number of prosecutions and; the equal punishment severity of those who commit offenses with adults and children:

> Three points in the Report strike me. The first is that homosexual acts in private are often far more severely penalised than those committed in public. The reason for this is that, under police interrogation, homosexuals will in fact admit to actions in private which the present law regards as graver than those of homosexuals who are caught in public. Thus the squalid are penalised much less severely than others. The Report also throws much doubt on a number of the prosecutions which are brought for homosexual acts, committed in private. It suggests that there is a monotony of evidence, almost an identity of evidence, given by police officers – and, of course, in such cases the uncorroborated evidence of a police officer is often sufficient to convict. The Report suggests that there is something odd about the nature of the evidence given in these cases. Finally, the Report makes a distinction – a distinction, which it is extremely important to make, and which is often misunderstood by people who have not a great cognisance of this whole matter – between those men who commit offences against children (and, of course, we all agree that such men must be restrained) and homosexuals. Yet the law treats both with equal severity. [287]

Earl (Clement Richard) Attlee spoke about the ineffectiveness of the current law:

> … whatever the law does, it is not a deterrent, and not being a deterrent I can see no reason for its existence. Deterrence could have been its only real use. It does not work. Therefore I think we are well advised to try to reform the law and make it accord with common sense and common justice. [288]

Lord James (Eric John Francis) of Rusholme argued about the inconsistency of homosexual offences being criminal:

> … our attitude sexual offences is so inconsistent that it is difficult to believe that any rational defence is possible. Lesbianism it outside the criminal law; fornication and adultery are outside the criminal law; yet homosexual acts between consenting males are within it. Why? Is there any reason why we should be guilty of an inconsistency of this sort? I do not wish to argue the fascinating philosophical issue as to wether or not our disapproval of some immoral acts that do offend against other people should or should not be signalised by making them illegal, but I would remind your Lordships that the noble and learned Lord, Lord Devlin, who defends with great eloquence the position that private immorality should in certain circumstances be considered actually criminal, has now come round to the conclusion as regards the subject we are discussing – homosexual acts between consenting adult males – that we have drawn the line wrong between the private and the public act, and that the time has come for a revision of the law. One of the most impressive things that has been brought to light by this series of debates was the letter which appeared in *The Times*, [see: 1:–1.1.4.5. page 75] signed by, among others, the noble Lord, Lord (Patrick Arthur) Devlin, and the noble Lord, Lord (Lionel Charles) Robbins. [289]

The Marquess (Hugh Edward Conway) of Hertford was concerned about the reputation of both the law and its enforcer:

> … it is the duty of the police to put the law into effect. The continuation of a law which is widely held to be unjust can do nothing but harm. Not only will it harm those sexual offenders who are sometimes regarded as victims of persecution, but it will also harm the reputation of the police and of the law itself. [290]

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[285] ibid. cols. 684-5.

[286] Schofield, Michael, *Sociological Aspects of Homosexuality: A Comparative Study of Three Types of Homosexuals*, Longmans, Green and Co Ltd, London, 1965.

[287] *Parliamentary Debates*, House of Lords, 28 October 1965, vol. 269, cols. 690-1.

[288] ibid. cols. 696-7.

[289] ibid. cols. 699-700.

[290] ibid. col. 713.

Viscount (Reginald Edward) Dilhorne proposed that the removal of criminal sanctions would very likely increase sodomy:

> It is all very well to talk about lopsided morality, but, my Lords, is it really likely to be the case that when you remove criminal sanctions from sodomy, when you remove the deterrent, the occasions on which sodomy is committed will grow fewer? Or will they be more? I should have said that once it becomes lawful, obviously it will be more frequently done, despite what the most reverend Primate and the right reverend Prelates may say about it; and if it is more frequently done, can it really be said that this Bill, which legalises that, will promote the ways of morality in this country? I think it might equally be argued that to legalise murder would promote morality.
>
> It has been interesting in this debate to find that no one has expressed a view upon wether or not these changes would lead to the commission of more acts of this kind. I am rather surprised that nothing has been said about that. But this Bill, which we are told with the greatest authority will improve morality, not only legalises sodomy but positively encourages male prostitution Nothing has been said about that to-day. [291]

- Causation of Homosexuality:

Lord (Noel Gilroy) Annan states that homosexuals are made that way:

> There is one last reason, a more philosophic reason, why I think the law is bad. It treats homosexuals as a category of people who are really beyond the pale, and it does not understand that they are that way. This was never more poignantly put than by the poet and scholar AE Housman, who wrote a poem, I think after the trial of Oscar Wilde, which contains the line:
>
> "Oh, they're taking him to prison for the colour of his hair." [292]
>
> Homosexuals are people who, in a sense, have a different colour of hair. They are not sick. Among them are many brilliant men of the highest integrity; and history contains some striking examples of this. Among them also, of course, are men who committed squalid acts.
>
> This Bill is not sentimental; indeed, I think there is great misapprehension in some quarters as to what would happen if it became law. I mean by this that there would still be prosecutions for deplorable offences against boys; there would still be prosecutions for men who must satisfy their craving for excitement and danger, and hence commit indecent acts in public places. There would also be cases of blackmail, though, I think far fewer of them. But what this Bill would do if it became law would be to bring compassion to over a million people; and not only compassion but justice. So if your Lordships pass this Bill it will, in my opinion be in no way approving of homosexuality. What it will be doing is expressing its desire not to send men to prison "for the colour of their hair." [293]

Lord (Charles Frank) Byers uses Michael Schofield's study [294] to explain the possible causation of homosexuality:

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[291] ibid. col. 720.

[292] Housman, AE, *The Collected Poems of AE Housman*, Holt, Rinehart and Winston, New York, 1965, p. 233. (Additional Poems XVIII). The complete poem is as follows:

'Oh what is that young sinner with the handcuffs on his wrists?
And what has been after that they groan and shake their fists?
And wherefore is he wearing such a conscience-stricken air?
Oh, they're taking him to prison for the colour of his hair.

'Tis a shame to human nature, such a head of hair as his;
In the good old time 'twas hanging for the colour that it is;
Though hanging isn't bad enough and flaying would be fair
For the nameless and abominable colour of his hair.

Oh a deal of pains he's taken and a pretty price he's paid
To hide his poll or dye it of a mentionable shade;
But they've pulled the beggar's hat off for the world to see and stare,
And they're haling him to justice for the colour of his hair.

Now 'tis oakum for his fingers and the treadmill for his feet,
And the quarry-gang on Portland in the cold and in the heat,
And between his spells of labour in the time he has to spare
He can curse the God that made him for the colour of his hair.'

[293] *Parliamentary Debates*, House of Lords, 28 October 1965, vol. 269, col. 691.

[294] Schofield, Michael, *Sociological Aspects of Homosexuality: A Comparative Study of Three Types of Homosexuals*, Longmans, Green and Co Ltd, London, 1965.

> … I was much impressed by Mr Michael Schofield's book, *Sociological Aspects of Homosexuality*. I believe that this is a study which would make any opponent of reform who took the trouble to read the whole report sit up and take notice. It is a study which must be read by the police, by magistrates, and by judges before they consider the damage that can follow from wrong decisions in the courts. I think all those who are interested in this subject would do well to study this particular report, because it shows how a continuation of the law as it now stands is, in fact, doing damage to society.
>
> Mr Schofield sums up the situation by saying, first of all, that the development of the homosexual condition, and the form which it takes, may depend on the events in an individual's early life, but it also depends – and this, I think, is vital – on the attitude which society takes to that condition. He makes a number of suggestions, such as a community education programme and so on, which might help to get rid of some of these ill-founded beliefs which many people hold at the moment, although these beliefs can be disproved by the sort of well-documented study made by Mr Schofield. He has pointed out that the law can be the direct cause of homosexual behaviour; he has pointed out that the law offers no solution; he has pointed out how capricious this law is, and – as the noble Earl, Lord (Philip) Swinton, said – how it protects the blackmailer, because the victim dare not go to the police. [295]

Lord James (Eric John Francis) of Rusholme disagrees with Lord (Noel Gilroy) Annan's proposition that homosexuality is not an illness:

> … we have got to realise that the homosexual condition is a very complex one, and that there is much research to be done upon it. The only time I was tempted to disagree with, if I may say so, the admirable maiden speech of the noble Lord, Lord (Noel Gilroy) Annan was when he said that homosexuality was not an illness. Sometimes it is not, but sometimes it is. It is a very complex and mixed phenomenon. We do not know, for example, how many forms are susceptible to psychiatric treatment but what we do know is that many homosexuals can be helped to adapt themselves to normal life; and simply to make their behaviour a criminal offence is the last way to see, first that they ask for such help and, secondly, that they get it. [296]

- Apparent Physical Unnaturalness of Homosexuality Or Not:

The Lord Bishop (Edward Michael Gresford) of St Albans believes that homosexual acts are morally wrong and physically unnatural:

> … when a Bishop speaks in your Lordships' House on this subject he cannot be too careful to state the moral standpoint from which he approached the question. I believe that homosexual acts are wrong, for they misuse human organs for which the right use is intercourse within marriage between men and women [see page 53]. I am convinced that as fornication is always sinful, so homosexual acts are sins. But when circumstances are carefully weighed, it will be seen that there are degrees of culpability attached to these sins.
>
> The chief point I want to make – and I shall not detain your Lordships long – is Back to Wolfenden. It is a little time since the particular points he made were mentioned in this House, and I would remind your Lordships that the Report argues that not all sins should be treated as crimes; not even adultery which can destroy a home and make children's lives miserable for years. As the law stands neither fornication nor adultery is a crime, and I consider that homosexual acts between consenting adults should come into this category. [297]

The Marquess (David Harrington Angus) of Queensberry stated the following about the anatomy of homosexuality:

> What piece of the anatomy is to be put where by consenting adults in private seems to me to be their own affair. [298]

- Imprisonment of Homosexuals:

The Lord Bishop (Edward Michael Gresford) of St Albans speaks about the negative aspect of imprisoning homosexuals:

> … the 300 adult offenders convicted in the three years ending March, 1956, of offences committed in private with consenting adults. Of these 300, 181 were discharged, bound over or given a conditional discharge, put on probation or freed; 119 were imprisoned for periods ranging from six months or less to five years; one was dealt with as a mental

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[295] *Parliamentary Debates*, House of Lords, 28 October 1965, vol. 269, col. 693.
[296] ibid. col. 699.
[297] ibid. cols. 694-5.
[298] ibid. col. 710.

> defective. I have not seen any more recent figures, but even assuming some slight increase in the number of offences it is only a minute number of people who are involved, yet the consequences of a prison sentence can be devastating.
>
> I suppose that many of your Lordships read a recent article in a Sunday paper by a former Member of another place who had just served a four-year sentence for a homosexual offence. He wrote a bitter article convinced that prisons neither deter nor reform, and that a sentence which involved actual close confinement for more than two years was judicial killing. If he had not written immediately after release from prison he might not have written in quite those terms, but having recently visited one of Her Majesty's prisons in my diocese I came away with a certain sense of shame that people should have to suffer certain sentences. [299]

Lord James (Eric John Francis) of Rusholme stated the following about imprisoning homosexuals:

> To incarcerate in an all male prison a man who is a homosexual is an act which goes beyond the limits of folly and reaches those of barbarity. Of course, many homosexuals are depraved and wicked men against whom society must protect itself. Of course they are. So are many heterosexuals. But there are many who are not, and our first duty; surely, is to decide whether we shall help them to come to terms with an abnormality which is not o their choosing – terms which will corrupt no other person, terms which will offend no public decency – or whether we shall add to the shadow which dominates their lives the fear and the stigma of criminality. [300]

Lord (Donald Oliver) Soper spoke about his experience as a visiting prison chaplain:

> For 25 years I was a visiting chaplain, on behalf of the Nonconformists, to Pentonville Prison. Your Lordships will know that Pentonville is no ordinary prison. You cannot be convicted and go straight to Pentonville; you have to go elsewhere and work your way up to Pentonville – a kind of postgraduate course in crime. I know of nothing more heartrending than the experience of trying to tend and comfort homosexuals there, who were in the same condition, I think, as would be an alcoholic given board and lodging in a public house. They were exposed to intolerable strains and committed to all kinds of squalor, hatred and temptation, and sheer, absolute grief and misery. I believe that if this Bill can offer hope to even one of those such, it will be amply justified, and therefore I hope it will go through. [301]

- Blackmail, Spies' Charter and National Security:

The Earl (Philip) of Swinton introduced the viewpoint of a spies' charter resultant of criminality of homosexuality:

> There is, however, one aspect, and one aspect only, of this Bill on which I can perhaps offer a word or two of worthwhile advice. We are all agreed. I think, that blackmail is perhaps the most revolting of crimes. We are all agreed – and it is about the only thing, it seems to me, on which noble Lords in all parts of the House are agreed – that the law on homosexuality, as it stands to-day, is a blackmailers' charter. That, I think, is common ground and common sentiment.
>
> But I want to deal for a moment with one particular aspect. It so happens that for two years in the war I was responsible for the co-ordination of the whole of security, and that included supervision of all the Secret Services, espionage, counter-espionage and the like. Our security services in this country are quite first-class, and in recent years they have had, and deservedly had, the highest judicial tributes paid to them. It is fortunate that they are so good, for the forces they are up against are ubiquitous, unscrupulous and intelligent. I need not reveal any secrets, but your Lordships have read of trials where some wretched homosexual has been blackmailed into treason. He would not have become a spy but for that blackmail. The law as it exists to-day is not only a blackmailers' charter; it is, in my opinion, a spies' charter and an enemies' charter. I know I shall be told 'Well, yes, these unhappy criminals were no doubt blackmailed, but they would be even if you removed the taint of criminality by altering the law. Homosexuality between consenting males would no doubt no longer be criminal, but most of us would still regard it as a shocking thing.'
>
> I accept that, but I say this advisedly: I have not the least doubt that it is the criminality which makes the threat of blackmail effective. If it were not criminal blackmail would be much less used and much less effective. But assume that it is used. Assume that the enemy blackmails some unfortunate man and threatens him with exposure. If the taint of criminality has been removed the threatened official can go to his chief as he would if he were involved in some shocking entanglement with a woman, and make a clean breast of it. I think I know how wise chief would act. He

[299] ibid. cols. 695-6.
[300] ibid. col. 699.
[301] ibid. col. 704.

would certainly not condone, he would certainly discipline; but he would understand. [302]

Lord James (Eric John Francis) of Rusholme spoke about the repugnancy of blackmail and possible effects on national security and the homosexual:

I would ask those who feel comprehensible and strong repugnance to homosexuality, as many of us do in this House, to ask whether they do not feel a repugnance almost as great towards blackmail. We all know, and have been reminded to-day by the noble Earl, Lord (Philip) Swinton, that there is probably nothing which puts a stronger weapon into the hands of the blackmailer than the present laws on homosexuality. As I said when I spoke on this subject last time, one of the things which have impressed me most was that one of the most respected elder statesmen in this Chamber should have said that, all other arguments aside, if there existed no other argument, he would be in favour of reform of the law on the ground of national security because of this blackmail element. Nothing in the series of debates has given me greater pleasure than to hear that elder statesman, the noble Earl, Lord (Philip) Swinton, get up and say to-day, with all the force at his command, what he said to me in private earlier. In other words, however much repugnance we feel, the present law is no good. [303]

- Religious and Biblical Aspects of Homosexuality:

Lord (Donald Oliver) Soper spoke about the sofar unrepresented Nonconformity conscience and the opinions and convictions of the Free Churches:

Already most weighty, and profound evidence has been given by the most reverend Primate and the right reverend Prelates of the Church of England as to their state of mind and conviction, and the state of mind of those whom they represent. So far as I remember, nothing has been said about the Nonconformist conscience. Some of your Lordships may feel that there is a simple reason for this: that the said Nonconformist conscience has long since gone into liquidation and has become almost completely gaseous. This is a harsh and unrealistic judgment. There is a great deal more variety in what was more totalitarian in the days of men like Hugh Price-Hughes and Dr Clifford and there has been a great deal of movement of thought. But I deemed it sufficiently important to think that your Lordships' House would like to know something of what can be discovered by some little research as to the opinions and convictions of the Free Churches in this country.

I begin, not unnaturally, with the Methodist Church, and only strict attention to facts persuades me that this is, of course, the most important of the contributions that can be made from the Free Churches. In the Methodist Conference of 1958 the following resolution was presented by the Christian Citizenship Department and was carried unanimously: "The Department agrees with the Recommendation that homosexual behaviour between consenting adults be no longer a criminal offence. We considered with the utmost care the arguments of those who oppose this Recommendation and who fear that the removal of the ban of illegality would lead to an increase in homosexual behaviour. We believe that this possibility has been exaggerated and that there are weighty reasons why this suggested alteration in the law should be accepted. Such alteration would remove the anomaly which discriminates between male and female homosexuals; it would mitigate the evil practice of blackmail; and we believe it would help towards the creation of a heathier attitude on sex questions generally." That was in 1958; and the Report of the General Secretary of the Congregational Union, given to me as authoritative, very largely support this position. His words are that the Congregational Church is in general support of the principles expressed in the Wolfenden Report and explicit in this Bill. I wish I could say that the Baptists had yet seen as much light as has been granted to some of the other Free Churches in this regard, but they too are certainly on the move and would corroborate, if corroboration is necessary, the suggestion that there has been a vast and appreciable movement of thought and conviction towards the general substance of this Bill.

It may be that those of you who are not attached to the Free Churches will feel that this is an inconsiderable sort of contribution. I do not believe that; and I believe that it gives considerable support to the quality of leadership which belongs to this particular Bill. It is obvious that nothing can be led if it is already stationary and immovable. If there is this current of movement, this flux of change, then if it is indubitably, as the evidence suggests, in the direction of amelioration of this law and the taking away of the taint of criminality, particularly in respect of homosexual practices by consenting adults in private, then there is added reason to think that, if this Bill goes through, whatever may be its chances of enactment, it will fecundate a process that is already highly overdue and, at the same time, of paramount importance. [304]

Viscount (John Julius) Norwich asked the question if homosexuality was a sin or crime or perhaps both when

[302] ibid. cols. 686-7.
[303] ibid. col. 700.
[304] ibid. cols. 701-3.

he stated that:

> Is the homosexual act in fact a sin? Is it a crime? Is it both? Is it a sin, like adultery and fornication, without being a crime? Is it like civil trespass or parking your car in the wrong place, a crime without being a sin, or is it, like murder, both? Far be it from me to venture into the realms of moral theology. Far be it from me, in the presence of the most reverend Primate and other right reverend Prelates to pontificate in any way on the subject of sin, particularly as I believe that sin is a matter for the individual conscience, and I see no reason way your Lordships should be in the slightest degree interested in my ideas on the subject. But when it comes to crime, I think we are on very different ground, because crime is a matter which obviously, by definition, concerns us all.
>
> I looked up the meaning of crime in the dictionary this morning. It is defined as an act which is prejudicial to public welfare. My Lords, can the homosexual act between consenting male adults in private be considered to be prejudicial to the public welfare? Surely it cannot. Certain homosexual acts could by all means be so considered and should be. Acts which involve the corruption of a minor below the age of consent; acts which involve outraging public decency. These, of course, are naturally injurious to the public welfare. But it is not the homosexual nature of these acts which makes them so injurious. Such acts are equally to be condemned when committed by heterosexuals, and indeed equally and very rightly are condemned. We are therefore left with the inescapable conclusion that homosexuality in itself may or may not be a sin, but it is certainly not a crime. The fact remains that it is considered as a crime and indeed as an extremely serious one in the Law of England.
>
> This being the case, we are left with two alternatives, one or other of which is inescapable. On the one hand, we can accept that Parliament of this country is a body not only of legislators but of moralists, keepers of the public conscience and indeed the private conscience, from whom virtually no aspect of human behaviour, public or private, is immune. This, to me, is ugly, evil, totalitarian and Calvinistic in the worst sense of the word and intolerable to the extreme. If carried to the extreme it would, in fact, mean not only the end of all the liberties which we have upheld, developed and fought for for so long; it would also land us in a state of affairs in which man could not even call his conscience his own. If we do not accept this, and I for one do not, we have only one possible alternative: we can reject the existing legislation as being what it undoubtedly is, unwarranted and a monstrous trespass on the private affairs of human beings. If we do that, I think we can only do what I unhesitatingly and gladly do, which is support, with all the sincerity and all the warmth and vigour I may command, the Bill which is before us this afternoon. [305]

Viscount (Patrick William Daines) Barrington said the following about sin and lust:

> … the only sin we are dealing with now is lust, and the question is: What other forms or expressions of lust other than homosexuality lust are prosecuted? [306]

The Lord Archbishop (Arthur Michael) of Canterbury spoke about other abominable acts as follows:

> The word abominable came into our debates rather as a key word. I agree that the acts which we have been discussing are abominable acts, but many other things also are abominable, and as the Old Testament has figured a good deal in the debates I make no apology for turning to the other Testament. I do not find in the teaching of Christ any use of the word abominable in classifying sins, but I do find a passage in which a term very near to abominable is used; namely, sins which defile a man. Nothing could be more abominable than those. What are they? I use the best modem translation which I know:
>
> "Those acts of fornication, theft, murder, adultery, ruthless malice, fraud, envy, slander, arrogance."
>
> Those are the abominable sins which in the teaching of the Founder of Christianity defile a man. Some of those sins are sexual, some of them are not sexual; among the sexual sins there is not apparently an. isolation of homosexuality as being more cardinally sinful than are the others. [307]

Lord (Victor John) Stonham [The Joint Parliamentary Under-Secretary of State, Home Office] complemented the Archbishop and Bishops for their support for the decriminalisation of homosexuality:

> I should, however, like … to express to the most reverend Primate my own appreciation of the part he has taken during this debate, irrespective of one's views on this subject; indeed in my view, irrespective of the subject. As a humble lay member of the Church of England, I want to say that it has always been my dearest wish that the Bishops' Bench had long, long, ago taken a far more positive part in social causes. Possibly if they had done so, some of the things which

[305] ibid. cols. 705-6.
[306] ibid. col. 713.
[307] ibid. col. 716.

> are dear to the hearts of some of us on this side of your Lordships' House might have been achieved sooner than they have been. [308]

- Age of Consent and Equality:

Lord (Noel Gilroy) Annan brought more enlightened aspects to the debate when he spoke of younger people making a distinction now between corrupt heterosexual and corrupt homosexual acts rather then just condemning them:

> Those of us who teach in schools or universities have often heard discussions of this kind, and what strikes us is, I think, the unanimity of opinion which one hears on this matter. It is unanimity which, as I say; springs from the sense of injustice. They perfectly understand that people will be morally indignant; what they do not understand is why this moral indignation should be transmuted into criminal law. I myself find, when I listen in to these discussions, that no longer do people place homosexuality in a kind of Gehenna below all other kinds of corrupt sexual behaviour. On the contrary, what people do is to make a distinction between corrupt heterosexual and corrupt homosexual acts, on the one hand, and distinguish them sharply from other kinds of sexual behaviour in which they see no reason for the law to intervene. [309]

Lord (Noel Gilroy) Annan further spoke about the differing ages of consent for females and males:

> What I understand to be the law of this country is that no girl may have sexual intercourse before the age of 16. After 16, she is capable, of course, of going into a world in which she may be seduced by her employer or by other people. The noble and learned Viscount [Reginald Edward Dilhorne] has said that after the age of 21 young men should not have this temptation put in front of them. Is the noble Viscount suggesting that the moral fibre of young men of 21 and over is feebler than that of girls of 16 and over? [310]

Lord (Victor John) Stonham [The Joint Parliamentary Under-Secretary of State, Home Office] used the research done by Mr Schofield about the age of consent:

> Mr Schofield's work, [311] I am happy to say, was undertaken with the assistance of a substantial grant from the Home Office, though the views expressed are his own and not necessarily those of the Home Secretary. I am glad he deals with what I always considered the principal objection to any relaxation of the law as between consenting adults; namely, the danger that any change there might affect the position of children. If he makes anything clear – and he makes many points clear to me – Mr Schofield's researches confirm that child molesting is a quite separate phenomenon and should not be confused with adult homosexuality. [312]

- Effects of Homosexual Criminality:

The Earl (Arthur Kattendyke Strange David Archibald) of Arran provided an example of families suffering as a result of te current criminal situation:

> I said on Second Reading that my reason for introducing this Bill was that I do not like the persecution of minorities. I do not propose to repeat myself, but I will give one single example of what is involved. I have here a letter from a father who writes – and I quote with his permission, of course:
>
> "We, that is my wife and I, are particularly anxious that this Bill shall become law because our son is, most unfortunately, a homosexual. Naturally we are very concerned, worried and terrified lest he gets into serious trouble as the result. Recently I had a friendly talk with him on his behaviour and the appalling consequences should he get found out. To my horror he replied, "Don't worry, Dad, if we get found out there will be no disgrace, I shall quietly snuff it. Understandably, I have not told my wife this, but I assure you I live in a world of perpetual fear and anxiety lest one of his contacts, who are unknown to me, should in some way expose him."
>
> By snuff it presumably the fellow means that he would kill himself. That letter seems to me to epitomise the

[308] ibid. cols. 724-5.
[309] ibid. col. 689-90.
[310] ibid. col. 723.
[311] Schofield, Michael, *Sociological Aspects of Homosexuality: A Comparative Study of Three Types of Homosexuals*, Longmans, Green and Co Ltd, London, 1965.
[312] *Parliamentary Debates*, House of Lords, 28 October 1965, vol. 269, col. 727.

situation and to show what it is all about. So of course one has to go on. [313]

Lord (Charles Frank) Byers reiterated the importance of homosexual law reform, as follows:

… I want to plead with the Government on two counts. On the Third Reading of the Murder (Abolition of Death Penalty) Bill the noble and learned Lord the Lord Chancellor said – and I echo his sentiments in full – that we shall look back one day and wonder why we did not do it before. Although this Bill may not command, perhaps, as much support in both Houses as that other Bill. I believe that in time the reform we are advocating in this Bill will come to be accepted as the normal law of the land. Indeed, in my view, as the nature of the problem becomes more and more openly recognised, homosexual law reform will go even further than we envisage to-day. [314]

Baroness (Barbara Frances) Wootton of Abinger made a strong case for discontinuing discrimination against homosexuals only:

… I listened to a number of disquisitions of a philosophical and a moral character, and I did not understand them. I listened also to discriminations made by noble Lords between one form of abnormal intercourse and another, and I was even more completely puzzled. I could only conclude that this was a queer form of physical geography with which I unacquainted.

I can understand that many noble Lords, as also do many outside this House, view these practices with disgust, but what I cannot understand is that this disgust, which is a personal and private emotion, should lead them to impose, and to wish to continue the imposition of, extremely heavy penalties (and the examples quoted in this House this afternoon are a reminder of how heavy those penalties are) upon people who indulge in these practices in private. By definition, no noble Lord, and no one outside this House, will, as a result of this Bill, be exposed to the spectacle of practices which cause him disgust. This Bill is confined to activities which are conducted in private, and it can therefore be only the imagination of your Lordships which will be disturbed by them.

My Lords, there is much misery in the world. Some of it is inevitable, at least in the present state of knowledge, and much of it – sometimes, one fears, most of it – is [literally] man made. If this Bill passes into law – it cannot pass this Session, but it might, if reintroduced, pass next Session – a by no mean negligible part of that misery will be relieved … I have confidence that your Lordships will not want to miss an opportunity of relieving the misery of even half a million or a million people, your fellow countrymen, when the opportunity offers. [315]

Lord James (Eric John Francis) of Rusholme encapsulated Baroness (Barbara Frances) Wootton of Abinger's plea for justice by stating:

… [I am] trying to do what the noble Baroness has just described – justice to those with whom one disagrees … [316]

The Marquess (David Harrington Angus) of Queensberry stated that currently homosexuals in Britain were the single largest class of criminals in the community:

… this is the largest criminal class in the community. There is no indication that any particular income or social group is any more likely to be homosexual than any other group, except perhaps that those who have enjoyed the advantages of a public school education may be a little more vulnerable.

What does this mean? It means that one out of 25 male doctors, lawyers, architects or members of any male group that you like to think of are likely to be homosexual and are likely to be committing criminal offences. Thank Heavens that the law finds it impossible to catch them! If they could be caught, we should he sending to prison some of the most highly intelligent and able people in this land. [317]

Resolved in the affirmative. Bill passed accordingly, and sent to the Commons.

[313] ibid. col. 682.
[314] ibid. col. 692.
[315] ibid. cols. 697-8.
[316] ibid. col. 698.
[317] ibid. cols. 708-9.

Table 11: House of Lords' Division: on Question Whether the Sexual Offences Bill Should Now Pass, 28 October 1965

CONTENTS	Devonport, V.	Kinross, L.	Silkin, L.	Horsbrugh, Bs.
Airedale, L.	Dinevor, L.	Lansdowne, M.	Snow, L.	Howard of Glossop, L.
Amherst, E.	Drumalbyn, L.	Latham, L.	Soper, L.	Iddesleigh, E.
Amulree, L.	Effingham, E.	Lincoln, L. Bp.	Southwark, L. Bp.	Ilford, L.
Annan, L.	Elliot of Harwood, Bs.	Listowel, E.	Stamp, L.	Inglewood, L.
Archibald, L.	Emmet of Amberley, Bs.	Lloyd of Hampstead, L.	Stonham, L.	Ironside, L.
* Arran, E.	Exeter, L. Bp.	Longford, E. (*L. Privy Seal*)	Strang, L.	Kirkwood, L.
Asquith of Yarnbury, Bs.	Falkland, V.	Maugham, V.	Strange of Knokin, Bs.	Leatherland, L.
Attlee, E.	Ferrers, E.	Mitchison, L.	Strathcarron, L.	MacAndrew, L
Audley, Bs.	Fleck, L.	Molson, L.	Swinton, E.	McCorquodale of Newton, L.
Barrington, V.	Foley, L.	Monson, L.	Taylor, L.	* Massereene and Ferrard, V.
Bedford, D.	Francis-Williams, L.	Mottistone, L.	Twining, L.	Monsell, V.
Blackford, L.	Gardiner, L. (*L. Chancellor*)	Mowbray and Stourton, L.	Vernon, L.	Morton of Henryton, L.
Boston, L.	Gifford, L.	Plummer, Bs.	Walston, L.	Northchurch, Bs.
Bowles, L.	Gladwyn, L.	Ponsonby of Shulbrede, L.	Ward of Witley, V.	Reith, L.
Brockway, L.	Grantchester, L.	Queensberry, M.	Wellington, D.	Remnant, L.
Burden, L.	Greenway, L.	Rea, L.	Wells-Pestell, L.	Rockley, L.
Burton of Coventry, Bs.	Haire of Whiteabbey, L.	Ridley, V.	Winterbottom, L.	Rowallan, L.
Byers, L.	Hastings, L.	Ripon, L. Bp.	Worcester, L. Bp.	St. Aldwyn, E.
Canterbury, L. Abp.	Henderson, L.	Ritchie of Dundee, L.	**NOT-CONTENTS**	St. Oswald, L.
Chichester, L. Bp.	Henley, L.	Robbins, L.	* Brocket, L.	Soulbury, V.
Chorley, L.	* Hertford, M.	Sainsbury, L.	Dilhorne, V.	Stuart of Findhorn, V.
Colyton, E.	Hilton of Upton, L.	St. Albans, L. Bp.	Exeter, M.	Tenby, V.
Cranbrook, E.	James of Rusholme, L.	St. Just, L.	Ferrier, L.	Waleran, L.
Croft, L.	Jessel, L.	Sandford, L.	Grimston of Westbury, L.	Williamson, L.
Cromartie, E.	Killearn, L.	Shackleton, L.	Hobson, L.	

Note: Abp.–Archbishop; B.–Baron; Bp.–Bishop; Bs.–Baroness; D.–Duke; E.–Earl; L.–Lord; M.–Marquess or Marchioness; V.–Viscount.
Source: *Parliamentary Debates*, House of Lords, 28 October 1965, vol. 269, cols. 729-30. * Are the tellers.

Re-introduction for its First Reading of the Sexual Offences Bill in the of House of Lords, 26 April 1966, was necessary because the Government in the Commons would not provide time for discussion. [318]

The Earl (Arthur Kattendyke Strange David Archibald) of Arran re-introduces the Sexual Offences Bill after its rejection in the House of Commons into the House of Lords for its first reading:

> My Lords, I beg leave to introduce a Bill to amend the law of England and Wales relating to homosexual acts in private. I beg to move that this Bill be now read a first time.
> Moved, That the Bill be now read 1[a]. – (The Earl of Arran).
> On Question, Bill read 1[a], and to be printed.

Sexual Offences Bill Receives Second Reading in the House of Lords, 10 May 1966 [319]

The Earl (Arthur Kattendyke Strange David Archibald) of Arran's Sexual Offences Bill receives a second reading in the House of Lords. The Lords divided on this Bill with the positive result of 70 voted for and 29 against the proposed measure.

Committee Stage of the Sexual Offences Bill in the House of Lords, 23 May 1966 [320]

[318] *Parliamentary Debates*, House of Lords, 26 April 1966, vol. 274, col. 44.
[319] *Parliamentary Debates*, House of Lords, 10 May 1966, vol. 274, cols. 605-52.
[320] *Parliamentary Debates*, House of Lords, 23 May 1966, vol. 274, cols. 1170-82, 1190-1208.

Sexual Offences Bill
Order of the Day for the House to be put into Committee read.
Moved, That the House do now resolve itself into Committee – (The Earl of Arran).
On Question, Motion agreed to.
House in Committee accordingly.

Amendments to the Proposed Sexual Offences Bill in the House of Lords, 16 June 1966 [321]

The House of Lords agreed to read this Sexual Offences Bill a third time; they voted accordingly 83 in favour and 39 against to do so. At the end of the debate the Lords passed the Bill 78 to 60 and sent it to the House of Commons.

The Sexual Offences Bill Reported Without Amendment by the House of Lords, 21 July 1967 [322]

The Earl (Arthur Kattendyke Strange David Archibald) of Arran very eloquently reaffirmed his supportive position for this long overdue reform, as follows:

> My Lords, I beg to move that this Bill do now pass … It was this House which gave the lead. Because of the Bill now to be enacted, perhaps a million human beings will be able to live in greater peace. I find this an awesome and marvellous thing. The late Oscar Wilde, on his release from Reading Goal, wrote to a friend: "Yes, we shall win in the end; but the road will be long and red with monstrous martyrdoms." My lords, Mr Wilde was right; the road has been long and the martyrdoms many, monstrous and bloody. Today, please God! sees the end of that road. [323]

After a number of congratulatory speeches Lord (Charles Frank) Byers concluded that:

> Many of us have campaigned for this reform for many years and I think that this House, in particular, may be extremely pleased with what it has achieved in the last few years. [324]

The Hansard states that 'On Question, Bill passed'.

1:–1.1.5. – ANOP Poll, November 1971 – Permissiveness in Australia [325]

In two successive opinion polls in November, 1971 and March 1972, ANOP has attempted to explore community attitudes towards those aspects of Australian society often described as being the product of permissive standards on the part of the population. In these surveys the broad subject of permissiveness was segmented into certain key areas that were considered suitable for large scale survey research. These areas covered:

(i) Community approval rates concerning certain manifestations of the so-called permissive society – both of a sexual and of a non-sexual nature.

(ii) Sex Education.

An overview of the first area, or manifestation enquiry, with particular reference to sexual manifestations together with an examination of the second area, sex education, is included in this Newsletter. Our next Newsletter (Part 2) will examine in greater detail attitudes towards the non-sexual aspects studied in the November and March survey.

Also, in future Newsletters, three of the aspects touched on in the manifestations section have been singled out for more detailed treatment:

(i) Homosexuality

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[321] *Parliamentary Debates*, House of Lords, 16 June 1966, vol. 275, cols. 146-178.
[322] *Parliamentary Debates*, House of Lords, 21 July 1967, vol. 285, cols. 522-6.
[323] ibid. col. 522.
[324] ibid.. col. 526.
[325] The following text is quoted from: Australian Nationwide Opinion Polls, 'Permissiveness in Australia', *Australian Public Opinion Newsletter*, vol. 1, no. 2, November 1971, pp. 20-23, 25-27.

(ii) Marijuana
(iii) Gambling

Phase I: An Overview of the ANOP Survey Into Manifestations of the Permissive Society

The first phase of the examination into so-called permissive standards involved a researching of community opinion on various outward and simply defined manifestations of modern society, the approval or disapproval of which would help to indicate how liberal-minded Australians are in outlook. The list ranged from such majority approved of aspects as mini skirts to such majority disapproved of aspects as wife swapping, legalised homosexuality and so on. The list included both aspects of a direct or indirect sexual nature (striptease shows, see-through dresses etc.) And also aspects of a more general, non-sexual nature (gambling, marijuana, women judges etc.).

Respondents were asked simply whether they approved or disapproved of each of the aspects treated. The Australia-wide results are reproduced below, in descending order of approval. [See Table 12, page 103].

When looked at in sum, the results suggest that, in terms of tolerance towards certain controversial aspects of modern society, Australians may not be as socially tolerant or liberal minded in their outlook as constant exposure to the term permissive society has many to believe. Indeed it appears, even though this list is far from comprehensive and is weighted slightly more towards the more openly controversial aspects of the permissive society, that Australians are a good deal more conservative than is commonly admitted. Out of the list of 23 aspects we have only to go down the lists as far as no. 7 before there is an increase in percentage disapproving over approving. Indeed only 3 aspects had what might be called a sweeping majority in favour – mini skirts, women judges, and legalised abortion; on the other hand the last 8 (in order or [sic–of] disfavour) have more than a 2:1 ratio of disapproval over approval.

Table 12: ANOP, November 1971 – An Overview of the Survey Into Manifestations of the Permissive Society

Statement: Whether you approve or disapprove of each of the following aspects							
	Total Ap-proval	Total Dis-approval	Total Un-decided		Total Ap-proval	Total Dis-approval	Total Un-decided
1. Mini skirts	89	9	2	13. Striptease shows	35	54	11
2. Women as judges in court cases	80	18	2	14. Women in hotel public bars	34	63	3
3. Legalised abortion	61	33	6	15. Female impersonators	32	56	12
4. Coloured migrants settling in Australia	58	35	7	16. See-through dresses	30	64	6
5. The Pill for unmarried girls	55	39	6	17. Four letter words in books	29	64	7
6. Gambling	55	40	5	**18. Legalised homosexuality**	**28**	**62**	**10**
7. Australia's existing censorship laws	52	42	6	19. Four letter words in films	19	76	5
8. Easier divorce laws	52	41	7	20. Swearing in mixed company	11	86	3
9. Sunday hotel opening	47	48	5	21. Sex play in children under 5	10	78	12
10. Women's Lib	42	42	16	22. Marijuana	6	92	2
11. Nudist Camps	40	46	14	23. Wife swapping	3	95	2
12. Unmarried couples living together	36	51	13	Note: Figures are percentages. Emphasis added			

A suggestion then, implied by these results, is that the oft heard permissive society is a cliche or a slogan that confuses changes in mode of conversation with changes in mode of lifestyle. In other words, it may be that continued media exposure of the idea that today's is a permissive society has blinded many to the fact that in practice, society's sexual mores may have changed very little. There is no disputing the fact that permissiveness in terms of referring to and conversing about taboo subjects has increased (the overwhelming disapproval of aspect no. 20 – swearing in mixed company, notwithstanding); the ANOP survey has done much to suggest, however, that this is as far as the permissive society goes. A tentative conclusion, thus, appears to be that in practice, social acceptance of traditional sexual and other taboos has not changed apart from an increased tolerance of overt reference to these taboos in conversation. The fact remains that ANOP research has served only to suggest that the idea of there being a major change in morals is in fact unfounded; indeed violent disapproval is always voiced at anything resembling even slightly radical or non-conformist behaviour. If we make the assumption that a permissive society would reveal majority approval of most of the aspects tested, then this is **not** a permissive society – at least not nearly as much as the continued media use of the slogan permissive society would have us to believe.

One of the more important findings to emerge from our detailed age and sex data tabulations reinforces the

contention that no far reaching forces are at work undermining the morality system of the younger generation … this finding concerns the unexpected conservatism of the 18-21 year age group. Although sample sizes of age groupings like these are small (roughly 10% of an over 18 nationwide sample comprises 18-21 year olds), the findings were consistent enough to provide some justification for this contention. And despite the fact that the survey points out the expected differences in approval between over and under 35's, it is the surprisingly consistent occurrence of much lower approval figures as shown by the 18-21 year age group (as compared to the 22-24 year and 25-34 year age groups) that suggests the conservatism of under 21 year olds. Indeed the most liberal minded age group was generally the 22-24 age group.

With regard to the sexual aspects tested, if permissiveness is limited to a greater tolerance of overt reference to, rather than practice of, traditional taboo subjects then men are the main exponents. In most matters regarding direct or indirect reference to sexual topics (unmarried couples living together, the Pill, nudist camps, four letter words, striptease shows, etc.) It is the men who are more permissive. As will be seen later in this report, however, it is the women who revealed more permissive views on sex education. As a generalisation it could be true to say that societal roles encourage women to adopt a more permissive view on the more serious aspects of sex (sex training) and a less permissive view on the less serious.

In our state by state analyses, the most conservative and least permissive state overall in Australia is Qld. On all the directly or indirectly sexual aspects tested, Queenslanders featured almost always as least permissive in terms of aggregate disapproval. SA was next in the conservatism scale with Tas and WA following in that order. The most liberal minded states, were, not surprisingly, the larger ones – NSW and Vic.

The particular sexual aspects tested will now be examined in groups in more detail, and it is important to note that Table 13, [page 104], contains analyses of **approval rates** only.

When ages of the respondents are considered, a clear difference emerges – and this one are in which the young are more permissive than the middle aged. The 18-21 year olds show more approval for living in sin than do the under 35's generally … this is one area we can fairly conclusively associate with increased sexual permissiveness of the younger generation. It is, however, what may be called a soft core aspect of the permissive society (as opposed to more hard core permissiveness such as legalised homosexuality, four letter words, wife swapping, etc. – hard core meaning a greater deviation from traditional social standards) and as will be obvious later, under 21 extra tolerance tends to stop at the soft core aspects and not generalise to the hard core.

Table 13: ANOP, November 1971 – Percentages of Respondents Approving of Reform by Sex, Religion and Age

	Total	Sex		Religion			Age		
		Male	Female	Cath	Ang	None	18-21	22-35	Over 35
Legalised abortion	61	66	57	38	71	77	64	64	60
Legalised homosexuality	**28**	**27**	**29**	**20**	**30**	**52**	**37**	**39**	**22**
Note: Figures are percentages. Emphasis added.									

The question surrounding the issue of abortion involves basically two contentions – whether abortion should be legalised under certain conditions (maternal danger, etc.) And whether abortion should be available on demand. The first of these issues was posted as part of ANOP's look at the permissive society. The results showed that just on a third of Australians are against legalising abortion. There are significantly more women of this opinion than men; and Roman Catholic respondents reveal a greater disapproval than do people of other religious denominations. Taken overall, the results suggest that about 6 in every 10 Australians approve in **principle** of legalising abortion.

A far greater resistance to change is in evidence, however, with the question of legalising homosexuality. Over 60% of Australians disapprove of the legalisation of homosexuality. It is interesting to see that men and women agree on this issue, with virtually identical approval percentages … particularly relevant since women, in most other aspects examined and especially the ones with direct or indirect sexual overtones, tend to be noticeably more conservative and disapproving in outlook. It is the under 35's generally, but not the 18-21 year olds who reveal a greater tolerance of this and indeed the other more extreme aspects tested. As is repeated continually, the most liberal-minded age element of our society appears to be the 22-24 year age group, where the highest percentage approval is in evidence (44%).

Women in Australia – always the second sex, playing the supportive role.

Almost never up with the economic or political pace setters – not even equals in this mans world.

Now slowly they are reassessing their place in society – without fanfare, or much talk of women's lib.

AGE POLL found women still basically conservative in their social and political attitudes. Their world is suburban, domestic and narrow.

But the conservatism has some cracks – signs of a broadening outlook?

1:–1.1.6. – Age Poll, April 1971 – Women – A Separate Point of View [326]

Some paradoxes of Australian women here.

On one hand the pioneering image: stand by your man, grapple with the almost superhuman problems of the bush, fight them unaided if circumstances made it necessary.

On the other the tradition of a society that stressed the separation of the sexes, where women were, and chose to be, dependent, submissive.

But only within limits – Australian woman have built up a kingdom of suburban domesticity and defended it from all encroachments. Here the woman is supreme, the man the retainer, the subject.

It has been a matriarchal society in the home, but a distinctively masculine one outside it.

When women move in to compete seriously in the work world or the political one they are aware of entering the men's arena. Men determine the rules of the game, the style of play and the issues in the contest.

Often, defensively, women have retreated into sex-segregated organisations. These may simply reinforce the feminine sub-culture; others seek to storm the masculine employment or political citadels without coming face to face with the enemy.

But the rigid definition of sex roles is changing, spearheaded by the move of ever-increasing numbers of married women back into the workforce.

At first the drive was money – the feminine sub-culture frowned on working just because you enjoyed it. Somehow you'd failed if you needed to seek satisfactions outside husband and family.

But more and more women have been seduced by the satisfactions that a job, with its contacts outside the lonely – or inbred – suburbs, brings.

However, the pressures still pull in opposing directions.

Domesticity is exalted, the female peer group strong – and home-centred in its values.

Women still battle, but with growing confidence of their strength and indispensability, for equality in the work world. They have hardly taken on politics yet.

Australian women, then are caught in a stage of transition.

Their attitudes still lag behind their changing role, but for how long?

Age Poll found conservatism remains strong among the second sex, but with some interesting inconsistencies.

Women interviewed were most conservative on those social issues they saw as a threat to their families. [See Table 14, page 106].

They were more likely than men to say that pot, alcohol and hippies were wrong or dangerous.

The housewives were especially critical. Almost nine out of 10 said pot was wrong or dangerous, compared with 77 per cent of men. A little under half the housewives condemned alcohol, while only one in three men did.

When the issue did not directly threaten the home women became more permissive. **They showed greater tolerance towards homosexual than did men, for whom homosexuality challenges the masculine tradition of the society**.

But, oddly, they were also more permissive towards cigarettes than men. Fifty three per cent of men said cigarettes were wrong or dangerous – only 44 per cent of women.

Is the fear of lung cancer a more pressing one for men, or is it simply that the women are preoccupied with the immediately obvious evils of drink and drugs?

On the political social issues – censorship, capital punishment, and abortion – women's opinions were mixed.

They have more qualms about the highly personal and feminine concern of abortion. Ten per cent more women than men said it was wrong or dangerous. Is maternal instinct the factor that accounts for the difference?

Predictably, women show a greater bias towards censorship than their husbands. They move around in the

[326] Grattan, Michelle, 'Women – A Separate Point of View', *The Age*, 5 April 1971, p. 8. This poll was conducted for *The Age* by ASRB. Emphasis added.

world less, so fear permissiveness, the unknown, and those things they believe could destroy family patterns.

Table 14: Age Poll, April 1971 - Respondents' Attitude to Social Issues

Issues	Wrong-Dangerous		
	Total (1000)	Male (490)	Female (510)
1 Marijuana (Pot)	81	77	86
2 Alcohol	40	34	45
3 Hippies	44	42	46
4 Homosexuality	**48**	**52**	**44**
5 Cigarettes	49	53	44
6 Abortion	38	33	43
7 Censorship	37	44	31
8 Capital punishment	42	43	42
9 Communism	76	70	81
Note: Percentages rounded to nearest figure. Emphasis added.			

But they are rather more tender minded than men about capital punishment.

They were about as likely as men to say the death penalty was wrong, but they were less likely to positively endorse it (38 per cent of women, but 45 per cent of men, said capital punishment was right). More women than men opted for the neither right nor wrong category or had no opinion.

Housewives were even more squeamish than women in general on the death penalty.

A puzzle, this Capital punishment is often defended as protecting our women and children. And women have been (or have assumed to be) its hardline supporters.

The women's world is narrow, insulated. They respond more readily to threats, especially those that come from outside their immediate sphere of knowledge.

Table 15: Age Poll, April 1971 - Attitude to Russians

National Characteristics	Total (1000)	Male (490)	Female (510)
Aggressive	63	57	71
Different from me	70	66	75
Untrustworthy	46	40	49
Arrogant	49	42	55
I despise them	20	19	21
Note: Percentages rounded to nearest figure.			

So they were more frightened of communism than men. More than eight out of ten women, but only seven out of ten men, said it was wrong or dangerous.

Externally, women were very likely to think of the Russians as aggressive and untrustworthy. [See Table 15, page 106].

Locally, they were highly suspicious of the power of trade unions. Fifty-four per cent of women thought unions had too much power, 44 per cent of men.

Theft conservatism and fears are linked to their vote: 39 per cent said they voted Liberal at the last election compared to 28 per cent of men.

It's obviously a fallacy to argue, with the former secretary of the NSW Labor Party (Mr WR Colbourne) that 'women just vote as their husbands tell them'. But do the Liberal wives of Labor supporters tell their husbands how they vote?

Women are getting out into the world more, but still cautiously [and] nervously. They are less unionised, less likely to talk politics with their workmates, more frightened of radical revisions of the system.

They look for ways to patch the political garment. They are hesitant to unpick and begin to weave it again; certainly they are more reluctant than men to take the drastic step of throwing it away entirely and searching for a new one.

And where better to start political patching than at the local level? Women in general and housewives in particular were rather more likely than men to favour greater power for local councils.

This is the political level the suburban housewife understands – the level of the shopping centre, the neighbourhood, creche and local organisations.

She sees what can be done here – it is small enough to handle, compared with the more distant State and Federal Governments.

She is familiar with the world, with its power and limitations, through her personal experience. The outside world comes to her secondhand – through her husband, the newspapers and TV screen and the women's magazines.

Table 16: Age Poll, April 1971 - Respondents' Social Pecking Order - Occupations Rated by Respect

Occupation Placed First	Total (1000)	Male (490)	Female (510)
Doctor	42	27	47
Teacher	21	24	19
Clergyman	18	15	20
Lawyer	6	7	5
Engineer	6	8	4
Member of Parliament	4	4	5
Builder	1	2	1
Computer Programmer	x	x	x
Printer	x	x	x
Stockbroker	x	1	x
Not stated	1	2	0
Note: x Less then 1 per cent			

Pecking Order [See Table 16, page 106].

For most women dependence is a reality, and life revolves round day-to-day family crises.

Their insecurity was reflected in other groups they thought had inadequate power: police, church and doctors.

When it comes to their pecking order of respect admire those who offer help, protection, support. Forty-seven per cent of women put doctors top or their tree of respect – only 37 per cent of men. Typically, a

young housewife explained: 'I've got children and we rely on the doctor so much.'

And for the women the spiritual medicos – the clergy – rank just ahead of the teachers in winning respect, despite the obvious importance of teachers for their children's future.

The clergy bring support, they are authority figures in the local community and women, who are rather more frequent churchgoers than men, have greater contact with them.

And are women the more idealistic sex?

The female ragbag of political worries is very much the same as their husbands', with a few minor, family-centred variations.

Drugs concern them a little more (it could happen to my child) and so do pensioners (a very human, domestic problem, and the old are weak and dependent, like children – and women themselves?).

But surprisingly, the women were rather less likely than men to put inflation as the main problem facing the community.

In general, though, they are willing to let men determine the political priorities.

For the time being.

1:–1.1.7.–Age Poll, July1973 – We're Still A Conservative Lot [327] [328]

Australians are basically conservative in their thinking on a wide range of social issues, the latest Age Poll suggests.

While they are more liberal on the issue of homosexuality than they were two years ago, they show no signs of weakening appreciably on the other issues.

For example, they are overwhelmingly against communism (73 per cent describe it as dangerous), and more often against abortion and in favour of capital punishment.

And while they have shifted ground on censorship, and homosexuality, the number still opposed to both outweighs the number of those who look on them tolerantly.

Age Poll also tested opinion on five other social issues – cigarettes, marijuana, alcohol, hippies and poker machines.

In each case – but especially with marijuana – the majority were disapproving. (The results for these five will be analysed in *The Age* tomorrow.)

Age Poll interviewed 2000 people aged 18 and over in 80 electorates, both metropolitan and non-metropolitan, in all six States and the ACT.

They were asked to say whether they thought capital punishment, abortion, censorship, communism and homosexuality were: very wrong/dangerous, wrong, neither right nor wrong, right or very right/harmless. [See Table 17, page 108].

The poll suggests that over the past two years there has been a slight hardening of opinion on capital punishment.

An Age Poll, conduct in mid-1971 [see Table 11, page 102] (on a smaller sample restricted to Sydney and Melbourne), showed that 42 per cent thought capital punishment was either wrong or very wrong, while 41 per cent thought it was either right or very right.

This time 39 per cent thought it wrong or very wrong, while 47 per cent thought it right or very right. Support for capital punishment was related closely to age, occupation and education.

Thus 50 per cent of blue-collar workers and 65 per cent of those with trade qualifications described capital punishment as right or harmless, compared to 44 per cent of white collar workers and 30 percent of those with university education.

On the other hand, 56 per cent of the university educated group thought it wrong or dangerous.

Among the age groups, the strongest support for capital punishment came from those aged 35-44 (49 per cent of whom said it was right or harmless), and those in the 45-49 and 60 and over age groups (each 48 per

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[327] Radic, Leonard, 'We're Still A Conservative Lot', *The Age*, Monday 30 July 1973, p.7. This poll was conducted for *The Age* by the ASRB. Emphasis added.

[328] An almost word for word article as in *The Age* of the same date, using the same ASRB data, appeared in *The Sydney Morning Herald* on Monday 105 uly 1973, p. 10 under, the headline 'Conservatism Shown in Poll' and was called 'Herald Survey: based on an ASRB Poll'. The following day, Tuesday 31 July 1973, *The Sydney Morning Herald* published, on page 8, the second installment of the ASRB Poll with the headline 'People Condemn Marihuana'.

cent).

Table 17: Age Poll, July 1973 - Respondents' Attitudes to Capital Punishment, Abortion, Censorship, Communism, Homosexuality, Marihuana, Alcohol, Hippies and Poker Machines

Opinion of Respondents	Capital Punishment			Abortion			Censorship			Communism			**Homosexuality**		
	Total	M	F	Total	M	F	Total	M	F	Total	M	F	**Total**	**M**	**F**
Very wrong/dangerous	30	29	32	32	31	34	14	16	13	73	70	76	**29**	**33**	**26**
Wrong	9	8	9	7	6	7	13	17	8	10	11	8	**10**	**9**	**11**
Neither right nor wrong	12	11	15	23	23	23	26	23	28	10	11	9	**28**	**28**	**28**
Right	14	14	14	14	16	16	16	17	16	3	3	2	**11**	**10**	**11**
Very right/harmless	33	37	29	21	21	21	30	26	34	3	3	2	**18**	**17**	**20**
Don't know	2	1	2	3	3	3	1	1	x	2	2	2	**4**	**3**	**4**
Opinion of Respondents	Cigarettes			Marihuana			Alcohol			Hippies			Poker Machines		
	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F
Very wrong/dangerous	31	30	31	74	69	79	21	15	28	29	29	28	43	42	44
Wrong	19	19	19	9	11	8	14	13	14	12	12	11	14	14	15
Neither right nor wrong	32	32	33	8	9	7	41	41	40	29	27	32	24	23	26
Right	8	9	6	4	4	3	12	14	10	10	10	10	8	10	6
Very right/harmless	10	10	10	3	5	2	11	16	7	19	20	18	10	11	8
Don't know	x	x	x	2	1	2	x	x	x	1	2	1	x	x	x

Note: Percentages rounded to nearest whole number. x Indicates less than one per cent. The total sample of 2,000 respondents, consisted of 997 males and 1,003 females, for all categories. Emphasis added.

At the other end of the age scale only 30 per cent of those in the 18-21 age group saw capital punishment as right or harmless, whereas 53 per cent of this group saw it as wrong or dangerous.

Liberal voters were inclined to take a more liberal view of capital punishment than supporters of the other major parties. Only 33 per cent of Liberal voters described it as wrong or dangerous, compared to CP voters (34 per cent), ALP voters (43 percent) and DLP voters (59 percent).

With abortion, too, a slight hardening of public opinion was suggested, compared with the Age Poll of two years ago.

On that occasion, 38 percent described it as wrong or dangerous, and 40 per cent as right or harmless. This time 39 per cent of Australian described it as wrong or dangerous, and 35 per cent described it as right or harmless.

Women (41 per cent wrong or dangerous, 32 per cent right or harmless) were inclined to take a less liberal line than men (37 per cent wrong or dangerous, 37 per cent right or harmless).

Again there was a direct age correlation, with young people taking a more liberal or tolerant attitude to abortion than the middle-aged or the old.

Those with higher education were also more inclined to see abortion as right or harmless than those with primary or secondary education only.

Thirty-three per cent of the university-educated group saw abortion as wrong or dangerous (6 per cent below average), while 47 per cent (12 per cent above the average) saw it as right or harmless.

Among the major religious groups, Catholics were by far the strongest in their opposition to abortion. Sixty-two per cent described it as wrong or dangerous, compared to Methodists (37 per cent), Presbyterian (33 per cent) and Anglicans (28 percent).

However, 7 per cent of Catholics also described abortion as right, and a further 10 per cent as very right and harmless.

On the subject of censorship, answers reflected an increased support for the idea, with women taking a generally more conservative line than men.

Thirty-three per cent of men but only 21 per cent of women thought censorship was wrong or dangerous, while 43 per cent of men, but 50 per cent of women thought it right or harmless.

The overall figure (27 per cent wrong or dangerous, 46 per cent right or harmless) compares with the Sydney-Melbourne poll figures two years ago (37 per cent wrong or dangerous, 41 per cent right or harmless.

Support for censorship was stronger among blue-collar workers than white-collar workers, among those with primary or secondary education than with the tertiary-educated, and among the middle-aged and older rather than young people.

Forty-tight percent of Liberal voters and 47 of CP voters described censorship as right or harmless

compared with 44 percent of Labor voters and 48 per cent of DLP voters.

Catholics were more convinced that censorship was right or very right (51 per cent) than Anglicans (46 per cent), Presbyterians (45 per cent) or Methodists (42 per cent).

Tolerance of communism was strictly limited. While 10 per cent were non-committal, only 3 per cent were prepared to say it was right and another 3 per cent very right or harmless.

Against this has to be set a resounding 73 per cent who described it as very wrong or dangerous (76 per cent women, 70 per cent men) and another 10 per cent who described it simply as wrong.

The level of tolerance was reduced the higher one went, up the age scale and the lower one went on the education scale.

The strongest group support for communism came from the university-educated (8 per cent right, 7 per cent very right), and from those who described themselves as agnostics (12 per cent right, 10 percent very right).

The least tolerant were those with primary education only, housewives and those with some secondary education.

Liberal voters (92 per cent of whom described communism as wrong or dangerous), CP voters (93 per cent wrong or very wrong) and DLP voters (84 per cent) were less tolerant of communism than ALP voters (74 per cent wrong or very wrong).

Table 18: Age Poll, July 1973 - Major Religious Groups Responses

Opinions of Respondents	**Homosexuals** as Right or Harmless %
Presbyterians	30
Anglicans	30
Catholics	24
Methodists	23
Agnostics	59
Note: Emphasis added.	

On the question of **homosexuality** respondents were much more inclined to sit on the fence than on communism, capital punishment or abortion.

Twenty-eight per cent said it was neither right nor wrong. The majority, however, were opposed to it –39 per cent describing it as wrong or very wrong, and 29 per cent as right or very right.

Two years ago 48 per cent of Melbourne and Sydney people described it as wrong or very wrong, and 25 per cent as right or harmless.

Tolerance of **homosexuals** was stronger among women than men, among young people (and also those in the 25-34 age brackets) more than the middle-aged or old, and among the university and tertiary-educated rather than those with lesser education or trade qualifications.

Among the major religious groups, Presbyterians and Anglicans were more inclined to see **homosexuals** as right or harmless (each 30 per cent) than Catholics (24 per cent) or Methodists (23 per cent). [See Table 18, page 109].

By comparison, 59 per cent of agnostics considered **homosexuals** right or harmless.

On **homosexuals**, abortion and communism – but not censorship or capital punishment – non-metropolitan voters took a firmer, and less liberal, line than metropolitan voters.

(Age Poll is conducted for *The Age* by the Australian Sales Research Bureau in association with the Department of Political Science in the University of Melbourne).

1:–1.1.8.–Chappell and Wilson 1967 Survey – Public Attitudes to the Reform of Law Relating to Abortion and Homosexuality [329]

1. The Existing Law

As was made clear in the Report of the Committee on Homosexual Offences and Prostitution (the Wolfenden Committee) in the United Kingdom, it is important to make a distinction between homosexual offences and homosexuality. [330] The dictionary definition of the latter is a sexual propensity for persons of one's own sex. 'Homosexuality, then is a state or condition, and as such, does not, and cannot, come within the purview of the criminal law.' [331]

The expression homosexual offences is not defined by Australian criminal law. However, each of the States proscribe certain forms of homosexual behaviour under the guise of offences against morality or unnatural

[329] Chappell, Duncan, and Wilson Paul R, 'Public Attitudes to the Reform of the Law Relating to Abortion and Homosexuality', *The Australian Law Journal*, vol.42, September 1968, pp. 175-180. (Part I of this article was published in the same volume at p. 120).

[330] *Report of the Committee on Homosexual Offences and Prostitution*, HMSO, London, 1957, p. 11.

[331] ibid.

offences. [332] These expression relate to a variety of offences which are not uniformly defined, and which also forbid forms of sexual deviance other than homosexual behaviour. But following the practice of the Wolfenden Committee, the offences described below may be regarded as homosexual offences.

Buggery

The offence of buggery at common law consists of sexual intercourse, in public or in private: (i) per anum between man and man; or (ii) in the same manner between man and woman; or (iii) in any manner between man or woman and beast. [333]

It is only in the first of these forms that the act constitutes a homosexual offence. The word sodomy is normally used to denote intercourse in the first or second of these forms, and the word bestiality in the third form. [334] As in the case of rape, it is not necessary to prove a completed act of sexual intercourse, the crime of sodomy being established on penetration of the penis in ano. [335] Or in the quaint if archaic terms of the SA Criminal Law Consolidation Act, 'to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.' [336]

The definition of buggery in Australian criminal statutes is vague and obscure, words and phrases being used which reflect the deep seated prejudice felt against this type of conduct. [337] Thus the NSW *Crimes Act* states that 'whosoever commits the abominable crime of buggery, or bestiality, with mankind, or with any animal, shall be liable to penal servitude for fourteen years.' The addition of the phrase or bestiality seems unnecessary and confusing, for as has been mentioned, bestiality is a form of buggery at common law. The word abominable is of emotional rather than legal significance.

In the other non-code States, Vic and SA, the term buggery is used in its normal common law sense. However, marked variations exist in the maximum penalties which may be awarded for this offence. In Vic, buggery committed with any person under the age of fourteen years, or with, or upon any person with violence and without consent, is punishable by a maximum of twenty years imprisonment. Other forms of buggery may be punished by a maximum of fifteen years imprisonment. But in SA, buggery is punishable by a maximum of only ten years imprisonment.

The criminal codes of Qld, Tas and WA avoid use of the word bugger, preferring instead provisions which, somewhat euphemistically, refer to this crime as carnal knowledge against the other nature. For instance, the WA *Criminal Code* states that 'any person who—(1) has carnal knowledge of any person against the order of nature; or (2) has carnal knowledge of an animal; or (3) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a crime and is liable to imprisonment with hard labour for fourteen years with or without whipping. [338] The Qld and Tas Codes contain almost identical provisions. [339]

The use of vague, obscure and emotional words and phrases, such as those just described, in criminal statutes, does little to enhance respect for the law among members of the community. In a society which now discusses far more freely matters relating to sex and reproduction, no useful purpose would seem to be served by their retention in these statutes. Even if no liberalisation is effected of Australian laws dealing with homosexual offences, we might at least consider revision of these laws to provide rational definitions of buggery and allied offences.

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[332] The expression 'offences against morality' is used generally in the criminal codes, and that of 'unnatural offences' in the criminal statutes of the non-code States.

[333] *Report of the Committee on Homosexual Offences and Prostitution*, op. cit., p.30.

[334] Turner, JWC, (ed), *Russell on Crime*, 12th edition, 1964, p.735.

[335] *R. v. Wardle* [1947] VLR [Vic Law Reports] 389.

[336] s. 73.

[337] The offences of buggery and attempted buggery are defined in the *Crimes Act* 1900 (NSW), ss. 79,80; *Crimes Act* 1958 (Vic), s. 68; *Criminal Law Consolidation Act 1935-1957* (SA), ss. 69,70; *The Criminal Code* (Qld), ss. 208,209; *Criminal Code* (Tas), s. 122; *Criminal Code* (WA), ss. 181, 182.

[338] s.181.

[339] In Qld, *The Criminal Code* (Qld), s. 19(5), while the maximum penalty is the same as in WA, an offender convicted of buggery may be whipped only if sentenced to less than two years imprisonment with hard labour. The maximum penalty in Tas, *Criminal Code* (Tas), s. 389(3), for buggery is twenty-one years imprisonment. Whipping is available if the offence involved the use of serious personal violence (ibid. s.389(6). Offenders convicted of buggery in the non-code States may also be whipped.

Indecent Assaults on Males by Males

Various types of indecent assault on males, including those made with intent to commit sodomy and related homosexual acts, are punishable in each Australian State. [340] But only in Tas are indecent assaults by males on males specifically proscribed. [341] In the other States, offences of indecent assault are framed in more general terms to include assaults on males by both males and females. Section 70 of the SA *Criminal Law Consolidation Act* provides, for example, that:—

> 1 Any person who: – … (c) indecently assaults any male person: shall be guilty of a misdemeanour and liable to be imprisoned for any term not exceeding seven years and may be whipped.
> 2 No male person under the age of seventeen years shall be deemed capable of consenting to any indecent assault.

The special statutory protection given young males in the SA Act is also extended in other States. [342] Thus in Vic, no male person under the age of sixteen may consent to any indecent assault. [343] In WA and Qld, it is an offence for any person to 'unlawfully and indecently deal(s) with any boy under the age of fourteen years.' [344] The term deal is said, in the Qld Code, to include doing any act which, if done without consent, would constitute an assault. [345]

The NSW *Crimes Act* seeks to exclude consent as a defence to a charge of indecent assault, no matter what the age of the victim may be. Section 81 of the Act provides that 'whosoever commits and indecent assault upon a male person of whatever age, with or without the consent of such person, shall be liable to penal servitude for five years.' [346]

Indecent Assaults by Females on Females

Homosexual conduct between females has not received the same attention from the criminal law as has that between males. However, an indecent assault by one female on another may take the form of a homosexual act. Since indecent assaults by females on females are proscribed generally, if not specifically, by the laws of each Australian State, they have been included within the group of homosexual offences. [347]

In the United Kingdom, the Wolfenden Committee found no case in which a female had been convicted of an act with another female which exhibited the libidinous features characterising sexual acts between males. The Committee said they were 'aware that the criminal statistics occasionally show females as having been convicted of indecent assaults on females; but on enquiry we find that this is due in the main to the practice of including in the figures relating to any particular offence not only those convicted of the offence itself, but also those convicted of aiding and abetting the commission of the offence. Thus, a woman convicted of aiding and abetting a man to commit and indecent assault on a female would be shown in the statistics as having herself committed such an assault.' [348]

No criminal statistics are available in Australia which reveal the number of females convicted each year of indecent assaults on females. We may reasonably assume, however, that, as in the United Kingdom, the number would be very small.

Gross Indecency Between Males

The criminal laws of all Australian States contain provisions prohibiting a range of conduct between males

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[340] *Crimes Act* 1900 (NSW), ss. 80, 81; *Crimes Act* 1958 (Vic), s. 68(3); *Criminal Law Consolidation Act 1935-1957* (SA), ss. 70(1)(c), 70(2); *The Criminal Code* (Qld), ss. 210, 336, 337; *Criminal Code* (Tas), ss. 123, 127; *Criminal Code* (WA), ss. 183, 314, 315. For a general description of the law relating to indecent assault see Howard, C, *Australian Criminal Law*, 1965, pp. 147-151.

[341] *Criminal Code* (Tas), s. 123. Indecent assault upon females are dealt with by s. 127.

[342] As to consent generally as a defence to a charge of indecent assault, see Howard, op. cit. p. 148.

[343] *Crimes Act* 1958 (Vic), s. 68(4).

[344] *The Criminal Code* (Qld), s. 210; *Criminal Code* (WA), s. 183.

[345] ibid. s .210.

[346] The effect of this provision is considered in the case of *R. v. B. and L.* (1954) 71 WN [Weekly Notes] (NSW) 138.

[347] *Crimes Act 1900* (NSW), s.76; *Crimes Act* 1958 (Vic), s.55; *Criminal Law Consolidation Act* 1935-1957 (SA), s. 56; *The Criminal Code* (Qld), ss 216, 350; *Criminal Code* (Tas), s 127; *Criminal Code* (WA), ss 189, 328.

[348] *Report of the Committee on Homosexual Offences and Prostitution*, HMSO, London, 1957, op. cit. p.38.

referred to, in vague terms, as acts of indecency or gross indecency. [349] Section 123 of the Tas Criminal Code is typical of these provisions, stating that 'any male person who, whether in public or private, commits any indecent assault upon, or other act of gross indecency with, another male person, or procures another male person to commit any act of gross indecency with himself or any other male person, is guilty of a crime.'

The terms indecency and gross indecency are not defined by statute, nor have they received great judicial notice. However, it was held in *Hunt's* case [350] that there is no need for actual physical contact for an act to be indecent. It is sufficient that 'two men put themselves in such a position that it can be said that there is grossly indecent exhibition going on … [351]

The Wolfenden Committee noted that 'from the police reports we have seen and the other evidence we have received it appears that the offence usually takes one of three forms; either there is mutual masturbation; or there is some form of intercrural contact; or oral-genital contact (with or without emission) takes place. Occasionally the offence may take a more recondite form; techniques in heterosexual relations vary considerably, and the same is true of homosexual relations.' [352]

It has been stated, not surprisingly, that it is difficult to distinguish between indecency and gross indecency. [353] Nonetheless, an attempt was made to perform this task in the Qld case of *R. v. Whitehouse*. [354] In the view of Mr Justice Philp, the words gross indecency used in the Qld *Criminal Code* meant more than just indecency: ' … it seems to me,' said his Honour, 'that the ordinary meaning of the word gross in such a context as this is as appears in the Oxford Dictionary, plain, evident, obvious. I think that what the legislature had in mind was that [what] one might call a slight case of indecency between males was not struck by the section … ' [355] No example was given by the judge of an act which might be a slight case of indecency as distinct from a gross act of indecency. Elsewhere, the suggestion has been made that kissing between two males under circumstances which showed that the act was immoral and unnatural might be regarded as indecent, but could hardly be called an act of gross indecency. [356]

It is interesting to note that in NSW, unlike the other States, it need not be shown that the act in question was grossly indecent. Section 81A of the *Crimes Act*, 1900 (NSW), dealing with Outrages on Decency, purports to prohibit any act of indecency between males, whether in public or private. Thus, if the above suggestion is correct, immoral or unnatural kissing between males will amount to an indecent act in NSW and will be punishable as such, but will not be a grossly indecent act, and will not be punished under this head in the rest of Australia. [357]

Summary Offences Involving Indecency Between Males

A number of forms of indecency committed in public fall within the provisions of State legislation classified generally as police offences, and conduct which might well be subject of a charge of indecency or gross indecency between males under the statutes noted above, is prosecuted summarily. In NSW, for example, it is an offence under s. 12 of the *Police Offences Act 1901*, to behave indecently in any street or public place, or in any police office or police station-house, while male persons soliciting or importuning for immoral purposes in a public place may be convicted of an offence under s. 4(2)(o) of the *Vagrancy Act 1902*.

A survey of practice in the United Kingdom regarding prosecution of homosexual offences revealed that most of those detected committing acts of gross indecency were dealt with summarily under various local acts and by-laws akin to Australia police offences legislation. [358] It was also found that there was no uniform prosecution policy adhered to throughout the United Kingdom in relation to homosexual offences, 'with the result that in one place an accused may find himself facing a jury, charged with an indictable offence, while in another, for an offence committed in identical circumstances, he may be tried summarily and punished with a

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[349] *Crimes Act 1900* (NSW), s. 81B; *Crimes Act 1958* (Vic), s. 69; *Criminal Law Consolidation Act* 1935-1957 (SA), ss. 58, 71; *The Criminal Code* (Qld), ss. 211, 227; *Criminal Code* (Tas), ss. 123, 137; *Criminal Code* (WA), ss. 184, 203.

[350] *R. v. Hunt* [1950] 2 All ER [All England Law Reports] 291.

[351] ibid.

[352] *Report of the Committee on Homosexual Offences and Prostitution*, HMSO, London, 1957, op. cit. p.38.

[353] Radzinowicz, L, (ed), *Sexual Offences*, 1957, p. 349.

[354] *R. v. Whitehouse* [1955] QWN [Qld Law Reporter & Weekly Notes] 100.

[355] ibid. at p. 102.

[356] Radzinowicz, L, ibid. citing Mead and Bodkin *The Criminal Law Amendment Act*, 4th ed., 1913, p. 83.

[357] Although it may be punishable as offensive behaviour, if committed in public, or as some other summary offence.

[358] Radzinowicz, L, op. cit. p. xx.

small fine.' [359]

No similar survey of prosecution policies in this field has been made in Australia, nor is it possible to determine from existing statistical data the number and proportion of homosexual offences dealt with on indictment or summarily in this country each year. However, it seems likely that a situation prevails in Australia similar to that already described in the United Kingdom.

2. Public Attitudes Towards Homosexuality

Max Harris has claimed that Australians think of the homosexual as if he were 'a mysterious non-human aberration from outer space.' [360] While our study did not aim specifically to establish the truth or otherwise of this statement, the survey results suggest that there may well be substance in Harris' contention. Certainly a much larger proportion of the population opposes the liberalisation of laws relating to homosexuality than those concerned with abortion.

Table 19: Chappell and Wilson 1967 Survey - Liberalisation of laws Relating to Homosexuality

Statement: It should no longer be an offence for consenting males to engage in **homosexual acts in private**.					
	Yes	No	Unsure	Don't know	Total
Numbers	230	669	125	21	1045
Percentage	22%	64%	12%	2%	100%
Note: Emphasis added.					

For of the total sample of 1,045 informants [see Table 19, page 113] only twenty-two per cent agreed with the statement: 'It should no longer be an offence for consenting males to engage in homosexual acts in private.' Sixty-four percent of the sample disagreed with this statement, twelve per cent were unsure, and two per cent did not answer the question.

Comments made by many informants to interviewers clearly revealed the nature of their feelings towards homosexuals. Many said that homosexuals 'should be whipped severely', while others, perhaps more kindly, suggested they 'should be sentenced to long term of imprisonment.' In general, the feeling was that homosexuality was unnatural and something in which a full-blooded Australian male did not indulge. The small majority who thought that homosexual acts between consenting males in private should be lawful usually justified their opinion on the ground that it was a matter completely personal to those involved and that it should be in no way concerned with the law.

Table 20: Chappell and Wilson 1967 Survey - Males Favouring More Liberal Laws

Males – Age Groups	Percentage
16–25 years	24%
26–45 years	30%
46– >	15%

Contrary to our expectations, we found no direct relationship between liberalising legislation concerning homosexuality and age – twenty-four percent of men [see Table 20, page 113] the sixteen to twenty-five age group thought it should be legal, compared with thirty per cent in the twenty-six to forty-five group, and fifteen percent of those forty-six and over. The differences of opinion between men and women on this question were not significant — twenty-three per cent of men agreed to liberalisation compared with twenty per cent of women. The age pattern that emerged in the analysis of male opinion was also found In that of females, with the percentages slightly lower throughout.

Table 21: Chappell and Wilson 1967 Survey - Correlation of Education Levels and Those Favouring More Liberal Laws

Statement: It should no longer be an offence for consenting males to in **homosexual** acts in private.	
Education level	Percentage
Tertiary level	48%
Secondary level	23%
Not beyond primary school	9%
Note: Emphasis added.	

Table 22: Chappell and Wilson 1967 Survey - Correlation of Occupation and Those Favouring Change

Occupational group	Percentage
Professional	45%
Labourers and unskilled workers	16%

Education [see Table 21, page 113] had a strong influence on the way in which the question was answered. Of those with tertiary education, forty-eight per cent favoured more liberal laws, compared with twenty-three per cent of those with secondary level education and only nine per cent of those did not go beyond primary school.

Those in the higher occupational groups [see Table 22, page 113] also showed a more liberal attitude towards the suggested change – forty-five per cent of those in the professional groups were in favour of reform, compared with sixteen per cent of labourers and unskilled workers.

These results show that homosexuality, as well as abortion, is, in general, much more tolerated among the higher occupational levels of Australian society than the lower. However, the survey results also revealed that a very large percentage of farmers were opposed to liberalisation of laws concerned with homosexuality and this

[359] ibid. p. xxi.

[360] Harris, M, 'Morals and Manners' from *Australian Civilisation*, 1962, edited by P Coleman, p 56.

finding, combined with the trends shown due to education, provides an explanation for State differences on this question. Qld lagged behind other States in acceptance of homosexuality. The Qld sample had a much lower standard of education than the southern States, and a higher rural proportion in its structure. Those living in provincial or rural towns are significantly less likely to approve legislation sanctioning homosexuality than those in large cities. Overall figures for each State show that in Qld only twelve per cent favoured change of the law, compared with between twenty-two and twenty-seven per cent in southern States.

Finally, religion [see Table 23, page 114] made no major difference to the number who approved the legalisation of certain homosexual conduct although churchgoing made a slight difference, with twenty per cent of strong church-goers approving, seventeen per cent of moderate church-goers, twenty-one per cent of those who did not go often, and thirty-three per cent of those who did not go at all.

Table 23: Chappell and Wilson 1967 Survey - Correlation of Church Attendance and Those Favouring Change

Frequency of attendance	Percentage
Strong church-goers	20%
Moderate church-goers	17%
Those who did not often go	21%
Those who did not go at all	33%

Further analysis showed [see Table 24, page 114] that twenty-three per cent of Catholics who considered themselves as strong church-goers were in favour of change, while only twenty per cent of those Catholics who considered themselves moderate church-goers approved. The figures rose again for those who either did not go often or at all.

Table 24: Chappell and Wilson 1967 Survey - Catholics Favouring Change

Frequency of church attendance	Percentage
Catholics – Strong church goers	45%
Catholics – Moderate church goers	16%

Although the Catholic Church has always regarded any sexual behaviour which occurs outside marriage as abnormal, the homosexual issue is not as directly connected with church doctrine as that of abortion so the differences due to religion could not be expected to be as marked as they were on the issue of abortion.

3. Reforming the Law Relating to Homosexuality

When fewer than one in four of the Australian population favour liberalisation of the laws relating to homosexuality, the current prognosis for reform in this field of the criminal law is dismal. Those brave (or foolish) enough to advocate reform must combat the fierce traditional antipathy of Australians towards homosexuals, antipathy based almost certainly on a widespread misunderstanding and lack of sympathy for the problems of those who practice it. The nature of this antipathy is perhaps illustrated by a letter, reproduced below, received recently by one of the authors following certain press statements on the subject of homosexual law reform.

> You blokes talk about homosexuals well they should all be put on an island and they can go for their life. Any church who supports this unnatural filthy degrading should get out, Woman was made for Man God would not approve of this vice, even prostitutes are natural. What a rotten thing to answer if your Children should ask what does it mean, I have even been asked by my Wife what it means. This thing should never be put in the press, let these people go ahead in their own homes if they want too. Why waste time making it legal, No wonder the moral in Briton has gone down when they pass a bill to make this legal. I thought men who got Sir to there name done some good for it not homosexuals you Professor fellows must be low minded lot to support this filth, When there are so many real reforms that should be done.

Whether or not the moral in Briton has gone down following the passage of the *Sexual Offences Act 1967*, remains to be seen. However, there seems little doubt that few Australians are aware of the nature of the reform effected in England, due largely to the lack of debate on the subject of homosexuality in or outside the various parliaments of this country.

The *Sexual Offences Act* substantially implements the cautious recommendations for reform of this branch of the criminal law made by the Wolfenden Committee more than a decade ago. With the passing of the Act, notwithstanding any statutory or common law provisions, but subject to certain exceptions, homosexual acts in private between consenting parties who have attained the age of twenty-one years are no longer criminal. [361] For the purposes of the Act, a man is to be treated as doing a homosexual act 'if, and only if, he commits bugger with another man or commits an act of gross indecency with another man or is a party to the commission by a man of such aan act.' [362] Buggery is not defined but presumably means sexual intercourse per anum between man and man definition is attempted of an act of gross indecency.

[361] *Sexual Offences Act* 1967 (UK) s. 1(1).
[362] ibid. s. 1(7).

The *Sexual Offences Act* adopts a rather restrictive view of privacy. It is expressly provided that acts will not be treated as being done in private if more than two persons take part or are present, or if they take place in a lavatory to which the public have or are permitted access. [363] Should this particular provision be narrowly applied, it could largely thwart the intentions of the legislation.

A number of exceptions are made in the application of the Act, its provisions are extending in particular to members of the armed services, or to members of the merchant navy. [364] However, no exceptions are made for members of other disciplined services including the police. It is clearly stated in the Act that the burden of proving a homosexual act was done otherwise than in private, or with the consent of the parties, or that any of the parties had not attained their majority, rests upon the prosecution. [365]

Restrictions are also placed upon prosecutions, no proceedings to be instituted for various homosexual offences without the consent of the Director of Public Prosecution. This important limitation is designed to secure a uniform enforcement policy in this field. [366]

Finally, a new graduated scale of penalties for homosexual offences is set out in the Act. For example, the maximum punishment for bugger with another over the age of sixteen is reduced from life imprisonment to ten years imprisonment, where consent is absent. If consent is present, and the accused is twenty-one or over and the victim is under that age, the maximum penalty is five years imprisonment, but otherwise two years imprisonment (that is where both parties are twenty-one or over). [367]

From the description given of the main provisions of the *Sexual Offences Act*, it will be apparent that the direct effect of this legislation upon homosexuals is very limited. In practice, it is almost impossible to detect the commission of homosexual acts which take place in private, and those homosexuals who have been prosecuted for various homosexual offences in the past have, with very few exceptions, been engaged in this form of conduct in some public place. This point was emphasised in the Cambridge survey of sexual offences, where it was noted that 'the number of prosecutions by the police for homosexual offences between consenting adults (age twenty-one and over) in private is very small, and they mainly relate, to offences which were accompanied by unusual or aggravating circumstances. [368]

But as Leo Abse, MP, one of the main proponents of homosexual law reform in the United Kingdom, has stated, it would be an error to assess the value of the *Sexual Offences Act 1967*, in terms of those homosexuals who are immediately affected by its provisions. [369] The significance of the Act should be judged by the decade of parliamentary debate on the subject of homosexuality, a debate which, in Abse's words, 'helped to make our country a little more rational. Persistent educational campaigns of this kind assist both the nation and its leaders to gain insights and to come to terms with sexuality and aggression.' [370]

We in Australia have yet to experience this cathartic effect of parliamentary debate. Until we do, the forces of conscious and unconscious prejudice will no doubt continue to prevent legislative reform in this area.

1;–1.1.9. – Chappell and Wilson, 1970 Survey – Changing Attitudes Towards Homosexual Law Reform [371]

Writing in this Journal in 1968 the present authors expressed the opinion that 'when fewer than one in four of the Australian population favours liberalisation of the laws relating to homosexuality, the current prognosis for reform in this field of the criminal law is dismal.' [372] Three years later the Australian laws on this subject remain unreformed but there are indications that public attitudes towards homosexuals and homosexual law

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[363] s. 1(2).

[364] ss. 1(5), 2.

[365] s. 1(6).

[366] A time limit also placed on prosecutions, in general no proceedings to be commenced after the expiration of twelve months from the date on which an offence was committed. s. 7.

[367] s. 3.

[368] Radzinowicz, L; op. cit. p. xx.

[369] Abse, L, 'The Sexual Offences Act', *British Journal of Criminology*, 8,1968, p. 86.

[370] ibid. at p. 87.

[371] Chappell, Duncan, and Wilson Paul R, 'Changing Attitudes Towards Homosexual Law Reform', *The Australian Law Journal*, vol. 46, January 1972, pp. 22-9.

[372] See page 109, Chappell, Duncan, and Wilson Paul R, 'Public Attitudes to the Reform of the Law Relating to Abortion and Homosexuality', *The Australian Law Journal*, vol. 42, September 1968, at p. 179.

reform are changing. This article examines the nature of this change and considers certain implications of future homosexual law reform for the system of criminal justice.

Public Attitudes in 1967 and 1970

When, as part of a national survey, the authors examined public attitudes towards homosexual law reform in 1967, they found that only twenty-two per cent of respondents thought it should no longer be an offence for consenting males to engage in homosexual acts in private [373]. The results of this survey are analysed in according to the education of informants. [see Table 25, page 116].

It will be seen that the higher the level of education or respondents, the more liberal were their views concerning reform. Apart from education, other important variables affecting public attitudes towards reform in 1967 were rural or urban residence (urban dwellers were more liberal); state of residence (Queenslanders were more conservative); and church going habits (in general non-churchgoers were more liberal).

Table 25: Chappell and Wilson 1967 Survey – Public Attitudes to Homosexual Law Reform According to Education of Respondents

Statement: It should no longer be an offence for consenting males to engage in homosexual acts in private.					
Answers	Education Levels #				
	Tertiary	Secondary	Primary	Technical and other	Total
Agree	48	23	9	24	22
Disagree	39	62	73	68	63
Unsure	12	13	15	5	12
No Answer	1	2	3	3	3
Total: %	100	100	100	100	100
Number of informants	82	583	242	129	1045
Note: # Nine people did not disclose their education).					

In May, 1970, the authors again surveyed Australian attitudes towards homosexual law reform. On this occasion financial and allied resource problems required the restriction of the survey to three capital cities – Sydney, Melbourne and Brisbane – and one rural area in Qld. [374] Using multi phase random sampling procedures from census data for the four areas, a total of 1008 respondents were selected and interviewed. [375]

The specific survey question dealing with homosexuality was one of a series probing public attitudes to punishment problems. [376] Interviewers handed respondents a card on which was printed a list of different types of punishment. A number of situations were then read to respondents who were asked to indicate which punishment, if any, they would allocate for each situation. The allocation of punishment in a homosexual situation, analysed according to whether respondents resided in urban or rural regions is shown in Table 26 [page 117].

It is immediately apparent from Table 26 [page 117] that there is a wide disparity between urban and rural attitudes towards homosexual conduct. Although the rural sample is small, and representative of only one area of Qld, the predominantly punitive approach to homosexuality revealed in the table is in general accord with the rural attitudes discovered in the national survey of 1967. In the earlier survey, only eleven per cent of those living in rural regions favoured homosexual law reform compared with thirty per cent of those living in urban areas.

Direct comparison of the 1967 and 1970 survey results is not possible because of differences in the samples from which respondents were selected, and the variations in the questions asked of respondents. Nevertheless, we believe there is sufficient general comparability between the two surveys to permit a number of broad conclusions to be made concerning changes in public attitudes over the three year period.

First, there appears to have been a quite dramatic trend in urban areas towards more liberal attitudes on the subject of homosexual law reform. In 1970, the stage was apparently reached at which a majority of urban dwellers no longer regarded homosexual conduct between adult males, in the privacy of a home, as a crime. While the 1970 survey did uncover interesting attitudinal variations [see Table 27, page 117] between cities on this point (sixty-three per cent of Sydney respondents, fifty-six per cent of those in Melbourne and forty-nine per cent of Brisbane respondents said no crime) the consensus of opinion seemed to have moved decisively from a conservative to liberal approach to homosexual conduct.

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[373] See: 1:–1.1.8. page 109, 'Public Attitudes to Reform of Law Relating to Abortion and Homosexuality'.

[374] The rural sample was drawn from Laidley, a small country town forty miles west of Brisbane.

[375] Full details of the sampling and interview techniques used can be obtained upon request from the authors. These details will be included in a substantial survey report, prepared by the authors, on *Crime in Australia*, to be published shortly by Penguin Press.

[376] Each interview took approximately 35-40 minutes to complete. Interviews, which were conducted by trained personnel using standardised questionnaires, ranged over a wide variety of topics associated with crime and punishment.

Secondly, the change in public attitudes does not appear to be limited to any particular group or section of urban society. Across a broad spectrum of variables like age, sex, education, religion and occupation respondents in the 1970 survey expressed views which were more liberal than their counterparts in 1967. Thus of those respondents in urban areas in 1970 with only a primary education, thirty per cent thought the homosexual situation should be no crime; of those with secondary education, fifty-two per cent: of those with technical education, sixty-five per cent and of those with tertiary education, seventy-seven per cent. [See Table 28, page 117]. These results cannot be directly compared with those shown in Table 25 [page 116], but the magnitude of the change in attitudes according to education of respondents is so great between 1967 and 1970 that sample and question variations can almost certainly be substantially discounted as causative factors. Similar changes were found between 1967 and 1970 in attitudes analysed according to age, sex, religion and occupation.

Table 26: Chappell and Wilson 1970 Survey – Public Attitudes to Homosexual Law Reform According to Urban Or Rural Residence

Situation: Two adult males are caught engaging in homosexual practices in a private home.		
Response	Residence	
	Urban % *	Rural % *
No crime	56	15
Crime–No punishment	7	3
Crime–Probation	1	6
Crime–Fine	3	7
Crime–Prison < 1 year	4	6
Crime–Prison > 1 year	6	14
Out-patient treatment	16	38
Committal to an institution	5	11
Sterilisation	3	11
Number of respondents	937	71
Note: * Percentages do not add to 100 because many respondents gave more than one answer. The frequencies of responses to some other categories were so small that they were not recorded in the table.		

Thirdly, it can be strongly hypothesised that the change in attitudes towards homosexual conduct is not limited to people living in the three urban regions surveyed in 1970. If it had been possible to interview a national sample of respondents, it may reasonably be assumed that more liberal attitudes would have been found to prevail in 1970 throughout the country than was the case in 1967. On the national level these changes might have been expected to be less pronounced than those plotted in an urban setting. But the factors which seem likely to have produced attitudinal change during these three years were not confined to big city dwellers.

Table 27: Chappell and Wilson 1970 Survey – Variations Between Cities

City	No Crime %
Sydney	63
Melbourne	56
Brisbane	49

Factors Producing Change in Attitudes

The precise nature and impact of various change producing factors upon Australian attitudes towards homosexual conduct requires separate study. Certainly this change has not taken place in isolation but reflects a discernible trend towards greater pluralism in Australian society. More frequently than their 1967 counterparts, the respondents in our 1970 survey adopted a philosophy towards deviant sexual behaviour based upon the freedom of individuals to choose their own forms of conduct, providing that choice did not interfere with the freedom of others. In a significant public address made after the completion of our 1970 survey, the former Commonwealth Attorney-General, Mr TEF Hughes, QC, expressed a similar philosophy when he said: 'It is one thing to disapprove on moral grounds of homosexual connection in a private place between consenting adults. It is another thing to permit such disapproval to drive one to the conclusion that conduct of that description should be classified as criminal. In a pluralist society it is no part of the function of the criminal law to uphold and preserve the Judaeo – Christian ethic simply because that ethic exists.' [377]

Table 28: Chappell and Wilson 1970 Survey – Homosexual Situation Should Be No Crime by Education Level

Education level	Percentage
Primary education	30%
Secondary education	52%
Technical education	65%
Tertiary education	72%

Mr Hughes' remarks received a most favourable reaction from a wide segment of the Australian press and other mass media. [378] This reaction is itself an interesting measure of the changed attitude towards homosexual conduct in Australia. As Inglis has observed, earlier Australian media coverage of the British campaign to reform homosexual laws was far from favourable or comprehensive. [379] For instance 'all the papers received on 30 June 1960 contain a report of a debate in the House of Commons about whether the law should permit homosexual acts between consenting adults in private. The two morning papers in Sydney reported some of the arguments. *The Advertiser* allowed South Australians only two sentences under the heading Vice Vote. The

[377] Cited from: *Deviant Behaviour of a Criminal Nature*, an address made by Mr Hughes on 27 May 1970, to the Sixth National Conference of the Australian Council of Social Services.

[378] A more detailed description of the press response to Mr Hughes' speech, and other recent developments in the area of homosexual law reform will be found in *The Sexual Dilemma*, University of Qld Press, St Lucia, 1971, pp. 142-5.

[379] Inglis, KS, 'Religious Behaviour', in Davies AF, and Encel S, (eds), *Australian Society*, Cheshire, Melbourne, 1965, p. 168.

morning papers in Melbourne printed not a word.' [380]

The contemporary media approach to homosexuality is undoubtedly better informed and less dogmatic. His approach may well have played a significant role in educating the general public about the dilemmas confronting homosexuals in society under the existing law, and influencing public attitudes towards law reform. The public education process has now proceeded to the point at which a number of men and women have felt sufficiently secure to acknowledge openly their homosexual behaviour, and campaign as homosexuals for reform of the law. [381]

Given these and other important developments, it should now only be a matter of time before homosexual law reform is achieved somewhere in Australia. Mr Hughes, in the address referred to earlier, mentioned the possibility of such reform in the final formulation of a new criminal code for Commonwealth Territories. [382] The federal Labor Party has also indicated it favours reform of this branch of the criminal law. But no government has yet plucked up the political courage to sponsor openly legislation to implement reform. The absence of any Australian parliamentary tradition, akin to that firmly established in the United Kingdom, whereby private members are provided with the opportunity to introduce controversial measures, like a homosexual law reform bill, adds to the reformer's problems.

When homosexual law reform is achieved in Australia it is likely to follow closely the pattern set by the *Sexual Offences Act 1967*, in the United Kingdom. [383] Details of this legislation were discussed by the authors in an earlier article in this journal and it is not intended to repeat these remarks here. [384] Instead a number of observations will be made based in part upon British experience, concerning implications of homosexual law reform for police, prosecutors, courts and corrections.

Police and Prosecutors

From the viewpoint of Australian law enforcement agencies, the immediate impact of homosexual law reform upon enforcement practices is likely to be slight. If the only substantive change in the criminal law is to make legal homosexual practices between consenting adults in private, the change will affect only a small fraction of the homosexual offences currently dealt with by police and prosecutors. As we noted in 1968, 'in practice, it is almost impossible to detect the commission of homosexual acts which take place in private, and those homosexuals who have been prosecuted for various homosexual offences in the past have, with very few exceptions, been engaged in this form of conduct in some public places.' [385]

Recent confirmation of this statement has come from a senior officer in charge of the NSW Police Vice Squad. In a paper presented at a seminar on 'Male Sex Offenders in Public Places', Detective Sergeant Green commented that vice squad activities were in practice, 'apart from specific complaints (practically all of which stem from associations involving boys and youths) … performed in and around certain men's toilets at railway stations and in parks. Certain locations of this kind, both in the inner city and in the suburbs, have become well known to men with homosexual tendencies as places where persons of similar ilk are likely to be found.' [386]

The annual drive of police activity around NSW public lavatories, and no doubt around lavatories in other parts of Australia, has a strange tendency to fluctuate. Statistical information in this area is extremely limited but a survey of data drawn from the NSW Police Commissioner's report through the 1960s suggests that the level of enforcement reached a peak in 1962 and 1963, declined somewhat in the years 1964 and 1966, and

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[380] op. cit.

[381] These men and women formed the Campaign Against Moral Persecution Inc. in June 1970. The principal aims of this society include that of agitating for homosexual law reform.

[382] Since this Commonwealth Territories Code is unlikely to be enacted in the near future, pressure groups such as the ACT Homosexual Law Reform Society have urged the federal government to consider reforming legislation independent of the Code. See: *Newsletter no. 3*, Homosexual Law Reform Society of the ACT, July 1970.

[383] The United Kingdom legislation, with certain modifications, forms the basis of a Draft Ordinance for a Homosexual Offences Act prepared by the President of the ACT Homosexual Law Reform Society, Dr DO O'Connor. See: *Newsletter no. 2*, Homosexual Law Reform Society of the ACT, October 1969, of the Society. Also *The Sexual Dilemma*, op. cit. pp. 150-51.

[384] See: 1:–1.1.8. page 109, op. cit. *Australian Law Journal*, vol. 42, at pp. 175-180.

[385] op. cit. at p. 180.

[386] See: 1:–1.1.9.1. page 122, Green, V, (Detective-Sergeant, Officer-in-Charge of the NSW Vice Squad) 'The Role of the Police in the Detection of Homosexual Offences', in *Proceedings of the Institute of Criminology: Male Sex Offences in Public Places*, Institute of Criminology, Faculty of Law, University of Sydney, November 1970, p. 50.

moved upwards again in 1967 and 1968. These trends are displayed in Table 29 [page 119] which analyses the return of cases classified as homosexual offences dealt with by Courts of Petty Sessions in NSW. [387] The most recent increase in NSW of police activity around public lavatories appeared to be the result of the establishment of a special Indecency Squad in Sydney. The increased arrests resulting from the work of this squad attracted public attention and questions were subsequently asked in parliament about the squad's operating practices. [388] Following this attention the squad was disbanded and the number of arrests for homosexual offences sharply declined.

Fluctuations in enforcement practices of this type do little to enhance the reputation of police and seemingly bear little relationship to the seriousness of the problem presumed to be presented by the public activities of homosexuals. In this area of police work enforcement practices can all too readily reflect the individual prejudices and dislikes of officers rather than real variations in the level of homosexual conduct occurring in public places. It was a realisation of this fact which led to the inclusion in the United Kingdom *Sexual Offences Act* of the provision that no proceedings were to be instituted by police for serious homosexual offences, like buggery, without the consent of the Director of Public Prosecutions. [389] This provision was intended to secure uniform enforcement practices among United Kingdom police forces in relation to homosexual offences. However, it appears this aim has not been fully achieved, largely because the provision does not apply to less serious offences, like indecent assaults on males, which Table 29 [page 119] shows form bulk of official homosexual charges. Fluctuations and variations therefore continue among United Kingdom police forces in the level of enforcement of homosexual laws.

Table 29: Homosexual Cases Dealt with by Courts of Petty Sessions in NSW 1960-69

Years 1960-69	Buggery and Attempts	Indecent Assaults On Males	Other Acts of Indecency *
1960	74	378	#
1961	62	372	#
1962	106	344	#
1963	117	349	186
1964	64	252	103
1965	37	202	151
1966	68	162	79
1967	42	260	78
1968	101	270	132
1969	–	–	–

* These include the legal and statistical categories Indecent Act – Male Persons Party to in Public or Private; Indecent Act – Male Person Procuring or Attempting to Procure in Public or Private; Indecent Act – Male Person Soliciting or Inciting in Public Place and Attempts; Indecent Act Between Males in Public or Private. # No figures available.

When homosexual law reform does take place in Australia it would be wise to take account of this British experience and seek to avoid a similar occurrence by providing the prosecution for any offence of a homosexual nature should only take place with the consent of a State Solicitor-General or equivalent federal officer. Precedent for such a provision can already be found in the area of incest where prosecutions can, in certain jurisdictions, only be brought with the consent of the Attorney-General. [390] In our view, it is preferable that the prosecution decision should be removed from the political arena and placed in the hands of the professional head of Crown Law Departments.

Courts and Corrections

Apart from securing uniform law enforcement practices in relation to homosexual offences, an important social question is what should the nature and extent of these practices be in the first place. The question is not confined to police and prosecutors, but extends to courts and corrections who also have the duty to implement and interpret public policy concerning homosexual conduct.

Leaving aside the issue of enforcing homosexual laws in private places, the current rationale for enforcement of these laws in public places appears to rest upon a combination of social defence factors including a protection of citizens from acts which might be offensive to them; the protection of the young from possible involvement in homosexual practices; and the protection of homosexuals themselves from attacks by muggers and other criminals. In the words of Sergeant Green, 'if the police were to disregard their obligations altogether in this field it seems reasonable to assume that abhorrent homosexual acts would be a common

[387] The table does not include offences of a homosexual nature which may have been charged as offensive behaviour or an allied offence. There is no way of determining how many offences were charged in this way from existing police statistics.

[388] See: 1:–1.1.9.2. page 123, *Parliamentary Debates*, NSW Legislative Assembly, Thursday, 23 October 1969, pp. 1854-5.

[389] *Sexual Offences Act 1967* (UK), s. 8. As to the effect in law of this s. see *DPP. v. Burgess* [1971] 1 QB [Queen's Bench, Law Reports] 432.

[390] See, for example, *Crimes Act 1900* (NSW), s. 78F. In Vic, a charge for a misdemeanour under s. 69(1) of the *Crimes Act*, 1958, of gross indecency with a girl under sixteen can be commenced only with the sanction of a law officer.

spectacle for decent members of our male community legitimately visiting public toilets. Again, if it became known to the criminal element that there was little likelihood of police extending their patrols and observations to conduct in and about a particular homosexual rendezvous then assault and robbery and standover tactics of the nature outlined would multiply considerably. However, it is my opinion that the greatest benefit provided to the community by police action against homosexuals is that it deters them, as much as is possible, from introducing their immoral practices to the youth and the weak minded.' [391]

Sergeant Green did not comment in his paper upon the methods used by the police to carry out their obligations in this field. Police evidence given in court suggest these methods include looking into closed lavatory cubicles from hidden vantage points to detect men masturbating; covertly observing men urinating at open closets to detect any indication of homosexual overtures; and loitering in the vicinity of lavatories to apprehend any persons who might solicit them for homosexual purposes. While the courts have not sanctioned police tactics which amounted to those of an *agent provocateur*, they generally have not questioned the propriety of police methods described, even though in many cases the only person likely to be offended or a witness to an abhorrent homosexual act has been the arresting officer. [392] In these circumstances social justifications for law enforcement practices wear a trifle thin.

Few would dispute the desirability of providing protection to young people against interference by homosexuals, and to homosexuals against attack by criminals, but it is difficult to believe that the prevailing enforcement tactics are primarily directed towards either of these objectives. Available evidence suggests that the large majority of men arrested by Australian vice squads for homosexual offences in public places do not present any threat to young people, and were not themselves in danger of becoming the victims of crime. [393] Many offenders seem to be lonely, dissatisfied, unhappy men seeking emotional contact and companionship. [394] Mental disorders and disturbances also seem quite common among arrested offenders, although this is not generally true of the non-arrested homosexual population. In these circumstances, on utilitarian grounds alone, we question the usefulness and purpose of current homosexual law enforcement factors. The evils produced by these practices, like the shattering impact of public disclosure of homosexual conduct upon the lives of many offenders, the risk of blackmail and corruption of law enforcement officers, and the arrest of innocent bystanders, seem far greater than the evils prevented. [395] This harm can be compounded by punitive sentences. For many offenders a prison sentence in particular is likely to strengthen and confirm homosexual behaviour.

The present sentencing practice of the courts, at least in petty sessions in Sydney, appears less punitive towards homosexuals than the public would probably wish. The survey results in Table 26 [page 117] indicate that even in urban areas a significant proportion of respondents favoured prison sentences for homosexual conduct taking place between adults in private. Presumably, the proportion in favour of prison sentences for public displays of homosexual conduct would have been still higher. In practice, Sydney magistrate's courts are likely to fine, release with an admonition, discharge without recording a conviction, or release on probation homosexual offenders rather than send them to prison. Thus of a sample of 719 such offenders studied by Ward in Sydney in 1970 only ten were sentenced to goal. [396]

Even though sentences were objectively lenient, and often associated with psychiatric and allied assistance, merely being brought before a court was probably a personal tragedy for many offenders. For almost all the

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[391] Green, op. cit.

[392] Thus the NSW Court of Criminal Appeal has upheld a conviction for offensive behaviour where the appellant was observed by a police officer masturbating in a closed lavatory *cubicle: Jaritz, Klaus*, In the Matter of (26 July 1968, unreported). The cubicle was held by the court to be a public place. See also *Inglis. v. Fish* [1961] VR [Victoria Reports] 607.

[393] See: 1:–1.1.9.3. page 123, Briscoe, Oliver V, 'The Problem of Indecent Behaviours in Male Public Conveniences in Sydney', *Stipendiary Magistrates' Bulletin*, no. 173, September 1969. See also: 1:–1.1.9.4. page 126, McGonigal, Peter 'A Survey of Offender Behaviour in Sydney', in *Proceedings of the Institute of Criminology: Male Sex Offences in Public Places*, Institute of Criminology, Faculty of Law, University of Sydney, November 1970, pp. 15-35.

[394] Briscoe, Oliver V, op. cit.

[395] The risk of innocent people being honestly but mistakenly apprehended for homosexual conduct is not illusory. For instance, Briscoe points out that because some men, either from nervousness, or urinary tract obstruction, may have to stand at a urinal for what may seem to an observer an unusually long time, they are liable to be arrested as homosexuals.

[396] See: 1:–1.1.9.5. page 135, Ward, Paul, 'The Court Disposition of Men Charged with Acts of Indecency', in *Proceedings of the Institute of Criminology: Male Sex Offences in Public Places*, Institute of Criminology, Faculty of Law, University of Sydney, November 1970, pp. 37-47.

offenders now appearing before the courts on homosexual charges a method of disposition outside the framework of the criminal law would be far more appropriate. What form this disposition should take is obviously open to discussion. Humphreys, for instance, following an important ground breaking study of homosexual conduct in American tea rooms, argues cogently for the cessation of vice squad activities in such places. [397] A true tea room is defined by Humphreys as a public rest room which has gained a reputation as a place where homosexual encounters occur. [398] It is clear from Sergeant Green's stated cited earlier that this reputation is at present bound to attract police as well as homosexuals. Humphreys, in recommending cessation of police tea room activities, stresses the importance of the subculture in helping the homosexual mediate his relationship with society. He writes: 'In order to alleviate the damaging side effects of covert homosexual activity in tea rooms, ease up on it. Every means by which these men are helped to think better of themselves and to relate to others in the homosexual subculture will lessen any threat they may constitute for the society at large.' [399]

Conclusion

Humphreys' method of disposing of offenders by leaving them alone, even if practicable, is unlikely to be accepted by society at large. While the climate of public opinion in Australia may be becoming more tolerant towards homosexuals, tolerance almost certainly ends once homosexual conduct is publicly displayed in a lavatory or allied setting. Even those who disapprove of current vice squad practices are unlikely to favour the total cessation of police activities in this field. It can be argued that these activities, suitably modified, could act as a deterrent, albeit at times crude, to unsolicited and offensive advances upon innocent users of public rest rooms, and to violent attacks upon homosexuals themselves.

How should police activities be modified and controlled? We have already indicated our distaste for the police practices of peering over lavatory cubicles and prying into urinal stalls. We do not believe these practices are necessary elements of a deterrence strategy. To our mind it should be quite sufficient protection to the public and homosexuals if uniformed police conducted random but regular patrols of public rest room facilities. These patrols should not be viewed as opportunities to arrest homosexuals masturbating or committing fellation in cubicles. Providing innocent members of the public are not involuntary witnesses or subjects of homosexual advances there seems no reason to arrest or interfere with those who resort to tea rooms for impersonal sex. If members of the public do complain about the conduct of homosexuals in these facilities, police will be obliged to investigate. But in general, preventive patrol should reduce these complaints to a minimum.

What of control of police activities to ensure they remain within legitimate boundaries? Here we believe our suggestion for a centralised and uniform prosecution policy for homosexual offences would have additional benefit. This policy should be clearly spelt out to the police and the public. The policy should be based on prosecuting only those homosexuals who, on clear and objective evidence, acted in a manner which was actually offensive to an innocent member of the public, (other than a police officer) or who committed homosexual acts with a person who lacked the capacity to give true consent. By specifying this policy, and reviewing all arrests, the prosecuting agency should be able to maintain adequate control over police practices in the field of homosexual law enforcement.

We realise that our discussion and recommendations go beyond the parameters of any homosexual law reform proposal currently envisaged in an Australian setting. But it would be foolish, now that Australian attitudes towards this area of criminal law reform are changing, to create the impression that everything will be settled for society and homosexuality by the passage of legislation based on the British model. As we have sought to demonstrate, the potential implications of homosexual law reform for the criminal justice system, and for the society at large, are far more complex, and far wider then we may have been led to believe in the past. We hope our recommendations will provoke further discussion about the nature and scope for reform directly affecting an important and significant proportion of the Australian population.

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[397] Humphreys, Laud, *Tearoom Trade: Impersonal Sex in Public Places*, Aldine Publishing Company, Chicago, 1970.
[398] Humphreys, op. cit. p. 2.
[399] Humphreys, op. cit. p. 166.

1:–1.1.9.1. – The Role of the Police in the Detection of Homosexual Offences [400]

The short title of the charges and the Acts and ss. under which Police charge males committing homosexual offences are as follows:

- s. 8A, paragraph (a), *Vagrancy Act*.
  Offensive behaviour in or near, or within the view of a public street, thoroughfare or place.
- s. 4, subsection (2), paragraph (d), *Vagrancy Act*.
  Wilful and obscene exposure in or in view of any street, road or public highway, or in any place of public resort.
- ss. 79 and 80, *Crimes Act*.
  Committing, or attempting to commit, buggery or bestiality.
- s. 81, *Crimes Act*.
  Committing an indecent assault upon a male person.
- s. 81A, *Crimes Act*.
  Committing, in public or in private, any act of indecency; or Procuring, or attempting to procure, in public or in private, the commission of any act of indecency with another male person.
- s. 81B, *Crimes Act*.
  Soliciting or inciting, or attempting to solicit or incite, in any public place, another male person to commit or be a party to the commission of any offence under ss., 79, 81 and 81A of the *Crimes Act*.

A charge of offensive behaviour of a homosexual character usually arises where an offender, either for his own satisfaction or in the hope of sexually exciting another male person, indulges, without any associated words or other action, in masturbation in a public toilet. If, at the same time, the offender wilfully exhibits his private part, then the appropriate charge would be wilful and obscene exposure. If the masturbation is accompanied by words or actions amounting to an attempt to procure or a solicitation, then the appropriate charge would lie under ss. 81A or 81B of the *Crimes Act*.

Police performing this class of duty are carefully instructed to arrest immediately sufficient evidence is obtained to support a particular charge and nor delay the offender's arrest for the purpose of being in a position to prefer a graver charge which may develop if the original misconduct were allowed to continue.

The role of the police is, of course, to enforce the laws of the State, and while those laws provide for certain offences appertaining to homosexual acts it is the duty of members of the Police Service to arrest those members of the community committing such acts whenever sufficient evidence is available.

In practice, apart from specific complaints (practically all of which stem from association involving boys and youths), this class of duty is performed in and around certain men's toilets at railway stations and in parks. Certain locations of this kind, both in the inner city and in the suburbs, have become well known to men with homosexual tendencies as places where persons of similar ilk are likely to be found.

Although I speak purely as a layman, this affliction can be visited upon men in all walks of life. Because of the stigma associated with such an offence the resultant court proceedings are often prolonged and strenuously contested, the offender being represented by experienced and skilled counsel. By reason of the manner in which such offences are committed and the involved court proceedings likely to follow, this phase of police duty is carried out under the direction of experienced detectives, and the responsibility of policing particular locations, especially where there are complaints, generally devolves upon members of the Vice Squad.

Whilst the commission of certain homosexual acts in private involving male persons is an offence, the efforts of Police to deal with the activities of homosexual offenders are concentrated more on public places, especially where complaints have been received in respect of the activities of homosexuals.

Men afflicted with such a weakness are often the victims of assault and robbery, committed upon them by organised bands of criminals who operate in the vicinity of men's toilets where homosexuals congregate. Homosexuals are the ready prey of such criminals because the assailants know that in many cases the unfortunate victim will be loath to complain to the authorities, and even if he does sp his word can often be regarded sceptically by investigating Police and by tribunals presiding over a case involving such a crime. Again, an offence often arises where a man deliberately becomes involved with a homosexual whom he knows or thinks may be of considerable standing in the community, both financially and socially, and thereafter indulges in threats of blackmail as a means of extracting large sums of money from him. It is not uncommon also for two or more criminals acting in concert to observe a man indulging in homosexual practices and then

[400] Green V, op. cit. pp. 49-51.

on the pretence of being police to extract a sizeable sum of money from him to be allowed to go free.

If the Police were to disregard their obligations altogether in this field it seems reasonable to assume that abhorrent homosexual acts would be a common spectacle for decent members of our male community legitimately visiting public toilets. Again, if it became known to the criminal element that there was little likelihood of Police extending their patrols and observations to conduct in and about a particular homosexual rendezvous then assault and robbery and standover tactics of the nature outlined would multiply considerably. However, it is my opinion that the greatest benefit provided to the community by police action against homosexuals is that it deters them as much as possible from introducing their immoral practices to the young and the weak-minded.

Now I will to some extend digress to refer briefly to a type of homosexual behaviour which has become rather prevalent in recent years. The homosexual concerned is known as the drag-queen or male prostitute referred to in some overseas magazines as gays. Many of these individuals reside together in fashionable apartments in the Kings Cross and Elizabeth Bay areas and earn their livelihood or supplement their legitimate earnings by loitering for prostitution in female attire in less well-lit areas bordering on the Kings Cross business centre. They are known by female Christian names and operate openly as prostitutes. Whilst many of their clients are also homosexual, there are some men who, after innocently paying sums ranging from $6 to $10 for an abnormal form of sexual satisfaction, go away unaware that their partner was of the same sex.

Instances have come the notice recently of regular female prostitutes living under the same roof with this type of male homosexual. The individual prostitutes have told me that this is an ideal set-up as far as they are concerned because the male is usually very house-proud, thereby absolving the prostitute (who is generally a lazy individual) from any domestic duties. Then at night each indulges in his or her particular form of prostitution. But the regular prostitute's greatest advantage from this kind of existence is that she is not required to provide sexual satisfaction for her living-partner.

I feel sure, gentlemen, that the role Police are fulfilling in the community today in the detection and determent of homosexual activity can only be regarded by every decent citizen as an important one. As Officer-in-Charge of the Vice Squad my personal reaction to this type of duty is that I am convinced that if the efforts of my staff result in saving any person, particularly the young, from becoming involved in this type of depravity, then our work is very worthwhile indeed.

1:–1.1.9.2. – NSW Legislative Assembly Debates [401]

Police Indecency Squad

Mr Ferguson asked the Premier and Treasurer – (1) Does the NSW police force now have a section called the indecency squad? (2) If so – (a) what it is numerical strength? (b) What are the duties and responsibilities?

Answer – (1) and (2) The Commissioner of Police has informed me that since April, 1967, six selected police drawn from general uniform duties at metropolitan divisional stations, have formed a special patrol aimed at reducing the incidence of acts of indecency in male public toilets. They have made a number of arrests of male persons who have been charged with the appropriate offences. However, this was not a squad in the normal police sense but merely a temporary arrangement. Following a review made during June, 1969, of the need for forming a permanent indecency patrol, the commissioner reached the conclusion that there was no justification for this and the police concerned have been returned to their divisions. The commissioner added that attention is now given to male public toilets or areas frequented by male offenders for the purpose of the commission of acts of indecency, by (i) members of the vice squad as part of their normal duty, (ii) police attached to divisions in the course of their normal patrols by police in plain clothes to be arranged at the discretion of divisional offers as required.

1:–1.1.9.3. – The Problem of Indecent Behaviour in Male Public Conveniences in Sydney [402]

In 1968, 1,187 males were arrested for indecent behaviour in public conveniences in Sydney. At this rate of some 23 cases a week, these offences clearly take up a large part of the time of the Courts of Petty Sessions and of the police squad specially concerned. Though it is such a common offence, not a great deal seems to be known about it, and the ways it can be controlled. Since 1966, a small psychiatric clinic has been available at

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[401] *Parliamentary Debates*, NSW Legislative Assembly, Thursday, 23 October 1969, pp. 1854-5.

[402] Briscoe, Oliver V, op. cit. pp. 1-5. (Senior Lecturer in Forensic Psychiatry, University of Sydney Law School (Now [1970] Consultant Physician, The Maudsley and Bethel Royal Hospitals, London).

the Sydney University Law School where convicted persons can be referred from Courts of Petty Sessions for pre-sentence psychiatric reports. This papers offers some tentative impressions from a small series of cases of this type seen at this clinic during the period 1966-1969.

The source of the series indicates that it is highly selected, and presumably only cases where it appeared to the magistrate that some psychiatric factor was presented would have been referred. For most of the cases, no independent information accompanied the accused even though this was specifically requested when the accused was asked to attend the clinic. Consequently the reliability of some of the information elicited at interviews is dubious. Each accused was seen for about an hour by the same psychiatrist, and information from other sources was often obtained later before completing the report.

Findings

(a) Age

The range was from 19 to 65, with a mean in the late 30s and early 40s.

(b) Provisional Grouping

A. Repetitious offenders, with range from:

(a) predatory homosexuals (some prostitutes) seeking sexual intercourse, but otherwise fairly well adjusted, to

(b) predominantly lonely, dissatisfied, unhappy men seeking companionship, to

(c) offenders with obvious mental disorder, such as homosexual behaviour in public is an expression of hallucinatory or delusional experience. There are many intermediate and mixed stages.

B. First offenders, who may not offend again if handled wisely.

(c) Examples of Behaviour

A. (a) Probably too well known to require description.

(b) The best example in the series was that of an unemployed pensioned elderly bachelor living with unmarried dominant sisters. He had always been timid, socially unsuccessful, isolated and friendless. From time to time when life became intolerable, he would sneak out alone in the evening and make his way to a public convenience where he would seek out someone like himself. The pair then have a surreptitious conversation at a street corner, or possibly go to a hotel, a milk bar, or even a cinema if they felt very bold. Physical homosexual relations never took place, nor was the fleeting friendship maintained beyond the evening when it was formed. The patient was a gentle unassuming man, who had no wish to offend anyone but merely to alleviate the tragic emotional poverty of his life.

(c) An example of this group was that of a young man with complicated metaphysical beliefs who wished to attract the attention of men in a public convenience as in other places in order to encourage them in a lengthy intellectual discussion about his beliefs.

B. This group appears to comprise both men who usually control their self-recognised homosexual impulses, and men who genuinely do not know they have homosexual proclivities until something happens to expose them. There is great variety in this group of which the following are selected examples.

(a) The Asian student with examination disappointments who was oppressed at the social disgrace of failing in his studies. He had had some previous adolescent homosexual experimentation, and sought something similar under the stress described.

(b) The young middle aged contented bachelor who was under the twin stresses of a sudden serious illness in his mother, and of contemplating marriage to a forceful girl. He found himself masturbating openly in a lavatory without understanding why.

(c) The seriously oppressed, highly conscientious hardworking isolated man with a family history of congenital disease which he thought precluded matrimony for himself. He had decided to kill himself, but found himself making advances to a stranger in a lavatory. In retrospect, he said that he was aware vaguely of wanting a contact to protect him from his suicidal impulses. Perhaps this was not homosexual behaviour at all.

(d) The unsophisticated labourer from a country town who had injured his back and was unable to do the only work he knew. Debt accumulated, and he was involved in repeated expensive visits to Sydney to see legal advisers and union officials. He said he made no progress and became increasingly frustrated. During one of his visits to Sydney he made an obvious and clumsy homosexual advance to a stranger in a lavatory. Sometimes predisposed people in this condition may respond in a homosexual way to the neutral surveillance activities of police officers assigned to patrol public conveniences in plain clothes. This leads to misunderstanding.

(e) The middle aged previously happily married man, under recent pressure at work where his

competence for promotion was in question. He was ashamed to share his anxiety with his wife, began to drink, became depressed and experienced relief and comfort from mutual masturbation in a public convenience with a stranger with whom he would normally have been socially incompatible.

(f) The professional man whose customary homosexual activities were extremely discreet. Under a particular anxiety, and in an unfamiliar city, he was caught soliciting in a lavatory.

(d) Mental and Physical Illness in the Groups

Whereas disorder of personality is the commonest psychiatric disorder in offenders generally, it must be emphasised that more than one disorder can be found in the same person. Thus a man may be both a schizophrenic, and mentally subnormal and a practising homosexual. The form of the combination will govern what can be done by way of treatment.

The Law School series was too small to illustrate this comprehensively, but the author is of the opinion that while obvious psychiatric maladjustment is seen most often in the first offender group and in the group predominantly seeking companionship, it is by no means absent in the predominantly predatory group in whom chronic schizophrenia, epilepsy, drug abuse or mental subnormality may be overlooked.

Alcoholic access in all three groups of course may be an important factor in lowering self-control and triggering particular incidents.

A final point is that some men, either from nervousness or because middle age has brought with it enlargement of the prostate gland with consequent urinary tract obstruction, may have to stand at the urinal for what may seem to an observer an unusually long time before they can initiate micturition. Innocent individuals of this kind can sometimes be wrongly suspected of homosexual soliciting activity.

Discussion

The first point to be made is the variety of the phenomena that are sub-named under the term indecent behaviour, although each act appears to have the underlying purpose of making some satisfying emotional contact with another man. The depth and motive of this contact can vary in one parameter from the physically practising homosexual who is frankly looking for sexual pick-up; to the friendless, lonely middle-aged bachelor who is too shy and socially inadequate to adopt any other way of finding someone to talk to. The only personal contacts he has in his life are these fleeting nocturnal secretive chats he manages to have with men whose personalities are as crippled as his. He means and usually causes no harm, but his motives may be misunderstood. Between the extremes there are several subgroups, but a general characteristic is that the homosexual behaviour is likely to be repeated.

There is another important group or parameter, varied infinitely within itself, where the homosexual contact is an isolated event out of keeping with the accused's previous outward character and behaviour. Some event can usually be found to have happened which has temporarily upset the life patter, to which the accused has responded transitorily in a homosexual or quasi-homosexual way. Often the accused himself does not understand what happened. He may remember entering a convenience to relieve himself for natural reasons. When there he realised another man was looking at him, and that this was producing in a him a sexual sensation. He found he wanted something more to follow, although he could not have specified it more precisely. Whether the two men touched each other, masturbated, had erections or merely looked at each other, it seems that the result was originally consciously unplanned, but productive of some kind of comfort and relief when it took place. Disgust or disbelief sometimes followed full conscious awareness afterwards of what had happened.

This kind of homosexual symbolic comforting is seen in this series reported here to follow periods of tension, depression, anxiety and unease of various kinds. This link between credible stress, and symbolic homosexual relief cannot be explained in plain terms. That the link exists is incontrovertible, but to explain it one requires recourse to psychiatric theories about the unconscious mind which are not universally believed. A rough explanation would argue that some men have not completed their heterosexual sexual development in terms of personality growth, and that under stress they revert to the earlier homosexual stage of sexual development. Some forms of stealing are also symbolic acts, in which psychic tension is relieved by activity with which it has no direct common-sense connection.

If a specific cause of emotional tension can be found, and if previous offences of the same kind have not been committed, the outlook is probably favourable. Once the accused realises his weakness; that in him tension is likely to seek relief in homosexuality, he can often avoid the tension or guard against the danger. The problems posed by the predatory homosexuals looking for sexual partners at the one extreme, and by the friendless middle-aged men on the other, who use the public convenience as a kind of club are harder to solve.

Their behaviour is likely to continue in lavatories, or elsewhere, despite attempts to check it. Perhaps we should ask first whether it needs to checked at all?

This is a matter of community attitudes. Where all forms of homosexuality, even among consenting adults, are considered depraved and disgusting, behaviour of this kind in public lavatories will be seen in the same light. If, however, the society believes that providing no forced soliciting is attempted, people's sexual practices should not be controlled, then presumably much of what we now regard as indecent behaviour would be ignored. A balance has to be struck: no doubt some police action can be over zealous, yet on the other hand an ordinary citizen, and especially children and young people, ought to be able to use a public urinal without being offended and imposed upon. What will offend depends on a society's values.

Conclusions

In practical terms predatory homosexuals (without other psychiatric disability) seeking pick ups can probably only be deterred by court action making soliciting in public conveniences uneconomic or otherwise unattractive. Lonely old men may not be deterred from their largely harmless club behaviour easily. To them a moderate fine periodically is worth the pleasure they derive, and imprisonment may even be attractive because of its perpetuation of the club atmosphere. Psychiatric assessment can often help in this group not so much by individual therapy (although some in this group offend chiefly when they are depressed) but more by marshalling supportive resources. To reduce this group significantly in size we have to improve the quality of city life for the underprivileged, unattractive, social incompetent. This is not easy nr cheap, but the modern techniques of community psychiatry may have a part to play by reaching out and helping to mobilise community resources. It is not always easy to distinguish the two components of this repeater group; those I have termed principally predatory or principally lonely. Observers with different personal standards will assess the same case differently, but one way to distinguish which component is the most important is to ask whether the purpose of the contact was to exploit the victim or whether it was to enjoy some mutual companionship. Even if the repeater groups can be discouraged from lavatory contacts, their natural sexual needs will lead to similar contacts being made elsewhere. Only social policy can determine if one place is better than another. The occasional homosexual who is under unaccustomed pressure, and who may not even realise that he has homosexual inclinations, must be treated as an individual. He especially merits psychiatric appraisal and help. Of course not all indecent behaviour is homosexual. Some of it is more akin to exhibitionism, and some has features of transvestism and trans-sexualism.

Recommendations

The inadequacy of the evidence on which the tentative opinions expressed here are based will be apparent, and the author would like to see this important subject tackled thoroughly and systematically. A broadly based seminar might usefully be arranged if it was adequately prepared by some detailed research in this community. The research required would involve a random sample of 200-500 offenders interviewed over a 12-month period. Because of the difficulties of formal psychiatric referral in this random way, consent might be sought for a trained social worker to interview the offenders at the court, and later to conduct home visits to make similar independent enquiries. It might be possible for the social worker to accompany the police squad during some of their work, in order to see the other side of the picture. A full time research worker might be needed to carry out the job properly. The seminar following could include papers from the psychiatric services, from religious groups, from the Adult probation Service, from community organisations, from the police, and of course from the Bench.

1:–1.1.9.4. – A Survey of Offender Behaviour in Sydney [403]

I Introduction

This study was originally conceived as an integral part of a much larger project aimed at examining the problem of male homosexual activities in public. During the period 1966-1969 Dr OV Briscoe, then Senior Lecturer in Forensic Psychiatry at the Sydney University Law School, operated a small psychiatric unit at the Law School to examine persons referred to him for pre-sentence psychiatric reports. During this period he examined a small number of cases of offenders charged with public homosexual acts upon which he prepared a

[403] McGonigal, Peter, 'A Survey of Offender Behaviour in Sydney', in *Proceedings of the Institute of Criminology: Male Sex Offences in Public Places*, Institute of Criminology, Faculty of Law, University of Sydney, November 1970, pp. 15-35. (LLB Sydney, Senior Research Assistant, Sydney University Law School).

report of his initial impressions [see 1.1.9.3 page 123]. It was intended that a research project be established to commence in January 1970 to study the problem, the project to be staffed by a full-time social worker or a psychiatrist, and myself, and to consist of analysis of court records, psychiatric examination of a sample of offenders and interviews of other offenders.

Shortly before the project was commenced the Institute [of Criminology, University of Sydney] was advised that those members of the Vice Squad handling the problem were no longer involved in a regular surveillance of public conveniences and that they had not been replaced in this activity by any other group of police officers. The policing was limited to occasional visits by members of the Vice Squad. It will be seen from Table 31 [page 131], Table 33 [page 132] and Table 30 [page 131] that the pattern of arrests changed dramatically as a result of this change in levels of policing. Police policy in 1969 would have involved selective factors rendering the grouping of offenders and offences doubtful as representative samples of public homosexual behaviour: the pattern in 1970 would have rendered a psychiatrically based study useless as a study of a nature of offenders. Accordingly, it was decided to proceed with a statistical analysis of the records of Central Court of Petty Sessions for the two periods of the first six months of each of 1969 and 1970: the information to be obtained from these records is sufficiently detailed as to the nature, time and place of offences but severely limited as to personal details of the accused persons. As one of the questions of immediate concern in this area is that of danger to the morals or persons of children, an additional study was made of the records of the Central Children's Court at Albion Street for the period of the first six months of 1969: these records disclosed [see Table 43, page 134 and Table 44, page 134] that only a very small number of children were charged with such offences and that no adults were involved, although one case involved homosexual acts in a private apartment (which, therefore, was not included in the survey) where the initial meeting of the youth and adult occurred in a bar. It was considered that a six months study of Records of the Children's Court would be sufficient, as this was the period of steady surveillance of public conveniences.

I would like to point out at this time that the term Indecency Squad was not an official designation. Officially, the officers whose major function was the patrolling of public lavatories were a select group of members of the Vice Squad, a group which had no existence as a separate entity. However, the term is used in court records and is here adopted for convenience in distinguishing the regular surveillance from the irregular.

The variation in pattern due to changes in policing has caused difficulty in preparing the material for analysis. It has been decided to assimilate the data for the two periods in the majority of tables. Due to difficulties with the computer which arose shortly before the deadline for this paper, the figures in several tables may vary by one or two persons. It is expected that these differences will be too slight to make any appreciable difference to the total pattern, and they will be corrected before the paper is presented in the *Proceedings* of the Institute.

II Classification of Offences

The original classifications for the purposes of the study was that shown in Table 31 [page 131] and Table 36 [page 132]. The nature and legal basis of these offences is as follows:

1. Offensive behaviour within the provision of s. 8A paragraph (a) of the *Vagrancy Act 1902* as amended.

Persons charged with this offence fall easily into three groups.

The first, and largest, group comprises those who masturbate in public, whether alone or in company with others in the open or in the relative privacy of a cubicle. A study [404] of male public homosexual activities in the United States of America indicated that masturbation in the open is a standard method of commencing a homosexual pick-up. It should be noted that several offenders masturbating in railway carriages or on railway platforms were charged under By-Law 1099 clause XV made pursuant to the *Government Railways Act 1912* as amended.

The second group was one that increased in size in 1970 and comprised male prostitutes and transvestites. It was decided to so categorise the group, as in all but a few cases the male prostitutes were clothed in feminine garments and in all cases but one of transvestism the offender was observed offering french love to members of the public; I think the standard price was $7.00. The one exception was the case of a youth with a record of male prostitution offences who was arrested for dancing in the street at King Cross dressed in female attire and kicking u his skirt to show his panties; he explained to the arresting officer that he was celebrating his 21st birthday.

[404] Humphreys, Laud, op. cit. Also in *Trans-Action*, January 1970, pp. 11-25.

The final group is a small heterogeneous collection of offenders the majority of whom were arrested for peeping Tom offences, together with a few cases of males arrested for kissing or embracing fervently other males on the street. This group is too small to be capable of analysis and the offences are too distantly related to others within or without the group to be of any real value or importance to this study. Accordingly, they will be considered in any general tables but will not be considered in the alter threefold division of offences.

2. Acting in an indecent manner in public within the provisions of s. 8A paragraph (a) of the *Vagrancy Act 1902* as amended.

This offence involves urinating in public, usually in the street or a park. Although this offence has no homosexual overtones, the fact that the number of arrests has largely remained constant throughout the two periods studied [see Table 33, page 132] and [Table 30, page 131] renders the offence useful as a standard for comparison.

3. Wilful and obscene exposure under s. 4(2) paragraph (d) of the *Vagrancy Act.*

This offence would appear to be an intermediate offence between offensive behaviour (masturbating) and an attempt to procure an act of indecency. When the offence is committed in a public convenience it usually amounts to the accused masturbating openly and then deliberately exposing his erect penis without further conduct indicating that an act of indecency is intended to follow. It would appear from Laud Humphreys' [405] research in the United States that conduct amounting to offensive behaviour or wilful and obscene exposure is a standard preliminary in the homosexual approach.

It would appear that the conduct required to constitute the offence in locations other than public conveniences is merely the deliberate exposure of the person and does not require the accompaniment of masturbation; nor is it likely to be the beginning of homosexual overtures. An example of such conduct was the middle-aged man walking through a large Department store with his trousers unbuttoned in such a way that his testicles hung out.

Early in 1970 a practice developed of charging persons, not under s. 4(2)(d),but rather with offending against decency by the exposure of their person under s. 78 of the *Police Offences Act 1901-1967*. No such charges were heard during the first six months of 1969.

4. Acts of Indecency with another male person and attempts to procure such acts, within the terms of s. 81A of the *Crimes Act.*

An act of indecency is committed when two or more males masturbate one another. If they masturbate themselves in the presence of others this is the lesser offence of offensive behaviour. A charge of attempting to procure such an act is made when the accused by words or gestures indicates that he expects the other party, who is invariably a police officer, to perform a homosexual act on him. It appears that to be guilty of an attempt under this s. it is not necessary that the intended offence be one of mutual masturbation, but anal intercourse or fellatio may suffice.

When the attempt to procure involves gestures rather than words, the gesture is usually that of the defendant masturbating openly, together with other gestures suggesting that the person join him in the pastime. The gesture must go beyond the deliberate exposure of an erect penis and amount to an invitation.

5. Indecent assault on a male under s. 81 of the *Crimes Act.*

No court reports of such cases were observed during the periods reviewed for this study, but it is possible than one or two cases may have been overlooked due to variations in methods of recording such offences in lists of charges heard by the court. The conduct amounting to this offence is fellatio.

It should be noted that the typical behaviour observed by Laud Humphreys [406] was fellatio, while no such cases were observed in the period under review. I should like to offer, tentatively, some possible reasons for their absence. The first explanation, and one supported by Detective-Sergeant Green's paper 'The Role of the Police in the Detection of Homosexual Offences' [see 1:–1.1.9.1. page 122], is that the police arrest once they have evidence to sustain a charge, albeit one of a minor offence, rather than delay the arrest to enable evidence of a more serious offence to be obtained.

Another explanation is the difference in the populations studied in the United States and in Sydney. It is apparent that Humphreys is not interested in cases of masturbation as a separate activity and such conduct only comes within the scope of his study when it is a prelude to group activity. Dr Briscoe, on the other hand, considered the range of offenders presenting at the clinic which included 'men who genuinely do not know

[405] op. cit.
[406] Humphreys, Laud, op. cit.

they have homosexual proclivities until something happens to expose them' [see 1:–1.1.9.3. page 123]. In the latter circumstances the offender may have no intention of extending his behaviour to group activities: typical of such cases is that of the young man observed masturbating in a cubicle who explained to the police that he had just had an argument with his girl friend and had considered the cubicle private anyway. Table 32 [page 132] supplies some evidence for the hypothesis that those who indulge in solitary activity in cubicles form a different group from others involved in offences in public conveniences.

A third factor is the nature of locations selected for police surveillance, especially in 1969 when the Indecency Squad was operating. This squad concentrated on patrolling conveniences on railway stations on the City Circle: none of these conveniences fit the criteria of tea rooms as established by Humphreys. Tea room, incidentally, is slang for a public place where instant sex may be obtained.

III Analysis

The balance of the paper shall be devoted to an analysis of the statistics prepared from court records, and for this purpose shall be divided into three section.

1. Lavatory offences

Although not all these offences occurred in public conveniences [see Table 34, page 132] the number occurring elsewhere is small and the use of lavatory as a generic term is therefore not too irrelevant. The offences to be considered are the first four in Table 33 [page 132], namely, acts of indecency and attempts to procure the same, solitary masturbation in a closed cubicle, masturbation in any other circumstances, and wilful and obscene exposure.

This division was selected as it was suspected that those charged with masturbation in what amounts to relative privacy may have comprised a section of the population quite distinct from that section committing the other lavatory offences. Table 35 [page 132] and Table 32 [page 132] show the results of two attempts to examine this difference. It is clear from Table 35 [page 132] that this survey affords no evidence that there were any significant differences in age distribution between the two groups. There would appear to be a slight weighting in the private group in favour of the younger age groups and again in the 40-50 year age group, with a drop in the population over 50: however, these results may be due to chance, and no definite conclusions may be drawn from this Table.

From Table 32 [page 132] it is clear that there was a significant relationship between the place of offence and the nature of the offence, with a marked preference indicated for the conveniences at St James and Museum Stations by those arrested for private masturbation, whereas Green Park and the other public lavatories were favoured by those charged with the other lavatory offences. I would tentatively suggest that this affords some evidence of a difference in the two groups, and perhaps of a difference in the nature of the conveniences: further, that the private group probably contained a high proportion of those contained in the grouping by Dr Briscoe to which reference has already been made. A further survey based on psychiatric examinations would have been in a position to confirm or refute these hypotheses.

Table 34 [page 132] contains a wider break up of location and offence than Table 32 [page 132], with several of the other public conveniences being shown. Humphreys indicates the indicia of the more popular tea rooms: they are readily accessible to the roadways; located in parks but isolated from other park facilities preferably by drives; in a position where children are not likely to wander from a playground; in such a position that they cannot be approached without newcomers being observed by the lookouts; and, finally, are unlikely to be used by straight people. Of the conveniences, the locations and the offences here examined, those on the railway station on the Circle have none of the criteria, which may be a factor accounting for the time distribution of offences [see Table 39, page 133]. The conveniences at Circular Quay East, Rushcutters Bay Park and Green Park certainly satisfy more of the criteria, as do many suburban lavatories. The now defunct location hidden near Mrs Macquarie's Chair would have been ideal, and the convenience opposite the corner of Castlereagh Street and Hay Street would appear to satisfy all the criteria.

Table 36 [page 132] indicates the relationship between the offences and the day of arrest. In all lavatory offences activity may be seen to have reached a peak during the weekend and then dwindle during the week. However, it is possible that this rise and fall may largely reflect police activity.

From Table 39 [page 133] it would appear that the activity (of offenders, police, or both) was quiet in the early morning, became regular in the late morning and early afternoon, and rose to an initial peak during the two hours from 2.30pm. The number of arrests during the period 15:30-16:30hrs was particularly high. Activity died during the rush hour, probably for the obvious reasons, and then rose to another peak and slowly dwindled after midnight.

Unfortunately court records, whilst explicit about the nature of offences, contain few personal details about offenders: it is not even possible to ascertain in more than a small number of cases whether they are married [see Table 40, page 133], although this is of major importance in a study of these offences.

Table 45 [page 134] sets out the age distribution of the offenders: the range was from 18 to the late 70s with a mean in the 30 to 40 age group. The distribution was regular for each offence, with no significant difference between the four lavatory offences. Table 38 [page 133] examines the relationship between the age distributions of offenders and that of the general population at risk: there was a significant difference between the two populations with a probability of very much less than 0.1 per cent that such a result was due to chance. The distribution of offenders was much more heavily weighted in the 26-40 bracket than the general population, was a little lower in the 18-20 age bracket, and was much lower in the over 50 grouping. By comparison Table 46 [page 134] dealing with indecent manner offences shows a clear predominance of young offenders with a steady fall as the age rises.

Table 41 [page 133] contains a comparison of the occupations of the offenders. The Chi-squared tested indicated that the relationship between offence and occupation was highly significant with a probability of very much less than 0.1 per cent of such a result being due to chance. Each of the three lavatory categories contained professional and clerical population in excess of the expected population, and a labourer population less than the expected population and very much less in the masturbation category. The group of skilled, semi-skilled and sales workers varied between the offences. There was a much larger population than expected in the masturbation category, a little larger then expected in the wilful and obscene exposure category, and very much smaller in the act of indecency category. Humphreys suggests that this last occupation category is marked by a timidity in approaching strangers in tea rooms, a suggestion which is supported by the above figures: the size of the group was in sharply adverse relationship to the seriousness of the offence. Humphreys considers that the categories of labourers, having too little to lose, and professional and white collar workers, being in a position of financial stability sufficient to afford legal services, display little of such timidity: this would appear to be well founded.

Table 37 [page 132], Table 40 [page 133] and Table 42 [page 134], containing details of prior record, marital status and a conglomerate group of factors respectively, are married, unfortunately, by lack of sufficient data in court records. As it is the practice of police prosecutors to advise magistrates of prior records before sentence it may be inferred that in almost all of those cases in which no mention was made of prior offences the accused had no such records, and Table 37 [page 132] may be read accordingly. A similar assumption may be made in respect of the factors contained in Table 42 [page 134]. Unfortunately the assumption may not be made with any high degree of certainty about marital status in Table 40 [page 133].

Table 43 [page 134] and Table 44 [page 134], being the results of a study of six months' records of the Central Children's Court, indicate that such records give no hint of any danger to the morals of youths inherent in such lavatory offences, and, as Table 45 [page 134] would seem to indicate, such conduct appeals much more to adults.

2. Urinating in Public

This conduct occurred almost exclusively in streets or parks [Table 34, page 132], arrests reaching peak at the weekend [Table 36, page 132] and during the period 8.30pm to 12.30am [Table 39, page 133], and approximately half of the offences are committed by persons affected to some noticeable degree by alcohol.

Offenders varied in age from 18 to over 60 with a mean in the age group 31 to 40 years [Table 45, page 134] but with a predominance of young offenders [Table 46, page 134]. The number in each age bracket was in inverse proportion to the age of the group.

It is clear from Table 41 [page 133] that the offenders largely fell into the two categories of skilled, semi-skilled and sales workers and labourers. Table 37 [page 132] indicates that the proportion of offenders with criminal records of offences different from that now being considered to those without such records was considerably greater than in the lavatory offences.

3. Transvestism and Male Prostitution

This offence was one of little importance in 1969 but the number of arrests tripled in the second six-month period. Offences within this category occurred almost exclusively in the streets [Table 34, page 132] and usually in the suburbs of Kings Cross and Darlinghurst, and occurred steadily throughout the week [Table 36, page 132] mostly between 8.30pm and 12.30am.

Offenders were the youngest of all groups studied, with a range between 18 and 35 years with a mean in the age group of 18 to 20 [Table 45, page 134]. The majority claimed their occupation as being that of labourer,

with most of the balance of the group falling into the categories of workers in the field of entertainment and of skilled, semi-skilled and sales workers [Table 41, page 133]. Over 50 per cent of offenders charged had records of prior similar offences [Table 37, page 132]. There was no record of any such offenders being married.

IV Conclusion

In conclusion I wish to make some comments about the policy of official surveillance of public conveniences. The policy applied in 1969, a squad of officers experienced in such work being engaged in patrolling those public conveniences in the inner city area most used by straight members of the public, and perhaps by children, was certainly practical. The present level of policing would appear to amount to members of the Vice Squad visiting Green Park during the course of their duties and, on rare occasions, visiting one of the inner city conveniences. I do not intend to comment on the desirability of treating such conduct as criminal or of enforcing the provisions, if retained. However, if the conduct is to be treated as criminal and the offences prosecuted, the policy applied in 1969 would appear the more realistic procedure: it would certainly inhibit such activity in those conveniences most used by straight members of the public. Green Park is recognised as a popular tea room and arrests are certain: as the traffic of straight people is small, the function served by this method of enforcement is much less certain.

Table 30: Years of Disposal, Place and Type of Offences, Sydney – First Six Months of Each of 1969 and 1970

Place of Offence	**A**. Year of Disposal – 1969–Offence *								Place of Offence	**B**. Year of Disposal – 1970–Offence *								Total Offences
	Ind	M. Priv	M. Oth	Exp	U	Oth	TP	Total		Ind	M. Priv	M. Oth	Exp	U	Oth	TP	Total	
St James	5	23	21	9	0	0	0	58	St James	1	1	0	1	0	0	0	3	61
Museum	6	21	23	6	0	0	0	56	Museum	1	1	0	1	0	0	0	3	59
Town Hall	9	15	85	19	0	1	0	129	Town Hall	0	1	8	0	0	0	0	9	138
Wynyard	2	1	9	5	0	0	0	17	Wynyard	0	0	0	1	0	0	0	1	18
Rushcutters Bay Park	8	0	8	8	0	0	0	24	Rushcutters Bay Park	0	0	1	3	0	0	0	4	28
Circular Quay East	6	0	7	6	0	0	0	19	Circular Quay East	0	0	0	1	0	0	0	1	20
Green Park	1	1	5	8	0	0	0	15	Green Park	6	1	30	8	0	2	0	47	62
Street or Park	1	1	2	13	100	4	16	137	Street or Park	8	0	0	13	85	4	44	154	291
Other Public Lavatories	2	0	3	7	0	0	0	12	Other Public Lavatories	1	1	1	1	0	0	0	4	16
Elsewhere	0	0	2	3	3	4	0	12	Elsewhere	2	1	1	2	2	2	1	11	23
Total	40	62	165	84	103	9	16	479	Total	19	6	41	31	87	8	45	237	716

* Ind–Act of Indecency and attempt to procure same; M.Priv–Offensive Manner–Solitary Masturbation in cubicle; M.Oth–Masturbation in other circumstances; Exp–Wilful and Obscene Exposure; U–Indecent Manner–Urinating; Oth–Other Offences and Indecent Behaviour; TP–Transvestism and Male Prostitution.

Table 31: Where Offences Took Place and Types of Offences, Sydney – First Six Months of Each of 1969 and 1970

Place of Offence	Indecency Squad – Offences *							Place of Offence	Other Police – Offences *							Total Offences
	Ind	M	Exp	U	Oth	TP	Total		Ind	M	Exp	U	Oth	TP	Total	
St James	6	46	10	0	0	0	62	St James	0	0	0	0	0	0	0	62
Museum	6	44	7	0	0	0	57	Museum	1	1	0	0	0	0	2	59
Town Hall	9	102	19	1	1	0	132	Town Hall	0	8	0	0	0	0	8	140
Green Park	2	6	8	0	0	0	16	Green Park	5	31	7	0	2	0	45	61
Street or Park	1	0	0	1	0	0	2	Street or Park	8	3	26	184	8	60	289	291
Other lavatories	18	28	30	0	0	0	76	Other lavatories	1	3	2	0	0	0	6	82
Elsewhere	0	1	1	0	1	0	3	Elsewhere	2	3	6	5	5	1	22	25
Total	42	227	75	2	2	0	348	Total	17	49	41	189	15	61	372	720

* Ind–Act of Indecency and attempt to procure same; M–Offensive Manner–Masturbation; Exp–Wilful and Obscene Exposure; U–Indecent Manner–Urinating; Oth–Other Offences and Indecent Behaviour; TP–Transvestism and Male Prostitution.

Table 32: Comparison of Private and Public Lavatory Offences and Places of Offence, Sydney – First Six Months of Each of 1969 and 1970

Place of Offence	M. Priv. Offences	Total of M. Oth. Ind. & Exp. Off	Total
St James	24	37	61
Museum	16	122	138
Town Hall	22	37	59
Green Park	2	58	60
Street or Park	1	36	37
Other Public	2	81	83
Lavatories	1	12	13
Elsewhere	–	–	–
Total	68	383	451
D.O.F. = 6	P << 0.1%		$X^2 = 74.5$

Private: Offence M.Priv – Offensive Manner - Solitary Masturbation in cubicle. Public: Offences Ind – Act of Indecency and attempt to procure same; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure.

Table 33: Years of Disposal of Offences and Types of Offences, Sydney – First Six Months of Each of 1969 and 1970

Year of Disposal	Offence *							
	Ind	M.Priv	M.Oth	Exp	U	Oth	TP	Total
2.0e+07	4019	626	16542	8631	10387	98	1645	481238
Total	59	68	207	117	190	17	61	719

* Ind – Act of Indecency and attempt to procure same; M.Priv – Offensive Manner - Solitary Masturbation in cubicle; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure; U – Indecent Manner - Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.

Table 34: Locations and Types of Offences Committed, Sydney – First Six Months of Each of 1969 and 1970

Place of Offence	Ind	M.Priv	M.Oth	Exp	U	Oth	TP	Total
St James	6	24	21	10	0	0	0	61
Museum	7	22	23	7	0	0	0	59
Town Hall	9	16	94	19	0	1	0	139
Wynyard	2	1	9	6	0	0	0	18
Rushcutters Bay Park .	8	0	9	11	0	0	0	28
Circular Quay East . . .	6	0	7	7	0	0	0	20
Green Park	7	2	35	16	0	0	0	62
Street or Park	9	1	2	25	184	8	60	289
Other Public Lavatories	3	1	4	9	0	0	0	17
Elsewhere	2	1	3	7	6	6	1	26
Total	59	68	207	117	190	17	61	719

* Ind – Act of Indecency and attempt to procure same; M.Priv – Offensive Manner - Solitary Masturbation in cubicle; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure; U – Indecent Manner - Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.

Table 35: Comparison of Private and Public Lavatory Offences Within Certain Age Groups, Sydney – First Six Months of Each of 1969 and 1970

Age	M. Priv. Offences	Total of M. Oth. Ind. & Exp. Off	Total
18-20 . .	8	16	24
21-25 . .	11	55	66
26-30 . .	11	70	81
31-40 . .	18	105	123
41-50 . .	17	82	99
51-60 . .	2	36	38
60 + . . .	1	19	20
Total . . .	68	383	451
D.O.F. = 6	10%> P <5%		$X^2 = 11.3$

Private Offences: M.Priv – Offensive Manner – Solitary Masturbation in cubicle. Public Offences: Ind – Act of Indecency and attempt to procure same; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure.

Table 36: Relationship Between Offences Committed and Day of Arrest, Sydney – First Six Months of Each of 1969 and 1970

Day of Arrest	Ind	M	Exp	U	Oth	TP	Total
Monday	4	18	10	14	3	11	60
Tuesday	3	19	14	12	1	4	53
Wednesday . .	8	17	6	14	1	11	57
Thursday . . .	1	33	9	23	2	3	71
Friday	11	39	19	23	4	12	108
Saturday	16	79	33	48	2	13	191
Sunday	16	71	25	56	4	8	180
Total	59	276	116	190	17	62	720

Ind – Act of Indecency and attempt to procure same; M – Offensive Manner - Solitary Masturbation in cubicle and Masturbation in other circumstances; Exp – Wilful and Obscene Exposure; U – Indecent Manner - Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.

Table 37: Prior Record Details of Offenders and Offences, Sydney – First Six Months of Each of 1969 and 1970

Prior Record of Offences	Offence							
	Ind	M.Priv	M.Oth	Exp	U	Oth	TP	Total
One or more different	2	7	10	10	36	3	2	70
One or more similar	14	19	38	26	16	3	24	140
One or more of each	3	1	5	6	7	2	10	34
No mention	40	41	154	75	131	9	25	475
Total	59	68	207	117	190	17	61	719

Ind – Act of Indecency and attempt to procure same; M.Priv – Offensive Manner - Solitary Masturbation in cubicle; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure; U – Indecent Manner - Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.

Table 38: Relationship Between the Age Distributions of Offenders and That of the General Population at Risk, Sydney – First Six Months of Each of 1969 and 1970

Age Group	No. of persons charged with Ind. M. & Exp. Offences	Estimated No. of males in NSW 30 June 1968	Expected Value	Percentage of Pop. (%).	D = O–E	D^2	$\frac{D^2}{E}$
18-20 . .	25	110350	34.9	7.73	-9.9	8.01	2.81
21-25 . .	66	169080	53.4	11.84	+ 12.6	158.76	2.97
26-30 . .	81	140850	44.5	9.86	+ 36.5	1332.25	29.93
31-40 . .	122	288490	91.1	20.2	+ 30.9	954.81	10.49
41-50 . .	99	275440	86.9	19.28	+ 12.1	146.41	1.68
51-60 . .	37	248160	78.3	17.37	-41.3	1705.69	21.78
60 + . . .	21	195900	61.9	13.72	-40.9	1672.81	27.02
Total . . .	451	1428270	451	100	0	–	96.68
Ind – Act of Indecency and attempt to procure same; M.Priv – Offensive Manner - Solitary Masturbation in cubicle; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure.							
D.O.F. = 6			P << 0.1%				$X^2 = 96.68$

Table 39: Relationship Between Offences Committed and Hour of Arrest, Sydney – First Six Months of Each of 1969 and 1970

Hour of Arrest	Ind	M. Priv	M. Oth	Exp	U	Oth	TP	Total
00.30–02.29	9	5	21	9	15	3	4	66
02.30–04.29	2	1	6	4	8	2	4	27
04.30–06.29	0	0	2	0	1	0	0	3
06.30–08.29	0	0	0	1	0	0	0	1
08.30–10.29	1	0	1	2	0	0	0	4
10.30–12.29	1	2	10	11	2	1	3	30
12.30–14.29	5	2	11	9	3	0	3	33
14.30–16.29	6	13	26	13	4	3	2	67
16.30–18.29	1	3	12	11	6	0	0	33
18.30–20.29	6	24	49	18	10	2	3	112
20.30–22.29	16	8	28	23	81	3	21	180
22.30–00.29	11	9	41	16	57	3	21	158
Unknown	1	1	0	0	3	0	0	5
Total	59	68	207	117	190	17	61	719
* Ind – Act of Indecency and attempt to procure same; M.Priv – Offensive Manner - Solitary Masturbation in cubicle; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure; U – Indecent Manner - Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.								

Table 40: Marital Status Details of Offenders and Offences, Sydney – First Six Months of Each of 1969 and 1970

Marital Status	Offence							
	Ind	M. Priv	M. Oth	Exp	U	Oth	TP	Total
Not married	21	15	25	40	18	10	27	156
Married . . .	5	5	13	12	5	-	-	40
Separated . .	1	-	1	2	2	-	-	6
Divorced . . .	1	-	1	1	-	-	-	3
Widower . . .	-	1	-	-	2	-	-	3
Unknown . .	31	47	167	62	167	7	34	511
Total	59	68	207	117	190	17	61	719
Ind – Act of Indecency and attempt to procure same; M.Priv – Offensive Manner - Solitary Masturbation in cubicle; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure; U – Indecent Manner - Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.								

Table 41: Comparison of Occupations of Offenders and Offences, Sydney – First Six Months of Each of 1969 and 1970

Occupation	Offence												Total offenders
	Ind		M		Exp		U		Other		TP		
	No.	E	No.	E	No.	E	No.	E	No.	E	No.	E	
Professional & Clerical	22	11.6	78	54.1	26	22.7	12	37.3	1	3.3	2	12	141
Skilled/Semi Skilled & Sales	10	18.5	103	86.4	40	36.3	54	59.5	6	5.3	12	19.1	225
Labourers	21	22.4	65	104.8	37	44	106	72.1	6	6.5	38	23.2	273
Entertainers	5	2.3	8	10.7	1	4.5	5	7.4	2	0.7	7	2.4	28
Pensioners	1	2.1	11	10	6	4.2	6	6.9	2	0.6	–	2.2	26
Not known	–	2.1	11	10	6	4.2	7	6.9	–	0.6	2	2.2	26
Total	59	59	276	276	116	115.9	190	190.1	17	17	61	61.1	719
Ind – Act of Indecency and attempt to procure same; M – Offensive Manner - Masturbation; Exp – Wilful and Obscene Exposure; U – Indecent Manner - Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.													
D.O.F. = 25				P 0.1%									$X^2 = 120.9$

Table 42: Other Factors and Offences Details, Sydney – First Six Months of Each of 1969 and 1970

Other Factors	Offence							
	Ind	M.Priv	M.Oth	Exp	U	Oth	TP	Total
Alcohol	9	9	33	25	81	5	6	168
Medical difficulties	8	3	13	20	3	4	1	52
Language difficulties	5	3	8	8	7	–	–	31
A combination of factors	4	2	–	6	2	1	–	15
No mention	33	51	153	58	97	7	54	453
Total	59	68	207	117	190	17	61	719

Ind – Act of Indecency and attempt to procure same; M.Priv – Offensive Manner - Solitary Masturbation in cubicle; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure; U – Indecent Manner - Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.

Table 43: Youths (16 and 17 Years) and Offences Details, Sydney – First Six Months of Each of 1969 and 1970

Age	Offence							
	Ind	M.Priv	M.Oth	Exp	U	Oth	TP	Total
16	–	1	–	1	1	–	–	3
17	–	2	3	3	1	1	–	10
Total	–	3	3	4	2	1	–	13

Ind – Act of Indecency and attempt to procure same; M.Priv – Offensive Manner - Solitary Masturbation in cubicle; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure; U – Indecent Manner- Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.

Table 44: Youths (16 and 17 Years) Offences and Places of Offences Details, Sydney – First Six Months of Each of 1969 and 1970

Place of Offence	Offence							
	Ind	M.Priv	M.Oth	Exp	U	Oth	TP	Total
St James	–	1	1	–	–	–	–	2
Museum	–	2	1	–	–	–	–	3
Other lavatories	–	–	–	1	–	–	–	1
Street or park	–	–	1	3	2	1	–	7
Total	–	3	3	4	2	1	–	13

Ind – Act of Indecency and attempt to procure same; M.Priv – Offensive Manner – Solitary Masturbation in cubicle; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure; U – Indecent Manner - Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.

Table 45: Age Distribution of Offenders and Offences Committed, Sydney – First Six Months of Each of 1969 and 1970

	Offence *							
Age Group	Ind	M.Priv	M.Oth	Exp	U	Oth	TP	Total
18–20	1	8	8	7	32	0	37	93
21–25	6	11	35	14	37	5	17	125
26–30	16	11	36	18	30	2	6	119
31–40	13	18	58	34	32	6	1	162
41–50	14	17	47	21	34	2	0	135
51–60	7	2	15	14	20	2	0	60
60 +	2	1	8	9	5	0	0	25
Total	59	68	207	117	190	17	61	719

* Ind – Act of Indecency and attempt to procure same; M.Priv – Offensive Manner – Solitary Masturbation in cubicle; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure; U – Indecent Manner - Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.

Table 46: Relationship Between the Age Distributions of Offenders (Charged with Indecent Manner Offences) and That of the General Population At Risk, Sydney – First Six Months of Each of 1969 and 1970

Age Group	No. of persons charged with Ind. M. & Exp offences *	Estimated No. of males in NSW 30 June 1968	Expected Value	Percentage of Pop (%).	D = O–E	D^2	$\frac{D^2}{E}$
18-20	32	110350	14.7	7.73	+ 17.3	299.29	20.36
21-25	37	169080	22.7	11.84	+ 14.3	204.49	9.01
26-30	30	140850	18.8	9.86	+ 11.2	125.44	6.67
31-40	32	288490	38.6	20.2	-6.6	43.56	1.13
41-50	34	275440	36.8	19.28	-2.8	7.84	0.21
51-60	20	248160	33.2	17.37	-13.2	174.24	5.25
60 +	6	195900	26.2	13.72	-20.2	408.04	15.57
Total	191	1428270	191	100	0	–	58.2

* Ind–Act of Indecency and Attempt to Procure same; M–Offensive Manner-Masturbation; Wilful and Obscene Exposure

D.O.F. = 6 P << 0.1% $X^2 = 58.20$

1:–1.1.9.5. – The Court Disposition of Men Charged with Acts of Indecency [407]

When I set out to examine what happened to men charged with an act of indecency after they had been arrested I hoped to be able to draw from my data some generalisations about what was likely to occur in certain types of cases. Unfortunately the very complexity of the social phenomena we are examining here made this nearly impossible.

For a start, there are twenty-two possible outcomes of an arrest, ranging from the person who does not appear in court and forfeits bail without further action being taken to the person sentenced to goal without the option of a fine. The final disposition may of course depend on type of offence, previous record, a personal idiosyncrasy of the particular one of the 45 magistrates involved in this study, and other factors not recorded in the files available to us. This paper will therefore restrict itself to simple description, with little attempt at explanation or analysis of inter-relationships between various factors.

Bail

In cases of indecency occurring in metropolitan Sydney, many occur late at night and may be dealt with on a plea of guilty the next morning in court without the person charged being released. In other cases both the police and the magistrates have wide powers of releasing on bail.

The police have power under s. 153 of the *Justices Act* to release a person arrested on a cash bail. When this happens, in a substantial number of cases the person charged does not appear in court, the bail is forfeited and no further action is directed. This is, of course, not a conviction but is recorded as an arrest and the fact of the absconding may be mentioned in court if the offender is arrested for a similar offence at a later date.

If brought before the court, the man may be suffered to remain at large without bail, given bail or without the requirement of another person as surety, and may achieve release on bail or be remanded. Occasionally bail is refused.

Table 47 [page 138] shows the numbers of persons charged dealt with in various ways. Though it is obvious that great differences exist in the proportions of persons charged who are dealt with in various ways before trial, it is by no means obvious why these differences occur. The classifications of Mr McGonigal's paper [see 1:–1.1.9.4. page 126] have been retained. Those men released by the police who fail to appear in the morning have, as a result, very few details recorded of the act for which they were arrested. When charged with offensive manner, it is impossible to say whether the offence was committed solitarily or in company, or in the open or in a cubicle. They are all, therefore, classified in the group offensive manner (other), which is the reason for the large difference between this group and those convicted of offensive manner (solitary, open).

Previous Record

When the person is found guilty and sentenced, evidence of his previous record is given. When no evidence of previous record is given we have assumed that this means that the person is a first offender [see Table 48, page 139], although how accurate this is, is unknown. The cases in which no finding of guilt is made have to be separated, as their previous records are not available and one cannot assume they were first offenders. It is highly likely, however, that these cases are first offenders, as they are generally allowed to forfeit their bail at some stage in the proceedings without further action being taken.

Ignoring those convicted of other acts of indecent behaviour, it can be seen than those convicted of indecent manner in public (ie urinating) and the homosexual prostitutes form two distinct groups, while those convicted of other types of indecent behaviour seem to form a homogeneous group as far as previous record is concerned.

The group found guilty of indecent manner were more likely to have convictions of other kinds of criminal activity but were apparently mostly criminals with rather petty criminal backgrounds, as in only seven (7) cases out of 190 was there evidence in the record of a prison sentence. This was not significantly different from the proportions found among the homosexual prostitutes and the other indecent offenders formed into one group.

The transvestites had by far the greatest chance of having been previously convicted of a similar offence. This would be expected, as in this case the crime provides the income of the offender, while with the other offenders the crime is an incidental and sometimes almost accidental piece of behaviour far removed from his ordinary style of life.

Sentence

All the charged examined in this period were dealt with summarily. As well as those who never appeared

[407] Ward, Paul, 'A Survey of Court Disposition of Offenders and a Review of Recent Literature', in *Proceedings of the Institute of Criminology: Male Sex Offences in Public Places*, Institute of Criminology, Faculty of Law, University of Sydney, November 1970, pp. 37-47. (Senior Lecturer in Statistics, The University of Sydney, Law School)

in court after receiving bail from the police, there were other offenders who failed to appear to face their trial after being released on bail by the magistrate and with whom no further action was taken. Of those who stand trial there is a slight chance of having the charge dismissed and an extremely small chance of acquittal [see Table 49, page 139].

In all offences (except attempt to procure and acts of indecency) fines are used extensively. About one-quarter of the men fined end up in goal although the majority are given time to pay. The groups most likely to have this result are those convicted of indecent manner in public and the transvestites. If these men are homosexual prostitutes, the money to be made in this trade is apparently nothing compared to the income reputedly acquired by their female competitors.

To compress Table 49, sentences resulting in the offender leaving the court without paying a fine or bond have been grouped together and the various sorts of bond have been combined in one group. Bonds are important with those committing acts of indecency or attempting to procure or with wilful and obscene exposure, but not with other charges. The chance of being sent to prison without option is small, seemingly being reserved for persistent offenders who are arrested twice within a short period. Of those listed as other, seven (7) died and two (2) were committed to a mental hospital.

The Tea Room Trade

Acts of indecency, procuring a male person, offensive manner, and wilful and obscene exposure are commonly found occurring within lavatories and can be differentiated from exhibitionism, indecent manner in public and transvestism on this basis. The only major study of lavatory offences is one which has recently been made by Laud Humphreys.

Humphreys acted as a lookout for persons engaged in acts of mutual masturbation and fellatio in public lavatories in an American city. His findings are interesting in being the only piece of first-hand observation on this form of behaviour available. He observed 50 people engaged in this activity and later traced them and, appearing with a hair-cut in the role of a person making a survey, obtained background information on the social position and style of life, which he compared with a sample of 50 people who had been chosen as a close matched pair for each of the offenders.

Four types of offenders we re noted, separately by the criteria of whether they were married or single, in a position of dependence on their own credit in society to maintain themselves or relatively independent of economic pressures.

The largest group (38 per cent) was of married men in dependent occupations. This group was given the label Trade by Humphreys. They have an outwardly stable home life and typically have children whom they love and a wife who rejects her husband's sexual advances for fear of an unwanted pregnancy. The tea room (lavatory) operates as a cheap impersonal means of sexual gratification which probably assists in maintaining a stable home environment. The trade group are reportedly the most timed in making advances and would be rarely expected to be charged with anything more serious then offensive manner under Sydney conditions. Typically they are more neat in appearance, harder working and ambitious than the normal person in their sexual class.

Type II, the am bisexuals, consists of married men of means who sexually experiment a great deal and generally find in tea room offences a source of thrill not available in other forms of sexual activity. Their resources make it possible for them generally to avoid the consequences of being caught in this behaviour, as they are able to utilise the best legal advice. They appear also to be more moral than other groups and be more likely to counter arrest by charges that the police are carrying out a policy of falsely arresting innocent people.

The third group, the smallest (14 per cent) are homosexuals, from well-to-do families or being kept by a lover, who have low capital but negligible guilt feelings about their behaviour. They come from the gay sub-culture and seem usually to participate in this form of behaviour for the thrill or for money.

The last group, the closet queens, consists of single lonely men, usually hard workers in an ordinary occupation. These, although homosexually oriented, are not part of the gay society. They often appear pathetically worried about their life style, and have highly moral attitudes which they cannot live up to. Like the trade, they tend to work steadily and harder than normal.

All groups tended to regard young strangers in lavatories with suspicion, only engaging in sexual play with them after the first moves were initiated by the young person, and often even then, because of the danger of assault.

The Relevance of the Tea Room Trade to Sydney

The first problem in assessing the relevance in Humphreys' findings to Sydney conditions is that many

offenders charged with offensive manner deny any attempt to solicit but simple irresistible impulse. After reading Humphreys' book one doubts whether this is true in many cases and suspects that the offender is trying to put himself in as good a lights as possible so that the sentence will not be too heavy.

Luckily there was available a set of 33 cases of acts of indecency in which the psychiatric reports were available to the author. Unfortunately these were not all the acts within lavatories and it was sometimes hard to discover what the offence was because of lack of information. One must realise that the case coming before the psychiatrist are hardly likely to be a representative sample of the population of offenders. After eliminating three cases in which brain damage seemed indicated, the following numbers in each classification were obtained.

	MARRIED	UNMARRIED
Dependent	6	12
Independent	2	10

In nine cases out of the eighteen offenders in dependent occupations mention is made of above-normal capacity to work by the offenders. Phrases such as 'obsessionally devoted to work' and 'works well and studies at night' occur regularly. In no case is a poor work record shown.

Six cases of those in dependent occupations are specifically referred to as men with moral codes. Generally speaking, all the unmarried men give the impression of possessing few friends. All these characteristics are almost identical with those pointed out by Humphreys as typical of this group.

On the other hand the gay group are typically described as having little concern for change and being satisfied with their conditions. The opinion generally formed by the psychiatrists is that treatment is very unlikely to be successful. Once again, the description of Humphreys of the group is very close to what is observed in Sydney.

One is led to the conclusion then that it is at least plausible to accept the idea that many of the observations of the Tea Room Trade would be equally applicable in Sydney.

One cannot leave a paper concerning the sentences received by various offenders without at least mentioning the question of whether these sentences were appropriate. Indeed, it is to be hoped that at this seminar there will be some discussion of the wider problem of how far the criminal law should interfere with people who commit acts of indecency in relatively concealed places. To try to ensure some discussion, certain doubtful propositions will be put forward for consideration and interested members of the audience might care to bring forward evidence supporting or denying any of these propositions.

Firstly, it could be argued that a person will tend to consider acts which he cannot perceive himself as committing as more serious than the damage done by the offence would warrant. Generally the crime of keeping an undersized fish will be regarded as less serious than masturbating in a lavatory cubicle, but a marine biologist can easily demonstrate the lasting damage caused by wholesale crimes of the first kind, whereas it is doubtful that anyone can conclusively prove the second act as lasting harmful consequences at all. Are we simply using those detected in this behaviour as scapegoats to improve our own moral self-image?

Secondly, we have a long tradition in our society, dating at least from the ancient Greeks, that sexual continence is associated with a higher order of social competence. The most respectable version of this theory is Freud's hypothesis that ambitious people are those who have successfully sublimated their sexual lives and channelled the energy into socially acceptable goals. However, both anecdotal and empirical evidence cast grave doubts on the validity of this theory. American studies of students have shown that as many of the brighter students as of the more dull lead active sex lives and historically famous characters exist who, although universally regarded as competent in their field, are not noted for their degree of sexual restraint. Such evidence as we obtain from Humphreys indicates that a large group of offenders are not less competent or ambitious as the result of their sexual activities but somewhat more ambitious than randomly chosen matched persons. How valid, then, is the claim that these offenders pose a threat to society, when this threat is surely based on the theory outlined above?

The survey seems to indicate that these offenders are probably fairly widespread in Sydney and there would be little difficulty in finding more offenders in public lavatories if police resources were devoted to the problem. Three policies seem possible in regard to these offences:

(a) Increase policing of lavatories.

(b) Keep the law unchanged but only police lavatories complained of by the public.

(c) Alter the law so that acts of indecency are legal if inside a cubicle and a reasonable attempt has been made to obscure any window so that the public have difficulty in looking in.

Implementation of the first policy would probably initially create a rate of arrests proportional to the police man-hours expended in the process. A publicity campaign making known these arrests might reduce the incidence of the offence. Several policemen would no doubt be alleged to have falsely arrested people and possibly to have incited the offenders in their behaviour by initiating the pick-up routines of the tea room. A few notable offenders, famous enough not to be of interest to the newspapers, might suffer a disproportionate amount of loss of social position and income for an offence which will cost the ordinary man no more than $50. Whether one believes that the increased time spent in detecting these offences, with the compensating loss in time spent in investigating, say, breaking and entering, is worthwhile will very much depend on how serious one feels this offence is.

The policy of only responding to complaints by the public will generally result in people not involved in trying to solicit unwilling accomplices being arrested, as the offender will have left the scene. How effective this will be in reducing the number of offences depends very much on the amount of communication between offenders who use a particular lavatory. As this is an unknown quantity in Sydney, we cannot not really say how effective the policy would be. It seems obvious that such a policy might have more effect if the clientele were of the gay society than if most of the offenders were what Humphreys calls trade. These offenders preserve their anonymity and are unlikely to become aware of changes in police policy.

The last policy (ie changing the law) might have some interesting effects among those offenders who commit the offences not only for sexual relief but because of the thrill of committing a criminal offence. What type of sexual adventure would people in this group substitute if acts of indecency were legal? Indeed the rise in popularity of male transvestite prostitutes might just possible be related to the removal of danger from lavatories by the lower level of policing. Soliciting a male prostitute may very well lead to a brush with the police which, while providing a thrill, involves very little danger of actual arrest, as the police appear to generally accept the proposition that the customer was deceived concerning the sex of his pick-up.

It can be argued, then, that the presence of an Indecency Squad may channel the behaviour of some offenders towards the lavatories and that this behaviour is probably preferable to the sexual adventures that will be sought out if no policing of the lavatories exists. A reasonable policing policy would seem to be to assign two pairs of policemen to this duty for a period which they knew from the outset would be no longer than one year. Working overlapping afternoon shifts, so that one pair is on duty each weekend, the squad should probably, in the interest of justice, police the lavatories of Sydney on a strictly random basis, picking names out of a hat at the start of each shift. The squad would, of course, respond to public complaints as soon as possible.

To avoid strain on the officers involved, policemen who are not noted for the excessive neatness of their homes and driving ambition would seem to be preferable for assignment to the squad.

Table 47: Number of Persons Charged and Dealt with in Various Ways, Sydney – First Six Months of Each of 1969 and 1970

How dealt with	Offence *						
	Ind	M.Priv	M.Oth	Exp	U	Oth	TP
Released on bail s. 153 Bail forfeited	1	0	58	0	28	0	1
Released on bail S. 153 Appeared	1	20	40	12	34	3	9
Suffered to go at large	2	4	16	13	3	1	2
Granted bail with surety–Secured release	3	1	3	8	1	2	3
Granted bail without surety–Secured release	42	7	25	33	2	2	6
Granted bail without surety–Remanded	4	0	0	7	2	4	2
Granted bail without surety–Remanded	0	0	0	1	1	0	2
Refused bail	2	1	3	3	1	0	1
Dealt with on next day	3	35	62	40	117	5	34
Unknown	1	0	0	0	1	0	1
Total	59	68	207	117	190	17	61

* Ind – Act of Indecency and attempt to procure same; M.Priv – Offensive Manner - Solitary Masturbation in cubicle; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure; U – Indecent Manner - Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.

It would seem socially desirable for the police to make the widest possible use of their discretion to grant bail for persons arrested for acts of indecency in lavatories. No useful purpose seems to be served by bringing them before the court. Psychiatric examination is rare, and only the minority of those examined are found to be treatable. In effect, the cost of the psychiatric examination becomes an extra fine paid to ensure a bond in many cases. People showing a neurotic need to be punished (or incontrollable impulses) by being caught repeatedly will have to be brought to court and preferably medically examined as a matter of course.

In conclusion, my final opinion on the subject of offences in lavatories is that they provide a sexual outlet which provides a balancing factor in many marriages under strain. Over policing in this area, in an attempt to

stamp the offences out, will result in greater numbers of broken homes, with the undesirable consequences of this to society at large. One's personal distaste for such a mode of sexual adaptation should not make one completely blind to its possible socially desirable side effects.

Table 48: Number of Persons Previously Found Guilty and Sentenced Compared with Those Who Where Not Found Guilty and Sentenced, Sydney – First Six Months of Each of 1969 and 1970

	Offence *							
	Ind	M.Priv	M.Oth	Exp	U	Oth	TP	Total
Previous Offence(s) not acts of indecency	2	7	10	10	36	3	2	70
Previous Offence(s) acts of indecency	14	19	38	26	16	3	24	140
Previous Offence(s) of both kinds	3	1	5	6	7	2	10	34
No evidence of previous offence	33	40	94	67	102	8	19	363
Not found guilty no evidence available	7	1	60	8	29	1	6	112
Total	59	68	207	117	190	17	61	719
Percentage of those where guilt found with offence of different type	9.6	12.4	10.2	14.7	26.7	31.2	21.8	17.2
Percentage of those where guilt found with offences of similar type	32.7	29.8	29.4	29.4	14.3	31.2	61.8	28.7

* Ind – Act of Indecency and attempt to procure same; M.Priv – Offensive Manner - Solitary Masturbation in cubicle; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure; U – Indecent Manner - Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.

Table 49: How Offenders Were Dealt With, Sydney – First Six Months of Each of 1969 and 1970

	Offence *							
	Ind	M.Priv	M.Oth	Exp	U	Oth	TP	Total
Failed to appear no further action	8	0	70	6	28	1	7	120
Charge dismissed	2	0	2	7	2	1	2	16
Acquitted	0	0	0	2	0	0	0	2
Fine paid	0	42	82	31	89	10	23	277
Fine unpaid goal	0	5	8	8	47	2	25	95
Fine unknown result	0	9	22	8	6	0	4	49
Admonished & Discharged Rising of court Discharged 556A	16	6	18	20	12	3	0	75
Bond 554, 556A, 558 & Probation	28	6	4	28	0	0	0	66
Goal (No option)	4	0	0	6	0	0	0	10
Other	1	0	1	1	6	0	0	9
Total	59	68	207	117	190	17	61	719

* Ind – Act of Indecency and attempt to procure same; M.Priv – Offensive Manner - Solitary Masturbation in cubicle; M.Oth – Masturbation in other circumstances; Exp – Wilful and Obscene Exposure; U – Indecent Manner - Urinating; Oth – Other Offences and Indecent Behaviour; TP – Transvestism and Male Prostitution.

1:–1.1.9.6. – Sharp Swing in Favour of Homosexual Law Reform, 1 February 1972 [408]

Getting the State Out of the Bedroom

Much social change is barely visible while it proceeds – it takes some specific event to make it apparent.

Many people have been pleasantly surprised or badly shocked by the publication of the latest survey, [see page 115] by a Qld sociologist, Paul Wilson, and a New York criminologist, Duncan Chappell, showing a sharp swing in favour of homosexual law reform.

Four years ago only 22 per cent thought that homosexual conduct between consenting adults in private should no longer be a crime.

Now 63 per cent in Sydney, 56 per cent in Melbourne and 49 per cent in Brisbane think so. The countryside remains sound (or intolerant) – only 15 per cent agree with the more permissive urbanites.

The authors think the figures show that homosexual reform is now a matter of time. Well, that's nicely vague. It will take much more than a change in general attitudes, important as that is, to bring about law reform.

On most of the alleged hot potatoes, the key factor is the courage of the politicians. It may well be that in WA, where reform has been firmly promised, a Labor Government will bring it in.

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[408] Mayer, Henry, 'Getting the State Out Of the Bedroom', *The Australian*, Tuesday, 1 February 1972, p. 8.

If so, the national score on getting the State out of the bedroom would stand 1:1 – it was a Liberal government which brought in abortion law reform in SA.

From the angle of those who support such reform, this would be a goo thing. It would make it more difficult to smear one of the parties as favouring moral decay if both went in for reforms of this kind.

And this would be so in spite of the fact that many people, certainly Catholics, would differentiate sharply between reform of laws about homosexuality and those about abortion.

Clearly, issues of this sort cur across party lines and lead to serious divisions within parties.

Even if one believes reform in these fields to be very important, it is not reasonable to ask a party, Labor or Liberal, to risk a split and sacrifice all else to an official single line on the relations between law and morality.

For many politicians it may simply be a question of electoral survival in their own seats; for others it is an issue of conscience.

I am strongly in favour of the State opting out of all these fields and the faster the better. But if I were a member of any party, let alone influential in it – which I am not – I would not vote in favour of binding politicians to support my view.

Those who are active in reform movements in these fields have a number of options. Their resources are scarce. In 1972 this was not true even a short while ago – they might do best trying to concentrate most of their efforts on a small band of selected politicians.

They might focus on those who, at least, are willing to raise the issue within their own parties and try and get a conscience vote through.

Most of them are likely to be in pretty safe seats. Reformers, if they wish to get actual changes rather than just left off stream and proclaim pure principle, must realise that their demands are marginal to most politicians.

They do not represent an important enough interest in society – important in terms of votes and potential power, Their cause, an excellent one, does not arouse intense feelings among many people.

It is heartening that by now these should be majorities in favour of reforming the laws about homosexuality in at least two major cities. But of the 63 per cent of Sydney-siders, how many feel so strongly on it that they would switch their vote from one candidate to another solely on that issue?

A very high proportion of those 63 per cent might well support reform once it was initiated from the top – but the percentage who would push for it from the bottom, though growing, is tiny still.

Law reform, of course, is but a first step. It is obvious that it is not the most important. Homosexuals pushing for change and fighting for their right not to be treated as outcasts will be divided as to tactics. It would disastrous if they, of all people, attempted to chase the will o' the wisp of unity.

There will be gay direct actionists, and gay let's-go slowly through conventional channels peoples – there's ample room for a wide range of tactics.

As to the importance of the issue, it is clear: Here is a group with a different way of life, a minority (though not so small as many think), a minority with little clout, which can promise no material returns to those who support their cause. A minority, moreover, which is only now gradually coming out into the open and beginning to realise that any shame it still feels is but the reaction to a labelling process controlled by others.

It is, precisely, because the arguments for legalising homosexuality, and, even more important, treating homosexuals like anyone else, are mostly non-utilitarian that they are so important.

More than any other single issue today, here is a test of how genuine one's commitment to pluralism and diversity is.

THREE rousing cheers for Mrs Julia Hayes, spokeswoman for the Newcastle Resident Action Committee.

She wanted access to Newcastle City Council's business papers, to get advance information on threats to the environment. The Town Clerk refused: too expensive, the papers might have confidential information.

Mrs Hayes showed that an individual can do something: She registered her group's newsletter as a newspaper, herself as a proprietor, was recognised a member of the Press corps, and now gets the papers …

Why not find out what you can do to beat your local guardians of top-secret secrets?

1:–1.1.9.7. – Most Politicians Become Cowards, 25 February 1972 [409]

Sex and Political Cowards

When it comes to making political decisions on issues of personal morality, most politicians become

[409] Grattan, Michelle, 'Sex and Political Cowards: MPs Play it Safe – No Homosexual Law Reform', *The Age*, Friday, 25 February 1972, p. 9.

cowards.

Their electoral antennae sharpen, and they long to follow, rather than lead, public opinion in sensitive areas like abortion, homosexuality, divorce and capital punishment.

They want all the 'Is' dotted and the 'Ts' crossed on the indicators of community attitudes. Even when the public opinion polls suggest the lights are green, the politicos are nervously glancing over their shoulders and wondering about the influence of vociferous pressure groups.

In view of these political jitters, the advocates of homosexual law reform in Australia are laying some store on the possible reassuring effect of a just published survey on Australian attitudes [see page 115] by two academics, an associate professor of criminal justice at New York State University (Dr Duncan Chappell) and a senior lecturer in sociology at Qld University (Dr Paul Wilson).

The survey, published in the *Australian Law Journal*, [see footnote 371] shows that 56 per cent of a sample of more than 900 people in Melbourne, Sydney and Brisbane in 1970 believed that it should not be a crime for two adult males to engage in homosexual practices in a private home.

(Interestingly, a small sample of rural dwellers in Qld was very much less permissive – only 15 per cent took this liberal view.)

There appears to have been, in the urban areas, a quite dramatic trend towards more liberal attitudes since the same authors earlier study three years before.

In a national survey in 1967, Dr Chappell and Dr Wilson found that only 22 per cent of respondents (30 per cent in urban areas and 11 per cent in rural regions) thought it no longer should be an offence for consenting males to engage in homosexual practices in private.

Although the two surveys are not strictly comparable, because of sample and question differences, the authors say a number of broad conclusions can be drawn about changes in opinion.

They note: 'The change in public attitudes does not appear to be limited to any particular groups or section of urban society. Across a broad spectrum of variables like age, sex, education, religion and occupation, respondents in the 1970 survey expressed views which were more liberal than their counterparts in 1967.'

At present, sections of Vic's *Crimes Act* set a maximum penalty of 20 years for some homosexual acts.

Pressures for more humane approach to a group of people whose suffering, personal and social, is usually already considerable, have been building up over a period of years. Agitators for reform include humanist societies, some churches and groups representing homosexuals themselves.

The chance for reform will probably come first in SA, where at present a committee, under Australia's only woman judge, Justice Mitchell,[410] is conducting an inquiry into the whole SA criminal code.

Recently there were hints in the air of a possible move to homosexual law reform in WA, but the Premier (Mr Tonkin) [411] scotches these murmurs with the words: 'It's news to me.'

Vic, meanwhile, remains steadfastly against any liberalisation. The Victorian Attorney-General (Mr Reid) [412] is adamant: 'The Government is not in favour of any change in the law.

Once you relax the laws on this it would be an encouragement to homosexual practices. Homosexuality is a symptom of degeneracy and it was at the base of the decay of previous civilisation.'

At Federal level Labor's shadow Minister for Health and Welfare (Mr Hayden) late last year tried to organise a meeting between the Parliamentary Labor Party and representatives of the homosexual group, Camp Inc [sic–CAMP NSW].

The episode produced a major attack of Labor Party political nerves and after a heated debate the general caucus meeting was called off and a private meeting arranged. Sixteen Labor members turned up – and one

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[410] Criminal Law and Penal Methods Reform Committee of SA. The Hon Justice Roma Flinders Mitchell, chair and Professor Colin Howard and David Biles were appointed as members on 14 December 1971 as the committee. This committee produced five reports: *First Report: Sentencing and Corrections*, July 1973. On page 230 of the first report under the heading 'Organisations Furnishing Submissions' Campaign Against Moral Persecution [SA] is mentioned. *Second Report: Criminal Investigation*, July 1974. *Third Report: Court Procedure and Evidence*, July 1975. *Special Report: Rape and Other Sexual Offences*, March. 1976. The 'Special Report' does not contain any matters relating to homosexuality. *Fourth Report: The Substantive Criminal Law*, July 1977. In the fourth report there are some references to buggery on pp. 98-9, 108-10. On page 429 of the fourth report under the heading 'Organisations and Individuals Furnishing Submissions' Campaign Against Moral Persecution [SA] is mentioned.

[411] The Hon John Trezise Tonkin, MLA, WA Premier, Treasurer, and Minister for Cultural Affairs and member for Melville.

[412] The Hon GO Reid, MLA, Vic Attorney-General and member for Box Hill.

Liberal, Dr Bob Solomon.

Mr Hayden wants to see the Commonwealth take a lead on homosexual law reform in the places where in can legislate – the ACT and the NT.

(This could be done through the draft criminal code which has been drawn up for the ACT. However, the committee preparing the code said specifically that it would not make any recommendations on these moral issues.)

The Labor Party as a whole does not have a policy on homosexual law reform, and Mr Hayden admits that 'it would be a fairly turbulent issue to try to commit the party on.

It would be lucky if more than 20 per cent of the caucus would be in favour of law reform,' he estimates.

He sets out the arguments for law reform thus: 'Applying the sanctions of criminal law neither prevents this sort of behaviour nor changes moral attitudes among the people practising it.

The homosexual personality is pretty well established between the first and fifth year of childhood. It's quite wrong – and cruel and repressive – to think that homosexuals are the sorts of people who willfully and perversely practise homosexuality to flout conventional standards, and that it is just self-discipline that will change them.

There is no evidence, that changing the law increases homosexuality. So long as there are appropriate safeguards to protect minors there should be no reason to be concerned about homosexual law reform.'

Although it is certain that a Labor Government would not introduce homosexual law reform as a Government measure – any such move would be in the form of a private member's bill – the Labor leader (Mr Whitlam) has made it clear that he subscribes to the doctrine of Canadian Prime Minister, Pierre Trudeau that the 'law has no place in the bedrooms of the nation'.

Dr Solomon – the only Liberal to attend last year's meeting – sets out the dilemma of the small 'l' liberal struggling against a perception of political reality.

He believes there is a case for homosexual law reform, particularly of the 'more archaic and repressive legislation'. But he adds, 'I'm not in any sense evangelical about this – I don't believe it is a crucial issue.

Some politicians don't want to inform themselves about this. They don't believe it is a healthy issue to be playing around with – they don't believe there are any votes in it.'

Dr Solomon says he would not initiate a measure for homosexual law reform. Whether he would support any particular reform measure which came up would depend on its contents.

'If the Labor Party put a proposal for homosexual law reform in the form of legislation I think there would be a lot of heartburning but there would be some Liberal backbenchers who would support it,' he says.

Dr Solomon sums up the politician's classical dilemma: 'You're really wide open politically – although you might be morally right.'

A good deal of human misery may be eliminated if the politicians choose to be moral rather than safe.

1:–1.1.10. – ANOP Poll, August 1973 – Permissiveness In Australian Society [413]

Ten permissive issues dealing with contraception, **homosexuality**, censorship, abortion, living together, marihuana, prostitution, divorce, pub trading hours, and sex education, were presented to a stratified random sample of the Australian electorate (N=1881). Item inter-correlations indicate the presence of a general factor of permissiveness accounting for some 30% of the total variance. With the exception of that dealing with marihuana legalization, there is substantial support for a permissive stance on each of these issues. Permissiveness is related to church attendance, age, extent of formal education, and left-right voting intention.

Definition and Introduction

To be permissive is to adopt an heterodox stand with regard to institutionalized controls over hedonic, libertarian behaviours. Despite the assumption of generality that lies behind catch phrases like The Permissive Society, and the demonstration of a common factor of hedonism in studies of conservatism (Wilson, 1973), [414] the presence and extent of a general factor of permissivism has not been systematically tested within an

[413] Hasleton, Simon, (Department of Psychology, University of Sydney), 'Permissiveness in Australian Society', *Australian Journal of Psychology*, vol. 27, no. 3, 1975, pp. 257-267. The writer wishes to express his thanks to Rod Cameron of ANOP for his advice and help, and to the advisory service of the University of London, Computing Centre for consultation. Emphasis added.

[414] Wilson, GD, (ed), *The Psychology of Conservatism*, Academic Press, London, 1973.

adequately sampled electorate, even though these issues are being vigorously canvassed in present politics.

The aim of the present study is to determine the range and distribution of public opinion relating to permissive issues, the relationship between such issues, the question of generality-specificity discussed above, and the correlates of support for permissiveness.

Method

In August 1973 the writer commissioned Australian National [Nationwide] Opinion Polls Pty Ltd to present a group of ten statements to a stratified random sample of the Australian electorate. The sampling frame selects subjects at random from the Commonwealth Electoral Roll, within electoral divisions which are selected on the basis of a series of social and political indicators. In each capital city electoral divisions are ranked on a four-level SES description and a three-level political stability rating. Electorates are then selected on the basis of each division's relative population proportion in the 4 x 3 combined levels of these two strata, and following further sub-stratification at the sub-divisional level, the random sampling of electors takes place in terms of enrolled electoral populations. In rural areas stratification also involves predominant land use.

Table 50: ANOP, August 1973 – Composition of the Sample

Sex		Age		Residence		Church Attendance		Education		State	
Female	945	18-20	123	Capital city	1161	Regular	422	Tertiary	197	NSW	687
Male	934	21-24	165	Other	717	Occasional	775	Secondary qualified	328	Vic	509
ϕ	2	25-34	435	ϕ	3	Never	663	More than three years secondary, but not qualified	621	Qld	278
		35-44	306			ϕ	21	Less than three years secondary	732	SA	197
		45-54	348					ϕ	3	WA	132
		55-64	277							Tas	71
		65 +	225							ϕ	7
		ϕ	3								
Total	1881	Total	1882	Total	1881	Total	1881	Total	1881	Total	1881
Note: ϕ indicates that data was either missing or defective for the number of cases shown.											

Sampling took place in the whole Commonwealth, with the exception of the NT and the ACT. In each case the interviewer visited the respondent in his home, the statements being presented verbally in rotated order, and the responses being noted in the presence of the respondent. A total of 2,410 subjects were empanelled, of whom 22% were not at home on the third call, or were senile, ill, or drunk, or did not have sufficient English, or had died or moved away. This left a sample of 1,881.

A success rate of this order raises the question of the extent to which the sample can sustain generalization. In the first place, this can only be to that section of the adult population which is on the electoral roll (voting is compulsory in Australian Federal and State elections). The young and the floating population are not sampled, but if these issues are *political* matters, then their exclusion from this sample is reasonable. As to the 22% who were unavailable, their responses are unknown; the sample nevertheless comprises a large and diversified cross section of the population. Its composition is set out in Table 50, [page 143].

The Issues

Statements were selected so as to encompass the issues which were being canvassed in the context of The Permissive Society at the time of the survey. The traditional statement format was used in order to put the issues as they were being discussed in the media and elsewhere at the time.

The statements were as follows:

(1) Do you agree or disagree that people over the age of 16 should be able to buy contraceptives? (And do you agree/disagree strongly or mildly?)

(2) **that homosexuality between consenting adults should be legalized?**

(3) that censorship of books and films should be *tightened up*?

(4) that a woman should be free to have an abortion in the first three months of pregnancy without risking prosecution?

(5) that the community *should frown on* unmarried couples living, together?

(6) that the smoking of marihuana should be legalized?

(7) that prostitution should be legalized?

(8) that divorce on request should be available to couples without children?

(9) that hotels should be *closed* on Sundays?
(10) that there should be more sex education in schools?

After inversion of items three, five, and nine, the responses were, scored as follows:

Agree strongly Score 1
Agree mildly Score 2
Don't know Score 3
Disagree mildly Score 4
Disagree strongly Score 5

No attempt was made to control for acquiescence, but three items were selected as probably tapping different levels of item difficulty and were cast in the negative. These items were then matched with three positively cast items having similar loadings on the first principal component [see below], and the six items were then scored + 1 for a positive response, 0 for don't know, and – 1 for a negative response. The mean score for the total sample was 2.58 (*SD*=1.06), indicating that acquiescence was present to a statistically significant degree. However, the correlation between this measure and the summed raw item scores, and between the measure and the score on the first principal component was negligible (0.07 and 0.03 respectively). This suggests that the findings are unlikely to have been affected in substance by acquiescence, a suggestion which is reinforced by the small correlations between the measure and the four variables with which it was not confounded: these were the items dealing with abortion, marihuana, prostitution, and divorce. Correlations were .077, .057, .053, and .053.

Table 51: ANOP, August 1973 – Responses to Sex Education, Divorce, Living Together, Abortion, Contraception, Prostitution, Homosexuality, Censorship, Hotel Trading and Marihuana of Whole Sample

	Sex education	Divorce	Living together	Abortion	Contraception	Prostitution	**Homo-sexuality**	Censorship	Hotel trading	Marihuana
Agree strongly	53	46	15	46	36	32	**25**	36	43	7
Agree mildly	21	28	10	21	28	24	**22**	18	14	8
Disagree mildly	10	9	25	7	10	8	**9**	20	15	10
Disagree strongly	12	14	47	21	23	32	**37**	24	26	71
Don't know and refused	4	3	3	5	3	4	**7**	2	2	4
Source: *Australian Journal of Psychology*, vol. 27, no. 3, 1975, pp. 257-67. Note: Figures are percentages. Emphasis added.										

Results and Discussion

The responses to the several items are set out in Table 51, [page 144]. In this Table, scores on the items dealing with living together, hotel trading and censorship are presented in their original form, and should be inverted for comparison with other items.

Scores on the negatively cast items were now inverted, and the relative difficulty and scalability of the items were analysed using a cutting point which excludes the don't knows from the percentages displayed in Table 52, [page 144]. The coefficients of reproducibility indicate that the items fall short of scale quality, a situation that could have been improved by manipulating the cutting points: in any case it was not the intention of the study to create a scale.

Table 52: ANOP, August 1973 – Percentage Approving Each Issue, As A Function of Age and Education

Variable	Sex education	Divorce	Living together	Abortion	Contra-ception	Prosti-tution	**Homo-sexuality**	Censorship	Hotel trading	Marihuana	Reprodu-cibility	*N*
Whole sample	74	74	72	68	65	56	**48**	45	41	16	0.766	1869
18-24	88	80	86	67	82	48	**68**	66	41	30	0.79	288
25-44	78	72	78	72	69	59	**55**	52	44	16	0.772	741
45 +	66	73	62	66	55	57	**35**	31	38	11	0.755	850
Most education	80	73	77	72	77	59	**64**	59	47	25	0.779	525
Least education	71	74	70	67	60	55	**42**	39	39	12	0.763	1353
Source: *Australian Journal of Psychology*, vol. 27, no. 3, 1975, pp. 257-67. Note: 'Most education' comprises the tertiary and secondary qualified, 'least education' the remainder. Incomplete data suppressed. Emphasis added.												

With one exception, the distributions are more or less bimodal, and in all cases, between 59% and 71% of the responses are in the extreme categories: neither indecision nor moderation are characteristics of these issues. The item relating to marihuana is clearly the most difficult of those tested: despite substantial minority support among the young and among those with more formal education, approvers of marihuana legalisation

are decisively opposed by the majority of the sample. So too (to a lesser extent) are those who oppose increased sex education and divorce on request for couples without children. **On the other items, especially the one dealing with homosexuality, the community appears to be divided. *Opponents* of legalized homosexuality hold this opinion strongly**; so too do opponents of elective abortion, while those in favour of these issues are more evenly divided between strong and mild approval. **Since opposition to legalised homosexuality is concentrated strongly among the older section of the sample, it may be the case (subject to reservations which will be expressed below) that this proposal will become more accepted, albeit in the face of strong opposition**. On the other hand, opposition to elective abortion is spread evenly across the age range: since the data presented here in respect of divorce and living together suggest a readiness to accept changes in the institution of marriage, it may be that other solutions are available to some of the problems currently solved by abortion.

Considered from the viewpoint of tensions across the age range (the so-called generation gap) the greatest discrepancies between the 18-24 age group and the 45+ age group are in respect of censorship (35%), **homosexuality (33%)**, contraception (27%), and marihuana (19%). **As remarked above, the strong opposition to liberalisation in respect of marihuana and homosexuality indicates that these issues will continue to be foci of social tension. Overall, however, the community appears to be rather more liberal in respect of these issues than one might have thought**.

Table 53: ANOP, August 1973 – Item Loadings on First Principal Component

Variable	Sex education	Divorce	Living together	Abortion	Contraception	Prostitution	**Homosexuality**	Censorship	Hotel trading	Marihuana	% total variance accounted for	alpha	*N*
Whole sample	396	471	503	622	684	557	**668**	611	387	500	30.1	0.73	1869
18-24	373	503	417	617	730	585	**677**	528	258	509	28.8	0.71	288
25-44	292	466	488	653	653	594	**676**	616	394	532	30.2	0.73	741
45 +	384	506	453	653	654	624	**602**	547	417	405	28.5	0.72	850
Most education	418	533	584	654	714	532	**722**	635	399	574	34.3	0.78	525
Least education	371	466	467	618	662	581	**625**	573	366	422	27.6	0.7	1353

Source: *Australian Journal of Psychology*, vol. 27, no. 3, 1975, pp. 257-67. Note: 'Most education' comprises the tertiary and secondary qualified, 'least education' the remainder. Incomplete data suppressed. Emphasis added.

The Issue Specificity of Permissiveness

To test the correlations between the items for the presence of a general factor, product moment correlations were calculated, and a principal component analysis performed on the total sample and five subgroups, three based on age, and two on education. For the total sample, the proportions of the variance extracted by successive components was 30.14%, 11.16%, 9.45%, 8.70%, 7.83%, (etc.). Although the exercise was not precisely germane to the issue, the matrix was iterated for communality, and the first two factors were rotated to the Varimax criterion: inspection of a graphic plot indicates a sub-cluster of the three items related to abortion, prostitution, and divorce, with the two factors now accounting for 85.2% and 14.8% of the explained variance. It may be accepted that this group of items is largely unifactorial: factor scores calculated on the first principal component (HEDFAC) correlated .996 with the summed raw scores of the ten items (HEDSUM).

Table 53, [page 145] indicates the extent to which the several items are saturated by a general factor (first principal component) which now provides the basis for an operational definition of permissiveness in terms of the shared meanings of the items having the highest loadings. Coefficient alpha, based on the correlations between the normalized scores, is presented in the Table 53, [page 145].

For the sample as a whole, permissiveness is best defined in terms of liberal attitudes toward contraception, **homosexuality**, abortion, and censorship, although prostitution makes an increasing contribution as one moves up the age range, and among those with least formal education. The consistency coefficients indicate that membership of the tertiary educated group, and of the 25-44 age group, both contribute to a tendency to view these issues as having more in common, or to respond to them in a less differentiated manner.

The Correlates of Permissiveness

Permissiveness is clearly a sub-factor of the more general dimension of conservatism and emerges (at the negative pole) as anti-hedonism in Wilson's summary (Wilson, 1973). [415] Permissivism also has links with the

[415] Wilson, GD, 1973, op. cit.

Adorno et al. concept of authoritarianism, and with *both* R and T (Eysenck, 1954). [416] The writer has elaborated some of these relationships elsewhere (Hasleton, 1974): [417] the correlates under discussion here are biographic, and include such public behaviours as churchgoing and expressed voting intention.

Typically, the search for such correlates has involved a degree of circularity. Thus Wilson's c-scale (Wilson and Patterson, 1968) [418] was designed to tap the characteristics of the ideal conservative. Predictably, then, the religious emerge as more conservative than the humanists, the right radicals as more conservative than the left radicals, and the less educated as more conservative than the more educated. These findings demonstrate the construct validity of the scale but are not otherwise new knowledge. In contrast, the several items selected here were nominated with a view to sampling the several aspects of a concept under discussion: no assumptions were made about religious dogmatism, or political orientation, or anti-hedonism.

Nevertheless, the studies referred to above allow for fairly clear expectations about the variables that might be related to permissivism: naturalistic observation suggests that age might be an important predictor, a suggestion that is buttressed by the elegant (and perhaps somewhat idealised) curve presented by Wilson and Patterson (1968) [419] in the first of the c-scale papers. Of course, the relationship with age might have been due to the operation of one of the other components of this multidimensional scale, the question being o)ne which invites further analysis. Similarly, Sanford (1973) [420] has stressed the importance of education in his recent overview of *The Authoritarian Personality*. [421] It is notorious that university environments support a questioning attitude toward populist norms regarding many aspects of behaviour, but again, the mechanisms involved are far from clear.

There has been some examination in Australia of the correlates of cannabis related sentiments; among undergraduates in Sydney (Hasleton, 1971), [422] and in the general population (Hasleton & Simmonds, 1975). [423] Assuming, correctly as it turned out, that cannabis related sentiments shared a common meaning space with other permissive issues, these studies provide a basis for hypotheses about the correlates of general permissiveness. (Actually, the relationship between cannabis and the other permissive issues is much more tenuous in the UK, a finding that has some relevance for the control of his substance (Hasleton, 1974).) [424]

In the student study, those who had tried cannabis were likely not to be living under adult supervision, to be disaffiliated from formal religion, and (subject to some qualification) to be in Arts rather than Science. In addition, users were somewhat more extravert than their non-using peers (on the EPI), and more academic, liberal, and intellectual, and less dogmatic and pragmatic (on the Student Attitude inventory: Anderson & Western, 1967). [425] The wider study demonstrated that age, regularity of church attendance, residence outside the capital cities, Right voting intentions, and less formal education, were predictive of opposition to cannabis use.

In view of the above, the following observations were included among those tested for their predictive value in respect of HEDFAC:

(1) age;
(2) regularity of church attendance;
(3) Left *v.* Right voting intention;
(4) extent of formal education;

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[416] Eysenck, HJ, *The Psychology of Politics*, Routledge & Kegan Paul, London, 1954.

[417] Hasleton, SL, *Permissiveness and the Approval of Cannabis in Great Britain*, Report to the Sir Halley Stewart Trust, Institute for the Study of Drug Dependence, London, 1974 (in mimeograph).

[418] Wilson, GD, and Patterson, JR, 'A New Measure of Conservatism', *British Journal of Social and Clinical Psychology*, vol. 7, 1968, pp. 264-9.

[419] Wilson, GD, 1968, op. cit.

[420] Sanford, N, 'Authoritarian Personality in Contemporary Perspective', in Jeanne, Knutson (ed), *Handbook of Political Psychology*, Jossey-Bass, San Francisco, 1973.

[421] Sanford, N, 1973, op. cit.

[422] Hasleton, SL, 'The Incidence and Correlates of Marijuana Use in an Australian Undergraduate Population', *Medical Journal of Australia*, vol. 2, no. 6, 1971, pp. 302-8.

[423] Hasleton, SL, and Simmonds, DW, 'Is Australia Going to Pot? Some Trends Relating to Marihuana', *British Journal of Addiction*, 1975.

[424] Hasleton, SL, 1974, op. cit.

[425] Anderson, DS, and Western, JS, *An Inventory to Measure Students' Attitudes*, University of Qld Press, Brisbane, 1967.

(5) capital city *vs.* other residence.

In addition, sex and marital status were included, the first for its intrinsic interest, the second because marriage is an example of the sort of social institution that might be seen as opposed to or threatened by permissiveness in general and sexual permissiveness in particular. Thus:

(6) sex;

(7) marital status.

It has already been stated that issues related to permissiveness are being actively canvassed in the political arena: the current debate on the Family Law Bill, **and recent controversies over the legal status of homosexuals** and the availability of abortion make it clear that a matter of some generality is under discussion, and one political party (the Australia Party) has publicly advocated policies of a permissive nature in regard to divorce, abortion, **homosexuality** and cannabis. For this reason it was decided to investigate the *political* attractiveness of such policies, as put forward by this Party. Hence:

(8) support for the Australia Party; and

(9) firmness of voting intention.

However, the Australia Party and its policies are not well known, and hence the interviewer repeated the question about support for the Party, asking what the respondent's support would be if the AP emphasized its policies **which support the legalisation of homosexual acts**, abortion, and the use of marihuana. The results of this enquiry will be presented below.

The predictive efficacy of the nine variables listed above was tested by entering them into a recursive multiple regression analysis, using HEDFAC as the dependent variable, the program being set up so as to search for the best subset of six predictors.

For the whole sample, a multiple R of .550 was obtained ($F = 135.5$, $p < .001$). Church attendance accounted for 48% of the predicted variance, with age adding a further 36%, lack of formal education 10%, Right voting intention 10%, residence other than capital city 3%, and support for the AP adding 1%. This does not, of course, imply that the last two variables are not- significantly related to Permissivism, but rather that they add little to the information already at hand when the first four predictors are available. (The variable support for the AP refers to the respondent's *initial re*sponse to the question, i.e. before the interviewer repeated the question.)

Entered into an analysis of variance, age, education, church attendance and voting intention return F ratios which are significant beyond the .01 level: so too do the age X church attendance, education X church attendance, and church attendance X voting intention interactions. None of the other interactions reach significance at this level. Regular church attenders are not only less permissive than the occasional or non-attenders, but they are more homogeneous across the age range, and more homogeneous across the range of formal education, than are those who do not attend regularly. The interaction with voting intention indicates that while there is a linear increase in anti-permissivism over the three categories of church attendance among the Left voters, the increase is significantly steeper among the Right voters.

Regarding the impact of permissiveness on the attractiveness of a little-known political party, it was evident that a considerable sharpening of the perception of the AP by the public would occur if they emphasized their permissive policies. The proportion of the sample who don't know or don't know enough about them to state their support for the Party, decreases from 47.5% to 29.1 % at the second enquiry: the proportion of those who state that their support for the Party is very strong rises from 2.8% to 5.4%, although over 50% of the initial very strong category are lost to lower categories of support. In general, if this Party were to emphasize its permissive policies, it might make a small gain in first preference votes, but the membership would change. The Party would become more attractive to the young, to the intermediate educational groupings, and less attractive to those who attend church regularly.

Conclusion

A group of social issues or concerns has been identified in the media and elsewhere as reflecting the permissive society, and the suggestion that these seemingly disparate issues are in fact related, or reflect some underlying construct, has been tested in this paper, and confirmed. In short, it is meaningful to refer to permissiveness as a unitary dimension within the structure of social attitudes.

Although similar factors have been located in questionnaire studies, such as those described by Wilson

(1973), [426] for example as a factor of sexual morals in Eysenck (1971), [427] such studies have not been based on a sampling of the issues commonly discussed in this context, and hence have not tested the validity of the popular assumption. In addition, the present study has been based on a sample from which it may be permissible to generalize to the electorate, arguably the appropriate basis for change in these areas.

It might be argued that this account suffers from the weakness that the selection of issues for inclusion was subjective and informal: it was in fact based on no more than the author's general reading and discussion. However, subsequent discussion has not presented any issues that were not covered, and has not suggested that any of the issues presented were irrelevant. Euthanasia and compulsory religious training were suggested as possible items, and indeed, one suspects that they might well have loaded on the dimension, but they were hardly social issues at the time. Furthermore, the summed raw scores (HEDSWM) on the ten items comprise a variable which, as stated, correlates .996 with scores on the first principal component, is near normally distributed, and shows no evidence of basement or ceiling effects. (X = 28.06, mode = 23.00, *SD* = 8.52, g_1 = 0.136, g_2 = −0.467. Five respondents obtained the least permissive score of 50, 13 respondents obtained the most permissive score of 10. *N* = 1880.)

The most general consequence of this communality of meaning across permissive issues can be illustrated with respect to any one of them. Advice in regard to the use of marihuana may be accepted or rejected, not only on the grounds of its content or appeal regarding that substance, but also because it engages sentiments and stereotypes on a variety of other issues. Another consequence derives from the shape of the distribution: it is *not* the case that a deviant and vociferous minority confronts a consensus of anti-permissive conservatism. Indeed, a twenty-year-old who believes that the smoking of marihuana should be legal is somewhat less eccentric among his peers than one who opposes divorce on request for couples without children.

The levels of approval for the several issues have already been set out [Table 52, page 144], and on many of them are rather higher than might have been expected. Can they be believed? The sampling is probably adequate, and as stated, the results are unlikely to have been substantively affected by acquiescence, although notions of social desirability, with which permissiveness would seem to be confounded anyway, may well have interacted with factors arising, from the interviewer-respondent diad. No attempt was made to control for such effects, although data are available for their estimation. In any case, such factors seem most likely to operate in an anti-permissive direction. The size of the sample is such that the confidence limits, at least, are very small. For a 74%-26% split (as in the item dealing with divorce) the .99 probability limits are approximately ± 3%, assuming random sampling.

Age, church attendance, education, and voting intention have been shown to be important correlates of permissiveness. The last three, and to some extent the first, age, represent institutional affiliations, and suggest that these may be more appropriate levels of analysis for the explanation of social attitudes than intra personal constructs such as personality, which may underlie them. In particular, the relationship between church attendance and anti-permissiveness, found here and in a parallel study in the United Kingdom (Hasleton, 1974) [428] suggests that opposition to permissiveness may be a primary function of institutional religion.

The correlation with age admits of two explanations, both of which may be correct. It may be the case that people become less permissive as they grow older, either as a result of aspects of physiological ageing, or as a result of other changes in motivation, or because of changed affiliations and responsibilities. On the other hand, the correlation may be due to cohort differences which have persisted through the life span. There is simply no way of answering this question with data gathered at one point in time, although it is clear that church attendance modifies the effect of age differences, mostly because younger persons who attend church regularly are almost as anti-permissive as the older attenders, while those who attend less frequently show a clear increase in anti-permissiveness across the age range.

Permissiveness would seem to be an important concept, not only because it is composed of a group of issues regarded with some consistency (and vehemence) by the general population, but also because of its structural role in the organization of social attitudes. Since *The Psychology of Politics* (1954) [429] Eysenck has been arguing for a structure which contrasts radicalism (R) with tough mindedness (T); there is a suggestion that

[426] Wilson, GD, 1973, op. cit.

[427] Eysenck, HJ, 'Social Attitudes and Social Class', *British Journal of Social and Clinical Psychology*, 10, 1971, pp. 201-12.

[428] Hasleton, SL, 1974, op. cit.

[429] Eysenck, HL, 1954, op. cit.

this structure should be retained because it *ought* to be the one that describes the natural phenomena of politics. Thus in Eysenck (1971) [430] the author suggests that even though that study finds two second-order factors of Religionism and Authoritarianism, similar to Ferguson's earlier (1939) [431] suggestion, which Eysenck cites, such a structure is unacceptable. 'It seems unlikely that political parties would have grown up around concepts which were just combinations of authoritarian religionism … or permissive humanitarianism.' Furthermore, it is suggested that R, as demonstrated in the 1954 account, derives criterion validity from its correlation with voting behaviour.

However, inspection of Figure 23 in *The Psychology of Politics* [432] indicates that it might have been quite appropriate to rotate the axes through 45%, to a solution which would then have been almost identical with that from the 1971 paper (as Eysenck himself notes). [433] That solution is one of religious anti-permissiveness, and (as a second factor) authoritarian tough-mindedness, and the contribution of **this** structure to voting patterns is not tested. Nevertheless, it would not be surprising to discover that Permissiveness and Law and Order **are** moving to a central position among the icons of formal politics.

1:–1.1.11(A). – ANOP Poll, February 1972 [434] [435]

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[430] Eysenck, HL, 1971 op. cit.

[431] Ferguson, LW, 'Primary Social Attitudes', *Journal of Psychology*, 8, 1939, pp. 217-23.

[432] Eysenck, HL, 1954, op. cit.

[433] Eysenck, HL, 1971, op. cit.

[434] Australian Nationwide Opinion Polls Pty Ltd, *Australian Public Opinion Newsletter*, vol. 1, no. 4, May 1972, pp. 17, 18.

[435] The search for details of the illusive March 1972 ANOP poll and results has been long, thorough and exhaustive. Initially ANOP Research Services Pty Ltd were contacted. Their response was: 'The information you seek (1971-1974) I am afraid is unobtainable. The company changed into its present ownership in 1975 and records prior to this, to the extent they were kept at all, are not, to our knowledge, available.' The Parliamentary Library in Canberra was contacted for possible assistance. Their response was: 'The Department of the Parliamentary Library is not open to the public, it is dedicated to serving Senators and Members, we are unable to provide the research assistance you have requested.' Peter Baldwin's office was approach and asked for him to seek the required information from the parliamentary library. That did not result in anything relevant being supplied either. The library forwarded a copy of Chappell and Wilson's *Australian Law Journal*, vol. 46, January 1972, article analysing their 1970 survey and a few press clippings dealing with the results of this 1970 survey. The library furthermore stated: 'these are the only references we could find to [homosexual] opinion polling in 1972.' Goot et al *Australian Opinion Polls 1941-1990 An Index* was consulted which under the heading Homosexuality does not mention the March 1972 ANOP Poll. Sydney University's Public Affairs Research Centre did not hold any press clippings, which might have provided a lead to the poll's contents. Neither could the Political Science Program, Research School of Social Science at the Australian National University assist with clippings. Sydney University's Sample Survey Centre which purports to hold a 'large collection of press reports on polls' has vanished. A Sydney University Fisher Library librarian suggested that the holdings of the Sample Survey Centre might have gone to the University's Archives. Following and enquiry at the Archives revealed that '… the records are not within the scope of material held by the University Archives …' Murray Goot was contacted personally after another academic described him as 'the guru of opinion polls'. Unfortunately Murray was not able to assist. He, however, referred me to Dr Terence Beed, one of the et al of the *Australian Opinion Polls* ..., who according to Goot was working at ANOP when the poll was conducted and possible composed the legalisation of homosexuality question. Dr Beed's administrative assistant responded: 'Terry suggests you contact Rod Cameron at ANOP direct. He [Terry] has no other information.' On Thursday 26 February 1998 a message was left for Rod Cameron at ANOP but my call was never returned. Dr Moss Cass was also approached about the poll. He indicated that: 'I am sorry I am unable to answer the questions you have raised concerning the references quoted … during the debate in the House …' A suggestion was made to approach the National Archives of Australia and the Australian National Library in Canberra regarding the possible existence of Dr Cass' draft of his speech. The latter has responded that: 'We are unable to find any records of having received papers by Dr Cass.' The speech would have been prepared by his then parliamentary assistant, Peter Blazey, and the draft may include useful side-notes. Dr Cass's papers were examined at the Melbourne office of the National Archives of Australia and did not reveal any useful materials. Dr Graham Willett from Melbourne happen to be in Adelaide for some further research for his forthcoming book and knew about my desperation to find the poll. By chance he looked at the 1 February 1972 *The News* (Adelaide) and has discovered references to the now no longer illusive ANOP poll! The author also wrote a letter to *The Sydney Morning Herald*'s RSVP Column on 21 November 1998 seeking assistance with a copy of the illusive March 1972 ANOP Poll. This (continued...)

The only homosexual reference which has been found to the March 1972 ANOP poll, after a very exhaustive and thorough search, is the following in the *Australian Public Opinion Newsletter*, vol. 1. no. 4. May 1972, p. 17.

Table 54: ANOP Poll, February 1972 – Limited Details

		Education Level				Liberal Mindedness *	
	Total	Tert	2ndary Qual	Over 3 Yrs Secondary	Under 3 Yrs Secondary	Liberal Minded	Not Liberal Minded
Yes	27	41	36	25	20	40	17
No	68	54	58	71	73	55	78
Undecided	3	1	2	2	5	2	3
Conditional Approval	2	4	4	2	2	3	2

'Note: * Other questions on the survey concerned attitudes to the legalising of homosexuality. Undoubtedly there is some personality typology similarity between approvers of marijuana and approvers of homosexuality legalisation … they have thus been cross tabulated against each other. Approvers of homosexuality legalisation have been termed (for want of a better short description) Liberal Minded.' Source: *Australian Public Opinion Newsletter*, vol. 1. no. 4. May 1972, p. 17. Figures are percentages.

On page 18 of the same publication there is a further short reference to homosexuality which states:

> Indeed the proportion in favour of legalisation is around 40% mark among the **university educated**; the **under 25s**, and the **liberal thinkers** (those who would also like homosexuality legalised). [Original emphasis].

1:–1.1.11(B). – ANOP Poll, February 1972 – We're Not Galloping to Decadence!, 1 February 1972 [436]

The Permissive Society

Mr Rod Cameron, psychologist on the staff of Australian Nationwide Opinion Polls; sums up the results of the extensive ANOP survey, in which 1700 people in all States and from all walks of life were questioned on the many controversial aspects of the permissive society.

But far from indicating that serious and far reaching forces are at work undermining the whole morality of our society, the ANOP survey tends to show the reverse.

And there is a natural explanation for the older generation showing a more conservative attitude than younger people.

Most psychologists would agree that there is a natural resistance to change, a tendency to live and think by habit which comes with growing older.

Conservative – Surprise Reaction by Young People

But it does not indicate a gulf between two generations involving the moral fibre of the community.

And that thought is reinforced by the unexpected conservatism of the people between 18 and 21.

Certainly, society today is inclined more towards talking about sex in ways not done in the past.

What the results of this inquiry hint at – though there is no conclusive proof – is that basic approaches to sex and morality have changed little.

Violent disapproval is still voiced at anything resembling slightly radical or non-conformist behaviour, and certainly on the more controversial issues.

Of 20 issues [see Table 55, page 151] researched throughout Australia by ANOP, you only have to go down the list as far as number 8 before the disapproval vote is higher than the approval vote.

It seems that The Permissive Society may be a cliche or slogan which has confused changes in mode of conversation with changes in mode of living.

Repeated use of this phrase through the media may have blinded us to the fact that, in practice, society's sexual mores have changed very little.

There is no disputing the fact that permissiveness in talking about taboo subjects in open, and mixed conversation has increased.

But the ANOP inquiry has done much to suggest that this is the limit of our permissiveness.

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[435](...continued)
request was published in the *Herald's* RSVP Column on Wednesday 9 December 1998, p. 12; no response was ever received.

[436] n.a. 'We're Not Galloping to Decadence', *Daily Mirror*, Tuesday 1 February 1972, pp. 16-7. Original emphasis.

It also indicates that the idea that there has been a major change in morals and an increase in promiscuity among the younger generation is unfounded.

Tolerance

Australia is a conservative society – much more so than Britain, as shown by the voting trend of British migrants. One can reach the same conclusion by another approach.

Table 55: ANOP Poll, February 1972 – 1700 Opinions on the 20 Tell-Tale Controversies

Aspect	Total Approval	Total Disapproval	Total Undecided	Aspect	Total Approval	Total Disapproval	Total Undecided
1. Mini skirts	89	9	2	11. Unmarried couples living together	36	51	13
2. Legalised abortion	61	33	6	12. Striptease shows	35	54	11
3. Coloured migrants settling in Australia	58	35	7	13. Female impersonators	32	56	12
4. The Pill for unmarried girls	55	39	6	14. See through dresses	30	64	6
5. Gambling	55	40	5	15. Four letter words in books	29	64	**7**
6. Australia's existing censorship laws	52	42	6	**16. Legalised homosexuality**	**28**	**62**	**10**
7. Easier divorce laws	52	41	7	17. Four letter words in films	19	76	5
8. Sunday hotel opening	47	48	5	18. Sex play in children under 5	10	78	12
9. Women's Lib	42	42	16	19. Marijuana	6	92	2
10. Nudist camps	40	46	14	20. Wife swapping	3	95	2

Source: *Daily Mirror*, Tuesday 1 February 1972, p. 17. Figures are percentages. Emphasis added.

If we assume that a permissive society would show majority approval on most of the 20 issues involved, than Australians are not permissive in the real sense of the word.

But if permissiveness means a greater tolerance of talking about sex openly then men are the main exponents.

In most matters involving sex – The Pill, living together in sin – it is men who are more permissive.

One exception is sex education, where women are more permissive.

One could generalise by saying that society's roles encourage women to hold more permissive views on serious sexual issues and less permissive views on the lighter issues (talking about sex for example).

States Hold Varying Attitudes

The most conservative and least permissive State in Australia is Qld.

Of all the sexual aspects of society tested Queenslanders were the least or second least permissive in terms of approval.

SA was next in the conservatism scale, followed by Tas and then WA.

NSW was the most permissive State by a wide margin, followed by Vic.

The most permissive age group was 22 to 24.

White-collar workers were vastly more permissive than blue-collar workers.

Rural residents, as expected, were much less tolerant than city people.

Those claiming no religion were the most permissive generally.

Disapproval

Of the churches, the most conservative and least permissive people were the Methodists, who had the highest disapproval vote on about 15 of the 20 issues involved.

Roman Catholics followed, then Anglicans.

Presbyterians were the most permissive.

Voting on the Major Issues

On major issues like the use of The Pill by unmarried girls, legalised abortion, easier divorce and more liberal censorship, there was majority approval in all cases – but still with solid opposition.

THE PILL: Nearly 75 per cent approval among the 18 to 35s, with only 44 per cent approval among the over 35s. Catholic approval 44 per cent, with other denominations 50 to 63 per cent. In NSW, approval ran at 61 per cent, compared with Qld's 46 per cent.

ABORTION: More than 60 per cent approval by all age groups. Only figures below 50 per cent were the

Catholic and Italian votes (38 and 31 per cent) and the Qld vote (45 per cent). White-collar and city people revealed much greater approval than blue-collar and country people.

DIVORCE: Approval at all ages ranged from 49 per cent to 57 per cent. The Italian vote was only 21 per cent and the Catholic 38. Three States feel below 50 per cent approval, Vic, Qld and SA (only 37 per cent).

CENSORSHIP: Only the over 35s were satisfied with the present level of censorship in the age-groupings, and the highest level of approval for existing censorship was among Italian voters (78 per cent). Among the States, only Tas fell below 50 per cent, with the surprisingly low vote of 35 per cent. The 18-21 age group and English migrants were easily the most liberal in disapproving the present censorship laws.

1;–1.1.11(C). – ANOP Poll, February 1972 – Abortion – Six in Every Ten of Us Agree, 1 February 1972[437]

The Permissive Society

The question of abortion involves two issues: whether it should be legalised under certain conditions(where, for example, the mother's life is in danger) or whether it should be available on demand.

ANOP's inquiry was centred on the first issue: abortion under certain conditions. [see Table 56, page 153].

The results show that about six in every 10 Australians approve, in principle, legalising abortion, and that significantly more men hold this opinion than women.

Disapproval grows as one goes from white to blue collar worker.

Roman Catholics, predictably, reveal far more disapproval than people from other denominations.n

More than half the people in Australia approve the present censorship laws.

Women show a higher degree of approval then men.

But censorship is one of the few issues on which the 18 to 21-year-olds show a less conservative attitude than the under-35s generally. [see Table 57, page 153].

When disapproval figures are studied, it must be remembered that disapproval may imply either that the present laws are too strict or that they are too lax.

But it is far to assume that the lower approval rate, the more dissatisfied people are.

The most permissive sector in society – those least approving of censorship laws as they stand – proves to be younger men living in the cities.

More than 60 per cent of Australians disapprove of legalised homosexuality.

The voting pattern of men and women is almost identical.

On other issues of the permissive society, especially the sexual ones, women tend to be noticeably more conservative and disapproving.

Once again, it is the under-35s – excluding the 18 to 21-year-olds – who reveal a greater tolerance of the more extreme aspects of a permissive society.

Of this group, the 22-24 age group – the most liberal minded element in our society – showed the highest approval rate – 44 per cent.

This compares with 37 per cent approval from the 18 to 21-year-olds – the group popularly supposed to be the most permissive.

It may be that the normal train of development is for the peak of tolerance to occur between 22 and 24.

It is significant that Australians are less likely to approve legalised homosexuality than either British-born residents or migrants from European countries – other than Italy.

Among British migrants, approval jumps to nearly 40 percent (sexual relations between consenting males is legal in Britain).

Country people are much more disapproving than city people.

Fewer blue collar workers approved (21 per cent) than white collar workers (36 per cent). [see Table 59, page 153].

Wife – swapping is absolutely taboo, even though our society is becoming more permissive.

Across all sections of society – age groups, occupations, religions, country of birth – there is no more variation than a few per cent in the sweeping condemnation of wife-swopping. [see Table 60, page 153].

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[437] n.a. 'Abortion – Six in Every Ten of Us Agree', *The News* (Adelaide), Tuesday, 1 February 1972, pp. 16-7. Emphasis added.

It is obvious that this will never be approved of by the majority of Australians.

And, even though the issue is an extreme one, it provides a little more evidence for the belief that the permissive society today brings with it little major change in traditional sexual mores.

The community is evenly divided on the Women's Liberation issue, which is obviously a contentious one judging by the undecided vote.

The figure – 16 per cent – shows that more people are undecided on Women's Lib than on any other aspect of the permissive society.

This is obviously because the full implications of Women's Lib are not really understood by many Australians.

Considerably more men than women approve, indicating that a clear majority of women do not want to be liberated.

There may be two reasons for 50 per cent of men approving Women's Lib.

Firstly, it may be that most men feel that women's role in society is subservient and too restricted.

Secondly, it may be that most men do not take Women's Lib seriously, believing that it is not a serious threat to the traditional male way of life. [see Table 58, page 153].

Considering that gambling is an integral part of our way of life, a surprisingly high percentage of Australians disapprove of it. [see Table 61, page 154].

While a clear majority is in favour, the 40 per cent, disapproval vote is still quite high.

Whether many Australians are being hypocritical in voting against something they openly indulge in is another matter.

As one might expect, most women are against gambling.

The greatest number of people in favour are the under 35s – but with strong exception of the 18 to 21 age group.

Table 56: ANOP Poll, February 1972, Responses About Abortion by Sex, Occupation and Religion

Question: Do You Approve Or Disapprove of Legalised Abortion?											
	Total	Sex		Occupation				Religion			
		M	F	Upper W/Col	Lower W/Col	Upper B/Col	Lower B/Col	Cath	Ang	Meth	Pres
Approve	61	66	57	72	67	60	55	38	71	0	76
Disapprove	33	29	37	21	30	35	38	56	23	35	18
Undecided	6	5	6	7	3	5	7	6	6	5	6
Source: *The News* (Adelaide) Tuesday 1 February 1972, p. 16. Figures are percentages.											

Table 57: ANOP Poll, February 1972, Responses About Existing Censorship Laws by Sex and Age

Question: Do You Approve Or Disapprove of Our Present Censorship Laws?						
	Total	Sex		Age		
		Male	Female	18-21	22-35	35 +
Approved	48	48	55	34	45	58
Disapproved	42	48	36	62	51	34
Undecided	6	4	9	4	4	8
Source: *The News* (Adelaide) Tuesday 1 February 1972, p. 16. Figures are percentages.						

Table 58: ANOP Poll, February 1972, Responses About Women's Liberation by Sex and Age

Question: Do You Approve Or Disapprove of Women's Liberation? #						
	Total	Sex		Age		
		Male	Female	18-21	22-35	35 +
Approved	42	50	34	51	41	40
Disapproved	42	35	49	40	44	42
Undecided	16	15	17	9	15	18
Source: *The News* (Adelaide) Tuesday, 1 February 1972, p. 17. Note: # In the original text there was also a column heading Religion but no figures were provided. Figures are percentages.						

Table 59: ANOP Poll, February 1972, Responses Regarding Legalisation of Homosexuality by Age, Country of Birth and Place of Residence

Question: Do You Approve Or Disapprove of Legalised Homosexuality?										
	Total	Sex			Country of Birth				Residence	
		18-21	22-35	35 +	Aust	UK/Ire	Italy	Oth Eur	Urban	Rural
Approve	28	37	39	22	27	39	21	30	35	17
Disapprove	62	58	52	66	53	53	67	59	57	70
Undecided	10	5	9	12	10	8	12	11	8	13
Source: *The News* (Adelaide) Tuesday 1 February 1972, p. 16. Note: Figures are percentages. Emphasis added.										

Table 60: ANOP Poll, February 1972, Responses Regarding Wife–Swapping by Sex

Question: Do You Approve Or Disapprove of Wife–Swapping			
	Total	Male	Female
Approve	3	4	1
Disapprove	95	92	98
Undecided	2	4	1
Source: *The News* (Adelaide) Tuesday, 1 February 1972, p. 17. Figures are percentages.			

Table 61: ANOP Poll, February 1972, Responses Regarding Gambling by Sex, Age and Religion

Question: Do You Approve Or Disapprove of Gambling?										
	Total	Sex		Age			Religion			
		Male	Female	18-21	22-35	35 +	Cath	Ang	Meth	Pres
Approve	55	61	50	54	66	51	63	56	42	62
Disapprove	40	34	45	42	31	43	33	39	53	35
Undecided	5	5	5	4	8	6	4	5	5	3
Source: *The News* (Adelaide) Tuesday 1 February 1972, p. 17. Figures are percentages.										

1:–1.1.12. – Clinical Memorandum of the Australian and New Zealand College of Psychiatrists [438] Homosexuality

Psychiatric opinion on the nature of homosexuality varies along a conservative-radical continuum. The traditional view, based on the study of homosexual patients, is that homosexuality is a neurotic disorder, 'a pathologic adaptation resulting from fear of heterosexuality', Rado [439]. The radical view is that homosexuality is a normal variant like left handedness, while middle of the road opinion regards homosexuality as a developmental anomaly not necessarily or commonly associated with neurotic symptoms.

The conservative view is exemplified by the conclusions of Bieber [440], who compared 106 male homosexual patients with 100 controls; all members of both groups were undergoing psychoanalysis. He found that compared with the mothers of heterosexuals, mothers of homosexuals tended to be 'overly close, overly intimate, possessive, dominating, overprotective and demasculinizing … (they) encouraged an alliance against father and frequently openly preferred son to husband'. Bieber considered that the fathers of homosexuals were usually detached, un-affectionate and hostile to the sone as a result of rivalry for mother's love, and that both parents inhibited manifestations of assertive masculine behaviour and instilled a neurotic fear of heterosexuality. Bieber concluded that homosexuality was a neurotic disorder amenable to psychoanalytic treatment. He suggested that examination of allegedly well-adjusted homosexuals by psychoanalysts would be likely to reveal psycho-pathology.

Unlike later psychoanalytic theorists, Freud [441] believed that homosexuality could not be classified as an illness. Freud [442] pointed out that 'inversion is found in people who exhibit no other serious deviations from normal … Psychoanalytic research is most decidedly opposed to any attempt at separating off homosexuals from the rest of mankind as a group of special character.'

Controlled studies of homosexuals who have not sought psychiatric treatment or been in conflict with the law have usually found that homosexuals do not differ from heterosexuals in incidence of neurotic symptoms or occupational maladjustment. Bene [443] compared 83 male members of homosexual clubs with 84 married men of similar age and social background. She found no evidence that homosexuals, compared with heterosexuals, were strongly attached to, over-indulged and over-protected by their mothers as claimed by Bieber. Bene however found that homosexuals recalled poor childhood relationships with their fathers significantly more often than did heterosexual controls.

Siegelman [444] compared 307 mal members of a New York homosexual society with 137 heterosexual controls. He found no differences between groups in questionnaire measures of neuroticism, ego-identity or alienation.

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[438] The Australian and New Zealand College of Psychiatrists, 'Homosexuality', Clinical Memorandum no. 6, 13 October 1973.

[439] Rado, S, 'An Adaptational View of Sexual Behaviour', in P, Hoch, and J, Subin, (eds), *Psychosocial Development in Health and Disease*, Grune and Stratton, New York, 1949.

[440] Bieber, Irving, et al. *Homosexuality*, Basic Books, New York, 1962.

[441] Freud, Sigmund, 'Letter to An American Mother', *American Journal of Psychiatry*, 107, 1951, p. 786.

[442] Freud, Sigmund, 'Three Essays on the Theory of Sexuality', *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, vol. VII, The Hogarth Press, London, 1953.

[443] Bene, E, 'On the Genesis of Male Homosexuality: An Attempt At Classifying the Role of the Parents', *British Journal of Psychiatry*, 111, 1965, p. 803.

[444] Siegelman, M, 'Adjustment of Male Homosexuals and Heterosexuals', *Archive of Sexual Behaviour*, 2, 1972, p. 9.

In a clinical study of 89 male non-patient homosexuals and 35 unmarried heterosexual controls Saghir et al. [445] found that homosexuals tended to be dependent on alcohol or drugs and to report suicidal attempts more often than did heterosexuals. Saghir found no difference between groups in incidence of psychiatric disability or occupational maladjustment.

The contention that homosexuals tend to have difficulty in forming close relationships was examined by Loney [446] in a study of 60 non-patient male homosexuals, 11 lesbians, 33 heterosexual males and 12 heterosexual females. Most of the lesbian (82%) were married (having a stable relationship with a partner of the same sex). Only 22% of the male homosexuals were married. About 50% of the heterosexual controls were living with a partner of the opposite sex in marriage or stable relationship. Male homosexuals reported significantly larger number of sexual partners than did lesbians. These findings suggest that the absence of long term relationships and the tendency to have many sexual partners are associated with male gender rather than homosexuality per se.

Kenyon [447] found that 123 members of an English lesbian organisation did not differ from controls in the remembered incidence of childhood neurotic traits. Saghir [448] in a clinical study of 57 non-patient lesbians found that they did not differ from controls in incidence of psychiatric disability or level of occupational achievement and satisfaction; lesbian reported dependence on alcohol or drugs and suicide attempts more frequently than did controls.

Siegelman [449] studied 84 members of a lesbian club. Lesbian did not differ from controls on questionnaire measures of neuroticism, ego-identity or alienation. Siegelman found that lesbians obtained higher scores on measures of goal-directness and self-acceptance than did controls.

It is difficult or impossible to obtain a random sample of homosexuals. Homosexual psychiatric patients are not representative of all homosexuals; on the other hand, members of homosexual organisations may tend to be relatively well adjusted individuals intent on presenting a favourable picture of themselves. Nevertheless, the available evidence from controlled studies of non-patient homosexuals and heterosexuals suggests that the former do not show neurotic symptoms or occupational maladjustment more frequently than do heterosexuals.

Morris [450] surveyed opinion on the nature of homosexuality in a random sample of 150 English psychiatrists. About two-thirds regarded homosexuality as ‘an aberrant behaviour pattern’ and one-third regarded it as ‘a normal variant like left handedness’; only 5% considered homosexuality ‘a disease’. Wortley [451] reported a survey of 110 psychiatrists and 40 clinical psychologists in NSW. About two-thirds endorsed the views either that ‘homosexuality is merely a matter of personal preference but should be kept strictly private’ or ‘homosexuality is as natural as heterosexuality and should be freely expressed’. Only one-third of Wortley’s subjects endorsed the view that ‘there is something seriously wrong with a homosexual’.

In a further survey by Barr [452] of opinion among a random sample of 100 psychiatrists and all 93 trainee psychiatrists in NSW subjects were asked to indicate which of three statements was closets to their opinion of the nature of homosexuality. 81 (81%) psychiatrists replied, two stated that none of the statements were close to their views. Of the remaining 79, 27 (34%) considered homosexuality to be ‘a neurotic disorder’, 41 (52%) considered it ‘a developmental anomaly not necessarily or commonly associated with neurotic symptoms’ and 11 (14%) considered it ‘normal variant like left handedness’.

Of the 93 trainee psychiatrists 62 (67%) replied. 11 subjects (18%) considered homosexuality to be ‘a

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[445] Saghir, MT, Robins, E, Walbran, B, Gentry, KA, ‘Psychiatric Disorders and Disability in the Male Homosexual’, *American Journal of Psychiatry*, 126, 1970, p. 1079.

[446] Loney, J, ‘Background Factors, Sexual Experiences and Attitudes Toward Treatment in Two ‘Normal’ Homosexual Samples’, *Journal of Consul. Clinical Psychology*, 38, 1972, p. 57.

[447] Kenyon, FE, ‘Studies in Female Homosexuality: IV, Social and Psychiatric Aspects’, *British Journal of Psychiatry*, 114, 1968, p. 1337.

[448] Saghir, MT, Robins, E, Walbran, B, Gentry, KA, ‘Homosexuality: IV. Psychiatric Disorders and Disability in the Female Homosexual’, *American Journal of Psychiatry*, 127, 1970, p. 147.

[449] Siegelman, M, ‘Adjustment of Homosexual and Heterosexual Women’, *British Journal of Psychiatry*, 120, 1972, p. 477.

[450] Morris, PA, ‘Doctors’ Attitudes to Homosexuality’, *British Journal of Psychiatry*, 122, 1973, p. 435.

[451] Wortley, S, *Attitudes and Therapeutic Goals*, unpublished masters thesis, School of Psychology, University of NSW, 1973.

[452] Barr, RF, ‘Homosexuality and Psychological Adjustment’, submitted to: *The Australian and New Zealand Journal of Psychiatry*, 1973.

neurotic disorder'. 37 (59%) considered it 'a developmental anomaly not necessarily or commonly associated with neurotic symptoms' and 14 (23%) considered it 'a normal variant like left handedness'.

About two-thirds of psychiatrists and three-quarters of the trainees endorsed the view either that homosexuality was 'a developmental anomaly not necessarily or commonly associated with neurotic symptoms' or that it was 'a normal variant like left handedness'. The tendency for trainees to hold less conservative views than their elders just failed to reach statistical significance at the 0.05 level.

Conclusion:

Current psychiatric opinion of the nature of homosexuality is largely in accord with the results of controlled studies of non-patient homosexuals. Many psychiatrists consider that homosexual feelings and behaviour are not necessarily or commonly associated with neurotic symptoms and are compatible with good adjustment and a useful and creative contribution by the individual to society.

General Considerations:

1. Homosexuality may distress the individual and may cause him to seek psychiatric help. The aim of psychiatric treatment is usually a better adaptation to life in general and a more satisfactory adjustment to the particular difficulties of being a homosexual in a predominantly heterosexual society. Alternatively, when the patient desires it the aim of treatment may be an alteration of his sexual propensity, so that it is directed less towards his own sex and more towards the opposite sex. The latter aim is sometimes achieved, especially when the patient is relatively young or has experienced some heterosexual desire or activity in the past.
2. The ethics of treatment aimed at change in sexual orientation present difficult problems when the patient asks for such treatment while under the duress of impending trial on a charge of homosexual conduct. Courts may place homosexual offenders on probation or a good behaviour bond conditional on co-operation with treatment to reduce homosexual desire. If such treatment is not offered a prison sentence may be given. In such circumstances some psychiatrists are prepared to offer treatment providing that the individual seems motivated to reduce homosexual behaviour and increase heterosexual behaviour. However, the majority of psychiatrists are not prepared to recommend treatment aimed at change in sexual orientation while the patient is not a free agent. They prefer to delay consideration of such treatment until the patient is no longer under any form of legal constraint.
3. The psychological adjustment of homosexuals and their psychiatric treatment are made unduly difficult by existing community attitudes. The acceptance of homosexuals by society is slowly increasing but could and should be facilitated by reform of existing laws against homosexual acts between consenting adults in private.

1:–1.1.13. – Law and Hypocrisy [453]

Because one of the defendants was a Peer, and all were men of education, the case in which three men were sentenced to prison at Winchester for acts of gross indecency has attracted a vast notoriety. But cases of this offence, and of other homosexual crimes and misdemeanours, are constantly being tried up and down the country: there were 654 convictions in Higher Courts in 1952 for acts of indecency with males. This is not a momentary scandal but a deep-rooted malady.

Readers of *The Sunday Times* know that it was here, under the heading 'A Social Problem', that the underlying issue was first ventilated in a serious newspaper; the response to our leading article of last November, and to the pamphlet which was prepared for personal circulation from the article and the readers' letters it evoked, showed how deep was the public desire for sound knowledge and guidance on this tangled matter.

Nevertheless the so-called Montagu case has exposed with peculiar sharpness some of its more disturbing aspects. The chief witnesses for the prosecution were the accomplices – equally guilty with the accused of whatever acts were proved between them. We may well ponder, first, the fact that one set of parties goes free while the other takes the punishment; and, secondly, the inevitability that in the vast majority of such cases the only direct evidence obtainable is that of an accomplice. Accomplices' evidence is always tainted, requiring corroboration, and perhaps more so in homosexual cases than in any other class; for the witness is by confession queer, and being queer he is liable to be activated by powerful motives other than respect for truth – jealousy, delusion, fear.

Fear is a terrible emotion. It is the root of blackmail. Homosexuality is rich pasture for the blackmailers; for

[453] n.a. 'Law and Hypocrisy', *The Sunday Times* (London), Sunday, 28 March 1954, n.p.

the social stigma and the legal penalty of disclosure are alike terrifying to the wretched invert who, perhaps by a single reckless deed, has given way in secret to his warped desires, or who even without committing an actual offence has exposed himself to suspicion.

One may well ask whether, in regard to consenting acts between adult males, the truth is not that the real offence is to be found out. Notorious inverts occupy eminent places, and few people of wide acquaintance would be prepared to say that they know no one whom they could suspect of conduct which – if found out – would bring legal punishment and social disgrace. In all this matter, our society is riddled with hypocrisy.

The law, it would seem, is not in accord with a large mass of public opinion. That condition always brings evil in its train: contempt for law, inequity between one offender and another, the risk of corruption of the police. In this instance, the law was imposed, and is applied, by the normal majority who of their nature cannot experience any temptation to break it, and find it hard to understand the minds of those who do. Let it be admitted that the offences are to most of us disgusting: so, too, are other practices (such as homosexual conduct between women, or resort to prostitutes, particularly of a depraved or perverted kind) which are not punishable at law.

The case for a reform of the law as to acts committed in private between adults is very strong. The case for authoritative inquiry into it is overwhelming. An interim report under the auspices of the Moral Welfare Council of the Church of England has recently given that case clear support.

Such acts must be clearly distinguished from public indecency, from prostitution and importuning, and above all from corruption of the young. One of the arguments for consideration of the present criminal law is that until this is done the public conscience will not contrast sharply enough those things which must needs be legally tolerated and those which must be condemned and rooted out.

It is the problem of the young that chiefly needs the constructive attention of social reformers and the public. Homosexual inversion is not now regarded by most psychologists as inborn, save in the sense that the possibility of it may be latent in any child: it can often be started or stimulated at a formative age. Parents, schoolmasters, doctors, ministers of religion, and all who have to do with youth, ought to be far more aware of the facts and the dangers than they commonly are, and more alert to protect and help those in their care. This is the most important lesson of all that the scandals of recent months should have taught us. [454]

> *In the fear of the Lord is strong confidence; and his children shall have a place of refuge*
> – Proverbs, xiv, 26.

1:–1.1.14. – The Police and the Montagu Case [455]

On a careful consideration of the trial of Lord Montagu and his co-defenders at Winchester Assizes, several major abuses in police and penal policy become strikingly apparent. If they are allowed to go unredressed, it will be afresh victory for the public apathy and gullibility that have always nourished the most illiberal tendencies among those in authority.

How fare, for example, does the average citizen approve the policy of granting immunity to accomplices in crime, as a reward for turning Queen's evidence? No doubt most people would agree with the principle upheld in *R. v. James* (1913), that 'it is expedient that there should not be honour among thieves'; so that when an accomplice charged with larceny repents and gives information to the police, his sentence may decently – and justly – be reduced. But what is one to think of a system that not merely promises a reduced sentence to the renegade accomplice but absolves him from any criminal charge whatever? Since the Winchester trial, it has bee admitted that the two RAF men with whom the defendants were said to have committed homosexual offences were known to have been similarly involved with twenty-four other men, none of whom was charged. But it is the airmen who are free, Lord Montagu and his friends who are in prison.

Secondly, whenever two or more men commit an offence together, what principle of justice is served by charging each of them with that offence; and by charging them at the same time with conspiring to commit it? A conspiracy charge makes the words and acts of each of the defendants admissible in evidence against all the

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[454] Interestingly, the text box with biblical quotation was at the end of this 'Law and Hypocrisy' article.

[455] n..a. 'The Police and the Montagu Case', *The New Statesman and Nation* (London), 10 April 1954, pp. 456-7.

others. A co-defendant in a conspiracy trial, said Justice Jackson in the United States Supreme Court in 1949, 'occupies an uneasy seat. There generally will be evidence of wrong-doing by somebody. It is difficult for the individual to make his own case stand on its merits in the minds of jurors who are ready to believe that birds of a feather are flocked together, if he is silent, he is taken to admit it; and if, as often happens, co-defendants can be prodded into accusing or contradicting each other, they convict each other.' It is the cruellest trap that the law has ever contrived, an invention of the Star Chamber and a weapon of political oppression for centuries. It is a grave criticism of the Law Officers of the Crown in the conduct of their of office that the use of it, at least in such cases as this, has survived its severe condemnation by the Court of Criminal Appeal in the case of *R. v. West* (1948).

Thirdly, there is the extraordinary decision of the Director of Public Prosecution to launch a second prosecution against Lord Montagu while similar charges, on which an earlier jury had disagreed, were still pending. It could not have been necessary: Lord Montagu had demonstrated his willingness to surrender and face the charges. It could not be justified by any decision to 'offer no evidence' on the pending charges, or ask that they 'remain on the Court file.' It could not fail to bring him to the second trial in an atmosphere of prejudice.

Fourthly, there is the growing police practice of searching without warrant the private residences of people they have arrested. As to this, it must be said that the Home Secretary, in Parliamentary answers last Thursday, was led by those informing him to make statements that are seriously inaccurate. 'I am informed,' he replied, 'that the search [of Major Pitt-Rivers's flat] was carried out with the consent, and in the presence, of the person to whom the key of the flat had been entrusted.' Our information, and it is supported by the deposition taken by the Justice at Lymnington, is that Mr Anderson, an old friend of the Pitt-Rivers family, was holding the key for the mere purpose of occasional caretaking, and refusal to allow police to enter until he was given to understand that they would otherwise break in. They refused even to wait, he says, while he telephoned the Major Pitt-Rivers's mother. Is this what the police call consent?

The other question, which asked in what circumstances the Home Secretary authorised the Metropolitan Police to enter and search private premises without a warrant, Sir David Maxwell Fyfe replied, as he was bound to reply, that he had no power to give the police any such authority. He said that they had certain powers of that nature under Acts of Parliament, notably under s. 42 of the *Larceny Act 1916*. This s. enables Chief Constables to issue their own warrants for the search of houses occupied by known criminals, and for the seizure of stolen property found there. And even so, the Home Secretary should have said solely, not notably, for there is no other such enactment. 'In addition,' he went on, 'it has long been the practice, and one that is familiar to the Courts, that when the police arrest a person on private premises either on a warrant or for felony without a warrant, they may search the premises whenever it seems likely that any material evidence, whether for [sic] or against the accused, can be obtained.' Leaving aside the fact that Major Pitt-Rivers **was** arrested on the premises, that is roughly what Home Office witnesses told the Royal Commission on Police Powers and Procedure in 1929. They added that it had gone on for so long, without trouble, that it must have become part of the Common Law. It would be interesting to hear the Lords of Appeal on this. The Royal Commission regretted that the police had to rely upon 'powers of which the legality seems doubtful or obscure.' They urged that the position be clarified by statute.

'In other cases,' the Home Secretary affirmed, 'premises are searched only with consent, or in the absence of consent, on the authority of a search warrant.' To the knowledge of every practising lawyer, every Justices' clerk, and every policeman in the country, this statement is not true. The reluctant acquiescence of the prisoner's wife for example, when told that her husband is in custody and that it is proposed to search the house, is forthcoming only because the alternative is to have uniformed policemen posted outside the house until the warrant is obtained – perhaps for 24 hours. More often it is not forthcoming even on those terms; at the end of a brief colloquy at the street door, with a police manly foot across the threshold, the woman is brushed aside and the officers go in. The police commonly take this risk, and by doing it they recover an enormous quantity of stolen property that would otherwise disappear; more often than not the public interest is well enough served. But the time has come to give Parliament an opportunity to say whether a general police power of this drastic kind is today necessary and desirable.

There remains the unexplained episode of Lord Montagu's altered passport. From the moment of his arrival at London Airport until its production in Court three months later, it had remained in the possession of the police. The prosecution, vainly seeking to show that he had sneaked back on a visit to England at the end of 1953, and to discredit him as a liar for denying it, asked him to account for a Bordeaux exit date-stamp that

supported their allegation. This was discovered by the defence to be a forgery. There is no proof that the police made the alteration, but neither is there any explanation.

Regardless of the guilt or innocence of the defendants, of their social status, and of the humanity of the law relating to homosexuality, the Winchester trial provides, by itself, ample reason for an inquiry into the present methods of the Director of Public Prosecution and of the police. It also makes abundantly clear the need for a permanent committee, comparable to the Lord Chamberlain's committee on civil law, to review and as occasion demands to recommend reforms in the whole of our criminal law and procedure.

1:–1.1.15. – Prevalence of Homosexuality in the UK and Australia

It would appear that Mr James was referring in his speech supporting homosexual law reform to a generally recognised statistic, rather than pointing to any specific prevalence of homosexuality research.

The use of the one-in-twenty figure was in wide circulation at the time predominantly because of DJ West and Bryan Magee's writings. Also the newspapers of the time used these generally recognised statistics and, occasionally, the gay movement used them in their own writings.

West states that: 'The assertion that one in twenty of all adults males are predominantly homosexual seems at first incredible'. [456]

Bryan Magee states that: In most of the advanced Western countries surveys have been carried out in recent years – some by individuals, some by teams of sociologists, some by medical centres, some by university departments – to try to establish the incidence of homosexuality. Although their results naturally vary, they fall strikingly within a quite narrow rang. They mostly come up with the conclusion that somewhere between four per cent and six per cent of people are homosexual. [457]

The earliest estimates made by such investigations as Havelock Ellis [458] were little more than shrewd guesses based on commonsense considerations plus the testimony of confessing homosexuals. Ellis himself believed that two to five per cent of Englishmen were predominantly homosexual.

Dr Magnus Hirschfeld [459] in the 1920s attacked the matter more systematically by circulating a questionnaire to 3,000 German male technology students and 5,721 metal workers. According to the replies 2.3 per cent of them were exclusive homosexuals and 3.4 per cent were partial homosexuals. Since only half of those who were sent forms returned an answer, the result cannot be reliable. Hirschfeld sought to obtain confirmation by questioning homosexual men who, by virtue of their experiences, would know that extent of the homosexual activity among their own business and social groups. By this means he arrived again at approximately the same figures.

In 1929 GV Hamilton [460] published a survey of the lives of 100 married men and 100 married women. Seventeen of the 100 men reported having had some homosexual experience after the age of eighteen.

An American psychologist, FW Finger, [461] reported the results of a questionnaire study submitted to a class of adult students in advanced psychology. He prepared the students for the questionnaire by a course of preliminary instruction and assured of the secrecy of their replies. By this means he secured answers from 111 members of the total class of 138. Of those who replied twenty-seven per cent admitted at least one adult homosexual episode leading to orgasm.

All previous works on these lines was put in the shade in 1948 by the publication of a monumental survey on the sexual behaviour of American men prepared by the zoologist Dr AC Kinsey and his collaborators. [462] These investigators collected a sample of over 4,000 American men, representing as far as possible a cross section of the white community. From exhaustive confidential interviews about their sexual habits the researchers estimated that about four per cent of white males were exclusively homosexual all their lives, and

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[456] West, Donald J, *Homosexuality*, Penguin Books, Ringwood, Vic, 1969, p. 35

[457] Magee, Bryan, *One in Twenty: A Study of Homosexuality in Men and Women*, Corgi Books, London, 1968, p. 35.

[458] Ellis, Havelock, *Studies in the Psychology of Sex*, 3rd ed, vol. II, 'Sexual Inversion', FA Davis, Philadelphia, 1915.

[459] Hirschfeld, Magnus, *Sexual Anomalies and Perversions*, Francis Aldor, London, 1944.

[460] Hamilton, DM, 'Some Aspects of Homosexuality in Relation to Total Personality Development', *Psychiatric Quarterly*, 13, 1939, pp. 229-44.

[461] Finger, FW, 'Sex Beliefs and Practices Among Male College Students', *Journal of Abnormal and Social Psychology*, 42, 1947, pp. 57-67.

[462] Kinsey, AC, et al. *Sexual Behaviour in the Human Male*, Saunders, London, 1948.

over a third admitted at least some adult homosexual experience. Kinsey, et al's criterion of homosexual practices was contact with another man leading to orgasm.

1:–1.2. – Attorney-General Department's Letter to CAMP NSW, Including the Draft Ordinance, 28 August 1974 [463]

I refer to my telephone conversation with you last week. The Attorney-General has asked that I send you a copy of the Proposed Homosexual Law Reform Ordinance for the ACT.

Any comments your organisation might have on the proposed enactment would be appreciated. I shall be glad to discuss the matter with you on the telephone.

1:–1.2.1. – Draft ACT Homosexual Law Reform (Sexual Behaviour) Ordinance, 1974

Australian Capital Territory
No. of 1974
An Ordinance
Relating to Sexual Behaviour by Persons of Eighteen Years of Age or More.

I, THE GOVERNOR-GENERAL of Australia, acting with the advice of the Executive Council, hereby make the following Ordinance under the Seal of *Government (Administration) Act 1910-1973*.

Dated this Day of , 1974.

By His Excellency's Command, Governor-General

Attorney-General .

HOMOSEXUAL LAW REFORM (SEXUAL BEHAVIOUR) ORDINANCE 1974

1.	Short title.	This Ordinance may be cited as the *Law Reform (Sexual Behaviour) Ordinance 1974*.
2.(1)	Interpretation.	In this Ordinance - 'commits' includes attempts to commit, and 'commission' has a corresponding meaning; '*Crimes Act*' means the *Crimes Act 1900* of the State of NSW in its application to the Territory.
2.(2)		For the purpose of this ordinance, two persons are related to each other only if one is the mother, sister, daughter, granddaughter, father, brother, son or grandson of the other, whether the relationship is of the half-blood or the full-blood or is or is not traced through lawful wedlock.
3.(1)	Certain sexual behaviour not to be an offence.	Subject to this Ordinance, a person who, with the consent of another person (whether of the same or different sex), commits and act of a sexual nature upon or with that person is not, by reason only of the commission of that act, guilty of an offence.
3.(2)		Sub-section (1) does not apply where a person commits an act upon or with -

[463] On 4 November 1998 the FOI Unit of the Attorney-General's Department in Canberra was contacted to ascertain if further details of file 73/8002 were available. Lester Watson, Director, Ministerial and Parliamentary Section of the Attorney-General's Department responded on 13 November 1998 as follows: 'An examination of file 73/8002 has not revealed any trace of the 'Proposed Homosexual Law Reform' paper that you have requested.'

3.(2)(a)		a person to whom he is related;
3.(2)(b)		or a person who has not attained the age of 18 years.
4.(1)	Ordinance to prevail over other laws.	Subject to sub-section (2), this Ordinance has effect not withstanding any other Ordinance, any regulations made under an Ordinance or any Act of the State of NSW in its application to the Territory.
4.(2)		Nothing in this Ordinance affects the liability of a person to be prosecuted for, and convicted of, an offence against the *Police Offences Ordinance* 1930-1970.
5.1	Consent obtained by threat, etc., not effective.	The consent of a person is not effective for the purpose of s. 3 if the consent is induced by mens of a treat, by force or by means of a false pretence or representation.
5.2		The consent of a person of unsound mind is not effective for the purpose of s. 3 if the person to whom it is given knows, or has reason to suspect, that the first-mentioned person is of unsound mind.
6.	Burden of proof.	A person charged with an offence against s. 79, 80 or 81 of the *Crimes Act* shall not be convicted of the offence unless it is proved that the person upon whom the alleged offence was committed -
6.(a)		did not consent to the commission of the offence;
6.(b)		had not attained the age of 18 years;
6.(c)		or was related to the defendant.

1:–1.3. – CAMP NSW Letter to Attorney-General, Senator Murphy, 17 September 1974

Thank you for the copy of the Law Reform (Sexual Behaviour) Ordinance which you forwarded. I have been trying to get in touch with you by telephone, but have not been having much success.

CAMP NSW believes the only satisfactorily legal position would be a programme of sex law repeal, and hence is quite dissatisfied with the proposed ordinance. It bases its policy, firstly, on the ideological position that the state has no right to interfere in private matters. There would obviously still have to be safeguards against assault, but these situations could be quite adequately covered in other ss. of the Criminal Code. Its policy is based, secondly, on the difficulty of drawing up satisfactory and enforceable laws.

In this connection, I would ask the following questions about the proposed ordinance:

(1) Does the fact that the ordinance is cited as the Law Reform (**Sexual** Behaviour) ordinance mean that the heterosexual age of consent is being raised to 18? If this is so, why is this fact not being advertised? Why is the age not being lowered or, better abolished? How does this change affect ss. 62-78 of the *Crimes Act*?

(2) Why are sexual relations with relatives forbidden?

(3) s. 3(1): why only two people?

(4) Under the ordinance, women are now prosecutable under the law. Wouldn't a more satisfactory situation be to change the situation the other way, and make men no longer subject to the law?

(5) Now, of course, sexual relations between children are theocratically subject to the law. This, of course, is quite unenforceable and makes a farce of the law.

I would be pleased if you could answer the queries outlined in the last section, keeping in mind our overall policy of sex law repeal.

1:–1.4. – CAMP NSW Letter to Attorney-General, Senator Murphy, 30 September 1974

We wish to raise considerations in connection with two matters within your jurisdiction.

(1) *Draft Ordinance on Sexual Behaviour*. We have been in discussion with CB Fernando of your Department about this matter, but two issues remain to be raised with you (apart from our overall objections to the ordinance, which have been adequately pointed out to Mr Fernando):

(i) we can see no good reason, apart from outdated Christian ethics (which, or course, hardly constitutes

good reason) for including homosexual acts between relatives in the criminal code. We urge you to remove that from the code;

(ii) the ordinance would be improved by making s. 3(1) plural – viz., '… persons, who with the consent of other persons …' The only reason Mr Fernando could advance for this not catering for sexual relations between more than two people was that he did not know anal intercourse was possible between more than two people. I pointed out to him that this was not correct, and so the way seems open to providing that sexual relations between more the two people no longer be an offence.

(2) **Family**. Our consideration of National Compensation and Superannuation proposals have pointed up the necessity of some sort of family register. This would provide for two or more people to register themselves as a family, for legal and other administrative purposes. This could perhaps take the form of a statutory declaration at a central registry. The family unit would cease when one or members left it. This idea is, at the moment, only a tentative one, but we are hopeful you will give it serious consideration and perhaps come up with some concrete proposal.

We are always happy to discuss these and other related matters with you.

1:–1.5. – No Party to Celebrate [464]

Please Sir, We'd Like Some More

Thursday, October 18, 1973, 12 noon precisely, the result of the division was announced [see page 13] – 64 to 40 in favour of the motion Gorton/Cass [465] [466] law reform motion in Canberra. [Senator] Murphy announced the law would be repealed by ordinance [see page 160] as soon as it could be arranged, and after consultation with ACT Advisory Council. Before you actually read this, HLR [see page 3] will be a fact in the ACT male homosexual acts under certain conditions will, for the first time ever in Australia, be legal.

But we did not hold a party to celebrate. Nor should we. Let us place on record our thanks that the motion was actually passed., and that the majority was far greater than anticipated by anyone either MP or the homosexual movement, that the motion raised no organised opposition at all, and that reaction to the change from the media and the rest has been approval. That is a healthy sign. But …

The Canberra Times, [467] is accepting the move as being the result of 'a strong sense of justice and compassion', had reservations worthy of its big sister, Granny Herald [*The Sydney Morning Herald*]. [468] Just because the federal parliament had passed a motion was not enough, Murphy should ask for ACT itself, otherwise it would be 'another example of the Government imposing its view …' And the ACT had cause for concern, said the CT [*The Canberra Times*] – it would been better to have waited until all States would act simultaneously, so that, said their learned leader writer, 'Any qualms about possible undesirable repercussions the legislation might have on social and community life in the ACT would thus have been dispelled.' Clearly they envisage hoards of camps swarming over the border.

The CT had other worries. The debate [469] was too short (just on one hour). The issues, 'biological, medical, educational and commercial' relating to homosexuality needed to be aired. There was too much ignorance felt the CT. They suggest – 'scientific study of the factors that determine the sex of the human foetus and the femininity or masculinity or personal traits is part of an intelligent approach to homosexuality.' All of which proves that the CT, when deploring ignorance of homosexuality, spoke far truer than they knew.

Don Aitkin, founding member of the ACT HLR Society did his little bit, patting himself and others of similar ilk on the back for the success of HLR and its merit. He recalled that the ACT HLRS was set up because of a particularly unjust case of homosexual persecution in 1969 in Canberra. He, like everyone else, failed to notice that that was a public act (in a car off the road some miles out of the city) and the idiocy of the original police action can, and probably will, be repeated only too readily under the revised anti-camp laws. There was a persecution of precisely this sort earlier this year in Canberra.

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[464] Watson, Lex, Please Sir, Wed Like Some More, *CAMP Ink*, n.d. vol. 3. no. 7. p. 3.

[465] The Rt Hon John Grey Gorton, LP MHR for the Vic seat of Higgins.

[466] The Hon Dr Moses Henry Cass, ALP MHR for the Vic seat of Maribyrnong and Minister for the Environment and Conservation.

[467] See: 1:–1.5.1. page 163, 'Rapid Change in the ACT Law'.

[468] See: 1:–1.5.2. page 165, 'Granny Herald Says'.

[469] See: 1:–1.1. page 4, 'Parliamentary Debate – Law Change'.

And Murphy, of course, also weltering in the liberality of the day, announced that even before the law is formally changed, he was instructing his police force not to institute prosecutions for acts that will cease to be crimes when the law is changed. Now who was Murphy fooling, himself or the public? When was the last such prosecution in the ACT? Will he take his police off the other sorts of prosecutions? Or will the police take themselves off?

The motion passed was along the lines of the British reform of 1967. Since reform in Britain, prosecutions have increased by 160%. The police have apparently decided to crack down on what is left on the books, and continue the absurdities of past years in greater numbers [see page 337]. Past behaviour gives every reason to believe that the ACT Police are capable of repeating that inglorious achievement. Law reform, as has been said over and over, of this limited sort is likely to make the situation for us worse.

That of course is not the intention of Gorton and Cass. Yet what they have done is to act in such a way that they get all the kudos of reformers, but do not help the homosexual at all. It is not until the law itself ceased to matter, that they were prepared to abolish that part of it. Far from being reform, it is simply recognition of the status quo. But isn't that better than leaving the law on the books; you have to start somewhere; its better than nothing isn't it? These were the standard retorts of CAMP's lobbyists during this motion's history. There is another way of looking at it.

This reform specifically denies to homosexuals, equality with heterosexuals. It clearly and deliberately, puts us in a special and restricted category. In 1973, in other words, federal parliament in Australia saw fit to formally re-affirm that they did not regard male homosexuals as being equal to heterosexuals, or lesbians, that we are not deserving of full political rights. And that is something of which they have no cause to be proud, nor of the movement to be thankful.

So, boys, thanks: but thanks for nothing.

Several comments emerge from this – perhaps most obviously, just how out of touch Snedden [470] and Lynch [471] are with contemporary Victorian thinking. But overriding all that, the very obvious State variations.

NSW, with the arch-right wing Labor machine, provided 11 of the Labor's 18 no votes, and 13 of the yes votes, whereas Victorian Labor 14 yes and none against. All parties in Vic followed this pattern. Libs going 8:4 in favour, and the CP going 4:1 in favour. The only other State that presented this across the parties support was SA, with the ALP voting 7:0, and the Libs 3:1 for us.

Qld, perhaps predictably, was the only State that across the board voted against us, with Labor 3:4, Libs 2:5 and the CP 0:3.

Table 62: Gorton/Cass Motion Vote Analysed

	Yes	No	Abstention/ Absent	Total
ALP	40	18	9	67
LP	18	13	7	38
CP	6	9	5	20
Total	64	40	21	125
NSW	19	18	8	45
Vic	26	5	3	34
Qld	5	12	1	18
SA	10	1	1	12
WA	2	2	5	9
Tas	2	2	1	5
NT	–	–	1	1
Total	64	40	20	124

Source: *CAMP Ink*, vol. 3, no. 7, p. 3.

SA has clearly been influenced, amongst other things, by the Duncan case [see page 393], but WA with a very high abstention rate, remains a mystery, especially since Labor is officially on side there. But the one prediction you might have confidently made – the ACT voted 100% for the motion, thanks to Enderby [472].

1:–1.5.1. – Rapid Change in the ACT Law, 19 October 1973 [473]

Motion to Change Sex Laws in ACT

A decision by the House of Representatives, yesterday, that there should be no criminal penalties attached to homosexual acts, in private, between consenting adults, is going to result in a rapid change in the ACT law.

The Attorney-General, Senator Murphy, ordered his Department to prepare the necessary legislation to implement the decision immediately after it was made.

This followed representation from the Member for the ACT and Minister for Secondary Industry, Mr Enderby, who told the Attorney-General he thoroughly approved of the House's decision and that it was proper for him to implement its recommendation as an expression of the views of the Territory.

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[470] The Rt Hon Billy Mackie Snedden, LP MHR for the Vic seat of Bruce.
[471] The Hon Phillip Reginald Lynch, LP MHR for the Vic seat of Flinders.
[472] The Hon Keppel Earl Enderby, ALP MHR for the seat of the ACT.
[473] Solomon, David, 'Motion to Change Sex Laws in ACT', *The Canberra Times*, Friday, 19 October 1973, pp. 1, 6.

The House of Representatives vote came as something of a surprise, even to the supporters of the motion.

There were doubts earlier this week that it would be carried, and no one predicted a majority as large as the final 64-40 vote in favour of the proposal.

The motion, as put by that a former Prime Minister, Mr Gorton, and seconded by the Minister for the Environment, Dr Cass, read, 'That in the opinion of this House, homosexual acts between consenting adults in private should not be subject to the criminal law'.

It was pointed out in the debate that in the ACT the law provided that the minimum penalty for such offences at the moment was five years jail, and the maximum was life imprisonment.

The Attorney-General reacted to the carriage of the motion by instructing his Department to prepare alterations to the existing law, even though the House of Representatives motion is not binding on the Government.

Senator Murphy does not anticipate any difficulty in getting an amended law through the Senate.

A liberal backbencher who voted for the motion, Mr David Hamer, [474] pointed out that the ACT law against homosexual acts applied as much to females as to males, though in England women had been exempted from the law.

Dubbing Homosexuals as Criminals Unjust

Mr Gorton (Lib, Vic) said in the House of Representatives yesterday that it was unjust and wrong to dub as criminals people who in some way were built differently.

Mr Gorton was introducing his private Member's motion that 'in the opinion of this House homosexual acts between consenting adults should not be subject to criminal law'.

He said the three main words in the motion were consenting, adult and private, and the motion would not change the laws concerning homosexual assaults on minors, or approaches made in the streets.

Debate lasted less than an hour because MPs had to attend a luncheon with the Queen and Prince Philip.

The motion supported by the Minister for the Conservation and Environment, Dr Cass, was agreed to by 64 votes to 40.

It only covers the ACT and Territories under the control of the Australian Government. The States have their own laws.

Votes in Favour

Among those who voted in favour of the motion were the Prime Minister, Mr Whitlam, the Leader of the CP, Mr Anthony, his Deputy, Mr Sinclair, the Treasurer, Mr Crean, the Minister for Labour, Mr Cameron, the Minister for Overseas Trade, Dr Cairns, the Minister for Urban and Regional Development, Mr Uren, the Minister for Social Security, Mr Hayden.

The Minister for Secondary Industry, Mr Enderby, the Minister for the Capital Territory, Mr Bryant, the Minister for Health, Dr Everingham, the Minister for Housing, Mr Johnson, the Minister for External Territories, Mr Morrison, Mr Gorton, Dr Cass, Mr Chipp (Lib, Vic), and Mr Bury (Lib, NSW).

The Leader of the Opposition, Mr Snedden, and his Deputy, Mr Lynch, voted against the measure.

So too did the Deputy Prime Minister, Mr Barnard, the Postmaster-General, Mr Bowen, the Minister for Education, Mr Beazley, the Minister for Minerals and Energy, Mr Connor, the Leader of the House and Minister for Services and Property, Mr Daly, the Minister for Tourism and Recreation, Mr Stewart, and Liberal frontbenchers, Mr Fairbairn (NSW) and Mr Killen (Qld).

The motion is an expression of opinion which is expected to guide the ministers concerned in the drafting of new criminal codes.

Mr Gorton said it was unjust and wrong to dub as criminals people who in some way were built differently and might not be able to help themselves. They lived a life of desperation and pain, and sometimes committed suicide because of it.

Basically the motion was a matter for each individual, and not a matter to be decided on emotion. It should be decided on justice which, in the ultimate, was what parliament was all about.

The one ultimate justification was the welfare of the individual in Australia.

If the argument was taken that homosexuality in private was against God's law, then the major churches did not agree with it. The churches agreed with him that he could not imagine a function of God's law would permit people who were built somewhat differently to live a twilight life of guilt and fear.

Country after country in the world had changed their laws to those which used to apply, and none of them

[474] David John Hamer, LP MHR for the Vic seat of Isaacs.

had found an upsurge in homosexual activities as a result.

Dr Cass said poofter bashing had become a virtually recognised national civilian team sport. The homosexual was unmasculine by popular consensus, unmarried, non-fathering and anti-suburban.

'In Australia the homosexual is not merely shunned as a moral leper or despised as a pervert, but he is actively discriminated against,' he said.

Surveys and public opinion polls had shown a surprising level of public liberality on the issue. Responses suggested a high degree of tolerance.

Dr Cass said that defending the rights of homosexuals was not endorsing of advocating homosexuality.

Sir John Cramer (Lib, NSW) said he opposed the motion, because he believed it opened the door to social recognition of homosexuality a normal way of to live. He did not accept it and he did not think the Australian people wanted it that way.

1:–1.5.2. – Granny Herald Says, 19 October 1973 [475]

Homosexuals: Law Changing

CANBERRA, Thursday, – From next week homosexual acts in private between consenting adults in the ACT are expected to be legal.

The Executive Council is expected to amend next Tuesday the ACT ordinance which prohibits homosexual acts.

The House of Representatives carried today a motion which stated: 'That in the opinion of this House homosexual acts between consenting adults in private should not be subject to the criminal law.'

The motion moved by the former Liberal Prime Minister, Mr J G Gorton [476] and seconded by the Minister for the Environment and Conservation, Dr Cass [477] was carried by 64 votes to 40.

The Attorney-General, Senator Murphy, [478] immediately ordered the drafting of the ordinance amendment for the ACT.

Similar action will be taken as soon as possible for the NT and other Federal territories.

In a debate cut short because of the parliamentary luncheon for the Queen only four members spoke – only one, Sir John Cramer [479] (Lib, NSW), against.

Seven Labor ministers and 10 backbenchers voted against the motion, including the Deputy Prime Minster, Mr Barnard. [480]

The Prime Minister, Mr Whitlam [481] voted for it but did not speak.

The Leader and Deputy Leader of the CP, Mr Anthony [482] and Mr Sinclair, [483] along with other party members, also voted for it. But the LP Leader and Deputy Leader, Mr Snedden [484] and Mr Lynch, [485] voted against the motion.

Mr Gorton said during the debate that the effect of the motion would not be to change the laws concerning homosexual assaults on minors, or approaches on the streets.

MPS, IN 64-40 VOTE DECLARE HOMOSEXUALITY NOT CRIMINAL

The House of Representatives yesterday resolved, by a 64-40 free vote, that homosexual acts between consenting adults should not be subject to criminal law.

The motion, introduced by Liberal front bencher, Mr John Gorton, of Vic, was supported by the Minister for the Environment and Conservation, Dr Moss Cass.

It covers only the ACT, and territories under the control of the Federal Parliament.

The States have their own laws on homosexuality.

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[475] n.a. 'Homosexuals: Law Changing', *The Sydney Morning Herald*, Friday 19 October 1973, pp. 1, 8.

[476] The Rt Hon John Grey Gorton, LP MHR for the Vic seat of Higgins.

[477] The Hon Dr Moses Henry Cass, ALP MHR for the Vic seat of Maribyrnong and Minister for the Environment and Conservation.

[478] The Hon Lionel Keith Murphy, ALP Senator for NSW, Attorney-General and Minister for Customs and Excise.

[479] The Hon Sir John Oscar Cramer, LP MHR for the NSW seat of Bennelong.

[480] The Hon Lance Herbert Barnard, ALP MHR for the Tas seat of Bass.

[481] The Hon Edward Gough Whitlam, ALP MHR for the NSW seat of Werriwa.

[482] The Rt Hon John Douglas Anthony, CP MHR for the NSW seat of Richmond.

[483] The Hon Ian McCahon Sinclair, CP MHR for the NSW seat of New England.

[484] The Rt Hon Billy Mackie Snedden, LP MHR for the Vic seat of Bruce.

[485] The Hon Phillip Reginald Lynch, LP MHR for the Vic seat of Flinders.

Debate on the motion lasted less than an hour because members were to attend a luncheon with the Queen.

Among those who voted in favour of the motion were the Prime Minister, Mr Whitlam, the Leader of the CP, Mr Anthony, and his deputy, Mr Sinclair.

The Leader of the Opposition, Mr Snedden, and his deputy, Mr Lynch, voted against the motion. So did the deputy Prime Minister, Mr Barnard.

Mr Gorton's private member's motion was that 'in the opinion of this House homosexual acts between consenting adults in private should not be subject to criminal law.'

He said the motion would not change the laws concerning homosexual assaults on minors, or approaches made in the streets.

'We are concerned with one question only – the rights of consenting homosexual adults in private,' he said.

It was unjust and wrong to dub as criminal people who in some way were made differently and may not be able to help themselves, Mr Gorton said.

They lived a life of desperation and pain, and sometimes committed suicide because of it.

If the argument was taken that homosexuality in private was against God's law, then the major Churches did not agree with it, he said.

The Churches agreed with him that he could not imagine a function of God's law would permit people who were built somehow differently to live a twilight life of guilt and fear.

Seconding Mr Gorton's motion, Dr Cass said poofter-bashing had become a virtually recognised national civilian team sport.

The homosexual was unmasculine by popular consensus, unmarried, non-fathering and anti-suburban, he said. 'In Australia the homosexual is not merely shunned as a moral leper or despised as a pervert, but he is actively discriminated against.

The homosexual suffered unique and potentially crippling psychological pressure in a dominantly heterosexual society and had to cope with legal, social and institutional discrimination.

Genuine offences such as rape, assault, indecent exposure, child molesting and other acts occur among heterosexuals as well as homosexuals and are capable of being dealt with by laws that apply to all,' Dr Cass said.

'This motion does not seek to legalise homosexuality, in the sense of issuing a licence or charter for homosexuality. Rather, this motion supports the decriminalisation of homosexuality.

The passing of this motion would signal that the time has arrived for the end of sexually biased social oppression in Australia,' Dr Cass said.

Sir John Cramer (Lib NSW) said he was opposed to the resolution because he believed it opened the door to social recognition of homosexuality as a normal way to live.

The motion could give the green light to promote, encourage and publicise homosexuality, he said.

'It is a distorted way to live and should be branded for what it is.'

Young people should be dissuaded from drifting into this obnoxious habit.

'If the Government acts in accordance with this resolution, this would bring a further advance of the permissive society which is so destroying the fabric of moral rectitude of the people of Australia,' Sir John said.

1:–1.6. – Unfairly Discriminated Against, 18 October 1973 [486]

Move for Reform of Homosexual Law

CANBERRA Wednesday – The former Prime Minister, Mr Gorton, will introduce a motion into the House of Representatives tomorrow for reform of laws governing homosexuality.

If the motion is carried legislation could be introduced early next year, but it would apply only to the ACT and the NT.

Mr Gorton has already given notice 'that in the opinion of this House homosexual acts between consenting adults in private should not be subject to the criminal law.'

The Leader of the House, Mr Daly, said today there would be debate and a vote on the motion before noon tomorrow.

The motion has been seconded by the Minister for the Environment and Conservation, Dr Cass.

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[486] n.a. 'Move for Reform of Homosexual Law', *The Sydney Morning Herald*, Thursday, 18 October 1998, p. 2.

Dr Cass said yesterday: 'Homosexuals have for many years been unfairly discriminated against by the law in all States and in Federal territories.

Hopefully our society has progressed beyond the stage where we must legally oppress these people just because they have different tastes in sexual partners.'

1:–1.7. – To Attend the Queen's Luncheon, 19 October 1973 [487]

Law to Follow Reform Vote

CANBERRA – Homosexual acts will stop being a crime in all Federal territories next week.

The Attorney-General, Senator Murphy is preparing to change the law following a vote in the House of Representatives yesterday.

The House voted 64 votes to 40 that homosexual acts in private between consenting adults should be made legal.

Cabinet decided before the debate to bring in an ordinance to change the law provided yesterday's motion was carried.

The matter will not have to be considered in Parliament again although there could be a move to reject the ordinance in the Senate.

The motion was moved by former Prime Minister Mr John Gorton and seconded by the Minister for Environment and Conservation, Dr Cass.

The decision yesterday on a non-party vote, reversed previous hard-line opposition by most MPs to homosexual law reform.

It contrasted with a heated debate by the Labor Party Caucus in 1971, when an official meeting with representatives of the homosexual group, Camp Inc, [CAMP NSW] had to be cancelled.

Moving the motion yesterday Mr Gorton said a law which was only sometimes applied, used discriminately and which allowed a person to be blackmailed was the worst law of all.

DECIDED

'It is a matter to be decided on justice,' he said.

'It is a matter which in the ultimate is what this Parliament is all about.'

Only four other members spoke on the motion before debate was gagged.

The Minister for Services and Property, Mr Daly, [488] said this was done to allow all MPs to attend the Queen's luncheon in Parliament House.

He said that most of the major churches were in favour of changing the law against homosexuals.

Even the *Catholic Weekly* newspaper [see page 16] had presented a strong case in favour of changing the law.

Opposing the motion, Sir John Cramer (Lib NSW) said it opened the door to social recognition of homosexuality as a normal way of life.

'I cannot accept that and I don't think the Australian people want it that way,' he said.

'I am surprised that such a resolution is introduced into this house and I cannot understand what is its motivation.'

Sir John said 'that to legalise homosexual acts would give the green light to promote and publicise homosexuality in all its forms.'

1:–1.8. – Strong Support for the Motion Came As A Surprise, 19 October 1973 [489]

New Sex Law Next Week

CANBERRA. – The Government will change Commonwealth law next week to legalise homosexual acts between consenting adults in private.

The new law will apply only in the ACT, the NT, and other Commonwealth territories.

Yesterday the House of Representatives carried a motion that homosexual acts between consenting adults should not be subject to criminal law.

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[487] Farmer, Richard, 'Law to Follow Reform Vote', *The Daily Telegraph*, Friday, 19 October 1973, p. 4.

[488] The Hon Frederick Michael Daly, ALP MHR for the NSW seat of Grayndler.

[489] Grattan, Michelle, 'New Sex Law Next Week', *The Age*, Friday, 19 October 1973, pp. 3, 13. Original emphasis.

The House passed the motion by 64 votes to 40. It was moved by former Liberal Prime Minister, Mr Gorton, and seconded by the Minister for the Environment and Conservation (Dr Cass).

The strong support for the motion came as a surprise to even its supporters.

The House had recently watered down a move for an inquiry into sex, [490] and earlier this year strongly defeated a proposals to liberalise the abortion law.

WHITLAM

The Prime Minister (Mr Whitlam) voted for yesterday's resolution, while the Leader of the Opposition (Mr Snedden) opposed it.

While the motion was only an expression of opinion, the Attorney-General (Senator Murphy) immediately announced that Federal law would be changed.

This can be done by regulation. It will go before Tuesday's meeting of the Executive Council.

Homosexual offences carry penalties of from five years to life imprisonment in the ACT.

It is understood that Senator Murphy had been considering the changes for some time.

Yesterday's resolution is also likely to act as a pace-setter for the States on an issue which has been considered politically sensitive.

FREE VOTE

All parties gave their members a free vote on yesterday's motion.

Mr Gorton told the House it was unjust and wrong to dub as criminals people who in some way were built differently and may not be able to help themselves.

Seconding Mr Gorton's motion, Dr Cass said poofter-bashing had become a virtually recognised national civilian team sport.

Sir John Cramer (Lib NSW) said he opposed the move because he believed it opened the door to social recognition of homosexuality as a normal way to live.

The motion could give the green light to promote, encourage and publicise homosexuality, Sir John said.

HAMER, HOLDING BACK MOVE

The [Vic] Premier (Mr Hamer) [491] and the State Opposition Leader (Mr Holding) [492] last night supported the Canberra vote for homosexual law reform.

But there will be no immediate Government action to reform the Vic law.

Mr Hamer said he supported the House Representatives on the issue, but he was expressing a private opinion.

He said there was no such move in Vic at present.

Mr Holding, commenting on the Canberra vote, said: 'it is perfectly proper, and I would support such legislation in Vic.

It is time Vic reviewed many of its laws, particularly laws relating to sexual conduct, because many of them are not observed or enforced.'

Mr Holding said there must be some legal provision to protect the young, but the law on carnal knowledge – including the age of consent – should be re-examined.

MPS BACK SEX LAW REFORM

CANBERRA – Former Prime Minister Mr Gorton, yesterday called on MPs to act as a group of men and support his motion for homosexual law reform.

Mr Gorton was introducing a motion that 'in the opinion of this House homosexual acts between consenting adults in private should not be subject to criminal law.'

The motion was carried 64 votes to 40.

Mr Gorton said the three main words in the motion were consenting, adult and private.

He said the motion would not change the laws on homosexual assaults on minors, or approaches made in the streets.

'These would continue to be offences,' he said.

'We are concerned with one question only – the rights of consenting homosexual adults in private.'

Amongst those who voted for the motion was the Prime Minister (Mr Whitlam), the Leader of the CP (Mr

[490] It would appear that when Michelle Grattan mentions 'Inquiry Into Sex' she means the debate about 'Sexual Relationships' which is recorded in *Parliamentary Debates*, House of Representatives, 13 September 1973, pp. 945-69.

[491] The Hon RJ Hamer, Vic LP MLA for the seat of Kew and Premier, Treasurer and Minister of the Arts.

[492] AC Holding, Vic ALP MLA for the seat of Richmond and Opposition Leader.

Anthony) and his Deputy (Mr Sinclair), the Minister for Labor (Mr Cameron), the Minister for Overseas Trade (Dr Cairns), the Minister for Urban and Regional Development (Mr Uren) and the Minister for Social Services (Mr Hayden).

Mr Gorton urged members to put out of their minds the thought of people walking hand in hand or arm in arm down the street but to think of the many who were not like that and who could not be discovered in the ordinary population.

If the argument was taken that homosexuality in private was against God's law then the major churches did not agree with it.

The churches agreed with him that he could not imagine a function of God's law would permit people who where built somehow differently to live a twilight life of guilt and fear.

Country after country had changed their laws, and none had found an upsurge in homosexual activities as a result.

'Because a law has been in existence for 300 to 500 years is anybody going to suggest it is a good law,' Mr Gorton asked.

'If so, we would still be transporting people for stealing a handkerchief.'

Seconding Mr Gorton's motion, the Minister for Environment and Conservation (Dr Cass) said poofter-bashing had become a virtually recognised national civilian team sport.

The homosexual was unmasculine by popular consensus, unmarried, non-fathering and anti-suburban.

'In Australia the homosexual is not merely shunned as a moral leper or despised as a pervert, but he is actively discriminated against,' Dr Cass said.

'Our criminal penalties are severe and our social sanctions savage.

Police harassment in some States is accepted as an office perk by the police and as an occupational hazard by the victim.'

Dr Cass said homosexual suffered unique and potentially crippling psychological pressure in a dominant heterosexual society.

They also had to cope with legal, social and institutional discrimination.

Dr Cass said that defending the rights of homosexuals was not endorsing or advocating homosexuality.

'It is simply to recognise that as long as homosexuals abide by laws to which all citizen are subject, they ought equally be free to express their sexual preferences,' he said.

'Genuine offences such as rape, assault, indecent exposure, child molesting and other acts occur among heterosexuals as well as homosexuals and are capable of being dealt with by laws that apply to all.'

'This motion does not seek to legalise homosexuality in the sense of issuing a licence or charter for homosexuality, in the sense of issuing a licence or charter for homosexual activity.

Rather, this motion supports the discriminalising [sic–decriminalising] of homosexuality.'

Sir John Cramer (Lib, NSW), said he opposed the move because he believed it opened the door to social recognition of homosexuality as a normal way to live.

He said he didn't accept it, and he did not think the Australian people wanted it that way.

The motion could give the green light to promote, encourage and publicise homosexuality, he said.

'It is a distorted way to live and should be branded for what it is,' he said.

* * * * *

Move in Right Direction Say Girls

'Lesbians are lovely', read the sign on the wall above the girl who was giving her Gay Lib view.

'I think the House of Representatives' motion is a good start,' Christine Johnston, 19 said.

'But I think it will be many, many years before homosexual persons get full equality.'

Miss Johnston, an Arts student (English and Politics) says she is not 'the spokesperson for Gay liberation.' She says there is no spokesman. But the Melbourne University Union cites her as the one to see on these matters.

Christine was at home in Nicholson Street, Carlton. Among house visitors was Barbara Bell, 23, a micro-biologist at a hospital. She said: 'I'm on the male scene more than the female scene.

It was just that I got friendly with a homosexual man – and became a sympathiser for the Gay cause.' Christine Johnston says that's a typical step on the road to homosexual freedom …' All round Australia the straights unbend towards gay people once they find they're no threat, no danger in any way.

I think it is a credit to Australia that men carrying as much weight as Mr Gorton and Dr Cass have moved

in the forefront of this freedom move,' she said.

1:–1.9. – States Have Their Own Laws, 19 October 1973 [493]

Sex Bill Passed in House

CANBERRA, Thursday – The House of Representatives today passed a motion that homosexual acts between consenting adults not be subject to the criminal law.

The House passed the motion moved by Mr Gorton (Lib Vic), and supported by the Minister for Conservation and Environment (Dr Cass) by 64 votes to 40.

The motion covers only the ACT and Territories under the control of the Australian Government.

The states have their own laws on homosexuality.

Debate lasted less than an hour because members had to attend a luncheon with the Queen and Prince Philip.

Those who voted for the motion included the Prune Minister, the Leader of the C? (Mr Anthony) and his Deputy (Mr Sinclair), the Treasurer (Mr Crean), the Minister for Labor (Mr Cameron), the Minister for Overseas Trade (Dr Cairns), the Minister for Urban and Regional Development (Mr Uren) and the Minister for Social Security (Mr Hayden).

1:–1.10. – Sir John Cramer's Lament, 20 October 1973 [494]

Lab-Lib Favours Gay Lib

Poofter-Bashing, which Dr Moss Cass this week dubbed 'virtually a recognised civilian team sport,' has never enjoyed open official approval. Like two-up and cockfighting, it's all right so long as nobody complaints.

But better days, for homosexuals, are ahead. They may not need a Pink Panther brigade, like their American brothers to protect them. For old Lib, Young Lib, Gay Lib and Lab-Lib are standing shoulder to shoulder in the fight for justice.

The House of Representatives switched a spotlight on homosexuality on Thursday - thought one old Lib, Sir John Cramer, did his crusty best to switch it off. The House, by 64 votes to 40, passed John Gorton's private member's bill on the subject.

That shows pretty solid opinion on both sides, and members cut short debate to attend the Queen's parliamentary luncheon. The result will be reform of the laws governing homosexuality in the ACT and the NT.

Sir John Cramer lamented that Mr Gorton didn't have 'more important matters to raise' and told Dr Cass (Minister for the Environment and Conservation) who seconded the bill, that nothing produced more 'moral pollution' than homosexuality. But the aim – that homosexual acts between consenting adults in private should not be subject to criminal law – is winning acceptance.

Sir Robert Askin [495] is not shouting the news from the rooftops but homosexual law reform is now the policy of the NSW Council of the LP whether his old guard like it or not. It may not be a vote winner, but it is true.

The Council passed a resolution in August [1973] demanding that 'homosexual acts between adults consenting males be made legal.' Young Libs pushed the motion before Council and the NSW Young Lib Movement is exchanging views with Gay Lib. Some old Libs (with a State election coming up) are trying to hush it up.

'This is now the official policy of the LP in NSW, but it's not absolutely binding on MPs,' says the NSW president of the Young Liberal Movement, Chris Puplick. 'It's a guide, a strong expression of opinions.'

The resolution has inspired a clause in the draft platform which NSW Liberals will approve next week: 'Respect for the rights of individuals to determine their own personal code of moral belief and behaviour, provided that the rights of minors and society in general are protected adequately.'

'This is not a local aberration of any sort; Young Libs in other States are also moving that way,' says Mr Puplick.' The motion was passed by quite a substantial majority.

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[493] n.a. 'Sex Bill Passed in House', *The Newcastle Morning Herald and Miners' Advocate*, Friday, 19 October 1973, p. 3.

[494] Moffitt, Ian, 'Lab-Lib Favours Gay Lib', *The Australian*, Saturday, 20 October 1973, p. 18.

[495] The Hon Sir Robin William Askin, LP MLA for the NSW seat of Collaroy, Premier and Treasurer.

This is the general feeling of the party on this question. 'The Young Libs moved it, perhaps, because they may have a little more nerve and enthusiasm to give expression to what a lot of people are thinking.'

Gay Lib speakers have already addressed the Young Libs in NSW. And next Thursday, in Sydney, Young Lib's Mr Ron Scott (Double Bay Young Lib president) will address a Gay Lib gathering.

1:–1.11. – ACT Advisory Council Consulted, 22 October 1973 [496]

Opinion Sought on Sex Laws

The ACT Advisory Council will be consulted on proposed changes in Federal laws on homosexuality, the Minister for the Capital Territory, Mr Bryant, [497] said yesterday.

He said he had already talked to the Attorney-General, Senator Lionel Murphy, about this.

1:–1.12. – Homosexual Acts Are Objectively Morally Wrong, 4 November 1973 [498]

Bishop Hits At Cavalier Attitude Towards Changes in Law on Homosexuality

Canberra – Archbishop Cahill, of Canberra-Goulburn, said last week Federal Parliament's 'brief and hastily concluded recent debate on the motion of homosexual law reform suggests a cavalier attitude to a matter important to the individual homosexual and to society.'

Archbishop Cahill's statement was released after the House of Representatives carried a motion which stated: 'That in the opinion of this House homosexual acts between consenting adults in private should not be subject to the criminal law.'

The motion moved by the former Liberal Prime Minister, Mr Gorton, and seconded by the Minister for the Environment and Conservation, Dr Cass – was carried by 64 votes to 40.

Seven Labor ministers and 10 backbenchers voted against the motion, including the Deputy Prime Minister, Mr Barnard.

The Prime Minister, Mr Whitlam, voted for it but did not speak.

The Leader and Deputy Leader of the CP, Mr Anthony and Mr Sinclair, along with two other party members, also voted for it. But the LP Leader and Deputy Leader, Mr Snedden and Mr Lynch, voted against, the motion.

DESERVES MORE CONSIDERATION

The Attorney-General, Senator Murphy, immediately ordered the drafting of an ordinance amendment for the ACT, legalising homosexual acts in private between consenting adults.

Archbishop Cahill said: 'A matter of this complexity and importance deserves more consideration than the short time-slot Parliament gave it between Question Time and the luncheon for the Queen.'

'Remarks made during the recent debate suggested that the Catholic Church endorsed homosexual law reform. This suggestion is quite unwarranted. Because of its importance the Catholic Bishops of Australia have conducted a continuing study of the question of homosexuality in its legal, social, medical, and moral aspects.

This study, in its historical and current social context, reveals the complexity of the matter.

A simple change in the law will do little to solve the range of problems connected with homosexuality, either for the individual homosexual or for his place in society.

IRRESPONSIBLE APPROACH

The resolution passed by Parliament over-simplifies a complicated question, and indicates an irresponsible approach to the need for careful research of the issues and their solutions, for homosexuals and for society.

In the guise of lawmaking, there are some who seek to use Parliament to legislate a new moral code, without consulting the good of the individual or of the community.

Parliament will be derelict in its duty if it enacts legislation embodying its resolution last week without more informed and mature treatment of the homosexual question.'

The question of homosexuality was the subject of a lengthy study prepared for the Australian

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[496] n.a. 'Opinion Sought on Sex Laws', *The Australian*, Monday, 22 October 1973, p.2.

[497] The Hon Gordon Bryant, ALP MHR for the Vic seat of Wills.

[498] n.a. 'Bishop Jilts At Cavalier Attitude Towards Changes in Law on Homosexuality', *The* [*Catholic*] *Leader*, 4 November 1973, p. 2. Original emphasis.

Episcopal Conference. [499]

At their recent meeting, the Bishops approved these principles:

• The Catholic bishops of Australia are concerned for the total welfare of all individuals and groups within the Church and society.

• In particular, the Church is concerned to be of service to those groups, such as homosexuals who feel they are isolated and subject to social discrimination.

• The bishops deplore discrimination against any minority group, and affirm the obligation on those responsible for administering laws to ensure just and fair treatment of homosexuals and to protect them from the informal means of oppression to which they have sometimes been subject.

SYMPATHETIC ASSISTANCE

• In their genuine desire to offer homosexuals full and sympathetic pastoral assistance, the bishops have studied the question of homosexuality in its legal, social, medical and moral aspects.

• This study, in its historical and current social context, reveals the complexity of the matter.

• The bishops do not believe that a simple change in the law relating to homosexuality will do much to solve the range of problems connected with it, either for the individual homosexual or for his place in society.

• They believe that mere legal changes can oversimplify the complicated issues, and may well obscure the need for more careful and lengthy research into these issues and their solutions for the benefit of homosexuals and society.

• Whatever stance the civil law takes towards homosexual conduct, whether it prohibits it as a criminal offence or withdraws any judgment on it the bishops note that this stance does not alter the objective morality of homosexual behaviour.

• The bishops do not pass judgment on any individual homosexual in his conduct.

As teachers of Christian moral law and tradition, however, they cannot ignore the consistently held and taught instruction that homosexual acts are objectively morally wrong.

1:–1.12.1 – Archbishop Cahill's Press Release, 22 October 1973

Statement on Parliamentary Debate on Homosexuality Law Reform by Most Rev Dr TV Cahill, Catholic Archbishop of Canberra-Goulburn.

1. Federal Parliament's brief and hastily concluded debate on the motion for homosexual law reform suggests a cavalier attitude to a matter

[499] The now called Australian Catholic Bishops Conference-General Secretariat in Canberra was contacted on 6 November 1998 requesting a copy of the lengthy study which Archbishop Cahill mentioned in the press article. Mary Stewart, Archivist at the General Secretariat informed on 22 December 1998 that '… I have checked our archives and found that the file covering the year 1973 has been taken to our permanent storage area and requires a fee of $25.00 to be retrieved … upon the receipt of the $25.00 I will arrange for the file to be returned to this office. However, I cannot guarantee that the particular study you are looking for is indeed in the file.' The requested amount to retrieve the 1973 files was forward to the Secretariat on 4 January 1999. On 15 February 1999 Ms Stewart informed the author '… that the document on homosexuality …, was a private document for use of the bishops alone. As a result, it is not appropriate to release it. It should be noted that there have been developments during the intervening years so more recent publications would be of more value. Recent correspondence to the Editors of the Brisbane *Catholic Leader* may provide some leads.' The author approached an acquaintance who has worked within the Catholic church for many years and has a very good knowledge of its hierarchy. He advised that the now retired Archbishop James Gleeson should be contacted who was purported to have kept the best files on the Catholic church in Australia. Accordingly, on 7 April 1999 a letter was forwarded to His Grace requesting a copy of the lengthy Australian Episcopal Conference's study. The Archbishop's secretary, (Miss) Marie Shevlin, responded on 13 April 1999 that: 'After his retirement he [Archbishop James Gleeson] sent his Australian Catholic Bishops' Conference files to the Secretariat.' The secretary suggested another possible source may be the Diocesan Archives of Canberra-Goulburn where Archbishop Cahill's papers pertaining to the Australian Catholic Bishops' Conference might have been lodged there. Subsequently a letter was written to the Diocesan Archivist, Rev Father Brian Maher on 14 May 1999. A response to the 14 May 1999 request for a copy of the lengthy study came from Mr Bob Smeaton, Business Manager, Archdiocese of Canberra-Goulburn dated 14 July 1999. The letter stated: 'I have caused a search to be undertaken of the late Archbishop Cahill's papers held in the Archdiocesan Archives. I regret to advise that the lengthy study to which you refer is not among those papers.' Mr Smeaton's letter also included Archbishop Cahill's press release of 22 October 1973 (see: 1:–1.12.1.) in which the lengthy study is mentioned and on which *The* [*Catholic] Leader*, 4 November 1973, p.2 article was based. The library at the Australian Catholic University was searched for the lengthy study without any success.

important to the individual homosexual and to society.

2. A matter of this complexity and importance deserves more consideration than the short time-slot Parliament gave it between Question Time and a luncheon for the Queen.

3. Remarks made during the recent debate suggested that the Catholic Church endorsed homosexual law reform. This suggestion is quite unwarranted.

4. Because of its importance the Catholic Bishops of Australia have conducted a continuing study of the question of homosexuality in its legal, social, medical, and moral aspects.

5. This study, in its historical and current social context, reveals the complexity of the matter.

6. A simple change in the law will do little to solve the range of problems connected with homosexuality, either for the individual homosexual or for his place in society.

7. The resolution passed by Parliament over-simplifies a complicated question, and indicates an irresponsible approach to the need for careful research of the issues and their solutions, for homosexuals and for society.

8. In the guise of lawmaking there are some who seek to use Parliament to legislate a new moral code, without consulting the good of the individual or of the community.

9. Parliament will be derelict in its duty if it enacts legislation embodying its resolution last week, without question.

1:–1.13. – Live A Twilight Life of Guilt and Fear, November 1973 [500]

Gorton Motion Passed

In a historic move, the Federal Parliament has passed a motion which could end current Australia-wide legal prohibition against consenting adults committing homosexual acts in private.

The motion,which reflects the changed public attitude to homosexuality, was carried by a margin which surprised even its sponsors; former Prime Minister John Gorton and Environment and Conservation Minister, Dr Moss Cass.

The Labor, Liberal and Country Parties all allowed their MPs a free vote on the motion – 'that in the opinion of this House (of Representatives) homosexual acts between consenting adults in private should not be subject to the criminal law' – and it was carried 64 votes to 44.

Mr Gorton said later that Federal Attorney-General Lionel Murphy had indicated to him that the House of Representative's expression of opinion would be transferred into action immediately in Commonwealth-controlled Territories.

The removal of existing criminal sanctions against homosexual acts between consenting adults will be achieved by deleting references to penalties in Territory criminal ordinances.

Homosexual offences carry penalties of from five years jail to life imprisonment in the ACT.

TWILIGHT LIFE.

Mr Gorton believes the motion carried by the House of Representatives and the Attorney-General's subsequent actions could lead to the States dropping their criminal sanctions as well. He said he expected the two moves to have 'a persuasive effect'.

Influential sections of the Australian Press warmly supported the passage of the motion. The only national paper, *The Australia*, saw it as a refreshing sign of society's maturity. The Melbourne *Age* described it as 'significant liberal and wise' – and went on to brand Australia's laws on male homosexuality as 'a curious and archaic intrusion on privacy by the State'.

Although the motion received plenty of pre-publicity, it failed to arouse interest among members of the camp community in Canberra – or anywhere else for that matter.

A group of Aborigines confronted the authorities on the front steps of Canberra's Parliament over land rights, with chants fists raised in the black power salute.

But not a single limp wrist was raised in support of Mr Gorton and Dr Cass and there was not a gay shreik [sic–shriek] to be heard.

The public galleries of the House of Representatives-were only half full, with the usual assortment of gaily-dressed tourists.

In the debate, Mr Gorton stressed that the operative word of this motion was 'consenting', 'adults' and 'private'. If the House agreed to this motion, he said it would not be signifying its approval of homosexual acts, nor would it be condoning them.

Mr Gorton said the motion did not concern itself with Homosexual acts committed with minors, Public soliciting in the streets or creating a public nuisance

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[500] Watchorn, Jay. 'Gorton Motion Passed', *Stallion*, vol. 1, no. 6-9, November 1973, p. 4. Original emphasis.

or Homosexual acts which were the result of constraint

All would continue to be offences.

'We are concerned with one question and one question only', he said 'That question is: Should homosexual individuals who are adults, who both wish a homosexual relationship with each other who do not flaunt it but act in private – withdrawn from the public gaze – be dubbed criminals and be subject to punishment by the criminal law?'

'I suggest they should not be treated in that Way'.

The former Prime Minister said he could not believe 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.

He believed it was unjust and wrong to dub as criminal these people, who in many cases, lived lives of desperation and pain because of the way in which they were constructed.

There was no evidence from other countries that the liberalisation of homosexual laws led to an upsurge in homosexual activity.

He said if the law was rarely or never used it was a bad law. If that same law was used in a discriminatory way – sometimes used and sometimes not – it was worse. And if that same law gave opportunities for blackmail and bashings, it must be the worst law of the lot.

'This is not a matter to be decided on emotion; it is I matter to be decided on justice', Mr Gorton told the house. Seconding the motion, Dr Cass said homosexuals were Australian society's 'unwelcome outsider' and most obvious minority group.

'In this country the homosexual is not merely shunned as a moral leper or despised as a pervert, he is actively discriminated against.

Our criminal penalties are severe, and our social sanctions savage,' Dr Cass said.

BARBARIC LEVEL

At a particular barbaric level, Poofter-bashing is virtually a recognised national civilian team sport, while police harassment in some States is accepted as an office perk by the police and as an occupational hazard by the victim.

Dr Cass said all minority groups suffered by being different.

But sexuality and identity were so profoundly connected, and so profoundly important, that homosexuals in a heterosexual dominate society lived under unique and potentially crippling psychological pressure.

In Australian, they also have to cope with legal, social and institutional discrimination.

Both sources of pressure, operating simultaneously every day, mean that homosexuals suffer doubly from their difference – they are the victim of double jeopardy.

Difficulties such as these, however have not prevented homosexuality from enduring through the-ages. Whether treated as an illness, a crime or an aberration, homosexuality has survived.

As an expression of sexual preference, its validity has been confirmed by history.

The Minister said the passing of the motion would constitute a signal that the time had arrived for the end of sexually-biased social oppression in Australia.

Footnote: Debate on Mr Gorton's motion was briefer than expected because of the visit to Canberra of – wait for it – The Queen.

How did your local Member vote? Check against this list [voting pattern not listed here – see Table 1, page 14 and Table 2, page 15] (and if he did the wrong thing, write to him).

1:–2. – Human Rights Bill

> The object of this Bill is to give recognition in legislation of the Australian Parliament to basic human rights and freedoms and to provide remedies for their enforcement [see page 181].

With these words, Senator Lionel Murphy, [501] Attorney-General, began his second reading speech in the Senate on 21 November 1973 on the Human Rights Bill. CAMP quickly realised that the basic human rights and freedoms of homosexuals will neither be recognised not enforced by this Bill, since sexual orientation is excluded from s. 7 which states:

> Everyone is entitled to the fundamental rights and freedoms as set out in this Part, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other statues [see pages 178].

It therefore took prompt action (in December 1973) [502] to inform the Attorney-General of this shortcoming, and to request inclusion of the term sexual orientation in the Bill. No reply was received concerning this important matter until July 1974.

In that letter, the Attorney-General's Department claimed:

> For constitutional reasons, Parliament cannot in legislation introduced in reliance on the International Covenant, establish rights that are not contained in the Covenant [see page 206].

CAMP responded by pointing out that the full title of the Bill gave the impression that its scope was not as limited as the Department would have us believe and that there is the opportunity to show enlightenment not shown in the UN when the Covenant was drawn up [see page 206], by amending it as we had suggested. No written reply has ever been received to this letter. However, in a telephone conversation with the Attorney-General's Department, made on 2 September 1974 on our initiative in the light of its failing to reply, a senior officer reiterated that the Australian Parliament has no power to adopt an international covenant with alterations. He indicated that clause 8 of the proposed Act – Everyone is entitled without any discrimination to the equal protection of the law [see pages 178, 182] afforded the only possibility of protection of rights and freedoms for homosexuals, but it will be only a possibility.

In the light of this reply, the Professor of Constitutional Law at Sydney University was approached for an independent opinion on the powers of the Australian Parliament when implementing legislation in reliance on and international Covenant [see page 211]. His opinion concurred substantially with that of the Attorney-General's Department but indicated that its interpretation could be a little more flexible [see page 211].

At the same time we [CAMP NSW] approached the Secretary General of the UN, since the Australian Human Rights Bill is based on the International Covenant on Civil and Political Rights (adopted by the UN in 1966) seeking his support for a move in the UN to amend that Covenant to include the term sexual orientation in s. 1 of article 2 [see pages 194, 207]. To this date no interest has been shown in our request.

Copies of the letter to the Secretary-General were sent to the Prime Minister [Gough Whitlam], who was soon to address the UN General Assembly, and the Minister for Foreign Affairs [503] [Senator Don Willesee] [see page 208] who was to accompany him, both of whom were to meet the Secretary-General. Covering letters were sent requesting that they raise the matter in their discussions with the Secretary-General. A similar letter was sent to the Australian Ambassador to the UN [see page 208]. It has been ignored to date.

On 2 September, the Department of Foreign Affairs responded to our suggestion in this way:

> The International Covenant, on which the proposed Australian Bill is based, is, however, a delicate compromise that was reached after much international negotiation. To attempt to re-open the drafting of the Covenant for the purpose of including one amendment would most likely open the way to a host of other

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[501] The Hon Lionel Keith Murphy, ALP Senator for NSW, Attorney-General and Minister for Customs and Excise.
[502] A copy of this letter is not available.
[503] The Hon Donald Robert Willesee, ALP Senator for WA, Minister for Foreign Affairs.

> suggested amendments, some worthy, some not, which could put the very existence of the Covenant in jeopardy [see pages 298].

This lack of concern to find any positive way of obtaining the rights of homosexuals is highlighted by the preceding paragraph of that same [above] letter:

> The Government is, of course, sympathetic to all groups which have been discriminated against or persecuted in the past. This is the basis of the Government's proposed Human Rights Bill and of our support for international instruments on the subject [see pages 298].

Our very point in this whole matter is that, while the Human Rights Bill may well make discrimination against other groups a thing of the past, it will have no such effect for homosexuals since the Bill specifically excludes them.

After two letters further to the one of 24 July aimed at obtaining a correct understanding of what the 24 July letter was saying (it having been first misunderstood) and then obtaining a response [see page 212], a reply was finally received from the Office of the Prime Minister dated 22 October 1974. It merely supported the stand taken by the Department of Foreign Affairs, quoted above. It too hastened to assure us:

> This is not to suggest that the Government is now no longer sympathetic to the aims of your organisation or that these aims would not be reflected in future initiatives of the Australian Government as you seem to imply in your letter [see pages 298].

That is where the question of Human Rights remains at the moment so far as the Australian Government is concerned.

In July 1974, at the same time that approaches were being made to the UN and the Australian Government, contact was made with various overseas movements, particularly in Scandinavia, with a view to starting a move of international pressure on the UN to have the International Covenant on Civil and Political Rights amended. In response to this move, Forbundet af 1948, [504] the Danish movement, wrote to the Secretary-General of the UN, requesting the amendment and sent copies of that letter to the Danish Prime Minister, Foreign Minister, and the Danish delegation to the UN [see page 212].

The Swedish group, Revolt, has been in touch with groups in America working on this issue, but sees little hope of any support from the Swedish Government [see page 210].

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[504] Forbundet af 1948: Lands forening for homofile – National League for Homophiles in Denmark.

1:–2.1. – Parliamentary Debates – Human Rights Bill 1973 [505] [506]

Bill presented by **Senator Murphy** [507], and read a first time. Standing orders suspended.

Second Reading

Senator MURPHY (NSW – Attorney-General and Minister for Customs and Excise)(16:10) – I move:

That this Bill be now read a second time.

The object of this Bill is to give recognition in legislation of the Australian Parliament to basic human rights and freedoms and to provide remedies for their enforcement. On 10 December 1948 the Universal Declaration on Human Rights was adopted by the UN. It is easy to be cynical about the failure of many members of the UN to ensure to their own citizens the rights embodied in the Universal Declaration. I am not one of those who believe this justifies the absence in Australia of constitutional and statutory guarantees of those rights.

Australia assented to the Universal Declaration. It is commonly regarded as a country where freedom and individuality are allowed to flourish. The Australian people are commonly believed to be jealous of their freedoms and to be strongly opposed to government interference in their lives. It is sais that this commitment to freedom is the best safeguard against encroachments on that freedom. It is said to be more effective in ensuring freedom than a Bill of Rights. Yet one might well ask whether this is really so, whether actual experience bears it out.

In 1966 the UN adopted two other great instruments defining the rights that individuals should enjoy. These are the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. One of the first acts of this Government last December [1972] was to sign those 2 covenants, and we propose to take action to ratify them by 10 December this year. It is known that other countries which have not already done so are also considering ratification. We hope that the interest in human rights engendered by the 25th anniversary of the adoption of the Universal Declaration of Human Rights will prompt these countries to ratify the covenants, and that the 2 covenants will shortly come into force.

This Government has made plain its attitude to the denial of human rights in other countries. I do not intend to recite the melancholy catalogue of what is happening elsewhere. Far better that we should turn our attention to our own situation, and examine that state of liberty in our own country. Despite our supposed commitment to freedom, we cannot be self-satisfied about what is happening in Australia. No matter what the law may provide, those who are poor, who are socially disadvantaged, are denied the basic human rights of a full and satisfying life. There are too many in our community who fall into these categories for us to be complacent about the state of liberty in Australia. The aged, the chronically ill, the migrant groups and the Aborigines do not enjoy the full measure of human rights and dignity. The programs of social security and social assistance which this Government is undertaking is fundamental to the promotion of human rights in Australia.

The main concern of the present Bill is to implement the International Covenant on Civil and Political Rights [see 1:–1.2.1.1.1. page 194]. In the case of the Covenant on Economic, Social and Cultural Rights, progressive implementation of its terms is required of a party to it. Its terms are not so apt for direct legislative enactment as those of the Covenant on Civil and Political Rights. There is much more direct obligation on a party to that latter Covenant to implement its terms forthwith. It is therefore to that Covenant that we have turned our attention first in legislation.

The Covenant on Civil and Political Rights sets out a familiar catalogue of rights. I will not go through them all; they are concerned with such matters as freedom of movement, freedom of expression, the protection of individual privacy, the rights of a person charged with a criminal offence, and so on. Although we believe these rights to be basic to our democratic society, they now receive remarkably little legal protection in Australia. What protection is given by the Australian Constitution is minimal and does not touch the most significant if these rights. The common law is powerless to protect them against the written laws and regulations made by Parliament, by Executive Government under delegated legislative authority, and by local government and other local authorities. The common law rights exist only in the interstices of statutory regulation. Thus freedom of expressions is what remains after one takes account of the laws relating to defamation, contempt of court, censorship, obscenity, offensive behaviour, sedition, official secrecy and the

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[505] *Parliamentary Debates*, Senate, 21 November 1973, pp. 1971-75.

[506] See: 1:–1.2.1. page 181, for full text of the proposed *Human Rights Bill 1973*.

[507] The Hon Lionel Keith Murphy, ALP Senator for NSW, Attorney-General and Minister for Customs and Excise.

like. Freedom of assembly is restricted by the scarcity of places in which people who wish to express a particular point of view can assemble without official permission from some authority or other. The protection of the *Habeas Corpus Act* is whittled away by the extensive powers of arrest given to police and the powers to detain those who are thought to be mentally ill. The democratic concept that each person shall be entitled to a free and equal vote is denied by the operation of our electoral distribution laws. That a person is to be presumed innocent of a criminal offence until he is proved guilty is overshadowed by the inequities of our criminal justice system, and especially by the inadequacy of legal aid in Australia. The Press is supposed to be a guardian of our liberties. It is often muzzled by the laws that circumscribe freedom of expression or by its ownership being concentrated in the hands of vested interests.

I do not want to overstate the case. Many restrictions on individual freedom are necessary to protect the rights of others, or to prevent a crowded society from falling into chaos. But many restrictions have been imposed without sufficient care being taken to ensure they do not go further than necessary, or because the acts they regulate or forbid might provide inconvenience to those in authority. What is needed is a yardstick against which can be measured proposals to place restrictions or, as in the case of the protection of privacy, the failure to legislate and to provided the means whereby effective action may be taken in the courts to enforce rights.

Ideally, in my view, a Bill of Rights should be written into the Australian Constitution and I proposed at the Constitutional Convention in Sydney that this be done. But in the absence of a constitutional entrenched Bill of Rights, it is proposed that those rights should be set out in legislation of this Parliament, so far as it is within the powers of this Parliament to do so. The legislation will be binding on Australian, State and local officials and on State parliaments. Only this Parliament will be able to abrogate the rights thus established and I would hope this Parliament would not lightly subtract from rights guaranteed by this legislation. Moreover, I believe that a statutory Bill of Rights will have a very great educational value. It will serve to make people more aware of their rights. By identifying rights, it will be easier to know when they are being denied.

It would be futile, however, to grant these rights unless there machinery to enforce them. The legislation will provide this machinery. First, legal remedies will be provided for infringements of rights and a aggrieved person will have recourse to the courts to enforce his rights. Second, the legislation will establish an Australian Human Rights Commissioner who will have power to investigate infringements of rights, either on his own initiative or where a complaint is made to him. The Commissioner will have also power to take legal proceedings on behalf of an aggrieved person. In establishing this machinery, Australia will be taking a lead that will put it in the forefront in the protection of human rights. The legislation will also establish and Australian Human Rights Council that will advise the Attorney-General and the Commissioner on the implementation of international instruments relating to human rights.

I now turn to a brief description of the broad framework of the Bill. The Bill is divided into 7 Parts, the first dealing with preliminary matters, the second with fundamental rights and freedoms, the third with the Australian Human Rights Commissioner, the fourth with the enforcement of rights, the fifth with the Australian Human Rights Council, the sixth dealing with administrative provisions and the seventh with miscellaneous matters.

Part I contains provisions dealing with the commencement of the legislation and will enable the legislation to be brought into force immediately in the Territories and on Commonwealth places and in relation to a law of Australia or a Territory. Part I also provides, in relation to the application of the legislation, that the Act is to bind Australia and each State and is to extend to every external Territory, except Papua New Guinea. The view has been taken that, in view of the steps being taken by Papua New Guinea towards independence, it will properly be a matter for that country to make a decision on accession to the Covenant.

Part II of the Bill will establish in legislation of the Australian Parliament fundamental rights and freedoms in a number of extremely important areas which are not at present covered by formal legislation. A basic provision of the legislation is to provide that everyone is entitled to the fundamental rights and freedoms set out in the legislation, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Bill also provides that everyone is entitled without any discrimination to the equal protection of the law. Part II of the Bill the proceeds to deal with a number of important rights, including the right to freedom of thought, conscience and religion, the right to hold opinions without interference, the right to freedom of expression, the right to peaceful assembly, the right to freedom of association, the right, without reasonable restrictions, to take part in the conduct of public affairs, vote at elections held by universal and equal suffrage and to hold public office, the right to liberty of movement, and the right to privacy. In the provisions relating to freedom of religion, expression, assembly,

association and movement, the legislation provides that these rights may be restricted in certain circumstances, such as where restriction is reasonably necessary to protect public safety or public health or constitute reasonable regulations, as to time, place and manner, of the right.

The Bill also deals, in clause 15(2) with the right of woman to hold public office or equal terms with men, without discrimination. The enactment of this provision will enable Australia to ratify the Convention of the Political Rights of Women which has been in force since 1954. Part II of the Bill goes on to provide a number of protections that are of importance in the field of the administration of justice. An important function of the legislation will be to provide protections against unreasonable search and seizure. The Bill deals with the right of a person not to be subjected to arbitrary arrest or detention and will provide that everyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or to release. The Bill provides that anyone arrested on a criminal charge shall not be detained in custody unless the detention is reasonably necessary in the circumstances of the case. A person in custody is to be afforded adequate time and facilities to communicate with his lawyer and shall not be compelled to incriminate himself. He is to be informed of these rights. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. In the determination of a criminal charge, everyone is to be entitled to a number of guarantees, such as the right to have legal aid where the interest of justice so require and where he does not have sufficient means to pay for it, and the right not to be compelled to testify against himself or to confess guilt.

The Bill provides that a person is not to be subjected to cruel, inhuman or degrading treatment or punishment, and all persons deprived of their liberty are to be treated with humanity and with respect for the inherent dignity of the human person. The Bill will also contain provisions relating to the segregation of accused persons and juvenile offenders.

Part III provides that there shall be an Australian Human Rights Commissioner. It will be the function of the Commissioner to investigate al alleged infringement of the Act, either on his own initiative or where a complaint is made to him. The Commissioner will have discretion not to investigate a matter in certain circumstances, such as where in his opinion a complaint is frivolous or not made in good faith. The Commissioner may also take action when he is of opinion that an unlawful act is about to be committed. The Commission is to endeavour to secure an assurance against the doing of, or the repetition of, an unlawful act and to secure a settlement and he may warn the person concerned not to do, or not to repeat, the act.

Part IV of the Bill deals with enforcement. It provides that, where the Commissioner is unable to secure a settlement, he may commence civil proceedings in the Australian Industrial Court. Where the court is satisfied than an infringement of the Act has occurred, it is to make a declaration to that effect and it may grant, as appropriate, a number of remedies including an injunction, and order cancelling a contract, orders setting aside a judgment, quashing a conviction or directing a new trial and damages in respect of the loss suffered by an aggrieved person and the loss of dignity, humiliation and injury to the feelings of an aggrieved person. Any damages so recovered are to be paid by the Commissioner to the aggrieved person. An aggrieved person may also commence proceedings for a remedy under the Act independently of the Commissioner. Part IV also provides that proceedings are to be taken in the Superior Court of Australia when that Court is established.

An Australian Human Rights Council is established in Part V of the Bill. It will be the function of the Council to make recommendations to the Attorney-General and the Commissioner on matters relating to the observance and implementation of international instruments relating to human rights, the promotion of educational programs with respect to human rights and other related matters.

Part VI of the Bill deals with the administrative provisions and provides for the appointment of an Australian Human Rights Commissioner and his staff. The Commissioner is to be a corporation sole. As it will be a function of the Commissioner to take action against infringements of the Act by Australian or State officials, the Bill provides for the appointment of staff that will be independent of the Australian Public Service. Part VI also provides that the Australian Human Rights Council is to consist of 10 members who shall be appointed by the Attorney-General.

Mr President, I believe that enactment of this legislation will be a significant milestone in the political maturity of Australia. It will help to make Australian society more free and more just. It will provide the legal framework within which our social programs can assist people to realise their fuller potential. In conclusion, I would emphasise that the purpose of the Bill is to carry out the International Covenant on Civil and Political Rights. A great deal of work has been done in the preparation of this Bill but it has not been possible to discuss it with all interested groups. The Government will welcome any proposal and comments on the Bill, whether from inside or outside either House of Parliament and during the Committee stage. I commend the Bill to the

Senate.

Debate (on motion by **Senator Greenwood**) adjourned.

Motion (by **Senator Murphy**) proposed:

That the adjourned debate be made an order for the day for the next day of sitting.

Senator GREENWOOD [508] (Vic)(16:17) – The Opposition does not oppose the motion but I take the opportunity which the motion affords me to invite the Attorney-General to indicate whether he will facilitate the debate when it occurs by presenting the views which have been obtained or are in the process of being obtained from the various State governments. I understand that a draft of this Bill was submitted to the States a week or two ago. Some States have not had the opportunity to express views which they would like to express, but I would hope that when they are expressed that material will be available for the Senate's consideration. I say that because I would think it is highly relevant to the assessment of many of these provisions.

I notice that in his second reading speech the Attorney-General (Senator Murphy) stated that the legislation will be binding on Australian, State and local government officials and on State parliaments. That is concept, I think, quite new in law in Australia apart from the provisions of the Constitution itself. Likewise I notice from what the Attorney-General said that a Human Rights Commissioner may apply to the Industrial Court and that Court may set aside a judgment which I assume means a judgment of the State courts. That again is a concept which is new in this country. They are matters upon which unquestionably many views will be expressed but I think it would be vital for a proper consideration to have the views of the various State governments and conceivably even the views of the State parliaments available for the ensuing debate.

Senator Webster [509] – What about the staff who are beyond the Public Service?

Senator GREENWOOD – I have not appreciated sufficient of the content of the Bill to be able to respond to the comment which Senator Webster made. I invite the Attorney-General to give consideration to what I have suggested. I am sure it will in due course facilitate consideration which must be given to the matter.

Senator Murphy – (NSW–Attorney-General and Minister for Customs and Excise)(16:19) – in reply – In answer to the Deputy Leader of the Opposition (Senator Greenwood) I say that I will give consideration to what he said. Of course States may say anything they wish publicly. Some views may be communicated confidentially but it would be better that I gave consideration to the question that he has raised. As to the other matter about the legislation being binding on the States –

Senator Wright [510] – State parliaments.

Senator MURPHY – Well, I think that is a way of expressing what we all know is the position: That by reason of the provisions of s. 109, [511] of our Constitution any valid law passed by this Parliament operates to cut across any laws of the State Parliament. If any such law is inconsistent then the Constitution operates to cut it down. It can be expressed in many ways. In a sense it can be said that all laws of this Parliament are binding on all people of Australia. I think the position is expressed rather neatly in the covering clauses of the Constitution. If I remember correctly, the laws made by this Parliament, are binding on the courts, the judges and the people of every State and of course one would say, in that sense, on the parliaments. It can be expressed in different ways. Section 5 of the covering clauses of the Constitution states:

This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State …

What is being said is not in any way novel. However one express it it may sound a little novel, but there is no doubt that any lay properly made by this Parliament binds all people, all the courts and judges and in that sense all the parliaments of the States. I think there is nothing novel at all in that approach to the matter. I think it is just a matter of spelling out that this is something which is intended to cut across any contrary law of a State and it is intended that the State parliaments could not legislate validly if their legislation were inconsistent with Commonwealth law. I trust that clarifies the matter and I ask the Senate to agree to the motion.

Question resolved in the affirmative.

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[508] The Hon Ivor John Greenwood, LP Senator for Vic and Deputy Leader of the Opposition in the Senate.

[509] James Joseph Webster, CP Senator for Vic.

[510] The Hon Reginald Charles Wright, LP Senator for Tas.

[511] s. 109: 'When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to that extent of the inconsistency, be invalid.' *The Constitution*, AGPS, Canberra, 1977, p. 32.

1:–2.1.1. – Federal Human Rights Bill 1973 [512]

To implement the International Covenant on Civil and Political Rights, and for other purposes.
BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows: –

Part I – Preliminary

1. **Short title.**

This Act may be cited as the *Human Rights Act 1973*.

2. *Commencement.*

(1) ss. 1,2,6, and 71 shall come into operation on the day on which this Act receives the Royal Assent.

(2) Sub-section 15(2) shall come into operation on a day to be fixed by Proclamation.

(3) Subject to sub-section (4), the remaining provisions of this Act shall come into operation on a day to be fixed by Proclamation.

(4) On and after the day referred to in sub-section (3) and until a day to be fixed by Proclamation, the provisions of this Act referred to in sub-section (3) have effect only –

(a) in relation to, or in relation to the doing of acts under, a law of Australia or of a Territory;

(b) in relation to the doing of acts by or on behalf of Australia or an authority or body established for a public purpose by or under a law of Australia or of a Territory; and

(c) in and in relation to a Territory or a place which respect to which the Parliament, by virtue of s. 52 of the Constitution, has, subject to the Constitution, exclusive power to make laws for the peace, order and good government of Australia.

3. *Interpretation.*

(1) In this Act, unless the contrary intention appears – 'Australia', when used in a geographical sense, includes the external Territories to which this Act extends;

'Chairman' means Chairman of the Council;

'commencing day' means the day fixed under sub-section 2(3);

'Commissioner' means –

(a) subject to paragraph (b), the person holding office under this Act as the Australian Human Rights Commissioner, including a person appointed to act in the office of Australian Human Rights Commissioner; and

(b) in relation to the appointment of officers or the engagement of employees, the receipt, holding or payment of moneys or the acquisition, holding or disposal of other property – the corporation established by s. 46;

'Convention on the Political Rights of Women' means the Convention on the Political Rights of Women a copy of the English text of which is set out in Schedule 2 [see page 204];

'Council' means the Australian Human Rights Council established by s. 43;

'International Covenant on Civil and Political Rights' means the International Covenant on Civil and Political Rights a copy of the English text of which is set out in Schedule 1 [see page 194];

'judgment' includes a decree, order or sentence;

'judicial officer' means a judge, magistrate or justice of the peace;

'member' means a member of the Council and includes the Chairman;

'Territory' does not include Papua New Guinea.

(2) For the purposes of this Act, refusing or failing to do an act, or delaying for an unreasonable time the doing of an act, shall be deemed to be the doing of an act and a reference to an act includes a reference to such a refusal, failure or delay.

(3) A reference in this Act to a law of Australia, of a State or of a Territory includes a reference to any instrument including a rule, regulation, by-law, award, determination, order or direction) made, granted or issued under a power conferred by such a law.

4. *Extension to external Territories.*

[512] *Human Rights Bill 1973*, Senate, A Bill for an Act, number 202.

This Act extends to every external Territory except Papua New Guinea.

5. *Application.*

(1) This Act binds Australia and each State.

(2) Subject to sub-section (3), any provision of a law of Australia or of a Territory, whether passed or made before , on or after the commencing day, that is inconsistent with a provision of this Act does not, to the extent of the inconsistency, have any force or effect.

(3) Sub-section (2) does not apply in relation to a provision of a law if an Act expressly declares that that provision shall operate notwithstanding this Act.

(4) The rights and freedoms set out in this Act are in addition to, and not in derogation of, any other rights and freedoms of the individual, whether under the laws of Australia, of the States or of the Territories and this Act is not intended to exclude or limit the operation of any of those laws in so far as they can operate concurrently with the provisions of this Act.

(5) Nothing in this Act may be interpreted as implying any right to engage in any activity or perform and act that is restrictive of any of the rights and freedoms recognized in this Act or limits any of those rights and freedoms to a greater extend than is provided for in this Act.

6. *Ratification of Conventions.*

Approval is given to ratification by Australia of the International Covenant on Civil and Political Rights and the Covenant on the Political Rights of Women.

Part II – Fundamental Rights and Freedoms

7. *Entitlement to rights without distinction.*

Everyone is entitled to the fundamental rights and freedoms as set out in this Part, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

8. *Equal protection of law.*

Everyone is entitled without any discrimination to the equal protection of the law.

9. *Minorities.*

Persons belonging to ethnic or linguistic minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture or to use their own language.

10. *Thought, conscience and religion.*

(1) Everyone shall have the right to freedom of thought, conscience and religion.

(2) The right shall include freedom to have or adopt a religion or belief of choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

(3) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

(4) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are reasonably necessary to protect public safety or public health or constitute reasonable regulations as to time, place and manner.

(5) The burden of proving that a limitation referred to in sub-regulation (4) is reasonably necessary or constitutes a reasonable regulation as mentioned in that sub-section lies upon the person asserting that the limitation is so necessary or constitutes such a regulation.

11. *Expression.*

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression, including freedom to seek, receive and impart information and ideas of all kinds, regardless or frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

(3) The exercise of the rights referred to in sub-section (2) may be subject only to such limitations as are prescribed by law and –

(a) are reasonably necessary for respect of the reputation of others;

(b) are reasonably necessary for the protection of national security or public health;

(c) constitute reasonable regulations as to time, place and manner; or

(d) are reasonably necessary to protect persons from involuntary exposure to any matter

that might reasonably be regarded as offensive in the community in which they live.

(4) The burden of providing that a limitation referred to in sub-section (3) is reasonably necessary or constitutes a reasonable regulation as mentioned in that sub-section lies upon the person asserting that the limitation is so necessary or constitutes such a regulation.

(5) Nothing in this s. affects the operation of a law relating to defamation or limiting right of a juvenile person to access to any matter of the kind referred to in paragraph (3)(d).

12. *Propaganda and incitement.*

(1) Any propaganda for war is prohibited.

(2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence is prohibited.

13. *Assembly.*

(1) Everyone shall have the right to peaceful assembly, subject only to such limitations as are prescribed by law and are reasonably necessary in the interest of national security, public safety or public health or constitute reasonable regulations as ti time, place and manner.

(2) The burden of proving that a limitation referred to in sub-section (1) is reasonably necessary or constitutes a reasonable regulation as mentioned in that sub-section lies upon the person that the limitation is so necessary or constitutes such a regulation.

14. *Association.*

(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interest, subject only to reasonable restrictions in die interest of national security, public safety or public health.

(2) The burden of proving that a restriction referred to in sub-section (1) is a reasonable restriction as mentioned in that sub-section lies upon the person asserting that the restriction is such a reasonable restriction.

(3) Sub-section (1) does not affect any provision of, or any act done under, a law of Australia, of a State or of a Territory that restricts or prohibits, or authorises the restriction or prohibition of, the registration under that law of organisations of employers or employees on the ground that there is already registered under that law and organisation to which the members of an organisation seeking registration may conveniently belong or on any similar ground.

15. *Voting and public-office.*

(1) Every Australian citizen shall have the right and the opportunity, without unreasonable restrictions –

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) to vote and to be elected at genuine period elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and

(c) to hold public office and-to exercise all public functions established by law.

(2) Women shall be entitled to hold public office and to exercise all public functions, established by law, on equal terms with men, without any discrimination.

(3) Sub-section (2) does not limit the operation of any other provision of this Part.

(4) The burden of proving that a restriction referred to in sub-section (1) is a reasonable restriction lies upon the person asserting that the restriction is reasonable.

16. *Movement.*

(1) Everyone lawfully in Australia shall have the right to liberty of movement and freedom to choose his residence.

(2) Everyone shall be free to leave Australia.

(3) The right referred to in sub-section (1) and (2) shall not be subject to any restriction except those which provided by law, are reasonably necessary to protect national security, public safety, public health or civil obligations, and are consistent with the other rights guaranteed by this Part.

(4) A person who –

(a) was born in Australia and is an Australian citizen by birth; or

(b) was born outside Australia and is an Australian citizen otherwise than by birth,

shall not be deprived of the right to enter Australia.

(5) In this s., 'civil obligations' means obligations imposed on a person under the law relating to bankruptcy er to the custody of children or under a condition upon which he was released from legal custody.

17. *Aliens.*

An alien lawfully in Australia may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against the expulsion and to have his case revied by, and be represented for the purpose before, a competent authority provided by law.

18. *Marriage and family.*

(1) The right of men and women of marriageable age to marry and to found a family shall be recognised.

(2) No marriage shall be entered into without the free and full consent of the intending spouses.

(3) Every child shall be registered within a reasonable time after birth and shall have a name.

(4) A person is of marriageable age for the purposes of this s. if that person is of marriageable age for the purposes of the *Marriage Act 1963-1973*.

19. *Privacy.*

(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on bis honour and reputation.

(2) Without limiting the generality of sub-section (1), an unreasonable search or seizure is an unlawful interference with privacy.

(3) For the purposes of this s., a search or seizure shall be deemed to be unreasonable unless lawfully made –

(a) pursuant to an order made by a court;

(b) pursuant to a warrant for a search issued by a court or judicial officer on reasonable grounds, supported by oath or affirmation, particularly describing the purpose of the search and who or what is to be searched;

(c) in response to circumstances of such seriousness and urgency as to require and justify immediate action without the authority of such an order or warrant;

(d) pursuant to a law that authorises the inspection of goods, premises, vehicles, ships or air crafts to ensure compliance with lawful requirements as to the entry of persons or importation of goods into Australia or the departure of persons or exportation of goods from Australia or as to standards of safe construction, public safety, public health, permitted use or similar matters, or to secure compliance with the terms of a licence to engage in manufacture or trade;

(e) for the purpose of inspecting or taking copies of documents relating to –

(i) the conduct of a business, trade, profession or industry pursuant to a law regulating the conduct of that business, trade, profession or industry; or

(ii) the affairs of a company pursuant to a law relating to companies; or

(f) for the purpose of inspecting goods, or inspecting or taking copies of documents, in connexion with the collection, or the enforcement of payment, of taxes or pursuant to a law prohibiting or restricting the importation of goods into Australia or the exportation of goods from Australia.

20. *Arrest.*

(1) Everyone has the right to liberty and security of person.

(2) No one shall be subjected to arbitrary arrest or detention.

(3) No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

(4) Any one who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

(5) When a person is charged, the nature of the charge shall be made known to him in a language that he understands.

(6) Anyone arrested on a criminal charge shall be brought promptly before a court, judge or magistrate and shall be entitled to trial within a reasonable time or to release.

(7) Anyone arrested on a criminal charge shall not be detained in custody unless the detention is reasonable necessary in the circumstances of the case.

(8) The burden of proving that the detention of a person is reasonably necessary lies upon the person asserting that the detention is so necessary.

(9) The release from custody of anyone arrested on a criminal charge may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings or, if necessary, for execution of the judgment.

(10) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

(11) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

21. *Post-arrest procedures.*

(a) he shall be afforded adequate time and facilities to communicate with a lawyer of his own choosing;

(b) he shall not be compelled to make any statement that may incriminate him; and

(c) he shall be informed of the right referred to in paragraph (a) and (b).

22. *Speedy trial.*

Anyone charged with a criminal offence shall be tried within a reasonable time.

23. *Presumption of innocence.*

Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law.

24. *Public trial.*

(1) In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

(2) The press and the public may be excluded from all or part of a trial for reasons of national security or when the interest of the private lives of parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice, but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

25. *Fair trial.*

(1) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees: –

(a) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing, and to be informed, if he does not have legal assistance, of his rights under this paragraph;

(b) to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have aufflcient means to pay for it;

(c) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(d) to have the free assistance of an interpreter if he cannot understand or speak the language used in court; and

(e) not to be compelled to testify against himself or to confess guilt.

(2) In the case of persons who are under the age of 16years, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

26. *Post-trial procedures.*

(1) Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher court or tribunal according to law.

(2) When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a

new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

(3) No one shall be liable to be tried or punished again for an offence for which he bas already been finally convicted or acquitted in accordance with the law.

27. *Retrospective offences.*

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a crirminal offence, under national or international law, at the time when it was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.

(2) If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

28. *Punishment.*

No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

29. *Imprisonment.*

(1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(2) Accused persons shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.

(3) Accused persons who are under the age of 16 years shall be separated from other persons.

(4) Offenders who are ander the age of 16 years shall be segregated from other persons and be accorded treatment appropriate to their age and legal status.

(5) No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

30. *Right to life.*

(1) Every human being has the inherent right to life, and no human being shall be deprived of his life except according to law.

(2) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence, and amnesty, pardon or commutation of the sentence of death may be granted in all cases.

(3) Sentence of death shall not be imposed for crimes committed by persons against laws of Australia or of the Territories.

(4) Sentence of death in respect of offences against laws of the States shall not be imposed for crimes committed by persons below 18 years of age and shall not be carred out on pregnant women

31. *Slavery and forced labour.*

(1) No one shall be held in slavery, and slavery and the slave-trade in all their forms are prohibited.

(2) No one shall be required to perform forced or compulsory labour.

(3) In this s., ‘forced or compulsory labour’ does not include –

(a) any work or service lawfully required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

(b) any service of a military character and any national service required by law of conscientious objectors;

(c) any service exacted in cases of emergency or calamity threatening the life or well-being of the community; and

(d) any work or service which forms part of normal civil obligations.

32. *Medical experimentation.*

No one shall be subjected without his free consent to medical or scientific experimentation.

Part III – Australian Human Rights Commissioner

33. *Commissioner.*

For the purposes of this Act there shall be an Australian Human Rights Commissioner.

34. *Functions of Commissioner.*

The functions of the Commissioner are to investigate alleged infringements or prosed infringements of fundamental rights and freedoms in accordance with this Part and, where necessary, institute proceedings in respect of the infringements or proposed infringements in accordance with Part IV.

35. *Investigation by Commissioner on own initiative.*

Where it appears to the Commissioner that a person has done an act that is, or is about to do an act that would be, a contravention of a provision of Part II, the Commissioner may, on his own initiative, investigate the doing, or the proposed doing, of the act.

36. *Investigation by Commissioner as result of complaints.*

(1) Where a complaint is made to the Commissioner that a person has done an act that is, or is about to do an act that would be, a contravention of a provision of Part II, the Commissioner shall, subject to this s., investigate the doing, or the proposed doing, of the act.

(2) The Commissioner may, in his discretion, decide not to investigate the doing, or the proposed doing, of an act in respect of which a complaint is made or, if he has commenced such an investigation, decide not to continue the investigation, if –

(a) in the opinion of the Commissioner –

(i) the subject matter of the complaint is trivial;

(ii) the complaint is frivolous or vexatious or is not made in good faith;

(iii) the complainant has not a sufficient interest in the subject matter of the complaint;

(iv) the person who is or would be aggrieved by the act does not desire that the investigation be made or, as the case may be, continued; or

(v) there is some other remedy that is reasonably available to the complainant; or

(b) in the case of a complaint in respect of the doing of an act – the complaint is not made within 12 months after the doing of the act.

(3) Where the Commissioner decides in accordance with this s. not to investigate, or not continue to investigate, the doing, or the proposed doing, of an act, he shall inform the complainant of his decision and, unless he considers it to be undesirable to do so, of the reasons for that decision.

37. *Procedure.*

In the investigation by the Commissioner of the doing, or the proposed doing, of an act in pursuance of any powers conferred on the Commissioner under this Part –

(a) the procedure to be followed is within the discretion of the Commissioner;

(b) the Commissioner may inform himself in such manner as he thinks fit;

(c) any proceeding before the Commissioner is not required to be conducted in a formal manner, and

(d) the Commissioner is not bound by the rules of evidence.

38. *Evidence.*

(1) Where the Commissioner has reason to believe that a person is capable of furnishing information, producing documents or giving evidence relating to a matter being investigated, the Commissioner may, by notice in writing served on that person, require that person –

(a) to furnish to the Commissioner, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any such information;

(b) to produce to the Commissioner or to a person specified in the notice acting on his behalf, in accordance with the notice, any such documents; or

(c) to appear before the Commissioner at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

(2) The Commissioner may require the evidence referred to in paragraph (1)(c) to be given on oath or affirmation and for that purpose the Commissioner may administer an oath or affirmation.

(3) A person shall not –

(a) refuse or fall to comply with a notice under this s. to the extent that the person is

capable of complying with it; or

(b) in purported compliance with such a notice, knowingly furnish information or give evidence that is false or misleading. Penalty: $1,000.

(4) A person is not excused from furnishing information, producing a document or answering a question pursuance of this s. on the ground that the information, the document or the answer to the question may tend to incriminate him, but any such information, document or answer is not admissible in evidence against him in any criminal proceeding other than a proceeding for an offence against subsection (3).

39. *Powers of Commissioner.*

(1) Where, after an investigation has been made under this Part, the Commissioner is of the opinion that a person has done an act that is a contravention of a provision of Part II, the Commissioner may do all or any of the following: –

(a) he may endeavour to secure from the person a satisfactory assurance against a repetition of the act;

(b) he may endeavour to secure a settlement of any difference between the person and any person aggrieved by the act;

(c) he may warn the person not to repeat the act;

(d) he may institute a proceeding in respect of the act in accordance with sub-section 40(1).

(2) Where, after an investigation has been made under this Part, the Commissioner is of the opinion that a person is about to do an act that would be a contravention of a provision of Part II, the Commissioner may do all or any of the following: –

(a) he may endeavour to secure from the person a satisfactory assurance against the doing of the act;

(b) he may endeavour to secure a settlement of any difference between the person and any person who would be aggrieved by the act;

(c) he may warn the person not to do the act;

(d) he may institute a proceeding in respect of the proposed act in accordance with sub-section 40(5).

Part IV – Enforcement

40. *Civil proceedings.*

(1) Where the Commissioner is of the opinion that a person has done an act that is a contravention of a prevention of a provision of Part II, the Commissioner may, on his own behalf or on behalf of a person aggrieved by the act, institute a proceeding against the first-mentioned person by way of civil action in the Australian Industrial Court for a declaration that the act is a contravention of a provision of Part II and for any one or more of the remedies specified in sub-section (3).

(2) A person aggrieved by an act that he considers to be a contravention of a provision of Part II may institute a proceeding against the person who did the act by way of civil action in the Australian Industrial Court for a declaration that the is a contravention of a provision of Part II and for any one or more of the remedies specified in sub-section (3).

(3) Where, in a proceeding instituted under sub-section (1) er (2), it is established to the reasonable satisfaction of the Court that the defendant has done an act (in this sub-section referred to as the 'relevant act') that is a contravention of a provision of Part II, the Court shall make a declaration to that effect and may grand all or any of the following remedies: –

(a) an injunction restraining the defendant from repeating the relevant act or from doing an act of a similar kind or from causing or permitting others to do acts of the same or similar kind;

(b) an order directing the defendant to do a specified act, being an act directed to –

(i) placing a person aggrieved by the relevant act as nearly as practicable in the position in which he would be if the relevant act had not been done; or

(ii) otherwise avoiding a detriment to such a person resulting from the doing of the relevant act;

(c) if the doing of the relevant act resulted in the making of a contract or the relevant act was done in pursuance of a contract – an order cancelling the contract, varying any of the terms of the contract or requiring the repayment, in whole or in part, of an amount paid in pursuance of the contract;

(d) damages against the defendant in respect of –

(i) loss suffered by a person aggrieved by the relevant act, including loss of any benefit that that person might reasonably have been expected to obtain if the relevant act had not been done; and

(ii) loss of dignity, humiliation and injury the feelings of a person aggrieved by the relevant act;

(e) an order setting aside or varying a judgment given in any court;

(f) an order quashing a conviction imposed by any court;

(g) an order directing a new trial in a civil or criminal proceeding in any court;

(h) such other relief as the Court thinks just, including an award of costs.

(4) Damages recovered by the Commissioner under this s. in respect of loss suffered by a person or in respect of loss of dignity, humiliation or injury to the feelings of a person shall be paid by the Commissioner to that person.

(5) Where the Commissioner is of the opinion that a person is about to do an act that would be a contravention of Part II, the Commissioner may, on his own behalf or on behalf of a person who would be aggrieved by the act, institute a proceeding against the first-mentioned person by way of civil action in the Australian Industrial Court for a declaration that the act would be a contravention of a provision of Part II and for all or any of the remedies specified in sub-section (7).

(6) Where a person is of he opinion that another person is about to do an act that would be a contravention of Part II, being an act by which the first-mentioned person would be aggrieved, the first-mentioned person may institute a proceeding against the other person by way of civil action in the Australian Industrial Court for a declaration that the act would be a contravention of a provision of Part II and for all or any of the remedies specified in sub-section (7).

(7) Where, in a proceeding instituted under sub-section (5) er (6), it is established to the reasonable satisfaction of the Court that the defendant is about to do an act that would be a contravention of a provision of Part II, the Court shall make a declaration to that effect and may grant all or any of the following remedies: –

(a) an injunction restraining the defendant from doing the act or from doing an act of a similar kind or from causing or permitting others to do acts of the same or similar kind; and

(b) such other relief as the Court thinks just, including an award of costs.

41. *Jurisdiction of Court.*

(1) Jurisdiction is conferred on the Australian Industrial Court to hear and determine civil proceedings instituted in that Court under this Act and that jurisdiction is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under s.75 of the Constitution.

(2) Sub-section (1) does not deprive a court of jurisdiction in a matter arising under this Act in a proceeding instituted in that court otherwise than under this Act.

(3) The jurisdiction of the Australian Industrial Court under this s. may be exercised by a single judge.

(4) If the day fixed by Proclamation under sub-section 31(1) of the *Superior Court Act 1973* is earlier than the commencing day, that sub-section has effect on and after the commencing day as if this Act had been wholly in force immediately before the first-mentioned day.

42. *Certain evidence inadmissible.*

Evidence obtained in contravention, or in consequence of any contravention, of a provision of Part II is not admissible in any court or before any tribunal for any purpose.

Part V – Australian Human Rights Council

43. *Establishment of Council.*

For the purposes of this Act there is established an Australian Human Rights Council.

44. *Functions in relation to human rights.*

It is the function of the Council to advise, and make recommendations to, the Attorney-General and the Commissioner, either of its own motion or upon request made to it by the Attorney-General or the Commissioner, as the case may be, concerning –

(a) the observance and implementation of international conventions and other international instruments relating to human rights;

(b) the promotion of educational programs with respect to human rights; and

(c) any other matter related to the observance or implementation of human rights.

Part VI – Administrative Provisions

Division 1 – Australian Human Rights Commissioner

45. *Appointment of Commissioner.*

The Commissioner shall be appointed by the Governor-General.

46. *Commissioner to be a corporation.*

(1) The Commissioner –

(a) is a corporation sole by the name of the Australian Human Rights Commissioner;

(b) has perpetual succession;

(c) shall have an official seal; and

(d) is capable, in his corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued.

(2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Commissioner affixed to a document and shall presume that it was duly affixed.

(3) Except as otherwise approved by the Minister administering the *Lands Acquisition Act 1955-1966*, the acquisition (including acquisition by agreement) of land, as defined by s. 5 of that Act, required for the purposes of the Commissioner shall be effected under that Act.

47. *Tenure of appointment.*

(1) Subject to this Part, the Commissioner holds office for such period not exceeding 7 years as is specified in the instrument of his appointment and on such terms and conditions as the Governor-General determines, but is eligible for re-appointment.

(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Commissioner, and a person shall not be appointed or re-appointed as the Commissioner for a period that extends beyond the date on which he will attain the age of 65 years.

48. *Remuneration and allowances.*

(1) The Commissioner shall be paid, out of the funds of the Commissioner, remuneration at such rate, and an annual allowance at such rate (if any), as is fixed by the Parliament, but, until 1 July 1974, the rate of that remuneration and the rate of that allowance (if any) shall be as prescribed.

(2) The Commissioner shall be paid such other allowances as are prescribed.

49. *Leave of absence.*

The Attorney-General may grant leave of absence to the Commissioner upon such terms and conditions as to remuneration or otherwise as the Attorney-General determines.

50. *Resignation.*

The Commissioner may resign his office by writing by him and delivered to the Governor-General.

51. *Termination of appointment.*

(1) The Governor-General may terminate the appointment of the Commissioner by reason of misbehaviour or of physical or mental incapacity.

(2) The Governor-General shall terminate the appointment of the Commissioner if the Commissioner –

(a) is absent from duty, except on leave of absence granted by the Attorney-General, for 14 consecutive days or for 28 days in any period of 12 months; or

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his

remuneration for their benefit.

(3) The termination of the appointment of the Commissioner by reason of physical or mental incapacity shall be deemed, for the purposes of the *Superannuation Act 1922-1973*, to be retirement on the ground of invalidity.

52. *Outside employment.*

The Commissioner shall not, except with the approval of the Attorney-General, engage in paid employment outside the duties of his office.

53. *Acting Commissioner.*

(1) The Attorney-General may appoint a person to act in the office of Commissioner during any period, or during all periods, when the Commissioner is absent from duty or from Australia or during a vacancy in that office, but a person so appointed to act during a vacancy shall not continue so to act not more than 12 months.

(2) Subject to this s., the Attorney-General may –

(a) determine the terms and conditions of appointment of a person appointed to act in the office of Commissioner; and

(b) at any time terminate such an appointment.

(3) Where a person is acting in the office of Commissioner in pursuance of an appointment under this s. otherwise than during a vacancy in that office and the office becomes vacant while that person is acting, that person may continue to act in that office until the Attorney-General otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) ss. 49, 50 and 52 apply in relation to a person appointed to act in the office of Commissioner in like manner as they apply in relation to the Commissioner.

(5) While a person is acting in the office of Commissioner in pursuance of an appointment under this s., he has, and may exercise, all the powers and shall perform all the functions of the Commissioner under this Act or under any other law.

(6) The validity of anything done by a person appointed to act in the office of Commissioner shall not be called in question on the ground that the occasion for his appointment had not arisen or that the appointment had ceased to have effect.

54. *Superannuation.*

(1) The Commissioner is an approved authority for the purposes of the *Superannuation Act 1922-1973*.

(2) For the purposes of sub-sections 4(3A) and (4) of the *Superannuation Act 1922-1973*, the Commissioner shall be deemed to be required, by the terms of his appointment, to give the whole of his time to the duties of his office.

55. *Staff of Commissioner.*

(1) The Commissioner may, with the approval of the Attorney-General, appoint such officers and engage such employees as he thinks necessary for the purposes of the performance of his functions.

(2) The terms and conditions of employment of persons appointed or engaged under sub-section (1) shall be such as are, with the approval of the Attorney-General, determined by the Commissioner.

56. *Officers' Rights Declaration Act.*

If person appointed as Commissioner or as an officer of the Commission was, immediately before his appointment, an officer of the Public Service or a person to whom the *Officers' Rights Declaration Act 1928-1969* applied –

(a) he retains his existing and accruing rights;

(b) for the purpose of determining those rights, his service as Commissioner or as an officer shall be taken into account as if it were service in the Public Service; and

(c) the *Officers' Rights Declaration Act 1928-1969* applies as if this Act and this s. had been specified in the Schedule to that Act.

57. *Moneys payable to Commissioner.*

(1) There are payable to the Commissioner such moneys as are appropriated by the Parliament for payment to the Commissioner.

(2) The Treasurer may give directions as to the amounts in which, and the times at which, moneys referred to in sub-section (1) are to be paid to the Commissioner.

58. *Bank accounts.*

(1) The Commissioner may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.

(2) The Commissioner shall pay all the moneys of the Commissioner into an account referred to in this s.

(3) In this s., 'approved bank' means the Reserve Bank of Australia or another bank approved by the Treasurer.

59. *Application of moneys.*

The moneys of the Commissioner shall be applied –

(a) in payment or discharge of the costs and expenses of the Commissioner under this Act; and

(b) in payment of remuneration and allowances payable to the Commissioner and to officers and employees appointed or engaged by the Commissioner, and not otherwise.

60. *Estimates of expenditure.*

(1) The Commissioner shall prepare estimates, in such form as the Attorney-General directs, of expenditure of the Commissioner for each financial year and, if the Attorney-General so directs, for any other period specified by the Attorney-General, and shall submit estimates so prepared to the Attorney-General not later than such date as the Attorney-General directs.

(2) Moneys of the Commissioner shall not be expended otherwise than in accordance with estimates or expenditure approved by the Attorney-General.

61. *Proper accounts to be kept.*

The Commissioner shall cause to be kept proper accounts and records of the transactions and affairs of the Commissioner and shall do all things necessary to ensure that all payments out of the moneys of the Commissioner are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the Commissioner and over the incurring of liabilities by the Commission.

62. *Audit.*

(1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Commissioner and records relating to assets of, or in the custody of, the Commissioner, and shall forthwith draw the attention of the Attorney-General to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his so doing.

(2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any account or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each year, report to the Attorney-General the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or an officers authorised by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Commissioner relating directly or indirectly to the receipt or payment of moneys by the Commissioner or to the acquisition, receipt, custody or disposal of assets by the Commissioner.

(5) The Auditor-General or an officer authorised by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(6) The Auditor-General or an officer authorised by him may require any person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorised officer considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding $200.

63. *Delegation.*

(1) The Commissioner may, either generally or otherwise as provided by the instrument of

delegation, by writing signed by him, delegate to an officer or employee of the Commissioner all or any of his powers under the Act or under any other law, except this power of delegation.

(2) A power so delegated may be exercised by the delegate in accordance with the instrument of delegation and this Act or the other law conferring the power, as the case may be, has effect in relation to the exercise of the power by the delegate as if a reference in this Act or that other law to the Commissioner were a reference to the delegate.

(3) A delegation under this s. is revocable at will and does not prevent the exercise of a power by the Commissioner.

Division 2 – Australian Human Rights Council

64. *Constitution of Council.*

(1) The Council shall consist of ten members, who shall be appointed by the Governor-General.

(2) Subject to this Part, a member holds office for 2 years and on such terms and conditions as the Attorney-General determines, but is eligible for re-appointment.

(3) The performance of the functions or the exercise of the powers of the Council is not affected by a vacancy or vacancies in the membership of the Council.

65. *Chairman.*

(1) The Attorney-General shall appoint one of the members to be the Chairman of the Council.

(2) The Chairman may resign his office as Chairman by writing signed by him and delivered to the Attorney-General.

66. *Fees and allowances.*

Members shall be paid such fees (if any) and such allowances (if any) as are prescribed.

67. *Resignation.*

A member may resign his office by writing signed by him and delivered to the Attorney-General.

68. *Termination of appointment.*

The Attorney-General may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

69. *Meetings of Council.*

(1) The Chairman shall convene such meetings of the Council as he thinks necessary for the proper performance of the functions of the Council.

(2) The Attorney-General may convene meetings of the Council.

(3) At a meeting of the Council, six members constitute a quorum.

(4) The Chairman shall preside at all meetings of the Council at which he is present.

(5) If the Chairman is not present at a meeting of the Council, the members present shall appoint one of their number to preside at the meeting.

(6) Questions arising at a meeting of the Council shall be decided by a majority of the votes of the members present and voting.

(7) The member presiding at a meeting of the Council has a deliberative vote and in the event of an equality of votes, also has a casting vote.

(8) The Council shall cause records to be kept of its meetings.

Part VII - Miscellaneous

70. *Annual report.*

(1) The Commissioner shall, as soon as practicable after 30 June in each year, prepare and furnish to the Attorney-General a report of the operations of the Commissioner during that year, together with financial statements in respect of that year in such form as the Treasurer approves.

(2) Before furnishing financial statements to the Attorney-General, the Commissioner shall submit them to the Auditor-General, who shall report to the Attorney-General –

(a) whether the statements are based on proper accounts and records;

(b) whether the statements are in agreement with the accounts and records;

(c) whether the receipt and expenditure of moneys, and the acquisition and disposal of

assets, by the Commissioner during the year have been in accordance with this Act; and

(d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Attorney-General.

(3) The Attorney-General shall cause the report and financial statements of the Commissioner, together with the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House alter their receipt by the Attorney-General.

71. *Regulations.*

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

1:–2.1.1.1. – International Covenant on Civil and Political Rights

Schedule 1 – Introduction

THE STATES PARTIES TO THE PRESENT COVENANT,

CONSIDERING that, in accordance with the principles proclaimed in the Charter of the UN, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

RECOGNIZING that these rights derive from the inherent dignity of the human person,

RECOGNIZING that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

CONSIDERING the obligation of States under the Charter of the UN to promote universal respect for, and observance of, human rights and freedoms,

REALIZING that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of–the rights recognised in the present Covenant,

AGREE upon the following articles:

Part 1 – Right of Self Determination

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the UN.

Part II – Without Distinction of Any Kind

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant.

3. Each State Party to the present Covenant undertakes:
   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
   (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the UN, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human Rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognises them to a lesser extent.

Part III – Inherent Right to Life

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by

any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
   (b) Paragraph 3 shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
   (c) For the purpose of this Paragraph the term 'forced or compulsory labour' shall not include:
      (i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
      (ii) Any service of a military character and, in countries where conscientious objection is recognised, any national service required by law of conscientious objectors;
      (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
      (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons of his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons Shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
   (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile Offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above mentioned rights shall not be subject to any restrictions except those which are provided by

law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
   (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
   (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
   (c) To be tried without undue delay;
   (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed if he does not have legal assistance, of this right; and to have legal
   assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
   (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
   (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when, subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal

offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom, to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. lt may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary;
   (a) For respect of the rights or reputations of others;
   (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to

take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognised.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of wrights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Part IV – Establish a Human Rights Committee

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the

present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the UN shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the UN shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the UN at the Headquarters of the UN. At that meeting, for which two-thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-selection if re-nominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the UN, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the UN, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the UN shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the UN, receive emoluments from UN resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the UN shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the UN shall convene the initial meeting of the committee at the

Headquarters of the UN.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the UN or at the UN Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
   (a) Twelve members shall constitute a quorum;
   (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
   (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
   (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the UN, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the UN may, alter consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognises the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognising in regard to itself the competence of the Committee. No Communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
   (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.
   (b) if the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.
   (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity

with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

(i) If a solution within the terms of sub-paragraph (e) *is* reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

(iii) In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article.

3. Such declarations shall be deposited by the States Parties with the Secretary-General of the UN, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a state Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the UN or at the UN Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the UN and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant

information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned.
   (a) If the commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
   (b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached.
   (c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned.
   (d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.
8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.
9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the UN.
10. The Secretary-General of the UN shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the UN as laid down in the relevant ss. of the Convention on the Privileges and Immunities of the UN.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the UN and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the UN through the Economic and Social Council, an annual report on its activities.

Part V – No Impairment of the UN Charter

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the UN and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the UN and of the specialised agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Part VI – Open for Signature by Any State Member

Article 48

1. The present Covenant is open for signature by any State Member of the UN or member of any of its specialised agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the UN to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the UN.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the UN.
5. The Secretary-General of the UN shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months alter the date of the deposit with the Secretary-General of the UN of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the UN. The Secretary-General of the UN shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting urban the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the UN. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the UN for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the UN and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the UN shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accession under article 48;
(b) The date of the entry into force of the present Covenant under article 49 und the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French. Russian and Spanish texts are equally authentic, shall be deposited in the archives of the UN.
2. The Secretary-General of the UN shall transmit certified copies of the present Covenant to all States referred to in article 48.

IN FA1TH WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed the present Covenant, opened for signature at New York, on the nineteenth day of December, one thousand nine hundred and sixty-six.

1:–2.1.1.2. – Convention on the Political Rights of Women

Schedule 2

The Contracting Parties,

DESIRING to implement the principle of equality of rights for men and women contained in the Charter of the UN,

RECOGNIZING that everyone has the right to take part in the government of his country, directly or indirectly through freely chosen representatives, and has the right to equal access to public service in his

country, and desiring to equalize the status of men and women in the enjoyment and exercise of political rights, in accordance with the provisions of the Charter of the UN and of the Universal Declaration of Human Rights,

HAVING RESOLVED to conclude a Convention for this purpose,

HEREBY AGREE as hereinafter provided:

Article I

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

Article II

Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

Article III

Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

Article IV

I. This Convention shall be open for signature on behalf of any Member of the UN and also on behalf of any other State to which an invitation has been addressed by the General Assembly.
II. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the UN.

Article V

I. This Convention shall be open for accession to all States referred to in paragraph 1 of article IV.
II. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the UN.

Article VI

I. This Convention shall come into force on the ninetieth day following the date of deposit of the sixth instrument of ratification or accession.
II. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession the Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article VII

In the event that any State submits a reservation to any of the articles of this Convention at the time of signature, ratification or accession, the Secretary-General shall communicate the text of the reservation to all States which are or may become parties to this Convention. Any State which objects to the reservation may, within a period of ninety days from the date of the said communication (or upon the date of its becoming a party to the Convention), notify the Secretary-General that it does not accept it. In such case, the Convention shall not enter into force as between such State and the State making the reservation.

Article VIII

I. Any State may denounce this Convention by written notification to the Secretary-General of the UN. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
II. This Convention shall cease to be in force as from the date when the denunciation which reduces the number of parties to less than six becomes effective.

Article IX

Any dispute which may arise between any two or more Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation, shall at the request of any one of the parties to the dispute be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.

Article X

The Secretary-General of the UN shall notify all Members of the UN and the non-member States contemplated in paragraph 1 of article IV of this Convention of the following:

(1) Signatures and instruments of ratifications received in accordance with article IV;
(2) Instruments of accession received in accordance with article V;
(3) The date upon which this Convention enters into force in accordance with article VI;
(4) Communications and notifications received in accordance with Article VII;
(5) Notifications of denunciation received in accordance with paragraph 1 of article VIII;
(6) Abrogation in accordance with paragraph 2 of article VIII.

Article XI

I. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the UN.

II. The Secretary-General of the UN shall transmit a certified copy to all Members of the UN and to the non-member States contemplated in paragraph 1 of article IV.

IN FAITH WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention, opened for signature at New York, an the thirty-first day of March, one thousand nine hundred and fifty-three.

1:–2.2. – Attorney-General's Letter to CAMP NSW, 5 July 1974 [513]

The Attorney-General has asked me to reply to your letter to him on behalf of the Campaign Against Moral Persecution, NSW Branch.

Table 64: Number of Convictions (1 Jan 1963-31 Mar 1974) for Homosexual Offences Committed in the ACT

Year	Buggery	Attempted Buggery	Indecent Assault on a Male by a Male	Total
1963		1	3	4
1964			4	4
1965			2	2
1966	3	1	8	12
1967			5	5
1968			11	11
1969			2	2
1970			11	11
1971			1	1
1972			2	2
1973			9	9
1974			–	–
Total	3	2	58	63

Note: (a) Records held at ACT Police Headquarters only date back to 1963. (b) During the above period 39 charges were dismissed by the Courts. These charges are not included in the above figures. Source: Attorney-General letter to CAMP NSW, 5 July 1974.

Table 63: Homosexual Offences and its Criminal Application in the ACT

Offence	Section	Where Determined	Maximum Prescribed Penalty
Buggery . . .	79	Supreme Court	Life imprisonment or imprisonment for not less than 5 years
Attempted buggery . . .	80	Supreme Court	5 years' imprisonment
	80	Court of Petty Sessions	2 years' imprisonment
Indecent assault on a male	81	Supreme Court	5 years' imprisonment
	81	Court of Petty Sessions	2 years' imprisonment
Source: Attorney-General letter to CAMP NSW, 5 July 1974.			

In your letter you suggest that the Human Rights Bill is defective in that it does not prohibit discrimination on the ground of sexual orientation. The Purpose of the Human Rights Bill is to implement, by legislation enacted by the Australian Parliament, the fundamental rights and freedoms contained in the International Convention on Civil and Political Rights. For constitutional reasons, Parliament cannot, in legislation introduced in reliance on the International Covenant, establish rights that are not contained in the Covenant.

As you are aware, the Government proposes to reform the law with respect to homosexual behaviour in the ACT copy of a draft ordinance relating to homosexual behaviour was, I understand, recently forwarded to you. On the question of prosecutions I am informed that, in the ACT, the practice has been that the police take no action unless there is a complaint from a member of the public. No detailed records are available for prosecutions in the period ending December 1962. However from 1 January 1963 to 31 March 1974, 40 persons were charged with a total of 63 homosexual offences. Details of the offences are set out in the attached schedule [see Table 64, page 206]. I understand that only one person was arrested on private premises. This occurred after the mother of a youth involved complained to the police that she suspected her son was involved with a homosexual.

Homosexual offences are dealt with in the *Crimes Act 1900* in its application to the Territory. The relevant provisions are set out in [see Table 63, page 206] together with details of the particular Court that may hear the matter and the prescribed maximum penalty.

In your letter you referred to a report that you believed had been prepared by this Department in 1969. There is, however, no such report.

1:–2.3. – CAMP NSW Letter to the Attorney-General, Senator Murphy, 18 July 1974

[513] The FOI Unit of the Attorney-General's Department in Canberra was contacted to see if any further details of file 74/2071 could be obtained. Lester Watson, Director, Ministerial and Parliamentary Section of the Attorney-General's informed on 13 November 1998 as follows: '… file 74/2071, which you indicated contained a reference to the Human Rights Bill, has been destroyed, in accordance with the procedure of the National Archives of Australia.'

I refer to the letter [5 July 1974] sent by your Department to this organisation.

There has been no copy of the draft ordinance relating to homosexual behaviour sent to us. We would be pleased if you could do so. The letter only mentions reform of the law in the ACT. Why is there no intention of reforming the law in the NT when you indicated alter the passing of the Cass-Gorton motion (in **October** last year) that the law would be amended there too?

In answer to question no. 586 [514] on notice last year, you indicated that no person had been charged in the ACT or the NT in the last 10 years for an offence arising out of alleged homosexual behaviour in private between consenting adults. The statistics provided by your Department indicate that from 1 January 1973 to 31 March 1974 40 persons were charged with a total of 63 homosexual offences. The nature of the offences does not rule out the possibility that the activities could be defined as being between consenting adults in private. Perhaps you could indicate the definition of 'alleged homosexual behaviour in private between consenting adults' which guides your Department.

In justification of its claim that the right of freedom from discrimination on the grounds of sexual orientation could not constitutionally be included in the Human Rights Bill, your Department says, 'The of the Human Rights Bill is to implement, by legislation enacted by the Australian Parliament, the fundamental rights and freedoms contained in the International Covenant an Civil and Political Rights'. This statement quotes part of the full title of the Human Rights Bill. It, significantly, falls to mention that the Bill is also '… for other purposes'. It seems, then, that the scope of the Bill is not limited by the International Convention and that there is the opportunity to show enlightenment not shown in the UN when the Convention was drawn up. In your second reading speech you stated, '… I believe that the enactment of this legislation will be a significant milestone in the political maturity of Australia. It will help to make Australian society more free and more just.' [515] These lofty aims will not be achieved as long as the rights of homosexuals are ignored and their oppression perpetuated. We urge you to consider carefully our proposal that the words sexual orientation be included in the Bill. We are aware that our voice and strength is minimal compared to that of the churches, who get a ready and sympathetic hearing, but hope that for once in Australian politics, justice and not political kudos will carry the day.

Whether you accept this proposal or not, we ask for your support for an international approach to the UN later this year to have the International Convention amended to include sexual orientation.

1:–2.4. – CAMP NSW Letter to Dr Kurt Waldheim, Secretary-General, UN, 18 July 1974

This organisation has recently made approaches to the Australian Attorney-General seeking to have included in the proposed Human Rights Bill the right of freedom from discrimination on the grounds of sexual orientation.

The homosexual in most modern societies is subjected to oppression and rejection. We are blackmailed, discriminated against in employment, ignored by the media, open to ridicule in our social lives. Our rights have consistently been ignored and/or denied. Australian homosexuals see the proposed Human Rights Bill as providing one opportunity of redress for homosexuals.

However, the response of the Attorney-General, through his Department, to our proposal was:

> In your letter you suggest that the Human Rights Bill is defective in that it does not prohibit discrimination on the ground of sexual orientation. The purpose of the Human Rights Bill is to implement, by legislation enacted by the Australian Parliament, the fundamental rights and freedoms contained in the International Convention on Civil and Political Rights. For constitutional reasons, Parliament cannot, in legislation introduced in reliance on the International Covenant, establish rights that are not contained in the Covenant.

From our overseas contacts, we gather that this is a standard reply to requests to include sexual orientation

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[514] *Parliamentary Debates*, House of Representatives, 17 October 1973, p. 2309. **Dr Klugman** asked the Minister representing the Attorney-General, upon notice: How many persons were charged (a) successfully and (b) unsuccessfully in (i) the ACT and (ii) the NT for offences arising out of alleged homosexual behaviour in private between consenting adults in each of the last 10 years. **Mr Enderby** – The Attorney-General has provided the following answer to the honourable member's question: No person has been charged in the ACT or the NT in the last 10 years for an offence arising out of alleged homosexual behaviour in private between consenting adults.

[515] *Parliamentary Debates*, Senate, 21 November 1973, p. 1974.

in Human Rights Bills. The only solution, therefore, is to amend the International Covenant on Civil and Political Rights which these Bills are implementing.

The amendment would involve the inclusion of the phrase sexual orientation in s. 1 of Article 2 of the Covenant. We are writing to seek your support or sponsorship for such a move in the UN. We trust you will give our proposal sympathetic consideration.

1:–2.5. – CAMP NSW Letter to Gough Whitlam, Prime Minister and Foreign Affairs Minister, 24 July 1974

Enclosed is a copy of a letter recently sent by this organisation [CAMP NSW] to Dr Kurt Waldheim, Secretary-General of the UN. Copies will also be sent to the Minister for Foreign Affairs, the Attorney-General and the Australian Ambassador to the UN.

Being aware of your proposed visit to the UN towards the end of this year, we are hopeful that you will raise the matter in discussions with Dr Waldheim.

Before this matter is dismissed as insignificant (particularly in view of inflation problems), we would. remind you that it is a matter of concern to approximately one million Australians.

1:–2.6. – CAMP NSW Letter to Sir Laurence McIntyre, Australia's Ambassador, UN, 24 July 1974

Enclosed is a copy of a letter recently sent by this organisation to Secretary-General of the UN. Copies will also be sent to the Prime Minister, the Attorney-General, the Minister for Foreign Affairs.

We request that you raise this matter, which is of concern to approximately one million Australians, in discussions with the Secretary-General and other appropriate UN's officials and that you support the move should it make the floor of the UN.

1:–2.7. – CAMP NSW Letters to Various Scandinavian Homosexual Rights Groups, 31 July 1974

CAMP NSW wrote to:

- Forbundet af 1948, Copenhagen, Denmark
- Revolt, Stockholm, Sweden
- Psyke, Helsinki, Finland
- Forbundet af 1948, Oslo, Norway

To obtain support for proposed changes to the UN's International Covenant on Civil and Political Rights to include sexual orientation.

1:–2.8. – Foreign Affairs' Minister' Private Secretary Letter to CAMP NSW, 1 August 1974

On behalf of Senator Willesee I wish to acknowledge receipt of your letter of 24 July 1974 to which was attached a copy of a letter you sent to the Secretary-General of the UN about sexual orientation as an inclusion in Human Rights Bills.

The views expressed in your letter have been noted, and you will receive a reply on this matter as soon as possible.

1:–2.9. – Private Secretary of the Prime Minister's Letter to CAMP NSW, 12 August 1974

I acknowledge receipt of your letter of 24 July 1974 to Mr Whitlam concerning your representations to the Secretary-General of the UN.

1:–2.10. – Danish Forbundet af 1948, Foreign Secretary's Letter to CAMP NSW, 13 August 1974

We thank you for your letter dated 31st July and have pleasure in informing you that we shall discuss the question at our next Committee meeting on Sunday 18th August. This is a good task for our Foreign Affairs group, and we shall try to work along your lines. However, most people are on holiday (including parliament) so we do not know whether we can reach the date of opening of UN.

At the same time, we are trying to work with Amnesty International on a project regarding the prosecution of conscience prisoners, to include sexual variations. For this purpose, we need to know what the actual laws are in Australia regarding sexual offences; does the recently allowed liberalisation only affect the state of Canberra, or all of Australia? How many people are jailed annually, and what kind of sentences are given? Is it true that Elton Jones [sic] stopped his European concert trip because his friend was jailed for a h. s. [homosexual] offence? What h. s. groups are there in Australia?

Thanking you for your efforts, and we hope to hear from you again. We shall inform you of the outcome of our efforts, and will supply any help you may require.

1:–2.11. – CAMP NSW Letter to Prime Minister, Gough Whitlam, 16 August 1974

Thank you for your acknowledgement [12 August 1974] of our recent letter by your private secretary, Michael Delaney.

However, I fear neither you nor your staff actually read our letter. May I repeat the second paragraph of that letter?

Being aware of your proposed visit to the UN towards the end of this year, we are hopeful that you will raise the matter in discussions with Dr Waldheim.

Might I also quote Michael Delaney's letter?

I acknowledge receipt of your letter of 24 July 1974 to Mr Whitlam concerning your representations to the Secretary-General of the UN.

It seems rather obvious from a reading of the paragraph of our letter quoted above that our letter was concerned to solicit **your** representations to the Secretary-General.

One can only speculate about the reasons behind the misrepresentations of our letter. However, it might be a salutary political exercise for your Government to reflect that its election and re-election to office was, in good part, the result of the support of groups such as ours who were offered a vision of hope of a more just society, 'the more decent, the more humane, the more tolerant, the more compassionate society' to quote your own policy speech of 29 April this year [1974]. The history of your Government has, to a large extend, been a history of erosion of this ideal by the pettiness of political life. We are asking you to restore some of our faith.

1:–2.12. – First Assistant Secretary, Consular and Legal Division, Department of Foreign Affairs's Letter to CAMP NSW, 2 September 1974 [516]

The Minister has asked me to reply to your letter of 24 July concerning inclusion of the term sexual orientation in the International Covenant of Civil and Political Rights.

The Government is, of course, sympathetic to all groups which have been discriminated against or persecuted in the past. This is the basis of the Government's proposed Human Rights Bill and of our support

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[516] On 4 November 1998 the author made an FOI enquiry with the Department of Foreign Affairs and Trade in Canberra to ascertain if the complete file (558/3/91-1974) regarding CAMP NSW's submission on the inclusion of sexual orientation in the International Covenant on Civil and Political Rights. The Department's FOI unit forwarded the request to Christopher Taylor, Senior Research Officer, Historical Documents Unit at the Department of Foreign Affairs and Trade who did a very extensive search and reported with the following on 6 November 1998: 'Unfortunately, I'm pretty sure the file would have been destroyed in routine disposal sentencing. I did find a database reference to a slightly earlier 558/3/9 file going up to 1973 which had been destroyed some years ago but I could find no reference either here or at the National Archives to the existence of a later file? Mr Taylor further stated that '… if the submission did have important results it may have ended up on another file of a broader nature …' The author subsequently provided further details, references and dates in a fax on 15 November 1998 to Mr Taylor. He responded on 16 November 1998 that '… I still can't get a lead on where the original file went or where the copies of the submission – and any Departmental comments – might be.' Mr Taylor further suggested that '… something might be held in Don Willesee's personal papers collection held in the National Archives in Canberra, amongst his records is a series dealing with Ministerial correspondence with organisations (NAA citation AA1976/62).' This suggestion was followed up and contact was made on 4 January 1999 with Linda Macfarlane at the National Archives of Australia who undertook searches of the potentially relevant records. Ms Macfarlane stated on 25 February 1999 that she had '… examined all these [following] files on [my] … behalf but did not locate any references to CAMP in them.' (AA1976/62, 1– Correspondence Minister's Office A-G 1973; AA1976/62, 143– Correspondence 'C'; AA1976/62, 143 – Amnesty International; AA1976/62, League of Rights).

for international instruments on the subject.

The International Covenant, on which the proposed Australian Bill is based, is, however, a delicate compromise that was reached after much international negotiation. To attempt to re-open the drafting of the Covenant for the purpose of including one amendment would most likely open the way to a host of other suggested amendments, some worthy some not, which could put the very existence of the Covenant in jeopardy.

You may be assured, however, that in the drafting of any future international instruments on human rights, the Government will certainly bear, interests of your organisation in mind.

1:–2.13. – Michael Holm, Swedish Revolt's Letter to CAMP NSW on 13 September 1974

Thanks for your letter. Very kind of you write in Swedish, [517] but not necessary to translate as I do read English.

Separately I have sent you – by air mail – the latest edition of our Guide. The addresses written in italics are of gay unions and gay groups who work with gay rights. You'll thus have the addresses to most gay unions in Europe and the biggest in the States.

The new US national gay organization National Gay Task Force have been working on the issue you mention, the UN declaration of human rights. I suggest you write to Robert Roth, 225 West 70th Street, New York, NY 10023, USA. He'll be able to give more information on this.

In December [1974] there will be an international conference on gay rights in Edinburgh, Scotland. I'll attend and speak there and will be glad to mention your initiative. Please let me know if your approach to your prime minister has given any result.

There were some representatives from the US National Gay Task Force here this summer (among them Robert Roth) and they meant that the gay organisations can do very little in the UN. They mean that it is necessary that the issue is introduced in the UN by a politician. When the issue is risen in the General Assembly, the Americans (who have great possibilities with good finances and a great staff) will see to it that the members of the UN get further information needed. At the moment we don't see any great possibility to make our prime minister Palme raise the question in the UN. It would be great if your prime minister would.

1:–2.14. – CAMP NSW Letter to Prime Minister, 17 September 1974

I am still awaiting a reply to my letter of 15 August.

1:–2.15. – CAMP NSW Letter to Swedish Revolt, 18 September 1974

Thank you so much for your letter which reached our box yesterday. I was delighted to learn that there is no need to write to you in Swedish. In fact the letter which came to you was translated for me by Christer Stahl, whom you possibly know, who has been in Australia for nearly two years now. He lives not far from us.

Thank you too for the *REVOLT guide 74* which certainly contains information which will be valuable to us. What a shame that it doesn't recognise Australia! May I suggest that the following appear for Australia in the next edition?

SYDNEY Campaign Against Moral Persecution (CAMP), Box 5074, GPO, Sydney, 2001. Tel: for information and help: (02) 660 0061. Clubrooms (02) 660 0090. Secretary (02) 827 3063. Information available from these numbers about other branches of CAMP throughout Australia.

Gay Liberation Press, Box A76, Sydney South, 2000.

Hope I'm not asking too much – but this would to complete the story for those who want to know what's happening in this part of the world. There are organizations, some affiliated to CAMP and some not, right throughout Australia, but information is available from us at any time, and we have found in the past that addresses and telephone numbers in other parts of the country are inclined to change without much notice – hence the idea that people write to us or telephone us for the latest information.

Now to the really big stuff – the UN. Unfortunately our representations to our Prime Minister have resulted

[517] This was made possible with the assistance of Christer Stahl who came from Sweden and who at the time was politically involved in CAMP NSW.

only in a stuffy acknowledgement from his private secretary … 'I acknowledge receipt of your letter of 24 July 1974 to Mr Whitlam concerning your representations to the Secretary-General of the UN.' This acknowledgement was dated 12 August, and we wrote back on 16 August to repeat what he said originally: 'Being aware of your proposed visit to the UN towards the end of the year, we are hopeful that you will raise the matter in discussion with Dr Waldheim.' In this letter we pointed out that our original letter was being entirely ignored, in that we had originally asked Whitlam (our Prime Minister) to make representations on our behalf.

So you see, we seem to strike the same sort of trouble that you have found. It seems at the moment that it is perhaps pointless at this stage to press our claims any further. I fear that you in Sweden cannot expect any leadership from Australian politicians. In fact, we had rather hoped that your politicians would be the ones who may offer some leadership to the world on this subject.

Sweden is quoted in this part of the world as the leader of western civilization and democracy; often by those who oppose anything that Sweden may do. We agree that the solution to the whole human rights thing seems to be political at the moment – but from this part of the world we would expect that Swedish politicians would be prepared to stick their necks out for a principle some 25 years before any Australians would be prepared to be labelled. I am not trying to get at you, Michael, just to point out some of the difficulties we experience for the sake of living so far from the rest of the western world. Do you think that there is anything more that can be done from your side? Our present Prime Minister offered us 'a more decent, more humane, more tolerant, more compassionate' society in his policy speech earlier this year, and it was with the support of such groups as ours that he was re-elected in May [1974]; but we are now finding that we have to write in strong terms to remind him of the sort of people whom he encouraged to vote for him, and who are now being disappointed on every side by the subsequent performance of his party in government.

Hope you can work all this out! Perhaps the entry for CAMP in the next *REVOLT guide* should mention that we are able to supply information about places **not** in italics in the present edition, although we do reserve the right to disagree with the basis of such places, most of which are an attempt to enlarge the ghetto into which the homosexual is encouraged to disappear. Not our scene!

1:–2.16. – CAMP NSW Letter to Professor Lane, 30 September 1974

Forgive my intruding on your privacy, but I have a constitutional question with which you may be able to help me.

Could you explain the position of the Australian Parliament when implementing legislation in reliance on an International Covenant? By position, I mean powers. To what extent is it limited by this covenant?

Hoping that you will be able to help with this question. Thanking you in anticipation.

1:–2.17. – Professor Lane's Letter to CAMP NSW, 3 October 1974

When implementing an international convention, the Federal Parliament almost always relies on its external affairs power in s. 51 (xxix) of the Constitution. The implementing federal legislation must adhere to the terms of the international convention. This adherence to the terms of the convention must be fairly close. In other words, the implementing legislation can only depart from the terms of the convention in incidental matters or matters of form.

Of course, the implementing legislation does not have to repeat all the terms of the convention, although even in this case the resulting legislation should not be something that is substantially different from the convention. But on the other hand, the implementing federal legislation cannot exceed or vary the terms of the internation [sic–international] convention, except in the incidental matters and the matters of form which I mentioned above.

1:–2.18. – Danish Forbundet af 1948 Letter to Secretary-General, UN, 20 October 1974 [518]

The undersigned board wishes to have the International Covenant on [Civil and Political Rights] Human

[518] Copies of this letter were also forwarded to: Poul Hartling, Danish Prime Minister; Danish Foreign Ministry; Danish Delegation at the UN. Emphasis added.

Rights amended.

Part II, Article 2, Paragraph 1 [see page 194], should be altered, to read as follows:

> Each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, **sexual orientation**, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The inclusion of sexual orientation is due to the fact that many countries in their legislation directly discriminate against those citizens wo [sic– who] wish to share their lives with a person of the same sex, as opposed to the more general heterophile marriage. This section of the population is estimated to be 4-5%, and is found in all countries and civilisations.

Australia has now decided to adopt the International Covenant on Human Rights into their own legislation, and we wish to use this opportunity to have the above-mentioned definition supplemented, so as to bring it into line with contemporary evolutions in countries such as the Netherlands and Norway which in practice and in law have eliminated any discriminations of their homophile citizens.

We do hope that this amendment can be introduced in the current or next General Assembly and are, yours sincerely.

1:–2.19. – Prime Minister's Letter to CAMP NSW, 22 October 1974

Thank you for your further letter of 16 August. In that letter you say you fear that your original letter was not read. That is not so. It was in fact read but as you point out, not correctly. I regret very much that this occurred and also that it has taken until now for you to receive a further reply.

By this time, however, you will have had a reply, from the Department of Foreign Affairs, to your letter to Senator Willesee. Given that reply, which I have seen, I believe you will agree that the Covenant and indeed the guarantees which the Human Rights Bill will contain, could be jeopardized by any attempt by Australia to raise an amendment in the UN. This is not to suggest that the Government is now no longer sympathetic to the aims of your organisation or that these aims would not be reflected in future initiatives by the Australian Government as you seem to imply in your letter. It is, rather, the Government's view that the very real achievements of the current Conventions on Civil and Political Rights should not in any way be imperilled.

You refer to the commitment in the Prime Minister's 1974 policy speech to a better Australian society. The Prime Minister and his Government stand by that commitment. They also, incidentally, stand by their intention to try and remove **all** forms of discrimination in our society thought they are well aware that the pettiness of political life which you lament has, in its parliamentary expression by the Opposition, slowed the pace at which such discrimination can be overcome.

Please be assured that your faith in the Prime Minister, and that of other groups, given in 1972 and 1974 was not misplaced. In the twenty-two months that have elapsed since December 1972 a great deal has been achieved. The Government has gone as far as possible in removing practical discrimination against homosexuals by the use of every administrative discretion available to it.

I think you will agree, however, that in the circumstances it would be unreasonable to expect that in such a short time the Government could reverse the discriminatory social attitudes and the associated legal codes that as you will be aware have their origins in British Criminal Law, dating back to 1885.

I regret that you did not receive this, as you should have, in reply to your letter of 24 July 1974.

1:–2.20. – Danish Forbundet af 1948 Letter to CAMP NSW, 25 October 1974

On the 13 August [1974] we wrote you a letter concerning an action you asked us to take to get the International Convention on [Civil and Political Rights] Human Rights amended so as to include sexual orientation.

After long and thorough discussions, we have now sent the letters, and a photostat copy is enclosed. Copies of the letter, together with a letter asking the receiver to support our wishes, have been sent to those listed on the copy. We realise that this took longer than expected. On the other hand, we were certain that the list of subjects to be treated by the autumn assembly certainly had been drawn up long ago. Nevertheless, we hope

that our support helps your cause, and that other societies have also helped in the meantime. If anything results, would you let us know?

We have also received a recent letter of your treasurer, regarding your magazine, Certainly, we would like to receive a copy of it regularly, and we can offer to send you a copy of PAN (in Danish) every month. I doubt it very much if any of us has the time to contribute regularly to your magazine Undersigned [Marcel Ulmann] has now also become treasurer of this group, and there is a limit to how much time one can offer to the cause. With regard to holiday accommodation with members, we are not very keen on the idea, Certainly, your members are welcome at our club, and if they write to us we shall inform them and help them.

If you agree with this exchange, please let us know, so that we can put on the lists of our addresses.

1:–3. – National Compensation Scheme

The Australian Government, in March 1973, established a committee [519] to investigate and report upon the desirable scope and form of a nationwide system of rehabilitation and compensation for all sick and injured persons. Fifteen months later the Committee presented its report, which recommended that de facto relationships be recognised for the purpose of payments of benefits. When this came to CAMP's attention, It immediately wrote to the Minister for Repatriation and Compensation, Senator John Wheeldon, [520] applauding this social advance, but requesting:

> that the principle be extended to include the partners of homosexual unions [see page 217].

A reply was received, with unusual speed, 19 days later. In lt the Minister said:

> As you may know the proposals for a National Compensation Schema are not yet finalised, and I shall certainly keep your comments in mind, during my discussions [see page 218].

The matter remained at that stage for some time until the Treasurer announced in his Budget Speech [521] that the Government had endorsed the Committee's report and that legislation to implement the scheme would be soon introduced into Parliament. CAMP immediately wrote to the Minister in these terms:

> We are anxiously looking forward to evidence that our comments were not merely kept in your mind as your letter promised, but have been translated into action [see page 218].

Three days after that letter was sent, a telephone call was received from the Minister's office asking us to suggest specific amendments to the proposed Bill which would give effect to our ideas.

On 22 September [1974] an eight-page submission listing the requested amendments was forwarded to the Minister. The submission was divided into three sections: Option A, Option B, Sexist language.

It was indicated that Option A was the scheme which would most fulfil our aspirations. 'We have been appalled at the way the proposed Bill relies on the status quo institutions.' [see page 219] 'Therefore, CAMP's proposals in Option A sought to move beyond the usual definition of spouse, by introducing the concept family', and widening its ordinary scope so that it would cover all situations. Family was defined (accepting some of the limitations of the proposed Bill) as:

> two or more people who have lived together on a permanent and bona tide basis for two years, or who are married, excluding offspring [see page 219].

The result of this definitional change would be that the dependants of all family groups would be eligible to receive the benefits of the compensation scheme.

> However, we are realistic enough to realise that political exigency will demand, most probably, a softer approach than that of Option A, and so have formulated Option B [see page 230].

The concept family, as redefined by our proposal, was also introduced into Option B, but this scheme was prepared, for the reasons outlined above, to list the members of alternative families in the Bill's lesser classification of relative.

The section on sexist language provided examples of ways in which language could be amended

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[519] The Committee of Inquiry consisted of: The Hon Mr Justice AO Woodhouse, chairperson, a Judge of the Court of Appeal of New Zealand and The Hon Mr Justice CLD Meares, a Judge of the Supreme Court of NSW.

[520] The Hon John Murray Wheeldon, ALP Senator for WA, Minister for Repatriation and Compensation.

[521] 'We have endorsed in principle the compensation scheme contained in the Report of the National Committee of Inquiry into Compensation and Rehabilitation in Australia (the Woodhouse Report) and the main enabling legislation will be introduced in the Budget sitting. The Bill will provide for a phased introduction of the scheme and, following detailed examination of the scheme by the Government and others, amendments may be made to the Act before its implementation. The only costs in 1974-75 will be for the payment of staff and consultants to plan the operation of the scheme.' *Parliamentary Debates*, House of Representatives, 17 September 1974, p. 1279.

to eliminate sexism, in the form of sex-specific language; 'part of the liberation of this society is bound up with changing its dominant male structure' [see page 219].

A prompt replay was received from the Minister's office stating:

> The Minister is now examining your submission in detail and will write to you further in the near future [see page 222].

No further communication has ever been received by us. Several phone calls made at our instigation about the proposal have received the response that the submission was still under consideration. We have learnt privately from a member of the Senate that the Minister is not prepared to adopt our proposals in any form since he feels to do so would be politically inadvisable. Another display of lack of political courage.

When the Bill came before it for consideration, the Senate referred it to its Standing Committee on Constitutional and Legal Affairs [see page 224] for investigation and report. That body invited submissions from interested persons and organisations [see page 222] and in particular from the Law Council of Australia [see page 223] and the ACTU [see page 223]. A copy of our submission was therefore sent to the Senate Standing Committee, the Law Council and the ACTU [see page 219]. The two first-mentioned bodies acknowledged receipt of the submission and indicated that they would consider our proposals. [see page 224]. They are still in that process. The Senate Committee will be taking evidence at public hearings around the country. We wait with interest to see if CAMP is called. Nothing has been heard from the ACTU.

1:–3.1. – CAMP NSW Letter to Minister for Repatriation and Compensation, 11 July 1974

I refer to a report in *The Australian* [522] of today of the national compensation scheme based on the report of Justices Woodhouse and Meares.

The report states that 'The scheme acknowledges the rights of de facto wives. The report says as far as the scheme was concerned a woman who lived with a man for two years before his death would be regarded as his widow.'

This organisation applauds this social advance, but requests that the principle be extended to include the partners of homosexual unions. This could be done on the same basis as the recognition of de facto wives. We request in addition, however, that consideration be given to unions which involve more than one partner. In these cases, provision could be made to divide the compensation benefits, or to give them to the remaining partners jointly.

We are confident you will be anxious to provide some overdue justice for an oppressed section of the Australian society, and will thus give our proposal sympathetic consideration.

1:–3.1.1. – Announcement of National Compensation Scheme, 11 July 1974 [523]

Compo to Cover All -85p.c. Pay For Sickness, Injuries

The Federal Government yesterday released details of a national compensation scheme designed to provide automatic injury and death compensation for all Australian workers and their dependents.

The new scheme, if adopted by the Government and passed by Parliament, would provide 85 per cent of income to all wage earners earning up to $26,000 a year for as long as they were injured or sick – for any reason. lt is estimated to cost $1655 million – to be partly raised by a 2 per cent levy on all incomes.

The scheme is the basis of a report by a committee headed by Mr Justice Woodhouse, of the New Zealand Court of Appeal, and Mr Justice CLD Meares, of the Supreme Court of NSW, tabled in Federal Parliament yesterday.

It would eliminate third party insurance, workers compensation and all common law claims for damages.

It would end cumbersome, expensive, time-wasting and socially degrading legal procedures now involved in most compensation claims.

Non earners like housewives would get $42.50 a week as long as they were sick.

The scheme would cover self-employed people.

WIDOWS

Under benefits for death a widow would get 60 per cent of her husband's salary before death until she was 65 when superannuation would provide income.

There would be provision for lump sums of up to $10,000 for 'cosmetic impairments of real significance.'

Benefits would automatically rise with the Consumer Price Index, increasing quarterly, plus 1 per cent per year. The scheme would be retrospective, and accident victims who are not now entitled to compensation would be eligible.

The levy on all incomes would raise about $600 million a year.

Further finance would come from a road users' tax of 10c a gallon petrol, to raise $290 million. About $395 million would be drawn from general revenue.

Savings from paying social security benefits are expected to provide the final $370 million.

Mr Justice Woodhouse said the report was concerned with responsibility for the injured and the sick.

NO DISCRIMINATION

'Its theme is their need for automatic rehabilitation and compensation without tags and without discrimination,' he said.

The report proposed 'a new deal for every Australian whose life has been disrupted or damaged by injury or disease.'

Officials say the scheme, if adopted would take away at least 40 per cent of business from private insurance companies.

lt would involve the restructuring of the present social welfare and repatriation departments in Canberra.

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[522] See: 1:–3.1.1. page 217, 'Announcement of National Compensation Scheme'.

[523] n.a. 'Compo to Cover All -85p.c. Pay For Sickness, Injuries', *The Australian*, 11 July 1974, p. 1.

The scheme acknowledges the rights of de facto wives. [524] The report says that as far as the scheme was concerned a woman who lived with a man for two years before his death would be regarded as his widow.

Illegitimate children would also be recognised.

Medical and hospital expenses have not been included in the total cost of the scheme as the committee said it accepted these would be covered by the Government's national health scheme.

1:–3.1.2. – Draft National Compensation Bill 1974, Clause 51 [525]

51. Part VI – Widows' Pension

(1) In this Part, unless the contrary intention appears –

'child' means a person who has not attained the age of 20 years;

'class A widow' means a widow (but not a widower) who –

(a) is pregnant;

(b) is maintaining a family home for a child;

(c) is caring for an aged or infirm person who is related by blood or adoption to the widow;

(d) is unable to engage in suitable gainful work; or

(e) became a widow after attaining the age of 55 years;

'class B widow' means a widow (but not a widower) other than a class A widow.

(2) For the purposes of sub-section (1), a woman shall not, by reason of her employment in, or conduct of, a hospital, nursing home, old peoples home or similar institution, be taken to be caring for aged or infirm persons.

(3) For the purposes of this Part, where a woman, although not married to a man, lived with him on a permanent and bona fide domestic basis immediately before his death and –

(a) the woman had so lived with the man on that basis for not less than 2 years immediately before his death; or

(b) the man was survived by a child who was a child of the union between that woman and that man and was dependent on that man immediately before his death,

then —

(c) that woman shall, unless she has re-married, be deemed to be a widow of that man; and

(d) that man shall be deemed to have been her husband.

1:–3.2. – John Wheeldon, Minister for Repatriation and Compensation Letter to CAMP NSW, 30 July 1974

Thank you for your letter of 11 July 1974, and your suggestions for the proposed National Compensation Scheme.

As you may know the proposals for a National Compensation Scheme are not yet finalised, and I shall certainly keep your comments in mind, during my discussions.

1:–3.3. – CAMP NSW Letter to the Minister for Repatriation and Compensation, 17 September 1974

Thank you for your reply of 30 July to my letter of 11 July, concerning the proposed National Compensation Scheme.

We notice that the Treasurer in his Budget speech tonight made reference to the forthcoming legislation to implement this scheme. These comments, of course, follow on similar comments made by yourself recently in New Zealand. We are anxiously looking forward to evidence that our comments were not merely kept in your mind as your letter promised, but have been translated into action.

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[524] Report of the National Committee of Inquiry, *Compensation and Rehabilitation in Australia*, AGPS, Canberra, July 1974, p. 156.

[525] ibid. p. 283.

1:–3.4. – CAMP NSW Letter to the Minister for Repatriation and Compensation, 22 September 1974

Hereto attached are the alterations we propose to the *National Compensation Act 1974*. We thank you very sincerely for the opportunity to make these suggestions, and trust that they will be acted on.

We have included two options. Option A [526] is the plan which would most fulfil our aspirations since it covers all family situations. We have been appalled at the way the proposed Bill relies on the status quo institutions. However, we are realistic enough to realise that political exigency will demand, most probably, a softer approach than that of Option A, and so have formulated Option B. But we still hold out hopes for Option A.

We intend suggesting to Senator Murphy [Attorney General] in the near future that some sort of family register be set up, where people could register themselves as a family for simplicity of legal purposes. This would alleviate some administrative problems with the *Compensation Act*.

The recommendations on sexist language are, of course, applicable whichever option, or/either option, is adopted. Part of our liberation is bound up with changing the dominant male structure of our society.

If you should wish to discuss any of the matters we have raised, Mike [Clohesy] will be at home (above number) this week: Monday, from 3:00 pm; Tuesday, until 1:00 pm, and from 4:00 pm; Wednesday, except between 12 and 5; all evenings. You would be most welcome for dinner any time you are in Sydney.

1:–3.5. – CAMP NSW Proposed Alterations to National Compensation Act 1974

Explanatory Memorandum

Two options have been included. Option A is the plan which would most fulfill our aspirations since it covers all family situations. We have been appalled at the way in which the proposed Bill relies on the status quo institutions. However, we are realistic enough to realise that political exigency will demand, most probably, a softer approach than that of Option A, and so have formulated Option B. But we still hold out hopes for Option A.

It has been suggested to the Attorney-General [Senator Lionel Murphy] that some sort of family register be set up where people could register themselves as a family for simplicity of legal purposes. This would alleviate some administrative problems with the *Compensation Act*.

The recommendations on sexist language are, of course, applicable whichever option, or if neither option, is adopted. Part of the liberation of this society is bound up with changing the dominant male structure.

Option A

I. Amend the title of the Act to read:

'A Bill for an Act to make provision for the payment of benefits in respect of incapacity as the result of sickness (including personal injury), for the payment of pensions and certain other benefits, and for purposes connected therewith.'

II. Amend certain sections of s. 4(1) to read as follows:

III. s. 16(2)(c) is amended to read:

'Benefit' means benefit (including pension) under this Act;

'Family' means two or more people who have lived together on a permanent and bona fide basis for 2 years, or who are married, excluding off-spring.

'Re-marriage' is omitted.

Amend s.4(3) by omitting 'widow's'.

IV. s. 43 is amended to read:

(1) A benefit is payable to a child of a deceased person or of the spouse of the deceased person, or to a child dependent on the family of a deceased person at a rate per week

(a) Equal to three-twentieths of the rate per week of the benefit –

(b) If both parents, or members of the family on which the child is dependent had died – equal to a rate of three twentieths per parent or member of the family.

(2) In the application of sub-section (1), if the weekly income of the deceased person for the purposes of paragraph 39(1)(b) was less than $100, the rate of benefit that was payable to that person or that would have been payable shall be taken to be the rate calculated by reference to a weekly income, for those purposes, of $110.

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[526] See: 1:–3.5. page 219, 'CAMP NSW Proposed Alterations to National Compensation Act 1974'.

(3) A benefit is payable to a child of a person who died before the proclaimed date at a rate of $13 per week, if both parents of the child, or members of the family on which it is dependent have died, at a rate of $13 per parent or member of the family.

(4) A benefit is only payable to a child where the child was substantially dependent on the person or person in respect of whose death the benefit is payable immediately before the death of that person or those persons.

V. s. 44 is amended to read:

(3) For the purposes of making a determination under sub-section (1) or (2), the Director-General shall have regard –

VI. s. 45 is amended to read:

A benefit is not payable under s. 43 er 44 to a person to whom a benefit or pension is payable under Part VI.

VII.: Part VI is revised as follows:

Part VI – Pensions

VIII. s. 51.

(1) In this Part, unless the contrary intention appears –

'Child means a person who has not attained the age of 20 years;

'Class A' means persons who:

(2) For the purposes of sub-section (1), persons shall not, by reason of their employment in, or conduct of, a hospital, nursing home, old-peoples home or similar institution, be taken to be caring for aged or infirm persons.

(3) For the purposes of this Part,

IX. s. 52.

Subject to this Act, pensions are payable as provided by this Part to persons who are surviving members of the family of deceased persons and have not attained the age of 65 years.

X. s. 53.

(1) There is payable to persons in class A, a member of whose family dies on or after the proclaimed date

—

(2) In the application of sub-section (1), if the weekly income of the member for the purposes of paragraph 39(1)(b) was less than $100, the rate of benefit that was payable to that person or that would have been payable shall be taken to be the rate calculated by reference to a weekly income, for those purposes, of $100.

(3) If persons in class A re-constituted their family, the pension payable to them at the rate ascertained in accordance with paragraph (1)(b) ceases to be payable but there is payable a benefit by way of a lump-sum payment equal to the amount of pension paid to those persons at that rate during the last preceding period of 1 year or the period since the death of the member of the family, whichever period is the shorter.

(4) There is payable to persons in class B, a member of whose family dies on or alter the proclaimed date

—

XI. s.54.

(1) There is payable to a person in class A, a member of whose family died before the proclaiming date a pension at the rate of $50 per week.

(2) If such persons re-constitute their family, the pension payable under sub-section (1) ceases but there is payable a benefit by way of a lump-sum payment equal to the amount of the pension paid to her under that sub-section during the last preceding period of 1 year or the period since the death of the member, whichever period is the shorter.

(3) There is payable to persons in class B, a member of whose family died within 1 year before the proclaimed date, until the expiration of a period of 1 year after the proclaimed date, or until the family is re-constituted, whichever first happens, a pension at the rate of $60 per week.

(4) This s. only applies to persons, a member of whose family died after the proclaimed date.

XII. s. 55.

(1) This section has effect where a member of a family who dies after the proclaimed date is survived by more than one member of the family to whom pensions are payable under this Part.

(2) The benefit referred to in paragraph 53(1)(a) er 53(4)(a) is payable only to a person who was a member of the family of the deceased person immediately before the person's death.

(3) The rate of the pension payable to each member is the rate per week ascertained in accordance with the formula *ab* over *c*, where –

a is the rate of benefit ascertained in accordance with paragraph 53(1)(b);

b is the degree (expressed as a percentage) to which the member was dependent on the deceased person immediately before that person's death; and

c is the sum of the degrees (expressed as percentage) to which those members were dependent on the deceased person immediately before that person's death.

(4) If the rate of pension payable to a member of a family under sub-section (3) is less than $50 per week, the rate of pension payable is that amount per week.

(5) A pension payable to a member in accordance with this s. is payable –

(6) Upon a pension being paid to a member of a family at a rate ascertained in accordance with this s. ceasing to be payable by reason of the operation of any provision of this Act –

(7) Upon a pension payable to a member of a family at a rate ascertained as provided by this s. again becoming payable by reason of the operation of any provision of this Act, the rate of pension payable to that member and to the other member or members of the family of the deceased person shall be recalculated in accordance with sub-section (3).

XIII. s. 56.

(1) This s. has effect where a member of a family who died before the proclaimed date is survived at the proclaimed date by more than one family member entitled to a pension under s. 54.

(2) The rate of pension payable to each member is $50 per week.

(3) A pension payable to the member of a family in accordance with this s. is payable –

XIV. s. 57.

The total of the rates of pension paid to the members of the family and if benefit paid to the children of a deceased person who died on or after the proclaimed date shall not exceed the rate of benefit that would have been payable to the deceased person if that person were totally incapacitated and had not died and the respective rates of pension and benefit so being paid shall, where necessary, be reduced proportionately so as to give effect to this s.

XV. s. (1) is amended by:

(1) Including: 'family' means two or more people who have lived together on a permanent and bona fide basis for two years, or who are married, excluding off-spring;

(2) Changing 'relative' to read:

XVI. s. 16(2)(c) is amended to read:

'The spouse of, the family of, or a person dependent on, a person in relation to whom sub-section (1) may have effect by reason of paragraph (a) or (b)'.

XVII. s. 43 is amended to read:

(1) A benefit is payable to a child of a deceased person or of the spouse of the deceased person, or to the child dependent on the family of a deceased person at a rate per week –

(a) equal to three twentieths of the rate per week of the benefit –

(b) if both parents, or members of the family on which the child is dependent had died – equal to a rate of three-twentieths per parent or member of the family.

(2) In the application of sub-section (10), if the weekly income of the deceased person for the purposes of paragraph 39(1)(b) was less than $100, the rate of benefit that was payable to that person or that would have been payable shall be taken to be the rate calculated by reference to a weekly income, for those purposes.

(3) A benefit is payable to child of a person who died before the proclaimed date at a rate of $13 per week, or, if both parents of the child, or members of the family on which it is dependent have died, at a rate of $13 per parent or member of the family.

(4) A benefit is only payable to a child where the child was substantially dependent on the person or persons in respect of whose death the benefit is payable immediately before the death of that person or those persons.

XVIII. s. 44 is amended thus:

(1) For the purposes of this s., where two or persons have lived together on a permanent and bona fide basis immediately before the death of one or more of those persons and had so lived for not less than 2 years immediately before the death of any of those persons, they shall be deemed to be relatives.

(2) Delete; or: The rate of a benefit under this s. is not subject to variation in accordance with s. 88, save in respect of benefits payable to persons under sub-section (5) of this s..

Sexist Language

All sexist language in the Bill should be amended, along the lines of the following examples:

XIX. s. 4(1). 'deceased person' means a person whose usual place … is satisfied that death was the result … (b) … provided that the person would have been … sickness if death had not ensued.
'qualifying age', in relation to persons, means the age –

XX. s. 4(4) Pluralise.

XXI. s. 6 The Director-General, may for the purposes of this Act, establish such offices as seem fit and places an office in charge of any such office.

XXII. s. 7 'Officer', wherever occurring, becomes 'officers'. Pronouns change accordingly.

XXIII. s. 9(c) Pluralise.

XXIV. s. 12 Pluralise, cf. s. 9.

XXV. ss. 15, 16, 17(4), 18, 22 Pluralise.

XXVI. s. 27

(1) Omit 'his' of 'his incapacity'; amend 'his weekly income' to read 'the weekly income'; amend 'his earnings' to 'the person's earnings'.

(2) Amend 'his weekly income' to 'the weekly income'.

(3) Cf. 2; 'his earnings' amended to 'the person's earnings'.

(4) Amend 'his incapacity' to 'the incapacity', 'his weekly income' to 'the weekly income', omit 'his' in 'his earnings'.

XXVII. s. 28 Cf. s. 27.

XXVIII. s. 29

(1) (a) and (b) omit 'his', 'After he attains the age of 21 years' amended to 'after the persons attains the age of 21 years', last phrase amended to 'if the person had not been incapacitated'.

(2) amend 'he' to 'the person'.

(3) amend 'after he attained the age of 21 years' to read 'after the age of 21 years was attained'.

XXIX. ss. 30(2), 33(2), 35(4)(a), 38(1) amend 'his' to 'the' or omit.

XXX. ss. 66(4), 74(3), (4), 76(1), (2), (3), (5), (6)(a) amend 'chairman', whenever occurring, to read 'chairperson'.

1:–3.6. – Minister for Repatriation and Compensation's Letter to CAMP NSW, 24 September 1974

I wish to acknowledge receipt of your letter and submission dated 22 September 1974 concerning the proposed *National Compensation Act*.

The Minister is now examining your submission in detail and will write to you further in the near future.

1:–3.7. – Senate Standing Committee on Constitutional and Legal Affairs Advertisement, 6 November 1974 [527] [528]

[527] n.a. *The Sydney Morning Herald*, Wednesday, 6 November 1974, p. 14. The above advertisement was inserted in 12 newspapers throughout Australia on 6, 7 and 8 November 1974. (Source: *Report on the Reference: the Clauses of the National* Compensation Bill 1974, the Senate Standing Committee on Constitutional and Legal Affairs, AGPS, Canberra, (continued...)

The Senate has referred the clauses of the National Compensation Bill 1974 to this Committee for investigation and report

The Committee will have at its disposal the submissions made to the National Committee of Inquiry on Compensation and Rehabilitation in Australia (known as the Woodhouse Committee). The Committee proposes to invite submissions from:

i. The Law Council of Australia.
ii The National Compensation Insurance Industry Committee.
iii The Australian Council of Trade Unions.

The Committee invites written submissions on the above matter from interested persons and organisations who feel that they could provide further assistance to the Committee.

Any person or Organisation wishing to furnish a submission on this matter is asked to inform Mr Michael Dixon, Secretary, Senate Standing Committee on Constitutional and Legal Affairs, Parliament House, Canberra, ACT (Telephone 726737) as soon as possible and forward the written submission to him by 25 November, 1974.

1:–3.8. – CAMP NSW Letter to Senate Standing Committee on Constitutional and Legal Affairs, 14 November 1974

Enclosed is a submission [529] from the above organisation [CAMP NSW] regarding the National Compensation Bill 1974, which is currently under consideration by the Senate Committee of which you are secretary.

We ask the Committee to consider carefully our proposals which are designed to ensure rights of homosexual families, and all families which are outside the accepted pattern.

Peter de Waal and I, [Mike Clohesy] who compiled the submission, would be willing to discuss it with the Committee should it so desire.

1:–3.9. – CAMP NSW Letter to Law Council of Australia, 14 November 1974

Enclosed find a copy of proposed alterations to the National Compensation Bill 1974 by the above [CAMP NSW] organisation. These alterations aim to ensure the rights of homosexual families, and all families outside the usual pattern.

It has come to our attention that the Senate Standing Committee on Legal and Constitutional Affairs is seeking a submission from your Council regarding the same matter. We ask you to consider our proposals and to incorporate them into your own, when you present them to the Committee.

We are wiling to discuss our submission with you whenever you should wish.

1:–3.10. – CAMP NSW Letter to Executive of the Australian Council of Trade Unions, 14 November 1974

Enclosed find a copy of proposed alterations to the National Compensation Bill 1974 by the above [CAMP NSW] organisation. These alterations aim to ensure the rights of homosexual families, and all families outside the usual pattern.

It has come to our attention that the Senate Standing Committee on Legal and Constitutional Affairs is seeking a submission from the ACU regarding the same matter. We ask you to consider our proposals and to

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[527](...continued)
1975, £ 2).

[528] The members of the Senate Standing Committee on Constitutional and Legal Affairs at the time were Mervyn George Everett, Chair, ALP Senator for Tas; John Norman Button, ALP Senator Vic; Frederick Michael Chaney, LP Senator for WA; Donald James Grimes, ALP Senator for Tas; Alan Joseph Missen, LP Senator for Vic; The Hon Reginald Charles Wright, LP Senator for Tas. Former members of the Committee were: Peter Drew Durack, LP Senator for WA (he ceased to be a member of the Committee on 5 January 1975 and was replaced by Senator Wright on the same day). James Robert McClelland, ALP Senator for NSW, (he, then chair of the Committee ceased to be a member of the Committee on 12 February 1975 and was replaced by Senator Grimes on 18 February 1975).

[529] See: 1:–3.5. page 219, 'CAMP NSW Proposed Alterations to National Compensation Act 1974'.

incorporate them into your own, when you present them to the Committee.

We are wiling to discuss our submission with you whenever you should wish.

1:–3.11. – Law Council of Australia Letter to CAMP NSW, 27 November 1974

Thank you for your letter of 14 November, 1974 and enclosed copy of proposed alterations to the above Bill. Copies of your proposal have been forwarded to the Law Council Committee which is to prepare and present a submission to the Senate Standing Committee on Legal and Constitutional Affairs.

Please note that the Law Council has moved from Sydney to 185 William Street, Melbourne.

1:–3.12. – Senate Standing Committee on Constitutional und Legal Affairs Letter to CAMP NSW, 28 November 1974

I refer to your letter of 14 November 1974, to which was attached a submission on the clauses of the National Compensation Bill 1974.

I have been asked by the Committee to thank you for your interest in forwarding to the Committee your comments on the Bill. Your submission, together with others which have been received, have been placed before the members of this Committee.

1:–3.13. – The National Compensation Act 1974, Clause 55 [530]

55. Part VI – Widows' Pension

(1) In this Part, unless the contrary intention appears –
'child' means a person who has not attained the age of 20 years;
'class A widow' means a widow (but not a widower) who –
(a) is pregnant;
(b) is maintaining a family home for a child;
(c) is caring for an aged or infirm person who is related by blood or adoption to the widow;
(d) is unable to engage in suitable gainful work; or
(e) became a widow after attaining the age of 55 years;
'class B widow' means a widow (but not a widower) other than a class A widow.

(2) For the purposes of sub-section (1), a woman shall not, by reason of her employment in, or conduct of, a hospital, nursing horne, old peoples home or similar institution, be taken to be caring for aged or infirm persons.

(3) For the purposes of this Part, where a woman, although not married to a man, lived with him on a permanent and bona fide domestic basis immediately before his death and –
(a) the woman had so lived with the man –
(i) for not less than 3 years immediately before his death; or
(ii) from the time when the injury or sickness occurred until his death, whichever is the shorter; or
(b) the man was survived by a child who was a child of the union between that woman and that man and was dependent on that man immediately before his death,

then —
(c) that woman shall, unless she has re-rnarried, be deemed to be a widow of that man; and
(d) that man shall be deemed to have been her husband and she shall be deemed to have been his wife.

(4) In this Part, each reference to 'the commencing date' is, in relation to the person who died as a result of sickness, a reference to the date fixed under s. 21.

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[530] The Bill for an Act included in the Senate Committee's report changed s. 51 (in the draft Bill – see: 1:–3.1.2. page 218) to s. 55 with a major change when the de facto relationship had to have been in existence for 3 years instead of 2 years as stated in the Committee of Inquiry's report. *Report on the Reference: the Clauses of the National Compensation Bill 1974*, the Senate Standing Committee on Constitutional and Legal Affairs, AGPS, Canberra, 1975.

1:–3.14. – CAMP NSW Petition for 1974 National Compensation Bill

To the Honourable the Speaker and Members of the House of Representatives in Parliament Assembled:

The humble petition of the undersigned citizens of Australia respectfully sheweth –

That the National Compensation Bill 1974 and the proposals for a new Superannuation scheme for Australian Government employees discriminate in the payment of revisionary benefits against members of families which:

(a) are homosexual families;

(b) do not fit the nuclear family pattern.

Yours petitioners therefore humbly pray that the National Compensation Bull 1974 and the new superannuation scheme for Australian Government employees be amended to provide for the payment of revisionary benefits to dependent members of all families, however constituted.

And your petitioners, as in duty bound, will ever pray.

(Signature) (Address)

1:–4. – Superannuation Scheme for Australian Government Employees

Moves by the Government to amend the superannuation scheme for Australian Government employees provided another forum in which CAMP could urge a redefinition of family and dependence. It was assumed that when the Government came to implement its National Superannuation Scheme, [531] it would use the basic principles of this scheme as guidelines. In the light of this assumption, the submission concerning the scheme tor Australian Government Employees took an greater importance.

A submission [see page 229], of basically the same format as that concerning the Compensation scheme, was sent to Treasurer, Frank Crean on 25 September 1974. It said:

> We are concerned that the rights, even the existence, of homosexual families have been ignored [see page 232].

The submission urged that in the payment of reversionary benefits (benefits payable to survivors of contributors to the scheme upon the contributor's death) dependent members of families, as redefined by us in the submission concerning the Compensation scheme, be recognised.

On 1 October 1974 the private secretary to the Treasurer wrote:

> Before departing for overseas, the Treasurer asked me to thank you for your letter of 25 September 1974 and attachments which have been noted [see page 236].

CAMP replied a week later:

> Presuming that politicians have minds, we presume that you have same opinion of the submission sent and that you have done more than the nauseating cliche 'noted' … It would be appreciated if you could give some indication of your opinion about our submission, same meaningful opinion [see page 236].

Over five weeks later the Treasurer replied through the Minister assisting him that our submission would receive careful consideration [see page 236].

To obtain further support for our proposals, copies of the submission were sent to Prime Minister Whitlam, Deputy Prime Minister Cairns, Minister tor Social Security Hayden with a covering letter which declared:

> We look forward to evidence that you are supporting moves for a more just society in Australia [see page 236].

Whitlam's office referred the submission to the Treasurer and informed us of this without commenting on it [see page 236]. The private secretary to Dr Cairns [Deputy Prime Minister] wrote:

> The many comments received have now been assessed, including requests to eradicate sexist language and it is anticipated that the matter will be considered by the Government as soon as possible [see page 237].

Recognition of the section on sexist language was at least some advance on the other ministers. We were informed by the Treasurer that the Minister tor Social Security had forwarded our letter to him [see page 237].

Since the superannuation scheme is concerned with employees, and the union movement had already displayed considerable interest in it, CAMP felt that this was an opportune time to introduce the issue of homosexual rights to unions. It therefore sent copies of the submission to thirty-three unions, with members in the public service, and the ACTU [see page 237].

The willingness of the union movement to take up the homosexual cause is nil, as evidenced by the fact that only the Builders Labourers Federation of NSW has ever replied to our communication. The BLF letter stated:

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[531] *National Superannuation in Australia: Interim Report of the National Superannuation Committee of Inquiry*, AGPS, Canberra, June 1974.

> The Union supports the proposals submitted to the Government by CAMP and we will endorse your suggestions in a letter to the appropriate Government Department. Our best wishes to your members. We wish you well in your struggle and we will give you as much support as possible [see page 238].

When CAMP learnt that the scheme was to be discussed at a meeting of the Parliamentary Labor Party (Caucus) on 4 December 1974, the following urgent telegram was sent to Senator Arthur Gietzelt [532] (ALP, NSW):

> Please ensure today's Caucus herald a breakthrough for alternative families by adopting CAMP's superannuation proposals [see page 238].

In a subsequent telephone conversation Senator Gietzelt indicated that there had not been opportunity to press our proposed amendments since Caucus was only voting on the scheme in principle. Further appropriate action will be taken when the matter comes up tor debate again.

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[532] Arthur Thomas Gietzelt, ALP Senator for NSW.

1:–4.1. – CAMP NSW Proposed Alterations to the Superannuation Scheme for Australian Government Employees, 25 September 1974

Explanatory Memorandum

The following alterations to the proposed superannuation scheme have been formulated to ensure the rights of homosexual families. Presuming that the enabling legislation will be based, in large part, on the formulations in the Treasurer's proposals of March 1974, [533] we have adopted the method of suggesting changes to the wording of those proposals.

Two options have been formulated Option A is that which, given the limitations of the present system, most closely caters for our wishes. Option B has been formulated because of our awareness that political exigency will most probably and unfortunately demand that its softer approach be adopted.

We are not happy with the time limit placed on the existence of families other than those of married people. It has been suggested to the Attorney-General [Senator Lionel Murphy] that some sort of family register be set up where people could register themselves as a family for legal purposes. This would facilitate administration and would do away with the necessity for a time period.

The eradication of sexist language is necessary whichever, or if neither option, is adopted. Part of the liberation of this society is bound up with changing its dominant-male ethic.

Option A

I. Paragraph 11 is amended to read after 'alternatively' (line 13): 'the member could purchase an increase in reversionary benefits only, either for the member or members of the family or the children or for all'.

II. Paragraph 24 is amended to read: 'Persons who would automatically be deemed to be dependent upon the member (male or female) are':–

(1) A member or members of the family of the contributor, family being understood for the purposes of this scheme as: a married couple, or two or more people who have lived together on a permanent and bona fide basis for two years preceding the death of the contributor, excluding off-spring;

(2) Children of the family residing with the family.

III. Paragraph 25 is amended to read: 'Persons who would need to establish substantial dependency to the satisfaction of the commissioner are':–

(1) A member or members of a family as defined in paragraph (24)(i) who have lived together for less than 2 years, but which family can be regarded as having been permanent in nature;

(2) Children of the family, living apart from the family.

IV. Paragraph 26 is amended to read: 'Children' means children who are under 16, or who, if aged 16 or more bot under 25, are undergoing full-time education. It does not include any children of a family established after the date of retirement or the date a pensioner attains age 60, whichever is the later, unless the family had been in existence for 5 years.

V. Paragraph 27 is amended to read: The benefit payable to eligible family member or members would be:–

(1) A pension of 67% of the pension that would have been payable to the contributor under paragraphs 15, 19 or 20, had the contributor instead retired on invalidity grounds, the family member or members having the right to choose between the two levels of pension available; **and**, depending on the level of pension selected.

(2) A lump sum equal to the **supplementary** contributions of the contributor accumulated at the earning rate of the Fund from time to time (the contributor's accumulated **basic** contributions being paid to the Government) or a lump sum equal to contributions accumulated at the earning rate of the Fund from time to time.

If the contributor would not have been eligible for pension in the event of invalidity retirement, or subparagraph (ii) of paragraph 20 would have been applied to the contributor and the family member or members so elected, the benefit would be the lump sum payable under sub-paragraph (i) of paragraph 28. If sub-paragraph (ii) of paragraph 18 applied to the contributor, the benefit would be a pension of 67% of the

[533] Treasurer's Proposals for A New Scheme, *Superannuation Scheme for Australian Government Employees*, Canberra, March 1974, PP no. 14,1974.

pension payable under sub-paragraph (ii) of paragraph 15 and lump sum equal to his contributions accumulated at the earning rate of the Fund front time to time.

VI. Paragraph 23 is amended to read: If pension were payable to a family member or members, additional pension of 33% of the pension that would have been payable to the contributor (the family member or members having chosen between the two levels of pension available), would be payable in respect of eligible children or 11% for each child where there are 3 children or less. In the event of the pension for the member or members of the family ceasing to be payable for any reason, pension would be payable in respect of children in accordance with paragraph 29.

VII. The opening sentence of paragraph 29 is amended to read: The benefit payable where there is not an eligible member or eligible members of the family but there is an eligible orphan or child, would be:-

VIII. The opening sentence of paragraph 31 is amended to read: The benefit payable to an eligible [member] or eligible members of the family would be:–

IX. The opening sentence of paragraph 32 is amended to read: Where there was not an eligible family member or members, the benefit payable in respect of an eligible orphan or child would be pension aggregating:–

X. Paragraph 33 is amended to read: The pension payable to a family member or members would cease on the re-constitution of the family. Pensions payable in respect of children however would continue.

XI. Paragraph 34 is amended to read: In the event of the re-constituted family ceasing to exist, the Commissioner would have the power to restore pension in necessitous circumstances, e.g. where there was evidence of financial hardship.

XII. The title of paragraph 35 is amended to: Families established after retirement.

XIII. Paragraph 35 is amended to read: A family established after retirement but before the pensioner reached age 60 would be recognised for the purpose of payment of pension to an eligible family member or members, subject to all conditions of the definition of a family under this scheme being fulfilled. Surviving members of post-retirement families established after age 60 by a pensioner, which had been in existence for at least 5 years at the time of the pensioner's death would also be recognised.

XIV. Paragraph 36. The title is amended to read: *Existence of more than one eligible person*. The paragraph is amended to read: In the event of more than one person establishing eligibility, the allocation of benefits between them would be at the discretion of the Commissioner, or, in the case of members of the same family, would be shared between them equally.

XV. Paragraph 43(ii). For the purpose of this s., we regard CAMP (NSW Branch) as an appropriate organisation to be selected in matters relating to homosexual families.

XVI. Paragraph 50 is amended to read: Where a pension is not being paid at the date of commencement of the proposed scheme, members of the families of former pensioners, who would have been able to satisfy the proposed eligibility conditions at the date of death of the former pensioner and who have not since disqualified themselves, may, subject to certain conditions, be granted a pension at the appropriate rate from the date of commencement of the proposed scheme.

XVII. Paragraph 74 is amended to read: *Guaranteed Lump Sum Benefit*. On retirement a contributor, or in the event of death while a contributor, the family, would have the option of taking benefits under the proposed scheme or the lump sum benefit that would have been payable had the benefit provisions of the Provident Account (3 times contributions accumulated at the interest rate applying from time to time) continued to apply.

Option B

I. Paragraph 24 (ii) is amended to read: One or more person who have lived together with the member on a bonafide basis for a continuous period of at least 3 years immediately preceding the death of the member, such person or persons to be termed, for the purposes of this scheme, spouse or spouses of the member.

II. Paragraph 25 (i) and (ii) is amended thus:
(1) A legal spouse living apart from the member;
(2) A spouse, as defined in paragraph 24(ii), whose relationship with the member existed for less than 3 years but which can be regarded as having been permanent in nature;

III. Paragraph 26 is amended to read: 'Children' means children who are under 16 or who, if aged 16 or more but under 25, are undergoing full-time education. It does not include any children (legitimate, illegitimate, or adopted) of a marriage or relationship established after the date of retirement or the date a pensioner attains age 60, whichever is the later, unless the relationship had been in existence for 5 years.

IV. Paragraph 33 is amended to read: The pension payable to a spouse would cease on remarriage or on the establishment of another relationship. Pensions payable in respect of children however would continue.

V. Paragraph 34 is amended to read: In the event of remarriage or the relationship ceasing to exist the Commissioner would have the power to restore pension in necessitous circumstances, e.g. where there was evidence of financial hardship.

VI. A marriage after retirement but before the pensioner reached age 60 would be recognised for the purpose of payment of pension to an eligible spouse. A relationship established before the pensioner attained age 60 and which remained in existence for a period of at least three years until death, or which is placed on a legal basis before death, would be recognised. The surviving spouse of a post-retirement marriage or relationship established after age 60 by a pensioner, which had been in existence for at least 5 years at the time of the pensioner's death would also be recognised.

VII. Paragraph 36. The title is amended to read: *Existence of more than one eligible person*. The paragraph is amended to read: In the event of more than one spouse establishing eligibility, the allocation of benefits between them would be at the discretion of the Commissioner.

VIII. Paragraph 43(ii). For the purpose of this s., we regard CAMP (NSW Branch) as an appropriate organisation to be selected in matters relating to homosexual relationships.

Sexist Language

All sexist language should be eradicated, along the lines of the following examples:

I. Paragraph 5, paragraph 6, paragraph 12(ii), paragraph 13(ii) paragraph 15(ii) paragraph 16, paragraph 19: Amend 'his', wherever occurring, to read 'the'.

II. Paragraph 9, paragraph 11: Omit 'his', wherever occurring.

III. Paragraph 14: Pluralise.

IV. Paragraph 15 line 4: Amend 'his' to read 'the contributor's'.

V. Paragraph 17:

(1) Line 2: amend 'he' to 'the person';

(2) Line 6: omit 'he'
amend 'his' to read 'the'.

VI. Paragraph 18: Amend opening sentence after 'or higher' to read 'than previous designation'.

(1) line 1: amend 'he' to 'the person';
line 4: amend 'his' to 'the';
line 6: amend 'his' to 'the'.

(2) line 1, 4, 5: amend 'he' to 'the person';
line 7, 9: amend 'he' and 'his' to 'the'.

VII. Paragraphs 43(i), 44(i): Amend 'chairman' to read 'chairperson'.

1:–4.2. – CAMP NSW Letter to Frank Crean, Treasurer, 25 September 1974

Your announcement in the Budget that legislation to bring into effect the new superannuation scheme for Australian Government employees would be soon introduced into Parliament has prompted us to hasten the work we had begun on this matter.

We have studied the March 1973 report of the Treasury committee on superannuation, [534] your March 1974 proposals,[535] and the actuaries' report [536] on your proposal. We are concerned that the rights, even the

[534] See: 1:–4.2.1. page 232, 'Report of the Treasury Committee'.
[535] See: 1:–4.2.2. page 233, 'Treasurer's Proposals for a New Scheme'.
[536] See: 1:–4.2.3. page 234, 'Actuaries' Report on the Treasurer's Proposals'.

existence, of homosexual families have been ignored. Paragraph 22 of your proposals [537] outlines various changes in the community, but fails to mention homosexuals.

We have formulated alterations to the proposed scheme which will ensure the rights of homosexual families. Presuming that the enabling legislation will be based, in large part, on the formulations in your proposals, we have adopted the method of suggesting changes to the wording of your proposals.

Two options have been formulated. [538] Option A is that which, given the limitations of the present social system, most closely caters for our wishes. Option B has been formulated because of our awareness that political exigency will most probably and unfortunately demand that its softer approach be adopted. Recommendations 3 and 4 of the actuaries' would need to be altered in the light of our suggestions.

We are not happy with the time limit placed on the existence of families other than those of married people. We have suggested 2 years in Option A to bring this scheme into line with the National Compensation Scheme. We intend to suggesting to Senator Murphy in the near future that some sort of family register be set up where people can register themselves as a family for legal purposes. This would facilitate administration and would do away with the necessity for a time period.

The eradication of sexist language is necessary whichever, or if neither option, is chosen. Part of our liberation is bound up with changing the dominant-male ethic of Australian society.

We trust you will give these proposals serious consideration, and implement them as far as possible, so that sections of society long denied it, might at last find some justice.

1:–4.2.1. – Report of the Treasury Committee, March 1973 [539]
Eligibility for Reversionary Benefits

Widows and widowers

6.17 The Committee recognises that within the community an increasing number of family units are becoming dependent for their continued support upon the joint incomes of husband and wife. As a corollary to this development, the greater the percentage of married women entering the workforce, the smaller the percentage of wives who are wholly dependent upon their husbands' income.

6.18 Under these circumstances, and in terms of the provisions of the existing Pension Scheme which grant reversionary benefits automatically to widows but require widowers to establish dependency before being eligible for such benefits, the financial situation of the family unit can be seriously affected on the death of a female contributor who was contributing to the support of the family unit but upon whom it could scarcely be said the surviving widower was wholly dependent. If the husband rather than the wife dies, however, the income of the family unit is largely maintained as the working widow receives both her own salary and the widow's pension.

6.19 The Committee considers that this situation should be recognised in the superannuation scheme by removing the distinction between benefits for widows and widowers. At the same time the Committee considers that greater weight should be given to dependency in deciding whether reversionary benefits are payable [see paragraphs 13.43 to 13.46].

De facto spouses

6.20 Changing social attitudes towards the status of de facto wives and representations seeking their recognition for superannuation benefit purposes lead the Committee to believe that, consistent with the provisions of other Commonwealth legislation, they should be eligible for benefits.

6.21 As the Committee does not propose to draw a distinction between males and females in relation to

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[537] Treasurer's Proposals for A New Scheme, *Superannuation Scheme for Australian Government Employees*, Canberra, March 1974, PP no. 14, 1974.

[538] See: 1:–4.1. page 229, 'CAMP NSW Proposed Alterations to the Superannuation Scheme for Australian Government Employees'.

[539] Report of the Treasury Committee on Superannuation, *Superannuation for Commonwealth Employees*, Canberra, March 1973, PP no. 37, 1973, pp. xi, 45, 87-8. Membership of the Committee: Mr RC Davey – Assistant Secretary, Retirement Benefits Branch, Department of the Treasury (Chairman); Mr HB MacDonald - Secretary, Public Service Board; Mr AA Pearson – Acting Assistant Secretary, Superannuation Project, Department of the Treasury; Mr RJ Perriman – Secretary, Office of the Superannuation and DFRB Boards; Mr JR Trowbridge – Actuary, Office of the Commonwealth Actuary.

contributions and other provisions, it considers it would be inappropriate to do so in this context. It would recognise, therefore, both the de facto widows and widowers for benefit purposes on the same dependency grounds as would apply to legal spouses provided the relationship could reasonably be regarded as having been permanent [see paragraphs 13.43 to 13.45].

Reversionary benefits – eligibility

13.42 The Committee has concluded that reversionary benefits should be payable to a much wider group of persons than hitherto. In reaching this conclusion the Committee has recognised the changes occurring in the community which are resulting in:

(i) an increasing number of households relying on the incomes earned by both husband and wife;
(ii) the eligibility of married women for permanent appointment;
(iii) variations to conditions of service to facilitate continuation of a married woman's career while discharging family obligations as a wife and mother;
(iv) the increasing recognition, for benefit purposes, being given to de facto relationships and illegitimate children.

13.43 At the same time, the Committee considers that significant weight should be given to dependency in determining who should benefit, by way of reversionary benefits, from the superannuation scheme. The Committee believes that a person who did not receive from the member substantial support while the members was alive should not benefit by way of a Commonwealth-financed benefit after the member dies. Accordingly, except in certain situations in which dependency will automatically be deemed to exist, it is intended that substantial degree of dependency upon the member will be necessary to establish eligibility for payment of benefit.

13.44 Person who will automatically be deemed to be dependent upon the member (male or female) are:

(i) a legal spouse living with the member;
(ii) a de facto spouse who has lived with the member on a bona fide domestic basis for a continuous period of at least three years immediately preceding the death of the member; and
(iii) children of the member, including adopted and illegitimate children, residing with the member.

13.45 Persons who need to establish substantial dependency to the satisfaction of the administering authority are:

(i) a spouse living apart from the member;
(ii) a de facto spouse whose relationship with the member existed for less than 3 years but which can be regarded as having been permanent in nature;
(iii) children of the member, including adopted and illegitimate children, living apart from the member;
(iv) children of a spouse or eligible de facto spouse, including adopted and illegitimate children;
(v) foster children.

13.46 'Children' means children who are under 16 or who, if aged 16 or more but under 25, are undergoing full-time education. lt does not include any children (legitimate, illegitimate or adopted) of a marriage or de facto relationship established after the date of retirement or the date a pensioner attains age 60, whichever is the later, unless the marriage places on a legal basis a de facto relationship recognised for the purposes of the scheme.

1:–4.2.2. – Treasurer's Proposals for a New Scheme, March 1974 [540]

Reversionary Benefits – Eligibility

22. Reversionary benefits would be payable to a much wider group of persons than hitherto, having in mind the changes occurring in the community that have resulted in:

(i) an increasing number of households relying on the incomes earned by both husband and wife;
(ii) the eligibility of married women for permanent appointment;
(iii) variations to conditions of service to facilitate continuation of a married women's career while discharging family obligations as a wife and mother; and

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[540] Treasurer's Proposals for A New Scheme, *Superannuation Scheme for Australian Government Employees*, Canberra, March 1974, PP no. 14, 1974, p. 9.

(iv) the increasing recognition for benefit purposes, being given to de facto relationships and illegitimate children.

23. At the same time, significant weight would be given to dependency in determining who would benefit, by way of reversionary benefit, from the superannuation scheme. A person who did not receive from the member substantial support while the member was alive would not benefit by way of a Government-financed benefit after the member dies. Accordingly, except in certain situations in which dependency would automatically be deemed to exist, a substantial degree of dependency upon the member would be necessary to establish eligibility for payment of benefit; for example, pension would be paid to a financially dependent de facto spouse of a deceased contributor or pensioner.

1:–4.2.3. – Actuaries' Report on the Treasurer's Proposals, June 1974 [541]

Summary of Recommendations

63. We commend those responsible for the design of the proposed scheme. It has same attractive and novel features and remedies the few deficiencies of the existing scheme. There is no need for us to comment on the many comparatively minor changes which are proposed but mention should be made of four major definite improvements which characterise the scheme. These are:

(i) the special structure of the scheme which provides a lump sum in the form of a return of the member's contributions with interest which, in a national scheme, makes periodical actuarial valuations unnecessary;
(ii) the ultimate provision of full benefits for persons joining the service with medical impairments and the inclusion of Provident Account members;
(iii) preservation provisions after ten years service which facilitate the mobility of staff;
(iv) a flexible contribution scale made possible by the particular structure of the scheme.

These have been attained in a scheme which is as simple in concept as one could expect a scheme with such a wide range of benefits to be. We support this basic approach as an answer to the complex problem of superannuation for Australian Government employees.

64. In the course of the Report we have given reasons for making six specific recommendation. These are:

Recommendation 1

That no supplementary pension be provided for service exceeding thirty years. (paragraph 26)

Recommendation 2

That the invalidity benefit be a pension of 70% of salary during any invalidity before age 60 and the usual age retirement benefit (ie 50% of salary pension plus a return of contributions with interest) at age 60. (paragraph 28)

Recommendation 3

That the widow's and children's pension be the suggested percentages of the invalidity pension in Recommendation 2, the accumulated basic contributions being paid to the Government in the event of the death before age 60 of a contributor or of an invalid pensioner. (paragraph 30)

Recommendation 4

That the scale of reversionary pensions be reviewed if legislation provides for separate reversionary pensions to be payable to each individual. (paragraph 33)

Recommendation 5

That, except in the case of existing pensioners, the proposed Government-financed pension payable on age retirement and the whole pension payable on invalidity or on death in accordance with Recommendations 2 and 3 be increased automatically and annually by the percentage increase in the Consumer Price Index. (paragraph 49)

Recommendation 6

That provisions be made to enable National Superannuation payments made as of right and regardless of

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[541] *Report on the Treasurer's Proposals for A New Superannuation Scheme for Australian Government Employees*, Canberra, Suite 1974, PP no. 103, 1974, pp. 25-6, 28-9. The actuaries, both Fellows of the Institute of Actuaries, who prepared this report were: Professor AH Pollard and GL Melville.

means by the Australian Government to be fully offset against any benefit payments under the proposed superannuation scheme for Australian Government employees. (paragraph 57)

65. We would like to draw attention to the proposal in paragraph 59, and to the reasons behind it, that the Government issue a Consumer Price Index-linked pension for purchase both by retired employees of the Australian Government and, on the same terms, by retired persons generally.

66. We are aware of the criticism that the proposed changes are unnecessarily generous. We do not support that view. The rearrangement of benefits provides more appropriate financial protection for employees, including those with medical impairments, against all the likely hazards, and with the modifications we have suggested does so at a cost in respect of existing contributors only 3.7% above the cost of the present arrangement. We support the proposed restructuring of the Scheme.

Frank Crean, Treasurer, Letters to Actuaries, 28 March 1974

You will be aware from discussions with Mr JM Wark of the Treasury that the Government would like you, jointly with Professor AH Pollard, to examine and report on my proposals [see page 234] for a new superannuation scheme for Australian Government employees. You may also be aware of the general nature of my proposals, details of which I tabled in the House of Representatives on 5 March 1974.

Consideration of the proposals should proceed, I would think, against the background of the following matters:

(i) the nature of the existing superannuation arrangements and the criticisms that have been made of them;
(ii) the intended larger and more diverse membership of the proposed scheme;
(iii) fairness as between individual members of the scheme; and
(iv) the desirability of the scheme being readily understood by the membership and being relatively simple in concept and administration.

Without in any way limiting the scope of the report, I should like it first to deal in the broad with the proposals and then to comment on any particular components of the proposals where this is considered appropriate.

In this latter connection, I should like to comment specifically on the question of post-retirement updating of pensions. Last year the *Superannuation Act* was amended to include a formula for automatically updating pensions in course of payment. If the proposed new scheme is introduced, it will be necessary for the Government to decide whether the use of that formula, without modification, would continue to be appropriate.

It is apparent from calculations already made by the Australian Government Actuary that the proposed scheme would result in increased cost to the Government. I would want the report to deal with this, from both short and long term aspects, with particular reference to:

(i) the range of probable costs compared with the existing scheme, taking into account the various options that would be available to members retiring, including the age at which they retire; and
(ii) the main causes of the increased cost.

Because the Government is anxious to take a final decision on my proposals for a new superannuation scheme as soon as possible, I should like the report to be available by the end of April or early May. I have therefore asked the Secretary to the Treasury to arrange for the Treasury, the Australian Government Actuary and the Australian Government Retirement Benefits Office to provide such information and assistance as will facilitate the examination and report.

I have also asked Treasury officers to get in touch with you to explain the nature of the information that is immediately available and to discuss such matters as fees and expenses and possible staff and accommodation requirements.

I should be glad if you would let know as a matter of urgency whether you are willing to undertake this task jointly with Professor Pollard. I should mention that, on acceptance by you both, it is probable that I shall make a short statement about the appointments.

I am writing in similar terms to Professor Pollard.

1:–4.3. – Letter from RQ Freney, Private Secretary to the Treasurer to CAMP NSW, 1 October 1974

Before departing for overseas, the Treasurer asked me to thank you for your letter of 25 September 1974 and attachments which have been noted.

1:–4.4. – CAMP NSW Letter to Frank Crean, Treasurer, 8 October 1974

Further to our submission concerning the superannuation scheme for Australian government employees and the reply by Edward Shann on behalf of RQ Freney on behalf of you.

Presuming that politicians have minds, we presume that you have some opinion of the submission sent and that you have done more than the nauseating cliche noted. It should have been obvious that a considerable amount of valuable time and energy was expended in the preparation of that submission. Since we both [Peter de Waal & Mike Clohesy] have full-time occupations, this work had to be done in our free time.

In the light of this, it would be appreciated if you could give some indication of your opinion about our submission, some meaningful opinion.

1:–4.5. – Letter from FE Stewart, Minister Assisting the Treasurer to CAMP NSW, 14 November 1974

The Treasurer has asked me to reply to your letter of 8 October 1974 in which you refer to your earlier submission regarding the proposals for a restructuring of the superannuation arrangements for Australian Government employees.

You may be assured that your submission will receive careful consideration along with the many hundreds of others received on the proposed superannuation scheme. However, at this stage the Government has not yet considered the proposed scheme and I am therefore unable to indicate whether the courses proposed by you will be adopted.

1:–4.6. – CAMP NSW Letters to Prime Minister, Deputy Prime Minister and Minister for Social Security, 30 September 1974

Enclosed find a copy of alterations which this organisation has suggested to the Treasurer that he make to the forthcoming superannuation scheme for Australian Government employees.

The scheme totally ignores the rights of homosexuals. We are hopeful of your active support for our proposals, which seek to widen the definition of family, so that all relationships will be recognised.

Presuming that the enabling legislation will be based on the formulations in the Treasurer's March 1974 proposals, we have adopted the method of suggesting changes to the wording of these proposals. Two options have been formulated. Option A is that which, given the limitations of the present social system, most closely caters for our wishes. Option B has been formulated because of our awareness that political expediency will most probably and unfortunately demand that its softer approach be adopted.

We are not happy with the time limit placed on the existence of families other than those of married people. We have suggested 2 years in Option A to bring this scheme into line with the National Compensation Scheme. We intend suggesting to Senator Murphy in the near future that some sort of family register be set up where people can register themselves as a family for legal purposes. This would facilitate administration and would do away with the necessity for a time period.

The eradication of sexist language is necessary whichever, or if neither option, is chosen. Part of our liberation is bound up with changing the dominant-male ethic of Australian society.

We look forward to evidence that you are supporting moves for a more just society in Australia. [The following addition was made to the Social Security Minister's letter] You will have a further chance to do so when we make similar proposals regarding the National Superannuation Scheme.

1:–4.7. – Prime Minister Letter to CAMP NSW, 11 October 1974

I acknowledge receipt of your letter of 30 September 1974 to the Prime Minister concerning the new superannuation scheme for Australian Government employees.

1:–4.8. – Prime Minister Letter to CAMP NSW, 21 October 1974

I refer again to your letter of 30 September 1974 in which you put forward proposals for the restructuring of the Superannuation Scheme.

I have been asked to let you know that your proposals have been noted and that your letter has been referred to the Treasurer, who has responsibility for the Superannuation Scheme, for consideration.

1:–4.9. – Deputy Prime Minister Letter to CAMP NSW, 15 October 1974

Dr Cairns has asked me to thank you for your letter of the 30 September 1974 concerning the restructuring of the Superannuation Scheme for Australian Government employees.

Dr Cairns is aware of the many problems being faced by contributors under the existing Superannuation Scheme and of the strong support for the Treasurer's proposals.

The many comments received have now been assessed, including requests to eradicate sexist language and it is anticipated that the matter will be considered by the Government as soon as possible.

1:–4.10. – Treasurer Letter to CAMP NSW, 10 October 1974

I wish to acknowledge receipt of your letter of 30 September 1974 to the Minister for Social Security concerning the Treasurer's proposals for varying the existing superannuation arrangements for Australian Government employees.

The Treasurer has asked me to say that your views will be taken into consideration and has said that he expects that the matter will be considered by the Government as soon as practicable.

1:–4.11. – CAMP NSW Letter and Submission Forwarded to 33 Unions, 29 September 1974
For Urgent Consideration

The Union Executive

Enclosed find a copy of alterations which the above organisation [CAMP NSW], a homosexual political movement, has suggested to the Treasurer that he make to the forthcoming superannuation scheme for Australian Government employees.

The interest of the union movement in this scheme is well-known, but we fear that it has, yet again, ignored the rights of its homosexual members. We are hopeful that it will actively support our proposals which seek to widen the definition of family, so that all relationships are recognised.

Presuming that the enabling legislation will be based on the formulations in the Treasurer's March 1974 proposals, we have adopted the method of suggesting changes to the wording of those proposals. Two options have been formulated. Option A is that which, given the limitations of the present social system, most closely caters for our wishes. Option B has been formulated because of our awareness the political exigency will most probably and unfortunately demand that its softer approach be adopted.

We are not happy with the time limit placed on the existence of families other than those of married people. We have suggested 2 years in Option A to bring this scheme into line with the National Compensation Scheme. We intend suggesting to Senator Murphy in the near future that some sort of family register be set up where people can register themselves as a family for legal purposes. This would facilitate administration and would do away with the necessity for a time period.

The eradication of sexist language is necessary whichever, or if neither option, is chosen. Part of our liberation is bound up with changing the dominant-male ethic of Australian society.

We look forward to evidence that the union movement is seeking to redress its previous ignoring of alternative family life-styles.

1:–4.12. – CAMP NSW Letter to Bob Hawke, ACTU President, 30 September 1974

We write to draw your attention to material recently sent to the ACTU and several unions associated with the Australian Public Service by the above organisation [CAMP NSW], a homosexual political movement.

The material concerns proposed alterations to the superannuation scheme for Australian Government

employees to provide for the rights of homosexual families, which have for too long been ignored.

We would be pleased if you would study these proposals and give them your support. It is high time that the labour movement in this country gave some support, in a positive way, to its homosexual members, instead of continually bolstering up the Status quo institutions and family life-style.

We would be pleased to discuss the superannuation proposals or any issues associated with the homosexual movement whenever you wish.

1:–4.13. – Joe Owens, Secretary, Australian Building and Construction Employees' and Builders Labourers' Federation, NSW Branch Letter to CAMP NSW, 4 October 1974

I am in receipt of your letter of 29 September, 1974 re amendments to the Government Superannuation scheme. The Union supports the proposals submitted to the Government by CAMP NSW and we will endorse your suggestions in a letter to the appropriate Government Department.

Our best wishes to your members. We wish you well in your struggle and we will give you as much support as possible.

1:–4.14. – CAMP NSW Urgent Telegram to Senator Arthur Gietzelt, 4 December 1974

TO: Senator Arthur Gietzelt
Parliament House
CANBERRA ACT 2600

TEXT: Please ensure today's Caucus heralds breakthrough for alternative families by adopting CAMP's superannuation proposals.

FROM: CAMP NSW

Figure 1: CAMP NSW Urgent telegram to Senator Arthur Gietzelt

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1:–5. – National Superannuation Scheme

We were disturbed in examining the Interim Report of the National Superannuation Committee of Enquiry [542] to note that in discussing payments tor pensioner's dependents, yet another advisory committee to the Government was unable to see beyond status quo institutions. The Report on page 183 states:

> … the dependants in question basically fall into one or two categories: a dependent spouse less than age 65 or a dependent child. [543]

On 13 December 1974 in a submission to it CAMP urged the Committee:

> to take a broader view of family units than is evidenced here. This would involve the definition of family to include all units, however constituted, which consider themselves a family [see page 244].

We pointed out that few statistics are available to indicate the numbers of families outside the traditional nuclear pattern, but listed some of those who would benefit by our proposals, namely, homosexual families of two or more members, nuclear families in which the husband wishes to be dependent, mixed-sex families of more than two members.

> Under our scheme, dependency would be the criterion for making payments, but in all cases this would have to be proved: it would never be assumed [see page 244].

It was stated that consideration needs to be given to establishing the principle that one member of a family may be dependent.

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[542] *National Superannuation in Australia: Interim Report of the National Superannuation Committee of Inquiry*, AGPS, Canberra, June 1974.

[543] ibid, p. 183.

1:–5.1. – History of the National Superannuation Committee of Inquiry [544]

In the budget speech of 15 August 1972, the then Treasurer, the Rt Hon BM Snedden [545] announced that the Liberal-Country Party Government intended to introduce a free-of-means test pension for everyone of 65 and over during the next three years. Mr Snedden said:

> The Government's commitment to introduce free-of-means test pensions for people aged 65 or over is an historic decision and represents a major social advance. It is one that has, of course, considerable financial and social implications. Because of this, the Government proposes to appoint a Committee of Inquiry to examine and report on these matters and on how this proposal may be responsibly financed with particular reference to national superannuation.

On 19 October 1972 the then Prime Minister, the Rt Hon William McMahon, [546] announced the establishment, membership and terms of reference of the National Retirement Benefits Committee of Inquiry. Members were Sir Leslie Melville (chairman) and included Mr TP Scott and Mr JEM Dixon. The Committee's terms of reference were:

> Having in mind the policy of the Government to abolish the means test within the next three years on age Pension eligibility for residentially qualified men and women aged 65 years and over, as announced in the 1972 budget speech, to report on:
> 1. Matters involved in the implementation of the abolition of the means test in accordance with the Government's announcement as set out in the Treasurer's 1972-73 budget speech.
> 2. Appropriate ways and means of financing the free-of-means test retirement benefits associated with a possible national superannuation scheme, including:
>   (a) the type of national superannuation;
>   (b) the persons to be covered;
>   (c) whether the scheme of national superannuation should be voluntary or compulsory.
> 3. The relationship of the new free-of-means test retirement benefits and national superannuation (if any) to private schemes and to life insurance.
> 4. The method of adjusting the new benefits over time.
> 5. The taxation treatment of the new benefits.
> 6. Methods of making the administration of the new scheme as simple as possible.
> 7. Any associated matters that the committee considers relevant to the objective of the inquiry.

The Committee was disbanded after the election of the Labor Government in December 1972.

On 20 March 1973, the Labor Government announced the appointment of the National Superannuation Committee of Inquiry, comprising Professor KJ Hancock (chairman), Mr KJ Hedley and Mr JB Wright, with revised terms of reference. Mr Wright withdrew from the Committee towards the end of 1973 and Mr RG McCrossin was appointed in his place. Professor Hancock is Professor of Economics, School of Social Sciences, Flinders University; Mr Hedley is a company director and a consulting actuary; and Mr McCrossin is the general manager, Australian Resources Development Bank Ltd, and is also a qualified actuary. The revised terms of reference were:

> A. To examine and report on:
> (a) overseas and Australian proposals for national superannuation schemes;
> (b) existing overseas national superannuation schemes;
> (c) the relevance of the above proposals and schemes to present and future Australian needs; and
> (d) the financial, economic and social implications of such proposals and schemes in the Australian setting.
> B. To make recommendations to the Government on a suitable national superannuation scheme.

In fulfilling this task the Committee will have regard to the Government's objective to abolish the means test within the life of the present Parliament for those aged 65 years and over and to increase the basic rate of pension to 25 per cent of average weekly earnings progressively by twice annual increases of at least $1.50 a week.

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[544] n.a. *Social Security Quarterly*, 'The National Superannuation Committee of Inquiry', Summer 1976-77, pp. 14-8.
[545] The Rt Hon Billy Mackie Snedden, LP MHR for the Vic seat of Bruce.
[546] The Rt Hon William McMahon, LP MHR for the NSW seat of Lowe.

The Committee will also include in its examination and investigation of the following matters:

1. in addition to covering the contingency of retirement on the grounds of age, whether the scheme should also cover other contingencies such as:
   (a) voluntary early or deferred retirement
   (b) invalidity
   (c) widowed survivor
   (d) mortality grant for surviving spouse
   (e) unemployment
   (f) sickness
2. whether benefits should be flat-rate or earnings related or a combination of these;
3. whether eligibility for benefits should be linked to the payment of contributions or depend simply on the occurrence of a contingency covered by the scheme;
4. the method of determining and adjusting the levels of benefits in future years;
5. the most equitable way of financing the scheme and distributing its cost;
6. the taxation treatment of benefits, and of contributions if they form part of the scheme;
7. the treatment of contributors who emigrate before or after an entitlement to draw benefits;
8. whether and if so what provisions should be made for contracting out of the scheme;
9. the method of introducing or phasing in the scheme;
10. the treatment of entitlements under existing superannuation schemes;
11. the best way in which free-of-means test benefits could be either replaced by, or integrated into, the national superannuation scheme.

The Committee advertised nationally inviting submissions from interested parties. Ninety submissions were received, which included 20 front industrial organisations and employers, 20 from trade union bodies and associations and 40 from individuals. Discussions were held with some of the individuals and organisations who had lodged submissions.

Interim Report of the National Superannuation Committee of Inquiry, 24 July 1974

On 24 July 1974, the then Minister for Social Security, the Hon WG Hayden, [547] presented to Parliament the Interim Report of the National Superannuation Committee of Inquiry entitled, *National Superannuation in Australia*. The Committee advanced two basic alternatives for consideration. One was a universal, flat-rate scheme, with pensions financed front general revenue; the other a non-funded partially contributory scheme, also providing a universal pension but with the pension bearing some relation to past contributions.

The Committee hoped that the report would generate discussion in the community on the different approaches outlined. Submissions from the public were again invited [548] and some 90 were received; 35 from industrial organisations and employers, 20 from union bodies and 30 from individuals. Further hearings were also conducted. [549]

Final Report of the National Superannuation Committee of Inquiry, 2 June 1976

The Final Report of the National Superannuation Committee of Inquiry consists of two parts: Part One, entitled, *A National Superannuation Scheme for Australia*, was tabled in the Senate by the Minister for Social Security, Senator the Hon Margaret Guilfoyle [550] on 2 June 1976.

Part Two of the Final Report is being prepared. The Government expects to receive this report shortly. Part Two will deal with occupational superannuation and will cover such aspects as the manner in which national and occupational schemes might be integrated and the need for regulation of occupational superannuation in regard to such matters as vesting and preservation of superannuation rights. It should be noted however that the Committee clearly favours a continuing and expanding role for occupational superannuation.

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[547] The Hon William George Hayden, ALP MHR for the Qld seat of Oxley.

[548] See: 1:–5.2.1. page 244, 'CAMP NSW Submission to National Superannuation Committee of Inquiry'.

[549] See: 1:–5.3.1. page 245, 'CAMP NSW Evidence at Public Hearing of National Superannuation Committee of Inquiry'.

[550] The Hon Margaret Georgina Constance Guilfoyle, LP Senator for Vic, Minister for Social Security.

Final Report (Part One) – Summary

The Committee was unable to reach unanimity in the first part of its Final Report. Part One of the final report therefore contains a recommendation by the majority of the committee in favour of a partially contributory scheme broadly in line with that described in its interim Report. There is also a dissenting view prepared by Mr Hedley stating a preference for a fiat-rate non-contributory approach.

It should be noted that the majority and minority reports both direct their attention primarily to the provision of income to the aged through Government-provided benefits available to the whole community.

Brief Summary of the Majority Report's Scheme

1. Rationale – The majority of the National Superannuation Committee's primary objective is to enhance the economic security and living standards of the aged, It believes that, given existing revenue sources, it would not be possible in the foreseeable future to meet the two objectives of abolishing the means test and raising the basic rate of pension to 25 per cent of AWE. The Committee was directed to have regard to both of these objectives in its terms of reference.

Consequently a partially-contributory scheme of national superannuation is recommended, as the revenue generated by contributions makes possible the provision of pensions that are less austere than the flat-rate pensions likely to emerge under a non-contributory alternative.

2. Principal Provisions –
   (a) Qualifying Age – Under the Scheme, everyone 65 years and over would qualify for the national superannuation pension. The age pension currently payable, on a means-tested basis, to women aged 60-64 would be phased out.
   (b) Pensions - The national superannuation pension due to any person would be the sum of three components:
      (i) a universal pension;
      (ii) a purchased pension; and
      (iii) supplementation.

The universal pension would be identical for all pensioners and equal to about 25 per cent of AWE. Purchased pensions would depend upon past contributions and would therefore differ between pensioners. Supplementation would be paid, on a tapered basis, to all those with purchased pensions below 40 per cent of the universal pension (ie 10 per cent of AWE) and would guarantee to all persons 65 and over an income equal to about 30 per cent of AWE.

The following table [see Table 65, page 242] shows how the guaranteed level is achieved and illustrates the fact that a person who has paid contributions and thereby earned a purchased pension will always receive a larger National Superannuation pension than a person who has contributed less.

Table 65: Guaranteed Level Percentages of AWE Under the Proposed National Superannuation Scheme

Universal Pension	Purchased Pension	Supplementation	National Superannuation Pension
25	0	5	30
25	5	2.5	32.5
25	10	0	35
25	15	0	40

Most individuals would therefore receive an income in retirement from the national scheme in the range of 30-35 per cent of AWE. The adjustment procedure would then ensure that the real value of the pension was maintained throughout the life of the pensioner.

   (c) Ancillary Benefits – Additional benefits, subject to a means test, would be payable as follows:
      (i) A dependent spouse's allowance, equal to the universal pension, would be paid in respect of the spouse of a pensioner if the spouse is below age 65. (Although it is thought that it would not be unreasonable for claimants to have to be at least 50 years of age).
      (ii) An allowance would be paid to a pensioner with dependent children. The allowance would be 20 per cent of the universal pension for each dependent child.
      (iii) A pensioner living alone would be eligible for living-alone allowance equal to 15 per cent of the universal pension.
      (iv) A pensioner living alone with one or more dependent children would be eligible for an additional guardian's allowance equal to 10 per cent of the universal pension (15 per cent if any child is aged below six or is an invalid requiring full-time care).

Although these ancillary benefits would initially be means tested, it is recommended that means test be removed at the earliest opportunity.

(d) Death Benefits – Modest benefits would be payable upon the death of people aged 19 or more. The benefits contain contributory and non-contributory components. Both components are age-related, yielding maximum benefits at ages of death when the needs of surviving dependants are typically highest.

(e) Adjustment of Benefits – Benefits would be subject to automatic quarterly adjustment in accordance with the movements of a Pensions Adjustment Index designed to ensure that, over the long term, benefits rise proportionately to AWE.

3. Contributions – Contributions to the Scheme would be compulsory. The liability to pay contributions would begin in the financial year in which a person reaches 19 and end in the financial year in which he or she reaches 63. Contributions would be income-related and would be collected with income tax. The amount to be paid in any financial year would be equal to five per cent of taxable income in excess of an exempt amount, the exempt amount being approximately 30 per cent of AWE. [551] Because of the use of an exempt amount of income the rate of contributions would rise with income, but for an average income recipient would approximate 33 per cent.

Records of contributions would be kept for use in determining entitlements to benefits. Accumulated contributions would be protected against inflation by annual adjustments to offset movements in the CPI; [552] additionally they would be increased by a further 1 per cent per annum.

4. Finance – The Scheme would be financed from the general revenue of the Commonwealth Government and from the contributions of employees and the self-employed. These contributions would be paid into the Consolidated Revenue Fund. Appropriations to meet the merging cost of benefits would be made by legislation. No special fund would be created. The Report rejects the need for specific employer contributions to a National Superannuation Scheme on the basis that there are economic and administrative advantages in avoiding that form of finance.

The gross cost of implementing the Scheme at the beginning of the financial year 1975-76 was estimated, for illustrative purposes, by the Committee to be about $3,600 million, compared with an estimated $2,150 million under existing pension arrangements. Gross revenue from contributions would be about $1,500 million.

5. Taxation – In the context of the taxation scheme operating from 1 January 1976, benefits (other than death benefits) would be included in assessable income and contributions would be regarded as a rebateable expense.

6. Administration – The collection and recording of contributions would be a responsibility of the Taxation Office. Benefit payments would be administered by the Department of Social Security, which would receive from the Taxation Office the information necessary to determine individual entitlements.

7. Date of Introduction – It is recommended that the Scheme should be implemented by 1 July 1978.

8. Occupational Superannuation – The Committee strongly favours a continuing and expanding role for existing occupational schemes. It views occupational superannuation as complementing a national scheme by providing for those who cannot maintain previous living standards on national superannuation pensions alone and by providing additional options, such as early retirement. However some modifications to occupational superannuation may be necessary and such possible modifications are to be considered in Part Two of the Committee's Final Report.

Brief Summary of Minority Report

The minority report completely rejects the concept of a contributory income-related national superannuation scheme and concerns itself primally with raising objections to the National Superannuation Scheme proposed by the majority report.

In the minority report the preferred approach to age pension provision is seen as the development of present arrangements, accompanied by the abolition of the means test. This approach would include three broad aspects.

1. A universal pension for all from age 65, irrespective of sex, marital status, work force status, housing arrangement, wealth or income to provide a basic level of security.

2. A selective supplement, ideally based on needs (which could include the consideration of housing, sharing of household expenses and any special circumstances) but directly or indirectly based on income if this

[551] AWE—Average Weekly Earnings.
[552] CPI—Consumer Price Index.

were more expedient for harmonisation with other social welfare arrangements and the personal income tax system.

3. Greater encouragement to voluntary savings for old age by way of personal savings, especially those of a contractual nature, through normal long-term investment media (including home purchase) and fair occupational pension plans for work force members (including self-employed).

Government Policy

The Government has referred the Final Report (Part One) to the Income Security Review Committee for consideration. In tabling the Report in the Senate on 2 June 1976, the Minister for Social Security, Senator the Hon Margaret Guilfoyle, stated, 'Any conclusions regarding Part One of the Committee's Report must naturally await receipt of Part Two of the Final Report on occupational superannuation later this year. The tabling of Part One of the report at this stage will enable all interested persons and organisations to assess the implications of the two recommended schemes.'

1:–5.2. – CAMP NSW Letter to John MacMahon, Secretary, National Superannuation Committee of Inquiry, 13 December 1974

Enclosed find a short submission [553] from this movement [CAMP NSW] to the Committee of which you are. Secretary.

We apologise for the late submission, but our limited resources have been stretched beyond their limit of late.

We would be happy to discuss the issues raised in the submission with the Committee, should it so wish.

1:–5.2.1. – CAMP NSW Submission to National Superannuation Committee of Inquiry, 13 December 1974

I. At this stage in the Committee's proceedings, we make a submission concerning one basically social aspect of its work: the family unit.

II. We have been disturbed in examining the Interim Report of the Committee to note that in discussing payments for pensioners' dependants, it takes the view that: 'The dependants in question basically fall into one or two categories, a dependent spouse less than age 65 or a dependent child.'

III. We urge the Committee to take a broader view of family units than is evidenced here. This would involve the definition of family to include all units, however constituted, which consider themselfs a family.

IV. Such a system could be administered by establishing a family register where people could, for legal purposes, denote themselves a family. This proposal has been made to the Australian Attorney-General.

V. Few statistics are available to indicate the numbers of families outside the traditional nuclear pattern (those our suggestion provides rights for, and the Committee's current definition excludes), but those who would benefit include: homosexual families of two or more members, nuclear families in which the husband wishes to be dependent, mixed-sex families or more than two members.

VI. Under our scheme, dependency would be the criterion for making payments, but in all cases this would have to be proved: it would never be assumed.

VII. Same consideration needs to be given to establishing the principle that one member of a family may be dependent.

1:–5.3. – John MacMahon, Secretary, National Superannuation Committee of Inquiry Letter to CAMP NSW, 16 December 1974

Thank you for your interest in sending to the Committee your Branch's views on the family unit.

I have forwarded copies of your submission to the members of the Committee so that they may consider your ideas.

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[553] See: 1:–5.2.1. page 244, 'CAMP NSW Submission to National Superannuation Committee of Inquiry'.

1:–5.3.1. – CAMP NSW Evidence at Public Hearing of National Superannuation Committee of Inquiry, 3 March 1975 [554]

National Superannuation Committee of Enquiry
Professor KJ Hancock, Chairman; Mr KJ Hedley, Member; Mr RG McCrossin, Member
Transcript of Proceedings
at Sydney on Monday 3 March 1975, at 09:10 hours
Michael Clohesy, Secretary, CAMP NSW:

Chairman (Professor K Hancock): Thank you very much for the submission you have sent to us and thank you for coming along today. Is there anything you would like to add to what is in the submission?

Michael Clohesy: No, I do not think so. It was done in hurry, but the basic concept is that we hope the committee can support the dependants of all family groups.

Chairman: Could you tell me the status of the submission? Did you write it?

Michael Clohesy: In conjunction with two or three others.

Chairman: It has been supported by a committee or a general meeting of your members, or something of that sort?

Michael Clohesy: Yes.

Chairman: Now, my purpose today is not to debate the principles underlying your submission but explore their practical implications for this committee. You will appreciate that we have to operate within our terms of reference?

Michael Clohesy: Yes.

Chairman: I would like first to put to you that the question of support for a pensioner's dependent children which you have referred to in the submission really does not need to be discussed further because, to the best of my knowledge, no one has suggested that only natural-born children should qualify for support. So I think it would be commonly accepted that where a pensioner is supporting children they would be regarded as dependent children and whatever scale of benefit went for dependant children would apply.

So the real questions I think pertain to dependant adults. So far as husband and wives are concerned, we talked in our interim report about dependant spouses and there was no suggestion (or at least no intentional one) that only wives would qualify for a means tested benefit. We certainly had it in mind if you had a case where a wife reached retiring age first the husband who is below retiring age might qualify for a means tested benefit. Therefore, I suggest we can put aside one of the categories of people mentioned in your submission, that is nuclear families in which the husband wishes to be the dependent. I think the committee has recognised that case. So far as other unions are concerned, I know that you are seeking to widen the accepted definition of a family and you have made a proposal to the Attorney-General for establishing a family register. Have you had any response to that Submission?

Michael Clohesy: Yes, the response has been that there are no constitutional powers to do that. We are in the midst of exploring whether that is a fact or not. What he suggests, it would have to be implemented with a different piece of legislation, so that if the National Superannuation Committee adopted it they would have a family register for the national superannuation scheme, a scheme with compensation and a scheme for superannuation of Australian government employees. Each piece of legislation would establish that body, rather than one general one.

[554] National Superannuation Committee of Enquiry, *Transcript of Proceedings*, Public Hearing, Sydney, Monday 3 March 1975, pp. 765-773.

Chairman: That would be administratively unfortunate, would it not?

Michael Clohesy: Yes, quite. That is why we are exploring constitutional possibilities.

Chairman: Speaking for myself, I would certainly agree if you succeeded in establishing a register of non-nuclear families, which I suppose would imply some degree of community recognition of that concept, that would have implications for the national superannuation policy, but I suppose it would at least be arguable that until that happens that a redefinition of the family unit would be a very difficult course for this committee to follow and our primary responsibility is to come up with a scheme of national superannuation. We run into enough controversial areas as it is. Do you really think it is practical and realistic to suppose that national superannuation might be linked with the establishment of a different concept of a family than we have at present?

Michael Clohesy: I cannot see any difficulties. Obviously this is a radical change and it would take courage to establish it and it would involve a lot of controversy, but our basic point is that all superannuation payments should cover all dependants.

It is a fact that there are dependants in families other than the nuclear family. We are not trying to establish that is not already existing. We are simply trying to establish recognition of something that is already existing. There are in fact dependants in families other than nuclear families and those dependants suffer because those family units are not recognised. Obviously there are practical difficulties but from the justice point of view we think they should be looked at and grappled with.

Chairman: I suppose we could distinguish between the cases where the non-nuclear family consists of two adults and where it consists of more. Certainly I can think of a nuclear family of two men and two women and there the problem I suppose is to establish the dependency and we might come back to that. What about where the family contains more than two or three or four, do you see any difficulty about providing a benefit at public expense to an unlimited number of dependants?

Michael Clohesy: I think we mentioned that in the submission, that is a difficulty. The principle that has to be grappled with is whether, and this would depend on the number of people, one person in a family can be dependent. Obviously if you had a family of six, two people perhaps could be dependent. We do not have the answer but I think it is a just principle because there are so many things involved in running a house hold that one person would be occupied full-time running a household.

In my situation I am in a three member family, three males. Over the last two years I was dependant while I was at university, the other two supported me. In the past few months I have been unemployed and one of the others has gone to Tech. To do matriculation. Two have been dependant on the other one. I start work today, so there is one dependant in that family. He is dependant because he is a student. I think that would be a generally recognised situation. The question of a man running the household perhaps is a different question but I think just as vital. I think the principle has to be discussed and I would support this establishment that one person in a family can be dependant.

Chairman: Of course, in terms of our interim report we would only come into the picture where one of the members of the household was aged 65 or more?

Michael Clohesy: Yes.

Chairman: Presumably that does not apply in your case?

Michael Clohesy: Not yet. We hope it will.

Mr Hedley (Committee Member): That sort of dependency is a different sort to what we have in mind, It is really temporary, temporary during unemployment, temporary during training in a tertiary institution, it is of quite a different character to the normal situation of a dependent female spouse-housekeeper?

Michael Clohesy: This is where I think this principle needs to be examined, whether one person in a family could have household duties and be considered dependent.

Mr Hedley: Your submission is really only dealing with that particular type of case where there is one member who is engaged in household duties?

Michael Clohesy: Over a long term that would be the only dependency situation as you understand, would it not?

Chairman: Some of the other circumstances you mentioned, such as unemployment, would be taken care of by existing social security provisions?

Michael Clohesy: They would not be but we hope they will be. There is no system in which dependency outside a nuclear family is recognised at the moment.

Chairman: In our case and again I am speaking in terms of the interim report and we may have cause to reconsider, we have seen the provision for the dependant below the age of 65 as designed to meet an economic necessity. If that economic necessity is provided for by some other form of social security then by definition there is not an economic necessity. I do not think we need to regard the dependents' allowance as some kind of civil right, it was merely designed to prevent hardship and we thought in the context of married couples where one had reached retiring age and the other had not. I could see there could be hardship in other circumstances?

Michael Clohesy: That is what we are all concerned with, not trying to get money, but if there is a case of hardship and dependent state should be recognised. That is the only principle, we ask for recognition.

Chairman: Even there I think we are further influenced by the consideration which we might not have made fully explicit in the report, that it could seem a little harsh where you had say a man aged 65 and a 62 year old wife, to say that the wife must go out to work and, equally, it might be harsh if you had a wife aged 65 and a husband aged 62, to say he must go out to work, but if you had a situation where you say you had two males in the household and one was aged 65 and the other was 40, would you think it excessively harsh to say it is reasonable to expect the 40 year old to work?

Michael Clohesy: That is something about which you could not make a blanket statement. As a general principle, no, I do not think it would be unreasonable, but obviously there are individual circumstances where a person may be ill or unable to work. I think each case would have to be looked at individually. I think there are circumstances where he could be expected to work and where he could not be expected to work.

Chairman: If I understand you, you accept in the case of the husband-wife situation that I depicted the mere fact of being a spouse might establish dependency, whereas in the case you are talking about other tests of dependency would have to be devised and presumably administered by the Department of Social Security or some other appropriate authority?

Michael Clohesy: No, I would hope that dependency would have to be proved in every case. I hope it would never be assumed in any case. I think there may be circumstances where a 62 year old wife could be reasonably expected to work. I think we should get away from any set definition of dependency. It should have to be proved in every case.

Chairman: Have you given any thought to the tests that might be established?

Michael Clohesy: No, we have not.

Chairman: It is a problem that the committee has run into in a number of submissions, that people have put forward general principles and left it to us to work out the details and working out the details is much harder than putting forward the principle?

Michael Clohesy: We will try to do some work to help you.

Mr McCrossin (Committee Member): I think you pointed out one of the problems at the start, at your presentage of your colleagues' presentages it is possible to move voluntarily from one category to another, from being a dependant to being a breadwinner. Presumably this capacity to move from one category to the other would still be there in ten years, it may be there in fifteen years time. It seems to me to become very difficult to define precisely the point of time at which a person who has been doing household duties and has been dependent loses his or her freedom to change that status in the event of some unusual thing taking place.

For example, if the senior person retires and the other has been so long in the dependency role that it is not feasible to expect him to go out to work, I can see that is a case that is established nowadays under the subject to means test in the husband wife situation, but supposing the older person dies three years before the [sic–they] might have contemplated retirement, it becomes a little bit more difficult I think. If you walk back another ten years, if the senior person dies at 55 and the younger person is 45 or 35 and he has worked some years before he moved into this dependency situation, then it would be reasonable to expect him to be able to move back in it again.

I am only pointing out that which I think you also pointed out in the earlier statement, that it would be extremely difficult to establish the rules and to subsequently keep track of the situation. We have all read of the difficulties that Social Services has in some circumstances administering benefits of a type that involves the Department keeping track of people subsequently. This causes problems. I can see there would be very severe technical problems. I suppose if we look far enough into the future that if the institution of formal marriage was to disappear we would have to solve this problem and a lot of others. I am just asking you about this so that you can come in.

Michael Clohesy: I think that situation is arising now where there is greater change in the roles of husbands and wives. I do not think it is problem peculiar to us, and taxation and security departments are having to keep track of movements within families at the moment. Sure, it is an administrative problem but I hope justice prevails over administrative problems. I think a related question is the one Professor Hancock put up of what would be the situation in which dependants could be recognised. If any system is going to be arbitrary and 65 is the arbitrary retiring age, I think we would have to look at some set of rules, but I do not think there are immense problems in doing it and there are situations where dependency so far as you are concerned is in existence.

Chairman: I explained earlier on that in the comments we made in our interim report which I think resulted in your submission we had in mind most clearly the case of the retired spouse with a slightly younger unretired spouse. Suppose we took the view that we were sympathetic to the position you are putting but we saw practical difficulties in the way of giving it general implication, but we put an age limit to it? Suppose we said that in the case of two males co-habiting and one was 65, if the other was aged 60 or 55 support might be provided. Would you think that was an acceptable compromise between the principle you are espousing and administrative feasibility?

Michael Clohesy: I would like to think about it more, but provided that principle applied to all situations.

Chairman: You mean in the case of husbands and wives to have a similar age provision?

Michael Clohesy: Yes.

Chairman: It might be argued that context that for a woman who has not worked all her life to imply that she should go into the labour force at age 58 is a bit harsher than to say that a male in a two male household ought to seek employment at age 58?

Michael Clohesy: At this point of time I think that is fair enough, as due to social conditions a male will have worked for most of that time; but we, or course, are looking over a longer period of time to when this situation will be more fluid and there will not be set rules. I think that is fair enough at this point in time. Of course, if the male has not worked for 58 years the same thing will apply.

Chairman: That is a very rare circumstance, I would think. I think I have extracted all I need to understand your submission. Is there anything else you would like to put.

Michael Clohesy: No. I think we have to do more work on what we suggest is a way of overcoming the administrative problems.

Chairman: I offer you the view that whatever emerges in our final report it will not be lasting for all time. A national superannuation scheme is going to have to move. We are changing social conditions, so even if you do not find everything you want in our report you will be well advised to do the sort of work you referred to and continue to apply pressure in places where it can always be applied, but we certainly would be grateful to receive anything else you would like to put on these matters.

(The witness withdrew)

1:–5.4. – John MacMahon, Secretary, National Superannuation Committee of Inquiry Letter to CAMP NSW, 13 March 1975

I am enclosing a copy of the transcript of your oral evidence given before the Committee in Sydney on 3 March 1975.

If you believe the document contains inaccuracies of substance which should be corrected, you may care to advise me.

1:–6. – Royal Commission on Australian Government Administration

The Royal Commission into the Australia Public Service was advised on 11 July 1974 [see page 256] by CAMP that it would be presenting the Commission with a submission concerned with the welfare of homosexuals in the Public Service. It would cover terms of reference of the Commission dealing with the relationship of the Australian Public Service with the Parliament, Ministers and the community; personnel policies and practices; salaries, wages and other conditions of service; the rights of public servants as citizens.

Considerable time was spent in gathering evidence and documentation, studying this and drafting the submission. The submission was finally prepared for presentation to the Commission on 17 October [1974].

In the introduction to its submission CAMP declared:

> The homosexual members of the Australian Public Service have far too long been ignored or actively discriminated against. It is time that their existence was recognised, their rights legislated for and their life-style encouraged and supported [see page 257].

Part I of the submission stressed the role of the Australian Public Service in influencing public attitudes. This was attributed to the part it plays in formulating and implementing government policy. Being in this position, CAMP submitted, it should be in the vanguard of social change, not trailing them.

The submission pointed up, with examples, the difficulties which movements such as ours face when trying to penetrate the bureaucracy.

> The crux of the problem of morale with homosexual public servants is the necessity for them to hide their sexuality [see page 258].

This pressure, claimed Part II of the submission, has two sources: (a) usual societal pressures, resulting in blackmail; (b) fears concerning job appointment and promotion. Both these combine to force homosexuals to feel that they must hide their sexuality. CAMP urged implementation of a program which would overcome this.

It declared that criminal records relating to homosexual offences should have no bearing on appointments to the Public Service:

> It is unjust, because the laws are archaic and, anyway, bear no relation to a person's job suitability, that these records play a part in selecting people for positions in the Public Service [see page 258].

Because of these problems with job selection, the submission suggested the appointment of a homosexual ombudsman.

Part III of the submission outlined suggested changes to the Public Service Regulations which govern the granting and payment of allowances, such as travelling allowance, sick allowance and leave, removal allowance, district allowance. The basic recommendation concerned the adoption of our redefinition of family. We noted that:

> Provision should be made in the regulations that payment will only be made to the family of the officer or employee where the family is found to be dependent on the officer or employee [see page 258].

The *Public Service Act* came under scrutiny in Part IV. Here, CAMP stated that the Joint Council, the employer-employee organisation of the Public Service, to be truly representative of the organisations of all officers and employees, should have a representative(s) from homosexual organisations. It said that the composition of the Joint Council, or its equivalent, should be determined by the percentage membership of the Public Service of the various relevant parties.

On job promotion, the submission declared:

> Discrimination in job promotion within the Public Service against persons whose homosexuality is known to those charged with recommending the promotion should be positively legislated against [see page 260].

It submitted that CAMP would be an appropriate organisation to sit on Appeal Tribunals where public servants believed their homosexuality was a factor in the decision re promotion [see page 260].

The final part (V) of the submission dealt, as did the Compensation and Superannuation submission [see pages 260], with sexist language:

> It is necessary that all language discriminating on the grounds of sex in the Public Service documents be eliminated and avoided in the future [see page 260].

As with the other submissions, a list of possible changes was included.

Attached to the submission was an appendix recounting personal experience of discrimination suffered by a known homosexual in the Post Office:

> Throughout, I have been deliberately misled and my progress in the Post Office seriously delayed by what amounts to an appalling ignorance on the part of officers of the Post Office Branch who frequently conduct interviews leading to the appointment of staff, and in whose hands the recommendation of appointment or promotion is often left [see page 263].

The submission was sent to the Commission in Canberra on 21 October [1974] and was received by them on 25 October.

On 19 November, Michael Wilson, Secretary to the Commission, telephoned CAMP and invited Peter de Waal and Mike Clohesy, who had prepared the submission, to appear before the Royal Commission at a public hearing in Sydney on 5 December [1974] [see page 263] to discuss the submission. Out of 510 submissions received, the Commission has heard only 28 at public hearings, so we were rather pleased with this recognition, but hope that it will bear fruit.

A couple of days before the hearing we received from Peter Wilenski, special adviser to the Commission, copies of questions [see page 264] which would form the basis of questioning by the Commissioners. This gave some chance for thought and preparation.

The Commissioners present at the hearing were: Dr HC Coombs (Chairperson), Professor Enid Campbell, Mr P Munro and Mr PJ [sic–PH] Bailey. We began by declaring that we were homosexual, members of a homosexual family and that we considered it important that homosexuals themselves speak on homosexual issues [see page 265]. We also expressed the hope that the Commission would not lose sight of the female homosexual members of the community in view of the fact that we were male.

Coombs opened discussion by questioning a statement in the submission that the existence of homosexual members of the Australian Public Service should be recognised, their rights legislated for and their life-style encouraged and supported:

> Frankly, I find it a little puzzling to know why a commission on the organisation of government should consider encouraging and supporting any individual life-style [see page 265].

In reply, we pointed out that, in fact, the Public Service at the moment does favour a life-style:

> It favours the nuclear family life-style in so far as leave, superannuation payments and so on are based on this style. It ignores our life-style and it ignores the life style of single people, heterosexual families which have more than two members, so in fact we move from the point that the Australian Public Service already favours a particular life-style … We think it should not make judgement: it should be neutral [see page 266].

During the discussion about the role of the Public Service in changing attitudes and breaking down discrimination, the idea of a Homosexual Bureau was mooted [see page 272]. Coombs' first comment on the Bureau, which is similar to ideas put forward by women's organisations, is of interest:

> It suggests, I suppose, that because of the past negative discrimination, you need a period in which there is positive discrimination or measures to favour the group in order to overcome the effect of past discrimination [see page 266].

Coombs asked whether a bureau concerned to work against discrimination on any grounds would be sufficient. We replied that this would be a satisfactory arrangement provided there was a specialised homosexual Department, staffed by known homosexuals, since only homosexuals are truly capable of understanding their discrimination.

Bailey asked: 'Do you know to what extent homosexuals are stopped from rising to the top positions?' We answered:

> We only know three or four known homosexuals in the Public Service. The other homosexuals whom we know all are terrified to come forward and say what their sexual orientation is in fear of being discriminated against [see page 267].

Coombs was mystified why we attached such importance to public declaration of their sexuality by homosexuals. He felt that people could reasonably consider this a private matter and no more necessary to reveal than political of football affiliations. We pointed out the difference between homosexuality and the other issues: that to be homosexual was not regarded favourably, that homosexuals are not free to talk about their feelings for their partners (as husbands are of wives, or vice versa). In the process of coming forward and expressing their affections, homosexuals become full human beings. We pointed out that the argument that people should be free not to reveal their sexuality is only valid in a situation where they are totally free to reveal it.

While discussing discrimination in job appointment and promotion with Bailey, we admitted that few statistics of discrimination are available, since people making appointments never reveal that homosexuality was a factor in failing to get the job: 'we can only speak of the fears that people have …' [see page 268].

In the course of this discussion, this statement by the Prime Minister was read:

> My view is that in the operation of the recruitment, promotion, and disciplinary processes under the *Public Service Act*, account should not be taken of criminal convictions when those relate solely to consenting homosexual acts between adults and in private. I know that the Public Service Board shares my view and agrees with them [see page 269].

We also learned that the Public Service Board has stated that merit alone should be the criterion for recruitment and advancement and that homosexuality is not relevant. We complained that these statements of policy are never made public:

> Obviously, homosexuals who feel depressed and worried about their position would be delighted to have an encouraging statement of a step forward by our Prime Minister, but is this disseminated? [see page 269]

Professor Campbell entered the discussion to raise our proposal for an extended definition of the concept of family. She asked whether we would be in agreement with the approach of the women's organisations that allowances should be payable according to whether or not the officer in question had to maintain dependants. We pointed out that we had studied the women's submissions and believed that, in fact, we were saying the same thing. Professor Campbell asked if there would be any difficulties in establishing dependency. To this we replied that the family register [see page 277] could be used for this purpose. We suggested that consideration be given, as was needed, to the principle that one member of a family may be dependent.

Our recommendations concerning sexist language, Munro asked whether suggesting that the legislation be amended wasn't taking things too far. Two viewpoints were indicated in reply:

> … the financial subsidy of such a change would be worth while in social benefits that would accrue from people being conscious of the fact that 50 per cent of the population were not male. If finance was going to be a terrible problem I think the principle could be that forthcoming legislation would adopt this principle [see page 271].

We were asked by Campbell why we thought sexual orientation should be relevant to representation on Joint Council. We pointed out that that body is mainly concerned with conditions of employment (ie. all allowances, leave of every kind, superannuation). Since these are second best

for homosexuals, they should be represented on the body concerned with them. Supporting our argument, Munro mentioned that one staff representative on Joint Council represents females.

Bailey gave examples of administrative action which could be recommended ahead of extensive changes to provide rights for homosexuals, and asked if we would be happy with those recommendations. We indicated the affirmative.

The hearing ended with Coombs stating that they would be in touch with us if they wished to discuss matters further.

1:–6.1. – CAMP NSW Letters to Lionel Bowen, Special Minister of State and Secretary, Department of Prime Minister and Cabinet, 15 June 1974

I would be pleased if you would forward this organisation a copy of the terms of reference of the Public Service enquiry recently set up by the Prime Minister under Dr Coombs.

As an organisation representing a large proportion of the NSW homosexual population, we would be interested in making a submission to the enquiry on the welfare of homosexuals in the Public Service. We would thus be glad of guidance as to the particular terms of reference under which our submission would fall.

Details of the composition and address of the enquiry would also be welcome.

1:–6.2. – PJ Lawler, Secretary to the Special Minister of State Letter to CAMP NSW, 3 July 1974

The Special Minister of State, the Hon Lionel Bowen has asked me to reply to your letter of 15 June 1974, in which you sought details of the terms of reference of the Royal Commission into the Australian Public Service.

I am enclosing for your information a copy of an advertisement [555] which has appeared in the national press throughout the past week. This contains the details you seek.

1:–6.2.1. – Advertisement of Terms of Reference–Royal Commission on Australian Government Administration, 29 June 1974 [556]

The Australian Government has recently set up a Commission to make an inquiry into the Australian Public Service. The members of the Commission are Dr Herbert Cole Coombs (Chairman), Mr Peter Hamilton Bailey, OBE, Professor Enid Campbell, the Honourable Joseph Ezra Isaac and Mr Paul Robert Munro.

The full terms of reference of the Commission are set out below.

Persons, organisations or bodies wishing to place evidence before the Commission are invited to make a detailed written submission not later than 31 October 1974. The Commission wishes to be advised by 31 July 1974 of the intention of any person, organisation or body to make a submission and, where practicable, of the particular aspect of the terms of reference the submission will cover. The Commission may wish to have discussions with persons making submissions.

Submission should be addressed to: The Secretary, Royal Commission into the Australian Public Service, Box 1952, Canberra City, ACT 2601.

Written submissions to the Commission would be regarded by it as being available to the public unless requested to be treated as confidential by those making the submission.

Terms of Reference

To inquire into and report upon the administrative organisation and services of the Australian Government, and in particular–

(1) the purposes, functions, organisation and management of Australian Government Departments, statutory corporations and other authorities and the principle instruments of co-ordination of Australian Government administration and policy; and

(2) the structure and management of the Australian Public Service.

And to make recommendations for improving efficiency, economy, adaptability and industrial relations and the despatch of public business; and without restricting the scope of the industry, to give particular attention to the following matters:–

(1) The appropriate role of ministerial departments, statutory corporations and other authorities;
(2) Relationship of the Australian Public Service and statutory corporations and other authorities with the Parliaments, Ministers and the community;
(3) Parliamentary scrutiny and control of administration;
(4) Responsibility and accountability of public servants, and their participation in forming policy and making decisions;
(5) Adequacy of the machinery available to assess the relevance and economy of existing programs in

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[555] See: 1:–6.2.1. page 255, 'Terms of Reference – Royal Commission on Australian Government Administration'.

[556] *The Sydney Morning Herald*, advertisement, Saturday, 29 June 1974, p. 22.

meeting government objectives;

(6) The extent to which central management of the Australian Public Service is necessary, and internal control and co-ordination in that Service, especially the functions of the Public Service Board, the Auditor-General and the Treasury;
(7) Centralisation, decentralisation and delegation of functions;
(8) The principles applicable to staffing of statutory corporations and other authorities;
(9) Personnel policies and practices, including eligibility, recruitment, selection, appointment, tenure, training (especially management training), promotion, classification, discipline, morale and conditions of service of members of the Australian Public Service, both generally and in relation to particular classes of persons;
(10) The determination of salaries, wages and other conditions of service of persons in the service of the Australian Government, including those serving overseas;
(11) The rights of public servants as citizens; and
(12) Any others matters to which attention of the Commission is particularly directed by the Prime Minister and in the course of the inquiry.

It is not intended that special inquiry be made into, or special reference made to, matters relating to postal and telecommunications services that were the subject of the inquiry made in accordance with the Letters Patent issued on 22 February 1973 (referring to Australia Post Office Commission of Inquiry) or to matters relating to superannuation.

1:–6.3. – Department of the Prime Minister and Cabinet Letter to CAMP NSW, 5 July 1974

With reference to your letter of 15 June 1974 I enclose a copy of the terms of reference for the Royal Commission into the Australian Public Service. Also enclosed is a press clipping containing the other information you requested.

1:–6.4. – CAMP NSW Letter to the Secretary, Royal Commission on Australian Government Administration, 11 July 1974

In accordance with the request contained in newspaper advertisements concerning the setting up of this Royal Commission, this organisation, the Campaign Against Moral Persecution (NSW Branch), advises the Commission that it will be presenting it with a submission.

The submission will be concerned with the welfare of homosexuals in the Public Service; it is envisaged that the submission will cover sections (b), (i), (j) and (k) of the Terms of Reference.

1:–6.5. – John Ireland, Royal Commission on Australian Government Administration Letter to CAMP NSW, 30 July 1974

Thank you for letter of 11 July 1974 concerning the intention of your Branch to make a submission to the Royal Commission

The Commission will be pleased to receive any submission which you may care to prepare.

1:–6.6. – CAMP NSW Letter to John Ireland, Royal Commission on Australian Government Administration, 16 August 1974

Thank you for your letter acknowledging receipt of our letter informing the Commission that we intend making a submission.

However, we have struck a snag. The *Public Service Act*, which is essential for the formulation of our submission, is out of print, and we are unable to get our hands on a copy. We were wondering if you would be able to be of assistance in this regard.

Thanking you in anticipation and looking forward to a reply.

1:–6.7. – CAMP NSW Letter to Secretary, Royal Commission on Australian Government Administration, 17 October 1974

Enclosed herewith the submission [557] by CAMP (NSW Branch) to the Royal Commission, notice of which we gave in July.

Both the compilers and the author of Appendix A are willing to appear before the Commission, if the Commission felt this would be useful.

1:–6.8. – CAMP NSW Submission to the Royal Commission on Australian Government Administration, 17 October 1974

Submission by CAMP (NSW Branch)
To
Royal Commission into the Australian Public Service

Michael Clohesy
Secretary

Compilers

Peter de Waal
Postal Officer Grade 2
AGSN 301 – 08290

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Introduction

This submission is presented by CAMP (NSW Branch), a homosexual political movement, on behalf of at least 5% of the Australian Public Service who are homosexual. [558] On June 1973 figures, this means it represents, at a minimum, 12,719 Australian Public servants. The rise of liberation movements and attitudes, the passage of time and new statistical techniques point to these figures being very conservative estimates.

The homosexual members of the Australian Public Service have for too long been ignored or actively discriminated against. It is time that their existence was recognised, their rights legislated for and their life-style encouraged and supported.

Part I–Term of Reference (b)

The Australian Public Service, whether for good or for bad, obviously plays a leading role in influencing public opinion since it is so closely involved with formulating and implementing government policy. Its members should thus be at the vanguard of social attitudes, not trailing them. Our recent experience with a senior member of the Attorney-General's Department has pointed up this lack of awareness [see page 3]. This public servant is involved with matters in that Department relating to homosexuals. However, our contact with him has revealed his ignorance even of the sexual activities of homosexuals. One wonders at his ability to be doing the work he is doing in this field. This also points up the more general question of the involvement of public servants in formulating policy and legislation in areas which they have little or no experience or knowledge. If homosexuals within the Public Service were encouraged to make themselves known as such this situation would, in all probability, not have arisen. It could also have been avoided had the public service been more open to people outside it.

One easy way of obtaining this outside involvement would be by each Department's advertising (perhaps in

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[557] See: 1:–6.8. page 257, 'CAMP NSW Submission to the Royal Commission on Australian Government Administration'.

[558] Kinsey, AC, et al. *Sexual Behaviour in the Human Male*, Saunders, London, 1948.

a weekly newspaper column) the work it is doing. If such a scheme were adopted, the result would be laws and regulations etc. reflecting a wider cross-section of the views of the people, and, in particular, of the people directly affected by the specific matters, not solely the heavy-handed attitude of the public servants.

When contact is made with public servants, problems arise with delays in communication and with the quality of communication. The former problem is a recurring one. The latter has, most recently, been experienced with the Prime Minister's office. The point of the matter raised in a simple, 3-paragraph letter was completely missed. A second letter explaining again the original matter has received no reply after eight weeks, despite a reminder note after four weeks [see pages 208, 209, 210].

Part II–Term of Reference (i)

The crux of the problem of morale with homosexual public servants is the necessity for them to hide their sexuality. This pressure has two sources:

(a) the usual pressure from a society which regards them as, at best, second-class citizens. This attitude should be actively combatted within the public service. The oft-aired problem of blackmail of senior homosexual public servants is only the result of this pressure. If public servants were completely free to reveal their sexuality, the possibility of the blackmail would be eradicated;

(b) fears concerning appointment and promotion. As Appendix A' clearly points out, those whose homosexuality is known face active discrimination when seeking jobs in the public service. This results in the need for other homosexuals not to reveal their sexuality, which means they are unable to play a public role in the homosexual political movement. Those already in the public service face the same pressure because of the fear of not receiving promotion. Of course, most public service officers concerned with appointment and promotion are sufficiently embarrassed and hypocritical not to reveal that homosexuality was the cause of a person's failing to be appointed or receive promotion.

Many people seeking appointment to the public service and many public servants seeking promotion, as a result of the archaic laws relating to homosexuality in this country, have criminal records, which impair their eligibility. It is unjust, because the laws are archaic and, anyway, bear no relation to a person's job suitability, that these records play a part in selecting people for positions in the public service. In the light of this, the access of the Public Service Board to criminal records and its use of them needs to be critically reviewed.

These problems with job selection demonstrate the need for provision of the right of appeal against decisions in this connection, and for a homosexual ombudsman within the public service (perhaps as a member of the Joint Council, or its equivalent – see our proposals in Part IV).

The discipline of sex role playing imposed by a public service deliberately aping current social mores results in discrimination against many public servants who wish to transcend these oppressive vales. Departmental regulations relating to clothing should be abolished to give the individual freedom of choice.

Part III–Term of Reference (j)

The implementation of the following amendments to the Public Service Regulations, which form a guide-line for any regulations, would merely result in the conditions of service of public servants with life-styles outside the accepted norm being brought into line with those which their counter-parts have always enjoyed. The largest employer in Australia must be a vanguard in moves for social justice.

Amendments:

1. Insert in regulation 3(1):

'Family' means two or more persons who have lived together on a permanent and bona fide basis for two years, or who are married, including children.

NOTE:

(1) Provision should be made in the regulations that payment will only be made to the family of an officer or employee where the family is found to be dependent of the officer or employee;

(2) Representation has been made to the Attorney-General for the setting up of a family register.

2. Amend regulation 62(1)(c) to read after 'is payable':

'… or, in the case of an officer with a family, his family, during his absence from the district, remains in that district';

3. Amend table in regulation 79B(1) to read:

Class of officers
Veterinary Officers or Meat Inspectors without family; Veterinary Officers or Meat Inspectors with family;

4. Amend regulation 80A to read:
Travelling allowance shall be payable to any officer or employee who has a family, or who has dependants or who is maintaining a home.

5. Amend regulation 83(1) by omitting 'wife or'.
(1) omitting sub-regulation (a);
(2) changing (d) to read: who travels accompanied by the family.

6. Amend regulation 84(3) by omitting 'wife or'.

7. Amend regulation 87B(1) by:
(1) changing 'a married male officer', first occurring, to read: 'an officer with a family';
(2) changing 'a married male officer', second occurring, to read: 'an officer';
(3) omitting 'to him'.

8. Amend regulation 89(2)(a)(ii) to read:
(1) in the case of an officer with a family, with dependants or who is maintaining a home – at the rate of $2.70 per day.
(2) in the case of an officer without a family – at a rate of $15.0 per day; and

9. Amend regulation 89(4) by changing 'where an unmarried officer' to read'where an officer without a family'.

10. Omit regulation 89(7)

11. Amend regulation 93 after 'conveyance of the person and' to read: 'if there is a family, of the family to that place.'

12. Amend regulation 95C(1)(c) to read: 'except in such special cases as the Chief Officer determines, the member or members of the family caring for the child remains at the lighthouse.'

13. Amend regulation 97(1) and (2) by changing 'married officer', wherever occurring, to read 'officer with a family.'

14. Amend regulation 97(3) by changing 'unmarried officer' to 'officer without a family.'

15. Amend regulation 98 by:
(1) changing 'married officer' in sub-regulation (2) and (3) to read 'officer with a family';
(2) changing 'wife and children' in sub-regulation (2) (twice occurring), (5), (6) (twice occurring) to read 'family';
(3) changing 'unmarried officer' in sub-regulation (4) to read 'officer without a family'.

16. Amend regulation 98AAA(1)(b) and (3)(b) by changing 'his parent's home' to read 'the family home'.

17. Amend regulation 98AAA(3)(c)(d)(e)(i)(iii) by changing 'wife' and 'his wife', wherever occurring, to read 'family'.

18. Amend regulation 98AA(1)(a) and (b) by changing 'unmarried officer to read 'officer without a family'.

19. Amend regulation 98A(1)(b) by omitting sub-regulations (ii) and (iii) and substituting: (ii) the family.

20. Amend regulation 98AC(8)(a) to read: 'a member of the family or a parent of the officer'; and.

21. Amend the table in regulation 101(1) by changing 'married officer' to read 'officer with a family'; 'unmarried officer' to read 'officer without a family'.

22. Amend regulation 101(2) to read: 'Officers maintaining a family shall be granted the district allowance prescribed as payable to an officer with a family whether or not the family resides with the officer in the locality in respect of which district allowance is payable.'

23. Amend regulation 101(3) to read: For the purpose of this regulation, an officer who is maintaining a home or who has dependants shall be deemed to be an officer with a family.

24. Amend regulation 101(4) by changing 'unmarried' to read 'without a family'.

25. Amend regulation 108A(1) and (3) by changing 'a married officer' to read 'an officer with a family'

and 'unmarried officer' to read 'officer without a family'.

26. Amend regulation 103A (5) (6) and (7) to read the same as regulation 101(2), (3) and (4) as amended and including reference to district allowance.

27. Amend the table in regulation 103B(1) to read:

Class of officer	Amount of allowance
Officer with a family	$400
Officer without a family	$200

28. Amend regulation 103D(2) to read the same as regulation 101(3) as amended.

29. Amend regulation 103D(3) and (4) by omitting 'married', wherever occurring.

30. Amend regulation 119(1) by changing 'wives and children' to read 'families'.

31. Amend regulation 119B(1) to read after 'Board considers relevant'; 'authorise the payment to the family of the whole or such part as the Board thinks fit of the expenses incurred in the conveyance of the family, and of the furniture and household effects of the family from that locality to another place.'

32. Amend regulation 130 to read: 'Selection for temporary employment shall be by ballot.'

Part IV–Public Service Act

This part of our submission has been prepared with the greatest of difficulty and its value is limited because of the difficulty. One would have expected that, with a Royal Commission being undertaken, provision would have been made for adequate stocks of the relevant Act (essential to preparation of submission) to be available. Instead, there has been the spectacle of the current Act being out of print. Copies of the Act would probably have been available to people in the service, but this simply shows that there was little or no interest in making the Royal Commission more than an internal-examination of the Public Service. Assistance in obtaining a copy of the current Act was sought from this Commission (letter dated 16 August 1974), [see page 256], but our request was ignored.

The following points are made in relation to various ss. of the outdated Act (1922-1972) we were able, with difficulty, to obtain and the relevant regulations:

- s. 19A(2); Regulation 72B(c)(i)

To be truly representative of the organisation of all officers and employees, the Joint Council, whatever for it may take, should have ea representative(s) from homosexual organisations. The Composition of the Joint Council, or its equivalent, should be determined by the percentage membership of the Public Service of the various relevant parties. Since, at a very conservative estimate, 5% of the Public Service is homosexual, 5% at least of the membership of the Council, or its equivalent, should be representatives of the homosexual members of the Service.

- s. 50; Regulation 109 cf. Part II this submission

Discrimination in job promotion within the Public Service against persons whose homosexuality is known to those charged with recommending the promotion should be positively legislated against.

At the moment, qualifications such as 'good conduct' in s. 50(4) are used to discriminated against known homosexuals. Homosexuality seems to constitute sufficient reason to disqualify one from the qualification of 'good conduct'.

For the purposes of regulation 109D(1)(c), CAMP NSW would be an appropriate organisation in cases where the officers or employees believed that their homosexuality was a factor in the decision on promotion.

- Dependants

'For the purposes of this s., a dependant is any person or persons found to be dependent on the officer.' This sentence to be included after s. 68C; 73(3); 74(4); 75A(2) (3); 81.

'For the purposes of this s., a dependant is any person or persons found to be dependent on the State employee.' This sentence to be included after ss. 81K; 81V.

Part V–Sexist (Sex-Specific) Language

It is necessary that all language discriminating on the grounds of sex in the Public Service documents be eliminated and avoided in the future. Part of the liberation of our society is bound up with changing the present dominant-male ethic. The following are a few examples of the changes we are seeking to the present and future

publications:

- Public Service (Salaries) Regulations

The main changes necessary to these regulations concern sex-specific titles, for example:

Amend	Draftsman	to	Drafts person
	Foreman		Fore person
	Tradesman		Trades person
	Airmen		Air persons
	Headmaster		Principal
	Fireman		Fire person
	Groundsman		Grounds Officer
	Boatman		Boat person
	Cameraman		Camera Operator
	Handyman		Handy person
	Kitchenman		Kitchen person
	Laundryman		Laundry Attendant
	Lineman		Line person
	Maintenance Man		Maintenance Officer
	Craftsman		Craftsperson
	Pressman		Press person
	Storeman		Store person
	Watchman		Watch person
	Seaman		Sea person
	Postmaster		Post Chief
	Postman		Post Deliverer

Amend regulation 9 Schedule 2 Part I and regulation 13(2)
Schedule 4 by pluralising.

- Public Service Regulations

I. Amend ‘chairman’ whenever occurring to read ‘chairperson’.
II. Regulation 6: for ‘him’, substitute ‘the person’, for ‘his’, substitute ‘the’.
III. Regulation 11(1)(a) and (b) omit ‘his’
IV. Regulation 11(2) for ‘he’, substitute ‘the Officer or employee’, omit ‘his’
V. Regulation 11(3)(b) omit ‘to him’ and (4) omit ‘himself’, for ‘his’. Substitute ‘the’ (twice occurring).
VI. Regulation 13(a) omit ‘his’ (four times occurring) and (b) for ‘he’, substitute ‘the officer’ and omit ‘his’.
VII. Regulation 17 omit ‘by him’.
VIII. Regulation 19(1) omit ‘he’
etcetera
etcetera
etcetera

- Public Service Act

I. s. 7 ‘national service’: omit ‘by him’ for ‘he’, substitute ‘the Person’.
II. Amend ‘chairman’, whenever occurring, to read ‘chairperson’.
III. s. 8A(1) for ‘his’, substitute ‘her/his’ and (4) for ‘him’, substitute ‘the person’.
IV. s. 88(4) omit ‘he is’.
V. s. 11(5) and (6) for ‘his’, substitute ‘the’, and (7) for ‘he’, substitute ‘the person’ (twice occurring), and (8) and (9) for ‘his’, substitute ‘the’.
VI. s. 13(2) for ‘his’, substitute ‘the’ (twice occurring).
VII. s. 14(1) for ‘his’, substitute ‘the’.
VIII. s. 15(1) for ‘his’, substitute ‘the’ and (1)(a) amend sub-section to read:’The member engages, during the term of office, in any paid employment outside the duties of the office’ and (1)(b) for ‘he’, substitute ‘the member’ for ‘his’, substitute ‘the’ and (1)(c) for ‘he absents himself’, substitute ‘The

member decides to be absent' and (1)(d) for 'he', substitute 'the member'.

IX. s. 16(3) for 'him', substitute 'the member'.

X. s. 18(2) for 'he', substitute 'she/he'.

XI. s. 19(4) for 'him', substitute 'the person'.

etcetera
etcetera
etcetera

Appendix A–Personal Evidence of Discrimination

During the week ended 23 February 1973 I had an interview with the District Postal Manager, Metro. no. 6 District, at his office, so that he could ascertain my suitability for employment within the Australian Post Office. Arrangements were made following this interview for me to report for work at 8:45am on Tuesday 27 February to the Postmaster, Darlinghurst.

At Darlinghurst Post Office I was interviewed by the Acting Postmaster and asked to complete an application form on which I listed, as required, convictions (dated 1960) of indecent assault and wilful and indecent exposure. The Acting Postmaster was quite obviously disquieted that I should be able calmly to complete such details (although the form required them), and further that I was willing to provide an affirmative answer to his following question as to whether the charges laid against me had been for homosexual offences. He conferred anxiously with other members of the staff, made a telephone call, and then returned to me to inform me that convictions of the type meant that my employment in the Post Office would have to be cleared with the Public Service Board. I was assured, however, that this clearance could be obtained that day by telephone or telegraph and that I would be contacted as soon as a reply had been received from the Board.

I was not contacted, but telephoned Darlinghurst Post Office myself on the Wednesday, Thursday and Friday mornings, to be told there was still no reply. Again I was assured that I would be contacted when the clearance had been processed by the Public Service Board.

After a further ten days' wait I decided to call at the Commonwealth Employment Service's office in Leichhardt, from which I had received the original suggestion of contacting the Post Office. On Wednesday 14 March I was told by the officer there that the Public Service Board has no role in issuing clearances in the case of convictions of such minor nature and of such antiquity as mine.

The following morning I telephoned Darlinghurst Post Office, and was told again that clearance had not been received, but assured that the position was still being held open for me, presumably in anticipation of a favourable reply from the Board. Within hours I received my first telephone call from Darlinghurst, and was told, despite the assurances earlier that day, that they were very sorry that the position had been filled. No mention was made of the Public Service Board.

I telephoned the District Postal Manager for an explanation. He returned my call and explained that I had been recognised by staff at Darlinghurst Post Office as having appeared on an ABC *Chequerboard* television programme on homosexuals, aired in NSW on 31 October 1972. [559] (Following my appearance on that programme I was dismissed from the position of Church Secretary at St Clement's Anglican Church, Mosman, after four years of employment there). It had therefore been decided that I should be protected from taunts and ridicule from my fellow workers and possible recognition while serving on the counter. I explained to him that taunts and ridicule are meaningless to a declared homosexual since there is nothing about which one can be taunted or ridiculed; but no reason was given at any stage for the necessity of protecting me from recognition at the counter. The means of protection was to be the withdrawal of the District Postal Manager's previous offer of employment.

The District Postal Manager was surprised that I was still anxious to obtain employment, apparently unaware that the fatuous reasons given for my not working at Darlinghurst Post Office could have been used against me by any prospective employer. He telephoned me again later that day and it was arranged that I should start as an Assistant Postal Officer, sorting mail for private boxes at Sydney South Post Office. This position I held from 19 March until I commenced at the Postal Training School, Strathfield, as a Postal Clerk in Training on 29 January 1974. At no time during the ten months spent at Sydney South was I offered any counter position either at that office or at any other in the Postal District.

[559] 'This Just Happens to Be Part of me', Australian Broadcasting Commission, *Chequerboard* Television Program.

On Saturday 15 September 1973 I sat for an examination to qualify as a Postal Clerk in Training. No official notification was ever received of success, beyond a telephoned message from the District Postal Manager to the Postmaster, Sydney South, indicating that I had received the highest score among the candidates who sat. Similarly, I have never received any sort of notification following an examination for which I sat on 16 June 1973 for appointment as Assistant Postal Officer beyond a list indicating that I held the seventeenth position out of the 165 who were successful in the examination. I have become a permanent officer of the Australian Public Service only since qualifying as Postal Clerk in August this year.

Following the examination to qualify as Postal Clerk in Training I was interviewed by the District Postal Manager, Metrop. no. 6 District, and an Instructor from the Postal Training School, Strathfield. Questions asked of me during this interview included the following, to which I took great exception. They are obviously the product of a thinking process which has been confronted by homosexuality for the first time, and which shows a clear ignorance of homosexuality or the homosexual.

- Do you feel you could work with heterosexuals?
- Would you be able to work at a counter?
- Would you have problems as a homosexual when in charge of telegram delivery officers? [560]

More mundane questions relating to my degree of ambition were asked, but the whole interview was conducted in a tone akin to 'Can you, a homosexual, possibly perform such and such a duty in the efficient manner in which we heterosexuals can'? I was even told that there was another homosexual working in the Postal District – and much as I expected, the name given to me was not one of the other two homosexuals whom I knew to be working at the same Post Office as I, simply because they are not **known** to be homosexuals.

Throughout, I have been deliberately misled and my progress in the Post Office seriously delayed by what amounts to an appalling ignorance on the part of officers of the Post Office Branch who frequently conduct interviews leading to the appointment of staff, and in whose hands the recommendation of appointment or promotion is often left.

Peter Bonsall-Boone Personnel Number 74/22945X

1:–6.9. – MJ Wilson, Secretary, Royal Commission Letter to CAMP NSW, 30 October 1974

Thank you for your submission to the Royal Commission.

The Commission may wish at some time in the future to discuss with you the matters raised in your submission. In this event I shall write to you again.

1:–6.10. – MJ Wilson, Secretary, Royal Commission Letter to CAMP NSW, 19 November 1974

I write to confirm the telephoned invitation to yourself and to Mr Peter de Waal to attend a public hearing of the Royal Commission and to let you know the general arrangements. These are:

Place: Conference Room, 21st Floor, at Westfield Towers, 100 William Street.

Time: 10.40-11.20 a.m.

Date: Thursday, 5 December.

The hearing will be open unless otherwise agreed with the Commission beforehand and a verbatim transcript will be taken.

Each witness will be sworn by oath or affirmation.

The submission you have made will have to be formally attested and I would be glad if you would bring an additional copy to be handed to me when this has been done.

If you have any questions about these arrangements please do not hesitate to contact me or, in my absence, the Assistant Secretary, Mr WH McMillan.

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[560] '… telegram delivery officers' at this time, were invariably teenage males.

1:–6.11. – Possible Royal Commissioners' Questions for Representatives of CAMP NSW

General (Submission no. 115)

To what extent are the problems set out in the submission those of general attitudes for the community which can be solved only by changes in such attitudes? Would you favour a full-scale campaign by the government to change such attitudes either generally or directed specifically at public servants? What specific measurers might be taken to educate recruitment personnel and others in APS as to the relationship (or lack thereof) between a person's sexual orientation and his job performance?

In the introduction to their submission [page 2] it is stated that 'it is time that their (homosexual members of the APS) existence was recognised, their rights legislated for and their life-style encouraged and supported'. Why should it be the role of the APS to encourage any particular life-style? Is this not an argument that might equally be used by those who favour conventional families? Should not the APS be neutral in the matter of life-style?

Discrimination Against Homosexuals

Part II of the submission refers on pages 3 and 4 to the need for homosexuals to hide their sexuality because of fears concerning appointment and promotion. Does CAMP consider that such discrimination comes primarily from departments themselves or from the Public Service Board? The Board has stated that merit alone should be the criterion for recruitment and advancement and that homosexuality is not relevant. Does CAMP feel that the Board follows this policy in practice? There are apparently many homosexuals in senior positions in the APS. Has CAMP made any study of the promotion rates of known homosexuals as against others in the APS? Does CAMP consider that practices in some departments are more or less discriminatory than others?

The CAMP submission notes [page 4] that Public Service officers concerned with appointment and promotion 'are sufficiently embarrassed and hypocritical not to reveal that homosexuality was the cause of a person's failing to be appointed or receive promotion'. In these circumstances how helpful would legislation be? Would it not be very difficult to prove discrimination on the basis of homosexuality?

On page 4 the submission refers to the use made by the Public Service Board of criminal records [see page 258]. The Prime Minister, on 6 April 1974, states that:

> My view is that in the operation of the recruitment, promotion, and disciplinary processes under the *Public Service Act*, account should not be taken of criminal convictions when those relate solely to consenting homosexual acts between adults and in private. I know that the Public Service Board shares my view, and that its current practices accord with them.

Does CAMP believe that these are the Board's practices? Is this policy one of which CAMP approves?

The submission on page 4 also states the 'departmental regulations relating to clothing should be abolished to give the individual freedom of choice' [see page 258]. To what particular regulations does CAMP object?

Allowances

CAMP advocates a change in the definition of family. It has been submitted to the Commission by women's organisations that the criterion of being a married officer as opposed to a single one (or equally an officer with family as opposed to one without) should no longer be the relevant criterion for the payment of allowances and that these should instead depend on whether or not the officer has to maintain dependants. Would CAMP approve of this approach?

Joint Council Representation

CAMP advocates homosexual representation on joint Council in proportion to the number of homosexuals in the Public Service (said to be at least 5 per cent). What is the argument for the representation of homosexual organisations on this basis? For example, it equally be argued that as Catholics form, say 40% of the Public Service, Catholic organisations should have 40% representation on joint Council or as migrants form, say 25%, migrant organisations should have 25% representation.

How helpful has CAMP found staff associations to be in working to correct the grievances of their homosexual members?

Positive Discrimination

Would CAMP favour advertising positions specifically for homosexuals in such departments as Social Security, Health and Attorney-General's as an interim step in breaking down discrimination?

Prepared by Dr Peter Wilenski, Special Adviser.

1:–6.12. – CAMP NSW Evidence Presented to the Royal Commission on Australian Government Administration's Public Hearing, 5 December 1974 [561]

Royal Commission on Australian Government Administration

Dr HC Coombs, Chairman; Professor Enid Campbell, Commissioner; Dr JE Isaac, Commissioner; Mr P Munro, Commissioner; Mr PH Bailey, Commissioner.

Transcript of Proceedings
at Sydney on Thursday 5 December 1974, at 10:10 hours

Michael Clohesy and Peter de Waal, representing the Campaign Against Moral Persecution, on affirmation.

Chairman (Dr Coombs): Do you have a copy of your evidence?

Michael Clohesy: We have a copy of the submission [see page 257] and additional evidence [see page 272] we would like to tender at this stage.

Chairman: Would you hand those to the Secretary? Would you care to make a brief introductory statement?

Michael Clohesy: Yes. We make the point that we are both homosexuals and we are two members of a three-member homosexual family.

Peter de Waal: I think it is important that homosexuals actually tender the evidence themselves as in the past evidence has always been produced by interested parties.

Michael Clohesy: We make the additional point that the commission will not lose sight of the female homosexual members of the community in view of the fact that we are male.

Mr Bailey (Commissioner): Do you have members of the female homosexual group in CAMP? Or are they a separate organisation?

Michael Clohesy: Both male and female members.

Mr Munro (Commissioner): What membership would there be of CAMP?

Michael Clohesy: Approximately 300 financial members.

Mr Munro: Is that in Sydney or nationally?

Michael Clohesy: NSW, there are branches in every state, not in Canberra, but we hope there will be one soon.

Chairman: In your statement you expressed the view that it is time that the existence of homosexual members of the Australian public service was recognised, their rights legislated for and the life style encouraged and supported. I am not quite sure whether you are expressing that as a view, so to speak, which justifies or explains the existence of your campaign, or whether you are suggesting that this should be an objective which the commission should advocate or take action to further.

Frankly, I find it a little puzzling to know why a commission on the organisation of government should consider encouraging and supporting any individual life style. I can see the reason why we should be

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[561] Royal Commission on Australian Government Administration, *Transcript of Proceedings*, Public Hearing, Sydney, Thursday 5 December 1974, pp. 692A-703.

concerned if a person's choice of life style was restrained or inhibited by aspects of the Australian government organisation or administration, but were you expecting that the commission should propose measures defined actually to encourage or support the particular life style which you favour?

Michael Clohesy: The point is that the public service at the moment does favour a life style. It favours the nuclear family life style so far as leave, superannuation payments and so on are based on this style. It ignores our life style and it ignores the life style of single people, heterosexual family which have more than two members, so in fact … we move from the point that the Australian public service already supports a particular life style. We think it should favour all life style[s] and should not take [make] judgement which should be neutral.

Chairman: In other words it should not discriminate?

Michael Clohesy: Yes.

Chairman: That is perhaps a rather different view from what the particular sentence I quoted seems to suggest. However, you perhaps should elaborate a little later on the precise character of the discrimination which you think exists so that we can be more specifically aware of action that might be within our area of competence to recommend.

If you would, I would like you to comment how far you feel this question is one which is in a sense, not exclusive to, but particularly a problem for the government administration. I suppose a preference for the particular nuclear family life style that mention is a reflection of a majority view in the community. It is the predominant view. To the extent that it should be changed or diversity should be acknowledged, and perhaps even encouraged, how far is that something which should occur by a change of attitude in the community rather than by a change in the administration of the government. Would you care to comment on that?

Michael Clohesy: Certainly the total picture will only be changed by a change in total community attitude, but the point we made in our submission is that the Australian public service places itself in a very important role in forming those attitudes. It is involved in formulating and implementing policy which forms attitudes and which carries on attitudes. It is the largest employer. Also, we think it should be taking a lead in showing all life styles should be encouraged and discrimination broken down.

Chairman: In this particular field you think the Australian government should be a pace setter?

Michael Clohesy: Yes, we think it would be enhanced by the proposals which we tendered as additional evidence, the formation of a homosexual bureau. This would primarily have an information role.

Chairman: This runs fairly closely to the proposal put forward by the women's organisation for a bureau for fostering the advancement of women in the public service?

Michael Clohesy: Yes.

Chairman: This is an interesting proposition. It suggests, I suppose, that because of the past negative discrimination, you need a period in which there is positive discrimination or measures to favour the group in order to overcome the effect of past discrimination. Of course, this too does raise some problems for a body such as ours.

An additional complication I would like you to comment on is how far do you feel that this idea of special groups whose function it is to further the interests of people or groups against whom there has been discrimination in the past, should go. You can be discriminated against on grounds of sexual attitudes, of colour, or religion or race. Indeed, there are innumerable bases for possible discrimination and, no doubt, there are people in the Australian government administration who feel that they have been discriminated against on one or more of these grounds from time to time.

Do you think it practicable to establish bodies such as bureaux to pursue the interests of all the people who

fall into some category which in some sense has been discriminated against in the past, and is this not likely to become a self-defeating exercise?

Michael Clohesy: I do not see that. I think they would have to be seen in practice. The fact is that the government and the public service is continually formulating and implementing policy and fostering attitudes which effect our group. I think it would be up to other groups to come and say that legislation is discriminating against them and their case would then have to be evaluated on its merits. Our contention is, as we have pointed out in the submission and additional evidence, government legislation, for instance, is continually coming up and is continually being formulated and it is continually discriminating against homosexuals by failing to recognise their life style at the same time as recognising the life style of many members of the community.

Peter de Waal: We would also hope that once the bureau had been established and it has gone through its process, eventually it could disappear and it would not be necessary any more to have the homosexual bureau.

Chairman: You think it not sufficient to have a bureau which was concerned to work against discrimination on any grounds?

Michael Clohesy: I think there would have to be specialised functions. There may be such a bureau, but I think there would have to be a specific homosexual bureau. In fact, we say in our submission that the homosexual bureau should be [sic–have] known homosexual people who have stated publicly that they are homosexual, or people selected by a panel of known homosexuals, because the only people who can understand the discrimination and how that discrimination can be changed are the people affected by it. So, in fact, an overall discrimination bureau may be the answer, but it should have a specialised Department.

Mr Bailey: Do you know to what extend the people of homosexual ideas are stopped from rising to the top positions. The women's organisation have told us, and statistics bear it out, there are very few of them in the top levels of the service. Do you know yourself whether that is a similar position with homosexuals, or whether it has not gone as far as that in discrimination?

Peter de Waal: We only know of three or four known homosexuals in the public service. The other homosexuals who we know all themselves are terrified to come forward and say what their sexual orientation is in fear of being discriminated against.

Mr Bailey: The 300 that you mentioned in CAMP who are in Sydney are not in the public service, perhaps only 3 of them are; is that what you are saying?

Peter de Waal: Yes.

Michael Clohesy: There are members of CAMP who are in the category of being terrified of revealing their sexual orientation who have different names at work because of their fear of this action. It is not whether homosexuals have reached the top, but whether known homosexuals have reached the top people, those who have stated publicly that they are homosexuals.

Peter de Waal: We only know one senior public servant who is a known homosexual in Canberra.

Chairman: Why do you attach such importance to a public statement of this? Might not a person reasonably consider that this idea in these matters was a matter private to himself and that he would not want to make public this any more than he might wish to state what political party he supported or what football he barracked for?

Michael Clohesy: Of course, the difference is that it is not looked upon favourably to say you are a homosexual. A person can reveal what political party or football he follows and nobody gives a damn, but …

Chairman: Certainly some people would not agree with that. If the political party that you belong to or supported was the anarchists or the Communist party, I would think that many people who belong to those political groups would believe that they are discriminated against. Would you not believe that they have the right to have such views without making a public acknowledgement of this?

Peter de Waal: To my mind it is a different matter. If a male homosexual wants to express himself, it means he cannot talk to other people about his other male friend or lover in the way heterosexuals can do about the wife or the husband. Surely it is quite different. Homosexuals should be encouraged to come forward and talk about their own feelings which they have for another person. That is where, I think, the active part would be, where homosexuals become full human beings.

Michael Clohesy: I think the argument that people should be free not to reveal their sexuality is only valid in a situation where people are totally free to reveal it.

Chairman: It does seem to me in a sense to raise issues of a different kind if there is, so to speak, a demand that a particular attitude or affiliation should be acknowledged?

Michael Clohesy: I think the question really is, should people feel free. Our argument is that they are not free to, mainly because of fingers just as much as active discrimination.

Mr Bailey: Apart from the few people that you have mentioned that actually, as it where, declare themselves as homosexuals, you would have a feeling there were not as many undeclared ones through the public service as there could be because if discrimination against them, is that right?

Michael Clohesy: Yes.

Mr Bailey: You think that is because there is some kind of a quiet net which passes it around, or how does this happen? What do you think happens that makes you feel they are discriminated against more than other people perhaps?

Michael Clohesy: Speaking with them, the fears that people have. Only someone who has gone through the process of coming out, as we have described that, can understand what a terrifying experience it is. For a family who have been conditioned by society all along to believe that their children are going to grow up and take a husband or wife and have three or four kids and live in suburbia, it is a terrifying process for people to change that.

Mr Bailey: You come before an interviewing board, or whatever it is, and you do not get the job. You are an undisclosed homosexual. How do you know that it is that, as it were, that disbarred you from getting the job and not something else? You did give us in the submission in the attachment an account in a post office area. Have you any way of really being sure it is that and not something else that produces the grounds of not getting the promotion or the appointment?

Michael Clohesy: No, of course not, because, as we pointed out in the submission, people will not say. You have an interview and they do not tell you why you do not get the job. We can only speak of the fears that people have and the evidence we present is attestable to the fact that there is discrimination.

Mr Bailey: In April 1974 the Prime Minister, in the course of something else, said, 'My view is that in the operation of the recruitment, promotion, and disciplinary processes under the *Public Service Act*, account should not be taken of criminal convictions when those relate solely to consenting homosexual acts between adults and in private. I know that the Public Service Board shares my view and agrees with them.' Would you have any comments on the aspects of that statement in the way you believe it actually goes. I am not asking you to criticise the Prime Minister, even though you can, but I just wanted to get your reaction to that statement?

Michael Clohesy: There is not much evidence of the use of criminal records of course. The appendix does point to one case where they were used. The overall policy which the Prime Minister enunciated would seem to us to be a step in the right direction, but a very way from the direct policy. We cannot see what criminal records relating to sexual offences should have to do with a person performing a public service job.

Mr Bailey: You are really saying just looking at the criminal convictions is not enough; a number of names would have not ever got to the courts but are still in this difficult situation you mention?

Michael Clohesy: And even if they had got to the courts, we cannot see the relevance.

Mr Bailey: Except the public service rules state that criminal convictions do affect you. It does not matter whether it is a criminal conviction for a motor offence or anything else. It does affect you because they are part of your record and I think that is what he was getting at?

Michael Clohesy: We are going further and saying that the public service rules should be critically reviewed. It would have to be an in depth study looking at the various aspects of the law, but we cannot see what sexual offences have to do with a public service job.

Peter de Waal: I would like to add that statements like the one made by the Prime Minister seem to take a long time before these are passed on to its members. I only came upon it when you just mentioned it. I have never heard what he said before. Is this statement well known to the public service as such? Obviously homosexuals who feel depressed and worried about their position would be delighted to have an encouraging statement of a step forward by our Prime Minister, but is this disseminated?

Michael Clohesy: On the same point, we have discovered that the board itself has stated that homosexuality is not relevant when making appointments and promotion, but the fears can only be overcome when these sorts of things are made public.

Chairman: Do you have a journal?

Michael Clohesy: Yes, we do.

Chairman: It would be, presumably, a reasonable function to publish these things?

Michael Clohesy: How would we get them? This is the problem.

Chairman: I do not know where the Prime Minister's statement was made but it was presumably made in parliament or in some public address.

Dr Wilenski (Special Adviser): It was a letter to Mr Hayden. [562] As I understand it, it was sent on to Mr Hayden's constituents. It was not a public document in the sense that it was a circulated document.

Mr Munro (Commissioner): Is it your view in relation to convictions for homosexual offences that those convictions invariably be sufficient to exclude entry to the public service?

Michael Clohesy: We know of one instance where it has been.

Mr Munro: Do you know of others?

Michael Clohesy: No, but on the basis of that – we are generalising, but that has happened and therefore there is no reason why it would continue to happen. Our problem, as we said, is having only three or four

[562] Mr Bill Hayden was at the time a member of the House of Representatives for the seat of Oxley in Qld.

people who have revealed their sexuality. This happens to be one of those people.

Chairman: In the light of the statement in your paper, it is interesting that you thought that at least five per cent of members of the public service were, presumably most of them undeclared homosexuals, but were in fact homosexuals. What was the basis for that?

Michael Clohesy: A 1948 study by Kinsey [563] which is the usual source for that figure. I think it is reasonable to say that is an extremely conservative estimate. That figure is for people who are exclusively homosexual for the whole of their life, so in fact the figure is probably considerably higher than that but, of course, there are no other statistics available.

Professor Campbell (Commissioner): Earlier you complained that the legislation of the Australian Government continues to fail to recognise and take account of the different life styles of homosexuals. In your written submission you have made fairly specific recommendations for change of current legislation governing the Australian Public Service. In particular you have suggested changes to those parts of the regulations dealing with the entitlement to various kind of allowances and you have proposed the adoption of an extended definition of the concept of a family. Some of the women's organisations who have made submissions to the commission have made recommendations along similar lines. It has been recommended to us that the criterion being a married officer as opposed to a single one should be rejected in place of a more liberal criterion on which allowances would be payable according to whether or not the officer in question had to maintain dependants. Generally would you be in agreement with that general approach?

Michael Clohesy: In fact we have read the women's submissions and we cannot see in fact that the two proposals differ at all. In our submission on page 5 we make reference to dependency and say, 'Provision should be made in the regulations that payment will only be made to the family of an officer or employee where the family is found to be dependent on the officer or employee'. So in fact we believe we are saying the same thing so we would certainly support what the women are saying.

Professor Campbell: When you speak of dependency I take it you are referring to de facto dependency. I think it might be assumed that one of the bases of making provision for the payment of allowances to public servants was that as a matter of law wives and children are entitled to be maintained, whereas at the present time there is no such legal obligation attaching to the members of a homosexual family unit. This would seem to me to be a rather fundamental objection and perhaps the first step might be to acknowledge some kind of legal obligation. Would you consider that there would be any practical difficulties in establishing de facto dependents on which entitlement would rest?

Michael Clohesy: As we pointed out in the submission, we have suggested to the Attorney-General that a family register be set up. People could come along and say: We are a family and for legal purposes should be considered a family. In that situation perhaps one of the members of the family should be specified as the dependant in the family in the same way that I believe that the wife should not automatically be assumed to be a dependant in a nuclear family, that perhaps the husband could be the dependant and the wife the bread-winner.

Mr Munro: Does the life style of a homosexual family in fact create a real state of dependency? In nuclear families there is an assumption, which must now be questioned with two member families, that the wife is dependent on the male, and in a fair percentage that reflects the situation, one person stays at home and performs the domestic role. Would in fact a homosexual family have that living pattern of one member being not employed in a wage/salary earning capacity, as a matter of general social obligation?

Peter de Waal: This could well occur if homosexuals were allowed to adopt children, or if it were a three or

[563] Kinsey, AC, et al. *Sexual Behaviour in the Human Male*, Saunders, London, 1948. Kinsey, AC, et al. *Sexual Behaviour in the Human Female*, Saunders, London, 1953.

four member homosexual family and one or two of the members were students they would obviously have to be supported, so I think the student would be dependent on the other members of the family.

Michael Clohesy: In our own situation, for example, I am a student and the others work and they support me. Next year Peter will be a student so there will be two dependants in that situation. I think the question that should be looked at is whether or not one member of a family could be allowed by law to be dependent, as the wife is now, for instance, even if she does not have children. I think that would be a fair thing if one member of the family could be deemed to be dependent, but I think it would further examination.

Mr Bailey: It would be the same sort of thing as the de facto wife situation at the present time in income tax and other things where if you have de facto wife increasingly it is being recognised. This is in an ordinary man/woman family; it is recognised she is dependent although she is not legally married. It is the same sort of thing.

Chairman: It would appear really that all you require is a more liberal definition of dependent. If it were established as a matter of fact that one or more members of a homosexual family or a voluntary grouping were in fact dependent, i.e., was a student and was being helped by the other members of the family – that is what, I take it, Professor Campbell was referring to when she spoke of de facto dependants – if the law acknowledged that where such dependants could be established as a matter of fact it would be treated in the same way as dependants within a nuclear family.

Mr Munro: Could I put a question on a different topic? Rather exhaustively you have itemised the use of the male pronoun in public service regulations. Do you not feel that is taking it a little bit far when you consider the administrative costs of making that particular change? The women's liberation movement might suggest the same thing. It would be quite substantial. Virtually all legislation would need to be amended, whereas there is legislation that deems he to mean, or to desexualise, if you like, the use of that pronoun. Do you have any comment on that?

Michael Clohesy: One could take several viewpoints on that, I suppose, one being that the financial subsidy of such a change would be worth while in social benefits that would accrue from people being conscious of the fact that 50 per cent of the population were not male. If finance was going to be a terrible problem I think the principle could be that forthcoming legislation would adopt this principle.

Professor Campbell: I think you have, amongst other thing, advocated that there be distinct homosexual representation on the joint Council according to the percentage of homosexuals within the public service. Why do you think sexual orientation should be relevant at all to representation on a body such as this?

Michael Clohesy: Our argument would be based on the 1974 Public Service Board report which says: 'A significant recent development has been the increasingly important role of the joint Council in the examination of many important aspects of conditions of employment.' One of the constant things in our submission is that conditions of employment for homosexuals are, at best, second best, so far as allowances are concerned, so far as leave is concerned; bereavement leave is automatically given to a wife and it would not automatically be given to a member of a homosexual family; if the wife goes to hospital the husband can take a day off to go to the hospital which would not apply to a homosexual family; if a member of a nuclear family becomes sick in a place distinct from headquarters the member of a nuclear family has an automatic right to have fares paid to go and visit and this is not so for members of a homosexual family; superannuation discriminates in conditions of employment of homosexuals. We say that in fact there is discrimination and it could best be overcome by having representation on the body which is concerned with these things.

Mr Munro: I think in fairness it should be added that the joint Council regulations provide that one of the staff side representatives should be represented by a female?

Michael Clohesy: That is from where we derived that suggestion, when we discovered that. We think at the

present time the female representative is a male. We would hope the homosexual representative would be a homosexual.

Mr Bailey: A number of the regulations you have mentioned are perhaps offensive to you because, for instance, they say the board has a discretion to treat somebody as a married officer if they wish for the purposes of some allowance. Mr Munro has said it takes a very long time to get regulations changed, but where the board would have a discretion like in regulation 101(3) or 80A – 101(3) is the one which says: 'For the purposes of an officer who is maintaining a home or supporting dependent children in circumstances which, in the opinion of the board, justify his being deemed a married officer shall be deemed to be a married officer,' and then he gets certain allowances. If the board were able to provide administrative action to indicate to departments or to determine itself that homosexual groups could be included, you would not be objecting to that happening by administrative action ahead of any legislation, I take it?

Michael Clohesy: No, I would not. As an interim measure I think it would have our full support. We were envisaging a situation where the commission would be recommending a change in the act and regulations.

Mr Bailey: Even then it would be open to us to recommend ahead of that an administrative interpretation which would allow benefits where the law would preclude them, as it were.

Professor Campbell: Has your organisation made approaches to various public service associations in order to bring before them the kinds or grievances that you have expressed to us. in your submission?

Michael Clohesy: Not to a sufficient extent perhaps. For instance, on 29 September [1974] this year we sent to 33 unions with members in the public service including the four major unions – the Amalgamated Postal Workers Union, the Union of Postal Clerks and Telegraphists, The Administrative and Clerical Officers Association and the Fourth Division Officers Association – copies of changes we were proposing to the superannuation scheme for Australian Government employees. To date we have received one reply, from the Builders Labourers Federation of NSW, and not even an acknowledgement of our letter and proposals being received, which I think is indicative of the reaction we would get from unions. The ACTU has received a copy of the superannuation proposals plus the proposed alterations to the national compensation scheme. They have not replied either.

Professor Campbell: What about the Public Service Board itself?

Michael Clohesy: We have not approached them directly yet.

Chairman: Thank you very much for coming along. If there are any issues we may wish to pursue we will get in touch with you.

(The witnesses withdrew)

1:–6.12.1. – Additional Evidence Presented to the Royal Commission on Australian Government Administration's Hearing–Homosexual Bureau, 5 December 1974

CAMP presented the following additional evidence at the public hearing of the Royal Commission on Australian Government Administration on 5 December 1974.

The search for practical measures to analyse and change existing attitudes and practices within the Australian Public Service relating to homosexuals, and to provide for their recognition and the implementation of their rights has led to the conclusion that this purpose would best be served by the establishment of a Homosexual Bureau.

This would be a body able to concern itself with the whole Public Service and the policies and practices of all departments. It would have authority to make recommendations concerning any matter it felt related to homosexuals. It would be an independent body, safe from the whims of changing governments.

We believe that a central Bureau is preferable to a system in which homosexual officers were attached to individual departments for several reasons: greater efficiency; possibility of more co-ordination in the work being done; ease of communication in the work being done; ease of communication between Bureau personnel; possibility of development of major projects; danger that homosexual officers would be caught up in departmental work not related to homosexuals.

The Bureau would make an Annual Report to Parliament on its work. This would provide an occasion for reviewing the structure and functions of the Bureau.

The Personnel of the Bureau would be known homosexuals, or people of different sexual orientation selected by a panel of known homosexuals, with equal numbers of women and men, so far as this was possible. Because of the large volume of work remaining from the past to be done, it is envisaged that more staff would be needed when the Bureau began than at later stages of its existence.

Structure

- Central office, situated in Canberra;
- Personnel responsible for liaison with departments;
- Personnel responsible for education programs;
- Research personnel;
- Personnel responsible for contact with the public.

Functions

- Review existing legislation and regulation with a view to recommending changes which would provide for the rights of homosexuals;
- Review proposed legislation and regulation for the same purpose;
- Initiate proposals for government action;
- Conduct education programs on homosexuality for various classes of officers, for example:
  (a) those responsible for appointment and promotion;
  (b) those responsible in departments for drawing up legislation;
  (c) departmental heads;
  (d) those dealing with the public.
- Undertaking research into:
  (a) nature of attitudes to homosexuals and homosexuality within the Australian Public Service;
  (b) nature of discrimination against homosexuals within the Australian Public Service;
  (c) means of changing prevailing attitudes and discrimination;
  (d) status of homosexual women within the service;
  (e) morale of homosexuals within the Australian Public Service;
  (f) job success of homosexuals who are known as such in the Australian Public Service;
- Initiate programs designed to facilitate homosexuals identifying themselves as such within the Service;
- Maintain facilities to receive and redress the grievances of homosexuals;
- Provide representation for homosexuals on appropriate committees advising Government and departments, and on such bodies as Joint Council;
- Provide information resource centre for officers with duties relating to homosexuals;
- Maintain close liaison with the various homosexual movements and related movements.

1:–6.12.2. – NJ Campbell, Federal Secretary, Administrative and Clerical Officers' Association Letter to CAMP NSW, 18 December 1974 [564]

In evidence to the Royal Commission into the Australian Government Administration, on Thursday 5 December, 1974, two representatives of your Organisation commented on the role of staff associations within the Public Service sector.

The representatives alleged that a detailed document prepared by your Organisation relating to the new Public Service Federal Superannuation scheme had been circulated to all the relevant associations and unions [see pages 237, 272]. The representatives pointed out that no reply, with the exception of the Builders

[564] Although the above letter is dated 18 December 1974 it is date-stamped as received by CAMP NSW on 6 February 1975. This would appear to be the reason for the absence, in the original publication, of any response.

Labourers' Federation [see page 238] had been received from the staff-side area.

My Organisation through the Council of Commonwealth Public Service Organisations would wish to take considerable credit for the proposal and the pressures which were needed for the implementation of the new scheme. We did endeavour to seek the widest possible array of views from our members and were particularly concerned to protect groups designated as minority groups, such as female officers.

We were somewhat concerned at the reply given by your representatives to Mr Commissioner Munro alleging non-interest to the detailed views presented on this subject. It is not for us to comment on the unions to which you presented your views, however, we would hope if you intended to meet with some success that you wandered wider than the Builders Labourers' Federation.

I have conducted an inquiry at my Federal Office in Sydney and my Federal Industrial Office in Melbourne to see if the material on Superannuation had been received by ACOA. Our records show no such material was received by the Federal Office in the years 1973 and 1974.

I have enclosed a copy of our submission to the Royal Commission and I would draw your attention specifically to page 61, second paragraph [see page 275] where my organisation has asserted its active opposition to any form of discrimination.

I can assure you that any material from members of ACOA which alleges discrimination on the form of race, colour, sex, religion, political opinion, national extraction or social origin, will be treated with considerable seriousness.

As to the specific subject matter of the new superannuation scheme the details of the Act have been approved by the Federal Cabinet and ACOA is hopeful it will be passed in the first sittings of the Autumn Parliament. We would not wish to see any further delay to this overdue reform.

I would be interested in receiving your views so we could consider them with other matters to be dealt with by pressures for amendment after the initial substantive bill has been enacted.

ACOA, as an organisation, has been formed to protect and advance the views of its members. I would be very reluctant to attach ACOA's name to a political-come-social crusade but I do feel on this occasion the Organisation was improperly criticised by your representatives. If members of your Organisation are concurrently members of ACOA, they are quite free to raise the views of your organisation through the appropriate ACOA channels. ACOA is a highly democratic organisation having elected bodies at various levels reaching ultimately to the Federal Executive.

I would hesitate to accept policies of a body outside our own membership as part of ACOA's general platform. Indeed, my organisation is opposed to the creation of discriminatory bureaus designed to promote a social apartheid within public employment in Australia. I cannot accept the pseudo-liberal view that compensatory discrimination is justified to overcome past discrimination. The American experience must speak heavily against the institutionalisation of any form of discrimination whether it is compensatory or not. I would see my comments applied equally to other minority groups, i.e. aborigines and women.

I have taken the liberty to forward a copy of this letter to Dr Coombs, Chairman of the Royal Commission into the Australian Government Administration, as your evidence could be seen as counter to our general philosophic view outlined in Chapter 14. You might be kind enough to forward me a copy of your submission to the Royal Commission with the other papers discussed above.

1:–6.12.2.1. – Administrative & Clerical Officers' Association Submission to the Royal Commission on Australian Government Administration, 31 October 1974 [565]

14 Minority Groups

The treatment of minority groups in their employment in the APS has been the subject of controversy. The government's approach was defined in a statement by the Minister for Labour in May 1973, when he said:–

> The Australian Government has decided to ratify the Convention adopted by the International Labour Conference

[565] This is Chapter 14, page 61, of the Administrative and Clerical Officers' Association's submission to the Royal Commission on Australian Government Administration, dated 31 October 1974. The Association's complete submission totalling 72 pages is part of the 'Oppression Upon Reflection 1974' original documents held by the Manuscript Library in the Australian National Library.

> in 1958 (no. 111) abolishing discrimination in employment and occupation … For the purposes of the Convention, discrimination includes any discrimination, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation …

The ACOA has firmly endorsed these principles and our active opposition to sex discrimination is illustrative of this support.

It is accepted that there are some generally disadvantaged groups in the community who have particular problems. Aborigines are a case in point. Their educational opportunities are usually limited to the extent that only very few qualify in educational terms for appointment to the Third Division. The ACOA, whilst sympathetic towards their problems in general political terms, cannot support any move for relaxation of education standards for entry to the Third Division.

Any single modification of these standard requirements would establish a precedent which could cause a complete breakdown of entrance principles. Many migrants have language difficulties which seriously dampen their educational prospects. If the spirit of the ILO Convention is to be observed then they too would be entitled to similar treatment to that accorded aborigines. There are other handicapped groups who would also require consideration and this form of favouritism.

1:–7. – **Family Register**

It became obvious once we had formulated the idea that the definition of family needed to be extended [see pages 219, 229, 244] that some sort of central register was needed where people in a group would be able to declare itself a family (probably by statutory declaration).

Establishment of the register would have the immediate effect of eliminating any distinction between families constituted through marriage and those not in legal and administrative matters, and in the long term would serve to eliminate marriage as the basic unit of society and encourage a wider range of life-styles.

Families registered as such would be entitled to the same legal rights which now accrue to members of the nuclear family, eg., taxation claims for dependants, social security benefits, medical contributions funds, inheritance rights, education allowances, housing loans.

CAMP suggested to the Australian Attorney-General on 30 September 1974 [see page 161] that serious consideration be given to ways in which this register could be established. After three telephone calls by us (10 November, 2 December, 3 December) we discovered that our proposal had not even reached the appropriate section within the Attorney-General's Department (the Family Law and Miscellaneous Section of the Justice and Family Law Division). We were assured on 3 December that steps would be taken to rectify this. However, on 14 January 1975 when we telephoned the Family Law Section, we learned that the head of the Section had never heard of our proposal. The following day, therefore, we forwarded a copy of our original letter.

We have the impression that our proposal is being shelved because the changes it would initiate are too revolutionary.

1:–8. – **Royal Commission on Human Relationships**

Another initiative of the Australian Government in 1974 was the establishment of a Royal Commission 'to enquire into and report upon the family, social, educational, legal and sexual aspects of male and female relationship …' [see page 280].

This has proved an excellent opportunity to press for recognition at governmental level of homosexual relationships and of the pressures placed on them by a society which continually works to oppress them. Accordingly, CAMP announced at the opening hearing of the Commission [see page 284] that we would be presenting it with a submission [see page 285] which would be supported by oral evidence [see page 334].

The official announcement of the establishment of the Commission and newspaper advertising to this end did not get the Commission, investigating human relationships, off to a good start, since they perpetuated society's dominant-male ethic by referring to Elizabeth Evatt as chair**man** of the Commission. We wrote in these terms to the Commission on 30 September 1974 [see page 281]. The only reply we have ever received was a standard note of acknowledgement of receipt on 22 October 1974 [see page 281].

The submission is to be presented before 31 March 1975.

1:–8.1. – Royal Commission on Human Relationships–Terms of Reference Advertisement, 25 September 1974 [566]

1. The Australian Government has recently set up a Commission to make an inquiry into human relationships. The members of the Commission are the Hon Elizabeth Evatt (Chairman), the Most Reverend Felix Arnott, Anglican Archbishop of Brisbane, and Anne Deveson.
2. The full terms of reference of the Commission are set out below–

Term of Reference

To Inquire Into and report upon the family, social, educational, legal and sexual aspects of male and female relationships, so far as those matters are relevant to the powers and functions of the Australian Parliament and Government, including powers and functions in relation to the Territories:

To give particular emphasis to the concept of responsible parenthood, to have regard to experience in other countries and to include in your inquiry the following aspects of the said matters:

(a) the extent of relevant existing education programs, including sex education programs, and their effectiveness in promotion of responsible sexual behaviour and providing a sound basis in the fundamentals of male and female relationships in the Australian social environment;

(b) the extent of relevant existing programs in medical schools and their adequacy to provide comprehensive medical training in contraceptive techniques, in the physical, psychological and sexual problems experienced by women in adapting to marriage and before, during and after menstruation, and in matters relating to pregnancy, fertility control, spontaneous and induced abortions and childbirth and to encourage acceptance by the medical profession of its responsibilities in the field of contraceptive counselling;

(c) the provision, adequacy and effectiveness of existing family planning facilities, educational and activational information on family planning, and methods of evaluation of all family planning techniques;

(d) the social, economic, psychological and medical pressures on women in determining whether to proceed with unplanned or unwanted pregnancies, having regard to:

(i) the adequacy of housing, child-minding centres, pre-school centres, domestic assistance for families and working mothers, assistance to single parent families, other forms of assistance for mothers employed in industry, and adoption procedures;

(ii) the disabilities of families with handicapped children; and

(iii) the social status of women in the community; the social psychological and medical results of termination of, or failure to terminate such pregnancies;

(e) the adequacy and effectiveness of existing medicolegal determination in relation to termination of pregnancy, the incidence of such terminations, the factors influencing their occurrence, the adequacy of medical training in and evaluation of methods of termination, consultative rights of the family or other persons concerned and the adequacy and effectiveness of pregnancy support services; and

(f) any other matters in relation to the family, social, educational, legal and sexual aspects of male and female relationships to which the attention of the Commission is directed by the Prime Minister in the course of the Inquiry.

3. To make recommendations as to measures that are desirable with respect to the foregoing matters under existing or future laws of the Australian Parliament or of the Territories (including laws providing for grants to the States) and to indicate whether these measures should be implemented through existing bodies or through government instrumentalities to be created,
4. Further advice will follow re the–
   - calling of submissions
   - dates of hearings
   - calling of applications for positions on the Commission's staff, and
   - notification of a permanent address.
5. In the meantime any matters should be referred to the Assistant Secretary, Royal Commissions Branch, Department of the Special Minister of State, East Block, Parkes, Canberra, ACT 2600, who will arrange for them to be passed to the Commissioners.

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[566] n.a. 'Royal Commission on Human Relationships–Terms of Reference', advertisement, *The Sydney Morning Herald*, Wednesday, 25 September 1974, p. 12.

1:–8.2. – CAMP NSW Letter to A/Secretary, Royal Commission Branch, Special Minister of State, 30 September 1974

We have been appalled to see Elizabeth Evatt referred to in newspaper advertisements as the Chair**man** [see page 280] of the above Commission. Chairwoman or chairperson would seem to be a far more appropriate title.

One wonders about the ability of the Commission to investigate human relationships when it so obviously perpetuates the dominant-male ethic of this society.

1:–8.3. – Special Minister of State, Royal Commission Branch, Letter to CAMP NSW, 22 October 1974

I acknowledge receipt of your letter of 30 September 1974 concerning the Royal Commission on Human Relationships.

1:–8.4. – Opening of the Royal Commission on Human Relationships, 6 November 1974 [567] [568]

The Chair(man) Justice Elizabeth Evatt: I call upon the secretary of the commission, Mr Robert Hyslop to read the letters patent.

The Secretary Robert Hyslop: The letters patent read:

AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

To–

The Hon Elizabeth Evatt
Most Rev Felix Raymond Arnott and
Anne Barbara Deveson

Greeting:

WE DO BY these Our Letters Patent issued in Our name by Our Governor-General on the advice of Our Executive Council and pursuant to the Constitution of Australia, the *Royal Commissions Act 1902-1973* and other enabling powers, appoint you to be Commissioners to inquire into and report upon the family, social, educational, legal and sexual aspects off male and female relationships so far as those matters are relevant to the powers and functions of the Australian Parliament and Government, including powers and functions in relation to the Territories:

AND WE APPOINT you the said Hon Elizabeth A Evatt to be the Chairman of the said Commissioners:

AND WE DIRECT you the said Commissioners to give particular emphasis to the concept of responsible parenthood, to have regard to experience in other countries and to include in your inquiry the following aspects of the said matters:–

(a) the extent of relevant existing education programs, including sex education programs, and their effectiveness in promoting responsible sexual behaviour and providing a sound basis in the fundamentals of male and female relationships in the Australian social environment;

(b) the extent of relevant existing programs in medical schools and their adequacy to provide comprehensive medical training in contraceptive techniques in the physical, psychological and sexual problems experienced by women in adapting to marriage and before, during and after menstruation, and in matters relating to pregnancy, fertility control spontaneous and induced abortions and childbirth and to encourage acceptance by the medical profession of its responsibilities in the field of contraceptive counselling;

(c) the provision, adequacy and effectiveness of existing family planning facilities, educational and motivational information on family planning and methods of evaluation of all family planning techniques;

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[567] Royal Commission on Human Relationships, *Transcript of Proceedings*, Sydney, Wednesday 6 November 1974, 10:30 hours, pp. 1-11, 16, 28-9. (National Archives of Australia (NSW): A4013). The inaugural proceedings of the Royal Commission were held on the 21 floor, 100 William Street, Kings Cross.

[568] Other people apart from Martin Smith, Leon Protius and Mike Clohesy announced their intentions at the inaugural hearing of the commission. Only those who spoke on behalf of homosexual organisation have been recorded here.

(d) the social, economic, psychological and medical pressures on women in determining whether to proceed with unplanned or unwanted pregnancies, having regard to:–

(i) the adequacy of housings, chid-minding centres, pre-school centres, domestic assistance f or families and working mothers, assistance to single parent families, other forms of assistance for mothers employed in industry and adoption procedures;

(ii) the disabilities of families with handicapped children; and

(iii) the social status of women in the community; the social, psychological and medical results of termination of, or failure to terminate, such pregnancies;

(e) the adequacy and effectiveness of existing medico-legal determinations in relation to termination of pregnancy, the incidence of such terminations, the factors influencing their occurrence, the adequacy of medical training in and evaluation of methods of termination, consultative rights of the family or other persons concerned and the adequacy and effectiveness of pregnancy support services; and

(f) any other matters in relation to the family, social, educational, legal and sexual aspects of male and female relationships to which the attention of the commission is directed by the Prime Minister in the course of the inquiry;

AND WE DIRECT that, for the purposes of taking evidence, two Commissioners shall be sufficient to constitute a quorum and may proceed with the inquiry under these Letters Patent.

AND WE further direct you the said Commissioners to make recommendations as to measures that are desirable with respect to the foregoing matters under existing or future laws of the Australian Parliament or of the Territories (including laws providing for grants to the States) and to indicate whether those measures should be implemented through existing bodies or through government instrumentalities to be created;

AND WE require you as expeditiously as possible to make your inquiry and to report the results of your inquiry and your recommendations to our Governor-General of Australia.

WITNESS HIS EXCELLENCY THE HONOURABLE SIR JOHN ROBERT KERR, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Knight of the Most Venerable Order of the Hospital of Saint John of Jerusalem, Governor-General of Australia, this twenty-first day of August 1974.

JOHN R KERR
Governor-General

By His Excellency's Command, Special Minister of State.

ENTERED ON RECORD by me, in the Register of Patents no. 9 Page 24 this 21st day of August One thousand nine hundred and seventy-four.

K Pearson
Secretary to the Executive Council.

* * * * *

Justice Evatt: This is the first formal hearing of the Commission and we believe it is the first time that a commission has been established in Australia or elsewhere to inquiry into human relationships. Our task is to look into a wide range of matters relating to the roles and responsibilities of men and women as individuals, as members of society and in their relationships with each other. The general framework of our inquiry will lead us to consider the effect on the individual of the conflicting pressures of social responsibility, family responsibility and individual needs. Ours is a fact-finding mission and our investigations will cover a broad range of questions. For example:

How can families be helped to cope with stresses arising from social and technological change?

How far do we need to change our attitudes towards the roles and relationships of men and women in society?

How can women be encouraged to play their full part in our community, and how can we ensure that they are able to do so?

What further legislation or other action is needed to overcome discrimination?

How can parents and schools best help children to grow up with a deeper understanding of themselves and others?

Are students who are being prepared for the professions receiving the kind of training that helps them to understand the social needs of people?

How can our family planning facilities be improved?

What is the incidence of abortion in Australia, who are the women having abortions and why are they asking for them?

What are the effects of having an abortion, and what are the effects of having an unwanted child?

How can we prevent cruelty to children and the tragedy of battered babies?

What improvements in urban and social planning would help to remove basic inequalities in society?

We will proceed by way of formal hearings and informal consultations or discussions in all capital cities and in other centres throughout Australia. Although our headquarters are in Sydney, a centre for inquiries has been established in each capital city.

We will conduct our proceedings with a minimum of formality. Our hearings will be open and so far as possible oral evidence and written submissions will be made accessible to all. However, an inquiry of this nature it may become important as occasion arises to respect and maintain the privacy of individuals.

The matters which we will investigate could affect the daily lives of almost every Australian and success will largely depend on the participation and co-operation of all. We invite every person who has an interest in our inquiries to put his or her point of view to us so that we may be better able to determine priorities, to identify problems and to make constructive suggestions for their solution.

We need to hear from as many people as possible whatever their views. We want to talk with people of different ages, from the very old to the very young with aborigines, migrant groups, people in cities and suburbs and with people in country towns and isolated places.

We recognise that people with different cultural values will have different needs. We will be seeking the help of government departments, of universities and other research organisations, and of other associations, organisations or individuals concerned with people and their needs. We will also be looking overseas to the experience and findings of commissions in countries like Canada, the United States of America, Great Britain and Sweden.

In many areas of our inquiry we expect to meet with strongly held and conflicting views on religious, moral, social and political issues. If possible, we will seek to reconcile views and to reduce the area of difference. Where conflict cannot be eliminated, we will seek a solution with due regard for the interests of all.

Although we wish to encourage as many people as possible to come forward with evidence and submissions, we will not be content to rely solely upon submissions from the organized and articulate. We have a special responsibility towards those who have no voice but who are in need of help, to those upon whom pressures are great, though unidentified and unexpressed. Our aim will be to discover those people and to bring their problems within the scope of our work. In this way we aspire to become a commission not merely of words but of actions and we aim at recommendations for positive and effective programs of reform.

The first stage of our inquiry will be to consider what reports and research have been completed or are in progress in Australia or elsewhere and to receive and consider submissions and evidence from interested persons and organisations. All persons who intend to make or who are considering making submissions to us, and who are not here today, are invited to notify us as soon as possible. We ask that general submissions be sent to us not later than 31 March 1975.

That concludes our formal statement and copies of the statement will be made available on the adjournment of today's proceedings. Now we will deal with appearances.

Jane Mathews: (instructed by the Crown Solicitor) If the commission pleases, I have been appointed to assist the commission.

Justice Evatt: Before dealing with other applications for leave to appear or be represented, we wish to state that only in exceptional circumstances will we allow legal representation to persons or organizations making submissions or statements or giving evidence to the commission. Questions may be put to such persons by Counsel assisting the commission or by the members of the commission. We are, however, prepared to grant leave have to appear or to be legally represented today for the purpose of identifying persons or organizations and the subject matter or matters within our terms of reference in which they have an interest. Leave so granted does not extend beyond today's hearing.

We would now call upon persons present to identify themselves their organisation, the subject matter which concerns them and their submissions and their intention regarding evidence and submissions.

Martin Smith: And I am editor of *Gayzette*, the national homosexual fortnightly, and convenor of Chutzpah, the Jewish gay group. Firstly I shall be submitting written evidence that male and female homosexual relationships exist and that they are as valid and as fulfilling as those involving heterosexuals but that societal pressures on human relationships differ from those placed on heterosexual relationships. I shall be making available to the commission male and female witnesses who are participants in homosexual relationships, relationships which have lasted up to twenty-five years who will be able to graphically present evidence of societal pressures unique to such relationships. Finally I shall be making available to the commission male and female witnesses who have been involved in homosexual relationships which societal and other pressures have destroyed, despite the wishes of the participants that the relationships continue.

Leon Protius: And I represent the catholic homosexual group Acceptance. We would like to submit oral and written evidence to the commission, and wish to point out that as homosexuals we represent approximately 5% of the population, which is about three-quarters of a million people.

Mike Clohesy: I am secretary of CAMP (NSW Branch) a homosexual political movement. Our submission will analyse the forces which shape in an oppressive fashion the relationships between homosexuals namely the legal, religious, psychiatric and educational institutions of this society. We will show what our awareness of our own situation shows about human relationships in general namely that the male dominant ethic of this society and the sex role playing which is encouraged by this society are the main forces shaping the relationships. We will show the definition of the family should be extended so that alternative life styles will be accepted.

Justice Evatt: Is there anyone else who wishes to make a statement at this time?

Very well. We have had a number of applications for leave to make submissions. A number of people have indicated their willingness to make written submissions or oral submissions and we would like to pursue further with everyone who has made such a statement their intention in that regard.

To help us in that respect we would ask private individuals who wish to make some further submission to the commission and who have spoken today to ensure that their full name and address is forwarded to us as soon as possible so that we can communicate with them. In the case of organisations I do not think that will be necessary.

I will now call upon counsel assisting the commission to outline the general procedure which should be followed by persons wishing to make written submissions or to make statements or to give evidence to the commission.

Jane Mathews: First, in relation to written submissions, the commission has called for written submissions by 31 March 1975 and these submissions should be submitted to the secretary of the commission. It would greatly assist the commission if written submissions were accompanied by six copies, but only if that is possible. If anyone present in court has written submissions which he or she wishes to present, those will be received by the secretary at the end of today's proceedings.

It is anticipated that in due course all written submissions will be formally tendered to the commission and will thus become part of the formal record of the commission. If anyone wishes to seek confidentiality for their written submissions they should claim confidentiality with the submission itself.

The commission may ask for further information to extend or explain written submissions and it may do this in a number of ways. It might either ask for further written submissions or ask persons to attend, to give evidence or to take part in informal conferences or discussions.

Second, in relation to oral evidence or statements, persons or organisations who wish to appear in person to supply information, make submissions or give evidence should in the first instance put their request in writing to the commission. The commission will then consider whether and in what manner the request should be granted. The request should be accompanied by an outline of the proposed statement, submission or evidence and generally, all inquiries as to evidence, submissions and other related matters should be directed to the secretary of the commission.

Justice Evatt: Thank you Miss Mathews. I would like to thank everybody who has come this morning and to

assure them that we will do our very best to help all those intending to make submissions or statements to us and to see then as soon as may be possible.

I would also like to thank the Royal Commission on Petroleum and Mr Justice Collins in particular for making this courtroom available to us for today's proceedings. Our hearings in Sydney will in general be on the floor above, the 21st floor.

Finally, I would indicate that the commission will determine its further program in the light of the submissions which are made to us and in the light of its own researches. Details of our further program of hearings and discussions will be announced at a later date, probably in the new year. We will now adjourn these proceedings without fixing a firm date.

At 11.45 hours the Royal Commission adjourned to a date to be fixed.

1:–8.5. – CAMP NSW Submission to Royal Commission on Human Relationships, 20 September 1975

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Letter of Transmittal

CAMP NSW

We present the submission of CAMP NSW to the Royal Commission on Human Relationships.

The inspiration gained by one of our members at your last public hearings in Sydney led to the formation of a working group to prepare the submission. The group held a number of meetings between June and September [1975], discussing at great length the many problems with which we are confronted as female and male homosexuals.

The result of our discussion, the ideals to which we subscribe, and the recommendations for action by you are set out in the following report. We homosexuals look to the Commission for the promotion of our ideas and the implementation of our recommendations which will lead towards liberation for this suppressed minority.

We seek to discuss the matters contained in our submission and any matter about which you would like more information: in informal sessions, and, in formal sessions, through public hearings.

For the Working Group, representing the membership of CAMP NSW: Ron Austin; Mike Clohesy; Jan Davis; Peter de Waal; Col Eglington; Terry Goulden; John Greenway; Robyn Kennedy; Robyn Plaister; David Ritchie; Peter Trebilco.

Part I–Preamble

1.1 The first aim of this submission to the Royal Commission on Human Relationships is to analyse the oppression of female and male homosexuals.

1.2 This task is extremely complex, since the cause and manifestations of homosexual oppression are complex and divers.

1.3 The method adopted for this submission has been to analyse our oppression as homosexuals according to the five basic terms of reference of the Commission: family, social, educational, legal and sexual aspects of human relationships.

1.4 Analysis of homosexual oppression is pointless unless allied to the search for homosexual liberation. The second, and more important, aim of the submission, therefore, is to recommend ways of

liberating homosexuals from their oppression.

1.5 Liberation will come, fundamentally, only through a restructuring of society.

1.6 Some of the ways in which we see that this restructuring process could be promoted are outlined as recommendations at the end of each section of the submission.

Part II–Family Aspect

Nuclear family

2.1 The only family unit given full recognition by society at the moment is the nuclear family.

2.2 The energies of all components of society are expended in maintaining this as the basic unit, to the exclusion of the individual unit and other family units.

2.3 This section of the submission will examine the conditioning processes which are a primary function of nuclear families; and will discuss the position of nuclear families.

Sex roles

2.4 The fundamental way in which nuclear families perform their function as socialising agents is by conditioning their members into adopting certain sex roles.

2.5 This means that certain roles are assigned to people according to their gender, regardless of their individual personality.

2.6 These roles serve to uphold the power structure of this patriarchal society by striving to ensure that men take on roles of power and women those of weakness.

2.7 Adoption of these roles is essential to the maintenance of the microcosm of the patriarchal society, the nuclear family.

Effects on homosexuals

2.8 The insistence of society that people should be conditioned into these roles is reflected in the duality of peoples' view of homosexuals and their life-style:

2.8.1 That in homosexual relationships (of two people), one must adopt the male role, the other the female.

2.8.2 That all male homosexuals are effeminate and all female homosexuals ruffians.

2.9 The basic oppression of homosexuals resulting from sex-role conditioning operates in two ways:

2.9.1 since the purpose of the roles is to uphold the nuclear family life-style, they discriminate against alternative life-styles by ignoring them;

2.9.2 in a more active way, by ridiculing and shunning them for rejecting sex roles.

Families of homosexuals

2.10 The expectation, produced and fostered by society in families, that all its members will be heterosexual, marry and establish nuclear families, has severe effects on families from which a homosexual comes, and on homosexuals themselves.

2.11 The two major problems resulting from this are:

2.11.1 the development of an awareness of her/his sexuality;

2.11.2 the great difficulty of sharing their sexual orientation with the family.

2.12 This places obstacles in the way of developing good family relationships and forces the homosexual to lead a hidden life.

2.13 If the homosexual does summon the courage to open her/his life up to the family, it immediately has a crisis of failure. This is produced by the strong success/failure syndrome operating in society which brands all deviations as failures.

2.14 In most families there then ensues a period of great strain and estrangement while the family adjusts.

2.15 Unfortunately, in most cases there is no adjustment and the family rejects the homosexual, often by turning her/him out of the family home.

2.16 CAMP looks forward to a society in which no pre-determined sex-roles or models are presented to hinder the full development of the potential of individual people.

Homosexual families

2.17 Homosexual families, so far as society is concerned, do not exist.

2.18 This status is shared with all other variations from the nuclear family, since society is obsessed with maintaining the nuclear family as its basic unit.

2.19 Suppression of the homosexual family is shown most obviously in the provisions of various laws and

regulations relating to financial benefits (e.g. taxation, superannuation, allowances) for the dependent members of families. In these, only dependency in nuclear families is recognised.

Re-definition of family

2.20 What is necessary is a re-definition of family to mean: a group of people, however constituted, which considers itself a family.

2.21 This definition would be incorporated into all relevant legislation and regulation, so that:

2.21.1 dependency in all family situations would be recognised;

2.21.2 the current benefits accruing to nuclear families would extend to all families.

2.22 The instances to which this would apply include: taxation claims for dependants; social security benefits; inheritance rights; death duties; education allowances; housing loans; employment allowances; superannuation.

2.23 This dependency would, in all instances, have to be proved.

Children

2.24 Homosexual families meet oppression also where children are concerned.

2.25 The practice fostered by society is that children are possessions and projections of their parents.

2.25.1 This contributes to the high expectations of parents discussed earlier;

2.25.2 It contributes to the belief that the nuclear family is the only suitable atmosphere in which to raise children.

2.26 The consequences of this for parents in non-nuclear family situations is that they are labelled as deviants and accept this label for themselves.

2.27 For homosexual parents, gaining legal custody of their children is almost impossible. The hearsay dictum, 'Lesbians are unfit mothers' is, for instance, sufficient grounds upon which to refuse custody to a lesbian mother. The position with male homosexuals is unclear.

2.28 This, despite the fact that this dictum has never been proven.

2.29 The restrictions on homosexuals adopting children are absolute.

2.30 State legislation actively discriminates against homosexual parents. [569]

2.31 ACT legislation is not so prescriptive, since it does not specifically define the person or persons who may adopt. However, in the light of the social attitudes outlined in this section, *Adoption of Children Ordinance 1965-66* (ACT), s. 19(1), would obviously be used against homosexual applicants.

2.32 We draw the Commission's attention to pages 3-13 of *Female Homosexuality* [570] (Document A attached) which we include in this section of our submission.

Recommendations

1. That the Royal Commission on Human Relationships use the extended definition of family outlined in section 2.20, in its deliberations, research and reports.

2. That the Commission urge the implementation of this re-definition and the concomitant recognition of the rights of alternative families in all relevant Australian Government legislation and regulations.

3. That the Commission recommend the financing of education programs by CAMP NSW designed to inform the community about alternative life-styles.

4. That the Commission undertake research into the effect of sex roles on the development of individuals within the family.

5. That the Commission recommend changes to all adoption laws so that the restrictions would not be based on the sexual nature of the family or person wishing to adopt children.

Part III–Social Aspect

Conditioning

3.1 The conditioning which enforces certain sex roles on people discussed in the preceding section also operates in society at large.

3.2 It is manifested in such institutions and situations as sporting activity, clubs and hotels, social groups of various kinds, education.

Support for nuclear family

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[569] *Adoption of Children Act 1965-66* (NSW), s. 19.

[570] *Female Homosexuality: Seminar One–Conditioning Processes in Education and Mass Media*, CAMP NSW, 22-23 March 1975, pp. 3-13. Papers and Discussion of Seminar One, as part of International Women's Year, 1975.

3.3 The rigidity of the division between masculinity and femininity builds up those roles which prepare people to take their expected place in the nuclear family.

3.4 All the main institutions of society work towards supporting the nuclear family and its concomitant sex-roles, so oppressing all deviant life-styles.

3.5 These institutions are principally: medical, religious, legal, educational and media.

3.6 The tenacious support of the status quo by these institutions is carried out by their individual power structure, which have been built up by the people in them conforming, throughout their lives, to social expectations. Therefore, they resist altering anything that might threaten their power base.

Medical institutions

3.7 The family doctor is traditionally one of the first to whom those in trouble gone for help. The general ignorance of doctors about homosexuality and, indeed, about sexuality in general, means that this avenue is closed to most.

3.8 The psychiatric profession, together with religious institutions and dogmata, must bear the responsibility for being the source of the most systematic oppression of the homosexual.

3.9 Psychiatrists are responsible for the labels which have been given to homosexuals of curable, abnormal, sick, deviant.

3.10 These conclusion have been based on the most questionable of evidence, viz., by interviews and study of homosexuals who had approached psychiatrists for treatment.

3.11 It seems logical that if any study of a group in society takes as its sample group a sub-group which classifies itself as sick, then an invalid result will occur.

3.12 Recent psychiatric research has seen the error of previous procedure and has produced results which show that former labelling of homosexuals is simply untrue.

3.13 A bibliography of recent psychiatric research will be forwarded.

Religious institutions

3.14 It is not the place of this submission to debate the position of the various churches on homosexuality, although there is a wealth of material to challenge those positions.

3.15 The point which should concern the Commission is the attempt by the major churches to force their beliefs on the rest of society, and to have society moulded around and based on their beliefs.

3.16 The fact that they have, in the past, succeeded in this attempt has resulted in much of the oppression which we homosexuals suffer today.

3.17 We submit that the perspective which should guide the Commission in its deliberations is that of a pluralist society.

3.18 The legal and educational institutions will be discussed in later sections of this submission.

Media

3.19 CAMP's experience shows the near impossibility of minority groups gaining sensitive coverage by the media.

3.20 Generally, only that which actively supports the status quo is given prominence by the media.

3.21 Probably the most influential educational forums, therefore, are closed to those seeking to change attitudes.

Effects on homosexuals

3.22 The major consequences for homosexuals of the oppression we have outlined are rejection of their life-style as fulfilling and rejection of their person because it does not fit in with the pattern which society dictates.

Concealment of sexual orientation

3.23 The reaction of most homosexuals to these situations is to hide their sexuality to as many people as possible.

3.23 Most homosexuals structure their life-styles around this attempt to conceal their sexuality and thus try to escape the opprobrium of society.

3.25 Many homosexuals give into society's pressures totally and sublimate their homosexuality, usually by marriage.

3.26 One of the greatest problems for the homosexual movement is this very concealment of their sexuality by homosexuals. An essential part of the movement's education of the community is for the community to meet homosexuals. This can only be done by individual homosexuals having the

courage to confront the covert and overt violence of society, and reveal their true personality.

3.27 The society towards which we hope we are moving is one in which there will be no need for people to have to endure the traumatic experience of coming out, because no assumptions will be made about people. That is, people will not, as now, begin from the premise that everyone they meet is heterosexual.

Blackmail

3.28 A direct consequence of the forced concealment of their sexuality for homosexuals is the problem of blackmail: emotional, social, legal, financial.

3.29 The extent of this problem is impossible to gauge, but it can confidently be described as wide-spread and the effects destructive.

3.30 But blackmail is only a problem when homosexuals are forced to hide their sexual orientation. As soon as there is no subject for blackmail, the problem disappears.

Employment

3.31 A large area of discrimination which homosexuals encounter is employment.

3.32 Once homosexual orientation is admitted, none of their basic rights as workers is guaranteed or safe-guarded.

3.33 The basic tools used to protect the rights of workers in Australia are the Committees on Discrimination in Employment. [571] The powers of these Committees are based on International Labour Organisation Convention no. 111. [572]

3.34 s. 1 of Article 1 of the Convention reads: For the purpose of this Convention the term 'discrimination' includes:

> (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
> (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

3.35 It is clear from the reading of that s. that the rights of homosexuals are not safe-guarded:

3.35.1 since part (a) excludes the term sexual orientation;

3.35.2 since part (b) has not been used in Australia for the benefit of homosexuals.

3.36 We would point out that the rights of the aged and handicapped are similarly ignored by Convention 111.

3.37 The experience of CAMP NSW with unions is that they wish, with few exceptions, to simply ignore the homosexual issue.

3.38 While it is essential that the rights of homosexuals be guaranteed in legislation and/or regulation, we are under no delusion that this will be the end of our struggle.

3.39 With homosexual oppression and liberation becoming something of a political issue, employers are very reluctant to give homosexuality as a reason for dismissal or refusal to employ.

3.40 From the homosexual's point of view, the greatest problem with employment is the fear that their sexual orientation will be discovered and they will be discriminated against.

3.41 What is need principally, then, is a change in community attitudes towards the homosexual: for, in this case, employers to realise that peoples' sexuality has nothing to do with the job they perform.

Defence forces

3.42 The area of employment in which the most official discrimination against homosexuals occurs is in the Defence Forces. The policy of the Defence Forces on Homosexuals in the Armed Forces is included as Exhibit 1. This submission's comments on the policy are included as Exhibit 1A. The inclusion of this document and the comments as an Exhibit is only for reasons of length, and in no way lessens its importance.

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[571] See: 1:–8.5.1. page 299, 'National Committee on Discrimination in Employment and Occupation'.

[572] See: 1:–8.5.2. page 300, 'International Labour Organisation Convention Number 111'.

Homosexual women and employment

3.43 Problems in employment are duplicated for homosexual women, since they encounter discrimination first as an women, and then as an homosexuals.

3.44 This discrimination is very real and very personal because most homosexual women are, or must seek to be, self-supporting.

3.45 Remedies for them, therefore, must cover both areas of discrimination.

Civil liberties

3.45 As with their employment rights, the civil liberties of all homosexuals are ignored.

3.47 The Human Rights Bill [see pages 175, 181] introduced by the Australian Government into Parliament in 1973 could have been one way in which the rights of homosexuals were recognised.

3.48 However, since sexual orientation was excluded (following the international covenant) from the list of fundamental rights and freedoms in s. 7 [see page 182] of the Bill, another chance to guarantee them for homosexuals was lost.

3.49 Correspondence with various government departments on this subject is included as Appendix 2.

3.50 An amended form of the Human Rights Bill (a Sex Discrimination Bill) is being discussed and will only have application in the Australian Territories.

3.51 Since the Government will be legislating under its powers over its Territories, there will be no constitutional or legal limits.

3.52 The Government must, then, be persuaded to introduce a Rights Bill which deals with all rights.

Recommendations

6. That the Commission encourage the development of programs of education on sexuality in general, and homosexuality in particular, in medical faculties and all nursing schools.

7. That the Commission gives its support to the principle that the laws of a country should recognise the rights and beliefs of all its citizens and not only those of some sectional interest.

8. That the Commission urge the Australian Government to take urgent steps to open all forms of the media to the public for their use.

9. That the Commission urge the Australian Government to use its powers under s. 1(b) of article 1 of International Labour Organisation Convention 111 to amend that Convention in its Australian applications so that the rights of homosexuals in employment will be recognised and safe-guarded.

10. That the Commission, in representations to the Australian Government, support the right of homosexual defence personnel to live openly as homosexuals within the Defence Services.

11. That the Commission make immediate representations to the Australian Government with a view to encouraging the Government to introduce a Bill guaranteeing human rights and all human rights.

12. That the Commission recommend to the Government that it move in the UN for an International Homosexual Year as one means of education about homosexuality.

Part IV–Educational Aspect

Conditioning into roles

4.1 The main expressed aim of the educational system is to condition people.

4.2 It aims to condition people into the roles demanded for their required place in the nuclear family.

4.3 This has been established by a wide variety of research and has been recognised by the Schools Commission in its *Report for the Triennium 1976-1978*. [573]

4.4 This means that no alternatives are presented to students; that the options which they might adopt are limited; and that they are not allowed to find their natural position in society.

Homosexual students

4.5 Homosexual students thus come to accept that their natural life-style is a second-best and that, to be accepted by society, they must attempt to conform to the norm.

4.6 Other students are confirmed in their conditioned belief that homosexuals are perverts, only fit to be ridiculed, or worse.

4.7 This belief is manifested openly in their actions.

Responsibility of educational authorities

4.8 Educational authorities must accept that there are homosexual students in schools and colleges.

[573] See: 1:–8.5.3. page 302, 'Establishment of the Schools Commission'.

4.9 They must recognise that, in a pluralist society, they have a responsibility to those students, as to other students, to see that their natural personalities are able to develop fully.

Homosexual teachers

4.10 One way in which this could be achieved is by homosexual teachers being allowed to be honest, in the school situation, about their own life-style.

4.11 Homosexual students would then be provided with a model and the belief that the homosexual life-style is a fulfilling one.

4.12 But the freedom of teachers is severely restricted both by social attitudes and by the conditions under which they are employed.

Education hierarchies

4.13 Education system are very tightly knit and, being hierarchies, have authority devolving from the top.

4.14 This structure is maintained and reinforced by the Act from which it derives its power.

4.15 In the case of the Australian Government, this is the *Commonwealth Teaching Service Act 1972* (as amended).

4.16 Even a cursory reading of this Act reveals the wide-ranging powers given to the Commonwealth Teaching Service Commissioner.

4.17 These powers are always used to protect the existing structure and to oppress homosexual teachers and homosexual students.

4.18 Specifically for homosexual teachers, s. 35 of the Act means that they are wary of doing anything which might be construed as misconduct', and thus jeopardise their employment.

Sex education

4.19 A specific area of education curricula which could and should discuss homosexuality as a valid life-style, but which only ignores or downgrades it, is that of sex education.

4.20 These courses should present homosexuality as one part of the continuum of human sexuality.

Recommendations

13. That the Commission gives its support to the concept that the function of an education system is to promote the development of the natural potential of all people in it, not to mould them into roles.

14. That the Commission devise programs which will promote the achievement of that aim in Australian education.

15. That the Commission support submissions by CAMP NSW to the Schools Commission for funding of projects to produce material on homosexuality.

16. That the Commission recommend amendments to the *Commonwealth Teaching Service Act 1972* which would provide greater trust and autonomy for individual schools and teachers.

Part V–Legal Aspect

Law

5.1 The only reference to homosexuality in the Statue Law of Australia is the proscription of male homosexual activity in all States and the ACT (except for token exceptions in the Territory and SA, both in the process of adoption).

5.2 The effect of Australian law is, therefore, to destroy homosexual relationships.

5.3 CAMP NSW supports no law which defines human relationships; it supports only those which protect them.

5.4 This means, so far as criminal law is concerned, that CAMP NSW supports a program to repeal all laws relating to sexual conduct and to replace them with a single law making sexual conduct criminal only in situations where assault, threats or coercion are used.

5.5 A proposal to achieve this aim is contained in Exhibit 2.

5.1.1 This proposal is substantially the same as that submitted to the Commission by Ms Alicia Lee.

5.5.2 Reservations about this proposal centre on punishment, minors and incest. We are encouraging and would welcome discussion on these subjects.

Prison

5.6 Many homosexuals are suffering under the oppressive nature of the prison system.

5.7 We support moves to find alternatives to the prison system which are humane and which have as their basis the interests of the prisoner.

5.8 Rights for the partners of all relationships should be guaranteed, and not left to the whim of prison

officials.

Legal profession

5.9 The legal profession, which is closely associated with the application of the law, should be the leaders of moves to improve it.

5.10 The legal profession is renowned for its conservatism and is not willing to be associated with moves for change, for whatever reason.

5.11 It, therefore, must take a part of the blame for the oppression resulting from the many unjust laws which abound on Australian statue books.

Sexism of legislation

5.12 Male dominance, which this submission has shown to be at the basis of homosexual oppression, manifests itself in the sexist manner in which laws are framed.

5.13 Even though the laws are relating both to females and males, masculine pronouns and adjectives are always used.

5.14 The justification of this practice is the *Acts Interpretation Act 1901-1966*, s. 23A. This justification is rejected, because of its sexism.

5.15 We believe that the framing of laws in a non-sexist manner would be an important contribution to the removal of sexist attitudes, and the improvement of human relationships.

Recommendations

17. The Commission, in representations to the Australian Government, support the implementation of the law and associated program of law repeal, outlined in Exhibit 2 of this submission.

18. That the Commission recommend the repeal of s. 23A, *Acts Interpretations Act* and the future practice of framing legislation in a non-sex-specific manner.

Part VI–Sexual Aspect

Community attitudes

6.1 The general liberation of attitudes towards sexual activity must entail liberation of homosexuals.

6.2 The general ignorance of the community about sex is even more acute for homosexuals as their sexual activity and practice is a forbidden subject.

6.3 The development of open sex education program would help to overcome this problem, particularly if these were designed by liberated homosexuals who have become aware of their sexuality.

Female sexuality

6.4 The work of the women's movement to raise awareness of sexuality and to educate women about the functioning of their bodies must lead to better sex education for homosexual women.

6.6 The work of the women's movement must be supported, funded and aided.

Sex roles

6.6 The adoption of roles in social functioning carries over into sexual activity. This leads to a limiting of personality.

6.7 Education must be aimed at the discarding of these artificial roles, thereby showing the possibilities for personal development.

Recommendations

19. That the Commission recommend the establishment of community sex education programs, which present the validity of the homosexual life-style as an integral part.

Part VII–Summary of Recommendations

1. That the Royal Commission on Human Relationships use the extended definition of family outlined in s. 2.20, in its deliberations, research and reports.

2. That the Commission urge the implementation of this re-definition and the concomitant recognition of the rights of alternative families in all relevant Australian Government legislation and regulations.

3. That the Commission recommend the financing of education programs by CAMP NSW designed to inform the community about alternative life-styles.

4. That the Commission undertake research into the effect of sex roles on the development of individuals within the family.

5. That the Commission recommend changes to all adoption laws so that the restrictions would not be based on the sexual nature of the family or person wishing to adopt children.

6. That the Commission encourage the development of programs of education on sexuality in general, and

homosexuality in particular, in medical faculties and all nursing schools.
7. That the Commission gives its support to the principle that the laws of a country should recognise the rights and beliefs of all its citizens and not only those of some sectional interest.
8. That the Commission urge the Australian Government to take urgent steps to open all forms of the media to the public for their use.
9. That the Commission urge the Australian Government to use its powers under s. 1(b) of article 1 of International Labour Organisation Convention 111 to amend that Convention in its Australian applications so that the rights of homosexuals in employment will be recognised and safe-guarded.
10. That the Commission, in representations to the Australian Government, support the right of homosexual defence personnel to live openly as homosexuals within the Defence Services.
11. That the Commission make immediate representations to the Australian Government with a view to encouraging the Government to introduce a Bill guaranteeing human rights and all human rights.
12. That the Commission recommend to the Government that it move in the UN for an International Homosexual Year as one means of education about homosexuality.
13. That the Commission gives its support to the concept that the function of an education system is to promote the development of the natural potential of all people in it, not to mould them into roles.
14. That the Commission devise programs which will promote the achievement of that aim in Australian education.
15. That the Commission support submissions by CAMP NSW to the Schools Commission for funding of projects to produce material on homosexuality.
16. That the Commission recommend amendments to the *Commonwealth Teaching Service Act 1972* which would provide greater trust and autonomy for individual schools and teachers.
17. The Commission, in representations to the Australian Government, support the implementation of the law and associated program of law repeal, outlined in Exhibit 2 of this submission.
18. That the Commission recommend the repeal of s. 23A, *Acts Interpretations Act* and the future practice of framing legislation in a non-sex-specific manner.
19. That the Commission recommend the establishment of community sex education programs, which present the validity of the homosexual life-style as an integral part.

Part VIII–Exhibits

Exhibit 1

Policy Regarding Homosexuals in the Armed Services, 1975

1. The structured society of the Armed Services involves special considerations with regard to homosexual relationships not existing generally throughout the civilian community.
2. There is an essential need in the Armed Services to maintain command relationships, high morale and a measure of discipline. The Services cannot function effectively in peace time, let alone in an operational situation, without these.
3. The public view of the special character of the Services would be seriously eroded if open tolerance of homosexual behaviour was to be accepted policy. The effect on the morale of those in the Services would be adverse and serious. Life in the Services is generally felt to be outdoor and vigorous one; one of essentially normal and healthy endeavour. Acceptance and condonation of homosexual behaviour does not fit either the public or the Services view of the Armed Services and would adversely affect both recruiting and re-engagement.
4. A large proportion of those recruited into the Services are very young persons for whom the Services have an obligation to act, in the field of social behaviour, in loco parentis. If it were to be known that the Services declined to fulfil this obligation many parents would be reluctant to authorise or encourage their children to enlist.
5. Homosexuality does not have a high incidence in the Armed Services. It does occur occasionally however. Policies towards it have recently been reviewed with a view to ensuring that where cases do arise, besides the interest of the Armed Services being taken into account, the persons concerned are treated sympathetically and with discretion.
6. When an allegation is made that a serviceman or service woman has been involved in homosexual

conduct it is investigated. The investigators are carefully briefed on the conduct of the investigation, which is carried out as an discreetly and with as an little publicity as an possible in order to minimise the embarrassment to those involved. An officer of the appropriate sex, either selected by the person being interviewed, or nominated by the Commanding Officer, is always to be present during an interview of a person suspected of homosexual activities. Service women are to be used exclusively for detailed investigations of allegations made against women.

7. Should the investigation show that an allegation is ill founded, that is the end of the matter. Should the investigation substantiate the allegation further action may be disciplinary (i.e. the laying of charges) or administrative.
8. In all three Armed Services there is a reluctance to take disciplinary action against a service man accused of homosexual behaviour. A trial inevitably causes embarrassment not only to the accused but also to others who may be wholly innocent victims. It also brings unwelcome and adverse publicity on the unit or Service concerned. Disciplinary action has never been taken against women.
9. Charges have occasionally been brought against men but only in the following types of case:–
   (a) where an assault is alleged; or
   (b) where an indecent act has occurred in public; or
   (c) where one party is senior in rank or there is evidence of an adult corrupting a young person.

   Even in these types of case it may be inexpedient to lay charges.
10. When charges are brought and a conviction results the sentence has usually been dismissal or discharge from the Service.
11. Where the homosexual act is not aggravated by an offence involving disciplinary action, account is taken of such factors as an:
   (a) was the incident an isolated one?
   (b) can the incident be ascribed to adolescent experimentation?
   (c) is there a psychological or psychiatric assessment that the incident was non-typical and unlikely to be repeated?
   (d) how widely known is the incident?
12. If it reasonable to assume that the service man or service women is not a confirmed homosexual and is unlikely to become involved in further incidents, he or she may be retained in the Services and warned of the consequences of further involvement in homosexual behaviour.
13. If, however, it is apparent that the service man or service woman is a confirmed homosexual who cannot or will not refrain from further involvement, administrative action is taken to arrange release from the Service. Before a service man or service woman is discharged, ‘service no longer required’ or ‘unsuited for further service’, he or she is normally given an opportunity to apply for discharge ‘at own request’.
14. In conclusion, the reviewed policy now means that, although confirmed homosexuals are not retained in the Armed Services, their cases are treated with sympathy and discretion, and it is possible for them to leave the Services with an honourable discharge.

Exhibit 1A
Comments on Policy Regarding Homosexuals in the Armed Services, 1975

General comments:

1. The aim and effect of the policy is to force homosexuals to deny their true personality, to hide their true life-style, or to be forced out of an area of employment which might best suit them. At all of these situations we protest most strongly.
2. In the light of these denials of basic human rights, the ‘sympathy and discretion’ expressed in the policy are meaningless and empty phrases.

Paragraph 2:

3. The policy assumes, but nowhere demonstrates, how homosexuals adversely affect ‘command relationships, high morale and a measure of discipline’. Since this the basic assumption of the document, it would seem that some effort should be made to demonstrate it. We believe that this would be impossible to do.

Paragraph 3:

4. Another unproven and untested assumption is made that 'the public view of the Armed Services would be seriously eroded if open tolerance of homosexual behaviour was to be accepted behaviour'.
5. We challenge that assumption that to act in loco parentis means to support the stereotype of the heterosexual nuclear family.
6. The reference to life in the services as an 'an outdoor and vigorous one; one of essentially normal and healthy endeavour' is puzzling. Nowhere does the document indicate why this precludes homosexuals from joining the forces. We presume that the reference in based on the general belief that all homosexuals are unmanly and effeminate. That is a belief in no way supported by fact, as an any elementary research amongst the homosexual community would indicate; and, further, this stereotype refers, of course, only to male homosexuals.

Paragraph 5:

7. The statement that 'homosexuality … does occur occasionally' is a gross mis-understatement of the situation.

Paragraph 6:

8. The embarrassment referred to is only felt by the command structure of the Armed Services, and because they allow it to embarrass them. Homosexuals feel no embarrassment at being homosexual.

Paragraphs 11-12:

9. These paragraphs highlight the total lack of awareness and understanding of homosexuality as an a life-style and not just a sexual activity, which has pervaded the whole document. Without this understanding, no one could devise a rational Policy on Homosexuals.

Paragraph 13:

10. The expectation that homosexuals could possibly or would possibly wish to refrain 'from further involvement' again demonstrates the total lack of awareness of the homosexual life-style.

Conclusion:

11. The document demonstrates a shallowness of understanding, a total lack of research, and a general insensitivity.

Exhibit 2

Proposed Amendment to all Australian *Crimes Acts* to Regulate Criminal Sexual Conduct [574]

Preamble: To implement this amendment or series of amendments, it would be necessary to repeal those ss. of each statute which deal with criminal sexual conduct as this amendment would provide a complete code to regulate all aspects of such conduct.

s. 1 Definition section.

As used in s. 2

(a) 'Actor' means a person, including the spouse of a victim, accused of criminal sexual conduct.
(b) 'Intimate parts' includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.
(c) 'Mentally defective' means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.
(d) 'Mentally incapacitated' means that the person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of narcotic, anaesthetic, alcoholic, or other substances administered to that person with or without his or her consent, or due to any other act committed upon that person, with or without his or her consent.
(e) 'Physically helpless' means that the person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.
(f) 'Personal injury' means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease or loss or impairment of a sexual or reproductive organ.
(g) 'Sexual contact' includes the intentional touching of the victim's or actor's intimate parts or the

[574] The Michigan Bill was a proposal which was supported by CAMP NSW, the Rape Crisis Centre and more generally the women's movement. The Bill proposed to repeal all laws relating to sexual conduct and to replace them with a single law making sexual conduct criminal only in situations where assault, threats or coercion are used.

intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if the intentional touching can be construed reasonably as an being for the purpose of sexual arousal or gratification.

(h) 'Sexual penetration' means vaginal intercourse, anal intercourse, cunnilingus, fellatio or any other intrusion, however slight, of any part of the person's body or of any object into the genital or anal opening of another person's body, but emission of semen is not required.

(i) 'Victim' means the person alleged to have been subjected to criminal sexual conduct.

s. 2

(1) A person is guilty of criminal sexual conduct if she or he engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That the other person is under thirteen years of age.

(b) That the other person is at least thirteen but less than sixteen years of age and the actor is a member of the same household as an the victim, the actor is related to the victim by blood or affinity to the fourth degree to the victim or the actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(c) The actor is aided and abetted by one or more persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in subdivision (a) (i) to (vi)

(d) The actor is armed with weapon or any article used or fashioned in a manner to lead the victim to reasonably believe that it is a weapon.

(e) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes but is not limited to any of the following circumstances;

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening the use of force or violence against the victim and the victim believes that the actor has a present ability to execute these threats.

(iii) When the actor coerces or threatens the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes that the actor has the ability to execute this threat. As an used in this section, to retaliate includes threats of physical punishment, kidnapping, extortion, or withholding of rewards or advances in material condition which otherwise would be reasonably thought of as an due to an individual's own efforts or personal merits.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognised as an unethical or unacceptable.

(v) When the actor, through concealment or by the element or surprise, is able to surprise the victim.

(f) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(2) Criminal sexual conduct in the aforesaid section is a felony.

s. 3

(1) A person is guilty of criminal sexual conduct if the person engages in sexual conduct with another person and if any of the following circumstances exists:

(a) That the other person is under thirteen years of age.

(b) That the other person is at least thirteen but less than sixteen years of age and the actor is a member of the same household as an the victim, the actor is related to the victim by blood or affinity to the fourth degree to the victim or the actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(c) The actor is aided and abetted by one or more persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in subdivision (a)(i) to (vi)

(d) The actor is armed with weapon or any article used or fashioned in a manner to lead the victim to reasonably believe that it is a weapon.

(e) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes but is not limited to any of the following circumstances listed in s. 2(1)(e)(i) to (v).

(f) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(2) Criminal sexual conduct in the aforesaid section is a felony punishable by imprisonment for not more than fifteen years.

s. 4

(1) A person is guilty of criminal sexual conduct if the person engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That the other person is under thirteen years of age.

(b) Force or coercion was used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in s. 2(1)(e)(i) to (v).

(c) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the aforesaid section is punishable by imprisonment for not more than fifteen years.

s. 5

(1) A person is guilty of criminal sexual conduct if she or he engages in sexual contact with another person if either of the following circumstances exists:

(a) Force or coercion is used to accomplish the sexual contact. Force or coercion includes but is not limited to the circumstances listed in s. 2(1)(e)(i) to (v).

(b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the aforesaid section is a misdemeanour punishable by imprisonment for not more than two years. or by a fine of not more than $500 or both

s. 6

(1) Assault with intend to commit sexual conduct involving sexual penetration shall be a felony punishable by imprisonment for not more than ten years.

(2) Assault with intend to commit criminal sexual conduct is a felony punishable by imprisonment for not more than five years.

s. 7

(1) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admitted under section 2-6 unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

(a) Evidence of the victim's past sexual conduct with the actor.

(b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy or disease.

(2) If the defendant proposes to offer evidence described in subs. (1)(a) or (b) the defendant within ten days after the arraignment or information shall file a written motion and offer of proof. The court may order an in camera hearing to determine whether the proposed evidence is admissible under subs. (1). If new information is discovered during the course of the trial that may make the evidence described in subs. (1)(a) or (b) admissible, the judge may order an in camera hearing to determine whether the proposed evidence is admissible under subs. (1).

s. 8 Upon the request of the counsel or the victim or actor in a prosecution under ss. 2-7, the magistrate before whom any person is brought on a charge of having committed an offence under s. 2-7 shall order that the names of the victim and order that details of the alleged offence be suppressed until such time as an the actor is arraigned on the information, the charge is dismissed, or the case is otherwise concluded, whichever occurs

first.

Part IX–Appendixes

Appendix 1

References (not exhaustive)

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Appendix 2

Prime Minister's letter to CAMP NSW, 22 October 1974

Thank you for your further letter of 16 August [1974]. In that letter you say you fear that your original letter was not read. That is not so. It was in fact read but as you point out, not correctly. I regret very much that this occurred and also that it has taken until now for you to receive a further reply.

By this time, however, you will have had a reply, from the Department of Foreign Affairs, to your letter to Senator Willesee. [575] Given that reply, which I have seen, I believe you will agree that the Covenant and indeed the guarantees which the Human Rights Bill will contain, could be jeopardized by any attempt by Australia to raise an amendment in the UN. This is not to suggest that the Government is now no longer sympathetic to the aims of your organisation or that these aims would not be reflected in future initiatives by the Australian Government as you seem to imply in your letter. It is, rather, the Government's view that the very real achievements of the current Conventions on Civil and Political Rights should not in any way be imperilled.

First Assistant Secretary, Consular and Legal Division, Department of Foreign Affairs's letter to CAMP NSW, 2 September 1974

The Minister has asked me to reply to your letter of 24 July concerning inclusion of the term sexual orientation in the International Covenant of Civil and Political Rights.

The Government is, of course, sympathetic to all groups which have been discriminated against or persecuted in the past. This is the basis of the Government's proposed Human Rights Bill and of our support for international instruments on the subject.

The International Covenant, on which the proposed Australian Bill is based, is, however, a delicate compromise that was reached after much international negotiation. To attempt to re-open the drafting of the Covenant for the purpose of including one amendment would most likely open the way to a host of other suggested amendments, some worthy some not, which could put the very existence of the Covenant in jeopardy.

You may be assured, however, that in the drafting of any future international instruments on human rights,

[575] The Hon Donald Robert Willesee, ALP Senator for WA, Minister for Foreign Affairs.

the Government will certainly bear, interests of your organisation in mind.

1:–8.5.1. – National Committee on Discrimination in Employment and Occupation [576]

Basis for Committees' Activities

The Employment Discrimination Committees were established to implement a national policy of the Commonwealth Government to eliminate discrimination in employment and occupation.

The National Committee on Discrimination in Employment and Occupation and the six State Employment Discrimination Committees were established following the ratification by Australia, in June 1973, of International Labour Organisation Convention no. 111–Discrimination (Employment and Occupation), 1958. This Convention proscribes employment discrimination on seven grounds: race, colour, sex, religion, political opinion, national extraction and social origin. (ILO Conventions are treaties which set international labour standards. Through ratification, ILO Conventions are intended to create binding obligations on Government to put their provisions into effect.)

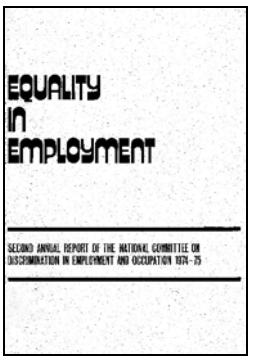

Figure 2: Second report of the National Committee on Discrimination in Employment and Occupation

The scope of the Committees' activities is not restricted, however, to dealing with allegations of employment discrimination on the seven grounds set out in this Convention. The Committees are free to deal with allegations on grounds other than those mentioned in the Convention: indeed, the number of complaints received by Committees on grounds outside the Convention continues to represent a significant proportion (40 per cent) of the Committees' work on complaints received.

Since 1975 the Employment Discrimination Committees have also acted as delegates for the Commissioner for Community Relations (the Hon A J Grassby), established under the (Commonwealth) *Racial Discrimination Act 1975*. In actual practice, under an informal arrangement entered into between the National Committee and the Commissioner in August 1975, the Commissioner generally forwards complaints he receives alleging discrimination under the Act, which involve employment and occupation, to the National Committee for investigation and conciliation. It is the usual practice for the National Committee to refer such complaints to the relevant State Committee for necessary follow-up action. The State Committee advises the National Committee of the outcomes of its investigations and the National Committee, in turn, advises the Commissioner.

It must be emphasised, however, that the Employment Discrimination Committees are not Conciliation Committees envisaged by the *Racial Discrimination Act*, and are, thus, not responsible to the Commissioner for Community Relations. Equally, it must be emphasised that the Commissioner is not obliged to accept the advice tendered to him by the National Committee–he is quite free to exercise the discretion, as to appropriate action which he may consider necessary, entrusted to him by the Act.

In these circumstances, it is important to appreciate that the Employment Discrimination Committees, in fact, receive, and attempt to resolve by persuasion and conciliation, two classes of complaints alleging discrimination on the grounds of race, colour or national or ethnic origin, namely:

(1) those received direct alleging discrimination under the provisions of ILO Convention no. 111; and

(2) those received from the Commissioner for Community Relations alleging discrimination under the provisions of the *Racial Discrimination Act 1975*.

Establishment and Composition of Committees

The National Committee and the six State Committees, which began their activities soon after June 1973, are established on a non-legislative basis. The Committees were set up with the full support of all State Governments, the national employers' organisations and the trade union movement.

This wide basis of support for the Committees' activities, and for the national policy to eliminate discrimination in employment and occupation, is reflected in the composition of the Committees. The Committees have independent Chairmen appointed by the Minister for Employment and Industrial Relations

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[576] National Committee on Discrimination in Employment and Occupation, *Fourth Annual Report 1976-77*, AGPS, Canberra, 1978, pp. 2-4.

and tripartite representation in their membership, each Committee having one representative each of the Commonwealth Government, employers' organisations and the trade unions. (In the case of State Committees membership also includes a representative of the respective State Government.) Membership of the National Committee also includes three other persons, each with a special knowledge of the employment problems of, respectively, Aboriginals, migrants and women.

Functions of the Committees

The Committees' functions are twofold: to investigate, and to attempt to resolve by conciliation, allegations of discrimination in employment and occupation which come to the attention of Committees; and to endeavour to change community attitudes towards employment discrimination so that discriminatory policies and practices will come to be seen as unacceptable to the Australian community.

How Do the Committees Work?

Persons or organisations who contact the appropriate Committee concerning an allegation of employment discrimination are invited to put details of their allegation in writing and to authorise the Committee to investigate the allegation. The Committee then attempts to establish the facts of the allegation in order to determine whether the discrimination which was alleged has occurred. If the Committee considers that discrimination has taken place it then uses its influence and good offices to try to resolve the complaint.

If a State Committee considers that discrimination has occurred and is unable to resolve the matter by conciliation and persuasion, details of the complaint may be referred to the National Committee. The National Committee invites comments on the facts before it from the complainant and the party alleged to have discriminated. Where the National Committee is satisfied that discrimination has taken place it will then seek to resolve the issue by a process of conciliation and persuasion. At any stage of the conciliation process individual members of a Committee may assist personally in the negotiations and the parties may be invited to meet with the Committee.

The National Committee also investigates complaints concerning a policy in the area of Commonwealth Government employment and arranges for the appropriate State Committee to investigate and attempt to resolve employment complaints which are referred by the Commissioner for Community Relations.

The ultimate sanction available to the National Committee where, by its good offices, it is unable to resolve a complaint which comes within the terms of ILO Convention no. 111 is to submit a report on the matter to the Minister for Employment and Industrial Relations who may decide to table the report in the Commonwealth Parliament, together with such comments as he may consider to be desirable and appropriate. It has not been necessary to invoke this sanction fully to date. However, the potential force of this sanction appears to be indicated by the fact that, in the one instance in which the National Committee found discrimination to exist, and which it was unable to resolve, the organisation changed its discriminatory policy when it became aware that the National Committee had sought to have the sanction applied.

1:–8.5.2. – International Labour Organisation Convention no. 111 [577]

International Labour Conference, Convention 111

Convention Concerning Discrimination in Respect of Employment and Occupation

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-Second Session on 4 June, 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

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[577] National Committee on Discrimination in Employment and Occupation, *Fourth Annual Report 1976-77*, AGPS, Canberra, 1978, pp. 36-9.

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Article 1

1. For the purpose of this Convention the term 'discrimination' includes–
2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.
3. For the purpose of this Convention the terms 'employment' and 'occupation' include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

Each member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view of eliminating any discrimination in respect thereof.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice–

a. to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;
b. to enact such legislation and to promote such educational programs as may be calculated to secure the acceptance and observance of the policy;
c. to repeal any statutory provisions and modify and administrative instructions or practices which are inconsistent with the policy;
d. to pursue the policy in respect of employment under the direct control of a national authority;
e. to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;
f. to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Article 5

2. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.
3. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Article 6

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

Article 7

The formal ratification of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratification have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member who has ratified this Convention may denounce it after the expiration of ten years from the date

on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the UN for registration in accordance with article 102 of the Charter of the UN full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides–
   a. the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force.
   b. as from that date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

1:–8.5.3. – Establishment of the Schools Commission [578]

The Schools Commission was established by the Australian Government as a statutory body by the *Schools Commission Act 1973*, which was assented to on 19 December 1973. The Commission was preceded by the Interim Committee for the Australian Schools Commission, chaired by Professor Peter Karmel. The Interim Committee reported to the Australian Government in May 1973 in a Report entitled *Schools in Australia*. The major recommendations of the Report were accepted by the Government. As a result of this Report funding for Australian schools, for 1974 and 1975, was authorised by the *States Grants (Schools) Act 1973*. Other funds continued to be available from the 1972 Act; supplementary grants were made in subsequent amendments to both Acts. Over this period some $760m has been provided to Australian schools and school systems for programs recommended by the Interim Committee.

Broadly, the functions of the Commission as laid down in the *Schools Commission Act* are:

(a) to recommend to the Minister for Education after consulting with interested parties, what Australian Government funds should be made available to schools and school systems throughout the country in order to ensure acceptable standards;

[578] Schools Commission, *Report for the Triennium 1976-1978*, AGPS, Canberra, 1975, pp. 84-6.

(b) to enquire into and report upon any aspect of primary and secondary schooling.

Schooling and Sex Roles

Considerable attention has recently been given to the hidden messages passed in schools to boys and girls regarding social roles associated with sex. Although more women enter teaching than men, and their average qualifications on entry are higher, there are almost no women in high administrative positions in any educational system in Australia, and few women principals of any girls' schools. A number of obvious explanations have validity, but promotion systems need to be examined for the degree to which they penalise broken service. Positive steps need to be taken to redress the balance because of the unconscious learning of young people who sa rarely see women in positions of authority. Textbooks convey similar messages by failing to reflect the degree to which mothers now work, and by maintaining stereotyped views about sex characteristics and roles.

Knowledge for Choices

Education involves the examination of preconscious assumptions, and increased capacity for making rationale choices. Yet young people often gain very little assistance from their schooling in analysing issues about which they consciously or unconsciously are forced to make important decisions. The areas of personal relationships and sexual behaviour, of occupational choice and of sex roles are largely excluded from the overt curriculum, leaving the influence of the hidden messages conveyed in school and society to work unexamined and unchallenged. Modifications of sex roles are among the most profound changes going on in society. Adjustment to them and analysis of them is particularly important for both boys and girls.

The options opened up through schooling should extend beyond occupational ones. Girls are faced with choices whose range and consequences they should be given the opportunity to become knowledgeable about. Making these choices often requires considerable personal confidence as well as knowledge. It is important for both boys and girls to have the opportunity to ponder the extend to which their perceptions of possibilities open to them are constrained by unconsciously assimilated attitudes. In emphasising the importance of opening up options there can be no suggestion that some choices are right and others wrong. To be a full-time housewife for the remainder of life after marriage is as legitimate a choice as any other. However, failure to consider and keep open other options is constraining. Decisions should be consciously taken.

The educational system itself appears to make little attempt positively to assist either girls or boys to a redefinition of sex roles more in keeping with present possibilities for variation of subject choice, or subsequent study and employment, or to sustain among girls a more positive view of themselves. The broken employment pattern of most women has been largely ignored both in initial schooling and in subsequent opportunities for education and training. If society generally regards it as desirable that young children should be cared for at home by their mothers, and raising girls in this expectation, it has an obligation positively to acknowledge and reward that service through generously supported, deferred educational and training arrangements. If it does not, women, in the situation where a majority may be expected to return to the workplace, are in fact thrice penalised economically through child-bearing and care. Their initial ambitions are restricted; they are excluded from the general business and rewards of society while they care for children; and they re-enter the workforce in the least well paid and least interesting occupations. While steps are now being taken to open up re-training opportunities, initial levels of education remain important as a basis for it, and it is well established that the period of isolation reduces the confidence of women in ways which need to be taken into account. Although women going on to tertiary education from school take a limited view of the possibilities open to them, this select group is not the main object of concern. We know very little about the subsequent fate and needs of girls who leave school early, except as we see it reflected in the low income and restricted occupational spread of women in the workforce. A significant proportion of early leavers among boys enter training for skilled trades, an outlet from which girls are at present, for all practical purposes, largely excluded.

1:–8.6. – Royal Commission on Human Relationships–Challenge to Terms of Reference, 19 November 1975 [579]

The Royal Commission's Terms of Reference and our interpretation of those Terms have been challenged on two occasions.

1. The NT State Executive of the Community Standards Organisation submitted in a letter dated 19 March

[579] Royal Commission on Human Relationships, *Transcript of Proceedings*, Sydney, Wednesday 19 November 1975, 10:00 hours, pp. 2506-2507, 2544-2556. (National Archives of Australia (NSW): A4013).

1975, that many of the Terms of Reference of the Commission were outside the powers assigned to the Commonwealth Government under s. 51 [580] of the Commonwealth Constitution. In their view it followed that expenditure of funds on such a Royal Commission would be illegal. [581]

Jane Mathews: We start off this morning, our first set of witnesses are Bishop Reid, Reverend Livingstone, Reverend Nichols, Mr Harrison and Reverend Judd all of them from the Church of England Diocese of Sydney, and they are going to be talking about various aspects of the submissions which the Diocese have made, specifically family, problems of human relationships on new housing estates, abortion, pornography .

Then we have Mr Michael Clohesy, Robyn Kennedy, and two others [Ron Austin and Jan Davis] who wish their names to be confidential. They are all from CAMP NSW, who have made a submission to this commission, They want to talk about various aspects of employment, education, and various aspects of sex roles.

Jane Mathews: Before I call the next witness, [CAMP NSW] Mr Lusher, QC and Mr Larbalestier are here. I understand they have an application.

Justice Evatt: Mr Lusher?

Mr Lusher: May it please the commission; I ask leave to appear with my friends Mr Traill and Mr Larbalestier, instructed by Francis White Barnes and McGuire in the matter which relates to Mr Clohesy. We seek to appear for the Catholic Hierarchy of the Province of NSW, which in these circumstances includes the Catholic Education Officer, the Marist Brothers college at Eastwood and the principal of that college, Brother Raymond Mulvogue [sic–Mulgrave].

May I shortly say this? We have been given a letter from our friend Ms Mathews indicating that the member concerned wishes to specifically mention his dismissal in relation to an aspect of this matter.

Justice Evatt: Have you a copy of that letter? I will just read this for a moment. Perhaps you could indicate for what purpose you are applying for leave today.

Mr Lusher: In the first instance we would wish to make submissions to the commission as to whether or not the terms of reference include homosexual conduct and communications, manifestations and aspects of it. Secondly, we wish to put a submission as to the circumstances relating to the particular matter concerned with Mr Clohesy and the incident itself which is mentioned in the letter. Thirdly, we would wish to put some submissions before you as to the attitude and policy of the school authorities in relation to this sort of matter.

Justice Evatt: As you are aware, we are scheduled at least to take evidence from Mr Clohesy and other members of CAMP today. On the first point, we have not had argument put to us before today on the issue of whether homosexual relationships or conduct is within or not within our terms of reference; but it is only fair to say that our provisional view, in the absence of any argument being made, is that the terms are wide enough to cover this so far as it is relevant to an individual sphere.

Dr Arnott: We have had some evidence on this.

Justice Evatt: We have taken quite a lot of evidence on the issue so far. I do not know how far you want to pursue that argument.

Mr Lusher: We would wish to put a submission to you, with very great respect, and our submission is reasonably short – and by that I mean it can be stated in something like fifteen minutes – it does not involve any legal argument other than a submission on the construction of the terns of reference themselves. We are

[580] s. 51: 'The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:– …'. *The Constitution*, AGPS, Canberra, 1977, p. 17.

[581] Royal Commission on Human Relationships, *Interim Report*, 30 January 1976, AGPS, Canberra, 1976, pp. 7-8

prepared to do that now or at some other time when it is convenient to the commission. It is only fair to say that we have not given notice to Ms Mathews because we only came into the matter comparatively lately and have not had time to give the fullest consideration to her.

Our submission is that this area is not part of that which is covered by the terms.

Justice Evatt: As to the other matters upon which you wish to make submissions, I suppose they are to a large extent dependent upon your first submission?

Mr Lusher: Indeed.

Justice Evatt: And also I think somewhat dependent on the nature of the evidence we hear from Mr Clohesy; so I think at this point we might take a few minutes to discuss the matter. We will adjourn for a moment.

Mr Lusher: May I say that what we would like to do would be to shortly put the points, either now or in a few moments when we resume, that we seek to make on the reference point. As to the other aspects of the matter we would be quite frank and say we are not in a position to deal with them today and we appreciate you have a schedule of other material. If you were against us on the first matter and decided to proceed we would ask that we be given an opportunity of considering the situation and be permitted to make submissions on a subsequent date.

Justice Evatt: I think I can say quite openly now that if evidence were to be given by Mr Clohesy, or anyone else for that matter, which concerns or relates to your organization or the organisation you represent, you would be given opportunity to reply.

(Short Adjournment)
Upon Resuming:

Justice Evatt: Mr Lusher, if you would proceed to make your submissions relating to the terms of reference; there is of course one aspect of the matter, and that is that counsel instructing Ms Mathews, has not had an opportunity to consider this matter and of course we would want to call upon her to consider it and perhaps make a submission to us.

I think the best course would be for you to make your submission and have it put on the record, and, subject to anything you may say about it, we would then proceed to take the witnesses we had arranged for today.

Mr Lusher: (continuing) I shall, in short terms, indicate the nature of the submission. I appreciate that Ms Mathews will obviously want and I should hope would have, some time to give thought to it. If I could go to the document being the terms of reference, which are:

> To inquire into and report upon the family, social, educational, legal and sexual aspects of male and female relationships–

if I might pause there, it is our submission that what is to be considered is male and female relationships, and it is implicit, in what we put, that that is regarded as a conjunctive relationship of male and female relationships. It is not a warrant to inquire into male and male relationships or female and female relationships or male and any other form of relationship or female and any other form of relationship.

It is essentially, in our submission, a relationship of man and woman that is being considered, and is to be considered, in the family, social, educational, legal and sexual aspects. It would be our submission to you that the sexual aspects relate to the sexual relationship of the man and woman and do not encompass and relate to sexual aspects as between males or as between females exclusively or to other persons with whom such people wish to have sexual relations.

The submission we make is added to when one looks at the second paragraph:

> To give particular emphasis to the concept of responsible parenthood …

I leave out the other words of that paragraph before the colon. We would submit that emphasis is placed there upon responsible parenthood and that this adds meaning and colour to and gives connation to, the words male and female relationships with particular emphasis on the concept of responsible parenthood.

We are making the submission that there is no question of parenthood relating to the male–male relationship or the female–female relationship. It is essentially a productive quality that is being looked at: that the male and female relationship, in our submission, relates to that, and that alone, and in relation, with emphasis, to responsible parenthood.

We submit that you do get sole further indications of that sense or meaning, and the conjunctive meaning of male and female, from the other matters which are set out in the subsequent paragraphs, which are delineated by the same alphabetical letters; that is to say, it is to give particular emphasis to the concept of responsible parenthood.

Then, there are the following matters:

(a) the extent of relevant existing education programs, including sex education programs, and their effectiveness in promoting responsible sexual behaviour …

I am not here to make any submission as to what is responsible sexual behaviour and what is not responsible sexual behaviour, but apparently those who framed the document thought there was some aspect of sexual behaviour which is responsible.

> … and providing a sound basis in the fundamentals of male and female relationships.

We would submit that this is in the context of responsible parenthood being given emphasis and the aspect at which we look is for prevision of a sound basis in the fundamentals of male and female relationships.

The matters in (b) deal with women adapting to remarriage and before marriage, and the matters mentioned there. They are all matters which relate to aspects of, consequences of, the relationships of men and women and not of women and women. That is, as I am at the moment so informed that is to say, during and after menstruation, pregnancy, fertility control, spontaneous and induced abortions, childbirth. These are all matters which spring from, and are only related to, the male–female relationships, and not otherwise. '… acceptance by the medical profession of its responsibilities in the field of contraceptive counselling,' which, again, we submit, relates to the male–female relationship and nothing else.

(c) relates to family planning and family planning, we submit, relates again to male–female relationships and not to a relationship inter-sex. It relates to planning of families, tied again with the emphasis on parenthood and tied up with the male–female relationship.

(d) similarly deals with women, again; it deals with pregnancies and it deals with matters relating to unplanned or unwanted pregnancies; it deals with housing, child-minding centres, pre-school centres, domestic assistance for families. It is all in the connotation of a relationship which produces a child. Working mother, assistance to the single parent family other forms of assistance to mothers which obviously implies persons [who] have a child who are employed in industry, and adoption procedures.

It deals with families with handicapped children and the social status of women in the community and is again related to the termination of such pregnancies. So, (d) deals with pregnancies, the consequences and aspects.

(e) deals with questions of the filmily; that is to say, 'the adequacy and effectiveness of existing medico-legal determinations in relation to termination of pregnancy, the incidence of such termination, the factors influencing their occurrence, the adequacy of medical training in an evaluation of methods of termination, consultative rights of the family …'

All of those matters, in our submission, are matters which relate to aspects of the man–woman relationship.

(f) deals with other matters in relation to the family, social, educational, legal and sexual aspects of male and female relationships. That, again, is a repetition of the initial paragraph in the opening words of the terms of reference.

It is our submission, in short, and repetitive, that it all goes back to the initial terms of reference; that is to say, what is to be inquired into and reported upon is not a general exercise into the sexual behaviour of people generally in any broad sense but is to consider the male and female relationship and to report on this and inquire into family, social, educational, legal and sexual aspects.

It is therefore our submission, putting it as shortly as that, that the subsequent use of the word parenthood,

as the emphasis to be given to the concept makes it clear from the terms of reference …

Justice Evatt: What about the title 'Human Relationships'? Do you think that adds anything?

Mr Lusher: I do. It is true it merely says 'male and female relationships,' and, in the sense of human, it could mean anything. It could mean any form of life which was male–female. The opening words are descriptive not of the nature of the inquiry but of the commission as the title is Royal Commission on Human Relationships. Obviously, it is dealing with human beings and it is dealing with relationships.

It then proceeds, we submit, to set out what human relationships are to be inquired into. It is human relationships of a man and woman together It talks of the family, which we submit is a unit situation, which comprises parents and child, whether they live together or not. It comprises that unit of those who are connected by birth and by blood and by things of that sort in the normal concept of the word, and one construes the document in the normal meaning in this context of a male–female relationship.

We submit that the word family there is the accepted normal situation. I must concede that the word family is spoken of in other relationships. One speaks of the Mafia. We had a Royal Commission which touched on that. There were Mafia families involved who were regarded as groups of persons who associated together, which, in our submission, is a totally different concept from the situation which is spoken of here.

I do not know that I can elaborate or develop any further the concept we seek to support. It is a document construed in normal form. If it was to open up the field of all family sexual aspects of humans, as stated, we would have thoughts with great respects it would have said so, and left it at that, and whether they be male or female, and in relations one with the other, and we know that there is a *Crimes Act*, there are crimes which deal with bestiality, which deal with relations between people and animals, and we know that that sort of activity is by no means encompassed by these proceedings here, any more than unilateral activity between men and men and women and women.

That is the broad band of the nature of the submission which we would want to touch on, in this field.

The second aspect of the matter which we say should be looked at is this: this is on the educational aspects, because it refers to education in relation to male and female relationships. We submit there that education – and I am raising this, because this is an educational matter, it involves a man and a school and we would submit that educational in that sense, to be regarded, or to be construed educationally in the broad political or constitutional sense of education, such as teaching at schools in the normal sense, but is in a limited sense of education, in this relationship, but in so far as you are not with me on that we would say it is limited by the last three lines of that sentence, that is to say:

> So far as those matters are relevant to the powers and functions of the Australian Parliament and government including power and functions in relation to the Territories.

On that we would wish to make the following points, shortly, that education, in its widest sense, may be federal – in the commonwealth sense – or it may be state. The subject matter of this particular matter is exclusively a state matter. It relates to a man at a school in NSW, a teacher at a Marist College at Eastwood, and we would make the following observations in relation to that:

The school is covered by the NSW act of parliament being the *Education Act*. The employee is governed by a state union, not a federal union, a state union, being the NSW Independent Teachers Association, which is a registered union under the State *Industrial Arbitration Act*.

There is an award which covers the employment of teachers in non-government schools and pre-schools and it is called the Teachers (Non-government Schools and Pre-schools) (State) Award, and that deals with terms of employment, termination of employment and all aspects of employment of teachers in such schools in the State of NSW exclusively.

There is also the NSW State *Industrial Arbitration Act*. That Act makes provision for a judge of the state commission or an industrial conciliation commissioner to inquire into – has power to inquire into dismissals, makes provision for statutory rights, gives them statutory rights of restoration of employment, re-employment, emoluments, leave and the like. It is a comprehensive matter dealing with applications for re-instatement of employment, and it would be our submission that in the light of those matters, it would not be, with very great respect, bearing in mind the opening paragraph, that is to say 'so far as those matters are relevant to the

powers and functions of the Australian Parliament', for this commission to inquire into educational aspects which touch upon a purely state field of employment and of teaching, and for which the state itself, by its legislation, makes full provision.

Those are the broad terms of the submission which we would wish to put before you for consideration, on the question as to whether or not an investigation of these matters would come within the terms of reference.

Justice Evatt: Have you given consideration to the content of sex education programs?

Mr Lusher: I have indeed, yes.

Justice Evatt: You may know, it is a quite usual item of content in school sex education programs, to include material on homosexuality.

Mr Lusher: This of course is the very point we are making here, as to whether one reads it as widely as that, or limits it. If one reads it as widely as is put to you, we would readily concede that.

The submission we are making is that what is to be inquired into is the male–female relationship. That is the relationship, it is a particular type of relationship, it is not looking at individuals separately, it is a relationship, otherwise there would be no need for the word. It is a particular relationship, and then says 'evidence as to parenthood', and then says in that relationship that makes emphasis on responsible parenthood, you give sex education, and that is to be considered in its effectiveness in providing a sound basis for that fundamental of male–female relationship, in that context.

Justice Evatt: Are you reading A, B, C, D and E under the rubric of responsible parenthood?

Mr Lusher: We are. We take the view, with great respect, that the initial matter of the inquiry is set out in the first paragraph. Two is expansive, in the sense that it is illustrative of the emphasis that is to be given. All one needs is the first three lines: 'To inquire into male–female relationships.' Paragraph 2 then merely, in our submission, gives an expensive illustration or emphasis to be considered. The emphasis of that relationship is on responsible parenthood, and that is what it is for.

Justice Evatt: Assuming, just for the sake of argument, without having reached a final view, that homosexual relationships could be construed as not being within these terms of reference, what are the consequences, so far as these proceedings are concerned?

Mr Lusher: The consequences?

Justice Evatt: The consequences, so far as these proceedings are concerned.

Mr Lusher: The consequences are that this commission would have acted outside its terms of reference, by inquiring into matters which were not within it

Justice Evatt: And what are the consequences of that?

Mr Lusher: One of the consequences would be that its evidentiary matters on that would be of no effect, and would be excluded and expunged from the report, if there be one, or from such portions of the evidence, if it be retained.

For argument's sake, to take a case very wide of this mark, simply for illustration purposes, let us assume that the commission took the view that it was within its terms of reference to inquire into, as part of this, aspects of the constitution of trade unions. We would make the submission that this would be completely without power and outside the area of this relationship that is being looked at here, and that if the court did investigate it, and no one did anything on it, our submission would be that the consequence of it would be that there would be no legal foundation, and would be ultra vires of the commission, and would be of no import whatever.

The second aspect, of course, as a consequence, is that usual steps are taken to see whether or not the particular document which founds and warrants the particular commission can be so construed, and this is done by legal procedure. The effect of that, to give a determination by a court of law, is whether or not the document is as wide as is said.

Justice Evatt: What sort or proceedings would they be?

Mr Lusher: They could a number of forms. They could take an application for declaration of right, or alternatively for an injunction to restrain the commission from inquiry other than in accordance with the law.

Those are the usual methods, and I can give you a reference to a decision in Commonwealth Law Reports of Colonial Sugar Refinery Ltd. and the Attorney-General for the Commonwealth, which is in 15 CLR at p. 182, where there was a Royal Commission into the sugar industry, pursuant to the Commonwealth *Royal Commission Act* and there was a summons issued requiring the issue of a subpoena and certain documents and material being involved, and there was in that very case, the issue was raised as to whether the powers of the commission and true construction of that document went so far as to permit the document to be issued in the width of the form that it did, and that was the type of issue that was involved, and at p. 193 of that report the then Chief Justice, Sir Samuel Griffin, said:

> In my opinion … (reads) … does not confer.

Justice Evatt: That was in relation to the issue of summons, was it not? There has been no issue in this commission as regards the use of any of our compulsory powers on the subject.

Mr Lusher: No, this is being put as a statement of principle, that the court would in these sort of cases infer, that is to say, by declaration of right or injunction. A third case, and this is a statement of principle:

> If it is attempted to exert … (reads) … and that is in relation to the royal commission terms of reference, the submission would be that there was an attempt under cover of the document:
>
> Powers which that instrument does not confer and that would be for the court to consider, whether or not the matters considered came within the concept.
>
> He proceeds: I think it is immaterial … (read) … letters patent.

Justice Evatt: What kind of powers are being referred to there?

Mr Lusher: Powers in the wider sense that anybody who is seeking to assert power, he says, if it is under an act of parliament the court will infer, if it takes the view that the act is wholly invalid.

Justice Evatt: It is an assertion of power to receive submissions or hear evidence without using any of the powers which are given to the commission by the act? Is that an assertion of power within the terms of that decision?

Mr Lusher: We would assured that it is. We would assert it is a matter of construction. Ultimately it is a matter for the court to determine what the construction is to be in regard to the terms of reference. If the view for which this submission contents prevails it would follow, in our submission, that this commission has no power to inquire into homosexual behaviour. It has no power.

If, on the true construction of the first paragraph, the High Court is of the view that it is within it, well, the court has power so to do. The Royal Commission, with very great respect, cannot give itself powers which it does not have. It either has or has not. The purpose of this submission is to make the submission to you that it has no power to inquire into homosexual conduct and behaviour. That is an aspect of human activity, in our submission, which is not covered by the relationship of male and female relationships with which this particular Royal Commission is concerned. It is a question of construction ultimately of power or no power. That is on the first point.

On the second point, education, this raises no question of construction at all, but is a pure question of

power. That is limited, as it must be, by the terms of the letters patent. The letters patent could not validly be issued in any other form. Insofar as the matters are relevant to the powers and functions, that same sort of thing is put in in order to read down an act of parliament of the commonwealth which might otherwise be thought to have a much wider application of power. You read it down to keep within the federal sphere.

These are the submissions we would ask the commission to consider on our behalf.

Justice Evatt: Ms Mathews, do you want to make some submissions at this point?

Jane Mathews: No, I would like to defer my submission on this matter. As Mr Lusher said, I was not given notice of this. It is clearly something which has to be looked at. I would ask that I be given at least until tomorrow.

Justice Evatt: What about the rest of the day? Have you any comment on that?

Jane Mathews: The witnesses are here. There are four of them. I would suggest that their evidence be taken, subject to it being expunged if necessary. If it is entirely outside it would have no bearing on the subject.

Justice Evatt: Have you any comment to make, Mr Lusher?

Mr Lusher: With very great respect, we would not agree with that. We would submit that we be given the benefit of a view upon this, one way or the other and that whilst the matter, as it were, is not determined, our submission would be that to take evidence on the matter would be to do that which may possibly be abortive and ultimately, with very great respect to the commission, be proved to be wrong.

Secondly, it does not give us any opportunity to consider, in the light of the determination to be made by the commission, what course we would wish to adopt.

In any event, if the court were with us on this submission the problem would not arise; but if the court were against us on our submission the question of what course we would wish to adopt in regard to the matter proceeding further, would need to be considered.

Justice Evatt: I would like to mention at this point that we have received at least 10, probably more, submissions on homosexuality and there would have been three or four groups of witnesses, in SA, NT and two in WA. We will have to consider that. We will adjourn again for a few minutes.

(Short Adjournment)
Upon Resuming:

Justice Evatt: We have considered this matter quite shortly, Mr Lusher, and we would like to give Ms Mathews an opportunity of replying to your submissions and study the question. We have looked at our timetable and we can provisionally at any rate fix the date of 8 December [1975] for that to take place. If that date does not prove satisfactorily we may be able to do something about it.

In the meantime we think it would be preferable to defer hearing the witnesses we had fixed for today and tomorrow morning on this issue. We cannot fix a further date for hearing of this but this can depend upon the outcome of our decision.

We will adjourn until 10:30 tomorrow morning.

At 12:50pm the further hearing of this matter was adjourned until 10:30am the following day, Thursday 20 November 1975.

1:–8.7. – Royal Commission on Human Relationships–Challenge to Terms of Reference, 20 November 1975 [582]

Jane Mathews: As you know, our first witness this morning was to have been Dennis Altman who would have talked about homosexuality and sex education. In view of the events of yesterday I contacted Mr Altman yesterday afternoon and told him that his evidence would have to be deferred. He asked me to express his disappointment at that turn of events and to indicate that on the adjourned date in relation to the terms of reference issue on homosexuality he intends to appear and make a submission to the commission to the effect that homosexuality is within the commissions terms of reference.

Justice Evatt: He would like to ask for leave on that date to make a submission, would he?

Jane Mathews: Yes, he would.

Justice Evatt: You will organise the date and notify Mr Lusher?

Jane Mathews: Yes

Justice Evatt: Is 14:30 on the 8th [December 1975] convenient?

Jane Mathews: It is convenient to me. I do not know whether it is convenient to Mr Lusher, yet.

Justice Evatt: You will check up on that, will you and let us know?

Jane Mathews: Yes.

1:–8.7.1. – Media Report–Challenge of Terms of Reference, 20 November 1975 [583]

Church Bid to Silence Homosexual

SYDNEY. – The Roman Catholic church yesterday intervened in a bid to prevent a teacher giving evidence about discrimination against homosexuals to a Royal Commission.

A barrister for the church warned of a High Court challenge if the commission heard the submissions.

The teacher, Mr Michael Clohesy, was dismissed from Marist Brothers College in the western Sydney suburb of Eastwood on October 13 after discussing his homosexuality on a television current affairs program.

Mr Clohesy and three other members of the Campaign Against Moral Persecution in NSW attended the Royal Commission on Human Relationships yesterday to present submissions on discrimination.

When Mr Clohesy was about to give his evidence Mr EA Lusher QC, intervened to address the three commissioners.

Mr Lusher appeared for the hierarchy of the Catholic church, the Catholic Education Office, Eastwood Marist Brothers' College and its headmaster, Brother Raymond Mulgrave.

He challenged the commission's right to hear the submission on the ground that they would not be within its terms of reference.

'The commission is not inquiring into male and male relationships or female and female relationships,' Mr Lusher said.

'Our submission is that the inquiry is only into aspects relating to male and female relationships.'

NOT RIGHT

'It would not be right for this commission to touch upon an aspect which was outside the terms of reference for the commission.'

'A Royal Commission cannot give itself the power to inquire into aspects not covered by this commission, and homosexual conduct and behaviour is not covered here.'

Mr Lusher told the commissioners their report would have no legal foundation if it investigated

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[582] Royal Commission on Human Relationships, *Transcript of Proceedings*, Sydney, Thursday 20 November 1975, 10:30 hours, pp. 2557-2558. (National Archives of Australia (NSW): A4013).

[583] n.a. 'Church Bid to Silence Homosexual', *The Age*, Thursday, 20 November 1975, p. 3.

matters outside the terms of reference.

The commission chairman, Justice Elizabeth Evatt, told Mr Lusher that they already had received 10 submissions on homosexuality from four separate groups.

She said counsel assisting the commission would have to take time to consider Mr Lusher's submission.

She adjourned the matter until December 8.

1:–8.7.2. – Media Report–Challenge of Terms of Reference, 20 November 1975 [584]

Catholic Move to Stop CAMP Evidence

Lawyers representing the Roman Catholic Church in NSW claimed yesterday that the Royal Commission on Human Relationships had no power to inquire into homosexual behaviour.

The commission has already heard 10 submissions on homosexuality. They have come from churches and various organisations devoted to the recognition of homosexuals.

The legal challenge, which caused a flurry of interest among the approximately 40 witnesses and spectators at the hearing in Sydney, came as the commission was about to hear evidence from Mr Michael Clohesy, NSW secretary of CAMP (Campaign Against Moral Persecution) and from three branch members.

Mr Clohesy, 23, was dismissed from the teaching staff of the Marist Brothers College, Eastwood, on October 13 after appearing on the television program, *A Current Affair*.

In the program he discussed CAMP's pending submission to the Royal Commission and stated that he was a homosexual. He was dismissed after complaints from eight parents.

An argument has since arisen over whether the Catholic Education Office or the school principal, Brother Raymond Mulgrave, was responsible.

Church spokesmen have said he was dismissed for his public attitude, not private morality.

Mr EA Lusher, QC, and Mr BJ Larbalestier told the commission that they had been engaged by the NSW Catholic hierarchy, the Catholic Education Office, the Marist College, Eastwood, and Brother Mulgrave.

Mr Lusher then quoted the opening paragraph of the terms of reference of the commission, which said its purpose was:

'To inquire into and report upon the family, social, educational, legal and sexual aspects of male and female relationships so far as those matters are relevant to the powers and functions of the Australian Parliament and Government, including powers and functions in relation to the Territories.'

He also quoted references in subsequent paragraphs of the document relating to 'responsible sexual behaviour,' 'training in contraceptive techniques,' problems experienced 'during and after menstruation and in matters relating to pregnancy,' 'fertility control,' 'spontaneous and induced abortions and childbirth.'

He said the examples clearly referred to problems of sexual behaviour involved in male and female relationships, and to medical, legal and social aspects of heterosexual family life.

The three commissioners – Justice Evatt, Archbishop Arnott and Miss Ann Deveson, the broadcaster and journalist – adjourned for a brief discussion.

They said later they would examine further the argument about the commission's terms of reference. In the meantime CAMP's submission would not be heard.

The inquiry is expected to resume on December 8.

1:–8.8. – Royal Commission on Human Relationships–Challenge of Terms of Reference Resisted, 8 December 1975 [585]

Justice Evatt: We have convened this meeting today specifically to allow you the opportunity to reply to Mr Lusher's submissions, Miss Mathews. Are there any other matters to be dealt with?

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[584] Gill, Alan, 'Catholic Move to Stop CAMP Evidence', *The Sydney Morning Herald*, Thursday, 20 November 1975, p. 3.

[585] Royal Commission on Human Relationships, *Transcript of Proceedings*, Sydney, Monday 8 December 1975, 14:00 hours, pp. 2724-2753. (National Archives of Australia (NSW): A4013).

Jane Mathews: Before we deal with it there are, I think, two applications to be made.

Justice Evatt: Who is going to make the applications?

Dennis P Altman: I apply to be heard, Your Honour.

Michael Anthony Clohesy: I seek leave to make a statement to Your Honour.

Justice Evatt: First of all, Mr Altman, could you tell me what your application concerns?

Dennis Altman: Briefly, it concerns the application from the lawyers representing the Catholic Church that prevented me from giving evidence at the commission on 20 November and I shall argue that the evidence I was going to give comes clearly within the terms of reference of this commission.

Justice Evatt: You want to make a submission relative to the scope of the terms of reference or the interpretation of the terms, is that the idea?

Dennis Altman: Yes.

Justice Evatt: I see. Mr Clohesy?

Michael Clohesy: As secretary of one of the organisations prevented from giving evidence and as one of the individuals prevented from giving evidences I seek leave to make a statement on the same matter.

Justice Evatt: Properly, a submission about the scope of the terms of reference – is that what it is?

Michael Clohesy: That is correct.

Justice Evatt: Does anyone else here wish to seek leave to appear or make a representation?

Mr BJE Larbalestier: (instructed by Francis White, Barnes and McGuire) Mr Lusher still appears in the matter, and Mr Traill, and I still appear with him. Unfortunately they are unable to be present.

The only comment I would seek to make is that whilst who is to be heard is totally a matter for yourself and the commission sitting with you, and whilst I agree we only appear for ourselves, I would say this: the point that was taken was argument on a purely legal basis and not one which went to the merit or otherwise of the evidence which may have been given on the Subject, or over the subject. We say this, however: that if the object of the entry of the appearances is to present to the commission subject matter which we are saying should not be presented – so, in other words, as it becomes known it becomes public, it becomes debated – merely by changing one's position at the table, then we say that should not be done. Certainly we say it should not be presented by anyone sitting on the relevant subject matter at this time. We say at this point that counsel assisting the commission, whatever view she may take, whether she agrees with us or not – what I actually say is that they should not be able to resort to this form by way of submission to put to it things which the commission might refuse to hear by way of evidence. I have nothing further.

Justice Evatt: Ms Mathews, have you any comment to make?

Jane Mathews: No comment, except of course both Mr Altman and Mr Clohesy did indicate to me beforehand when they gave notice that they proposed to come, that their only purpose for doing so is to make submissions on aspects relating to the terms of reference. In that situations as they did volunteer to give evidence before the commission and have both so far been unable to give evidence, they have been affected by the submission and I see no reason why leave should not be granted.

Justice Evatt: I have considered the matter quite briefly and our view is that, provided the submissions were

limited to the question of interpretation of the terms of reference, which may indeed involve some technical and legal problems, we would hear the submissions. But I would make it clear that we would not at this stage grant leave to go into matters of substance or evidence beyond the interpretation terms.

On that basis we would allow submissions to be made by you, Mr Altman and by you, Mr Clohesy. But, before doing that, we would hear first from our counsel. You will have an opportunity to listen to her argument and that may make it perhaps necessary to repeat some of the argument. You may add any points you wish to make, or you may entirely disagree with her argument for all I know. Then, of course, Mr Larbalestier, are you looking for an opportunity to reply today?

Mr Larbalestier: We would be seeking leave to reply. As to whether we do it today or not is somewhat governed by the time and also by the subject matter that we have to deal with. My clients were anxious that the arguments be put with Mr Lusher present. Unfortunately, he is going into his tenth or eleventh day of a lengthy hearing which prevented him coming here. However, if it meant we would not waste the commission's time, I would be happy to proceed.

Justice Evatt: I think I would appreciate having you reply today because it would be difficult to organise a further date before Christmas.

Mr Larbalestier: I will be happy to go on.

Justice Evatt: We would be happy to have a five or ten minute adjournment if that would help you in preparing your reply, and if there are any matters of a serious consequence you can, of course, refer to that later.

Mr Larbalestier: Thank you.

Jane Mathews: My submissions are going to be divided into three areas and roughly in the same order as those raised by Mr Lusher. The first is the general one of whether homosexuality is in the terms of reference of this commission. The second is whether an inquiry into the immediate question of Michael Clohesy's dismissal from Brothers School is within the constitutional competence of this commission. The third question is whether the High Court can have any jurisdiction in the matter at all at this stage.

Justice Evatt: That is a question of what would be the appropriate forum and at what stage to make a legal ruling on the issue?

Jane Mathews: Yes. On the first question, which was the general one raised by Mr Lusher of whether homosexuality is contained in the terms of reference of this commission, my submission is that the terns of reference are broad enough and do contain or embrace the subject of homosexuality.

Mr Lusher's argument was based on his argument that the words male and female relationships where they appear in the terms of reference, specifically in the general section at the beginning, must be construed conjunctively. In other words, that this commission is only entitled to look at relationships of men as opposed to women, and women as opposed to men, but not otherwise, and that to this extent this commission is not entitled to look at the question of homosexuality – homosexuals in society.

Mr Lusher purported to find support for this construction of male and female relationships from three areas in the terms of reference and the first one was from the exhortation in the second paragraph of the terms of reference to give particular emphasis to the concept of responsible parenthood. The second support which he obtained in his submission was from the specific paragraphs (a) to (e) in the terms of reference, and the third area of support was from the general words in the opening paragraph of the terms of reference. I want to go through each of those and I propose to go through each of those areas where Mr Lusher in his submissions found support for his interpretation of the male and female relationships.

First of all, the exhortation in the second paragraph in the terms of reference relating to placing emphasis on the concept of responsible parenthood: Mr Lusher's submission was that this concept should superimpose the whole inquiry. In other words, that everything which the commission looked into should be looked into with this notion of responsible parenthood. In my submission this is simply not possible when you look at the

terms of reference.

There are certain specific matters in paragraphs (a) to (e) which are incapable of being regarded together with any concept of parenthood whether it be responsible or otherwise. One would be in paragraph (b), the issue of medical education, dealing with the problems of women before, during and after menstruation. Another problem would be in paragraph (e) which, to some extent, deals with medical aspects of abortion. In my submission neither of these areas can have any connection with parenthood. My submission as to the meaning of this particular phrase in the terms of reference is that it is an exhortation to this commission to emphasise the concept of responsible parenthood where that is relevant, where parenthood is relevant.

Justice Evatt: You mean by that the techniques and the medical sequelae of abortion and thongs like that?

Jane Mathews: Yes. To go on to the particular paragraphs (a) to (e) of the terms of reference, and Mr Lusher went through them in considerable detail and submitted that each one could only be consistent with a conjunctive interpretation of the phrase, male and female relationships. In my submission this is not so. In my submission, although there area a large number of areas which do emphasise the male/female conjunction, there are others which do not.

Again I draw support in this from that portion of paragraph (b) relating to medical education in relation to the problems experienced by women before, during and after menstruation. The point arises in paragraph (d), assistance to single parent families for instance, and there are other matters in paragraph (d) which would be meaningless, in my submission, if they were confined to a situation where you could only look at a woman's relationship with a man and vice versa; that you are forced in many of the facets of (d) to look at whole family situations which may or may not be single sex or different sex situations.

Also, of course, it is important to note that (a) to (e) are by no means an exhaustive statement of the terms of reference of this commission, that in the terms of reference what the commission is requested to do is to include those matters in the inquiry and in fact it is quite clear from the terms of reference that it is the general statement, in my submission, at the opening on the terms of reference that in fact describes the ambit of the inquiry. Perhaps to go to those general words at the beginning of the terms of reference, Mr Lusher also submitted that those words themselves were only capable of the construction that male and female relationships were conjunctive and meant males in relation to females.

My submission is that for an effective inquiry into these matters the commission cannot be restricted into looking at and considering males as opposed to females and vice versa. Perhaps if I could by way of illustration just deal with two of the aspects mentioned in those general words, the general words in full are to enquire into and report upon the family, social educational, legal and sexual aspects of male and female relationships. Then it proceeds to refer to constitutional function. In my submission, if you go to the family aspect of male and female relationships the construction which was urged upon the commission by Mr Lusher must inevitably result in the commission being restricted to looking at opposite sex relationships in families. Remembering the responsible parenthood exhortation in the second paragraph of the terms of reference, this commission is being specifically asked to look into parent/child relationships.

In my submissions it would be putting an absurd and unworkable construction into it to say that the commission can only look at opposite sex relationships within the family. That, in my submission, is the inevitable result of Mr Lusher's argument that male and female can only be construed conjunctively

Justice Evatt: I suppose you could say it is a family aspect of male and female relationships?

Jane Mathews: If you wish you can only look at the male relationship as opposed to the female, which is the essence of Mr Lusher's submission, which in my submission clearly hamstrings you in terms of looking at family relationships.

Justice Evatt: What I had in mind was the relationship between father and son or mother and daughter would be a family aspect of the parents male and female relationship.

Jane Mathews: It would be a possible interpretations, yes.

Justice Evatt: I take your point.

Jane Mathews: The other area which I wanted to mention in support of the submission is the educational aspect, that the conjunctive interpretation of male and female relationships would restrict the commission's inquiry into the area of sex education and away from the broad area of inter-personal relationships, inter-personal development, and in my submission this could not have been intended by the framers of that, sex education is a matter that is specifically referred to in paragraph (a); the fact that the educational aspects of male and female relationships are contained in the general words in my submission means that this commission should have been or was intended to look at the more general issue of interpersonal relationships in relation to education.

It is a fact that in relation to statutory interpretation the word and is usually interpreted as being conjunctive but there have been a number of cases in which it has been interpreted both conjunctively and disjunctively, so that the word and effectively amounts to :and/or. One such case is *John G Stein & Company Limited. v. O'Hanlon* (1965) Appeal Cases p. 890 and specifically at p. 904.

Dr Arnott: Appeal Cases of NSW?

Jane Mathews: No, English. Specifically at p. 904, Lord Reid redefines and in the statute with which he was then dealing as meaning and/or, saying in some situations this was necessary.

Justice Evatt: On what principle was the interpretation made, was it in order to make sense of it at all?

Jane Mathews: Yes, the principle was that the framers of the legislation could not have intended a purely conjunctive interpretation to be put on the words that it imposed in this case too onerous an obligation. It was to give effect to what the court saw as the intention of the framers of the legislation in interpreting and to and/or. In my submission this is what the commission should do in this situation in order to make the terms of reference workable.

There are some minor corollaries, or some minor further arguments which I make, but my primary submission is the one which I have just made, that the words male and female relationships should be interpreted both conjunctively and disjunctively.

Justice Evatt: Are you also arguing that it would not be workable unless you made a disjunctive interpretation?

Jane Mathews: Yes, I am. One aspect of this is that Mr Lusher assumed that if you only took a conjunctive interpretation of male and female relationships that immediately debars the commission from entering into any inquiry in relation to homosexuality. That argument, in my submission anyway, presupposes that homosexuals only have family, social, educational relationships with members of the same sex. This, in my submission, is an absurd proposition. The end result of accepting Mr Lusher's submission that and in male and female relationships should only be construed conjunctively is that this commission would be entitled to look at the family, social and educational relationships of homosexuals with members of the other sex but not with members of their own sex.

In my submission that is an absurd conclusion and adds weight to my original proposition that and should be construed distributively as well as conjunctively.

Justice Evatt: You are thinking about the married homosexual who may be carrying on a heterosexual marriage while being a homosexual at the same time, perhaps being a parent?

Jane Mathews: Perhaps being a parent, yes, also being a child.

Justice Evatt: Would Mr Lusher's submission preclude the commission from looking at the social impact say of homosexuality on the heterosexual relationship with the person concerned?

Jane Mathews: The way Mr Lusher framed his submission, he put it that homosexuality generally was

outside the terms of reference. I would submit that that cannot be so, whatever construction you put on the word and in male and female relationships; that the commission would be severely hamstrung to a highly artificial degree if a purely conjunctive interpretation were put on that phrase. Even if a conjunctive interpretation were put on the phrase, there are two other ways in which, in my submission, this commission could look at the issue of homosexuality. The first arises from paragraph (a) in the terms of reference and paragraph (a) deals with the extent of relevant existing education programmes, including sex education programmes and their effectiveness in promoting responsible sexual behaviour and providing a sound basis in the fundamentals of male and female relationships in the Australian social environment.

In my submission this commission is being asked to make a value judgment as to what should form the content of such sex education programmes. In order to responsibly make an informed judgment on the content of such education programmes, quite specifically on whether homosexuality should be included in sex education programmes and in what manner it should be included, to what extent it should be included, then the commission is bound to look at the issue of homosexuals in society.

My second submission, even assuming a conjunctive interpretation of male and female relationships, is that an inquiry into the particular area of activity can, and sometimes should, involve inquiry into areas where that activity does not exist, and the reasons for the non-existence.

In this particular case l submit even accepting the purely conjunctive interpretation of the word and – although in my submission it should not be so – it would be competent and open to the commission to look at those people who do not have male and female relationships in a conjunctive sense, and why not, and how do they differ, if at all, from people who do.

Justice Evatt: What categories would become involved in that, apart from homosexual people? Would that mean a single person?

Jane Mathews: The single person, but if you do the terms of reference disjunctively as well. as conjunctively the single person also comes in. In my submission the single person is one area which was intended to be in the inquiry. They are my submissions on the general point as to whether homosexuality is in the terms of reference.

I do not think I have to repeat any primary submission that the phrase male and female relationships should be construed disjunctively as swell as conjunctively.

Justice Evatt: You did deal with the title of the commission, human relationships. Can that be thought to add anything or throw any light on i t?

Jane Mathews: I have looked into it. I think its closest analogy in terms of statutory terminology is in the terms of the short title of an Act and the prevailing view is that the short title of an Act cannot prevent interpretations.

Justice Evatt: That is merely descriptive of the commission.

Jane Mathews: As is the short title of a statute.

Justice Evatt: That is what Mr Lusher submitted. I think he said it was descriptive of the commission rather than of the inquiry.

Mr Larbalestier: He defined the commission.

Jane Mathews: Going on to the second issue, that this particular matter is outside the constitution or competence of the commission; Mr Lusher's argument on that point was that because Mr Clohesy was employed under a State award in a school established under a State Act of Parliament and that there was in existence another State Act which gave him redress against dismissal; that the whole transaction was purely a State matter and that no Royal Commission set up by the Australian Government could have constitutional power to inquire into it.

My submission in relation to this is that it depends on the purpose from which the inquiry is being made. I will later be making a further submission that, in fact, the commission can, in effect, inquire into anything, but restricting myself to Mr Lusher's argument, my submission is that if this commission were inquiring into the question of Mr Clohesy's dismissal for the purpose of recommending his reinstatement, then that would clearly be a State matter and the Commonwealth, in inquiring into it, would be treading outside its areas of power.

According to my understanding the basis upon which this evidence was to have been presented before the commission was as an illustration of what Mr Clohesy alleged to be discrimination against him because of his sexual inclinations. If you accept my first submission that the inquiry into homosexuality is within the commission's terms of reference then this is a matter which I submit comes within the terms of reference specifically as a social aspect of male and female relationships; construing male and female relationships disjunctively as well as conjunctively.

There is a further issue which was not directly raised by Mr usher, but as he did raise the constitutional question, I thought in my submission I should take the matter slightly farther; and that is the question whether the social aspect of male and female relationships, accepting male and female relationships to include homosexual relationships, falls within the competence at all of the Australian Government or falls within the competence of the Australian Government to direct a Royal Commission to inquire into.

It was held by the Privy Council in *CSR Limited and others. v. the Attorney-General for the Commonwealth*, reported in 17 CLR, p. 644, that the *Royal Commissions Act* was invalid so far as it purported to allow commissions, exercising powers of compulsion, to inquire into matters into which the Commonwealth Government had no power. In that case the Privy Council overruled the majority decision in the High Court.

The question arises in this particular case before us now as to what power can the commission point to as justifying an inquiry into the social aspects of male and female relationships, interpreting that phrase broadly .

The first and easy answer which I will again deal with later, is that as long as the commission is merely inquiring and not exercising any powers of compulsion, it does not have to justify its inquiry by reference to any particular head of power.

The second and the main answer is that it must relate to the power of the Australian Government to legislate in relation to the territories. This power is conferred under s. 122 of the Constitution. [586] It was clearly intended by the framers of the constitution that it would be frequently resorted to, in the sense it is the only power of the Australian Parliament and Government which is specifically mentioned in the terms of reference.

Justice Evatt: I have two questions. First of all, you say that so long as one is merely inquiring and not exercising powers of compulsion there is no need to jus justify exercise of the inquiry?

Jane Mathews: Yes.

Justice Evatt: What about, not the powers of compulsion but the ss. of the Act which give protection – limited in some cases – to witnesses and persons making submissions to the commission? Would they come into play if the matter turned out later to be outside the competence of the Federal Parliament?

Jane Mathews: No, they would not come into play. There would be no protection under the *Royal Commission Act* to witnesses or commissioners, for that matter I suppose.

Justice Evatt: Does that mean if a commission decided to proceed with a certain line of inquiry, and witnesses came before it, whether voluntarily or otherwise, that the protection afforded would not touch them?

Jane Mathews: Yes.

[586] s. 122: 'The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of Representatives to the extent and on the terms which it thinks fit.' *The Constitution*, AGPS, Canberra, 1977, p. 34.

Justice Evatt: The protection against prosecution or actions for libel, in some cases.

Jane Mathews: That would be my submission. I will be referring to a case of *Cloth. v. Lay* [sic] *Clough. v. Leahy* [587] later. I was not specifically going to raise the questions of protections but from that case it appears clear if a commission inquires in an area outside its terms, although no action can be taken to prevent it from doing so, nor do witnesses or people appearing before it have any protection under the Royal Commissions act.

Justice Evatt: That may make it difficult for people if the issue is raised at a later point.

Jane Mathews: Yes.

Justice Evatt: As regards competence under s. 122 of the constitution, are you going to deal with the question of how far that would authorise any particular line of inquiry such as the matter we have already talked about, the employment of a person under State law.

I know you have sought to justify that under a general ground.

Jane Mathews: If an inquiry into a State matter, or into an activity in a State is relevant to an inquiry, the outcome of which will involve recommendations as to legislative or other changes in the territories, then in my submission it is competent for the commission to obtain evidence and to use its compulsory powers in relation to such evidence.

It all comes down to the question of relevance, and, in fact, the word relevant is used in the terms of reference:

> So far as those matters are relevant to the … (reads) … territories.

So Your Honour, this is a matter which really varies from situation to situation, and it would be impossible and unwise to make a firm submission that, in all cases the commission can inquiry into activities within a State where the only power which relates to that activity is the power to legislate within the territories. The question of relevance is a flexible one.

In this situation where an inquiry into a general area relating to the social aspects of male and female relationships (in this case defined as meaning and including homosexual relationships) a particular example of discrimination occurring in NSW, in my submission, is relevant to recommendations which might be made as to legislative amendments or reforms in the territories.

To that extent, it is within the constitutional competences, in my submission, of this commission. Of course, though you cannot gain constitutional powers from the document which establishes you, the terns of reference clearly envisage that an Australian-wide inquiry will be used in areas where the Commonwealth Government clearly only has power in relation to the territories; and I specifically refer to paragraph A of the terns of reference which refers to education programmes, and it asks the commission to investigate, inter alia:

> The effectiveness in … (reads) … in the Australian social environment.

So in that case, the commission is being asked to make an Australian-wide inquiry on a matter in which the only head of power which could be used (directly used) to justify the inquiry is the power under section 122 of the Constitution.

Justice Evatt: The … in grants power in the various schools grants.

Jane Mathews: Grants have been made under the grants powers. I have not heard (and I would be reluctant to rake a submission either way) but I have not yet made up my mind as to whether the grants powers can be used as an enlargement of the existing power under the Constitution power. The only case which I have been able to find which makes any reference to this is the High Court judgment in the CSR case: there are two

[587] *Clough. v. Leahy* (1905) [vol.] 2 CLR [Commonwealth Law Reports, High Court of Australia] 139.

statements of Barton J. which could lead to different results because of their differing emphasis in relation to that power. Perhaps if I could quickly refer you to them: the CSR case in the High Court was at 15 CLR at p. 182, and Barton J. (who was one of the two majority judges) on p. 206 in the middle of the paragraph said – and this is after referring to the fact that it is Placitum 39 of section 51 of the Constitution [588] which justifies an enactment of the *Royal Commission's Act* – he said this:

> The limit then of the … (reads) … are to be applied.

and that would be wide enough, in my submission, to take in existing conditions of grants under that section 96. [589]

Now if you go to p. 208, the second last paragraph, it there says:

> I am of the opinion therefore that the … (reads) … of the power to which it is incident.

In my submission, Your Honour, any condition attached to the exercise of the grants power would not fall within a present power vested in the Commonwealth by the Constitution. So, the matter appears to be open.

Now passing from there to the last point (which is the right of the court to intervene): Mr Lusher on the last occasion indicated that this was a matter for the High Court to determine but my submission is that the High Court has no jurisdiction at all in the present situation. Mr Lusher referred to the judgment of the High Court in the CSR case and specifically, to the judgment of the Chief Justice Mr Justice Griffiths at p. 193 where the Chief Justice said:

> In my opinion, the jurisdiction of the court … (reads) … in that case.

and in that particular case the commission was purported to exercise its powers of compulsion to compel CSR and its senior officers to appear before the commission and answer particular questions and produce documents, and in that situation the failure to comply with this request led CSR and its officers open to very substantial money penalty; and it was on the basis that there was an imminent danger of serious injury that the High Court allowed, by majority, this action at all. It was quite clear from the judgment of the Chief Justice that it was because there was imminent danger of serious injury and/or penalty if the court did not intervene that the court was, in fact, intervening in that situation. In this particular case where the Catholic Hierarchy has appeared before the commission and made a submission that the terms of reference – that it is a situation, well, it is not a situation where that Hierarchy is in any danger of any in jury and/or penalty if an adverse finding is made by this commission.

Your Honour, as such it has no locus standi before any court to obtain redress.

Justice Evatt: That is a decision by the High Court rather than this commission.

Jane Mathews: Yes, Your Honour, but the High Court has no jurisdiction in the case: I put it this way and, as a corollary to that, that this commission is entitled to inquire into anything and I want to refer specifically to the case of Clough …

Justice Evatt: Do you mean by that that this commission, do you say it is entitled '… to inquiry into anything.'

Jane Mathews: Yes, as long as it is only inquiring.

Justice Evatt: Anything within the terns of reference.

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[588] s. 51, op cit.

[589] s. 96: 'During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.' *The Constitution*, op. cit. p. 29.

Jane Mathews: That limitation would have to be imposed. That would be the only power the commission would obtain.

Justice Evatt: I thought what you were suggesting is that there is no power in anyone else to stop the commission from inquiring even into matters which might go beyond the terms, provided none of the compulsory powers – that would not be an appropriate course of action for the commission to take.

Jane Mathews: I am not suggesting that it is. My only submission is, that as long as this commission is only inquiring, I do not suggest that the commission attempt to exceed its powers in any way but as long as the commission is only making inquiries, no court has jurisdiction in the matter.

Justice Evatt; What you say is very relevant to us because we have already received submissions and heard evidence on the issue of homosexuality so we are, naturally concerned as to what possible consequences would attach to that, if it should turn out later that it was outside the terms of reference.

Jane Mathews: This is *Clough. v. Leahy* [590] and it is in 2 CLR at p. 139, and specifically at p. 157, within the judgment of the Chief Justices His Honour Mr Justice Griffiths where he says:

> We start then with the principle … (reads) … whether the law has been transgressed.

Justice Evatt: So that would go directly to the issue where terms of reference might have been outside the constitutional powers?

Jane Mathews: Yes, although this case of *Cloth. v. Lay* [sic] *Clough. v. Leahy* [591] involved a royal commission which was set up in lien NSW under the NSW Act. It was referred to with approval of Mr Justice Isaacs in the CSR case, and although he was one of the dissenting judgments, it clearly showed in his view at least that this reference (he was referring to this page) was equally applicable to a Commonwealth or an Australian Royal Commission.

Justice Evatt: Could the expenditure of funds in that area be challenged in any regard?

Jane Mathews: In my submission that would presumably get back to the parliamentary charge. Those are my submissions.

Justice Evatt: Mr Altman, are you ready to proceed with your submission.

Dennis Altman: Yes. I appear today because I was scheduled to give evidence on November 20 [1975] under the broad heading of homosexuality but I was informed the previous day that I was not able to give evidence until this matter had been cleared up.

I have subsequently looked very carefully at the terms of reference of the commission and also at the submission made by Mr Lusher on 19 November and I want to very briefly make five points in relation to the power of the Royal Commission to consider homosexuality. Some of these will cut across the points Ms Mathews has argued but it was impossible for me in preparing today to know what the counsel for the commission might argue.

I will not go into the first point at any great length because it relates to the conjunctive as opposed to the disjunctive interpretation of the phrase male and female relationships. If one looks at the first paragraph of the terms of reference straight after the first mention of the phrase male and female relationships, there follows:

> so far as those matters are relevant to the powers and functions of the Australian parliament and government.

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[590] *Clough. v. Leahy* (1905) [vol.] 2 CLR [Commonwealth Law Reports, High Court of Australia] 139.
[591] ibid.

I want to come back to this particular point a bit later on and argue that there are clearly a large number of matters concerned with homosexuality that do come within this term.

Mr Lusher's submission placed great strength on the second paragraph of the terms of reference before the commission, namely, to give particular emphasis to the concept of responsible parenthood. I would like to make two points about that. The first is that it is common sense if one wishes to give particular emphasis – this is by no means exclusive of all other arguments or matters that the commission might consider – but more importantly is the point that Your Honour raised in a question to Ms Mathews which is that there are homosexual parents, and homosexuals do themselves have parents.

Therefore, it would seem even if one took this very narrow, and I would say peculiar, interpretation of Mr Lusher's as being correct, it would still be within the terms of reference of this commission to consider the particular situation and problems of homosexual parents and the relations of homosexuals with their own parents. It seems to me under that particular emphasis the commission quite clearly is within its rights

I would point out in amplifying on this point that this is an area in which a certain amount of psychological research has been done. The clause which comes immediately after the reference to the concept of responsible parenthood:

> To have regard to experience in other countries,

would, it seems to me, allow the commission and make it proper for the commission to consider such matters as the possibility of known homosexuals adopting children, such as is the practice in other countries.

The third point is also one that Ms Mathews referred to but I think is probably the essential one I would want to put before the commission. This is the specific matter listed under the first item, item (a), of the terms of reference namely:

> The extent of relevant existing educational programs, including sex education programs, and their effectiveness in prompting responsible sexual behaviour and providing a sound basis in the fundamentals of male and female relationships in the Australian social environment;

It seems perfectly clear to me that it is impossible to discuss a sex education programme in a way that would admit any discussion whatever of homosexuality. I have yet to see any programme dealing with sex education that manages to do this and I would be interested to know if a submission has been made by Mr Lusher suggesting that the commission can somehow fulfil what they have been asked to do by parliament while at the same time avoiding any discussion of homosexuality.

It seems to me if one were to restrict the argument purely to (a), if one were to omit all the remaining terms before the commission, that in itself quite clearly makes it not only possible but mandatory for the commission to consider homosexuality at some length in its relationship to sex education programmes.

The fourth point is one that Mr Lusher spent some time on but I think there are some other points to be made. This is the power of the commonwealth. I refer back to the phrase in the first paragraph of the terms of reference: 'Including powers and functions of the Australian Parliament and Government.' It is in fact clear that there are a very large number of areas in which the Australian Parliament and Government has jurisdiction; not only matters relating to the territories but matters relating to the country as a whole in which submissions relating to homosexuality are very relevant.

On page 2554 [see page 309] of his submission on 19 November Mr Lusher, having spoken about the particular case of Michael Clohesy, went on to say, 'In our submission this commission has no power to enquire into homosexual behaviour.' His argument about the powers of the Australian government, therefore, was by no means restricted to the argument about a particular incident in a school in NSW; it was an argument that no matter relating to homosexuality came within the jurisdiction of the commission.

If one looks at the submissions already made before the commission, one can see something of the number of matters that come clearly and constitutionally under the authority of the Australian parliament and government which are related to and have implications for homosexuals. I refer not only to the specific laws of all territories but I refer to things such as control over the armed forces, the taxation laws of the commonwealth, the marriage laws of the commonwealth, the power of the Australian government over broadcasting, the control of the Australian Broadcasting Commission and the power of the Commonwealth in

relation to certain forms of education. All of these are matters that are mentioned in certain submissions and would be mentioned in any discussion of the social aspects of homosexuality in Australia.

It seems to me this argument is a very spurious one and one that has no basis in either fact or law.

Because this came up in an interchange between Your Honour and Ms Mathews, I would like to raise the matter that there appears in the terms of reference a specific mention of laws providing for grants to the states. I am not sure if Your Honour had this in mind.

Justice Evatt: It is mentioned in the terms of reference. Ms Mathews said it is uncertain that the commission can support any enquiry into a particular term of reference that has just not been specifically decided.
Jane Mathews: Yes. I would have been reluctant to submit that the commission could on that because it seamed to me to be a matter of uncertainty.

Dennis Altman: I do say – in full awareness of my legal ignorance and all that implies – but against that members of parliament are not necessarily better versed in the law than I am – that it is within the royal commission's jurisdiction to make recommendations on, for example, the teaching of sex education in universities, which come clearly under topic (a) of the specific terms of reference but where the powers of the Commonwealth would have to be read as coming under laws providing for grants to the states.

The last point is a rather ironic point. Before I prepared the evidence which I was forestalled from giving, I had in fact read the terms of reference very carefully and had considered possible objections that might be raised, although I must admit that Mr Lusher's ingenuity was rather greater than my own and I was not able to foresee all of his peculiar arguments. I had taken into account the terms of reference and the evidence that the commission has so far heard, and in fact the evidence that I was going to give was intended to relate especially and specifically to topic (a) of the terms of reference – sex education.

Justice Evatt: Does that conclude your statement?

Dennis Altman: Yes.

Justice Evatt: Mr Clohesy, are you ready to proceed?

Michael Clohesy: Yes. I wish to make a short submission on the two parts of the submission presented to the commission on 19 November 1975, on behalf of the Catholic Hierarchy of NSW.

The first relates to the commission's powers in general. I fully support Ms Mathews contention that male and female relationships should be seen is as wide as possible a context. I think a distinction needs to be made between the first and second paragraph of the commission's terms of reference. In my view the first paragraph provides the very broad framework within which the commission has to operate.

As the submission from CAMP NSW makes clear, since it bases itself on them, the five aspects of male and female relationships into which the commission is to enquire, ie. family, social, educational, legal and sexual, all relate to homosexual relationships.

I believe the second paragraph should be seen as providing specific areas of investigation, not exclusive areas or investigation. However, having said that many of the areas listed in the second paragraph – and Dennis Altman has touched on some of these – contrary to the submission presented on behalf of the Catholic Hierarchy, do affect homosexuals.

For instance, at page 2546 [see page 306] of his submission, Mr Lusher said:

> We are making the submission that there is no question of parenthood to the male-male relationship or the female-female relationship.

That statement, of course, is simply not true. Many homosexuals are parents and many seek to become parents. The concept of responsible parenthood is one to which the submission of CAMP NSW addresses itself in section 2.1-2.7 [see page 286] and 2.10-2.16 [see page 286] and 2.24-2.32 [see page 287].

I mention them simple to illustrate that responsible parenthood does affect homosexuals very deeply.

I would like to refer the commission to part (a) of paragraph 2. Particular emphasis here has been given in

the submissions already presented about sex education programs and I would like to point out that the terms of reference read, 'Existing education programs, including sex education programs.' CAMP NSW has submitted in sections 4 [see page 290] and 6 [see page 292] of its submission that existing education programs in general and sex education programs in particular are not effective in promoting responsible sexual behaviour and providing a sound basis in the fundamentals of male and female relationships from many people since they do not deal with the broad range of human relationships.

With regard to part (d) of paragraph 2, the matters referred to here are nor as Mr Lusher contended on page 2547 [see page 306];

> … all matters which spring from, and are only related to, the male-female relationships and not otherwise.

Homosexual women do menstruate; they are capable of falling pregnant, willingly or not – so contraception and abortion are very important issues to them.

Part (c) of paragraph 2 relates to family planning. Investigation of family planning necessarily involves discussion of family relationships and of expectations on relationships. Awareness of alternate life styles could only be helpful in such investigation.

Parts (d) and (e) of paragraph 2 again refer to pregnancy and, in particular, unplanned and unwanted pregnancies. As I said earlier, homosexual women are capable of falling pregnant; homosexual men are capable of fathering children; both are capable of caring for children. So all the matters referred to in paragraphs (d) and (e) potentially apply to homosexual people, such as adequacy of housing, child-minding centres, pre-school centres, the social status of women in the community.

Justice Evatt: Do they have any special application? Does the fact that a woman is a homosexual have any special implication as regards, say, menstruation, conception, unwanted pregnancy and so on?

Michael Clohesy: I think I would have to leave that to a homosexual woman to discuss in greater detail, menstruation in particular, but obviously contraception and abortion is a grave problem for a homosexual woman very personally.

Justice Evatt: What I am trying to get at is: does it affect them in any very different way from other women?

Michael Clohesy: I think I would have to leave that to the homosexual woman herself.

This examination of paragraph 2 shows clearly that the specific areas of investigation listed there do apply to homosexual people. Even so, the main point still remains that paragraph 1 of the terms of reference give the widest possible brief to the commission

If I might now turn to the second point of the submission on behalf of the Catholic hierarchy, my dismissal, I wish to contend that discussion or hearing the evidence about my dismissal is within the competence of the commission because of the reasons I was going to bring to the commission's attention.

Justice Evatt: I think you have to be careful how you proceed here, Mr Clohesy, because the leave which was given to you is on the interpretation of the terms of reference and your submissions as regards dismissal must, if it is made, relate to showing how the general question of dismissal of a homosexual from employment would be a relevant subject of inquiry of this commission, rather than specifically your own case.

Michael Clohesy: That is all I wish to do, Your Honour.

The first reason was that the termination of my services arose directly from publicly given to a submission presented to the commission of which I was one of the authors and which I believe shows the need for the powers and functions of the Australian parliament and government, including the powers and functions in relation to the territories, to be used to amend the *Royal Commissions's Act* to provide protection for people who are presenting submissions to the commission as distinct from people appearing before the commission in …

Mr Larbalestier: I object to that submission.

Justice Evatt: Just one moment. You have referred to publicity over your submission to the commission. How was that publicity secured?

Michael Clohesy: Well, if I can make the preliminary point, Your Honour …

Justice Evatt: I am trying to make the point, I think – was that secured by your own action as regards the submission, or otherwise?

Michael Clohesy: Yes, it was.

Justice Evatt: I see.

Michael Clohesy: But I do not wish to debate that. I am simply trying to point out why the matter would be one for the commission.

Justice Evatt: It does seem that the submission you are making does rather relate to the commission to the extent of the power to protect persons making submissions to the commission, whatever the subject matter be, whether in their employment or any other proceeding. Is this the point you are making, Mr Larbalestier?

Mr Larbalestier: It is, yes.

Justice Evatt: This goes outside the interpretation of our terms and it goes to how far the *Royal Commission's Act* or other legislation would affect people dealing with a Royal Commission. That is the subject, itself, of investigation by another Royal Commission. The Royal Commission on Australian Government Administration has within its own terms of reference, whether specifically or by implication, the functioning of the *Royal Commission's Act*, so …

Michael Clohesy: Well, that was only the first, of three reasons, so we shall abandon that one.
The second reason, and that was the one that was made by Ms Mathews, provides a concrete illustration raised in sections 3.31 to 3.41 [see page 289] of the submission by CAMP New South Wales relating to discrimination in employment and the matter to be brought to the attention of the commission …

Justice Evatt: So, really, what you are saying there is that it illustrates something in your general submissions but that still leaves the question of whether that comes within the overall framework?

Michael Clohesy: Yes, it is dependent on the wide interpretation of paragraph 1. The submission would be that the powers and functions of the Australian parliament and government, including powers and functions in relation to the territories, as described in the terms of reference should be used in that situation and for the second reason that the matter to be brought before the commission should be that it ties in with the issues raised in sections 4.10 to 4.12 [see page 291] of that submission relating to homosexual teachers and is illustrative of the problems of homosexuals teachers and would be used to show the need for the use of the powers and functions of the Australian parliament and government including powers and functions in relation to the territories to provide protection of rights for homosexual teachers.

Justice Evatt: I have not got the submission in front of me. Is that question of use of federal power expressly mentioned in the written submission?

Michael Clohesy: It is Your Honour. I believe those two issues do relate to the powers and functions of the Australian parliament and government and that they should be brought to the attention as the commission.

Justice Evatt: I take it, Mr Larbalestier, you have a copy of the written submission?

Mr Larbalestier: Unfortunately, I do not have a copy here. I think it covers a far wider area. I would appreciate

having a copy.

Justice Evatt: Mr Larbalestier, are you reedy to proceed? We can adjourn for a few minutes if that would assist you.

Mr Larbalestier: I might, if I could have a look at this document.

Justice Evatt: Very well, We will adjourn for ten minutes.

(Short Adjournment)
Upon Resuming:

Justice Evatt: Mr Larbalestier are you ready to proceed?

Mr Larbalestier: Yes. Thank you, Your Honour.

It is not that we have so much to say by way of reply because Mr Lusher put it rather fully in the first place. At that time he painted out that the wording did not permit of an interpretation which would invite this commission into inquiry into homosexuality, and the submission was put in general terms. I will refer later to the more specific incident which draws us here.

It might be well, however, if I were to say from the outset that when the inference has been made that the Catholic hierarchy prevented or obstructed the giving of evidence here – I will have to make it clear that the necessity for my clients to come here at all has only been raised by virtue of the fact that they were specifically referred to in a letter which I believe was exhibited on the last occasion.

Jane Mathews: It was a letter to your client?

Mr Larbalestier: Yes, I think that is right, which I think contained sufficient detail to indicate the reasons why we have been called. We were, of course, entitled to know where we are being referred to and in what terms, in general terms, and having been so informed my clients had to then consider, they having been isolated out, whether in their own interests they should come here and hear what was said about them. Once that has been heard, if it is ever to be heard, they can work out their position and decide whether it would warrant them examining on that, or seeking leave to cross-examine on that or whether they would be advised to call evidence on that, and whether the subject matter is important enough for them to be really concerned, or, on the other hand, they might consider it goes right to the root of their doctrine and they might feel they have to take a particular stand.

Of course, no such stand at this stage has been taken. The only submissions that have been made are simply along the lines that it is submitted that this commission should not near that evidence. In making that submission it went wider and said that you should not be hearing evidence at all on the subject matter. The second part would be that, even if you thought you should, well, certainly not the type of evidence being given or intended to be given by Mr Clohesy such as involves my clients. That is, in broad terms, the extend to which I put it to you – two things: one is that it should not at all, and the second is that if the subject matter is properly placed before the tribunal, the particular incident referred to in the document you have read is not one which should be used as an illustration of anything relevant to this hearing, the incident being one, in any event which concerned a particular incident at a particular school in the state of NSW.

Justice Evatt: Could I ask whether, assuring that it were found that homosexuality, the general social issues of homosexuality, were within the terms of reference of this commission, would it be your submission that the general question of discrimination in employment should not itself be a subject of inquiry?

Mr Larbalestier: Not by this commission.

Justice Evatt: That is what you are saying?

Mr Larbalestier: That is what I am saying.

Justice Evatt: Even if it was a general issue?

Mr Larbalestier: Yes.

Justice Evatt: Where would the boundary be drawn on the social question?

Mr Larbalestier: O, on the terms of the document setting out the terms of reference.

Justice Evatt: I think that may be an unfair question considering your submission that in no way should we consider homosexuality.

Mr Larbalestier: Yes. Even if we agreed with that, what do we say then – is this document, sitting within its own four walls, the extent to which you are inquiring? Again, of curse, it depends on how you interpret it. Getting away from the argumentative part, whether the act reads disjunctively and so forth, if you go to the last paragraph it says the reason why you and we are all here presumably is to eventually make recommendations as to measures than are desirable with respect to the:

> … foregoing matters under existing and future laws … (reads) … or government instrumentalities to be created.

Now, Ms Mathews has quite fairly put, and I would agree, that, the question of the grants does not, of course, assist at all because if that were so nothing would be excluded at all, because if the possibility merely of a grant of money were to be allowed in, anything, including the wide spectrum referred to in this document – well, it would be hard to imagine what would be excluded. Assuming the commission reports one way or the other on any subject matter and assuming the powers that be are so motivated ultimately it should be represented in the legislation which relieves the situation which you find to be in error. If that be so, then we say, of course, you would not be looking into things over which parliament would legislate; if you say, for example, that section 51 of the constitution – those are the things that we will inquire into – and surely these things are also only the things contained in section 51 and other parts of the constitution conferring rights, but principally section 51 – if I include those others in that term for ease, they are the things you should be inquiring into and those are the things you should have been asked to inquire into, and then you say if the wording of the document is capable of a variety of interpretations, well, how would we read that? If words like social, education, legal or sexual aspects, etc., are used stretched one way or the other you can get them to include the men arriving on time for the construction of battleships. I do not say that with the intention of being absurd, but is true: it is a question of how far you want to stretch it.

If I then say we will not do that at all, we take it as being meant to apply to matters referred to in the constitution, we will say that education is one thing that has bean left to the states, and the state of NSW has its own structure in relation to education generally which encompasses sexual education; it encompasses other forms of education, including religious education. If that be so, you would then I think probably have to reject some of your own terms of reference because they invite you to inquire into matters which, in my submission, parliament would have no right to legislate on other than in its own territories or seat of government. So far as your inquiries go beyond that, I would say you would be exceeding the true points of the terms of reference.

Justice Evatt: How would that apply? How would the argument you have just made apply to, say, the Schools Commission in hearing evidence and conducting inquiries about grants for education to the states?

Mr Larbalestier: It is competent for the commonwealth government to put together any form of committee to inquire into – and I do not refer to this commission as a committee; I say that advisedly – for example, if the commonwealth government wanted to concern itself with any aspect of life it is entitled to do so.

When it comes to producing a document appointing the Royal Commission, they should enquire into something which must have been intended to go just beyond the question of general inquiry for useful information in the general sense. It must be intended to be going to do what it has invited the commission to

recommend, to legislate in certain areas. If they do not go on, then it would not be, in my submission, meant to be taken to be intended that the commission should look into matters going beyond that, unless it is within the territories they control.

As I said earlier, it is not my intention to repeat the fact, although in saying that I automatically do it, that the words should read as they do. Very shortly, I put this to you, if it were intended that you were to inquire into male/female relationships, why then were they so economical with their words? If that were the intention, and clearly a recognised situation, I suggest homosexuality is no longer the mischief that it was before, people are no longer going into their adult life not knowing of its existence or ramifications of it, at least not for the want of publicity anyway, and that being so we assume the parliamentarians had heard of it, well within the knowledge of the persons who drafted this document, and one might think if one were drawing it up one would say between male/male, female/female or male and female relationships, because for the sheer want of a few words, in fact one line of typing, the whole question of any confusion arising from that could ne avoided. One would think if homosexuality were not a word to be avoided it could be even specifically put in the document and it was not and you could either think it has been omitted or it has been deliberately excluded.

Lest it be thought it forms any part of my instructions to say it is not proper to inquire into such things, that is far from the truth. All that my instructions are, and all my submissions are, that this is not the forum and attempts to use this commission to advance arguments such as are set out in the submission which has been put forward entitled 'Homosexuality and Human Relationships by the CAMP NSW Organisation' in my submission to you is merely to state that this is a convenient public hat on which to hang the homosexual hat.

For example, one would find it difficult to find in the terms of reference, in my submission, something which would go to enquire into homosexuals in the armed services. I cannot see that that comes within the terms here and yet no doubt it is a problem and no doubt it is something which the Commonwealth government, controlling as it does the armed services, could appoint someone to look into, and as one goes through the submission that has been made it contains many, in fact numerable, worthwhile matters of inquiry. This is not the sounding board.

Justice Evatt: It probably does not give you much comfort to say we have already had material on that particular issue.

Mr Larbalestier: It probably makes it much harder for me to say you were wrong, which I do with the utmost respect. These things tend to occur. If one is going to take a subject and in the course of it if homosexuality arises, that is one situation and, of course, it then becomes a matter of whether that is kept within its bounds. If, on the other hand, the subject of homosexuality is to be taken in all aspects of that, it is an entirely different concept and it is my submission to you that is what is happening here, and clearly from the submission that has been made, and I am simply saying this commission by its own terms of reference is not the appropriate place to have the problems of homosexuality aired.

Just going momentarily to the particular case in point, I also want to keep within the rules I sought to lay down myself and not to canvass the facts of that too much, but it is significant to say that that situation had a forum to which it could have been taken and it so happens it was not or has not been taken.

Justice Evatt: Mr Lusher I think did refer to that and we have tried to keep ourselves on a straight and narrow path of the meaning, the true interpretation, but I think what you are saying now is a matter that Mr Lusher did deal with.

Mr Larbalestier: I will not go through it again but I will say this, you may also say that the relevance of the matter set out in the letter is not a matter which you feel could be of any assistance to you to make any recommendations for the making of any legislation in any relevant place with the government to which this commission has to report. As I say and repeat, it is not part of my instruction to come along and moralise or to pass any judgment or to suggest that my clients do, all we say is, as I keep repeating, this is not the place to do it.

The matter of the jurisdiction of the High Court, if I could just subscribe to the observation that you, Your Honour, made and that is that the event of this commission not being receptive to our submission and in the event of my client seeking relief elsewhere, in the High Court, well then that is no doubt a matter which could

be determined then and does not form part really …

Justice Evatt: I am not quite clear if I follow that. In the event of the commission …?

Mr Larbalestier: If you find for us, it becomes academic.

Justice Evatt: If, on the other hand, it were thought by the commission that some aspects at any rate of homosexuality were within the terms of reference, what was the next point you were making?
Mr Larbalestier: Then, if my clients felt that they should seek some relief from whatever effect that it may have on them it becomes a matter of decision that they will go to the High Court and if they do then it is the decision for the High Court as to whether they fail in the circumstance that they have jurisdiction.

Justice Evatt: It is a point that Ms Mathews mentioned would arrive at that stage if there were proceedings in the High Court?

Mr Larbalestier: They would arise at that stage.

Justice Evatt: It is probably not for us to make any decision about but it is important to be aware of what the possible consequence could be.

Mr Larbalestier: It may well be that Your Honour to in asking that question was posing the area of thought, that is to say what harm is it going to do anyway and if any and if so, how grave a harm? It may depended on the result. If my clients would take an attitude that they are affected, publicly affected, by the decision of the tribunal, then they can do as they are advised. I say no more about that. I merely refer to it because Ms Mathews did and to record the fact that I disagree anyway, that is even much less for me to determine.

Mr Altman did not raise anything which I feel I have not answered or need to answer further. His comments are more, in my submission, defensive of the fact he wants a forum and seeks this as a convenient one.

Dennis Altman: I object.

Justice Evatt: It is a matter of some supposition by you, Mr Larbalestier.

Mr Larbalestier: That is all I am putting.

Justice Evatt: Are we going to be helped at all in reaching our decision on the interpretation of the terms by doing what we have tried not to do so far, get into personalities, specific issues?

Mr Larbalestier: Yes Your Honour, I will say no more about it. I would ask you to give such material, as I have said, such weight as you see fit.

Just going finally to the terms of reference, I would ask Your Honour and the other members of the commission to have close regard to both the first and last paragraphs in the terms as I put it to you. I would ask you also to have particular regard to the submission put about the way in which the reference to males and females should be construed, as I would also ask you to read the document narrowly rather than widely. Amongst other reasons, I would ask you to do that because a Royal Commission couched in the terms that this one is, if it were not restricted in some way, would be far too wide to come within the area where it could effective. I say that to you in the light of the submission I put to you about the ability of the people to whom this commission reports to give any effect to what observations you make n your final recommendations. I have nothing further to say.

Justice Evatt: Any other matters to raise today?

Jane Mathews: No, I think they are already covered.

Justice Evatt: We will not be giving our ruling today in this matter. We would hope to give it before Christmas,

probably next week, and we will arrange for the persons concerned to be notified of the date and time. It would probably be limited to no more than an accouncement [sic–announcement] of the rule. In other words, we would not expect to be having any further hearing at that point. We will now adjourn to morrow morning in Melbourne and you will be informed when the ruling is to be announced.

At 16:00 hours the Royal Commission adjourned to the following day, Tuesday 9 December 1975, at 11:00 hours in Melbourne.

1:–8.8.1. – Media Report–Challenge of Terms of Reference Resisted, 9 December 1975 [592]

Homosexual Objection Challenged

SYDNEY, Monday. – A claim by the Roman Catholic Church in NSW that the Royal Commission on Human Relationships had no power to discuss homosexuality was resisted at the resumed hearing of the commission today.

The claim was made at a hearing on November 19, by lawyers representing the NSW Catholic bishops, the Catholic Education Office, the Marist College, Eastwood, and the College Principal (Brother Raymond Mulgrave).

The opening paragraph of the commission's terms of reference states that it is empowered: 'To inquire into and report upon the family, social, educational, legal and sexual aspects of male and female relationships.'

Miss Jane Mathews, counsel assisting the commission, said today that the challenge to the terms of reference – in particular an argument about the definition of male and female – could produce an absurd situation.

The words did not indicate, as claimed on behalf of the Roman Catholic Church, that only relationships between the opposite sex could be discussed.

She said the lawyers had placed great emphasis on statements in the terms of reference about the family.

Yet the argument about exclusive heterosexual relationships would preclude, if taken to its ultimate conclusion, the hearing of evidence on relationships between mothers and daughters, fathers and sons.

SEXUALITY OBJECTION CHALLENGED

Miss Mathews said it had been put to the commission that evidence about the dismissal of Mr Michael Clohesy, a former teacher at Marist College, Eastwood, could not be heard by a national commission, because he had been employed under a State Government award, that contained procedures for redress against alleged wrongful dismissal.

She said she believed this argument was irrelevant.

Miss Mathews also referred to a statement made at the earlier hearing that the Roman Catholic Church would consider taking the matter to the High Court.

The High Court had no power to intervene but this was not an issue for the commission itself to examine, she said.

Evidence about the terms of reference was also offered by Mr Dennis Altman, an author and lecturer, and Mr Clohesy, Secretary of the Campaign Against Moral Persecution (CAMP).

Mr Altman said the commission's terms of reference specifically allowed for discussion of parenthood and sex education.

He said homosexuals have parents or are parents and a discussion of homosexuality was relevant within these categories.

Mr Clohesy said he had planned to give evidence to the commission not as an individual but as Secretary of CAMP.

He said he was dismissed from his job for having discussed CAMP's submission in a television program [593]

The Chairman of the commission (Justice Evatt) said the commissioners would need further time to consider whether the commission was competent to hear submissions on homosexuality.

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[592] n.a. 'Homosexual Objection Challenged', *The Newcastle Morning Herald and Miners' Advocate*, Tuesday 9 December 1975, pp. 1, 16.

[593] This refers to the Television Channel Nine program, *A Current Affair*, Wednesday 8 October 1975 discussing CAMP NSW's submission to the Royal Commission on Human Relationships.

1:–8.8.2. – Media Report–Challenge of Terms of Reference Resisted, 9 December 1975 [594]

Challenge on Homosexuality

A claim by the Roman Catholic Church in NSW that the Royal Commission on Human Relations had no power to discuss homosexuality was strongly resisted at the resumed hearing of the Commission yesterday.

The claim was made at a hearing on November 19 by lawyers representing the NSW Catholic bishops, the Catholic Education Office, the Marist College, Eastwood, and the college principal, Brother Raymond Mulgrave.

The opening paragraph of the Commission's terms of reference states that it is empowered: 'To inquire into and report upon the family, social, educational, legal and sexual aspects of male and female relationships.'

Miss Jane Mathews, counsel assisting the Commission said yesterday that the lawyers challenge to the terms of reference – in particular an argument about the definition of male and female could produce an absurd situation.

She said that in her view the word and in male and female did not indicate, as claimed on behalf of the Catholic Church that only relationships between the opposite sex could be discussed.

She said the lawyers had placed great emphasis on statements in the terms of reference about the family. Yet the argument about exclusive heterosexual relationships would preclude, if taken to its ultimate conclusion, the hearing of evidence in relations between mothers and daughters, fathers and sons.

Miss Mathews said it had been put to the Commission that evidence about the dismissal of Mr Michael Clohesy, a former teacher at the Marist College, Eastwood, could not be heard by a national Commission because he had been employed under a State Government award, which contained procedures for redress against alleged wrongful dismissal.

She said she felt this argument was irrelevant because the Commission was interested in the general question of discrimination in employment rather than specific arguments about alleged wrongful dismissal.

Miss Mathews also referred to a statement made at the earlier hearing that the Catholic Church would consider taking the matter to the High Court. In her view the High Court had no power ti intervene, but, in any event this was not an issue which the Commission itself should examine.

Evidence about the terms of reference was also offered by Mr Dennis Altman, the homosexual author and lecturer, and Mr Clohesy, who is the secretary of the Campaign Against Moral Persecution (CAMP).

Mr Altman said the terms of reference of the Commission specifically allowed for discussion of parenthood and sex education. He said homosexuals have parents or are parents and a discussion of homosexuality was relevant within these categories.

As for sex education, he said he failed to see how any reasonable program of sex education could fail to include mention of homosexuality.

Mr Clohesy said he had planned to give evidence to the Commission not as an individual but as secretary of CAMP.

He was dismissed from his job for having discussed CAMP's submission in a television program and said a person dismissed under such circumstances should be given legal protection.

He said his own situation was illustrative of the general problems facing homosexual teachers.

The chairman of the Commission, Justice Elizabeth Evatt, said the commissioners would need further time to consider whether the Commission was competent to hear submissions on homosexuality.

She said she expected to announce a decision within two weeks.

1:–8.9. – Royal Commission on Human Relationships–Challenge of Terms of Reference Rejected, 19 December 1975 [595]

Justice Evatt: We have considered the submission made by Mr Lusher on behalf of the Catholic Hierarchy of the Province of NSW and the submissions made to us by Ms Mathews, Mr Altman and Mr Clohesy, and for reasons which we will hand out in a moment we have reached the view that to give practical effect to our inquiry it is necessary to interpret male and female relationships as including male relationships and female relationships of a homosexual nature. We are also of the view that much of the material put before us on the question of homosexuality, including social attitudes to homosexuality, comes within one or other aspect of

[594] Gill, Alan, 'Challenge on Homosexuality', *The Sydney Morning Herald*, Tuesday 9 December 1975, p. 15.

[595] Royal Commission on Human Relationships, *Transcript of Proceedings*, Sydney, Friday 19 December 1975, 10:30 hours, pp. 2993-2998. (National Archives of Australia (NSW): A4013).

male and female relationships and that the reference to sex education includes homosexuality within its scope.

We therefore propose to continue to receive written submissions and oral evidence relating to homosexuality and relating to social attitudes which may lead to discrimination on the ground of homosexuality. It does not follow that we intend to call for evidence or to make findings or recommendations on any particular factual situation. In this area, as in others, our concern is rather with the general social pattern.

The reasons for this collusion will now be made available generally.

This commission was appointed in August 1974. The terms of reference require the commission 'To inquire into and report upon the family, social, educational, legal and sexual aspects of male and female relationships, so far as those matters are relevant to the powers and functions of the Australian Parliament and Government, including powers and functions in relation to the Territories.' Certain specific matters are to be included in the inquiry.

The Commission has received written submissions, heard oral evidences held informal discussion and initiated research dealing with a large range of subject matters, including aspects of homosexuality.

On 19 November 1975 Mr EA Lusher, QC made a submission to the commission on behalf of the Catholic Hierarchy of the Province of NSW. Briefly, this submission was that the terms of reference do not authorise the commission to inquire into homosexual conduct or behaviour because the expression male and female relationships in the terms of reference does not include in its meaning male relationships or female relationships, but is confined to relationships between persons of opposite sexes.

The circumstances giving rise to Mr Lusher's submission weer that the commission had notified the Catholic Education Office (included within the Catholic Hierarchy) of its intention to hear evidence from Mr M Clohesy relating to his dismissal from his job at the Marist Bothers College, Eastwood, and to his claim that this was an example of discrimination in employment against homosexuals. Mr Clohesy was a signatory to a written submission on behalf of CAMP NSW. His evidence has not yet been heard by the commission, though leave was granted to him and Mr Denis [sic–Dennis] Altman (another prospective witness on the subject of homosexuality) on 8 December to make submissions relating to the scope of the terms of reference.

In his submission Mr Lusher put forward two arguments relating to the dismissal of Mr Clohesy. The first was that educational … aspects of male and female relationships referred only to education in that relationship. The second related to that part of the terms of reference which requires the commission to look at its subject matters 'so far as these matters are relevant to the powers and functions of the Australian Parliament and Government, including powers and functions in relation to the Territories.' This it was submitted, precluded the commission from inquiring into any aspect of the employment of a teacher at a school in NSW.

On 8 December 1975 counsel assisting the commission Ms Jane Mathews, submitted that the terms of reference were wide enough to authorise the commission to inquire into homosexuality and that constitutional limitations did not preclude an inquiry into the dismissal of Mr Clohesy. She also made a submission about the extend of the jurisdiction of the High Court to deal with the matter.

On the first point Ms Mathews submitted that male and female relationships should be construed disjunctively rather than conjunctively, and that this was a necessary interpretation in order to make the inquiry effective. She argued that the specific reference to sex education in the terms of reference was intended to cover the general issues of education in sexual relationships and should not be confined solely to education in male/female relationships. To make an informed decision about the content of sex education programs the commission is bound to look at the issue of homosexuals in society.

On the question of the commission's power to inquire into the employment of a teacher in NSW Ms Mathews argued that it depended upon the purpose of the inquiry. If the commission had power to look at social aspect of homosexuality an instance of discrimination in employment on the ground of homosexuality would be relevant. She also submitted that in a broad social inquiry of the present kind which was envisaged as an Australia-wide inquiry it could be relevant to consider activities in a state even though the only legislative power with regard to that activity is power within the territories.

Mr Denis Altman made a submission supporting the view that the terms of reference were wide enough to include homosexuality. He argued that responsible parenthood required consideration of the parents of homosexuals as well as of homosexual parents and that sex education could not exclude homosexuality. He also referred to specific areas of commonwealth law and powers which could affect homosexuals.

Mr Clohesy argued that the written submissions from CAMP had been based on the five aspects of male

and female relationships into which the commission is to inquire.

In reply Mr Larbalestier, for the Catholic Hierarchy of the Province of NSW, submitted that even if the general social issues relating to homosexuality were included within the inquiry, discrimination in employment should be excluded. He argued that the omission of the word homosexuality from the terms of reference supported the narrow interpretation of male and female relationships. He also drew attention to the distinction between an inquiry into aspects of male and female relationships, which right include homosexuality at points, and an inquiry into aspects of homosexual relationships which would have a wider scope.

We have considered the matters put before us not without difficulty since our provisional view was that male and female relationship should be construed in the wide sense. There is some force in the argument for giving a narrow, conjunctive, meaning to the phase, in that there is no express mention of homosexuality in the terms of reference while there is a great deal that relates to relationships between male and female. Nevertheless, we have reached the view that the words are capable of bearing the wider meaning if that meaning is necessary to the effective conduct of the inquiry.

The terms of reference are very broad. Within the framework of constitutional power they encompass all aspects of the roles men and women in society and their relationships with each other. We are looking at all those factors which affect the individual from infancy in developing an awareness of self and relationships with parents, siblings and peer groups and in establishing marital and family relationships. It would be almost impossible to define precisely the boundaries of the family, social, legal, educational and sexual aspects of male and female relationships and it would be quite impractical to exclude any part of the broad pattern of relationships included within this expression from the material put before us, even though in formulating conclusions and recommendations we must confine ourselves to matters within the powers and functions of the Australia Parliament and Government. For similar reasons our inquiry is being conducted on an Australia-wide basis though direct federal powers may in some circumstances relate only to the territories.

It is a necessary implication of the broad social issues coming before our inquiry that some of the material put before us will relate to matters within the legislative competence of the states, and some will relate to more than one issue and to more than one head of power, federal or state. Our function, as we see it, is to look at the social pattern before us and to consider what measures within federal power would be appropriate and desirable to deal with the issues as we see them. In many cases this decision cannot be made until the inquiry reaches its final stages. We could not at this stage exclude material related to the general issue before us, unless there were no conceivable head of federal power to which it could be relevant.

The issue of homosexuality crops up at many points. For example, it cannot sensibly be excluded from any consideration of the individual's growing sexual awareness, of the effect of family relationships on this awareness, or of formal or informal education in personal development and sex. Nor is it possible to exclude from the inquiry the effect of homosexuality on the individual's ability to form family, social and sexual relationships. Those matters are themselves dependent to a large extent on current social attitudes to homosexuality and to the position of the homosexual in society. It would be impractical and it would lead to an unbalanced account of relationships if it were necessary to dissect current social issues relating to homosexuality and to exclude from our consideration part of the material put before us. We have received some submissions dealing exclusively with homosexuality; in addition a number of submissions dealing with general aspects of the inquiry include sections on or references to homosexuality.

For these reasons we have reached the view that to give practical effect to the inquiry it is necessary to interpret male and female relationships as including male relationships and female relationships of a homosexual nature. We are also of the view that much of the material put before us on the question of homosexuality, including social attitudes to homosexuality, comes within one or other aspect of male and female relationships and that the reference to sex education includes homosexuality within its scope .

We therefore propose to continue to receive written submissions and oral evidence relating to homosexuality and relating to social attitudes which may lead to discrimination on the ground of homosexuality. It does not follow that we intend to call for evidence or to make findings or recommendations on any particular factual situation. In this area, as in others, our concern is rather with the general social pattern.

We have not considered in detail the submission relating to the consequences of pursuing inquiries which prove to be outside the terms of reference of the commission or beyond federal constitutional power, since in our view the course we propose to take is within our terms and within constitutional power.

The Commission Justice Elizabeth Evatt – Chairman
Dr Felix Arnott – Commissioner
Ms Anne B Deveson – Commissioner

Justice Evatt: Are there any other matters to deal with this morning?

Mr Lusher: I think not.

Jane Mathews: No.

Mr Lusher: We had intended to ask that we be given an opportunity to consider the decision but in the light of the fact that the hearing will be adjourned to 10 February 1976, it gives us ample opportunity to do that.

Justice Evatt: I now adjourn proceedings until Tuesday, 10 February 1976.
At 10:35 hours the Royal Commission adjourned to Tuesday, 10 February 1976.

1:–8.9.1. – Media Report–Challenge of Terms of Reference Rejected, 20 December 1975 [596]

Inquiry Rejects Church Stand

SYDNEY – The Royal Commission on human relationships has overruled a submission by the Catholic Church to hear evidence from homosexuals.

The decision, announced yesterday by the chairman of the commission, Justice Elizabeth Evatt, follows a month of controversy between the Catholic Church and the commission.

Last month, the church stopped Mr Michael Clohesy from giving evidence before the commission on discrimination in employment against homosexuals.

Mr Clohesy claimed he was sacked from his job as a teacher at Marist Brothers College because he publicly announced he was a homosexual.

Mr E Lusher, QC (for the Catholic Church) submitted to the commission that its terms of reference did not authorise it to inquire into homosexual conduct or behaviour.

Justice Evatt said the term male and female relationships included male relationships and female relationships of a homosexual nature.

In a statement yesterday, the commission added that the issue of homosexuality occurred at many points during the inquiry.

The commission said: 'It cannot sensibly be excluded from any consideration of the individual's growing sexual awareness, of the effect of family relationships on this awareness, or of formal or informal education in personal development and sex.

Nor is it possible to exclude from the inquiry the effect of homosexuality on the individual's ability to form social and sexual relationships.'

1:–8.10. – Royal Commission on Human Relationships–Evidence Presented At Last, 25 February 1976 [597]

Jane Mathews: Before recalling the representatives of CAMP NSW, I tender a further list of submissions containing submissions 1051 to 1104 inclusive.

Justice Evatt: That will be Exhibit 252, submissions 1051 to 1104 inclusive. Are there any more to come, Ms Mathews?

Jane Mathews: As I understand it there are some 100 more.
EXHIBIT Exhibit 252 … Submissions 1051 to 1104 inclusive.

Jane Mathews: I call the four representatives of CAMP NSW. The witnesses have been sworn. Michael

[596] n.a. 'Inquiry Rejects Church Stand', *The Age*, Saturday 20 December 1975, p. 3.
[597] Royal Commission on Human Relationships, *Transcript of Proceedings*, Sydney, Wednesday 25 February 1976, 11:08 hours, pp. 3213-3224. (National Archives of Australia (NSW): A4013).

Clohesy, Col Eglington, Robyn Kennedy and Ron [Austin], previously affirmed.

Justice Evatt: I would remind the witnesses that you are all on your former oath.

Jane Mathews: As I understand it, today, having talked about general areas of discrimination on the last occasion, you want to talk about specific acts of discrimination?

Michael Clohesy: Yes. That was the introduction. I was in f act going to say that the perspective in which we would wish to put our comments this morning is instances of discrimination – we wish to specify certain specific areas in which discrimination against homosexuals does occur and we would like to express the hope at the outset of today' s hearings that we will be able to present our evidence without the noisy distractions which marred our presentation at the last meeting. We would like to begin with Ron, who will talk about the family.

Mr Lusher: May I interrupt? Noisy distractions? I was here last time and I am not aware of any noisy distractions. Could that be clarified?

Justice Evatt: Yes. Could you explain, Mr Clohesy? Was there something in particular that was upsetting you last time?

Michael Clohesy: Yes, Your Honour. After you left the hearings [19 December 1975] the four of us were somewhat upset by the chatter that went on amongst counsel for the Catholic Hierarchy, the passing of notes and the speaking by them to people behind them. We were upset by this and wished it to be brought to the attention of the commission this morning.

Justice Evatt: I was not here myself. This is something I have not had an opportunity to discuss, but I would ask that …

Mr Lusher: We should like to say that there was nothing unusual or untoward in anything that was carried out here on that occasion, apart from the two commissioners being here. Ms Mathews was here and she is a member of the bar; if there had been any complaint I think she would have spoken up. We are surprised to hear such a comment being made and we completely disavow …

Justice Evatt: Mr Lusher, it may be that you are more familiar with the courtroom and proceedings in a courtroom than Mr Clohesy and his friends. However, as I was not here I cannot really comment on what happened. But we will proceed now.

There is nothing that we can say further about this, Mr Clohesy. Is it Ron who is going to speak first? …

Michael Clohesy: Yes, Your Honour.

Ron [Austin]: I would like to discuss the homosexual family and the discrimination of that group. Homosexual families so far as society is concerned, do not exist. However, they do exist. Even though there is a considerable amount of discrimination toward such alternative family life styles, there are many gay people working in family groups, either as employees or extended groups. Many more gay people would enter into such family life styles but for fear of discrimination against them doing so.

Some of the areas of discrimination against there family groups, or the possibility of these family groups, being established are, first of all, their own families, fear of rejection from their families because they would be seen to be setting up in the homosexual life style, homosexual relationships, and all the trauma and difficulty that would bring to them.

Accommodation is another area of discrimination. Many gay couples find themselves being asked to leave by landlords. I personally know of a homosexual couple who bought into a unit block and were very heavily discriminated against to the point where they were considering selling and moving away.

Again many gay couples or homosexual family groups feel considerable fear because they would be seen to

be homosexual living in such a life style and if this got back to their work situation there would be discrimination against them in that area because they would be known to be gay.

The community itself is very hostile in discriminating against such groups, either couples or extended family groups.

In areas of housing, funding for housing, and so on, there is considerable discrimination. It would be totally impossible for myself or any other gay person who had entered into a relationship and set up a family life style, for instance, to apply to the Housing Commission. If I were a low wage earner, seeking reasonable and modest rental, I would not have any chance at all; I would just not qualify or we would not qualify as family unit for such consideration.

Also there is a very important area of discrimination against gay family groups and that is with the provisions of various laws and regulations relating to financial benefits such as taxation, superannuation, allowances for dependant members. These only apply to the nuclear family. They would not apply to any alternative family life style and this in itself is discriminatory.

Gay people, by the fact they are considered single people, pay very high taxes; probably they are in the highest tax bracket according to their income because, having no dependancies for remuneration, they are contributing taxes to the common purse and in many cases do not benefit from this contribution. Those taxes support very often even the law which is oppressive to them and discriminates against them.

A constant criticism of society against gay relationships is that they never last anyway. This is not altogether true. Many gay relationships, family relationships, do last and endure. It is to be wondered at, with the considerable oppression and discriminations that they last as long as they do. One might point out that heterosexual relationships probably do not enjoy any longer terms, that is as a family group, but the structure of the heterosexual family is such that these relationships are carried an probably long past the time when the meaningful aspect of the relationship has ceased to be.

Another area of very heavy discrimination, I think, is towards the married gay parent, particularly the lesbian mother. She has to deny her sexuality, her gayness, if she wants to maintain the custody of her children and the care of her children. To seek a divorce on the grounds of heterosexuality would immediately exclude her from taking custody of her children. The case of the gay parent, the father, is very unclear. It just does not seem to have been tested but I suspect that many married gay men have the same fear, that they would not be allowed access to their children in the case of divorce on the grounds of their homosexuality. So these are areas of discrimination too.

What possibly is necessary is a redefinition of the family group of people, however constituted, which considers itself a family; if this were so then many of the benefits that are now denied to alternative family life styles they would have access to.

But by far the largest area of discrimination is law itself. It destroys homosexual relationships by its discrimination. Only in a repeal of these discriminatory sex laws will there be any changes when discrimination itself can be dealt with by other means, total repeal. We in our submission have submitted an alternative law that covers the criminal sexual acts to protect the rights of the individual. I think it is exhibit l … I am not sure about that. It is exhibit 2.

Justice Evatt: Page 33, is it, of the submission? …

Ron [Austin]: Yes, Your Honour. Yes. That is Submission 558? … I would just like to finish on this note of the repeal of all discriminatory sex laws. In England there has been reform of these laws; in SA there has been reform of these laws. The reform is still discriminatory. Only in total repeal will discrimination against the homosexual be eliminated and be able to be dealt with in other areas. That is all I have to say, Your Honour.

Justice Evatt: You say the reform laws are discriminatory. Which particular reform laws would you be referring to there? … Particularly in England.

Ron [Austin]: Yes? … Because they make some adjustments but they do not cover enough. The homosexual is still discriminated against in that country. There are limits on their behaviour.

Justice Evatt: Any states or territories in this country?

Ron [Austin]: Tas – sorry, SA has recently changed its homosexual laws. They have reformed the law. It appears to be a very reasonable adjustment but I still think it is essentially discriminatory.

Anne Deveson: Could you expand on that a bit?

Ron [Austin]: I think it limits the homosexual still in terms of being free to relate as a gay person in society. He is or she is defined by that law. A heterosexual would have more freedom to express their sexuality in many areas where the homosexual would not be able to do so still. And always it seems to be implicit in these law reforms as to consenting adults in private. That seems to me to have some very doubtful limitations.

Robyn Kennedy: I think if we look at the evidence in England after the legislation was passed concerning homosexual acts between consenting adults in private the actual number of arrests and harassments of homosexuals increased because in public homosexuals were heavily discriminated against for showing any sort of affection towards another homosexual or to be seen to be with that other person; and police harassment of homosexuals in public increased dramatically. This is not the case for heterosexuals who are permitted to walk down the street holding hands and to be seen as relating to each ether. This is not possible for homosexuals.

Michael Clohesy: Yes, because reform of the law still does not make provision for homosexuals to meet each other to perform the acts which are legalised. It is still an offence to solicit someone for sexual relations and there are no facilities, apart from those established by homosexual organisations, for homosexuals to meet. There are not the sort of situations which heterosexuals have to meet so there is no point in legalising a law to allow people to do something which they cannot get together to do.

Robyn Kennedy: I wish to talk about the media and how the media discriminates against homosexuals. I think we should first look at the media from the point of view of entertainment. I am here talking about television shows, films and things of that nature. In media entertainment, homosexuals either are not presented at all or, if they are presented, they are usually presented as figures of ridicule. Comedy shows in particular rely heavily on stereotypes of homosexuals and jokes about homosexuals to get laughter.

I would like to look at the media from the point of view of community education. The experience of CAMP has been that the media is only interested in presenting anything about homosexuality if it can somehow use sensationalised. In the past we have consistently had news releases completely ignored by the media. It is only because the media were able to sensationalise Mike's [Clohesy] sacking that we have been able to get any coverage at all for our submission. Our whole submission has been viewed by the media as some sort of showdown. We do not believe that at all. The importance of our submission as a whole has been lost because the media is centring its interests on Mike's dismissal.

We see Mike' s dismissal as one of the many things that can happen to homosexuals in society. It is one of the many things that the public should know about. The importance of our submission lies in how widespread and entrenched discrimination exists against homosexuals. We would like to draw the attention of the commission to recommendation 8 of our submission [see page 290]. Recommendation 8 submits that the commission urge the Australian government to take urgent steps to open all forms of the media to the public for their use. I think it is fairly obvious that the media is a strong weapon in moulding attitude and opinion. It should be used responsibly. The whole range of alternative life-styles should be presented to the public.

Justice Evatt: Could you elaborate on that? How would you open the media for public use and public access?

Robyn Kennedy: I was thinking of access radio or making available of funds to people already in the media so that they could present these topics. I was thinking of the funding of alternative television stations, alternative radio stations, alternative newspapers. I suggest the government could sponsor programmes which would present alternatives to the public.

Justice Evatt: Are there any facilities now available for community access to the media?

Robyn Kennedy: I think it is very limited.

Col Eglington: I could enlarge on that a little. It is our finding that government funding and government assistance is very much limited by the respectability of the organisation or body that seeks the assistance. Last year, international women's year, we, CAMP NSW, requested funds from the government to assist in a series of seminars on female homosexuality. In those seminars we wanted to cover topics such as the social problems faced by lesbians, the problems of lesbians being able to bring up children, and other similar problems. Our original request for funding, in the vicinity of $30,000, [see page 358] was to cover a series of seminars and publications. This amount was cut down considerably to $4,000 We really had to scrimp to get the publications out and keep the seminars going. I feel that if the subject of the seminars and publications had been anything else, this would not have happened.

If we had been centring on the problems of migrant mothers, or something like this, I do not doubt we would have got the full assistance. It is very much our finding that assistance is tied to the social idea of respectability. The seminars brought a wave of protest from various groups in the community, which meant that any further requests for money were stifled. I have photostats of newspaper articles published at that time.

Justice Evatt: What are the articles about?

Col Eglington: They concern open seminars, protests over CAMP grants, vigorous protests from the NSW Council of Churches, protests over homosexual seminars, etc. The protests came from various areas. We sent copies of the papers given at the seminars, which covered a wide range of topics, to school principals and councils because we felt they were people who very much lacked reliable information on homosexuality, especially female homosexuality. We got no response at all from the schools in NSW. From a NT school we received a reply as follows:

> Recently I received a copy of some conference report on female homosexuality. This was not solicited. Kindly be advised that pornography is not a subject in our curriculum here. I intend to protest about the grant of public money to stage such a conference.

We found that was a written protest which was very much verbalised in many areas. There was a total rejection of what was said in the seminars which in no way supported pornography but dealt with the problems of bringing up children, the problems of the isolated mother and other matters dealing with homosexuality. This sort of thing biases government consideration when we, as a self-help group running councils and services, seek extra help to extend ourselves. These press-cuttings are photostats of the originals.

Justice Evatt: That bundle of press-cuttings will become exhibit 253. Exhibit: Exhibit 253 … Four sheets of Xerox copies of press-cuttings on seminar on homosexuality conducted by CAMP NSW. [598]

Justice Evatt: In these press-cuttings there is mention of sex education for children?

Michael Clohesy: That is not specifically relevant to this topic. I would like to turn to employment. I would point out that there seems to be evidence to suggest some relationship between a person's homosexuality becoming publicly known and a change in their employment situation. We leave it to the commission to determine the nature of any such relationship. We wish simply to provide the evidence.

We have observed that public knowledge of a person's homosexuality has been followed close in time by their loss of job. Peter Bonsall-Boone appeared on the ABC programme *Chequerboard* in late 1972. A week after his appearance he was dismissed from his position as the secretary of a church. [599]

Jeremy Fisher was a student at Macquarie University, resident at Menzies College. A receipt book for the

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[598] See: 1:–8.10.1. to 1:–8.10.4. pages 340, 341; n.a. 'What Sort of Education?', *The Catholic Weekly*, 18 May 1975, p. 5; n.a. 'Govt Grant for Homosexuals Alarms Churches', *The Australian Church Record*, 29 May 1975, p. 1; n.a. 'Protest Over CAMP Grant', 29 May 1975, p. 6. Council of Churches in NSW, *1975 Annual Report*, pp. 17, 18.

[599] See: de Waal, Peter, et al, *A Review of the 1976 Tribunal on Homosexuals and Discrimination*, The Tribunal Working Group, Balmain, 1994, pp. 10-18, 67-70; See also de Waal, Peter, et al, *The 1976 Tribunal on Homosexuals and Discrimination and Its 1994 Review*, The Tribunal Working Group, Balmain, 1996, pp. 2-10, 68-71.

Gay Liberation Society at that university was found in his college room. Shortly afterwards he was told to leave the college [see page 396].

Penny Short was a student at Macquarie University. She published a lesbian poem in the university newspaper, Irena [sic–*Arena*]. Shortly afterwards her Education Department teachers scholarship was withdrawn [see page 421].

Justice Evatt: May I just ask before you go any further, Mr Clohesy, these three names you have mentioned – do you know these people?

Michael Clohesy: Yes, I do, Your Honour.

Justice Evatt: Do they know that you are mentioning their names to me today?

Michael Clohesy: Yes, Your Honour.

Justice Evatt: Penny Short – you mentioned her scholarship was withdrawn?

Michael Clohesy: That is correct. I appeared on the Channel 9 programme *A Current Affair* and, five days later, lost my job as a teacher. [600]

Anyone in the defence services, as Exhibit 1 of our submission [see page 293] points out, knows that if their homosexuality becomes publicly known they will be dismissed from the services.

We have also observed that the public revelation of a person's heterosexuality in the marriage ceremony has not been followed by a similar change in circumstance. Homosexuals do perceive a relationships between the public disclosure of their homosexuality and loss of job, and we believe that measures are necessary to prevent this happening. Robyn would like to go on and talk about that.

Robyn Kennedy: We have talked about, on the last occasion, and in this session we have been talking about instances of discrimination and I would like to draw the commission's attention to recommendation for the adoption of a human rights bill which includes the rights of homosexuals; inclusion of the term sexual orientation has been previously ignored by the proposals for such a bill [see: 1:–2.2. page 206]. We recommend inclusion of the term sexual orientation and also the terms aged and handicapped, which have also previously been ignored.

In addition to a human rights bill, we see the need for anti-discrimination legislation similar to the sex discrimination and equal pay acts recently introduced in England. We would hope anti-discrimination legislation here would cover the rights of any minority group which has previously been discriminated against.

We are therefore recommending an expansion of the type of legislation which was introduced into England Legislation needs to provide sanctions against people who discriminate. Legislation would therefore need to have powers of inquiry, powers of fine and even powers of imprisonment for people who discriminate against a person, for whatever reason.

We would wish for a society where such legislation would not be necessary, where people would understand that it is the discrimination that is immoral and not the person who is being discriminated against. But this could only happen through a change in attitude and awareness among people, and the things we have been talking about – education, the media, institutions such as the law, the medical profession, the churches – all these are relevant in presenting attitudes and rasing awareness of the people.

In conclusion, I would just like to say that we hope that through submissions such as ours the community may become more aware of injustices that are dealt out to all minority groups.

Michael Clohesy: That is all we wish to say, Your Honour.

Justice Evatt: Ms Mathews, are there any other matters you want to ask about?

[600] See: de Waal, et al, (1994) op cit, pp. 97-106. Also see: de Waal, et al, (1996) op cit, pp. 136-145.

Jane Mathews: No.

Mr Lusher: I have no questions. Madam.

Justice Evatt: Was there any other business to deal with today?

Jane Mathews: No, no other business.

Justice Evatt: As it has already been announced, this is the last formal hearing fixed for the commission and it is unlikely that there will be any further hearings, so we will adjourn these proceedings without fixing a further date. Thank you for coming.

Michael Clohesy: Thank you for the opportunity.

The witnesses withdrew
At 11:40 hours the Royal Commission adjourned Sine Die. [601]

1:–8.10.1. – Catholics Upset Too–IWY Seminars, 19 May 1975 [602]

What Sort of Education?

We must agree with the NSW Council of Churches that the following seems to have little to do with International Women's Year.

In fact when you read the news release from the Anglican Press Office, you can be pardoned for wondering just what are the standards for Federal Government grants – remembering that one was given also towards the making of the Australian film 'The Ballad of Eskimo Nell', which we are given to believe is like the infamous verse (banned in Australia) on which it is based, leaving little to the imagination.

Here is the news release.

'The NSW Council of Churches has vigorously protested to the Prime Minister's Department over a grant of $4,000 to CAMP (NSW) to conduct seminars on homosexuality.

The Council passed a resolution which stated: 'CAMP is in our view not just against discrimination. It has a much more serious purpose of undermining traditional attitudes to sexuality in Australian society, including even acceptance by society of marriages and adoptions by people of the same sex living together.'

'It is our view that the Prime Minister's Department should not regard these purposes as coming within the scope of educational grants for International Women's Year, and we regard such a grant as an act of discrimination against traditional and Christian morality as held by most Australian'.

NSW Council of Churches secretary, Rev Bernard Judd said today: 'The Council is not, of course, in favour of any kind of discrimination, but it regards CAMP as existing to change community attitudes rather than reflect them.'

'The attitude of CAMP towards Australian sexuality is really that of anarchy.'

That's fair enough comment.

1:–8.10.2. – We're Not in Favour of Discrimination–IWY Seminars, 29 May 1975 [603]

Govt Grant for Homosexuals Alarms Churches

The NSW Council of Churches has protested to the Prime Minister's Department about a grant of $4000 to CAMP (NSW) to conduct seminars on homosexuality.

The Council passed a resolution which stated: 'CAMP is in our view not just against discrimination.'

'It has a much more serious purpose of undermining traditional attitudes to sexuality in Australian society, including even acceptance by society of marriages and adoptions by people of the same sex living together.'

'It is our view that the Prime Minister's

[601] 'Without day; indefinitely', Osborn, PG, *A Concise Law Dictionary*, Sweet and Maxwell, London, 1964, p. 295.
[602] n.a. 'What Sort of Education?', *The Catholic Weekly*, 18 May 1975, p. 5.
[603] n.a. 'Govt Grant for Homosexuals Alarms Churches', *The Australian Church Record*, Thursday 29 May 1975, p. 1.

Department should not regard these purposes as coming within the scope of educational grants for International Women's Year.'

'We regard such a grant as an act of discrimination against traditional Christian morality as held by most Australians'.

The NSW Council of Churches secretary, the Rev Bernard Judd said this week:

'The Council is not, of course, in favour of any kind of discrimination, but it regards CAMP as existing to change community attitudes rather than reflect them.'

'The attitude of CAMP towards Australian sexuality is really that of anarchy'.

1:–8.10.3. – Protested Vigorously–IWY Seminars, 29 May 1975 [604]

Protest Over CAMP Grant

The NSW Council of Churches has protested vigorously to the Prime Minister's Department over a grant of $4000 to CAMP (NSW), to conduct seminars on homosexuality.

The Council passed a resolution which stated: 'CAMP is, in our view, not just against discrimination. It has a much more serious purpose of undermining traditional attitudes to sexuality in Australian society, including even acceptance by society of marriages and adoptions by people of the same sex living together.'

'It is our view that the Prime Minister's Department should not regard these purposes as coming within the scope of educational grants for International Women's Year, and we regard such a grant as an act of discrimination against traditional and Christian morality as held by most Australians.'

NSW Council of Churches secretary, the Rev Bernard Judd, commented: 'The Council is not, of course, in favour of any discrimination, but it regards CAMP as existing to change community attitudes rather than reflect them.'

'The attitude of CAMP towards Australian sexuality is really that of anarchy.'

[Adjacent to the above news item was the following:]

SEX EDUCATION FOR CHILDREN

A new, controversial publication has been released by the Festival of Light, entitled 'Sex Education, the School and Your Child.' [605]

The book has been written by parents FOR parents. It contains vital information about the current School Personal Development – Sex Education Programs and their effect upon our children.

The book, which has taken two years to be compiled by the Parent Responsibility Study Group, contains essential data contributed by educators, doctors and many others. It highlights a number of disturbing influences actively at work in the areas of sex education today.

Chapter headings include: 'What is Sex Education About?' 'What are the Real Implications?' (Dr Claire Isbister). 'The Warnings There – Humanism, etc.' 'Is Sex Education Moral?' (Professor Brian Hill). 'You Can't Contradict Scientific Evidence.' 'Homosexuals and Homosexuality.' 'Parents Rights, Duties and Privileges in the School.'

(Copies are available from the Festival of Light Office, 379 Kent Street, Sydney. Recommended price, $1 per copy.)

1:–8.10.4. – Council of Churches in NSW–IWY Seminars, June 1975 [606]

The Australian Government's Grant to CAMP (NSW)

The NSW Council of Churches vigorously protested to the Prime Minister's Department over a grant of $4,000 to CAMP (NSW) to conduct seminars on homosexuality.

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[604] n.a. 'Protest Over CAMP Grant', *New Life*, (An evangelical Christian weekly newspaper) Thursday 29 May 1975, p. 6.

[605] See: de Waal, Peter, et al, *A Review of the 1976 Tribunal on Homosexuals and Discrimination*, The Tribunal Working Group, Balmain, 1994, pp. 19-27. Also see: de Waal, Peter, et al, *The 1976 Tribunal on Homosexuals and Discrimination and Its 1994 Review*, The Tribunal Working Group, Balmain, 1996, pp. 11-20.

[606] Council of Churches in NSW, *1975 Annual Report*, pp. 17-8. The Council represents: 'The Church of England (Diocese of Sydney); Baptist; Churches of Christ; Congregational; Methodist; Presbyterian Churches and The Salvation Army.'

The Council passed a resolution which stated: 'CAMP is in our view not just against discrimination. It has a much more serious purpose of undermining traditional attitudes to sexuality in Australian society, including even acceptance by society of marriages and adoptions by people of the same sex living together.'

'It is our view that the Prime Minister's Department should not regard these purposes as coming within the scope of educational grants for International Women's Year, and we regard such a grant as an act of discrimination against traditional and Christian morality as held by most Australian'.

The Council is not, of course, in favour of discrimination, but it regards CAMP as existing to change community attitudes rather than reflect them.

The attitude of CAMP towards traditional Australian concepts of sexuality is really that of anarchy.

1:–8.10.5. – Media Report–Evidence Presented At Last, 26 February 1976 [607]

Homosexuals Give Evidence

The Royal Commission on Human Relationships held its final public hearing yesterday – and ended on an unexpected cordial note.

Four members of the NSW homosexual organisation, CAMP, gave evidence about alleged discrimination in employment. They touched only lightly upon the dismissal of the organisation's secretary, Mr Michael Clohesy, from his teaching post at the Marist Brothers' College, Eastwood.

In return, three lawyers representing the NSW Catholic hierarchy, attending their fourth consecutive session of the commission, waived their right to cross-examine Mr Clohesy.

A dispute about the evidence and the right to cross-examine had led to two previous postponements of public hearings.

Mr Clohesy offered several specific examples of people being sacked from their jobs or facing other discrimination when it had become publicly known that they were homosexuals.

These included two students at Macquarie University, the former secretary of an Anglican parochial Council and members of the Australian armed forces.

Mr Clohesy and three other witnesses for CAMP reserved their main criticism not for discriminating employers, but at sections of the news and entertainment media which ignored genuine homosexual aspirations but enjoyed reporting scandals and sensations associated with homosexuality.

Miss Robyn Kennedy, a committee member said that none of the 30 pages of positive evidence offered by CAMP to the Royal Commission had been published in the newspapers, or mentioned on radio or television.

It was only because of Mr Clohesy's sacking from his school post that CAMP got any media coverage at all.

Mr Clohesy said the religious press, in particular, had been unfair towards CAMP and had labelled its members as publicity seekers.

Copies of *Australian Church Record* (Anglican) and *New Life* (independent Evangelical) were mentioned as particular offenders.

Copies were handed to the commissioners, Archbishop Felix Arnott, Miss Anne Deveson, and Justice Evatt, for inclusion in the official records.

1:–8.10.6. – Media Report–Evidence Finally Presented, 26 February 1976 [608]

Media 'Enjoys Gay Scandals'

SYDNEY, Wednesday – The Royal Commission on Human Relationships was told today that sections of the media enjoyed reporting scandals involving homosexuals.

Four members of the NSW homosexual organisation, Camp [sic], gave evidence about alleged discrimination in employment. They touched only lightly on the dismissal of the organisation's Secretary, Mr M Clohesy, from his teaching post.

It was the final hearing of the Royal Commission.

Mr Clohesy offered several examples of people being sacked from their jobs or facing other discrimination when it had become known publicly that they were homosexuals.

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[607] Gill, Alan, 'Homosexuals Give Evidence', *The Sydney Morning Herald*, Thursday 26 February 1976, p. 9.

[608] n.a. 'Media Enjoys Gay Scandals', *The Newcastle Morning Herald and Miners' Advocate*, Thursday 26 February 1976, p. 7.

Mr Clohesy and three other witnesses for Camp reserved their main criticisms for sections of the news and entertainment media which, they said, ignored genuine gay aspirations but enjoyed reporting scandals and sensations associated with homosexuals and homosexuality.

1:–9. – **Classified Telephone Directory**

In mid-August 1974 CAMP received a telephone call from an officer of the Directories Section of the PMG wanting to know a suitable classification for our entry in the Yellow Pages.

Consideration was given to this matter and it was decided that, given the unique and specific nature of the movement, the only suitable arrangement would be for a new heading to be created: 'Organisations – Homosexual'.

We consequently wrote to the appropriate PMG section outlining this decision and the reasons for it on 23 August 1974 [see page 346]. We received a reply from the PMG on 27 August, informing us that our request had been referred to the Headings Committee (Melbourne) for consideration [see page 346]. No reply was received for three months until pressure was applied by us by telephone calls at the end of November [1974]. On 3 December the PMG replied by letter thus:

> Advice has been received that your request is not approved as it is considered that the heading 'Organisations – Miscellaneous' to be suitable for your organisation's entry. It will therefore be arranged to list your entry under that heading in the next issue of the directory [see page 346].

A telegram protesting at the blatant discrimination shown by this decision was immediately sent [see page 347]. A reply by letter was sent on 8 December 1974. It declared that the decision was quite unsatisfactory as 'Organisations – Miscellaneous' does not qualify in any way the work done by CAMP:

> You will see from my first letter, in which I quoted from CAMP's constitution, that this body exists to support homosexuals in their fight for equality in the community. The refusal of the Headings Committee to even acknowledge the existence of such a campaign is a concrete illustration of the oppression we are attempting to combat [see page 347].

The only reply so far has been a letter on 16 December 1974 informing us that our objections had been referred to the Headings Committee – a very elusive body [see page 347].

1:–9.1. – CAMP NSW Letter to Superintendent, Sales Branch, Postmaster–General's Department, 23 August 1974 [609]

Classified Directory entry for 660 0061

I was telephoned the other evening by an officer of your Directories Section with whom I discussed a suitable classification for our entry in the yellow pages. Since then I have had conversations with other members of the executive of CAMP, and we have concluded that the only classification which would really describe the work of our organisation would be 'Organisations – Homosexual'.

By way of illustration, I quote from the first of the aims of CAMP, as expressed in our Constitution: '… to support full legal, political and social equality for homosexuals and to work against all forms of discrimination and persecution directed against the free expression of sexual preference.' As you can see, it would be impossible to describe the work done by CAMP in any way other than the one I have suggested above.

Although I understand that this entry would possibly be the only one under such a classification at the moment, the changing climate of public opinion on the subject of homosexuality will certainly lead to an increase in the number of such groups in the near future. I could also draw your attention to the fact that there are quite a number of instances in the current classified directory of classifications which contain only one entry.

I look forward to your early and favourable reply. Please do not hesitate to ask for any further information which may assist your deliberations.

1:–9.2. – Superintendent, Sales Branch, Postmaster–General's Department Letter to CAMP NSW, 27 August 1974

Thank you for your letter dated 23 Aug 1974, requesting a new heading of ORGANISATIONS – HOMOSEXUAL in the Classified Telephone Directory.

Your request is being referred to the Headings Committee at our Central Administration for consideration and advice of their decision will be forwarded to you at the earliest practicable date.

1:–9.3. – Superintendent, Sales Branch, Postmaster–General's Department Letter to CAMP NSW, 3 December 1974

I refer to your letter dated 23 Aug 1974 requesting a new heading Organisations – Homosexual in the Classified Telephone Directory.

Advice has been received that your request is not approved as it is considered that the heading 'Organisations – Miscellaneous' to be suitable for your organisation's entry. It will therefore be arranged to list your entry under that heading in the next issue of the directory.

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[609] On 6 November 1998 The Department of Communications and the Arts, Record Management Area (FOI Unit) was contacted to ascertain if further details of file TM 72/3621 (43) were available through an FOI application. No response was ever received to this enquiry. The author further contacted, at about the middle of December 1998, the federal member for Sydney's office, Tanya Plibersek, and spoke with her electorate officer, Roe Schroeder, who provided the name and telephone number of the federal government relations officer at Telstra, Graham Murphy. Mr Murphy was contacted on 14 December 1998 and mentioned that he knew of the existence of the Headings Committee of the then Postmaster-General's Central Administration in Melbourne. He indicated that it would be very unlikely that any records had survived. No further communications have been received from Mr Murphy.

1:–9.4. – CAMP NSW Telegram to Superintendent, Sales Branch, Postmaster–General's Department, 3 December 1974

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TO:     Superintendent, Sales Branch, Postmaster-General's Department

TEXT:   Re TM 72/3621 (43)
        Decision Discriminatory. Letter following.

FROM:   Peter Bonsall-Boone, Co-President
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Figure 3: CAMP NSW Telegram to Superintendent, Sales Branch, Postmaster–General's Department

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1:–9.5. – CAMP NSW Letter to Superintendent, Directories and Sales Checks, Postmaster-General's Department, 8 December 1974

I consider your reply to my request that Campaign Against Moral Persecution (NSW Branch) be included in a new category, Organisations – Homosexual, in the Yellow Pages to be quite unsatisfactory. Your letter could have been sent with equal justification to **any** of the organisations listed under the many sub-headings of this category, thus making them all appear under the one heading without further description.

You will see from my first letter, in which I quoted from CAMP's Constitution, that this body exists to support homosexuals in their fight for equality in the community. The refusal of the Headings Committee to even acknowledge the existence of such a campaign is a concrete illustration of the oppression we are attempting to combat.

Will you please arrange for the decision conveyed to us in your letter to be reconsidered, and for due consideration to be given to the reasons for the proposed classification given in my earlier letter. I did point out quite clearly then that 'Organisations – Miscellaneous' does not qualify in any way the work done by CAMP, even although the meaning of my letter seems to have escaped the Committee to which it was submitted.

In closing, may I comment that I feel that having to wait rather longer than four months for a reply to my earlier letter is having to wait more than three and a half months too long? At that rate I shall have only your reply to this present letter before the closing date for the Yellow Pages in 1975. I would ask you to do all in your power to speed both the process of decision and the communicating of the decision to me so that this matter can be satisfactorily concluded as soon as possible.

1:–9.6. – Superintendent, Directories and Sales Checks, Postmaster-General's Department, Letter to CAMP NSW, 16 December 1974

I refer to your letter dated 8 Dec 1974 requesting that further consideration be given your request for a new heading 'Organisations – Homosexual' in the Classified Telephone Directory.

It is explained that the Headings requests from all State Offices are handled by a Headings Committee in Central Office and your objections have been referred to this Committee.

Further advice will be forwarded you upon receipt of their decision.

1:–9.7. – CAMP NSW Letter to Superintendent, Directories and Sales Checks, Postmaster-General's Department, 20 January 1975

It is now longer than a month since your latest letter to me. You will notice that in my letter of 6 [should read 8] December I commented on the inordinate length of time it had taken ti receive a reply to earlier correspondence.

Perhaps one single entry in a directory comprising several ten of thousands of entries does not strike your Department as being particularly important. However, I can assure you that our telephone number, 600 0061, is of great importance to the thousands of people who have rung us since our information and advisory service commenced – an information and advisory service which can be only satisfactorily conducted by a homosexual movement such as CAMP.

A properly classified telephone directory entry would enable many others to contact us, and we feel therefore that the listing of our movement under 'Organisations – Homosexual' is a matter of urgency.

In view of the time being presently lost during the reaching of decisions and their communications to us, I

would appreciate your sending me, by return, the address of the Headings Committee in Central Office to which you refer, so that I may contact them directly.

1:–9.8. – Superintendent, Directories and Sales Checks, Postmaster-General's Department, Letter to CAMP NSW, 24 January 1975

I refer to your letter dated 20 Jan 1975 concerning a reply to your request of 8 Dec 1974 for further consideration of a new heading 'Organisations – Homosexual' in the Classified Telephone Directory.

The delay in replying to your request is regretted, however, advice will be forwarded to you upon receipt of the Heading Committee's decision.

A copy of your letter of the 20 January has also been referred to our Headings Committee.

1:–10. – **Population Census 1976**

When it came to our notice in November 1974 that a test census [see Figure 4, page 350] was to be held, moves were begun to amend the questions in the census form to include a census of homosexuals and homosexual families, since the only statistics available date from 1948 and refer only to the United States of America (in Kinsey et al.) [610]

This move has been deferred for the moment because CAMP feels a more favourable climate for people to reveal their sexuality needs to be achieved, or misleading statistics would be obtained.

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[610] Kinsey, AC, et al. *Sexual Behaviour in the Human Male*, Saunders, London, 1948. Kinsey, AC, et al. *Sexual Behaviour in the Human Female*, Saunders, London, 1953.

1:–10.1. – Householder's 1976 Census Testing Schedule

Figure 4: Householder's 1976 Census Testing Schedule

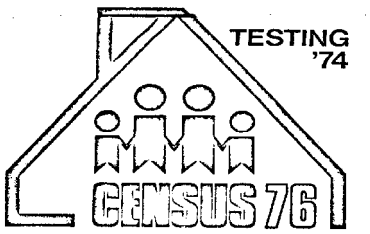
CONFIDENTIAL

State	NSW
Div.	
S. Div.	
C. D.	
Rec. no.	

AUSTRALIAN BUREAU OF STATISTICS
(Australian emblem)
1976 CENSUS OF
POPULATION AND HOUSING
AUSTRALIA
HOUSEHOLDER'S SCHEDULE

TESTING, 20th NOVEMBER 1974

This test is taken under the authority of the
Census and Statistics Act 1905-1973. Under this Act:–
(a) it is compulsory to provide all the information requested (except religion)
(b) all the information you provide in this questionnaire *will be kept confidential*
and used only for statistical purposes.



The completed Schedule should be ready to hand to the Collector
who will call on THURSDAY 21 NOVEMBER 1974 or as soon as possible after that day.
If you have any difficulties in filling in this Schedule, telephone SYDNEY 29 7351 for assistance.

Signature of Collector

. . . . . .

I certify that to the best of my knowledge and belief this form has been correctly filled in.

Signature of Householder . . . . . *Date* . . . . . .

Street, etc. . . . . . .

City, town or suburb . . . . . *Postcode* . . . . . .

All Persons Present on Census Night

List in Column ① all person (including visitors) who spent the night of Wednesday 20 November 1974 in this household (or returned on Thursday **21 November 1974 without** having been counted elsewhere), and then fill in Columns ② to ⑤ for each person.

Column ① First *or* given name and surname List LAST any person in this household who have completed Personal Slips. For unnamed baby write 'BABY' and surname.	Column ② Relationship to head of household For example: husband, wife, mother, de facto spouse, nephew, son, son-in-law, uncle, daughter, brother, sister, grandson, grand-daughter, co-tenant, housekeeper, boarder.	Column ③ Sex •Tick appropriate box	Column ④ Age •In years and completed months •If age is less than one year write '0' years and the number of completed months.	Column ⑤ Present Marital Status •Tick appropriate box.
1. First *or* given name . . . . . . Surname	**Head**	Male □ 1 Female □ 2	Years Months	Never married □ 1 Married □ 2 Married but permanently separated □ 3 Divorced □ 4 Widowed □ 5
2. First *or* given name . . . . . . Surname	Relationship to person 1	Male □ 1 Female □ 2	Years Months	Never married □ 1 Married □ 2 Married but permanently separated □ 3 Divorced □ 4 Widowed □ 5
3. First *or* given name . . . . . . Surname	Relationship to person 1	Male □ 1 Female □ 2	Years Months	Never married □ 1 Married □ 2 Married but permanently separated □ 3 Divorced □ 4 Widowed □ 5
4. First *or* given name . . . . . . Surname	Relationship to person 1	Male □ 1 Female □ 2	Years Months	Never married □ 1 Married □ 2 Married but permanently separated □ 3 Divorced □ 4 Widowed □ 5
5. First *or* given name . . . . . . Surname	Relationship to person 1	Male □ 1 Female □ 2	Years Months	Never married □ 1 Married □ 2 Married but permanently separated □ 3 Divorced □ 4 Widowed □ 5
6. First *or* given name . . . . . . Surname	Relationship to person 1	Male □ 1 Female □ 2	Years Months	Never married □ 1 Married □ 2 Married but permanently separated □ 3 Divorced □ 4 Widowed □ 5
7. First *or* given name . . . . . . Surname	Relationship to person 1	Male □ 1 Female □ 2	Years Months	Never married □ 1 Married □ 2 Married but permanently separated □ 3 Divorced □ 4 Widowed □ 5
8. First *or* given name . . . . . . Surname	Relationship to person 1	Male □ 1 Female □ 2	Years Months	Never married □ 1 Married □ 2 Married but permanently separated □ 3 Divorced □ 4 Widowed □ 5

If More Than 8 Persons. This Booklet has pages for 8 persons. If there are more than 8 persons in the household, obtain Personal Slips from the Collector.

For Collector's Use Only

Total persons in household, i.e. listed in Column 1 and on extra Personal Slips issued.	Males	Females	Persons	Number of Personal Slips issues.	

1. Name of person on line 1 of page 1.
First or given name .....
Surname .....

Note: • 'Usual residence' is that address at which a person has LIVED for the last 6 months or intends to live for any period of 6 months or more.
• In question 2 any person who now has no usual residence should give this address as their usual residence.
• In question 3 and 4 any person who did NOT have a usual residence on 20 November 1973 or 1969 should give the address at which they were then living.

2. Where does this person usually live?
This address ☐ → Go to question 3
Elsewhere ☐
State full address of usual residence.
• If overseas, write name of country of usual residence.
Number and Street .....
Suburb, Town or Locality .....
Name of Local Council .....
State, Territory ..... Postcode.....

3. Where was this person;'s usual residence one year ago (i.e. at 20 November 1973)?
Same as in question 2 ☐ → Go to question 4
Elsewhere ☐
Please state full address if usual residence one year ago.
• If overseas, write 'O'; if this person is less than 1 year old, write 'N/A'.
Number and Street .....
Suburb, Town or Locality .....
Name of Local Council .....
State, Territory ..... Postcode.....

4. Where was this person's usual residence five years ago (i.e. at 20 November 1969)?
Same as in question 2 ☐ → Go to question 5
Same as in question 3 ☐ → Go to question 5
Elsewhere ☐
Please state full address if usual residence five years ago.
• If overseas, write 'O'; if this person is less than 5 years old, write 'N/A'.
Number and Street .....
Suburb, Town or Locality .....
Name of Local Council .....
State, Territory ..... Postcode.....

5. Has this person been away from home ON A HOLIDAY of a week or more since 20 November 1973?
Yes ☐
or
No ☐

6. Where was this person born?
Australia ☐ → Give *State or Territory* of birth .....
or Go to question 9
Overseas ☐ → Give *country* of birth .....
or Go to question 7

7. Is this person of British Nationality (by birth or Naturalisation)?
Yes ☐ No ☐
State country of Citizenship State country of Nationality or Citizenship

8. Is this person a resident of Australia or a visitor to Australia?
Resident ☐ → Give date of first arrival in Australia as a resident Month ..... Year.....
or
Visitor ☐ → Give date of arrival in Australia on this visit Month ..... Year.....

9. (a) In which country was this person's father born? .....
(b) In which country was this person's mother born? .....

10. What is the person's racial origin?
• If of mixed origin, indicate the one which they consider themselves to belong.
• Tick one box only or give one origin only.
1 ☐ European origin 3 ☐ Torres Strait Islander origin
2 ☐ Aboriginal origin 4 ☐ Other origin
If 'other' please state one only .....

11. Does this person have a SERIOUS long-term illness or physical or mental condition?
Yes ☐
No ☐ → Go to question 12
Does this condition handicap this person– • Tick boxes which apply.
In his or her education? ..... ☐ 1
In getting or holding a job? ..... ☐ 2
In getting about alone? ..... ☐ 3
In doing house work? ..... ☐ 4
In sporting or recreational activities? ..... ☐ 5
In acts of daily living e.g., dressing, bathing? ..... ☐ 6
In other ways? ..... ☐ 7
Not handicapped ..... ☐ 8

12. What is this person's religious denomination?
• If no religion write 'none'.

PERSONS 6 YEARS OF AGE AND OVER GO TO QUESTION 15

13. Does this child attend pre-school (usually run on a half-day session basis during normal school term)?
Yes ☐
No ☐ → Go to question 14
Full name of the pre-school .....
Address .....
Postcode.....

14. Is this child minded by other than his/her parent(s) for some part of each working day?
• Tick boxes which apply.
Yes–at child care centre (includes child minding centres, day care centres, day nurseries, play groups) ..... 1 ☐
Yes–at pre-school ..... 2 ☐
Yes–at home (not by child's parents) ..... 3 ☐
Yes–elsewhere ..... 4 ☐
No ..... 5 ☐
If it is 1, full name of the centre .....
Address .....
Postcode.....

PERSONS UNDER 5 YEARS OF AGE NO MORE QUESTIONS

15. What language does this person regularly us every day?
• Tick boxes which apply.
English 1 ☐ Greek ..... 3 ☐
Italian 2 ☐ German ..... 4 ☐
Other ..... 5 ☐
If 'other' please state .....

16. Is this person a school pupil?
Yes ☐
No ☐
Full name of the school .....
Address .....
Postcode.....

CHILDREN UNDER 15 YEARS OF AGE NO MORE QUESTIONS
SCHOOL CHILDREN 15 YEARS AND OVER GO TO QUESTION 20

17. Is this person a full-time, part-time, or external student at university, college of advance education, technical college or any other educational institution?
Yes ☐
No ☐
Full name of institution .....
Address .....
Postcode.....

18. Has the person obtained a trade or other qualification since leaving school?
Yes ☐
No ☐ → Go to question 19
If 'yes' please state details of this person's qualifications–

	Name of qualification	Name of educational institution at which obtained	Main field of study or training	Year obtained
1				
2				
3				
4				

19. At what age did this person leave school?
..... Years
☐ Did not go to school.

20. Does this person pay into a retirement benefit scheme such as superannuation, provident fund, annuity?
Yes ☐
or
No ☐
Tick 'yes' *also* if payments are made by employer.

21. Does this person receive any benefits –
Yes ☐ No ☐ → Go to question 22
• Tick boxes which apply.

Superannuation or annuity?	☐ 1	Invalid pension	☐ 6
War widow's pension?	☐ 2	Widow's pension or supporting mother;s benefit	☐ 7
Other war pension?	☐ 3	Unemployment, sickness or special benefits?	☐ 8
Repatriation service pension?	☐ 4	None of these?	☐ 9
Age pension?	☐ 5		

22. Is this person licensed to drive –
A motor vehicle? Yes ☐ No ☐ *or* A motor cycle? (other than a motor cycle) Yes ☐ No ☐

23. Does this person usually work for wages, salary, payment or profit in a job, business, profession or on a farm?
Yes ☐
or
No ☐
IF THIS PERSON IS A MALE GO TO QUESTION 27

24. Has this woman ever been married?
Yes ☐
No ☐ → Go to question 27
If yes, how many babies has this woman EVER had from all marriages?
• Include children she has adopted.
• Do not count stillbirths.•If none write 'none'.
Now living ..... Not now living ..... Total .....

25. Is this woman AT PRESENT married?
Yes ☐
No ☐ → Go to question 27
If yes, what is the length of this present marriage?
Years .....(If less than one year, write '0'.)

26. How many babies has this woman had from this PRESENT marriage?
• Include children she has adopted.
• Do not count stillbirths. • If none write 'none'.
Now living ..... Not now living ..... Total .....

27. How much gross income does this person receive per WEEK from all sources?
• Do not deduct tax, superannuation, etc.
• Count all income: e.g., include wages, salary, overtime, *child endowment*, pensions, superannuation, tips and gratuities, business or farm income (less expenses of operation), scholarships.

Unable to estimate income on a weekly basis	☐	$50 but less than $70	☐ 7
		$70 but less than $90	☐ 8
No income	☐ 1	$90 but less than $110	☐ 9
Less than $10	☐ 2	$110 but less than $135	☐ 10
$10 but less than $20	☐ 3	$135 but less than $165	☐ 11
$20 but less than $30	☐ 4	$165 but less than $200	☐ 12
$30 but less than $40	☐ 5	$200 but less than $300	☐ 13
$40 but less than $50	☐ 6	$300 and over	☐ 14

How much gross income did this person receive from all sources during the last financial year? (i.e. the year ending 30 June 1974). If unable to provide estimate for 1974, give 1973 income and tick this box – 1973

No income	☐ 1	$3500 but less than $4500	☐ 8
Less than $500	☐ 2	$4500 but less than $5500	☐ 9
$500 but less than $1000	☐ 3	$5500 but less than $7000	☐ 10
$1000 but less than $1500	☐ 4	$7000 but less than $8500	☐ 11
$1500 but less than $2000	☐ 5	$8500 but less than $10,500	☐ 12
$2000 but less than $2500	☐ 6	$10,500 but less than $15,500	☐ 13
$2500 but less than $3500	☐ 7	$15,500 and over	☐ 14

28. Did this person do any work at all last week?
• Tick one box only
Yes, worked for wages, salary, payment or profit 1 ☐ → Go to question 32
Yes, but did unpaid work only 2 ☐ → Go to question 29
Did not work 3 ☐ → Go to question 29

29. Did this person have a full-time or part-time job, business, profession or farm of any kind last week?
Yes, had a job, business, profession or farm for payment or profit last week ☐ 1
Yes helped without pay in a family business ☐ 2
Had an unpaid job only ☐ 3
Did not have any job, business, profession or farm last week ☐ 4

30. Was this person temporarily laid off by their employer without pay foe the WHOLE of last week?
Yes ☐ *or* No ☐

31. Did this person look for work last week?
• *Looking for work* means being registered with the Commonwealth Employment Service or approaching a prospective employer, or placing or answering advertisements, or writing letters of application or awaiting the results of recent applications.
Yes, looking for first permanent job ..... ☐ 1
Yes, but not for first permanent job ..... ☐ 2
No ..... ☐ 3
IF THIS PERSON TICKED BOXES 3 *'OR'* 4 IN QUESTION 29, NO MORE QUESTIONS

32. How many hours per WEEK does this person usually work in the job or jobs held last week?
Main job ..... hours
Other job(s) ..... hours

33. In the main job held last week was the person –
• Tick one box only.
A wage or salary earner? ..... ☐ 1
Conducting own business but not employing others? ..... ☐ 2
Conducting own business and employing others? ..... ☐ 3
A helper not receiving wages or salary? ..... ☐ 4

34. What was this person's occupation (the kind of work done) last week?
• Describe as fully as possible using two or more words, e.g. builder's labourer.
• Where possible give award or Government Designation.
• Members of the armed services must state their rank.
.....

35. (a) For the main job held last week PRINT the full trading name of this person's own or employer's business.
• Teachers should print name of school.
• Government employees should print full name of department.
.....
Use Block Letters
(b) What is the full name of the Division, or Branch or Section (if any) in which this person works?
.....
Use Block Letters
(c) What is the full address of the Division, or Branch or Section (if any) or business at which this person works?
• Persons with no fixed place of work last week write 'N/A'.
Number and Street .....
Suburb or town ..... Postcode .....
Use Block Letters
(d) What kind of industry, business or service is carried out at that address?
• Use two or more words. For example, dairy farming, road
.....

36. How did this person get to work on Tuesday 19 November 1974?
• Tick box(es) to show method(s) used.

Train	☐ 1	Car–as passenger	☐ 6
Bus	☐ 2	Motor cycle or scooter	☐ 7
Ferry	☐ 3	Bicycle	☐ 8
Taxi	☐ 4	Works at home	☐ 9
Car – as driver	☐ 5	Other	☐
Please state		.....	
Did not go to work	☐	How do you usually get to work?	.....

1:–11. – International Women's Year

1975 has been designated International Women's Year by the UN. A secretariat has been established by the Australian Government to promote the year and to allocate funds for programs designed to celebrate it.

On 23 December [1974] a submission [see page 356] was forwarded by CAMP to the IWY Secretariat [611] requesting a grant of $30,200 for activities associated with Women's Year. We stated our aim as follows:

> To research the position of the female homosexual in Australian society;
> To formulate and conduct an education program to change current attitudes.

We pointed out the unique nature of this program, one which had never been undertaken in Australia before. If the money is made available, it will be expended in the following way:

A series of six weekend workshops. The weekends will be open to interested women from all over Australia. Members of CAMP will provide the nucleus, arrange speakers to deliver papers on the topics under discussion, coordinate inter-workshop research and coopt people with relevant expertise and experience in particular areas where needed. It is envisaged that participation in the workshops would provide:

(a) the experience of participation itself;
(b) the opportunity to conduct research by pooling ideas and resources;
(c) the preparation of a series of ten pamphlets [612] [see pages 363, 364] for distribution to the attitude-forming institutions of society;
(d) preparation of a series of tapes, based on the workshops, for distribution to radio and television throughout Australia;
(e) regular press releases to the media outlining the work being achieved, as part of the education program;
(f) a poster campaign - six posters are envisaged to advertise the work being done and to form part of the education program.

The publication of a book (5,000 copies) outlining the position of the female homosexual in Australian society based on the findings of the series of workshops.

The IWY Secretariat has indicated its receipt of our submission by a telegram on 6 January 1975. No further information is to hand at this stage.

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[611] The Australian Government established the Australian National Advisory Committee for International Women's Year with a Secretariat in Canberra. The committee's membership was: Elizabeth Reid, convenor; and the following as members: Shirley Castley, Barry Egan, Irene A Greenwood, Ruby Hammond, Jeanette Hungerford, Caroline Jones, Maria Pozos, Ruth Ross, JJ Spigelman, Diana Waite, Margaret Whitlam. Six-hundred-eighty-seven submission were received by the Secretariat for funding and nearly a quarter (21%) of these were to support conferences, workshops and seminars. 'Because of the volume of submissions in this area, the Committee developed guidelines to ensure that only those conferences would be funded which held the most promise for changing attitudes.' Source: *Report of the Australian National Advisory Committee for International Women's Year*, AGPS, Canberra, March 1976, p. 116.

[612] Only one introductory pamphlet was produced and sent to all medical, legal, educational and political institutions with the intention of advertising the forthcoming seminar/workshops and also to raise some of the issues pertinent to the position of the female homosexual in Australia society.

1:–11.1. – CAMP NSW Grant Application for International Women's Year, 23 December 1974 [613]

1. Aim

1.1 Research the position of the female homosexual in Australian society.
1.2 Formulate and conduct an education program to change current attitudes.
1.3 We would point out the unique nature of this program, which has never been undertaken in Australia.

2. Relation to the Objectives of International Women's Year

2.4 The second aim specified above (1.2) directly relates to the objective of the year by bringing about a change in societal attitudes. The project will aim, through education at all levels, to change attitudes which cause discrimination and suffering.
2.5 Female homosexuals labour under the double oppression of being women … will be designed to pinpoint the specific nature of this oppression and to formulate programs to combat, in order to achieve objective (b) of International Women's Year.
2.6 The project as planned provides considerable opportunities for women to share together creatively their experience and aspirations.
2.7 The activities planned by CAMP NSW Branch for International Women's Year spring from its awareness of the deep-rooted and far-reaching oppression of homosexual women and are guided by its vision of a process of liberation leading to their being able as whole people to make their full contribution to society.

3. Nature of the Project

3.8 A series of six week-end workshops, to be held at CAMP NSW Centre, 33a Glebe Point Road Glebe, where numbers make this practicable, otherwise in a hired hall.
3.9 The week-ends will be open to interested people from all over Australia. The members of CAMP would provide the nuclear of these workshops; to date 60 people have indicated they will be participating. The workshops will be advertised extensively.
3.10 A supervisory committee, headed by Margaret McMann BSc, BA, Co-President CAMP NSW and Robyn Plaister BA, DipEd, will be established with the following functions: plan the workshops and arrange speakers to deliver papers on the topics under discussion; co-ordinate inter-workshop research; collate material from the workshops; co-opt people with relevant expertise and experience in particular areas where needed.
3.11 The tentative timetable for the year's workshops is – [see Table 67, page 357].
3.12 It is envisaged that participation in the workshops would provide
(a) the experience of participation itself;
(b) the opportunity to conduct the research, by pooling ideas and resources, outlined in aim 1.1.
3.13 Publication of a book outlining the position of the female homosexual in Australian society based on the findings of the series of workshops. This will be the first such publication in Australia. Editor: Margaret McMann BSc, BA, Co-President CAMP NSW, editor *Khasmik*, poetry quarterly.
3.14 Preparation of a series of tapes, based on the workshops, for distribution to radio and television

[613] An FOI enquiry was lodged with Stewart Fenwick, Legal and Cultural Branch, of the Department of the Prime Minister and Cabinet on 9 November 1998. The author wanted to ascertain what the deliberations of the Australian National Advisory Committee for International Women's Year might have been regarding CAMP NSW's IWY funding submission. The Department responded on 11 November 1998 '… that no relevant files relating to CAMP or the [Australian] National Advisory Committee for International Women's year remain in existence.' In the light of the forgoing negative Departmental response a letter was forwarded to the Hon EG Whitlam on 10 December 1998 requesting permission to access Ministerial papers held with either the National Library of Australia or the National Archives of Australian. It was thought that these papers might include materials relating to the Australian National Advisory Committee for International Women's Year. In response Whitlam, on 14 December 1998, on a, with compliments slip stating: 'Peter de Waal. Pursuant to your letter of 10.xii.98 (50th anniversary of Universal Declaration of Human Rights). Season's greetings. Gough Whitlam.' forwarded a copy of his 20 February 1975 press statement number 456 (see: 1:–11.2. page 358) and its attachment (see 1:–11.2.1. page 359). Also included was a statement of the same date made by the Australian National Advisory Committee International Women's Year outlining additional information, (see 1:–11.2.2. page 360) to the national press release, on grants announced for NSW.

throughout Australia. It is felt important that, contrary to current practice, homosexuals should discuss homosexuals.

3.15 Regular press-releases to the media outlining the work being achieved, as part of the education program.

3.16 Preparation of a series of pamphlets for distribution to the attitude-forming institutions of society: educational, religious, political, medical, psychiatric, legal. These would be aimed at changing attitudes by education, working from the premise that much of the oppression of homosexual women is the result of ignorance. The pamphlets, which would be distributed at monthly intervals, would have these themes:

1. Nature of homosexuality, including outline of program for the year;
2. Examples of discrimination;
3. Education and the female homosexual;
4. Families and homosexuals;
5. Specific conditioning and the homosexual;
6. Female homosexuals in the workforce;
7. Homosexual mothers;
8. Society and homosexual relationships;
9. Lack of civil liberties for female homosexuals;
10. Summary.

3.17 A poster campaign: (a) advertising the work being done; (b) forming part of the education program. Six posters are envisaged: two advertising the workshops, one the book, and three part of the education program. These would be coloured posters, produced as part of the creative aspect of the workshops.

Table 67: CAMP NSW Proposed IWY Workshops, March – September 1975

Proposed Dates [1975]	Workshop Numbers	Proposed Topics To Be Covered	Proposed Dates [1975]	Workshop Numbers	Proposed Topics to be Covered
March 22-23	Workshop 1	Conditioning Process (1) • Education	July 5-6	Workshop 4	The homosexual mother • Social pressures • Adoption • Children • Custody applications
April 26-27	Workshop 2	Conditioning Process (2) • Family • Society	August 2-3	Workshop 5	Homosexual relationships • Societal forces
May 31-June 1	Workshop 3	The female homosexual in the workforce • Public Service • Education Departments • Nursing fields • Forces	September 6-7	Workshop 6	Civil liberties • Law/Finances

4. Technical Competence

4.18 CAMP NSW Branch has been in existence since August 1970. In that time it has gained considerable corporate experience and expertise in all the fields into which the project is venturing.

4.19 The movement is now publishing the fourth volume of its journal, *CAMP Ink*; it has published material such as *Homosexuals Report Back*; [614] the nature of the movement demands a continuous orientation towards education; vast numbers of press-releases have been prepared and issued.

4.20 The movement has about 250 members, and many non-members, upon whose expertise it can call. These include university staff, students and graduates, teachers, media people public servants, technicians, grass-roots people.

4.21 The availability of a centre makes the planning of workshops feasible and gives stability to the program.

5. Financial Administration

5.22 A special account, CAMP (NSW Branch) no. 2 Account, would be opened with our bankers, ANZ

[614] A sub-group of Cross+Section, (The church group within) CAMP NSW Branch, *Homosexuals Report Back: A Retort to the Report on Homosexuality of the Ethics and Social Questions Committee of the Church of England, Diocese of Sydney*, Campaign Against Moral Persecution, Sydney, 25 April 1974.

Balmain, for monies denoted for International Women's Year.

5.23 Monies in this account would only be allocated by direction of a meeting of the executive of the Branch. The executive at the moment comprises: Margaret McMann, Peter Bonsall-Boone, Co-Presidents; Mike Clohesy, Secretary; Vera Bourne, Treasurer; Noreen Clark, Peter Parkes, co-editors *CAMP Ink*, Ron Austin, Helen Pasley, Robyn Plaister .

5.24 The use of the monies would be subject to clause 10 of the Constitution, [615] a copy of which is enclosed.

5.25 A detailed accounting procedure establishing receipts of money and the precise nature of services rendered and goods purchased would be kept, to be scrutinised by Richard Hollamby ACANZ, in accordance with any requirements the committee may specify.

5.26 We are prepared to fulfil any conditions for the administration of money which the committee establishes.

5.27 Estimates of expenditure for the year – [see Table 68, page 358].

5.28 We can expect no income. Income from membership fees and social activities is only sufficient to finance the continuing operations of the movement, in particular the payments of rent. People will not give money to homosexuals.

5.29 All monies not used for the year's activities would be returned at the end of the year.

Table 68: Estimated Expenditure for CAMP NSW's IWY

Workshops	(1) Advertising (women's journals, newspapers)	$3,000.00
	(2) Rental of halls where necessary + hire of public address system	$500.00
	(3) Printing of materials for use in the workshops	$500.00
Tapes	(1) 6 tapes @ 40 copies	$600.00
	(2) Hire of tape recording equipment	$100.00
Press releases	(1) Printing of 10 x 20 copies	$200.00
	(2) Postage	$100.00
Pamphlets	(1) Printing of 10 x 5 000	$12,000.00
	(2) Postage & packing 10 x 2 000	$6,000.00
Posters	5 x 500 copies	$1,200.00
	Total estimated expenditure: *	$30,200.00

* The total grant allocated by the Australian National Advisory Committee for International Women's Year to CAMP NSW was only for $4,000.00 '… and a verbal statement that more money would be forthcoming if the first seminar-workshop was successful …' Two seminars were conducted: *Female Homosexuality: Seminar One – Conditioning Processes in Education and Mass Media*, CAMP NSW, 22-23 March 1975; *Female Homosexuality: Seminar Two – Conditioning Processes in Society and Family*, CAMP NSW, 31 May-1 June 1975. Both seminars were held at the University of Sydney, Carslaw Building. '2,000 of the first and second booklets [papers presented and discussion at the seminars on female homosexuality] are being sent to principals and counsellors of schools, members of the medical and legal profession, politicians and the mass media.' Source: the above mentioned booklets.

1:–11.2. – International Women's Year Grants, 20 February 1975 [616]

The Prime Minister, Mr Whitlam, announced today grants and assistance totalling $305,300.00 for special activities during, International Women's Year. This is the second of a series of grants and represents a total commitment so far of over a half a million dollars ($538,800.00).

He stated that he had approved the grants on the advice of the Australian National Advisory Committee for International Women's Year. This Committee which was established in September 1974, has the general responsibility for developing themes and programs for the Year which will be of benefit to all women in Australia.

Mr Whitlam said that the grants were part of an overall program for International Women's Year and reflect the Government's determination to make the Year one of substantial progress for women in Australia.

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[615] 'Finances of the Society

10. (i) The Treasurer shall manage and conduct the financial affairs of the Society.
(ii) The members at each Annual General Meeting shall appoint an Auditor or Auditors who shall be entitled to require production at any time of all books, papers, accounts, documents and records relating to the financial affairs of the Society.
(iii) All cheques drawn on behalf of the Society shall be signed or endorsed by at least two of the following: Treasurer, the two Co-Presidents, Secretary.'

Source: Campaign Against Moral Persecution NSW Branch, *Constitution*, n.d.

[616] Prime Minister, Press Statement, no. 456, 20 February 1975.

That Prime Minister said that he had been pleased with the response to the Year of both the Premiers of SA and Vic and also of many local government organisations.

As well as involving the community and individuals in activities for the Year the Government had embarked on an extensive program throughout all Australian Government Departments which aimed at reassessing their existing activities in light of the aims of the Year.

As part of this program the Australian Post Office would be issuing a stamp to mark International Women's Day on 8 March, a National Conference on Women and Health would be held in Brisbane in August, a special edition of *Education News* with special emphasis on women would be prepared, and an International Seminar on Women as Victims in Crime will be held in Canberra in April. Australia would also host a UN Inter-regional Seminar on Women, the Arts and the Media -- the communication of attitudes.

The Prime Minister said that many other submissions were presently under consideration by the [Australian] National Advisory Committee and by various Government Departments. He expected to be able to announce further grants shortly.

NOTE FOR PRESS

A detailed description of projects available from the Prime Minister's Press office. Contact officers for further information: Shirley Castley 49 6489, John Gavin 47 0839

1:–11.2.1. – International Women's Year Projects Funded, 20 February 1975 [617]

Submissions

Education	
• St Michael's Collegiate School (Tas)	874.00
• NSW Teacher's Federation	12,000.00
• Carole Ferrier, University of Qld	1,682.00
• Special edition of *Education News* – up to	6,160.00
• University of Adelaide, Department of Adult Education	3,250.00
Creativity	
• Adele Cohen - Readings (WA)	4,775.00
• The Women's Film Festival 75 (NSW) – guarantee	35,000.00
• Royal SA Society of Arts Inc.	3,850.00
• Albury Symphony Orchestra (Vic)	300.00
• Ewing Gallery (Vic)	6,000.00
• Adelaide Festival Trust	1,000.00
• North Shore Symphony Orchestra (NSW)	500.00
Health and Welfare	
• Conference on women's health (Qld)	22,500.00
• The Wayside Chapel, Kings Cross (NSW)	3,000.00
• NSW Council for the Ageing	5,500.00
• Women's Committee against Private Violence (NSW)	10,214.00
• The Women's House (Vic)	4,000.00
• The Women's Centre, Adelaide	4,000.00
• Two seminars on women and crime – up to	30,000.00
• Women's Centre Action Group (WA)	3,000.00
• The Women's House, Sydney	4,000.00
• Country Women's Association, Miniwinni (Qld)	1,300.00
• Sunshine International Women's Year Committee (Vic)	10,000.00
• Parents Without Partners (Aust.)	500.00
Work	
• Centre for Urban Research and Action (Vic)	60,000.00
• Women Lawyers Association (NSW)	2,000.00
Community Attitudes	
• National Council of Women, Townsville (Qld)	3,000.00

[617] Prime Minister, Attachment to Press Statement number 456, 20 February 1975. Emphasis added.

• Australian Local Government Women's Association – NSW and ACT Branch	3,000.00
• Young Women's Christian Association (NSW)	20,000.00
• Alderman Elizabeth Boesel, Parramatta (NSW)	3,000.00
• Prahran College of Advanced Education (Vic)	2,750.00
• International Women's Day Committee (Vic)	3,500.00
• Qld Association of University Women	637.00
• **Campaign Against Moral Persecution (NSW)**	**4,000.00**
• The Country Women's Association of Vic	3,500.00
• Seventeenth National FCAATSI Conference – up to	4,000.00
• The National Council of Women of Vic	7,000.00
• Joyce Stevens (NSW)	6,000.00
• National Council of Women of Launceston (Tas)	200.00
• A Morton and H Ken (Vic)	2,000.00
• The Country Women's Association of NSW	8,000.00

1:–11.2.2. – IWY Grants Announced for NSW – Additional Information, 20 February 1975 [618]

NSW Teachers' Federation

$12,000 has been allocated to the NSW Teacher's Federation. Its program for International Women's Year will focus on two issues – education – teaching as a career for women; and the effects of education and school activities on girls.

The majority areas for examination and action are working conditions, women and the Federation, teacher training, the academic achievement of girls, and the curriculum.

The NSW Teacher's Federation will appoint a coordinator to work with a committee of interested people who will plan activities for the Year. Space will be allocated in the Federation's journal *Education* for relevant articles.

Albury Symphony Orchestra

The Albury Symphony Orchestra will be holding a concert on 5 May 1975 for International Women's Year. Normally, the Orchestra is conducted by one of its own members, but on this occasion it has invited Mrs Trudy Bekessy to rehearse and conduct the concert. Mrs Bekessy was a member of the Berlin Opera Company, prior to her migration to Australia in the early 1950s. She now resides permanently in Albury where she is very highly respected for her work as a choral conductor. A grant of $300 will enable the orchestra to pay Mrs Bekessy's fees.

North Shore Symphony Orchestra

The North Shore Symphony Orchestra has been granted $500 to commission and orchestral work from Dulcie Holland, to be produced and rehearsed at their own expense as their contribution to Women's International Year. They hope that this work will be recorded and commercially released so that the contribution of women composers will be further accepted and noted in the community.

The Wayside Chapel Kings Cross

The Wayside Chapel has functioned in Sydney for many years. It continues to respond sensitively to the changing needs of the community and has developed a 24 hour 7 day a week counselling service for parents who feel they may be in danger of harming their children. The Chapel has a team of voluntary counsellors who react immediately when contacted by those who are under stress. The counsellors find that they are being contacted by an increasing number of women.

The Wayside Chapel is making a modest request for $3,000 in order to cover the cost of telephone expenses incurred by the counsellors.

NSW Council for the Ageing

The NSW Council for the Ageing has for a long time been very concerned about the role of women in the care of the aged, not only regarding the needs of female aged persons but also the women who care for these people. The Australian National Advisory Committee for International Women's Year will provide $5,500 to support a study by the Council on the problems encountered by single persons caring for aged parents and

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[618] Source: Australian National Advisory Committee International Women's Year, Additional Information for Grants Announced for NSW, 20 February 1975. Emphasis added.

hopes that the results of the study will lead to supportive services being established for single persons with the responsibility of caring for aged persons.

Women's Committee Against Private Violence

The Women's Committee against Private Violence has been granted $10,214 to enable them to undertake research into the incidence and seriousness of wife battering. Private violence has to date not been systematically documented and this research will fill an important gap on our knowledge of the position of women in our society.

The Women's House

Women's Liberation House is a three-storeyed single front building intended as a central meeting place and information centre where women can exchange ideas, borrow feminist literature and receive supportive counselling. $4,000 is being provided for the furnishing and painting of the building and to publish the services provided at the House.

Women Lawyers' Association of NSW

It is proposed that $2,000 be made available to partially subsidise two women lawyers to attend the International Federation of Women Lawyers' Conference on legislation relating to women, to be held in Hamburg.

This will be a significant conference discussing such matters as a women's legal position in the family and will hopefully lead to a redefinition of women's role in society. Areas needing urgent reform and the way to obtain and maintain these reforms will be studies [sic–studied]. Australia's contribution is considered to be very important to such a conference.

Young Women's Christian Association

The Sydney YWCA is being granted $20,000 to establish a Women's Centre. It is intended that the Centre will help women to meet difficulties arising from their changing situation today. The YWCA programs will include an educational program for school leavers; second career courses for women wishing to re-entre [sic–re-enter] the workforce; educational and recreational opportunities for migrant women and girls; craft activities for women of all ages, but especially for women over 40; opportunities for training and skills in such areas as public speaking and chairwoman ship; physical education activities and various counselling services. Several of these programs, to be known collectively as Women Empowered For Action, will be undertaken jointly with other relevant organisations.

Elizabeth Boesel

Elizabeth Boesel plans to use an easily accessable [sic–accessible] building in Parramatta to hold a series of exhibitions, meetings and workshops centred around the theme of International Women's Year. A grant of $3,000 will enable her to renovate the building and defray other costs associated with the project. It is hoped that various groups will be interested in providing suitable material.

Campaign Again Moral Persecution

CAMP proposes to hold a series of weekend workshops on the position of the female homosexual in society. As a result of these workshops, pamphlets and tapes will be produced for distribution throughout the community.

An initial grant of $4,000 is being made to cover the workshops.

Joyce Stevens

Joyce Stevens, who has been involved in many women's groups has been granted $6,000 to hold a series of women's commissions.

These forums have been held successfully in Sydney previously. The aim is to allow women themselves to enquire into social, economic and psychological pressures on women and to consider how they can best act to change these circumstances. The commissions will be held in the Eastern suburbs in Sydney, St George-Sutherland, Burwood-Western Suburbs, Balmain-Glebe-Newtown and North Shore-Manly areas. This [sic–It] is intended to hold the commissions from March to June, culminating in a major State or Sydney forum to follow up the lines of enquiries which emerged in the suburban commissions.

Country Women's Association of NSW

One of the many objectives of the Country Women's Association of NSW, which was founded in 1922, is to improve the welfare and conditions of women and children in the country, and to provide better educational facilities.

As part of the Year's activities and in order to focus attention on women, they plan to actively encourage their members throughout the State to participate as much as possible in the Year. $8,000 is being given to the

Association to hold residential seminars in Armidale, Bathurst, Wagga Wagga and Sydney, which will deal with Women's Legal Rights, Estate Planning and related subjects.

The Women's Film Festival '75

$35,000 has been guaranteed to a touring festival of films on or by women covering the period 1897-1975.

1:–11.3. – IWY Grants Announcements, 21 February 1975 [619]

Boost for Women's Year

Grants totalling $305,300 for special International Women's Year were announced today by the Prime Minister, Mr Whitlam.

The grants are the second in a series that now totals 538,800, and go to organisations and individuals in the fields of education, creativity, health and welfare, work and community attitudes.

Mr Whitlam said the grants were made on the advice of the Australian National Advisory Committee for International Women's Year and were part of an overall program reflecting the Government's determination to make the year one of substantial progress for women in Australia.

The 14 NSW grants will go to: NSW Teachers' Federation, $12,000; the Women's Film Festival 75, guarantee $35,000; North Shore Symphony Orchestra, $500; The Wayside Chapel, Kings Cross, $3,000; NSW Council for the Ageing, $5,500; Women's Committee against Private Violence, $10,214; the Women's House, Sydney, $4,000; Women Lawyers Association, $2,000; Young Women's Christian Association, $20,000; Alderman Elizabeth Beesal, Parramatta, $3,000; **Campaign Against Moral Persecution, $4,000**; Joyce Stevens (NSW), $6,000; the Country Women's Association of NSW, $8,000; Albury Symphony Orchestra, $3,000.

The other grants included: Centre for Urban Research and Action (Vic), $60,000; two seminars on women and crime, $30,000; survey on women's health (Qld), $22,500; Sunshine International Women's Year Committee (Vic), $10,000.

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[619] n.a. 'Boost for Women's Year', *The Sydney Morning Herald*, Friday, 21 February 1975, p. 2. Emphasis added.

1:–11.4. – CAMP NSW International Women's Year Pamphlet [620]

Figure 5: CAMP NSW International Women's Year seminar brochure – front

to the clergy–

No! There is no reason for your not allowing your lesbian parishioner her full place in your congregation. You must seriously re-examine your own biblical interpretation and open your mind to Christian experience through the ages. This will show you that the rejection of practising homosexuals which has been perpetrated by churches for centuries is not validated by the sources upon which these churches have relied.

Church members are not looking for a series of rigid rules, but are people involved in the human struggle. They are not looking for proclamations which can unerringly state 'This is Right, That is Wrong'. They are people who need to be assured that they have been made in the image of God, and the expression of their sexuality makes no difference to this. But still churches are prepared to insist that only in male-female relationships can humanity express itself. Humanity is much broader than this.

We urge you to consider the proposition that by spurning all relationships which are outside the nuclear family pattern you are placing limits on the ability of people to love, thereby negating the principle upon which Christianity is supposed to be based.

to the lesbian–

Isn't it; strange that the society in which we grew up – the society which moulded us – is able to forget us and cast us away. We are different; but we were formed by that society in which we are now told we have no place. Yet we are not the product of some far distant planet – we belong here.

This same society is worried about our presence – there have been countless studies conducted about homosexuality, and yet there is no feasible explanation of our presence. Our question remains – 'What does it matter?'.

By assuming that there is a reason for homosexuality society is trying to tell us that we are all heterosexual; but we know differently, We know that, society is made up of sexual people, to whom the short suffixes of homo-, hetero- or bi- have no meaning. We must continue to insist that humanity equals sexuality. As lesbians we cannot accept what society offers, but we can accept ourselves for what we **know** ourselves to be.

Seminar – workshops

No. 1 – 22nd/23rd March.
THEME: 'Conditioning in Education & the Mass Media.' Speakers will include: Chris Poll (Can.) Josepha Sobski (Syd.) Dilys Kevan and Tess Lee Ack (Melb.) + others.

Venue: Carslaw Building, Sydney University.

Registration: $2:00 8:30 to 9:30 a.m. Saturday.

No. 2 – 26th/27th April.
THEME: 'Conditioning in the Family and Society.' Speakers will include: Anne Summers, Lesley Rogers (Melb.) Kay Daniels (Tas.)

No.3 – 31st May/1st June.
THEME: 'The Lesbian in the Workforce.'

No.4 – 5th/6th July.
THEME: 'The Homosexual Mother.'

No.5 – 2nd/3rd August.
THEME: 'Homosexual Relationships'

No.6 – 6th/7th September.
THEME: 'Civil Liberties & the Lesbian.'

For: a) Registration by Mail, and/or
b) Further information;
write to Box 5074 G.P.O. Sydney 2001.
or phone – (02) 827 3063/ 827 3810.

[620] The paper size of the original pamphlet was 386 mm wide x 219 mm high folded twice and printed on both sides.

to the teacher-

Your very influential task is to guide the development of your students to help them realise their full human potential. To do this, you must present to them the full range of human emotions and life-styles. By discussing homosexuality in a rational way and as a valid family pattern you will eradicate much of the ignorance and prejudice which has given rise to the troubles your student is having with her classmates.

You will need to spend time in counteracting those values instilled in students which are oppressive to homosexuals, for after all these values will have been accepted without question. Your being aware of alternative life-styles and your ability to discuss relationships both homosexual and heterosexual will do much to relieve the oppression with which lesbians are currently forced to exist. There is a great need for acceptance during adolescence, and here the teacher can act in two ways. By support and encouragement of the lesbian she can help her to be accepted by her friends, and at the same time help her to accept herself with the dignity which is the right of all humanity.

For the lesbian herself one of the greatest needs is to be able to identify with other homosexuals, and to realise that she is not alone in the world. You can direct her to CAMP, where her growth and acceptance of herself will be encouraged. She should not be stunted by the rejection which she feels at the moment.

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to the mother we say-

Of course you were upset when you discovered that your daughter was a lesbian. Society puts pressures on parents to bring up their children according to an accepted set of values, and one of these values is the nuclear family. As a result you had always expected that your daughter would marry and bear your grandchildren.

It is disturbing for you to find that she won't fit into this pattern, and you are worried for her. Worried that she will be rejected by her friends and by society; and worried that this rejection may not be hers alone – for you may have to share it with her.

But you and society must accept that there is a continuum of human emotions from heterosexuality through bisexuality to homosexuality, and that the people with these emotions should be free to express them in friendship, in relationship and sexuality. All your daughter asks is the freedom to love as she wishes and to have that love recognized as valid and dignified. You are her mother, so she will depend upon you for your love and support, even when this may mean your having to reexamine the attitudes which you have held about yourself and about her for so many years.

Clearly there has been a need for an educative programme directed towards an examination and reassessment of the beliefs held by society about accepting the potential and life-style of the female homosexual.

For lesbians to take their place in society with dignity and equality we must remove all discrimination against them.

CAMP (NSW) has been aware of this need since its formation in 1970. We have challenged the attitudes and structures of society which have reinforced homosexual oppression. This year, International Women's Year, we shall be using a grant from the Australian Government in a concerted effort to:

a) research the position of the female homosexual in Australian society, and

b) formulate and conduct an educative programme to change current attitudes.

Lesbians labour under the double oppression of being women G homosexual. A series of six weekend seminar/workshops, designed to pinpoint the specific nature of this oppression and to formulate programmes to combat it, will be held in Sydney during IWY.

The seminar/workshops will be open to all interested people. The intention of this introductory pamphlet is to advertise these seminars and also to raise some of the issues pertinent to the position of the female homosexual in Australian society.

These questions and a myriad of others on the same topic are being asked throughout Australian society every day, however, very few honest answers are forthcoming.

The topic 'HOMOSEXUALITY' is generally ignored or greeted with derision – our society refuses to go beyond what religion, the law, the mass media & psychiatry equate with 'good', 'right' & 'healthy'.

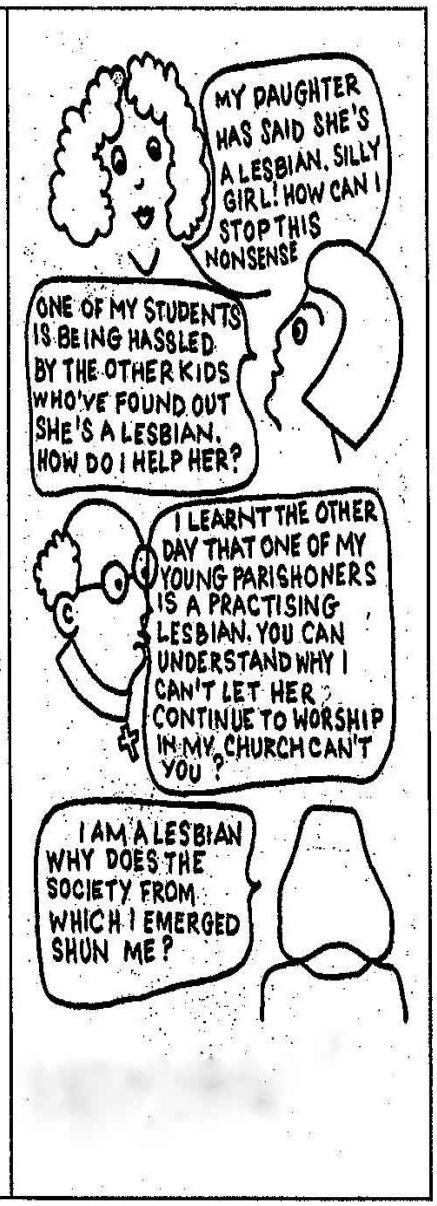


Figure 6: CAMP NSW International Women's Year seminar brochure – back

1:–11.5. – Print Media Advertisement for First IWY Seminar [621]

Figure 7: First IWY Seminar advertisements in *The Australian*

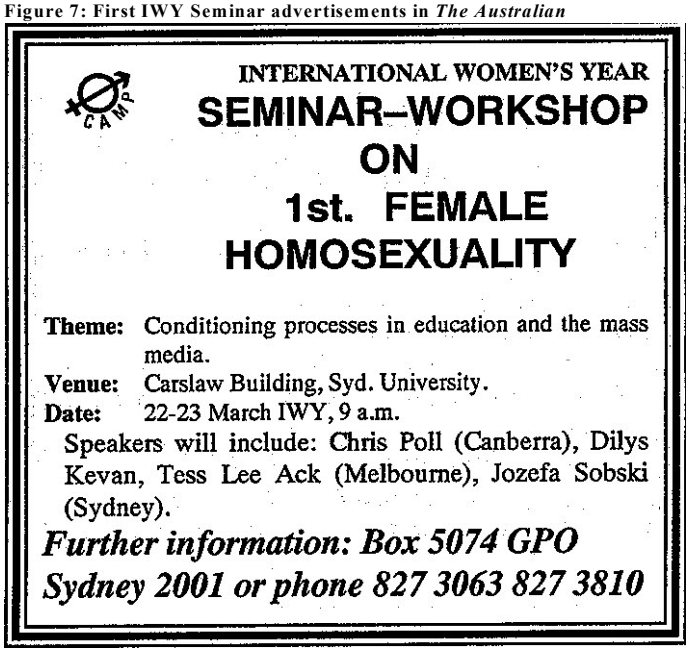
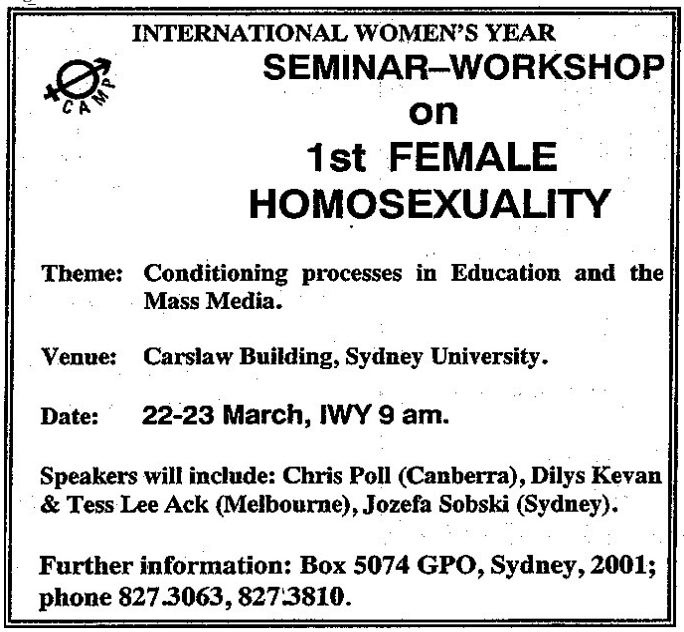
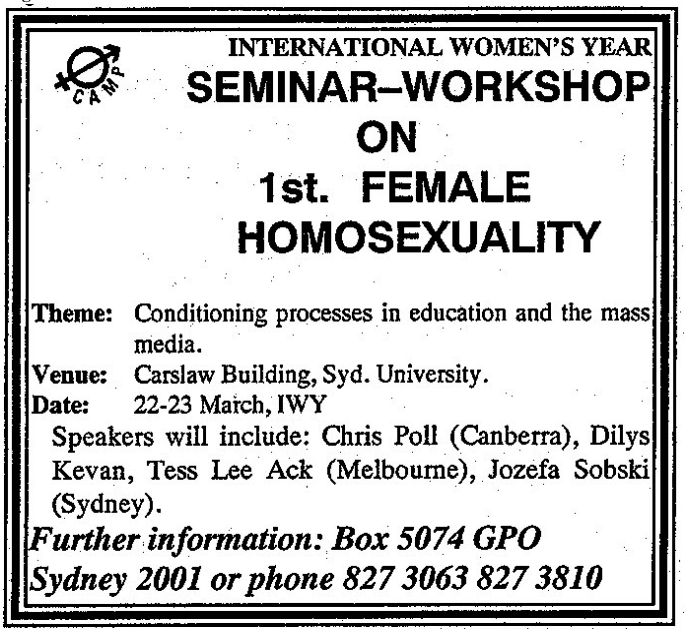


Figure 8: First IWY Seminar advertisements in the *Nation Review*



[621] Advertisements (850 mm wide x 780 mm high) for the first IWY Seminars appeared in the following newspapers: *The Australian*, Saturday, 8 March 1975, p. 9D; Wednesday, 19 March 1975, p. 11B. *Nation Review*, February 28–March 6, 1975, p. 525; March 7–13, 1975, p. 558; March 14–20, 1975, p. 574. *The National Times*, March 3–8, 1975, p. 43; March 10–15, 1975, p. 45; March 17-22, 1975, p. 22.

Figure 9: First IWY Seminar advertisements in *The National Times*



1:–11.6. – Print Media Advertisement for Second IWY Seminar [622]

Figure 10: Second IWY Seminar advertisement in *The Australian*

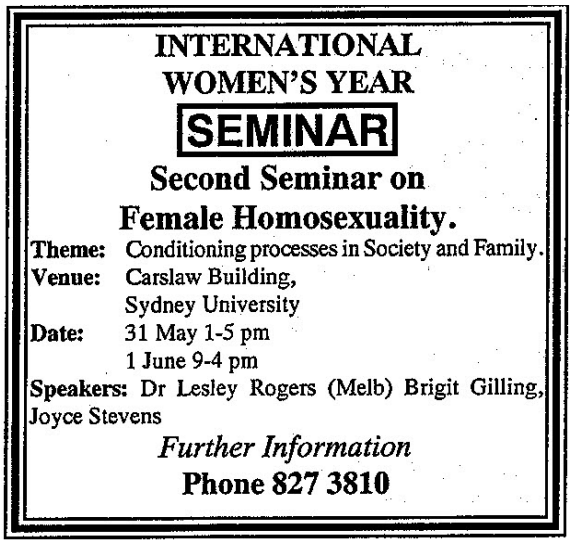


Figure 11: Second IWY Seminar advertisement in *Nation Review*

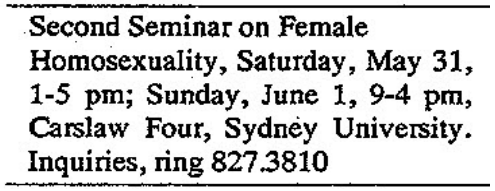
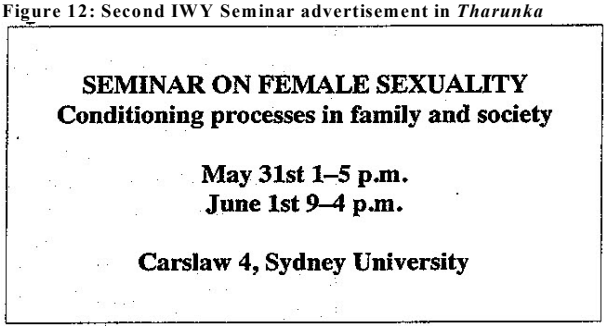


Figure 12: Second IWY Seminar advertisement in *Tharunka*



[622] *The Australian* advertisement, Wednesday, 28 May 1975, p. 7B, (730 mm wide x 730 mm high). *Nation Review*, advertisement, May 30–June 5, 1975, p. 864, (400 mm wide x 190 mm high). *Tharunka*, advertisement, Wednesday, 28 May 1975, p. 13, (870 mm wide x 380 mm high).

1:–11.7. – CAMP NSW Telegram to Bernard Judd, Secretary, NSW Council of Churches, 30 May 1975

TO: Reverend Bernard Judd
Secretary
NSW Council of Churches

TEXT: Your analysis CAMP's intentions reported ACR (Australian Church Record - see page 340) quite correct we would welcome you to second female homosexuality seminar tomorrow 1-5 and Sunday 9-4 Carslaw Building Sydney University.

FROM: CAMP NSW

Figure 13: CAMP NSW telegram to Rev Bernard Judd, NSW Council of Churches

An invitation to [the above] Bernard Judd to come to the [second] Seminar was not answered and he was not present. [623]

1:–11.8. – Print Media Coverage of IWY Seminar, 17 June 1975 [624]

Lesbianism and the Media

FEMALE HOMOSEXUALITY – Conditioning Processes in Education and the Mass Media. Published by CAMP (NSW), Box 5074, GPO, Sydney. $1.00 post free.

These are the papers presented at a seminar organised by CAMP and funded by the International Women's Year Committee. They examine the ways lesbianism is viewed by society and by lesbians themselves and how this fits into a general pattern of sexual behaviour and attitudes.

The ways in which social patterns are established and passed from one generation to the next are discussed. Moral attitudes are extremely variable and 'there is no form of sexual activity that is not deviant at some time, in some location, in some specified relations, or with some partners.' (How to Fit a Round Tot into a Square Hole, by Claire Burton.)

The media, schools and the family are all centres which help turn people out according to assigned male or female characteristics. Although one Establishment explanation for assigning people to sex roles is that they will otherwise 'grow up to be homosexuals', the real purpose for them is to maintain the existing power relations in society. (What is a Square Hole?, by Elaine Whiteman.)

Sue Collins discussed the difficulties involved in trying to establish new values with one's own children when school and the rest of society are moving in a different direction.

In the Session 'Conform or Else', Penny Short tells how the NSW Department of Education, despite heavy medical evidence to the contrary, hid behind a medically unfit classification to deprive her of her scholarship. This action followed the publication of her poem about lesbian love [see page 422]. Josepha Sobski and Pam Waugh outline other ways in which the education system discriminates or establishes a morality based on strictly defined sex roles. Sylvia Martin talks about religion and homosexuality.

The final papers discuss Literature and the Mass Media. Tess Lee Ack in 'Trendy is the New Oppression' warns against the gay movement seeing legal reforms as the whole question and points out that although not illegal 'lesbians are invisible … partly because women are not supposed to have any sexuality.'

Dilys Kevans [*sic*–Kevan] talks about books, TV, plays and rock music. Her subjects range from the few books with 'what might be called a homosexual bias', to no. 96 and The Box and rock/pop music where 'there is a general confusion around about homosexuality and transvestism'. She talks about the need that everyone has for models with whom they can identify and the part that popular forms of culture play in this.

She concludes:

> I have tried to indicate some of the ways in which gays can be treated in not too stereotyped fashions. I do not feel that we can do away with stereotypes by wishing them away, or producing more literature.

[623] n.a. *CAMP Ink*, n.d. vol. 4. no. 4-5, p. 6.
[624] Stevens, Joyce, 'Lesbianism and the Media', *Tribune*, 17 June 1975, n.p.

The image of the homosexual is all too pervading, and a lot needs to be done to break it down. More emphasis on critical approaches can help, but this only gets to a small enlightened audience Radical social change is necessary. Until society is no longer structured along the lines of race, class and especially sex I can't believe that homosexuals (along with other minorities) will be able to have freedom. Stereotypes are the official strait-jacket of society and we can't easily escape.

The fifty pages of this pamphlet provide some informal discussion on an issue that many on the left find difficult to accept as an essential part of radical politics.

It doesn't provide answers to the problem of how homosexuals – radical and conservative – can act in a more effective way to change society. The National Homosexual Conference to be held in Melbourne in August this year sets this as one of its aims.

1:–11.9. – Report on Seminar One, April 1975 [625]

Report on Seminar One

In November 1974, a submission was sent to the [Australian] National Advisory Committee for International Women's Year from CAMP (NSW). The submission outlined a program of six seminar/workshops covering the following topics – conditioning processes in education; family and society; the female homosexual in the workshop; the homosexual mother; homosexual relationships and civil liberties.

The aim of the submission was to research the position of the female homosexual in Australian society and to formulate an educative program to change current attitudes. The government made a grant of $4,000 for this submission to be carried through.

Prior to the first seminar 3,000 pamphlets were sent out to many organisations, doctors, psychiatrists, the legal profession, and the mass media. The seminar was advertised in various newspapers and posters were placed all the way down George Street, much to the displeasure of the police force. The first seminar was held on the weekend of the 22 and 23 March. The theme for this seminar was conditioning processes in education and mass media.

We were disappointed by the number of people that arrived considering our advertising. Some people, we feel, are still afraid of the word camp and probably feel that they will be branded with that name through association with camp people. Others, as usual, were sitting back to see what would happen at the first seminar. We received one envelope back: it contained our first pamphlet. The envelope, addressed to the WRAAC, had been opened, resealed with durax tape, a return to sender had been stamped on it, and written right across the front of the envelope was the comment - 'we don't posses any.' Who are they kidding? It is rather annoying that people who see a seminar on female homosexuality think that it is only for lesbians, when we emphasised the educational side. The first seminar proved to be a great success for all those who attended. On Saturday morning, two speakers presented papers on the socialisation process. This was followed by a personal talk from Sue Collins on Lesbian mothers.

The first speakers on the Saturday morning session on 'How to fit a round tot into a square role' was Clare Burton. She felt that when certain forms of behaviour are labelled by society as deviant, rather than merely a variation of the them – and ways of behaving are translated into deviant roles with either formal or informal negative sanctions attached to their expression; then the early socialisation process is affected. Adults are fearful of the effect on their children if they present as normal what most the community regards as deviant. She concludes that those institutions which are resisting change are the ones that we are aware need the most change.

The second speaker was Elaine Whiteman, who saw the real purpose of sex-role stereotyping as instilling social power roles. This then leads to the repression of homosexuality; as males who give up some advantages of the masculine role are traitors, and females who demand some of its advantages are a threat to the exclusiveness of the patriarchy. Elaine sees 'lesbians as women who value themselves and other women as whole people', and feels 'that lesbians must be the most desperately deprived persons in the whole of society when it comes to models and ideas to which they can relate'.

Sue Collins related how she attempted to break down the sex-role stereotyping amongst her children and how she found it very difficult when there were other socialising agents such as the peer group and school.

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[625] Plaister, Robyn, 'Report on Seminar 1', *CAMP Ink*, April 1975, vol. 4; no. 3-4, pp. 6-8.

On Saturday afternoon the session was called 'Conform or Else'. Jozefa Sobski spoke first on 'The Choice is Conformity'. Jozefa looks at the syllabus of the [NSW] Personal Development course that has been introduced into schools. Within the course the nuclear family is viewed as the primary social unit without any mention of other social units like the communes, homosexual units containing one or more persons etc. Although she believes the course to a certain extent should reflect the prevailing social system, and hence the needs of the pupils, she feels that many pupil's needs are manufactured by social expectations.

Penny Short gave a talk on how she was oppressed by the NSW Department of Education. She was asked to attend an interview with a psychiatrist because she had written a poem in a Macquarie University paper [*Arena*] on lesbian relationships. After this interview Penny was written an official letter to say that she was medically unfit to hold a scholarship.

On Saturday night the seminar was followed by a dance held at the Anthony Doherty Hall. Over a hundred people arrived to make it a really swinging evening with Zenith 4 as the band.

Sunday morning, Pam Waugh gave a talk on counsellors and the school system. She emphasised segregation and resulting sexism. Sylvia Martin gave a paper on women and spiritualism pointing out that desired characteristics in our society are masculine characteristics due to Judeo-Christian doctrines being based on male gods.

Sunday afternoon's session was based on homosexual oppression reinforced by literature and the mass media. Tess Lee Ack, in her paper 'Trendy is the New Oppression', suggested that this was brought about by firstly, the mass media presenting only heterosexual images for people to identify with; secondly, the media's in depth studies on **how** and **why** people become homosexuals; and thirdly, spectacular news reports on pederasty.

Dilys Kevan pointed that there is a general tendency to ignore lesbians because of the social denial of women's sexuality. The media is also oppressive to homosexuality by relying on numerous plays and films with stock homosexual characters for laughs. She concludes with the statement – 'that until society is no longer structured along the lines of race, class and especially sex, I can't believe that homosexuals will be able to have freedom'.

A pamphlet will be sent out covering the papers presented at the seminar and reporting the discussions and workshops findings that resulted. These follow up pamphlets will be sent out to members of the medical, legal, educational, political, counselling and psychiatric professions.

The next seminar/workshop on female homosexuality will be held at the Carslaw Building, Sydney University on the 30 and 31 May. It is hoped that this time all members will attend and help in the organisation before, during an dafter.

This second seminar has as its theme: 'The family'. The format of this seminar has changed to accommodate a wide range of activities. The seminar will begin on Saturday afternoon with two speakers, workshops and report-back discussions. On Sunday morning it is envisaged that speakers from other groups will present views on the relationship between feminism and lesbianism. On Sunday afternoon there will be a debate on a topic yet to be decided.

Meetings to arrange the seminar/workshop, and pre-advertising for it, are held every Wednesday night at 8 pm at Camp House [33a Glebe Point Road, Glebe]. Those who worked so conscientiously on the first seminar would appreciate a great deal more interest and help offered by other members.

1:–11.10. – Report on Seminar Two [626]

Report on Seminar Two

The second seminar was funded by a $4,000 Grant from the Government (which also paid for the first Seminar). The topics covered were:

- Conditioning Processes in Family and Society
- Lesbians in the Workforce
- Civil Liberties

Originally these three topics were to have been deal with in three separate Seminars but because of the strong possibility that we may not be granted more money, plus the difficulty of getting speakers, they were condensed into one.

A second submission has now been sent to the [Australian] National Advisory Committee for International

[626] O'Rourke, Kathy, 'Report on Seminar 2', *CAMP Ink*, n.d. vol. 4, no. 4-5, pp. 4-5.

Women's Year for another $4,000 to fund two more Seminars on the Homosexual Mother and Homosexual Relationships.

Now for the Seminar – once again we were not exactly trampled by wild, rushing hordes of straights in search of the truth! We did however get a few counsellors.

Dr Lesley Rogers from Melbourne had a field day exposing the so called scientific research into homosexuality. In one case these scientists took a measly four male homosexuals and three lesbians as the test group supposed to represent homosexuals per se. They were tested and found to have less male hormones and less female hormones respectively than the heterosexual control group. It was conveniently omitted that hormones are directly influenced by behaviour, therefore the stress of these homosexuals knowing that they were the ones having to prove something could have affected their hormones. So the scientists came to the edifying conclusion that homosexuality is the direct result of hormonal imbalance. [627] They then proceeded to publish this bit of bullshit in medical journal.

Much of the medical profession is only too glad to produce this type of result because then they can have a crack at curing this sickness, deviance, abnormality – whatever. The ironic thing was that when they gave the male homosexuals more male hormones ostensibly to bring them up to the heterosexual level and therefore heterosexual, it simply made them more sexually active homosexuals.

On the same afternoon Meg Smith and Bridget Gilling both spoke on different aspects of Conditioning processes in Family and Society. Bridget Gilling felt the need for a general change in the attitudes of society on a large number of subjects so that diversity will become the norm and homosexuality would then become acceptable.

Sunday morning began with Col Eglington's paper on Lesbians in the Workforce. She pointed out that since a lesbian needs to support herself for life she strongly feels prejudice against women in the workforce. Women are concentrated into a small range of occupational groups and their promotional prospects are bad – because of regulations as well as prejudice and tradition.

Apart from being a woman, being a lesbian in the workforce has its own store of problems. Many lesbians go to unnecessary lengths to cover their tracks. They fear losing their job or creating hassles with other staff that will make their job even more difficult. Col rang up a number of career fields to find out their policies as regards lesbians. Teaching is out of the question if she is known to be a homosexual, as are the armed forces. The police do not seem to have any objections to recruiting lesbians nor do most Department stores. The State public services does not have any written policy on the matter, although individual departments can make their own policy, eg., the Education Department.

She also spoke to Ms Patricia Campbell of the NSW Committee on Discrimination in Employment. The ILO specified seven grounds of discrimination which were to be abolished eg. race, sex, etc., but this did not include sexual preference and other groups (such as age, criminal record and handicaps). This discrimination committee is at present gathering information on the excluded groups in the hope that a policy can be drawn up to cover them adequately.

Jan Davis spoke on the problems of nurses caught up in the powerful hierarchy of the hospital, powerless because of their fear and oppression of women. Because of this strict power structure it is all the more difficult for a lesbian nurse to come out.

Cheryl gave a personal talk on her experiences of discrimination in the public service where a double life is forced on a lesbian because it is likely that she will be sacked although that would not be the reason given for her dismissal. Chris Melmouth's personal experiences were about the lesbian scene of a few years ago with the butch/femme stereotyping and about the change in her life that was brought about by feminism.

Joyce Stevens spoke on the relationship between feminism and lesbianism. She felt that feminism was about power. The redistribution of it in such a way that power basis disappear and power becomes inessential in the question of relationships between human beings. She stated that the alternative to wife and mother is not presented. The role of wife and mother is presented as the only way of achieving complete fulfilment as a woman. This myth has a very destructive affect on those women who choose another lifestyle.

She warned 'I find it rather disturbing that in a time when what the revolution to me is all about is trying to break out of all sorts of boxes and limits that have been put on our lives, that we are so eager that we put ourselves into other boxes'.

The last paper of the morning was Julie Earngey's discussion of the statement – 'Feminism is the theory

[627] Loraine, J, 'Hormones and Homosexuality', *New Scientist*, 3 February 1972, pp. 270-1.

and Lesbianism is the practice'. At first glance this appears to be true however Julie considered that on closer examination it was not. Her words – 'We seem to be trying to live our lives in a way that is suitable to our needs and desires and this happens to be similar to the ideals of feminist theory'. She also felt the need for a complete review of the male dominated system whereby roles are instilled in society.

Robyn Kennedy spoke on Civil Liberties and the Lesbian. She grouped these under the right to live, the right to love and the right to work without discrimination. The right to live: the fear of moral denunciation and social ostracism forces the lesbian in most cases to lead a double life. Passing for straight is part of the lesbian's oppression as is silence which stunts growth emotionally, intellectually and professionally.

The right to love: the homosexual couple has no legal status whatsoever. The legal rights for the nuclear family such as taxation claims for dependants, social security benefits, medical contribution funds, inheritance rights, education allowances, housing and bank loans are all denied. It is impossible for homosexual couples to adopt children. A lesbian may be denied visiting rights in hospital if her partner is seriously ill and she would be expected to be only mildly upset if her partner died.

The right to work is largely dealt with in Col's paper.

The Human Rights Bill was introduced into parliament in 1973 but is unpassed so far. Section 7 [see page 178] entitles just about everyone except homosexuals to fundamental rights and freedoms.

Throughout 1974 CAMP maintained correspondence with the Attorney-General's Department in order to have sexual orientation included. No enthusiasm was shown and it seems unlikely that it will be added; Rob[yn Plaister] feels however that because of the wording of the sections, even if sexual orientation is not included the existence of the Human Rights Bill as an Act would give homosexuals as a minority group some form of legal standing, which is now lacking.

Helen Coonan spoke on discrimination in the law. She talked on different technicalities in the law and pointed out the different snags a lesbian couple investing money could face and the best ways of coping with these.

The workshop topics on Sunday were–

1. Lesbian Mothers
2. Lesbian Relationships
3. Coming out at Work and Home
4. Reform or Revolution
5. Bisexuality
6. Counselling and the Lesbian
7. Mental Health and the Lesbian

A booklet with the full papers, workshop findings and discussions will be on sale for $1.00 These follow-up booklets will be sent out to members of the medical, legal, educational, political, counselling and psychiatric professions.

1:–12. – CAMP NSW Centre, Glebe

CAMP began leasing its present premises at 33a Glebe Point Road, Glebe in December 1973 from [John] Giles Bourke Holdings Pty Ltd. When that company ran into difficulties in September 1974 the property passed to the mortgagees, John Steel Ltd. and WR Carpenter Finance Co. Soon after this the property was put up for sale by action.

Since CAMP was anxious to retain the property, immediate steps were taken to investigate means of obtaining the necessary finances. We first tried various avenues of obtaining finance privately, but legal and economic opinion was that this was not feasible. Our next step was to approach the Minister for Social Security, Bill Hayden. This was done in an urgent letter sent on 9 October [1974] [see page 374] requesting assistance in the form of a grant, loan or guarantee, 'to purchase the property and continue building up the unique service to the homosexual community that we have started'. To press our case we contacted Senator Gietzelt (ALP NSW). [628] He spoke subsequently with Bill Hayden, who indicated that, although he was very interested in giving help, there is no Social Security legislation under which money can be made available to established organisations. The only possible avenue within his responsibility was the Australian Assistance Plan and this was not yet operating fully.

Arthur Gietzelt then approached the Minister for Health, Doug Everingham, who recommended that an application be made for a grant under the Community Health Program of his Department, to purchase the property [see page 377]. This application was sent (following necessary procedure) through the NSW Health Commission on 4 November 1974. In a telephone call from Canberra the following Friday, Brian Hennessy, Chairman of the committee of the Hospitals and Health Services Commission which decides which applications will receive a grant, stated that on a preliminary investigation of our application, he would think that it would not be approved since purchase of the property would not lead to an extension of our services [see page 389]. CAMP therefore immediately sent an addendum to the application [see page 383] to Hennessy arguing that purchase would, in fact, lead to an extension of services.

No word has been received from Canberra, despite many telephone calls to Hennessy's office, when the property was up for auction on 12 November 1974 [see Figure 18, page 388]. However, the property was passed in and CAMP, because it has shown interest in purchasing, was given until the end of the week to make an offer [see page 385]. On the afternoon of the auction, Hennessy, in a telephone call, indicated that our application could not be treated as urgent and would have to go through the normal processes, which meant no response would be received until the middle of December [1974]. He was at pains to point out that this decision was in no way connected with the fact that we were a homosexual movement.

Since the owner's agent, LJ Hooker, were very anxious for us to make an offer for the property (they claimed they had an interested buyer; we believed this to be a bluff, and called it), we put pressure on Hennessy, mainly through telephone calls, to make an early decision on our application. He was non-committal on this for some time but we finally managed, only through dint of pressure, to obtain a date by which we would be informed of the decision. On 9 December Hennessy notified us by telephone that our application had been rejected since the committee felt that it did not have sufficiently high community health content. He was most anxious to point out that this rejection reflected no anti-homosexual bias. This assurance was again accepted laconically.

Written notification [see page 388] was only received, through the NSW Health Commission, on 20 January 1975 (after Hennessy had said it would be received within ten days). Once the telephoned decision had been received, CAMP informed Arthur Gietzelt, who indicated that he would again take up the matter with Doug Everingham.

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[628] Arthur Thomas Gietzelt, ALP Senator for NSW.

1:–12.1. – CAMP NSW Letter to Bill Hayden, Minister for Social Security, 9 October 1974

Since December last year, our movement has been leasing premises at 33a Glebe Point Road Glebe, which we have been using as clubrooms. We have a coffee shop which is open each night of the week, to which homosexuals can come to mix with their own kind in a non-hostile, non rip-off and positively friendly atmosphere. Parties are run each alternative Saturday night. The premises house our telephone counselling service, Phone-A-Friend, which is rapidly gaining a good reputation among other referral services in Sydney. We have just this week had installed another [phone]line for the service, which will be used conjointly by the clubrooms. The premises are also used as the meeting place for the various groups within our movement – there are meetings most nights of the week and over the week-end. The clubrooms have recently been used for a meeting of various minority groups in Sydney.

The premises have, until 27 September, been owned by [John] Giles Bourke Holdings Pty Limited, which company, you may know, was at the centre of the land swindle in Glebe just recently. As a result of that debacle, our premises have passed to WR Carpenter Finance Corporation Limited, Mortgagee of the property. This company, with LJ Hooker (Drummoyne) as agents, has put the property up for sale by auction on 12 November next.

Our fear is that the valuable community service and centre we have built up will disappear, and with it the potential for greater extension of the services we offer, which are not, and will not be, offered elsewhere.

Our wish, therefore, would be to purchase the property (which includes what is, at present, 33 Glebe Point Road). The difficulty, of course, is that our finances are extremely limited. The manager of Hookers has estimated a market value of the property of $80 - 85,000. He, naturally, does not know the reserve price. We are investigating a proposal to form some sort of co-operative of our members and other who would be able and are willing to contribute finance towards purchasing the property. But these sources are private and would only be made available with some hardship.

We are therefore writing to seek Australian Government support for our plans to purchase the property and continue building up the unique service to the homosexual community that we have started. We thought your assistance might take the form of a direct grant, a loan or guarantee. We realise we are not breaking new ground in seeking this assistance, but stress the uniqueness of our service.

We trust you realise the urgency of the situation and that you will be able to contribute to this work of social justice.

There will be someone at the above number until 9.30 a.m., and then from the late afternoon on tomorrow (Thursday), and on Friday until 3 pm.

1:–12.2. – Minister for Social Security Letter to CAMP NSW, 21 November 1974

Thank you for your letter of 7 August [629] about an editorial in a Sydney newspaper. [630] Your letter of 9 October concerning financial assistance to purchase the club centre and coffee shop used by your organisation, has also been received. I regret the delay in replying to your earlier letter.

Needless to say I am most concerned at evidence of continuing ignorance surrounding homosexual people in the community particularly when various kinds of discrimination is involved. In this regard, I have taken steps to ensure that no discrimination against homosexuals occurs in their dealings with the Department of Social Security.

You may be assured that your pioneer work amongst the homosexual community is well appreciated and I recognise the need for the continuation of the services and facilities which you are providing. However I regret that no program exists at present under which funds could be made available to your organisation.

As you may know, the Australian Assistance Plan is current being developed on a pilot basis during which a certain number of Regional Councils are being set up. These Councils will be responsible for planning services for their regions, including recommending the provision of assistance from the Government for Social Welfare developments.

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[629] See: Footnote 10, page xxxi, for details. However, it is almost certain, seeing that he covered the Social Security portfolio, that CAMP's letter was about the following: 'Opinion – The Fairy Godmother', *The Manly Daily*, editorial, Saturday, 3 August 1974, p. 2.

[630] See: 8:–1.8. page 535, 'Opinion – The Fairy Godmother', *The Manly Daily*, editorial, Saturday, 3 August 1974, p. 2.

When the pilot period has been completed, it is expected that legislation will be drafted to provide for the full implementation of the Plan. Regional Councils should then be established in all regions. When this occurs you may wish to present any proposal to the Council in your region for consideration.

Thank you for writing to me about these matters and I trust that you will be able to obtain the necessary finance to enable you to purchase the Glebe [33a Glebe Point Road] property.

1:–12.3. – Valuation from HW Horning & Co Regarding 33 Glebe Point Road, Glebe, 30 May 1972

We refer to our valuation of the abovementioned property, dated 10 June 1971, made under instructions from A E S A Importers Pty Ltd.

As requested, we have reinspected the subject property. The Shop and Dwelling are now separately leased, but we are unaware of the present rentals.

In our opinion the present day market value of the subject property, no. 33 Glebe Point Road, Glebe, 'subject to the existing tenancies', is in the sum of SIXTY FIVE THOUSAND DOLLARS – ($65,000) – apportioned as follows:–

Improvements	$19,250
LAND VALUE	$45,750
Total	$65,000

Valuation of Freehold Property in the Municipality of Leichhardt
No. 33 Glebe Point Road, Glebe
For and on Behalf of
An Intending Mortgagee
Under Instructions from
AESA Importers Pty Ltd, no. 22 Grose Street, Glebe

LOCATION:	THE PROPERTY is situated on the Western side of GLEBE POINT ROAD, GLEBE, between BROADWAY and FRANCIS STREET and extending through to GROSE STREET at the rear. City bus transport passes the property and local shops are nearby.
LAND:	THE LAND has a frontage of about 25-feet 1-inch to GLEBE POINT ROAD, depths therefrom varying from about 75-feet to about 80-feet and a frontage at the read to GROSE STREET of about 26-feet 4-inches. The area comprises approximately 2,034 - square feet.
ZONING:	THE TITLE to the land is not recorded in Council Records but it is described as being lot 3 of section 1. The land is zoned as 'Living Area' under the County of Cumberland Planning Scheme and as 'Business General (Shop and Commercial)' under the proposed Leichhardt Municipal Council's Local Town Planning Scheme. We are informed that the property is unaffected by any published proposals of Public Authorities, but this may be confirmed by obtaining the usual Certificates from the Authorities concerned.
IMPROVEMENTS: . . .	ON THE LAND – erected approximately 55 years – is a LARGE BRICK ATTACHED SHOP AND DWELLING. of Ground and Upper floors, with corrugated galvanised iron skillion roofs behind front parapet, timer floors, plaster walls, fibrous plaster ceilings and box framed windows (except where otherwise stated hereafter). Brick rear Courtyard. FENCING: High cement rendered brick internal fences except where boundaries formed by walls of buildings.
ACCOMMODATION:	<u>GROUND FLOOR</u>: SHOP, formally used as a pharmacy, with vinyl tiled floor, plate glass and titled shop front, sliding glass door and good metal awning over footpath.

	PORTIONED WORKROOM, with stainless steel sink. STOREROOM, with cupboard under stairs and one fibro wall. SEPARATE SIDE PASSAGEWAY, with vinyl tiled floor. This leads to Rooms at the rear comprising: ROOM 1, with marble fireplace. ROOM 2, KITCHEN, with timber ceiling; fitted with stainless steel sink and cupboard unit. LOBBY OPEN SIDE PORCH TOILET, fitted with porcelain enamelled basin. Internal Timber Stairway leads from Side Passageway to: UPPER FLOOR DWELLING of: REAR ENCLOSED VERANDAH, with timber ceiling and hopper windows; fitted with linen press. HALL BATHROOM, with walls lined with tilux and timber ceiling; fitted with porcelain enameled bath built in with tilux with shower over, gas bath heater, porcelain enamelled basin and low down suite. NO. 1 BEDROOM LOUNGE ROOM NO. 2 BEDROOM KITCHEN, fitted with stainless steel sink and cupboard unit with tiled splashback, 'Zip' electric heater and small 'Vulcan' electric stovette.
SERVICES:	Water, electricity and sewearges [sic] services are connected.
AREA:	Approximately 23.6 squares (excluding Laundry and including about 7 squares in Shop).
REMARKS:	The premises are soundly constructed. The shop is in very reasonable order and could be used for most business purposes. The upper floor dwelling is in reasonable order and generally well painted. There is a copper water supply. Under the rear of the premises in the basement is a laundry, with concrete floor, but limited ceiling height; fitted with double cement tubs and power points and taps for washing machine. The rooms on the ground floor at the rear of the premises could be converted to a self contained flat or used for office or storage purposes. Properties in the area which are similarly zoned have been increasing steadily in value and the subject property should enhance in value in the future for eventual redevelopment of the site when amalgamated with adjoining lands. In the mean time the premises could command a good income.
CERTIFICATE OF VALUE:	WE ESTIMATE THAT THE PRESENT DAY MARKET VALUE OF THE SUBJECT PROPERTY – NO. 33 GLEBE POINT ROAD, GLEBE – 'FEE SIMPLE IN POSSESSION' – IS IN THE SUM OF SIXTY THOUSAND DOLLARS – ($60,000) – APPORTIONED AS FOLLOWS: IMPROVEMENTS $15,250 LAND VALUE $40,750 TOTAL $60,000

1:–12.4. – CAMP NSW Letter to Senator Arthur Gietzelt, 29 October 1974

Further to our conversation last night, a note to let you know that we have decided we would be happy to go through the NSW Health Commission. There are some reservations about the degree of control exercised, and some questions about the administration, but you may able to clear them up for us.

I gather now, then, that you'll come to the clubrooms [33a Glebe Point Road, Glebe] at about 3 on Friday afternoon where I'll meet you to fill in the papers. Is that correct? You could perhaps let me know, since I'll

arrange to be there if that is the case.

Thank you so much for your interest and help so far, and looking forward to meeting you on Friday.

1:–12.5. – CAMP NSW Application for Grant From the Community Health Program, 4 November 1974

Figure 14: Community Health Program Grant Application Form

CH 1	
File no.	
Ackn.	
Sub. no.	
Proj. no.	

AUSTRALIAN GOVERNMENT

Hospitals and Health Services Commission

COMMUNITY HEALTH PROGRAM

Application for Grant

To be sent to:
The Principal Executive Officer
Hospitals & Health Services Commission
Box 392 PO Woden ACT 2602

The Hospitals & Health Services Commission, which considers all applications for grants under the Community Health Program, does not wish groups or organizations to have to adopt a stereotyped approach to the making of submissions, but hopes that they will feel free to describe needs and express solutions as they see them, for proper consideration of requests it is necessary to ensure the availability of certain information. Completion of this application form would therefore be appreciated.

PROJECT TITLE: PURCHASE OF CENTRE FOR HOMOSEXUALS

LOCATION OF PROJECT: 33 Glebe Point Road Glebe

Name of agency, organization or person seeking the grant: Campaign Against Moral Persecution (NSW Branch)
Box 5074
SYDNEY 2001.

This is the NSW Branch of the national organization, which has branches in all Sates, but Tas.

Person to be contacted if further details required: Mike Clohesy

Address: Box 6 (16 Terry Street) Balmain 2041 Phone: (02) 827 3063

IF APPLICATION IS FROM OTHER THAN A STATE AGENCY:
Briefly describe how the project was developed, including details of groups and persons involved.

see APPENDIX A [page 380]

Name State Agency or Agencies with which this project has been discussed, or to which is has been referred.

N.S.W. Health Commission

Name(s) of Officer(s)

DETAILS OF GOVERNMENT ASSISTANCE

Please give details of any capital or operating assistance previously received or currently being received from Government (Australian, State or local) for this project.

NIL

PURPOSE OF PROJECT

Describe briefly the purpose of the project and state its objectives.

see APPENDIX B [page 380]

DESCRIPTION OF COMMUNITY IN WHICH SERVICE IS TO BE PROVIDED

Please indicate your view of the natural boundary of the area to be served by this project (where applicable an attached locality diagram or map would also be helpful).

NSW. There is no comparable service anywhere in the state.

Briefly describe:

(i) Other health facilities, (hospitals, nursing homes, medical practices, nursing services, etc.,) within the area.

There are several health facilities in the area, but none of direct relevance to the present project.

(ii) Population to be served, (size, demographic and socio/economic characteristics, etc.) Please make special reference where ethnic groups are involved.

All homosexuals – conservatively estimated at 5% of the population.

HOW DO YOU SEE THIS PROJECT WORKING IN WITH OTHER SERVICES IN THE COMMUNITY?

(i) Health Services, (incl. Hospitals).

see APPENDIX C [page 381]

(ii) Other Community Services, (Welfare, Education, etc.).

(iii) What consultation has taken place with these services?

ESTIMATED COSTS

N.B. (i) Where projects are approved, the Australian Government will meet up to 75% of the approved capital cost and 90% of approved net operating costs.

(ii) Funds are approved on an annual basis, however estimate for subsequent years should be provided where ever possible.

(iii) In preparing future estimates please use current costs.

TOTAL CAPITAL COSTS

	First Year 1974 ...../197.....	Second Year	Third Year
Land (incl.) existing buildings	$100,000	(This is the estimated	

New buildings Furnishings, Equipment Purchase of Vehicles Other		outside limits - the reserve price of course cannot be disclosed).
TOTAL	$100,000	

If the Australian Government contributed towards Capital Costs what would be the source(s) of the remaining funds?

The sources which have always been used to finance our operations - membership fees, donations and proceeds from social activities.

REAL PROPERTY (included above)

Present ownership WR Carpenter Finance Corporation Limited

Basis of valuation Manager LJ Hooker

Description of existing buildings 2 Storey brick building with shop frontage, 5 rooms and a passage-way with an additional single storey section at the back with one large, one small room and a toilet.

A simple sketch plan of sites indicating location and size, and of existing or proposed buildings showing number of rooms and approximate size should be attached to the application.

see APPENDIXES: D-I & D-II [pages 382, 383]

GROSS OPERATING COSTS N/A

	First year 197 ...../ 197	Second year	Third year
Salaries			
Rent			
Other			
TOTAL			

SALARIES (for First Year) N/A

Category of Staff	Number of Persons	Annual Salary * Level	Period Employed

* If employed full-time put F.T. If employed part-time, express as a percentage of full-time employment. If, in addition,employment is only for part of the year, indicate the number of months involved.

RENT N/A

Address of premises:

Owner of premises:

Enclose a brief sketch showing number of rooms and approximate area.

Proposed period of lease:

REVENUE N/A

Please show all revenue which it is proposed to derive from or apply to the operations of the project.

Source	First year
Rent	
Fees for services *	
State Government	
Australian Government (other than from this application)	
Other (please specify)	

* Proposals to charge fees for services rendered by salaried or sessional personnel will require approval in principal. Please indicate intentions:

Name: Michael Anthony Clohesy

Signature: (Michael A Clohesy) Date: 4/11/1974

Office held: Secretary

Appendix A

Briefly describe how the project was developed, including details of groups and persons involved.

CAMP (NSW Branch) was formed in August 1970:

(i) To support full legal, political and social equality for homosexuals and to work against all forms of discrimination and persecution directed against the free expression of sexual preference.

(ii) To provide in NSW a means of communication for all people sharing that aim, for the exchange of ideas and information, the maintenance of helpful services, and the organization of social activities.

(iii) To co-operate with other branches of Campaign Against Moral Persecution, and with organizations in Australia and elsewhere having similar aims. [631]

The movement has had a constant financial membership of 250-300, but its services have extended to many more homosexuals. During its history, it has been found that it is essential to have a centre for the movement to be able to satisfactorily carry out its aims.

It has had three such centres all of which, because of financial limitations, have been rented. We have thus been subject to the whim of the owner. We have been renting the present premises at 33a Glebe Point Road, Glebe since December 1973. When we took over the tenancy, the building was owned by John Giles Bourke Holdings Pty Ltd, which was subsequently been involved in a large land swindle in the Glebe area. As a direct result of this, ownership passed by default under the mortgage to WR Carpenter Finance Corporation Limited. They have instructed their agents, LJ Hooker Limited, to auction the property on 12 November 1974,

In the ten months that the premises have been the centre of CAMP (NSW Branch), much work has been done. The centre has been renovated and furnished to provide facilities for: meeting rooms, counselling service (including telephone counselling service), library archives and social activities with catering facilities on a small scale. It has been widely advertised as a centre welcoming all homosexuals. The forthcoming auction places the future of this essential service in jeopardy. The project has been developed to ensure its continuance.

Appendix B

Purpose of Project

Describe briefly the purpose of the project and state its objectives.

The purpose of the project is to provide a centre where the present services of CAMP (NSW Branch) to the homosexual community can continue without interruption. The services have the aim of helping homosexuals

[631] Campaign Against Moral Persecution NSW Branch, *Constitution*, Paragraph 2, 'Aims', n.d.

to accept their situation and to influence it if they can. The services are:

(1) Counselling Service.

(a) Phone-A-Friend. This telephone counselling service since its inception 18 months ago has handled over 8,000 calls. At present it has a voluntary staff of 25, including a counsellor at the University of NSW, a child counsellor and an officer of the NSW Health Commission. The calls come from all ages and all situations within the homosexual community. Face-to face counselling is provided where necessary. Close referral links have been established with other similar services (as indicated on page 3) [see Appendix C, page 381]. The service is widely advertised in newspapers, magazines, journals and through other services. The staff at present is internally trained, but discussions have been taking place with the Education Division of the Health Commission with a view to providing a co-ordinated training program for several services.

(b) Homosexual Guidance Service. This service, run by two members of the Psychology department of the University of NSW, provides therapy in small groups to those homosexuals who want more extensive counselling than that provided by Phone-A-Friend.

(2) Social activities. The centre includes a coffee shop which is open each night of the week and over the week-end. This provides a meeting place for homosexuals in a non-commercial, non-exploitative atmosphere where they can learn to accept themselves as persons. This service is an essential part of the counselling service, since many of the calls to Phone-A-Friend are from people wishing to meet other homosexuals to alleviate their feeling of being alone in the world. The coffee shop is staffed by a voluntary group of 10.

(3) Education. Part of the program of the movement to gain self-acceptance and acceptance by others for the homosexual involves providing information to the public about homosexuality. This is done through meetings held at the centre, by arranging speakers as requested by various bodies and by the publication of a journal, CAMP Ink. Meetings of members of the movement at the centre organise this part of the movement's program.

Appendix C

How do you see this project working in with other services in the community?

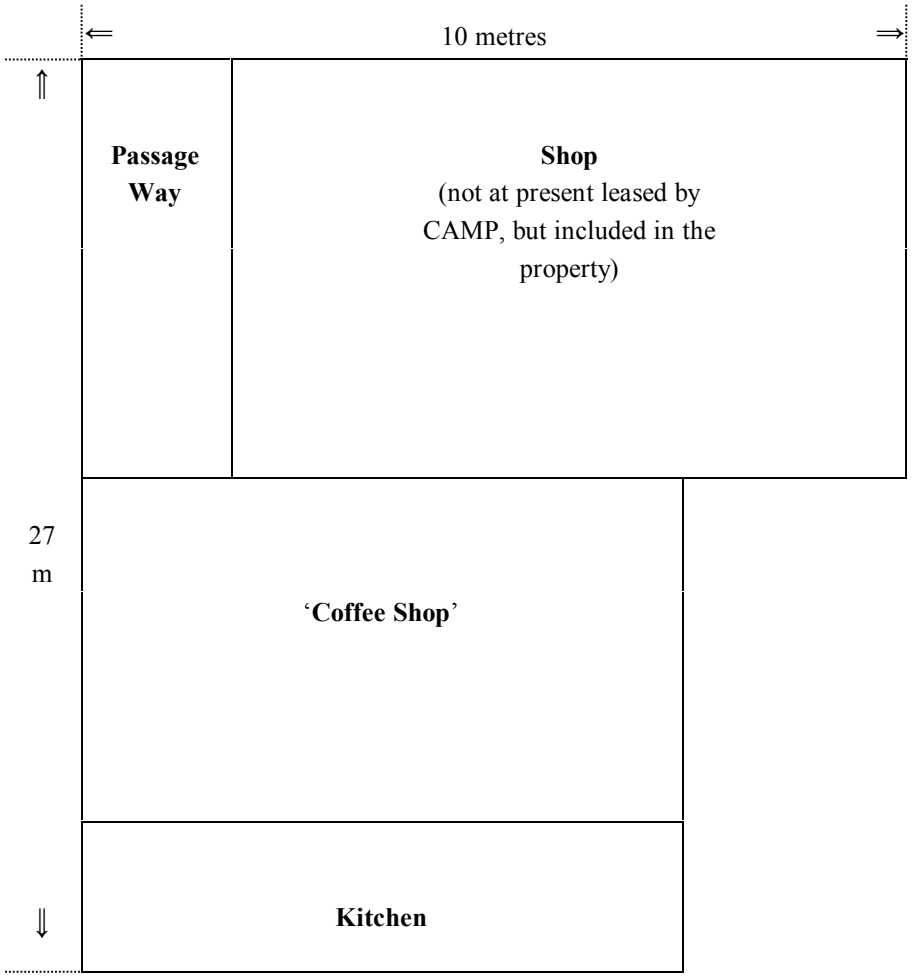
(i) Health Services. Links have already been established with Callan Park Hospital, Division of Epidemiology of the NSW Health Commission, Women's Health Centre, Drug Referral Centre and individual doctors and psychiatrists.

(ii) Other community services. Links have already been established with Wayside Chapel, Lifeline, individual parole officers, other minority groups (for example, Women's Centre, Prisoners' Action Health Commission, various departments of the Australian and State governments, Women's Commission of the Schools Commission, a group of trainees in community health nursing at Parramatta, several universities and Teachers' Colleges, individual solicitors, clergymen, journalists and politicians, Jaycees.

(iii) The various services above involved with counselling have referred homosexuals to us frequently; approaches have been made for education assistance through speakers from various of the other bodies mentioned; several meetings have taken place with other groups with a view to co-ordinating activity.

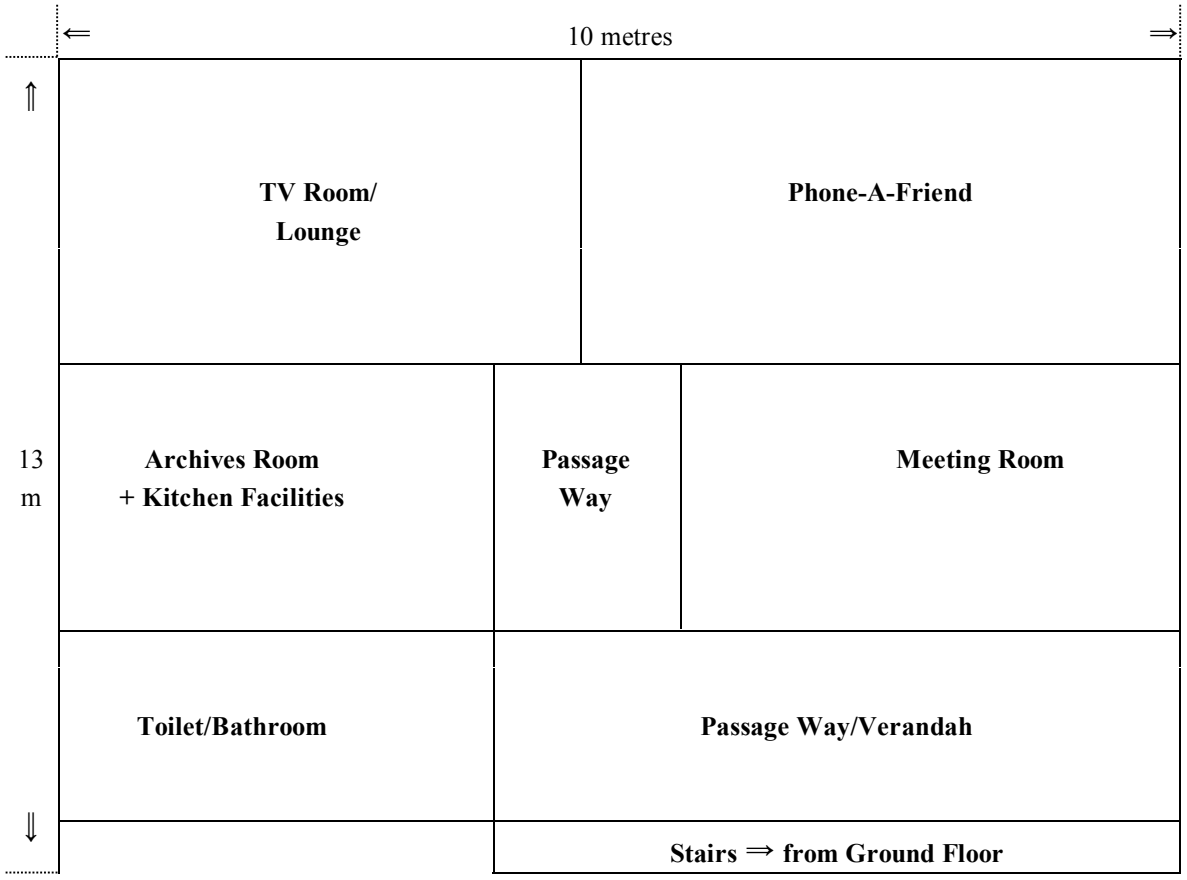
Appendix D – I (Ground Floor)

Figure 15: Ground Floor Plan, CAMP NSW Centre, 33a Glebe Point Road, Glebe



Appendix D – II (First Floor)

Figure 16: First Floor Plan, CAMP NSW Centre, 33a Glebe Point Road, Glebe



1:–12.6. – CAMP NSW Addendum to Hospitals and Health Services Commission, 10 November 1974

Addendum to Application for Grant Under Community Health Program of CAMP (NSW Branch)

Further to our telephone conversation of last Friday [with Dr Brian Hennessy]. Following discussions with other members of the Executive of CAMP, I would make several more points in connection with our application for a grant to enable us to purchase 33 Glebe Point Road, Glebe, the greater part of which we already occupy. We believe that the present use which we have of this building has been adequately described in the application which was lodged last week.

However, a grant enabling the purchase of this property for our use would in effect most certainly lead to an extension of our services. The whole property includes a small shop, at present not available for our use but is rented at the moment for $75 per week. If this weekly sum were added to our present rental of $40 per week, an extra amount of $115 on our present budget would be immediately available and could be used for such a project as the appointment of a full-time employee.

Up to the present, planning our services into the future has been pointless and not possible, because of the continual uncertainty about our future – whether we would have premises, and, if so, where they would be and of what they would consist. Replies to these questions are, of course, essential when planning services. In our judgement of the situation, Australian Government funds would best be spent in purchasing a centre since the large amount of capital necessary for such a project is not available to us. However, we would be able to support continuing and expanding services with the monies mentioned above. On a personal level, we would be looking to the appointment of an education officer, a full-time counsellor and perhaps a doctor. This would enable the work which is at present being done in an entirely voluntary capacity by many members after normal business hours to be continued throughout the day. We are constantly reminded by members and others

seeking our help that such help is severely restricted when it is only available during the evening hours.

Our past financial position has necessitated our renting premises rather then purchasing them. Because of the present rate of inflation, it has proved impossible to obtain a lease on such premises for longer than six months at a time, and the constant anxiety that such a lease is not bound to be renewed at expiration means that our worry that the rental may be substantially increased each six months is completely overshadowed by the uncertainty of tenure which we must endure as leaseholders only. As tenants, of course, we are subject to the merest whim of the landlord.

The premises in question are zoned as a commercial area, and this is why we are permitted to freely operate as a centre for our movement. Our tenancy on a previous occasion was abruptly terminated [632] by order of the local council, after complaints from residents that homosexuals were meeting in the area. Because of the social stigma attached to homosexuals, this a constant concern and means that we must have premises in a commercial area. (This distinguishes us from such places as the Women's Refuge, Elsie, since women are not looked down on by society). Higher rental can be charged for commercially zoned properties, so under our present situation we must constantly bear in mind the fact that a commercial interest with much greater financial capacity than we, as a registered non-profit organisation could ever hope to enjoy, should show an interest in any property we may lease, our chances of remaining as tenants would be very slight.

During the past ten months of our occupancy of 33a Glebe Point Road we have been able to establish a counselling service which is known throughout Sydney, and which is used as a point of referral by many other counselling services (see Appendix C of application). In this time there has been no objection from nearby residents (presumably because of the commercial zoning) and only praise from sections of the community which are concerned for their fellow citizens.

Without permanent premises, our future is bleak indeed. Rising valuations will certainly bring a large increase in our rental should the premises change hands and at the moment it seems doubtful that we would able to afford such an increased cost. A centre such as the one we operate takes at least six months to establish, and it can be far in excess of this time before all those who would need our services would become aware of our existence at a certain address. It is impossible to run any organisation from a different address every few months, both from the practical point of view, and from the equally supportable view that any organisation which constantly changes its address can hardly lay claim to public confidence.

I hope that you will appreciate from the foregoing that CAMP's work in Australia is shackled, as it has been from the organisation's inception, by the lack of any permanency of premises. The premises presently rented at 33a Glebe Point Road, with the addition of the shop which purchase of the property would enable, lend themselves ideally to providing a secure basis for the extension of our services.

It is with this certainty in mind, and with the hope that some concern for homosexuals will be shown by government, that we have made our application.

1:–12.7. – AD Watchorn, Manager, LJ Hooker, Urgent Telegram to CAMP NSW, 11 November 1974

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TO:     CAMP
        Box 5074
        GPO Sydney NSW

TEXT:   Please phone Mr Deane 253531 or myself [AD Watchorn] on 814231
        immediately.

FROM:   AD Watchorn, Manager, LJ Hooker
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Figure 17: AD Watchorn, Manager LJ Hooker, Urgent Telegram to CAMP NSW

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[632] The premises were at 10 David Street, Forest Lodge in Leichhardt Municipality. For further details: Municipality of Leichhardt, Council Meeting 12 June 1973, Town Planners Special Report: Re 10 David Street, Forrest Lodge, Item no. 2321, Ref (12/6/73). Subject: Petition by M/- V and JD Paley and thirty (30) others objecting to the use of premises known as no. 10 David Street, Forest Lodge and requesting May Pitt playground to be closed at night. RP 15385 7/3/73. There was also some print media coverage in *The Glebe*, Thursday 7 June 1973, pp. 1, 4 (photo) and 6. Thursday 14 June 1973, pp. 2, 4 (letters). Thursday 21 June 1973, p. 2 (letters).

1:–12.8. – Brian Hennessy, Commissioner, Hospitals and Health Services Commission Letter to CAMP NSW, 14 November 1974

This is to acknowledge receipt of your letter of 10 November.

I do appreciate the urgency of your application for a grant and I am arranging to have the matter examined as quickly as possible.

1:–12.9. – AD Watchorn, Manager, LJ Hooker Letter to CAMP NSW, 18 November 1974 [633]

Re: Premises at 33A Glebe Point Road, Glebe.

We have been instructed to advise you that the 5A lease of the above premises has expired, and the owners WR Carpenter Finance Corporation Limited, who are the first and second mortgagees in possession, require a new lease [see page 385] registered under s. 5A of the *Landlord and Tenant Act* for a term of 3 months (13 weeks) at a rental of $60.00 per week, paid every fortnight in advance to the Property Manager at our Drummoyne office.

We will draw the lease between your Association and the lessors WR Carpenter Finance Corporation Limited.

At this stage the property was not sold at auction and was passed in as you well know, because you were a very interested party and attended the auction, but did not bid.

Apple Real Estate Agents for the first mortgagees advised you that they too were interested to put the property up for auction on their behalf. We were later advised that an offer of $45,000 was made to purchase the property from the first mortgagees although we were informed that there was only about $33,000 owing, however expenses and costs were added to this.

You are now aware that WR Carpenter Finance Corporation Limited have paid out the amounts owing to the first mortgagees and are now in complete and full possession of the whole of the premises.

Therefore should you wish to continue negotiations to purchase we will give you first offer to do so over the next fourteen (14) days. This is in consideration of your continued interest over the past five or six weeks. The purchase price of course is $66,000 which was the reserve at auction, and this sum will increase every month until exchange of contracts takes place to cover accrued interest payments and expenses as they accumulate.

Should your Association wish to purchase this property please contact the undersigned, who will take up this matter on your behalf with the mortgagees.

We would like to point out that there is another party who have approached WR Carpenter Finance Corporation Limited with an offer to purchase the property, and interviewed by me last Tuesday afternoon. They are interested for future redevelopment and would require the property Vacant Possession on settlement.

Would you please be kind enough to advise us sometime over the next fourteen (14) days of your intentions to purchase, should you require any finance arrangements we may be able to assist you in this matter.

Thanking you in anticipation of your early reply.

1:–12.9.1. – Lease for Residential or Commercial Premises

© 1973 COPYRIGHT of the REAL ESTATE INSTITUTE OF NSW

LEASE FOR RESIDENTIAL OR COMMERCIAL PREMISES
(SUITABLE FOR REGISTRATION UNDER SEC. 5A OF
LANDLORD AND TENANT (AMENDMENT) ACT 1948,
AS AMENDED.)

FURNISHED or UNFURNISHED PREMISES

This Indenture made the TWENTY SEVENTH day of NOVEMBER One thousand nine hundred and SEVENTY FOUR (in pursuance of the *Conveyancing Act 1919* as amended)

[633] This letter has a hand written note at the bottom by Michael Clohesy, CAMP's secretary at the time, stating: 'Copy to Hennessy 21/11. Spoke with Hennessy 26/11 – will inform by 9/12 if Commission prepared to recommend to Minister. Unsure of prospects – many others with more pressing priority.'

between

W. R. CARPENTER FINANCE CORPORATION LIMITED in the State of NSW (Lessor) for the one part and CAMPAIGN AGAINST MORAL PERSECUTION N.S.W. BRANCH in the said State (Lessee) of the other part

WHEREAS the facts matters and circumstances set forth or referred to in Paragraphs 18 and 19 of this Indenture are true in fact NOW THIS INDENTURE WITNESSETH that the said Lessor doth demise unto the said Lessee

ALL THOSE UNFURNISHED PREMISES SITUATED AND KNOWN AS 33-33A GLEBE POINT ROAD, GLEBE 2037

Together with ~~the furniture therein an Inventory whereof shall be signed by all parties hereto before the said Lessee takes possession of the demised premises~~.

From the SECOND day of DECEMBER 1974 for the term of WEEK TO WEEK thence ensuingWEEKLY

Yielding and Paying therefor during the said term the rent of FIFTY DOLLARS ($50.00) PER WEEK PAYABLE per WEEKLY in advance payable at the office of L.J. HOOKER LIMITED, 178 VICTORIA ROAD, DRUMMOYNE the rent to commence and be computed from the SECOND day of DECEMBER 1974 and the first payment to be made on that date.

Provided that if the Lessee continues in occupation of the said premises after the expiration of the said term and tenancy shall under all the covenants and conditions of this lease continue as a WEEKLY tenancy only at a rental of FIFTY DOLLARS ($50.00) PER WEEK to be determined by a ONE WEEK'S notice in writing from either party hereto, expiring on any day.

1:–12.10. – CAMP NSW Letter to AD Watchorn, Manager, LJ Hooker, 27 November 1974

Re: Your letter 18 November concerning premises 33-33a Glebe Point Road, Glebe.

We will be happy to enter into a new lease, but believe that an increase of 50% in rental is exorbitant and unjustified. It seems that Carpenter wants it two ways: they intend recovering accrued interest payment and expenses both by increasing the rental on two properties (gaining them close to $160 a week, if they have their way) and by continually increasing the purchase price of the property. We believe they must contain their greed and chose but one way of recovering their monies.

We are still interested in purchasing the property and are conducting delicate negotiations with this end in mind. However, there have been delays to this which are beyond our control and we will require longer than the 14 days you mention in your letter. We should be in a position to give a definite decision towards the end of the second week of December. We would appreciate if you could extend our option to that time.

Some points of detail. You will be able to ascertain from this letter: (a) the correct name of the movement; (b) the correct postal address of the movement; (c) the correct spelling of my surname. Should you wish to further hand deliver correspondence, it would be most efficient to deliver it to 16 Terry Street, Balmain.

Looking forward to early advice of your attitude to our two requests.

1:–12.11. – AD Watchorn, Manager, LJ Hooker, Letter to CAMP NSW, 27 November 1974

Without Prejudice

In reply to your letter of the 27th instant concerning premises 33a Glebe Point Road, Glebe, and to confirm our telephone conversation of this morning, we wish to inform you that we have spoken with the vendors WR Carpenter Finance Corporation Limited with regard to your remarks about the increase of rents, together with your request for an extension of time to the end of the second week of December to confirm negotiations to purchase the property.

The vendors have agreed to increase your rental to $50.00 per week and not $60.00 per week as previously instructed, this will be on a week to week tenancy only, as from the 2nd December, 1974, and will be reviewed after the extension of time you have asked for to consider negotiations to purchase. Should you decide not to proceed with the purchase after that date, the vendor will then reconsider the rental basis thereafter.

It is normal procedure that we forward a photostat copy of letters to the vendors through their solicitors, but

in this case we are rather hesitant to do so, in view of some of your remarks about them, as we feel this may prejudice your chances to negotiate with them of your remaining in occupation.

With regards to some points of detail please accept our apologies for our hand delivered letter by the undersigned to 33a Glebe Point Road, Glebe, and not to your GPO Box Sydney. If this was an error, it was because you failed to give us the correct address, also the correct name of your Movement, again our error in putting the word Association, however we have corrected this matter, as you will now observe.

The correct spelling of your surname was never officially given to us, but the writer personally knows of a family by your surname which is spelt with a double 's', and naturally presumed this was correct spelling in your case. I am sure these points are quite a small issue and have no bearing on the actual rental, or personal negotiations on the property.

Thanking you for your courtesy during our weeks of negotiations, and trust that the final outcome will be to the benefit of your Movement.

1:–12.12. – AD Watchorn, Manager, LJ Hooker, Letter to CAMP NSW, 10 December 1974

We refer to our letter of the 27th November last, with enclosed 5A lease and account for $40.05. The amount now owing is $70.05 comprising of 1 weeks rent, to 23/12/74, $50.00, Stamp Duty $5.05 and Service Fee $15.00.

Would you please give this matter your urgent attention, with your remittance for this sum, together with your Lease signed and witnessed for registration purposes.

We would also expect in the ensuing week of your intentions to proceed with the purchase of the property so that we may advise the Mortgagees in Possession of your final decision.

Thanking you in anticipation of your early reply.

1:–12.14. – Sale by Auction Announcement of CAMP NSW Centre, Glebe, November 1974 [634]

Figure 18: Broadsheet Announcement of Sale by Auction of 33a Glebe Point Road, Glebe

L.J.HOOKER LIMITED

'Australia's leader in real estate'

Member Of The Real Estate Institute of NSW

Will offer the following properties at public auction in our auction room, 1st floor 'HOOKER HOUSE', 175 Pitt Street,

Tuesday, 12th November, 1974 at 10.30 a.m.

NOTE: Finance may be arranged on these properties. Should you require assistance, please contact us prior to auction.

LICENSED AUCTIONEERS — 231 1022

SEE THE SYDNEY MORNING HERALD, 12th NOVEMBER, FOR ORDER SALE AUCTION CONDUCTED EVERY TUESDAY

Sales also conducted Saturdays in our own Auction Rooms each month at Parramatta, Strathfield, Manly, Cronulla, Marrickville, Bondi Junction, Liverpool and Gosford.

GLEBE, ZONE BUS 3A – M'gagee Sale

33/33a GLEBE POINT ROAD.

Commercial and business premises, shop and private dwelling.

Consists of 4 bedrooms upstairs, spacious split-level living area downstairs, rear entrance from Grove St. Only approx. 100m from P'matta Rd.

INQUIRIES: DRUMMOYNE OFFICE, 81 4231: A.H. 95 3685.

Investment Dept. 231 1022

SOLICITORS: GEO. A. RAVES & POOLE.

1:–12.15. – Bernard M Nolan, Acting Regional Director, Inner Metropolitan Region, Health Commission of NSW Letter to CAMP NSW, 15 January 1975 [635]

Application for Grant, Community Health Program

I refer to your application for a grant under the Community Health Program and regret to advise that your application has been unsuccessful.

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[634] The above segment is only a small part reproduced from a 610 mm x 420 mm (double A3 size) auction broadsheet which contained numerous other properties being auctioned by LJ Hooker.

[635] The author lodged a FOI request (98/6433) on 4 December 1998 with the NSW Department of Health for a copy of funding files relating to 33a Glebe Point Road, Glebe. The Department informed on 21 December 1998 that the '… Inner Metropolitan Region … was amalgamated with the Southern Region in 1978. In 1988 the Southern Metropolitan Region was disbanded. Once financial records are finalised they are generally kept for only a period of 7 years. In this instance the documents relate to an application for a funding grant which was refused in 1974. Extensive searches of departmental records have failed to identify if the documents still exist. Due to the length of time it is believed that the records may have been destroyed.'

1:–12.16. – HD Kelaher, Principal Executive Officer, Hospitals and Health Services Commission Letter to CAMP NSW, 5 February 1975 [636]

I refer to your submission of 10 November 1974, seeking a grant under the Community Health Program, for the purchase of land and an existing building at 33A Glebe Point Road, Glebe.

Your proposal has been carefully considered by the Hospitals and Health Services Commission, and found to be not appropriate for funding under the Community Health Program.

The Commission had two major features of your proposals in mind in coming to this decision. The first was that you sought no additional or expanded health service but merely the purchase if a building from which CAMP was already operating. The second was that the function of your organisation primary concerned legal, political and social matters. The proposal was therefore outside the scope of this Commission's prescribed function and outside the scope of the Community Health Program as approved by the Australian Government.

The Commission has asked me to assure you that it would consider proposals from your organisation seeking establishment or expansion of specific community health services.

1:–12.17. – Brian Hennessy, Commissioner, Hospitals and Health Services Commission Letter to CAMP NSW, 3 March 1975

I am writing to confirm the arrangements we made by telephone to meet with yourself and other representatives of CAMP, officers of the NSW Health Commission and representatives of other health agencies in the area, at your offices [33a Glebe Point Road, Glebe] on Tuesday, March 11th at 8p.m.

I look forward to meeting you on that occasion.

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[636] On 3 November 1998 an initial FOI enquiry was lodged with the Federal Department of Health and Family Service's FOI Coordinator Penny Marshall. The response received on 5 November 1998 stated that 'the Hospitals and Health Services Commission would be a NSW State body and therefore would be subject to the NSW FOI Act. You should therefore direct your enquiry to the NSW State Department of Health (see footnote 635) who may be able to assist you.' A subsequent letter on 6 November 1998 to Penny Marshall with copies of the archival letters from the Hospitals and Health Services Commission requesting her to please further search for these files, resulted in her holiday substitute, Luke Cookson, informing the requester on 6 January 1999, 'that further extensive searches of the Department's files had not revealed any trace of the materials in question.'

CHAPTER TWO ≈ POLITICAL ARENA – SOUTH AUSTRALIAN GOVERNMENT

2:–1. – Dr Duncan

Dr George Duncan, a lecturer in the Department of Law at the University of Adelaide, was drowned in the River Torrens outside a well known beat on 10 May 1972. The circumstances surrounding the murder were extremely suspicious, but a report by two Scotland Yard detectives brought to SA to investigate it has never been revealed to the public.

On the second anniversary of the occasion [see press release, page 531], CAMP NSW Cross+Section its church group, together with the Catholic group Acceptance, held a ceremony outside the SA Tourist Bureau in George Street, Sydney. In a speech on the occasion, Peter Bonsall-Boone, CAMP NSW Co-President, declared:

> We are fighting against, basically, the fact (which we commemorate tonight) that a man can be murdered in cold blood by society – by a society which proceeds to protect itself by shutting out from itself the truth behind the crime [see page 394].

That evening a campaign was begun to have the report of the New Scotland Yard detectives released or the government's enquiry reopened. A letter to this effect was signed by those present and sent to Premier [Don] Dunstan [see page 396]. The Premier's Department informed us on 23 May 1974 that 'your letter has been referred to the Chief Secretary for consideration' [see page 399].

When no reply had been received in early June [1974], a telegram campaign [see page 400] was begun to solicit a reply from the Chief Secretary. The only outcome was this letter to a member:

> The investigation into the death of Dr Duncan did not produce evidence sufficient to put anybody on trial for any offence and contains material which is damaging to the reputation of persons whose conduct is discussed in the report. It follows that this case is not necessarily closed because if evidence were forthcoming at any time in the future the case would proceed [see page 400].

2:–1.1. – Peter Bonsall-Boone's Address at Dr Duncan Wreath Laying Ceremony, 10 May 1974 [637]

We are gathered here at this late eleventh hour on a Friday night to focus our attention, and the public's attention, to the fact that it is two years to this minute since the death by murder of George Duncan, lecturer in the School of Law, University of Adelaide: homosexual.

None of us knew George Duncan, yet to members of the homosexual community he remains a symbol, and his death remains a symbol too of what we homosexuals are fighting against. We are fighting against, basically, the fact (which we ~~celebrate~~ [638] commemorate tonight) that a man can be murdered in cold blood by society - by a society which proceeds to protect itself by shutting out from itself the truth behind the crime.

In an attempt to awaken a society which is so corrupt that it can happily ignore its own guilt, even to the extent of refusing to acknowledge its guilt at all, we would ask you to add your signature to this letter, which will be posted ~~immediately~~ to the premier of SA immediately after this meeting.

LETTER [639]

I feel that that letter, although it bears only a few signatures by today's standards ~~(undoubtedly the Festival of Light with its New Wave pop morality, which remains a pseudo morality for all the cant, would have been able to obtain several hundred thousand more)~~ - just a few signatures, mind you, speaks eloquently and pleads strongly for justice to be done.

Yet we are not here to act merely as some sort of bicep[s] aimed at forcing the long arm of the law to reach out, guns blazing, to capture and punish whoever may have murdered George Duncan. We are here to remind ourselves that we cannot afford to allow society to push us around, to tell us where to go, to oppress us in the way society was able to push, to tell, and to oppress George Duncan to the ~~end~~ ultimate degree. We ~~would hope there will not be~~ must not allow another George Duncan, and yet we must remind ourselves that unless we take a grip on our aims, our ideals, our aspirations … and do this ourselves, we must hold ourselves to blame when another individual is destroyed, and destroyed completely, by society.

~~I suspect that I was asked to speak tonight because of my association with the Campaign Against Moral Persecution since its beginning almost four years ago, and also because of my very close association during that period with Cross+Section, the church group within CAMP. These associations of mine, however, have had, I think, a far greater impetus on me then I could possibly have had on them. I hope you will bear with me as I search my own soul for the lessons I see coming out of the Duncan murder for us all.~~

Those of us who were fortunate enough to be at the memorial service for George Duncan held at the Wayside Chapel last Friday night heard Ted Noffs say that it was impossible for George Duncan to die without the whole society being affected. As Mr Noffs remarked, it is not necessary these days to remind ourselves of [John] Donne's *No Man is An Island, Entire Unto Itself*. But I wonder if Ted Noffs was not being more hopeful than we dare to be. I know that I need constant reminders that I should *Ask not for whom the bell tolls*. Yet it tolls for me, right enough. And it is I who must do something because of this.

The media, like the government, like the ordinary organisations which society supports like boy scouts, girl guides and masons, and like the church, ignores homosexuals and ignores them almost completely. Only those of us who seek publicity would cavil at this, except that we must at some stage come to the realisation that homosexuals are ignored only while they are themselves. It is possible for us to create mention of ourselves and our activities, and that is by falling foul of the society to which we belong. *GAY LIB, POLICE IN PUNCH-UP* roared the *Daily Telegraph* [sic] *Sunday Mirror* [640] after the arrests made at the Gay Pride Week march in September last year. Not a word, of course what Gay Pride Week was all about - or even about how there could possibly be a need for such a week.

This is surely **our** task, isn't it? To be ourselves, AND TO LET IT BE KNOWN that we are being ourselves. And don't mistake my meaning, because I am not asking all of you to become selfish, to demand this and to demand that. We must of course make these demands when we see ourselves and those whom we love being not just kept at ground level but being positively shoved lower than that. But any demand like this must, I feel sure, be given the support of the sort of attitude to life which allows us to stand proud, to stand firm, and to say *I am a homosexual*. How can society learn about the people it is so anxious to ignore

[637] An address delivered at the Dr George Duncan wreath laying ceremony outside the SA Tourist Bureau, George Street, Sydney on 10 May 1974.

[638] Text ~~marked thus~~ is included in the final draft but not necessarily verbalised at the wreath laying ceremony.

[639] See: 2:–1.2. page 396, 'CAMP NSW Letter to Don Dunstan, SA Premier'

[640] See: 2:–1.1.1. page 395, 'Gay Pride Week Arrests'; Also see: 2:–1.1.2. page 395, 'More Gay Pride Week Arrests'.

otherwise, unless we ourselves are prepared to declare ourselves as we live our lives.

We are told on all sides lately, and particularly by the churches and the parliament, the archbastians of morality, that the family is the basic unit of society. I cannot help feeling that the leaders of the groups who make such statements would be surprised to learn just how many of us would agree with what they say. Our argument with them would be based on our interpretation of the word family. When **we** say family we don't mean a white anglo saxon protestant male living exclusively (for sexual purposes only) with a white anglo saxon protestant female, and the product of their union, two and a third WASP [641] offspring, who will be brought up carefully so they can best imitate the male-female WASP role which their parents have prepared for them.

By family, we are able to include the whole gathering of those people whom we are able to love, and it is this family which is our basis for society. A society which has learned that to be a part of it does not mean subscribing to all its tenets would be a society which we could accept.

A society which feels free to murder the Duncans, throw out the Jeremy Fishers [642] and oppress anyone who has the courage to actually confess to being different is a society which we cannot and do not accept. Memories of George Duncan, of what he could have been, what contribution to all our lives he could have made had society allowed him to live, must spur us to recognise the tolling of the bell and to feel compelled to make ourselves known and to live and declare the grounds of our being, so that society is **forced** to face those who accept it with an ideal no less valid because of its new willingness to declare itself.

2:–1.1.1. – Gay Pride Week Arrests, 16 September 1974 [643]

Gay Lib, Police in Punch-Up

Fifteen arrests: A march by more than 200 members of the Gay Liberation Movement led to a brawl with police in city streets yesterday morning.

Fifteen of the demonstrators were arrested and charged at Central Police station with offensive language, offensive behaviour and resisting arrest.

The gay march began at the Town Hall at about 10.15 am and kept to the footpath along Park and Pitt streets.

But when the marchers reached Market St, some began chanting 'run down the pigs' and 'free the homos'.

A scuffle between police and about 20 of the demonstrators broke out in Martin Place.

ARRESTS

The 15 marchers arrested were taken away in paddy-wagons.

The march then moved to Hyde Park where speakers used megaphones to express contempt of the police.

Marchers stopped several times along the route to the park, formed groups and jeered at the police.

About 50 police were on hand to control the demonstrators.

The demonstration finished at 11.15 when gay libbers dispersed after a rowdy anti-police meeting in Hyde Park.

2:–1.1.2. – More Gay Pride Week Arrests, 16 September 1973 [644]

Gay Libbers Arrested

Police arrested 15 members of the Gay Liberation Movement during a violent demonstration in Sydney yesterday.

More than 200 people marched through the city's streets to protest discrimination against homosexuals.

Mr Dennis Altman, president of CAMP Inc, [645] said police had tried to stop the march leaving the Town Hall, but demonstrators assembled around the Cenotaph in Martin Place, and laid a wreath in memory of homosexuals killed in Germany during World War II.

Mr Altman said police then started to grab demonstrators indiscriminately from the crowd.

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[641] WASP – W(hite) A(nglo) S(axon) P(rotestant). *The Macquarie Dictionary*, Macquarie Library, St Leonards, NSW, 1981, p. 1958.

[642] See: 2:–1.1.3. page 396, 'Sydney Churchman Acts Against Homosexual – Jeremy Fisher'.

[643] n.a. 'Gay Lib, Police in Punch-Up', *Sunday Mirror*, Sunday 16 September 1973, p. 2. Original emphasis.

[644] n.a. 'Gay Libbers Arrested', *Sunday Telegraph*, (Sydney), Sunday 16 September 1973, p. 3. Original emphasis.

[645] Dennis Altman never was the president of CAMP NSW or CAMP Inc as mentioned in this article.

'They seemed to just want to fill their paddy-wagons,' he said. 'From what I saw there was no provocation on our part.'

The demonstration, which ended quietly after meeting in Hyde park, was to mark the end of Gay Pride Week.

2:–1.1.3. – Sydney Churchman Acts Against Homosexual – Jeremy Fisher [646]

The Reverend Dr Alan Cole, Master of Robert Menzies College within Macquarie University, has refused to allow a student to return to his place at College after the May 1973 vacation following the discovery that he is a homosexual actively engaged in Macquarie's Gay Liberation organisation. The information was learned from papers found in the student's room during his absence.

The student, Jeremy Fisher, has been required to seek medical or spiritual therapy before his readmission to the college can be considered.

In defence of his position, Dr Cole has stated that it is his opinion that homosexuality is a disease, and that someone suffering from measles would be asked to seek therapy before being allowed into the college.

The rules governing entry to the college at Macquarie University do not permit a religious test to be a criterion for college entry, and it is on these grounds that Fisher's expulsion is being opposed by the Student's Council.

2:–1.2. – CAMP NSW Letter to Don Dunstan, SA Premier, 10 May 1974

It is now two years since the death of Dr George Duncan in the river Torrens in Adelaide. According to the City Coroner, Mr TE Cleland, 'the cause of death was drowning due to violence on the part of persons of whose identity there is no evidence'. [See: 2:–1.2.1. 'TE Cleland, SA Coroner's Report', page 397].

We the undersigned, strongly request that the report, requested by your Government, prepared by two New Scotland Yard detectives, [647] be made public, with the proviso that the names of those persons named in the

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[646] See for example: 'Ban on Student in Hostel Brings Reaction' *The Sydney Morning Herald*, 19 June 1973, p. 2; 'Building Uni Ban', *Daily Telegraph*, 20 June 1973, p. 11; 'The Day the Sun Stands Still', *Nation Review*, 22-28 June 1973, p. 1128; 'Union Stand on Expulsion of Gay', *National U*, 25 June 1973, p. 3; 'Student Expulsion Inquiry', *The Australian*, 30 June 1973, p. 5; 'Trouble at Macquarie', *The Sydney Morning Herald*, 14 July 1973, p. 6.

[647] On 29 January 1998 the author lodged a FOI request (98/0603) with the SA Police for a copy of the report prepared by the two Scotland Yard detectives specifically brought to SA to investigate the drowning of Dr Duncan in the Torrens river on 10 May 1972. On 26 March 1998 SA Police informed the applicant that: 'Consultation has been undertaken with the Police Minister to determine the status of the document. Once this matter has been clarified, your application will be determined.' Finally, the Minister determined on 7 May 1998 '… **not to release** the report … in accordance with s. 20(1)(e) of the FOI Act …' Furthermore, '… the Government of the day decreed that documents pertaining to this incident were not to be released which would be the equivalent of a Ministerial Certificate in today's environment.' [Original emphasise]. The SA's State Coroner's Office was approached on 21 November 1998 to ascertain if a copy of the Coroner's inquest report would be available. Confirmation was received from the Coroner's office on 23 November 1998 that a copy could be made available. Subsequent correspondence from the Coroner's office revealed '… that a vast bulk of the documents generated as a result of the Duncan enquiry [inquest] were handed over to police. The file contains a duplicate of a post mortem report prepared by Dr Manock, a burial order and few procedural documents of no apparent significance.' A letter was subsequently forwarded on 15 January 1999 to the SA Police, using the above mentioned FOI request, enquiring how a copy of the State Coroner's inquest report could be obtained. On 18 January 1999 a FOI application (99/1277) was lodged with the SA Police to obtain a copy of the State Coroner's inquest. The SA Police FOI Unit determined on 22 June 1999 that they would release relating to my earlier application (98/0603) the following documents: 'Duncan Task Force, Final Report, Annex 'A' (20 pages)'; 'Duncan Task Force, Interim Report, Annex 'K' (25 pages)' It should be noted that both these 'Annexes' are materials already available in the public domain. Furthermore the SA Police decided, in relation to application (99/1277), to '… **release with exempt information removed** …' the '… Coroner's Inquisition into the Death of George ID Duncan 1972.' (See: 2:–1.2.1. 'TE Cleland, SA Coroner's Report', page 397. The final, and third, determination by the SA Police was '… **not to release** any further documentation from the Coroner's inquisition …' because this '… would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).' On 10 July 1999 an Application for Internal Review was lodged with the South Australia Police. On 3 August 1999 Irene Fountenekas, Solicitor, Police Solicitor Services and Internal Review Officer responded as

(continued...)

report who gave evidence but are not implicated in the Duncan murder, be withheld. The failure of your government to release this report has let to speculation that it contains information which could lead to the apprehension of Duncan's murderer or murderers. Such speculation would cease upon the release of the full report, unless that speculation is correct.

If the New Scotland Yard investigation did not reveal Duncan's murderer or murderers, then we request that the case be reopened and investigation proceed until the guilty are brought to trial.

This letter expresses the thoughts of NSW homosexuals who, for the past week, have taken part in activities recalling the violent death of Dr George Duncan.

We are confident that you and your Government will wish to see justice done in the case of Dr Duncan.

2:–1.2.1. – TE Cleland, SA Coroner's Report [648]

Re: – George Ian Ogilvie DUNCAN, deceased

Shortly after 19:00hrs on the 10 May 1972, Dr Duncan was thrown into the River Torrens, from the southern bank. It was at a point north-east from the junction of Victoria Drive and Kintore Avenue and about 370 yards from King William Road.

Normally the scene would have been illuminated by two electric lamps, close together. But on this night, and during some previous nights, the lamps were not operating.

Dr Duncan was a homosexual. There is no evidence of his movements during the evening of the 10 May [1972]. The only evidence is that he was on or near Victoria Drive, and that his car was parked in King William Road. At the relevant time he may have been coming from, or returning to, his car.

Not long before 22:30hrs two homosexuals quarrelled in a toilet near King William Road. On leaving the toilet one chased the other.

At about this time, according to the evidence of 3 young men sitting in a car, 4 or 5 men were chasing each other around between boat sheds, 70 or 80 yards from King William Road. There was no evidence of the subsequent movements of these men. But while this was going on, they said, a motor car pulled up near them. They said it was a green and white Holden like a police car, and the man who got out of it looked like a plain clothes police officer.

Many questions were put by counsel about this car and man. But after the inquest had proceeded for several days a Mr X came forward and gave evidence. He said that the green and white Holden was his car; that shortly before 22:30hrs he had stopped an the way home to visit the toilet; and that he had visited the toilet. After leaving the toilet he was on the bank of the river, overlooking the place where Dr Duncan was thrown into the water. He was there seized by 2 men, and flung down concrete steps into the river. He incurred some injuries.

The next incident, in point of time, involved a Mr … who told the police what he knew as soon as he read about Dr Duncan's death, and who gave evidence. He had served in, and retired from, the regular Army. During the evening of the 10 May [1972] he was a guest at a Sergeants' Mess on the Parade Ground. He left the Mess at 22:45hrs, walked across the Parade Ground, got some cigarettes from his car, and sat an a seat overlooking the place where Dr Duncan was afterwards thrown into the river. While seated there he was approached by a man who advised him to leave 'before the coppers come.' Mr … did not comply. He was then approached by another man who told him, in more emphatic and somewhat menacing words, to clear out. Mr … thought it wise to do so. He returned to his car, and sat in it, smoking. His car was parked in Victoria Drive close to Kintore Avenue. Some time later he saw 4 men run across Victoria Drive and enter Kintore Avenue. The locality was well lit by three powerful electric lights, and he had a good view of the men.

Not long after Mr … returned to his car, a Mr … was sitting on a seat below the seat on which Mr … had been sitting. A man joined him and made a homosexual inquiry, which Mr … rejected. Four men then appeared on the scene, one of whom turned out to be Dr Duncan. Mr … thought the sound of approaching

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[647](...continued)
follows: 'I refer to the determination of Chief Inspector McDonald dated 22 June 1999. I am varying the determination and am releasing to you a copy of the transcript [approximately 300 pages] of the Coroner's Inquest into the death of Mr Duncan with deletions of material which relates to the personal affairs of third persons.'

[648] This is the findings of the SA Coroner's inquest into the death of Dr Duncan was obtained through a FOI application with SA Police and had the names, apart from Dr Duncan's, deleted from the copy obtained.

footsteps were like those of a person walking downhill, or being forced along. At post-mortem bruises as from fingers were found in the inside of each of Dr Duncan's upper arms, indicating that he was being forced along by men on each side. When the four men were close to Mr … Dr Duncan was thrown down the bank into the river. Mr … was then seized by two of the men. He resisted, receive a blow on the head, an he also was thrown into the river.

Mr … called out that he, i.e. Dr Duncan, was drowning. One of the four men stripped off some clothes, dived into the river, and finally said that he could not find the drowning man.

Meanwhile Mr … had got out of the river. One of his ankles had been broken. Eventually the four men made off in the direction of Kintore Avenue. Mr … crawled after them. He saw them enter a motor car which was parked in the Avenue, close to Victoria Drive, and drive off to the south.

The next morning, the 11 May, the body of Dr Duncan was found on the bed of the river, in 10 feet of water, about 12 feet from the southern bank, at the place where he was thrown in.

At the direction of tile Commissioner of Police, Inspectors … and … made thorough inquiries. They found that two police officers were in the vicinity at times which might have been relevant. These officers were Constables … . and … Each was interrogated by the Inspectors, and a transcript of the questions and answers was received in evidence at this inquest.

It emerged that at a demonstration an the 10 May, Constable … was affected by the smoke of a bomb which struck a man whom he was arresting. During the evening Constables … and … were present at a social function and after leaving were driving along King William Road.

… wanted to vomit, because of the effects of the smoke, and they turned into Victoria Drive to enable him to go to the toilet for that purpose.

Each of the two officers I have mentioned and also Constable … were shown individually to Mr … and to Mr … in the presence of the Inspectors. Mr … said then, and repeated in evidence at the inquest, that he had never seen any of these officers before. Mr … was equally positive that they were not the men whom he had seen run into Kintore Avenue.

At this inquest Constables … and … each declined on legal advice to answer questions on the ground that their answers might tend to incriminate them. They were legally entitled to this privilege.

At this inquest there was no evidence that during the evening of the 10 May [1972] any of the three officers was nearer than about 300 yards from the place where Dr Duncan was thrown into the river, and there is no evidence that any person other than Mr … and Mr … was in the vicinity at the relevant times.

I find that the deceased was George Ian Ogilvie DUNCAN, Aged 41 years, Doctor of Philosophy, and lecturer of Law at the University of Adelaide, late of Lincoln House, 45 Brougham Place, NORTH ADELAIDE.

He died shortly after 23:00hrs on the 10 May 1972 in the river Torrens, Adelaide.

The cause of his death was drowning due to violence on the part of persons of whose identity there is no evidence.

AN INQUISITION taken for our Sovereign Lady the Queen at the Coroner's Court, ADELAIDE, in the State of South Australia, on the Seventh, Sixteenth, Nineteenth, Twentieth, Twenty-first, Twenty-eighth, Twenty-ninth and Thirtieth days of June, 1972, and Fourth and Fifth days of July, 1972, before THOMAS ERSKINE CLELAND, a Justice of the Peace and a Coroner for the said State, concerning the death of GEORGE IAN OGILVIE DUNCAN, aged 41 years, Doctor of Philosophy, and lecturer of Law at the University of Adelaide, late of Lincoln House, 45 Brougham Place, NORTH ADELAIDE.

AND I, the said Justice of the Peace and Coroner, do say that He died shortly after 23:00hrs on the 10 May 1972, in the River Torrens, ADELAIDE.

The cause of his death was drowning due to violence on the part of persons of whose identity there Is no evidence.

In witness where of the said Coroner has hereunto set and subscribed his hand and Seal the Fifth day of July, 1972.

. . . . . JP, Coroner [649]

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[649] The FOI copy received bore the SA Coroner's, TE Cleland, signature.

2:–1.3. – Wreath Casting, 11 May 1974 [650]

Torrens Death Remembered

The Gay Liberation Movement will cast a wreath into Adelaide's River Torrents today to commemorate the death two years ago of Dr George Duncan who was thrown into the river on May 10, 1972, and drowned.

During an inquiry into Dr Duncan's death three SA vice squad detectives were suspended for refusing to answer questions and subsequently resigned.

2:–1.4. – Who Killed Duncan, 17 May 1974 [651]

Gay Anger Down by the Torrents

by an Adelaide correspondent

'WHO killed Duncan? YOU killed Duncan!' and 100 Gay Liberationists pointed to men in the crowd as they marched under banners of 'Homosexual Liberation' and 'Gay Pride' on their way to the Torrens, where they commemorated the drowning two years earlier of Dr George Duncan, lecturer in law at Adelaide university, and homosexual.

As they indicated in speeches by the Torrens, prior to the casting of a wreath and flowers into the muddy water where Duncan himself had also been tossed, Gay Liberationists are increasingly dissatisfied with the lack of change in community attitudes to homosexuality and to homosexual women and men.

While the subsequent police investigation of Duncan's death recommended no prosecution, investigating police were confident that the evidence presented to the attorney-general in the Duncan Report was sufficient for prosecution of at least one ex-vice squad suspect.

Just as the government has taken no action on the report, very little else has changed for the better for homosexual people. Of the 63 reported muggins in the city this year's majority have been of men at the Torrens and South Parklands beats. Since the vice squad no longer spends its time doing the beats looking for pick-ups, homosexual men meeting in the only place they can have been fair game for poofter bashers and thieves.

Predictable demands for moderate change have been ignored or quashed. Sexual law reforms were opposed in the legislative council by fundamentalists; moves to alter the emphasis of sex-education taught in schools were impeded when the Moral Action Group was successful in halting a survey by the education department of the sexual knowledge of school children, and attempts by Gay Liberationists themselves to talk to senior secondary students were thwarted when the *Teachers Journal* refused to take their polite advertisement.

What should now be worrying is not the demands of homosexuals – which must become more radical – but the reactions of straight males. Regular meeting places of gay women and men (particularly the Buckingham Arms hotel) are attracting more and more voyeuristic straights inclined to vocally complain to the management over signs of homosexual affection (especially among women) and to lash out when they themselves feel threatened (Kempf's test for latency).

The hotel management is scared that open gayness is provoking so much continuing straight violence that police will take action to restrict or close their operations altogether – disaster for a pub that does very nicely indeed out of a large gay and trendy clientele.

The demands of homosexuals now will most likely take an effeminist course, with a call for society to radically reassess ideas of masculinity, and to ask why indeed masculinity should exist at all.

Society's obsession with poofters and the subjection of women is coupled with the need to violently assert the power of masculinity over all challengers – very evident that night two years ago when vice squad members of the SA police did their bit to put a poofter in his place.

2:–1.5. – W Voyzey, A/Director, SA Premier's Department Letter to CAMP NSW, 23 May 1974

The Acting Premier has asked me to acknowledge your letter of the 10 May 1974, concerning the evidence obtained in regard to the drowning of Dr George Duncan in the River Torrens, Adelaide.

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[650] n.a. 'Torrens Death Remembered', *The Australian*, 11 May 1974, p. 3.

[651] n.a. 'Gay Anger Down by the Torrens', *Nation Review*, 17 – 23 May 1974, p. 987.

Your letter has been referred to the Chief Secretary for consideration.

2:–1.6. – Telegrams to SA Chief Secretary, 3 and 24 June 1974

TO: AF Kneebone, Chief Secretary, Adelaide, SA

TEXT: Premier's Department reference M1107/74 anxiously awaiting your reply re Duncan.

FROM: Peter de Waal, Box 6 Balmain 2041.

Figure 19: Peter de Waal Telegram to SA Chief Secretary

TO: AF Kneebone, Chief Secretary, Adelaide, SA

TEXT: Premier's Department reference M1107/74 prompt reply requested re Duncan.

FROM: Michael Clohesy Box 6, Balmain 2041.

Figure 20: Michael Clohesy Telegram to SA Chief Secretary

TO: AF Kneebone, Chief Secretary, Adelaide, SA

TEXT: Letter sent 10 May to Premier concerning report of George Duncan murder. Reply 23 May from Premier's Department reference M1107/74 indicated that the matter had been referred to you. 10 days later there has been no acknowledgement. The murder of a homosexual has been lightly dismissed for too long. We request immediate consideration and acknowledgement of the points in our letter. Homosexuals must be recognised. Justice done.

FROM: Executive CAMP NSW Branch.

Figure 21: CAMP NSW Executive Telegram to SA Chief Secretary

TO: AF Kneebone, Chief Secretary, Adelaide, South Australia

TEXT: Executive CAMP NSW Branch still awaiting acknowledgement and reply concerning Duncan inquiry. Please give this prompt proper attention.

FROM: Executive CAMP NSW Branch.

Figure 22: CAMP NSW Executive Telegram to SA Chief Secretary

2:–1.7. – AF Kneebone, SA Chief Secretary Letter to Peter de Waal, 3 June 1974

I refer to your letter dated 10 May 1974 addressed to the Hon Don Dunstan as Premier of SA. This letter was referred to my department for attention.

The investigation into the death of Dr Duncan did not produce evidence sufficient to put anybody on trial for any offence and contains material which is damaging to the reputations of persons whose conduct is discussed in the report.

It follows that this case is not necessarily closed because if evidence were forthcoming at any time in the future the case would proceed.

CHAPTER THREE ≈ POLITICAL ARENA – WESTERN AUSTRALIAN GOVERNMENT

3:–1. – Homosexuality Commission

On 29 November 1973 a Bill was introduced into the WA Legislative Assembly to amend those ss. of the Criminal Code relating to homosexual acts. The Bill was passed by the Assembly and sent to the Legislative Council on 5 December. On 15 December, R J L Williams [652] moved in the Council:

> That the Criminal Code Amendment Bill be referred to a Select Committee.

The motion was agreed to. The Committee was appointed as a Royal Commission on 16 January 1974 [653] with wider terms of reference. Following is a review of the report handed down on 18 September 1974 [654] [655].

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[652] The Hon Richard John Lloyd Williams, LP MLC for the WA Metropolitan Province.

[653] Membership of the WA Royal Commission consisted of: The Hon Richard John Lloyd Williams LP MLC for the WA seat of Metropolitan; The Hon Norman Eric Baxter, CP MLC for the WA seat of Central Province; The Hon Victor Jasper Ferry, LP MLC for the WA seat of South West Province; Ian David Thompson, LP MLA for the WA seat of Kalamunda; Malcolm John Bryce, ALP MLA for the WA seat of Ascot; The Hon Colin John Jamieson, ALP MLA for the WA seat of Welshpool.

[654] *Honorary Royal Commission Appointed to Inquire Into and Report Upon Matters Relating to Homosexuality*, Report, WA Legislative Assembly, PP no. 317, 1974 and Legislative Council PP, no. 274, 1974.

[655] On 4 October 1997 the author wrote to the WA Freedom of Information Commissioner enquiring about the availability, cost and how an FOI application could be lodged for a copy of the Royal Commission's transcript of evidence. The WA FOI Commissioner's office informed on 6 October 1997 that: 'It is most likely Royal Commission records are held by the Ministry of the Premier and Cabinet and therefore your application should be lodged with that agency …' A few days later Sharon Aisbett, FOI Coordinator Ministry of the Premier and Cabinet was contacted to obtain further information regarding the transcript. On 13 October 1997 Sharon Aisbett informed that: 'The Ministry is searching its records for the documents you have requested.' On 21 November 1997, after a reminder note from the author, Sharon Aisbett wrote: '… I am waiting information from the Bills and Papers Office, Parliament House, as to whether the transcripts themselves may have been tabled in Parliament.' A further letter, dated 5 December 1997 from Sharon Aisbett, confirmed: '… that the transcripts were definitely not tabled' and therefore were not publicly available outside of the FOI Act. Furthermore, the request as it presently stood would require an unreasonable and substantial diversion of this agency's resources because all references to third parties would have to be removed. The estimated cost at that stage was $795.00 allowing 30 minutes consultation with each of the 53 witnesses making it approximately 26.5 hours. Finally, it was states that the mentioned cost did 'not include close scrutiny of the documents for consultation with other third parties, editing and photocopying of the documents.' Eventually the FOI application was lodged on 12 December 1997 with the standard $30.00 fee. 'The Ministry has approached the Office of the Information Commissioner for a preliminary opinion about the likelihood of a waiver of the requirement to consult being granted' stated Sharon Aisbett on 9 January 1998. It was also added that '… it is unlikely that waiver would be granted without prior consultation with the third parties …' In the same letter two options were proposed to deal with the application: '… for third party information to be excluded from the ambit of the application by agreement.' Or 'alternatively, the Ministry would propose to exempt the third party information, releasing all remaining information …' The only difference between the two approaches is that '… the exemption approach offers … a right to have the agency's decision to delete the information reviewed.' The cost of dealing with the application were now estimated to be between $60.00–$150.00. The author informed the Ministry's FOI Coordinator, Sharon Aisbett, on 28 January 1998 that the application should proceed using the second option. Mr G Pike, Assistant Manager, Formalities, Executive Government Services of the Ministry, who was dealing with the FOI application, informed on 17 March 1998 that he had divided the transcript of evidence into three groups. The division was as follows: Group 1 were those witnesses who gave evidence in camera with no members of the press or public present; Group 2 were those who gave evidence while members of the press were in attendance, but requested that their names and addresses be suppressed from publication; Finally, Group 3 others who gave their evidence at hearings attended by the press and did not object to the disclosure of their names and addresses. The following were Mr Pike's decisions, conveyed in the 17 March 1998 letter, in regard to the three groups of witnesses: Group 1 'Although the Ministry has been unable to locate any formal direction by the [Royal] Commission that the transcripts should not be disclosed I find that, on the basis of the Ministry's consultations with the surviving Commissioners [and its former Secretary], and the fact that the transcripts were not tabled, the Commissioners did so direct or order. Accordingly, each portion of the transcript relating to witnesses who gave their evidence *in camera* is exempt in its entirety under clause 12(b), Schedule 1. Mr Pike's findings for Group 2 were: 'The operative consideration for clause 12(b) is whether the [Royal] Commission ordered or directed that the transcript should not be disclosed. … I find that the [Royal] Commission did so order or direct and accordingly find all portions of the transcript relating to this group of witnesses are exempt under clause 12(b), Schedule 1. Finally, the

(continued...)

The Report of the Royal Commission investigating homosexuality in WA is most remarkable for the things it fails to do than for what it achieves, but it does make some intermittent enlightened comments.

Its first section, which investigates the law, makes the recommendation that 'acts of homosexuality between two consenting adults in private should not constitute an offence'. [656] Applause for this step needs to be tempered by realising that this is an elementary step agreed upon by all but the most condemnatory of groups (as public opinion polls in Australia consistently show).

Attitudes towards homosexuals in WA come under scrutiny in the second section of the report. [657] To substantiate its findings here the Commission quotes four non-homosexual groups, namely, christian religions, the law society, psychiatrists and a clergyman who runs a counselling service. Consistent with its general approach in the report, it quotes neither the homosexual movement nor the individual homosexuals [658] who presented evidence: the people surely most capable of commenting on social attitudes.

The submission from the christian religions maintained that homosexuality as such is not a crime, but it is a sin. [659] In its submission, the Law Society of WA reported the decision made by the Society in October 1972 to support reform of the law '… to remove therefrom as an offence homosexuality between consenting male adults in private.' The submission states that the members of the Society who put the motion forward were at pains to point out that in approving such a motion, the Society was not by implication approving of homosexuality itself. [660] The psychological and psychiatric submissions (psychiatrist Csillag [661] is quoted at length) were positive in tone, but did not go further than necessary. Csillag merely concluded that homosexuality cannot be considered a disease, but

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[655](...continued)
Commission appears to have taken the view that the evidence they received was so sensitive and personal in character as to warrant the transcripts' non-disclosure, *irrespective* of whether any individual witnesses elected to give their testimony in the presence of the media or not. Accordingly, I have decided that the greater public interest lies in the exemption of the personal information contained in this body of evidence contained in the transcript, under clause 3(1), Schedule 1.' For Group 3 it was reiterated that the [Royal] Commission had ordered or directed for the transcript not to be disclosed and therefore '… claim exemption for all portions of the transcripts relating to this group under clause 12(b), Schedule 1.' For this group Mr Pike finally '… concluded that the public interest in the protection of the personal privacy of these witnesses and those parties to whom they refer outweighs the public interest in disclosure. These documents are also exempt under clause 3(1), Schedule 1.' On 27 March 1998 an internal review application was lodged regarding the decisions made by Mr Pike regarding the three groups of witnesses. Ken Jones, Consultant, Human Resource Services of the Ministry, who was dealing with the internal review, informed on 8 September 1998 that witnesses in Group 1 could not be consulted for their consent to release because 'there are no addresses or names given in the transcript …' Therefore 'these documents are exempt under clause 8(1) and clause 12(b), Schedule 1 to the FOI Act.' The Ministry's consultation with as many Group 2 and 3 witnesses resulted in the release of some hundred pages of transcript covering 12 witnesses. The application for an external review with the Office of the WA Information Commissioner was lodged on 5 October 1998. The WA Information Commissioner, Ms B Keighley-Gerardy, on 17 March 1999 informed the Ministry after lengthy reasoning that: 'In summary, my preliminary view in respect of this complaint is that those parts of the transcript remaining in dispute between the parties may not be exempt from disclosure under clauses 3(1), 8(1) or 12(b) of Schedule 1 to the FOI Act.' This preliminary Commissioner's view resulted in the Ministry releasing on 19 May 1999 all the remaining documents of Groups 2 and 3 with their personal details edited out. The WA Information Commissioner issued its final decision on 20 July 1999 arguing along the same lines as in its preliminary view that all the remaining documents should be released by the Ministry. The latter responded on 20 August 1999 by forwarding 'a copy of the Transcript of Evidence [for Group 1], as edited in accordance with the Information Commissioner's decision …' to the author. Finally, after almost two years all the edited transcript of oral evidence to the Royal Commission, by witnesses, had been received.

[656] Report, ibid p. 26.

[657] ibid. pp. 29-36.

[658] From the list of witnesses contained in the Commission's Report it would appear that the following are homosexual witnesses who provided input into the Commission: Lindberg, Brian Charles, Teacher, WA Education Department; Myers, David Wilfred, CAMP Organiser; Watson, R, CAMP Organiser. Written submissions received by the Commission from homosexuals mentioned in its Report are as follows: P Bonsall-Boone, P de Waal, M Clohesey; Brian Lindberg.

[659] Report, ibid p. 29.

[660] ibid, pp. 30-2.

[661] Csillag, Erwin Robert, Senior Lecturer in Psychiatry, University of WA.

did attribute to psychiatric agencies some role in changing social attitudes. [662]

The Commission describes the submission of the fourth person, the Reverend Chad Varah ('OBE, MA') of the Samaritan Organisation, as of 'immense value' since he and the organisation have 'had considerable dealings with homosexual people'. [663] Such a comment makes it seem even more strange that homosexuals are not quoted. Varah claims that the change in the law in the United Kingdom has led to a gradual improvement in the public attitude towards homosexuals but that homosexuals still suffer from society's non-acceptance. [664]

The Commission concludes from this section that even with the possibility of reformation of the law public attitudes will not change overnight. [665] This, of course, is true and will continue to be true until the attitude-forming institutions of this society (eg churches, the legal profession, medical people as here quoted) stop their oppression of homosexuals. The churches purport to be very liberal by accepting that homosexuality is not a crime – but they continue to repress christian homosexuals by insisting that practice of their life-style is a sin; the legal profession purport to be very liberal by recommending law reform but ensures that oppression will continue by qualifying this stand so much so as not to taint the profession.

The Royal Commission has the general feeling that there is more tolerance now than in the past. They attribute this situation almost entirely to the fact that the matter has been debated in some depth in the media. [666] Perhaps 'the matter has been debated in some depth in the media', but we would be interested to learn where … certainly not in Australia.

The section of the report on victimisation covers this in the field of discrimination, physical assault and blackmail. [667] It displays a good understanding of these phenomena as they affect homosexuals. However, it is short on practical ways of preventing these from happening. For instance, it makes no mention of an anti-discrimination bill, no recommendation that the Australian Human Rights Bill be amended to prevent discrimination against homosexuals; it fails to grasp that homosexuals can only be blackmailed so long as they are forced or believe they are forced to hide their sexuality; it therefore failed to recommend a program designed to encourage homosexuals to reveal their sexuality.

In the section on the term of reference under which they had to make recommendations to prevent proliferation of homosexuality, the Commission successfully lays to rest the myth that homosexual liberation will lead to an increase in the number of homosexuals.

> The general fears of the community that proliferation will occur is usually due to two definitions – that homosexuals are either (a) a mincing transvestite or (b) a dirty old man. [668]

It strongly makes clear that the first category represents but a small percentage of the population and that there are more heterosexuals who commit offences against minors than homosexuals.

The Report concludes that there are sufficient medical facilities for homosexuals but that the medical profession needs to be more educated about homosexuality, as do people in general. It declares:

> The majority of homosexual problems arise from the fact that social pressures are forced on them by a predominantly heterosexual community. Greater tolerance by the heterosexual community at large could well see an alleviation of the homosexual's main adjustment problems. [669]

There is some merit in this statement, but here, as in the report in general, the Commission fails to come to grips with the basic cause(s) of the oppression of homosexuals (and therefore of their 'problems' as homosexuals). That is, it does not recognise that this society only accepts those who

[662] Report, ibid, pp. 32-4.
[663] Report, ibid, p. 34.
[664] ibid, p. 35.
[665] ibid.
[666] ibid, p. 36.
[667] ibid, pp. 36-40.
[668] ibid, p. 41.
[669] ibid, p. 42.

are prepared to adopt the nuclear family pattern and continue the ethic of male-dominance. The report would therefore perhaps have been richer had the Commission discussed the questions it lists as 'observations' and which it deems outside its terms of reference. [670]

There is practically no mention in the report of the specific oppression which female homosexuals suffer.

Having criticised the report thus, we should mention that for a government report it didn't do too badly. The only worthwhile 'report on homosexuality' can be one coming from the homosexual movement. [671]

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[670] ibid, p. 44.

[671] For complete details of the WA Royal Commission including the author's FOI applications and correspondence, see: Peter de Waal, *A Reconstruction of Reality: the 1974 Western Australian Royal Commission on Homosexuality*, 2004.

3:–1.1. – They Love Us – in A Funny Sort of Way, 24 October 1974 [672]

Report Seeks Reform of Homosexual Law

The report of the royal commission on homosexuality in WA released yesterday, has recommended that homosexual acts in private between consenting adults should not be a criminal offence.

It suggested that s. 184 of the criminal code be re-written to delete reference to homosexual acts in private.

But anyone committing such offences in public should be liable to imprisonment for a maximum period of three years. Reference to hard labor and whipping should be deleted from the s.

It said it would like to see the practice outlined by the British *Sexual Offences Act 1967* – that no homosexual offence could be proceeded with unless consent was given by the Minister of Justice or Attorney-General of the day – be followed in WA.

The commission said that psychiatric and counselling facilities for homosexuals in WA appeared to be adequate at present.

Despite conflicting evidence the commission believed that services and counsellors did exist, but their services were generally not well known.

The main reason for this could be that homosexuals were reluctant to discuss the matter with the relevant people or services because of the stigma society attached to homosexuality.

The commission said most homosexual problems arose from social pressures forced on homosexuals by a predominantly heterosexual community.

'Greater tolerance by the heterosexual community at large could well see an alleviation of the homosexual's main adjustment problem,' it said.

It suggested that non-professional but skilled social workers could be recruited to help in counselling.

The Premier, Sir Charles Court, said later that the report had been referred to the Ministers for Health, [673] Police [674] and Justice [675] so they could give their opinions on it.

He expected to have the have the ministers' reports within a few weeks. The reports, and any reaction from the public, would then be considered by State Cabinet.

The Cabinet would decide what action to take on the recommendations.

3:–1.1.1. – Norman E Baxter, WA Minister for Health Report to WA Minister for Justice, 8 January 1975

With reference to your memo of 20 December [1974] with a copy of the report of the Crown Prosecutor on the legal implications arising from the report of the Royal Commission on Homosexuality, I now advise as follows.

I have considered the report and would agree with the views of the Crown Prosecutor that the penalty for Sodomy under s. 181 be reduced to 10 years from 14 years, but believe the penalty of 14 years should be retained for Bestiality.

I would also concur with the recommendation that the phrase 'against the order of nature' be dropped from the ss. of the Code, and the offences be defined more particularly.

The Commission's principal recommendation for the decriminalisation of homosexual offences between

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[672] n.a. 'Report Seeks Reform of Homosexual Law', *The Australian*, Thursday 24 October 1974, p. 3.

[673] See 3:–1.1.1. page 407, 'Norman E Baxter, WA Minister for Health Report to WA Minister for Justice'. 'It appears that the reports of the Ministers for Health, Police and Justice in response to the report of the honorary Royal Commission Inquiry in 1975 into matters relating to homosexuality, were coordinated from the office of the Minister for Justice.' Source: Health Department of WA FOI decision (980004t1) dated 11 February 1998.

[674] On 29 January 1998 the author lodged a FOI request (98/402) with the WA Police for a copy of the police minister's response to the Honorary Royal Commission. On 24 February 1998 the applicant was informed that: 'Ms Haskovic of this office, [WA Police] has been advised by Mr Kevin Freeman from the Chief Office Records Section, that the file dated 1974 which related to the matters of an Honorary Royal Commission into Homosexuality, has been destroyed in accordance with the Retention and Disposal Schedule approved under s. 30 of the *Library Board of WA Act*.' An internal review of the decision revealed the same. The external review by the Office of the [WA] Information Commissioner stated on 21 April 1998 that: 'The class of files which, according to the acting manager Chief Office Records, would likely to have contained the requested document was listed for destruction after 5 years.'

[675] See: 3:–1.1.2. page 408, 'Neil McNeil, WA Minister for Justice Submission to WA Cabinet'.

consenting adults in private will not, in my opinion, change the existing situation in that I do not believe the Police take any action unless there are other factors involved, ie soliciting or acts in a public place, etc.

3:–1.1.2. – Neil McNeill, WA Minister for Justice Submission to WA Cabinet, 20 February 1975

Minister for Justice Submits to: CLD 313/74 Hon Premier (In Cabinet)

Royal Commission on Homosexuality

1. The Ministers for Police, Health and Justice were requested by the Hon Premier on the 24 October 1973 to study the Royal Commission Report on Homosexuality. The Ministers were further requested to make their recommendations to Cabinet as to what action should be taken by the Government arising from the Commission's recommendations.
2. The Ministers have taken into consideration searching reports procured for the purpose, and submitted by the Assistant Commissioner of Police, John Parker, and the Crown Prosecutor Mr M Murray, copies of which are attached for the information of Cabinet.
3. The Ministers recommend that Cabinet accepts the Royal Commission's recommendations, subject to the following–

That ss. 7, 181, 182, 184, 188, 189 and 314 of the Criminal Code be amended so as to encompass the observations made by Crown Prosecutor Murray, in a minute addressed to the Under Secretary for Law on 20 November 1974.

4. Briefly, the effect of the proposed amendments would be that acts of Sodomy and gross indecency be not an offence if committed by adults in private, but if not so committed, the punishment of 14 years imprisonment be reduced to 10 years and whipping generally de discontinued. The punishment for Beastiality [sic–bestiality] should not be reduced, and in all acts there be no differentiation in the Law as between male and female.
5. For the offence of permitting sodomy (s. 181(3) when not in private, and the offence of counselling or procuring the commission of Sodomy or gross indecency even between consenting adults in private, (not given attention to by the Royal Commission) there should be no reduction in the existing punishment.
6. To single out only those offences which relate to homosexuality as requiring prosecution consent of the Minister seems an unwarranted exception in the matter of law enforcement.
7. The foregoing recommendations are submitted for the consideration of Cabinet.

[A vertically typed note on the FOI copy states]
'Hon Minister for Justice
Cabinet decides to take no action to introduce legislation
17/3/75 Premier'

[The following appeared on the FOI copy]
'Signature Deleted'
[which was followed by]
'Minister for Justice'
[Neil McNeill [676]] [677]

[Next Page]

Cabinet Decision

Cabinet: ~~approved~~/decides: [hand written] to take no action to introduce legislation.

3:–1.1.3. – WA Cabinet Document, 17 March 1975

Figure 23: WA Cabinet Document Relating the Royal Commission on Homosexuality, 17 March 1975

Cabinet Record	252.
Present:–	Date 17 March 1975
The Hons.	The Hons. . . . .

[676] Mandy, John, and Black, David, (eds), *The Western Australian Parliamentary Handbook*, Perth, 1990, p. 272. The Hon Neil McNeill, LP MLC for the WA seat of Lower West Province, Minister for Justice and Leader of the Government.

[677] It seems unnecessarily over-protective by the WA Ministry of the Premier and Cabinet FOI official to withhold the signature of the relevant minister. Any public document related to the WA Parliament (see: footnote 676) reveals the identity of this minister instantly.

	. . . . .	. . . . .
	. . . . .	. . . . .
	. . . . .	. . . . .

File no.	Subject and Decision	To whom sent
[Blank space here]		
CL[D] 313/74	Royal Commission Into Homosexuality: In a minute dated 20 February 1975, the Minister for Justice reported that the Minister for Police, Health and Justice had considered the recommendations of the Royal Commission. The Ministers recommended that Cabinet accept the Royal Commission's recommendations, subject to the following: That ss. 7, 181, 182, 184, 188, 189 and 314 of the Criminal Code be amended so as to encompass the observations made by Crown Prosecutor Murray, in a minute addressed to the Under Secretary for Law on 20 November 1974, (C.L.D. 313/74) Cabinet: decides to take no action to introduce legislation.	Hon Min Justice

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3:–1.2. – Hope in the West, 24 October 1974 [678]

Homosexual Law Move

The report of the Royal Commission on Homosexuality in WA, issued today, has recommended that homosexual acts in private between consenting adults should not be a criminal offence.

However, anyone committing such offences in public would be liable to imprisonment for a maximum of three years. Reference to hard labour and whipping should be deleted from the s.

3:–1.3. – Whipping Deleted, 6 November 1974 [679]

Camp Pleased with Report

After considering more than 60 written submissions and hearing 53 witnesses at 12 public sessions, the Royal Commission into homosexuality has produced modern answers to many age-old questions.

The main question to be answered now is: Will the State Government have the courage of the commission's convictions and act on the main recommendations, that a homosexual act between consenting adults over the age of 18 should not be a criminal offence?

At present the Premier, Sir Charles Court, is not committing himself. He has said only that the commission's report has been referred to the Ministers

[678] n.a. 'Homosexual Law Move', *The Sydney Morning Herald*, Thursday 24 October 1974, p. 8.
[679] Thomas, Athol, 'Camp Pleased With Report', *The Canberra Times*, 6 November 1974, p. 14.

for Health, the Police and Justice for their opinions. Their reports, plus any reaction from the public, will then be considered by Cabinet.

No action will be taken during the current session of Parliament and the Government cannot be blamed for treading warily. Homosexuality has been considered a sin at least since biblical times, although, as the commission pointed out, most Christian religions do not regard it as a crime.

And then Federal Parliament has not given a lead. Dr HP Greenberg a councillor of the Australian and New Zealand College of Psychiatrists – he came to Perth for the college's annual congress – said that last year Federal Parliament had adopted a resolution recommending changes in the ACT law on homosexuality, but that legislation had yet to be drafted.

What happens in WA is now likely to give a lead to Canberra and other States.

Generally, the commission's recommendations can be presumed to reflect public thinking. Certainly it makes clear the law at present is harsh, providing as it does for prison terms of up to 14 years, plus a whipping. It also averts its gaze from lesbianism.

The report, tabled in Parliament last week, suggests that s. 184 of the Criminal Code be rewritten to delete reference to homosexual acts in private.

The suggested amendment to the s. also deletes specific reference to men and provided a less severe penalty for offences under the s.

The s., as amended, would apply to any person who committed in public any act of gross indecency with another person, procured another person to commit an act of gross indecency with them or attempted to procure the commission of any such act by any person with themselves or with another person.

WHIPPING DELETED

Anyone found guilty under this s. would be liable to imprisonment for a maximum of three years. Reference to hard labour and whipping is deleted.

s. 184 now says that a male who commits any act of gross indecency – in public or private – or procures another male to commit any act of gross indecency with him or attempts to procure the commission of any such act by any male with himself or with another male in public or private is liable to imprisonment with hard labour for three years, with or without a whipping.

The commission has also recommended the rewriting of s. 181 of the code to bring it into line with modern trends – notably a reduction in the penalty for offences against the s.

It says that s. 181 should apply to any person who has anal, carnal knowledge without consent or who has carnal knowledge of an animal.

It recommends the deletion of the part of the s. that makes it an offence for a person to allow a man to have carnal knowledge of him , or her, against the order of nature.

ROYAL COMMISSION

The commission says that this part should be struck out because married couples have been known to have anal intercourse.

'Therefore, this s. discriminates between male and female sexual offences', the commission says.

It says that the punishment for offences under s. 181 – imprisonment with hard labour for up to 14 years with or without whipping – appears to be very harsh.

It has previously been framed at a time when few people fully understood the implications of homosexuality.

The report says that though sodomy is still a reprehensible crime to many, people found guilty of a crime under the s. should be liable to imprisonment for a maximum of 10 years.

The commission says that it would like to see a provision of the British *Sexual Offences Act 1967* – that no homosexual prosecution could be proceeded with unless consent was given by the Minister for Justice or Attorney-General of the day – followed in WA.

Other points in the report are:

- Greater tolerance by the heterosexual community at large could well see an alleviation of the homosexual's main adjustment problems.
- There was evidence of discrimination, assault and blackmail against homosexuals, but not one case of blackmail had been brought to the notice of the police.
- Not one homosexual charge had been laid against a female in the past 10 years.

FAVOURABLE REACTIONS

- There was 'abundant and sickening' proof that homosexuals had been assaulted in WA – but it was remarkable that female prostitutes soliciting males were never set upon by groups of outraged females.

Reactions to the report have been generally favourable, suggesting that it does indeed, reflect modern thinking.

Mr Brian Lindberg, president of the Campaign Against Moral Persecution (CAMP) congratulated the commission on what he called its objective,

enlightened approach and the thought put into the findings.

He said, 'It is most pleasing to see that they suggest decriminalisation of homosexual acts in private and the deletion of the term 'acts against the order of nature', whatever that might mean.'

'We also appreciate that they favour the ed-sexing of the laws, recognising that lesbianism exists'.

Mr Lindberg said that CAMP objected to the link in the recommendations on homosexuality and bestiality. These were unrelated and should be treated as such.

CAMP also disliked the recommendation for tolerance. 'We want acceptance, not tolerance', he said. 'Society has to realise that a person can be attracted to someone of the same sex'.

The group disagreed with the setting of 18 as the age of consent for homosexual acts. 'The age of consent for girls is 16, so why not for everyone?' Mr Lindberg asked.

The Leader of the Opposition, Mr John Tonkin, said the recommendations of the commission appeared to be in accord with ALP policy.

The Anglican Dean of Perth, the Very Reverend John Hazelwood, believed the report was to be commended for seeking legality for homosexual acts between adults, while protecting the sanctity of the juvenile.

Father B Hickey, of the Catholic Family Welfare Bureau, said, 'Let's hope the law is changed speedily and the matter dropped'.

PARENTHOOD TRAINING

The Methodist leader, the Reverend David Robinson said he hoped reformed legislation on homosexuals would be accompanied by appropriate parenthood training. 'I think homosexuals are made, not born', he said.

When the time comes for voting in Parliament, Members will no doubt be asked to vote according to their consciences. The commission, from the evidence, has given them a lead – people whatever their sexual make-up, are people.

The report implies that no law can stop a person, male or female, from having homosexual tendencies.

CHAPTER FOUR ≈ POLITICAL ARENA – MINORITY GROUPS

4:–1. – CAMP NSW Executive Resolution

At its meeting on 22 June 1974, the executive of CAMP NSW resolved:

> That close links be established between CAMP and other liberation movements [see page 417].

In accordance with this policy, CAMP NSW arranged a meeting of various minority groups to be held at the Centre [33a Glebe Point Road, Glebe] on 17 August 1974. Representatives of the following groups attended: WEL, Humanist Society, Prisoners Action Group, Manly Community Centre, Ananda Marga, Metropolitan Community Church, Acceptance and CAMP.

The people present explained the aims and methods of their group and the reasons they believed there should be cooperation between minority groups. All present were strongly in favour of developing closer links and a further meeting was decided on. This is yet to be held.

Meanwhile, contact has been maintained with these and similar movements by individuals and by the exchange of publications.

4:–1.1. – CAMP NSW Executive Meeting Minutes, 22 June 1974 [680]
CAMPAIGN AGAINST MORAL PERSECUTION (NSW BRACH)

Minutes of the executive meeting held at 33a Glebe Point Road, Glebe

Meeting opened:	3.25 pm. Mike Clohesy in chair until arrival shortly after beginning of Peter Bonsall-Boone. Noreen Clark minutes secretary.
Present:	Peter Bonsall-Boone (Co-President); Mike Clohesy (Secretary); Vera Bourne (Treasurer); Noreen Clark (NSW Editor) Col Eglington (Phone-A-Friend); Rod Bavaro (Cross+Section).
Apologies:	Ron Austin, Peter Parkes.
Visitors:	David Ritchie, Mick Sullivan, Lee Harris, Peter de Waal.
Minutes:	Read by secretary.
Matters arising from minutes:	1. Room under house. A query was made about the lock which had suddenly appeared on this room. No answer available. 2. Acceptance. Representatives were invited to the meeting. 3. Letter to SA. Peter de Waal has received a reply. Others who originally sent letters or telegrams to press for replies. 4. Advertisements. These were placed in the Daily Telegraph and the Sydney Morning Herald of 8 June [1974]. The rates for the other dailies were too expensive, so letters were sent instead requesting a quote for the proposed advertisements. No replies yet received to these. Four replies were received from the Telegraph ad. 5. Troy Perry. A letter was sent to Perth in accordance with the resolution passed at the last executive meeting. Perth replied asking the executive to reconsider its decision. Extensive discussion was held on this question. It was that the executive abide by its decision of 1 June 1974. (Mike Clohesy/Rod Bavaro) CARRIED
RESOLVED:	That the minutes of 1 June 1974 be accepted as a true and accurate record (Mike Clohesy/Vera Bourne). CARRIED.
RESOLVED:	1. Bill Dalton re CAMP Ink. Bill wishes to sell CAMP Ink along with his usual papers and magazines. Discussion about past issues of CAMP Ink was held. It was decided that a call be made through the newsletter for back copies of those issues missing for archives. It was that Noreen Clark take responsibility for distribution of copies of CAMP Ink through Bill Dalton. (Vera Bourne/Col Eglington) CARRIED.
Correspondence:	2. Questionnaire from Guild Teacher's College concerning the development of homosexual roles in males. The College wishes to conduct the survey through our membership. It was that representatives of the Guild Teacher's College be invited to the next executive meeting to discuss the content of the questionnaire and that Peter Bonsall-Boone outline some of the unacceptable points in it when extending the
RESOLVED:	invitation. (Noreen Clark/Col Eglington) CARRIED
RESOLVED:	3. Electricity Rate. A memorandum from the Sydney County Council was left at the clubrooms advising that our electricity was henceforth to be supplied at General Supply Rate. It was that a letter be sent to the Sydney County Council asking why the change of rate, on what basis the change was made and how the inspection was carried out. (Mike Clohesy/Col Eglington) CARRIED
RESOLVED:	4. Finger Printers. A note was left at the clubrooms stating that an expert had been concerning the break-in.
	5. Public Service Inquiry. Letters have been sent to the Department of Prime Minister and Cabinet and the Special Minister of State asking for the terms of reference of this inquiry, with a view of CAMP's making a submission to it re the

[680] CAMP NSW Executive meeting minutes, 22 June 1974, p. 2.

	welfare of homosexuals in the Public Service.
CAMP Ink:	Advertising. It was that CAMP Ink accept all advertising. (Rod Bavaro/Noreen
RESOLVED:	Clark). CARRIED, Mike Clohesy abstaining. Discussion about the rates of advertising which were decided as follows: Small ads: Non-profit: 25c per 5 words with a minimum of 10 words; Profit: 50c per 5 words with a minimum of 10 words. Advertisers will pay 50c for the use of a box number. Those replying to a box number will pay 3 7c stamps. Large ads: ¼ page: $5; ½: $10; full page: $20. Vera is contacting interstate and overseas organisations with a view to soliciting articles and subscriptions.
General Business: . . .	1. Feminist Bookshop, Eastwood. This shop wishes to sell its literature in the coffee shop. It was that the Feminist Bookshop be allowed to sell approved books for a trial
RESOLVED:	period at 10% commission. (Vera Bourne/Rod Bavaro) CARRIED. 2. Forum. Question concerning subscription and change of address. To be investigated. 3. Defence Forces. It was that CAMP investigate the Defence Disciplinary Code
RESOLVED:	(Mike Clohesy/Col Eglington) CARRIED. 4. Abortion Clinic. It was that, at the instigation of the executive, a collection be made in support of the aims and ideals of the recently established Abortion Clinic in Parramatta Road, Camperdown from the members of CAMP. (Col Eglington/Noreen
RESOLVED:	Clark) CARRIED.
	5. Other liberation movements. Brief discussion was held concerning the links between homosexual liberation and other liberation movements. It was that close links be established between CAMP and other liberation movements. (Mike Clohesy/Col Eglington). CARRIED. Further discussion deferred until the next meeting.
RESOLVED:	Saturday 29 June 1974, 33a Glebe Point Road, Glebe, 2pm. 5.52pm
Next meeting:	Confirmed: . . . . .
Meeting closed:	Dated: . . . . .

CHAPTER FIVE ≈ POLITICAL ARENA – MISCELLANEOUS

5:–1. – Penny Short

At the end of 1973, Penny Short, a trainee teacher at Macquarie University, published a lesbian poem [see page 422] in the student newspaper *Arena*, and was seen kissing her girlfriend in public. As a result, she was declared medically unfit by the [NSW] Education Department and her Teachers' Scholarship was withdrawn, leaving her with the prospect of no career and no means of support.

On 29 March 1974, a demonstration [see pages 423, 426], supported by CAMP, was held outside the offices of the state department of education to protest at this discrimination. As a result of this, discussions were begun with the education people, but proved to be unsuccessful.

5:–1.1. – Lesbian Poem [681]

Warm bodies entwined in love
soft kisses are not enough
stroking your breasts
my knee slides up between your thighs
feels soft, slippery, throbbing cunt
Tongue seeks tongue
breathing heavily and fast as
Desire ripples and trembles
then flows freely
as my finger thrusts inside you
warm … soft … wet feeling
Yours moans excite me to a frenzy
my body writhes
spirit soars with love
At last your fingers
ease the longing into pleasure
with grows
swells unbearably and bursts
in ecstacy [sic–ecstasy], in orgasm … colour … throb
I suck your clitoris until
your moans end in a gasp and
body spasm as you come
you stroke me tenderly
I'm floating as we lie fulfilled
feeling one with you
No time for remembering
that our love is thought wrong
– unnatural and perverted, they say!
You emerge from your floating consciousness
and look blue eyed with love
and my whole being knows it's not wrong.

Penny Short

5:–1.2. – Scholarship Loss Over Lesbian Poem, 23 March 1974 [682]

Student Sacked Over Lesbian Poem

Twenty three year old Penny Short has lost her teacher training scholarship because she refused to hide the fact that she is a lesbian.

Penny, the first girl to lose a scholarship on the grounds of homosexuality, said last night the [NSW] Education Department cited 'emotional and personality problems' as the reason.

A department psychiatrist contacted Penny after she published a poem on homosexual love in *Arena*, the magazine at Macquarie University where she studied last year.

'I told this psychiatrist I was a lesbian when I went for my first interview early last year,' Penny said yesterday.

'She told me I was suitable to be a teacher, but to keep my homosexuality a secret because the department would not like it.'

Penny studied first year arts and passed all her subjects.

'I published the poem because I did not think anyone would see it outside the university,' she said.

FULL RELATIONSHIP

'I wrote it because I think people should know the truth – that homosexuals can have loving and full relationships.'

The department contacted her in November [1973] and confronted her with a photostat of the poem, and suggestions that she had been seen carrying on with another woman at the university.

'The psychiatrist told me the reason I was losing my scholarship was because of the poem, but when I contacted Dr Orr, the Medical Director for the department, he said I was medically unfit,' Penny said.

'I have independent psychiatric reports that testify to my ability as a potential teacher.'

Penny, who now lives at Pennant Hills, worked in several jobs before she decided to become a teacher.

Penny withheld her protest until yesterday so she could rally support at Macquarie University.

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[681] Short, Penny, *Arena*, 11 September 1973, vol. 6, no 10. n.p. The above cartoon is part of the original poem in the *Arena* article.

[682] Corrigan, Sue, 'Student Sacked Over Lesbian Poem', *Daily Telegraph*, Saturday 23 March 1974, p. 3. This article takes up about ¾ of the page and includes a very large photo of Penny Short.

The students will stage a demonstration against the | department's decision at the university on Wednesday.

5:–1.3. – Protest Meeting Flyer, 27 March 1974

CAMP (NSW Branch) Special Bulletin 27.3.74

Last year, Penny Short, a trainee teacher at Macquarie University, published a lesbian poem in the student magazine *Arena*, and was seen kissing her girl friend in public. As a result, she was declared medically unfit by the [NSW] Education Department, and her Teachers' Scholarship was withdrawn, leaving her with the prospect of no career and no means of support.

This blatant discrimination against homosexuals must not be allowed to continue. The Education Department must be told that this outright oppression of homosexuals will not be tolerated.

Consequently, next Friday (29 March) there is to be a protest meeting outside the Department of Education in Bridge Street, beginning at 3pm. We would like as many of you as possible to turn up and demonstrate our solidarity with out sister homosexuals.

Only by demonstrating mass support will the Education Department take any notice of what we are saying, so please make a special effort to be there.

P R O T E S T
DEPARTMENT OF EDUCATION
(Bridge Street)
FRIDAY 29 MARCH
3 p.m.
(Authorised by Peter Bonsall-Boone, male Co-President CAMP NSW)

5:–1.4. – Grubby Little Education Department Minion, 27 March 1974 [683]

Education and Oppression

Last September a group of women students got together and produced a special women's section in an edition of *Arena*. For most of the women it was the first time they had ever launched into print. It's hard for men to understand just what a terrific effort it is for women in this society to give public expression to the oppression they find around them every day (and it's virtually impossible for a man to attempt to discuss the question without appearing – despite the best intentions – rather patronising and hypocritical like Thomas Jefferson, the slave owner who had the nerve to draft a constitution that talked about equality. But nevertheless, one must try; there is much to do, even for a man). It is even difficult – as Toni Robertson's essay in this issue shows – for women to overcome the barriers and become proficient in articulating on safe subjects, let alone discussing things that directly affect them.

Approximately half of the written and photographic material of this issue of *Arena* was produced by women, yet their [sic] there is no doubt of the overwhelming proportion of **effort** expended by women – over that expended by the men – of those who produced this issue.

The first thing a woman realises when she speaks out about her oppression is that she gets more oppressed once she speaks out. It would have to be that way, wouldn't it, otherwise the oppressors wouldn't be oppressing, so the woman wouldn't have anything to complain about: one way to oppress a woman is to scoff at her when she complains about her oppression. (If you don't believe this, just test your reaction when a woman complains about the sexist nature of the Evangelical Union notice in this issue, or the stipulation by the Registrar of this university that a nomination for election to University Council requires 'the written consent of the candidate to **his** nomination').

One of the women who spoke out in the women's section of *Arena* was Penny Short. And for Penny Short the effort was even greater and more dangerous than for most of the other women who wrote in that section. Because Penny Short is a homosexual. Penny Short is a homosexual woman. Penny Short **was** a homosexual woman student teacher.

Until they found out. Now she's just a homosexual woman student because some grubby little Education Department minion has – with, no doubt, the approval of the highest officers of the Department – decreed that

[683] n.a. 'Education and Oppression', *Arena*, vol. 7, no. 3, Wednesday 27 March 1974, p. 2. Original emphasis.

homosexuals are not fit persons to teach a class.

According to a recent survey, fifty one percent of Australians favour the legislation of 'homosexual acts between consenting adults'. The survey further found that this proposition was supported by an even greater proportion of people in the lower age groups. [684]

It could be assumed, therefore, that the opinions of the Education Department bureaucrats are not shared by the students they wish to protect – particularly with respect to attitudes towards homosexuality. It's clear then, that the Education Department's attitude towards the employment of homosexuals is out of touch with the attitudes of students whom the Department is supposed to serve.

But this is obviously the wrong way to look at the situation. Firstly, we must dispense with the illusion that there is any harmony of interests between the Department and the students. In fact the role of educational institutions in this society has nothing to do with the full and free development of the personality and talent of the individual – education at present is the direct anthesis of this.

The education system of this society serves the dominant capitalist class, and we hardly expect the people who run education in this society to do anything but perpetuate and defend the ideas of this class. In the context of the continuing radicalisation of the world's youth, the education system finds itself obliged to make every effort to counteract the dissemination of any ideas and lifestyles that threaten the hegemony of capitalist rule. Indeed the education system is in the vanguard of the movement against human liberation.

Faced with the realisation that its control over ideas is slipping, and that more and more people are beginning to see through the democratic sham, and will no longer accept the old methods of outright and undisguised oppression – as with previous exclusion of homosexuals from public service, etc – the education system has to tread more carefully and devise more subtle tactics in defence of its social function.

The case of Penny Short is an eloquent example of this new style of operation. *Arena* has no doubt the Penny Short has been denied a teacher's scholarship because she is a homosexual. But – in the present context – the NSW Department of Education is unable to justify its action on these grounds. They may even point to the fact that there are many homosexuals in the teaching profession and presently in possession of teacher's scholarships. But there is one essential point that distinguishes the attitude of the Education Department these homosexuals are permitted to remain in the employ of the Department so long as they keep quiet about their sexual preference.

How tolerant is our education bureaucracy! How nice of these miserable gnomes to allow homosexuals to earn a decent living! But how clever of them to do it this way! This way they don't have to appear as the oppressor themselves – they have forced the quiet homosexuals to oppress their comrades who are no longer prepared to keep quiet!

The message is there for all to see: one person – Penny Short – has been made an example of so that all other homosexual teachers and students will know that they're alright as long as they shut up and behave like normal people. No matter what bullshit the bureaucrats will now attempt to foist upon us – as to the reasons for Short's exclusion – homosexual student teachers and teachers will have no doubt as to the intentions behind the whole sordid exercise.

Last year Penny Short went to the NSW Teachers' Federation for help with her case. On 14 November [1973] the senior officers of the Federation resolved to support her claim for reinstatement as a student teacher. An approach was made to the Director-General Buggy for information, but Buggy refused to discuss the matter.

Now, five months later, the Federation appears to have withdrawn its support. A press conference scheduled for Monday 25 March was called off at the last minute, confounding the press. Federation organisers, and – most important of all – Short and her supporters on campus.

It seems that the Federation is afflicted with a new type of disease that has an incubation period of five months. It also appears rather too ready to accept Departmental justifications of its actions. It's also clear that the Federation isn't prepared to take up the defence of homosexuals in the teaching service, thereby giving tacit support to the reactionary policies of the Education Department.

The case of Penny Short lays bare the duplicity of an education system that, while pretending to be all very

[684] Not certain which public opinion poll the author of this article refers to here. However, Simon Hasleton's August 1973 ANOP poll (see: 1:–1.1.10. page 142) shows that the whole sample's approval rate for legalisation of homosexuality was 48% and was (as mentioned in the *Arena* article) highest (68%) in the 18-24 age group. For complete details see Table 52, page 144.

liberal and democratic, is unable to allow within its employ persons who make it eminently clear that the system is not as liberal and democratic as it claims.

Arena demands that the Education Department reinstate Penny Short as a student teacher forthwith – with full restitution – or else make public its reasons for not ding so.

Arena further demands that the Minister for Education issue a public statement on his attitude to the employment of homosexuals as teachers.

Arena further demands that the NSW Teachers' Federation declare its unconditional support for the freedom of expression of homosexuals in the teaching service.

DEMONSTRATION [685]

FRIDAY 29 MARCH 3PM

EDUCATION DEPARTMENT BUILDING, BRIDGE STREET, SYDNEY

No Discrimination!
Reinstate Penny Short

5:–1.5. – Someone Snoopin' Around, 27 March 1974 [686]

How I Lost My Scholarship

Someone snoopin' around the place thought 'oh what a terrible disgrace! Those two dykes kissing on the grass shouldn't be allowed to teach a class.'

This person X (of course unidentified) was really freaked out and horrified and immediately phoned the Dept of Ed 'I've discovered some lesbians there' she/he said.

As well what was used as proof by X was a poem in *Arena* about homos sex 'between two women, that's just not right, it'll get the Department really uptight.'

Now the Dept of Ed has a handy way, of getting rid of people who've 'gone astray'. They get a Health Commission lackey to say that you're completely whackey.

Then for medical reasons (they say) 'we're taking your scholarship away!' (You won't be employed by the State unless you decide to go straight).

So all you non-conforming 'queers' I don't want to increase your fears but remember if X informs again a Government shrink can say you're insane.

I got my Teacher Education scholarship in 1973 and like all other scholarship holders had to have a medical check at the Medical Examination Centre which is under the Health Commission, I passed the physical but then found that in 1973 they'd started giving everyone a type of personality questionnaire which included questions such as 'Do you have vivid dreams at night?' and 'Do you admire your parents?' After they'd checked my answers against their normal answers I was interviewed by a women doctor who asked me what I'd been doing since I left school and why I wanted to teach. She concluded with seemingly OK things about me: 'you're more aware of what's happening in the society, more perceptive of yourself and others and more individualistic – so you'll have to have an interview with a psychiatrist to see whether you're suitable to be a teacher.'!!??

I asked her why it was necessary and she said they were worried about teachers having nervous breakdowns. I was given an appointment to see the psychiatrist at the Medical Examination Centre in April.

At the interview with the psychiatrist we discussed what was happening in education, my attitude to authoritarianism in schools, whether or not I had friends or not, etc. Then she asked me if I was having a relationship with anyone. I asked her if she was referring to a monogamous heterosexual relationship. She said yes and I said no. She then wanted to know what sort of relationship I had with people. I asked her why she wanted to know. She replied that if I was having a stable relationship with someone then she'd know I was stable and therefore I could keep the scholarship. So I told her I was having a stable homosexual relationship. This did not disturb her as she had known a few bisexual people who were nice people and she said she would

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[685] This 173 mm x 100 mm demonstration announcement appeared at the end of the above *Arena* article.

[686] Short, Penny, 'How I Lost My Scholarship', *Arena*, vol. 7, no. 3, Wednesday 27 March 1974, p. 5.

recommend that I kept the scholarship without saying in her report that I was a homosexual. She also warned me that I'd better keep it quiet because the Department wouldn't like it.

Then late last year I wrote a poem about the experience of making love with an another women. It was printed in *Arena* over my name. This was really sticking my neck out, but at the time I had no idea that anyone from the Department of Education would read the poem. It was intended to enlighten students on campus as to what a lesbian relationship might be like.

Then came the reaction. My parents got a phone call from the liaison office at Macquarie saying I had to attend another interview with the psychiatrist. I didn't keep that appointment but another one was made.

When I walked in, the psychiatrist (the same one) asked me how I was going. At this stage I had no idea what the interview was for. I told her how I'd been getting on at University and then she said 'You haven't been keeping your homosexuality quiet, have you?' I shrugged, not knowing exactly what she meant. Then she handed me a photostat copy of the page of *Arena* on which my poem was printed and said 'What about this?' I explained to her my reasons for writing it. She said she had also received a phone call from someone who said I had been seen 'carrying on with a woman on the front lawn at Macquarie.'

She asked whether I would behave in this way if I got a job teaching. I said I had no idea of how I'd behave in the future but that my behaviour at this time was not at all out of harmony with the situation at University. Her argument was that if the children at a school knew I was a lesbian they'd all laugh at me. She then told me that I would lose my scholarship because the Department didn't allow this sort of thing, and there was nothing I could do about it but 'things are changing slowly'.

Later I rang Dr Orr, the Chief Officer at the Medical Examination Centre and asked him what the situation was. He told me that he was recommending that my scholarship be terminated because I had 'personality and emotional problems'. He refused to tell me directly whether this was simply because of my homosexuality (in fact he talked in circles) but he admitted that it could have something to do with it. He said he would not include in the report that fact that I am a homosexual. I then told him that I had made appointments with two independent psychiatrists (I had done as a result of the interview to get contrary reports). Dr Orr said, patronisingly, that that was good because they would explain to me what my problems were. He seemed to be trying to imply that I had made the appointments because I needed psychiatric help! He said I could give him the independent reports when I got them.

Soon after this I got five favourable references from staff at Macquarie and took them into the Medical Examination Centre where I left them with a note asking Dr Orr to send them in with his report to the Department. I rang up later and he said that the references hadn't changed anything but he would send them in. I later got two favourable psychiatric reports but didn't bother given them to Dr Orr as it was obviously useless. He'd made up his mind (or someone had made it up for him).

I didn't hear anything for a while. I'd asked the NSW Teachers' Federation to help me but when they rang Mr Bunker, the Acting Director of Teacher Education, he said he had not heard anything about the case. Then in the holidays I tried to get another form for intended 1974 courses and found I couldn't get one because my scholarship had been terminated. Mr Gwilliam, the Liaison Officer at university for the teacher education scholarship branch showed me a copy of the letter (which had been sent to my old address about a month before by the scholarship branch at Blackfriars). It said that my scholarship had been terminated because I was medically unfit. It had Bunker's name at the bottom but was not signed by him. I couldn't read the signature.

Since then the Federation has asked Mr Buggie, the Director-General, about the case, but he refuses to discuss it.

The only course of action now possible is to publicly expose the whole case, so there will be a meeting on the front law at 1.00 pm at Macquarie University on 27 March, with various people commenting on the situation. There will also de demonstrations outside the Department of Education and Health Commission. The times of these will be announced at the meeting.

5:–1.6. – Students Support Penny, 28 March 1974 [687]

Protest March to Back Student

Sydney university students will hold a mass demonstration tomorrow for trainee teacher, Penny

[687] n.a. 'Protest March to Back Student', *Daily Telegraph*, Thursday 28 March 1974, p. 15.

Short, whose scholarship was revoked – allegedly because of her homosexuality.

Students at Macquarie University decided yesterday to rally support from other universities.

Miss Short lost her scholarship after a poem she wrote on lesbian love was published in the newspaper, *Arena*.

She was told after a medical examination she was medically unfit to retain the scholarship because of 'emotional and personality problems.'

The students will petition the Education Department to reinstate the scholarship and publicly give the Department's policy on employing homosexuals.

They also want to give students the right of appeal to an independent medical tribunal after medically unfit classifications.

5:–1.7. – NSW Teachers Federation, 4 April 1974 [688]

Union Support to Sacked Lesbian Student

The NSW Teachers Federation yesterday moved to prevent the State education department discriminating against homosexuals.

The federation demanded the department restore a teachers' college scholarship to Miss P Short, of Pennant Hills, Sydney, and set up an independent medical appeals tribunal for teachers and trainee teachers.

Miss Short claims her scholarship was cancelled because she is a lesbian. The department told her she lost it because a medical examination showed she had 'as yet unresolved personal problems,' and 'personal instability.'

The federation said 'Miss Short should have the right of appeal.'

The federation said 'the department had rebuffed moves to determine the exact reason for Miss Short losing her scholarship with consistent secrecy and non-cooperation.'

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[688] n.a. 'Union Support to Sacked Lesbian Student', *The Australian*, Thursday 4 April 1974, p. 9.

5:–2. – May Federal Election

Time did not permit CAMP NSW to publicise the issue of homosexuality in the election for the Australian Parliament. However, leaflets [see page 430] were produced and distributed at some of the larger rallies. They asked the question:

> Will your parliamentary representative represent you?
> We know that at least 10% of the population is homosexual. You and I have relatives and friends who are homosexual. And yet, at the moment, homosexuality is a dirty word in parliament.
> Let's talk about it.
> This means that all parliamentarians choose to ignore their own relatives and friends.
> Ask your member if he or she is prepared to allow your own relatives and friends to take their full part in the world.

5:–2.1. – CAMP NSW Election Leaflet [689]

Figure 24: CAMP NSW 1974 Federal Election Leaflet

[1]

WILL YOUR PARLIAMENTARY REPRESENTATIVE REPRESENT YOU?

THERE ARE SOME QUESTIONS YOU NEED TO ASK.

We know that at least 10% of the population is homosexual. You and I have relatives and friends who are homosexual. And yet, at the moment, homosexuality is a dirty word in parliament.

Let's talk about it.

This means that all parliamentarians choose to ignore their own relatives and friends.

Ask your member if he or she is prepared to allow your own relatives and friends to take their full part in the world.

Some of the things which homosexuals ask for are overleaf. Read this carefully, and contact CAMP NSW, BOX 5074, GPO, Sydney, 2001, for more information.

[2]

HOMOSEXUALS DEMAND PARLIAMENTARY ACTION!!

FIRST: Homosexual acts between consenting adults should not be subject to the criminal law.

SECOND: Legislation should be initiated to free all homosexuals from discrimination in – employment
– housing loans
– social contracts.

THIRD: The age of consent should be lowered, and sexual discrimination ended.

FOURTH: In law, a homosexual union should be given the same legal consideration as the present heterosexual de facto union, for as long as society accepts the union of two people as its basis.

FIFTH: Homosexuals should be given access to media outlets so that the ignorance about homosexuality in the community at large can be dispelled.

SIXTH: There should be a fundamental examination into the structure of society to determine why minority groups are oppressed.

Authorised by: Michael Clohesy and Peter de Waal, 16 Terry St., Balmain, 2041.
Telephone: (02) 827 3063

[689] Hand written date of 28 April 1974 on archival copy. This was an A4 leaflet folded in half with [1] being the front and [2] its reverse.

5:–3. – Australian Country Party NSW Branch

At its annual conference in Tamworth in June [1974] the Australian CP voted in favour of reforming the law to permit homosexual acts between consenting adults in private [see pages 433]. Following this, a press release [see page 434] decrying this sop cast in the direction of oppressed minorities in the community by politico-trendies was distributed to the media. It asked:

> Must homosexuals sit back and accept the muddled unthinking statements of those who would appear to be offering them a chance to live within the confines of society? We see this latest move as a continuation of the oppression which the homosexual movement is trying to kill.

5:–3.1. – Annual Conference – Motion [690]

Motion number 97 Sponsored by:

- Metropolitan Branch, Secretary, Jenny Gardiner
- Coonabarabran Branch, Dr Bullock

> That the NSW laws for homosexuality be reviewed with the intention of allowing homosexual acts between consenting adults in private.

* * * * *

The following precursor to the above was proposed and carried at the 1973 Young Australian CP [691] annual state conference:

48. Canberra/Queanbeyan

> That the homosexuality laws should be amended to allow homosexual relations between consenting adults over the age of 18 years in private.

Carried.

Action taken: Forwarded to CB Cutler [692]
JC Maddison [693]
KM McCaw [694]

Replies: CB Cutler– No comment
JC Maddison– No reply
KM McCaw

My colleague, the Honourable JC Maddison, BA, LL.B, MLA, Minister of Justice, has brought to my notice your letter of 12 December 1973 regarding homosexuality.

The views expressed in the motion passed at the 1973 Annual State Conference of the Young Australian CP (NSW) have been noted.

Present NSW laws in respect of crimes relating to sexual activities involving members of the same sex is derived from English law and is similar to that applying to other parts of the Commonwealth and many overseas countries.

English criminal sanctions against conduct of this nature between consenting adults in private have since been relaxed, as has the law in certain other countries.

Whilst NSW criminal law remains unchanged there has been a tendency in recent years by the Courts, in the exercise of the wide discretionary powers they possess as to sentencing, to place offenders in appropriate cases on bonds with a requirement that various forms of treatment be undertaken.

The Courts, of course, may have regard to the evidence of a wide variety of persons and it is not uncommon for psychiatrists, psychologists, probation and parole officers, the clergy and trained social workers to be called to give evidence and assist the Court in dealing with this and other classes of offenders.

Whilst it is not proposed to alter the existing law in NSW at the present time, the effect of the relaxation of the law in other places in the manner suggested by the resolution referred to is being kept in view.

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[690] The Australian CP, NSW, 1974 Annual Conference, *Agenda*, p. 26. The conference was held at the Workmen's Club, Tamworth, Wednesday 26, Thursday 27 and Friday 28 June 1974. (Papers of the National Party are held in the Manuscript Library, National Library of Australia, Canberra, MS 7507).

[691] The Young Australian CP, NSW, 1973 Annual State Conference, *Replies to Resolutions*, pp. 13-4.

[692] The Hon Sir Charles Benjamin Cutler, CP MLA for the NSW seat of Orange, Deputy Premier, Minister for Local Government and Minister for Highways and Leader of the CP.

[693] The Hon John Clarkson Maddison, LP MLA for the NSW seat of Hornsby, Minister for Justice.

[694] The Hon Kenneth Malcolm McCaw, LP MLA for the NSW seat of Lane Cove, Attorney-General.

5:–3.2. – NSW Country Party Annual Conference Supports Legalisation of Homosexuality, 29 June 1974 [695]

Party Supports Legalisation of Homosexuality

The NSW Country Party yesterday supported the legalisation of homosexuality.

It called on the State Government to change the law to allow homosexual acts between consenting adults in private.

The party's annual conference affirmed its strongest opposition to teaching about homosexual behaviour in school sex education programs by unskilled teachers and homosexuals.

But it rejected a move to oppose the teaching of homosexual behaviour by anyone.

Moving in favour of legalising homosexual acts, a delegate from Coonabarabran, Dr R Bullock, said adults who had chosen to be homosexuals should be allowed to follow their choice without fear of discrimination or victimisation.

He said the party's Federal Leader, Mr Anthony and his deputy, Mr Sinclair, had supported a similar motion in Federal Parliament last year.

The first speaker against the motion, Mr W Wheeldon, of Holbrook, said homosexuality was legal in areas controlled by the ALP.

'In Canberra it's legal, in SA it's legal,' he said. 'Let's keep the queers legalised where they belong.'

Dr Bullock told the conference at Tamworth he had treated many homosexuals with psychological problems.

VICTIMISED

'And a lot of them are caused by victimisation by society,' he said. 'I still say homosexuality is an aberrant form of behaviour. But it is their choice and I don't deny them that choice.'

'Only male homosexuals at present are victimised by the law. It's a weak law and I say a weak law is a useless law.'

Dr Bullock was supported by the secretary of the party's metropolitan branch. Miss Jenny Gardiner.

She said that if the motion were carried, it would still be the party's view that offences like molesting children shuld continue to be illegal.

The resolution was passed on the voices, but two State Mps asked for their opposition to be recorded. They are Mr J Brown, for Raleigh, and Mr M Singleton, for Clarence.

The conference later voted unanimously in support of government recognition of the financial problems faced by single fathers.

5:–3.3. – Motion Approving Legalisation of Homosexuality by NSW Country Party, 29 June 1974 [696]

Homosexual Law Reform Supported

The NSW Country Party made a major switch in its traditional stance yesterday by advocating the legalisation of homosexual acts between consenting adults in private.

The party's annual State conference in Tamworth called on the NSW Government to change the law to this effect.

Although the resolution was carried overwhelmingly on the voices, it met violent opposition.

Dr R Bullock, a delegate from Coonabarabran, who proposed the change, said adults who had chosen to be homosexual should be allowed to follow their choice without fear of discrimination or victimisation.

Opposing the motion, Mr W Wheeldon, from Holbrook, said homosexuality by consenting adults in private was now legal only in areas controlled by the ALP.

'In Canberra, it's legal; in SA it's legal,' he said. 'Let's keep the queers legalised where they belong.'

COUNTRY PARTY CHANGES ATTITUDE

Dr Bullock said he had treated many homosexuals with psychological problems caused by victimisation by society. He thought homosexuality was an aberrant form of behaviour, 'but it is their choice and I don't deny them that choice.'

When the resolution was carried the State MLA for Raleigh, Mr J Brown, and the State MLA for Clarence, Mr M Singleton, asked for their opposition to be recorded.

The conference also affirmed its strongest opposition to the teaching of school children about homosexual behaviour by 'unskilled teachers and homosexuals.'

But it defeated an amendment to oppose teaching about homosexual behaviour 'by anyone.'

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[695] n.a. 'Party Supports Legalisation of Homosexuality', *The Australian*, 29 June 1974, p. 11A.

[696] O'Hare, John, 'Homosexual Law Reform Supported', *The Sydney Morning Herald*, 29 June 1974, p. 3. Original emphasis.

5:–3.4. – It's Legal in ACT and SA, 29 June 1974 [697]

CP Backs Sex Law Change

The State Country Party yesterday called for legislation to legalise homosexual acts between consenting adults.

The party's State conference in Tamworth supported changes in the existing laws.

But there was strong opposition to the move.

A conference delegate, Mr W Wheeldon from Holbrook said homosexuality was legal in areas controlled by the Australian Labor Party.

'It's legal in Canberra and SA – Let's keep queers legalised where they belong.' he said.

While the conference which is attended by the NSW leader of the Country Party, Sir Charles Cutler, supported legalisation of homosexual acts between consenting adults in private it voiced strong opposition to the teaching of homosexual behaviour in schools' sex education programs by 'unskilled teachers and homosexuals.'

VICTIMISED

The resolution to legalise homosexuality was put forward by Dr R Bullock of Coonabarabran who said adults who had chosen to be homosexuals should be allowed to follow their choice without fear of discrimination or victimisation.

Dr Bullock said he had treated many homosexuals with psychological problems.

'A lot of these problems are caused by victimisation by society.

I say homosexuality is an aberrant form of behaviour – but it is their choice and I don't deny them that choice.

Only male homosexuals are at present victimised by the law.

It's a weak law and I say that a weak law is a useless law.' Dr Bullock said.

The secretary of the party's metropolitan branch, Miss Jenny Gardiner, said by moving into the 20th century by supporting the legislation of homosexuality the party would in no way encourage offences against children.

The resolution was carried by the conference but the MLA for Raleigh, Mr J Brown, and the MLA for Clarence, Mr M Singleton, asked for their opposition to the move to be officially noted.

5:–3.5. – CAMP NSW Press Release, 29 June 1974

Campaign Against Moral Persecution NSW Branch. Box 5074 G.P.O. SYDNEY. 2001.

PRESS RELEASE
FOR IMMEDIATE RELEASE

The toothless tiger of homosexual law reform has been raised by yet another major party in the Australian political scene at the Country Party's conference held last week in Tamworth. In an atmosphere mirroring the usual unenlightenment which abounds when the politico-trendies attempt to cast some sop in the direction of the oppressed minorities of the community, we have heard plain inaccuracy and political backbiting used under the guise of debate. Homosexual acts are not legal for males in any part of Australia.

In moving a motion proposing law reform, Dr R Bullock refers to a 'choice' made by homosexuals to follow what he describes as an 'aberrant form of behaviour'. Homosexuality is not a matter for free choice – some people are homosexual, some are not. In describing homosexuality as aberrant, Dr Bullock finds himself in disagreement with the American Psychiatric Association, the Australian Psychological Society and the Australian and New Zealand College of Psychiatrists, all of whom have in the past twelve months released the results of surveys showing that their members are opposed to discrimination against homosexuals simply because there are no grounds for such discrimination.

That the annual conference is strongly opposed to 'teaching about homosexual behaviour … by unskilled teachers and homosexuals' is arrant nonsense. Without delving too deeply, surely the only teachers 'skilled' for this purpose would be homosexual teachers, and there many thousands of homosexual teachers employed by svate and private school systems throughout the country. The vast majority of those would probably lose their jobs if they made public declaration of their homosexuality, so the myth that the only homosexual is a declared homosexual is continued.

Must homosexuals sit back and accept the muddled unthinking statements of those who appear to be offering them a chance to live within the confines of society? We see this latest move as a continuation of the

[697] Hooper, Ken, 'CP Backs Sex Law Change', *Daily Telegraph*, Saturday 29 June 1974, p. 5. Original emphasis.

oppression which the homosexual movement is trying to kill. When this society is able to remove its blinkers and start talking about society's problems without the panacea of being smugly able to refer to minorities in we and them terms, some sort of progress may be made.

Margaret McMann
Co-President

Peter Bonsall-Boone
Co-President

CONTACTS: Michael Clohesy (Secretary) or Peter Bonsall-Boone – 827 3063
Margaret McMann – 827 3810

5:–4. – CAMP NSW Registration as a Non-Profit Organisation

In accordance with long-expressed sentiment, CAMP, on 10 July [1974], became registered as a non-profit organisation with the State government [see page 438]. The immediate effect of this was to enable our name (Campaign Against Moral Persecution (NSW)) to be listed in the alphabetical telephone directory [see also page 345]. It is also useful to wave as a symbol of respectability to officialdom when necessary.

5:–4.1. – CAMP NSW Non-Profit Organisation Registration Certificate

Figure 25: CAMP NSW Non-Profit Organisation Registration Certificate

FORM 2

LOTTERIES AND ART UNIONS ACT 1901, AS AMENDED (Section 4 – Regulation 2)

Certificate of Registration as a Non-profit Organisation

[1] 765

I HEREBY CERTIFY that the CAMPAIGN AGAINST MORAL PERSECUTION NSW BRANCH,

has been registered under the provisions of the Lotteries and Art Unions Act 1901, as amended, as a non-profit organisation for the purposes of Section 4 of that Act.

Secretary/Authorised Officer

Sydney, _____

55535 6.66 K2209 V.C.N. Blight, Government Printer

5:–5. – Chile

To commemorate the first anniversary of the overthrow of the Allende government in Chile (11 September [1974]), homosexuals were called upon to join with the Chile Action Committee and its supporters who were organising a march through Sydney and a rally to demonstrate against the repressive regime of the junta now in power, a repression directed fiercely against our homosexual brothers and sisters. The following telegram [see page 440] of support was sent to the CAC:

> 365 days of suffering are too many. CAMP will support Chilean people and our repressed sister and brother homosexuals at to days demonstration.

5:–5.1. – CAMP NSW Telegram to Chile Action Committee, 10 September 1974

TO: Chile Action Committee

TEXT: 365 Days of Suffering Are Too Many CAMP Will Support Chilean People and Our Repressed Sister and Brother Homosexuals At Todays Demonstration. Unfortunately I Will Be in Melbourne and Unable to Attend

FROM: Peter Bonsall-Boone, Co-President

Figure 26: CAMP NSW Telegram to Chile Action Committee

5:–6. – Vic Discrimination Bureau

The Vic Government, when outlining its program at the opening of the spring parliamentary session, indicated that a special bureau would be established to investigate discrimination on sex, colour, race or religious grounds [see page 442].

When CAMP read the newspaper report of this move and realised that homosexuals had yet again been ignored (because sexual orientation was not included) it wrote to Premier Hamer [see page 442] pointing out:

> Governments have a record for overlooking the oppression of a significant section of our society – homosexuals – when drawing up such plans .

The letter went on to urge that this situation be rectified by including sexual orientation in the terms of reference of the bureau.

Although he failed to recognise our specific request, Hamer in his reply displayed some signs of being positive [see page 442]:

> It is intended that all forms of discrimination will be subject to investigation.

5:–6.1. – Vic Bureau to Investigate Discrimination, 11 September 1974 [698]

Vic Body to Fight Sex, Color Or Creed Barriers

A special bureau will be established in Melbourne to investigate discrimination on sex, color, race or religious grounds.

The Vic Governor, Sir Henry Winneke, said yesterday the bureau, to be set up in the Premier's Department, would recommend legislative or administrative changes it considered necessary to lessen discrimination.

'The Government also believes migrants to Australia suffer special disabilities, principally on account of language and unfamiliarity with our way of life.' Sir Henry said when opening the spring session of State Parliament.

'It is intended to establish another special bureau to help and advise migrants, supported by the Migrant Advisory Council staffed by members of foreign communities in Vic.'

The Vic Road Safety and Traffic Authority is to be reorganised under plans also announced by the Vic Government yesterday.

Sir Henry said in his speech the Government was not satisfied with the present organisation of the authority.

Legislation would be presented in the session to make substantial changes

Control over traffic signs, signals and road marking would be transferred to the Country Roads Board.

5:–6.2. – CAMP NSW Letter to RJ Hamer, Premier of Vic, 12 September 1974

The Australian newspaper today carries reports of the speech by the Governor at yesterday's opening of Parliament, outlining your government's program for the forthcoming session.

The report indicates that a bureau will be set up to investigate discrimination on sex, colour, race or religious grounds. We urge you to include in the bureau's terms of reference discrimination on the grounds of sexual orientation. Governments have a record of overlooking the oppression of a significant section of our society – homosexuals – when drawing up such plans. But such oppression is real and needs to be actively worked against. One step in this direction would be to widen the terms of reference of the bureau and specifically include sexual orientation.

We trust you will take a lead in establishing social justice for a section of our society which has for too long been oppressed, either actively or by being ignored.

5:–6.3. – Vic Premier's Department Letter to CAMP NSW, 4 October 1974

I have your letter of the 12th September about the new bureau that the Vic Government will establish to investigate forms of discrimination.

I have noted your views on the subject which will be considered. The terms of reference, as stated, are not meant to cover the whole scope of the work envisaged for the bureau. It is intended that all forms of discrimination will be subject to investigation.

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[698] n.a. 'Vic Body to Fight Sex, Color Or Creed Barriers', *The Australian*, 11 September 1974, p. 9.

5:–7. – Australian Union of Students 1975

At its August [1974] Council Meeting, AUS decided to invite ideas on campaigns it should pursue in 1975. An article accompanying this invitation in the Union's newspaper, *National U*, which reviewed the possible scope of activity failed to mention homosexual liberation at all [see page 444].

CAMP wrote stating that it was appalled the homosexual liberation had been ignored [see page 446]:

> Quite obviously, women's and black liberation, as part of the struggle of the oppressed against this capitalist system, must be adopted as a plank of AUS; but, so too must homosexual liberation.

CAMP indicated that AUS should work in close concert with the homosexual movements and support their demands such as for changes in school sex education, attitudes of union movement, end to job discrimination, and the recognition of homosexual families.

5:–7.1. – Scope of AUS 1975 Activities, 23 September 1974 [699]

AUS August Council Balance Sheet

The August Council of the Australian Union of Students, which met in the dilapidated George Hotel between August 20 and 23, was to all who attended a rather disorienting and confusing affair. The Council meets each year at this time to hear progress reports from the various departments of AUS. The main decision-making body of AUS, Annual Council, meets in January to determine the year's priorities, campaigns and directions.

From the outset August Council was beset by problems, both political and organisational. One of the first motions to be carried was that future Councils were to be held elsewhere than the George Hotel because of the sexist attitudes displayed by the hotel's management, whose main revenue is from the strip shows it holds.

Delegates representing nearly all tertiary campuses throughout Australia heard the outgoing report of President Neil McLean, which outlined the vast changes AUS has undergone in his two years as President. It is within these changes, as rapid as they have been, together with changes in political moods on campuses themselves that compounded the many difficulties that delegates faced at Council. Unfortunately many went away without a clear understanding of where AUS is at the present time, what AUS actually represents or any inkling of the future directions AUS should be taking.

Not least among these problems is the huge organisation AUS has developed into. It now represents 66 campuses with over 217,000 students, with 12 campuses being admitted during the course of Council. This growth represents a real gain in the strength of AUS. From representing only universities four years ago it now has the allegiances of many technical colleges and Colleges of Advanced Education. Students have realised the need for a national body representing them in educational affairs, social welfare and national and international matters. This is the real source of strength of AUS. At the same time because of the diversity of political opinions from campus to campus it can become a source of weakness for the national body if it has no sense of positive direction, no program to fight for the rights of students, and the rights of the community students are very much a part of.

There are many specific problems of a political nature that arose during the deliberations of Council. Some, as with the question of Australian nationalism and the nature of the Soviet Union, could not be definitively solved at August Council but will become a major point of contention at Annual Council 1975, where matters of policy are resolved. Others, including the oppression of blacks and women within the union and how AUS can combat these trends were raised and yet left unresolved. These problems are indicative of the teething pains AUS at present is undergoing as it attempts to grapple broader political and social questions.

The issue of paternalistic attitudes being displayed by AUS towards the struggle of women and blacks against their oppression was raised in strong terms. Repeatedly, it was pointed out, the question of the Race Relations Department and its relations with AUS, as a whole, drew out the prevailing racist attitudes of students. These attitudes are not blatant or open but take the form of non-involvement of AUS as a body in consistently defending blacks against their oppression. The Race Relations Department and its officers have nearly always superficial support from the Union but they feel this support rarely involves educating, agitating and organising by more than a handful of white students.

Comparisons can be drawn here with other areas of AUS work which have always been well organised with a lot of student involvement. Blacks feel that they often have been left out on a limb by the Union when organising to fight racism.

Involvement by AUS in campaigns to fight oppression of our black brothers and sisters doesn't mean allowing the blacks to do all the work while AUS gives its moral support to their activity. Neither does it mean AUS is to usurp the role of its Race Relations Department by taking control of the struggle, as the blacks themselves know intimately how deep racism in all its forms extends. However, if AUS embarks on a campaign to support black liberation it must give all its support and backing on all levels in helping this fight – from field work to demonstrations to office relations within AUS.

Another glaring problem that faces AUS which was evident at August Council, and is similar in content to the struggle for black liberation, is how AUS relates to the movement for the liberation of women. Again AUS suffers at this stage from a paternalistic approach to women.

[699] Timmerman, F and Jamieson, A, 'AUS August Council Balance Sheet', *National U*, vol. 10. no. 10, 23 September 1974, p. 5.

An example of this could be seen at August Council when a women's caucus proposed that AUS grant $1,000 to propagate ideas on International Women's Year in 1975 for the rest of 1974. No one spoke against the motion but everyone realised that $1,000 wouldn't be granted when the finance session arose. But rather than be seen seemingly attacking women for this campaign, everyone shied away from discussing the campaign.

Women in AUS were naturally infuriated. The probnem, they stated, was not so much that no-one discussed the campaign but rather the predominant feeling women's liberation involves women only. In other words, AUS again gives verbal support to women's struggles but lets women do all the work. Women consistently pointed out at August Council that the liberation of women is not just their concern but the concern of their male counterparts as well, and while men shouldn't dominate the struggle against their oppression, they should, as part of AUS, be consistent in giving their full support.

AUS in 1975?

In accordance with the decision of the August Council of the Australian Union of Students, submissions/position papers/ideas on campaigns and directions for the Union in 1975 are hereby invited. They should be typed, no more than one foolscap page in length, and should reach the President, AUS, 97 Drummond St, Carlton, 3053, by September 30, 1974. They will be collated and distributed to allow the widest possible discussion before Annual Council, 1975.

Women's and black liberation, as part of the struggle of the oppression against this capitalist system, must be adopted as a plank of AUS. However, in order for AUS to best fight for these movements of the oppressed, AUS should understand precisely the nature of these movements. Herein lay the weakness of August Council. Giving lip service to them will not suffice, nor will it allay the consciousness of some women or blacks.

AUS must recognise down to its grass-roots level that these struggles are integrated with the struggle against capitalism and the best service it can render to women and blacks is to educate its white male members on the need for women's and black liberation. AUS should also keep generating the need for independent movements to fight against sexism and racism, not seeking to incorporate these movements into the normal channels of redressing grievances – through parliament or lobbying parliamentarians. AUS should seek to help these movements by mobilising its members in mass or direct action in support.

To do this AUS should take up demands emanating from the struggles of women and blacks. For Abortion on demand, land rights, child-care facilities, no discrimination of women and blacks in jobs are a few of the key demands that many understand the need to fight for. On going campaigns of this nature will serve the interest of blacks and women best and at the same time help to overcome some of the blatant sexist and racist attitudes within AUS.

Smaller campuses which haven't been affected as much by the radicalisation of youth should occupy a good part of involvement by AUS in its campaigns. Many small CAEs and technical colleges went away from August Council not understanding the political sophistication of AUS in the debates that occurred. They should be approached at their level of understanding of issues and by involving them in campaigns they relate to will have a great effect on drawing them closer to AUS and the union's involvement in other campaigns oppression.

Personal advancement within the union was also raised at August Council, although in a crude way which raised much bitterness and animosity. The campaign at Council against careerism and opportunism while having this negative side, also showed that students are far more wary of voting for people for their personalities and so on. While lobbying for positions in AUS is on the increase, there is nothing wrong with this provided it is carried out in the open, provided delegates to Council know precisely the abilities and positions of the nominees. If candidates are prepared to campaign openly, not over a few drinks that are invariably shouted, and all debates between candidates re conducted on the floor at Council, delegates are able to have the best possible way of choosing their representatives. They will also have a better understanding of those who are careerist and opportunists and those who are genuinely trying to advance the union. There is no possible way lobbying for positions, doing deals or back-stabbing in private conversations can be eliminated by organisational means as some delegates to Council wanted, but if the norm is set for candidates to be open about their positions then the more unfortunate aspects of electioneering can be eliminated.

A final point of consideration during Council that was not raised in depth was around the position AUS should take on Australian nationalism. We believe this nationalism is equivalent to the interests of Australian imperialism in South-East Asia. To take

such a position would have meant lining up with Australian capitalists in their exploitation not only of the South-East Asians, but of their exploitation of Australian workers.

The advocates of Australian nationalism, centred mainly on La Trobe University, showed where adopting nationalism of an oppressive nation such as Australia leads to. They quite seriously wanted AUS to adopt the Eureka flag as its emblem, to have Ned Kelly elevated as a national hero and bordered on xenophobic attacks by proposing a motion preventing AUS touring overseas performers. Not only did they exult Australia's heroic past of over hundred years ago, they wanted AUS to adopt ideas over a century old to bring them into line with La Trobe's ideas.

Because of the nature of August Council, being a session of review, the main import of the debate over Australian (in this case white) nationalism will be held over until Annual Council. It is there that AUS should adopt a progressive position on the whole question. If AUS is to remain an integral part of the Asian Students Association by condemning the exploits of Australian capital in South East Asia, then Australian nationalism has no part of AUS. AUS must support the nationalism of the oppressed, such as black nationalism in Australia, not embrace the nationalism of the oppressor.

5:–7.2. – CAMP NSW Letter to AUS President, 30 September 1974

CAMP writes in response to the invitation in *National U* of 23 September [1974] to submit ideas on campaigns and directions of AUS in 1975.

AUS should be supporting, in a positive way, the struggle for homosexuals' liberation. We were appalled to find no reference at all in the 23 September *National U* report on the August Council to that struggle. Quite obviously, 'women's and black liberation, as part of the struggle of the oppressed against this capitalist system, must be adopted a plank of AUS'; but, so too must homosexual liberation.

AUS can express this support by working in close concert with the various homosexual organisations and supporting the demands of these movements – for example, for changes in school sex education programs, support from the union movement, an end to job discrimination, recognition of homosexual relationships for social security benefits, so long as this system continues.

AUS, with its printing, financial and outlet facilities, could play a big role in education, one of the major factors in the struggle for liberation.

Looking forward to evidence that AUS supports all liberation, and not merely those struggles which are respectable.

5:–8. – Prisons

A newspaper article [see page 448] in the middle of 1974 about Cooma Prison drew CAMP's attention to a particular feature of the NSW prison system, namely, that there are special prisons for homosexuals.

Upon investigating the matter further with the help of CAMP WA, who also took it up, we discovered that prison regulations stipulate that prisoners shall be classified into certain categories when they enter prison. Among these categories is homosexual, defined as [see page 449]:

> all convicted prisoners whose criminal history or prison record provides, in the opinion of the Commissioner, substantial evidence of homosexuality.

CAMP wrote to Minister for Justice Maddison on 12 December in these terms [see page 451]:

> We would be interested to learn the justification and reason for including homosexuals in a separate category.

Maddison replied on 31 December [see page 451]:

> The classification system is intended largely as a protective device, both in a physical and mental sense, and is not intended as a punitive measure.

This matter will be pursued further.

5:–8.1. – Cooma Jail, 27 May 1974 [700]

Cooma Jail: Home for Sorry Fellows

Cooma prison is the home, at the moment, to about 108 prisoners. They come from the prison system generally and the majority of them, says the acting superintendent, George Brown, are homosexuals.

There are also a few special prisoners there for what they call protection. These are the sort of men one couldn't let run around in other jails, for fear of the trouble they might get themselves into.

They are what George Brown called the 'sorry fellows.'

The Cooma prison sends two work parties outside the walls each day to the prison farm that grows most vegetables in season and also to the fish hatchery at Jindabyne.

The remainder live and work within the walls and there is very little recreation.

There is a clothing shop housing the most modern of machinery and which runs full belt for most of the working day.

The men manufacture a good many hospital accessories and last year their output was evaluated at $500,00 – not a bad annual figure for only about 50 prisoners.

They can make from between $1.50 to $8 a week in the shop.

The prison is an old set of buildings, situated in the heart of the town not far from the post office.

Cooma has five overseers or industrial officers and 18 disciplinary officers.

I asked about the prisoners right to complain and the superintendent told me that the prison had the usual channels.

If the officer consulted could not satisfy the request, then it was possible to see the superintendent.

The men told me it was impossible to see the superintendent.

However, most of the complaints, it was suggested, arose from the men's own doing.

They are generally little things that become inflated issues when not attended to quickly.

I also asked about punishment and was told that prisoners could be given a dose in the cells for infringements, breaches if discipline and acts of violence either against authorities or against each other.

The odd fight does break out occasionally with someone getting a thump in the eye.

The main problem is the lack of visits. The majority of the men come from Sydney and it's a long way for anyone to come and see them.

It would be wrong to suggest in any way that the men in Cooma are there because of sexual offences.

They are generally sentenced for other misdemeanours and are sent to Cooma because they fall into the homosexual category.

There are no associated cells in Cooma and as one prisoner said to me: 'We are watched for two reasons – one, so that we do as we're told, and the other because we are homos.'

The average age of the men in Cooma is, it seems, much lower than in other institutions. I met a couple of drug offenders, as well as an armed hold-up or two.

They were all under 30 and doing fairly long sentences.

I had a meal at Cooma and the food was quite good. I stood by in the kitchen watched the roster and then sat down in the dining-room and talked to the men.

In the end there were about four or five chaps and myself and we tried to look at some of the prisoners' problems.

Their main gripe was the fact that different set of rules applied to different prisons.

For example, they took up the issue of long hair and beards.

Not much of a complaint I suppose, but I was told that the commissioner had granted general permission for the men to grow long hair, but that the resident superintendent had said there would be non of that in his prison.

They also complained about lack of sport and I countered with the fact that I had been told there was a shortage of warders and that they were already doing more than enough overtime.

But again they suggested that other prisons of a like nature managed to provide some activity while they were denied.

'Look at Parramatta's football field,' one said.

They also complained about the fact that the new prisoners' committee had yet to be formed and asked why?

One of the amazing aspects of prison life is the bush telegraph that exists between prisoners from the different institutions.

Word gets from one place to another with amazing rapidity. The men at Cooma know what is going on in

[700] Bush, Roger, 'Cooma Jail: Home for Sorry Fellows', *The Sun*, 27 May 1974. The subtitle of this article states: 'Inside our jails: uncensored, Part 6'.

other places – sometimes before it even happens.

How then does an inmate at Cooma spend his day if he's not on the farm or the hatchery or engaged on general tasks about the jail?

One said: 'I'm a top class machinist and I put out double the quota every day. Now I'm supposed to do 12 gowns which earns me 48c a day or about $2.50 a week, see'.

'But I do 25 gowns a day which brings my earnings up to $5.50 a week.'

'If I wanted to get transferred, there would not be a hope in hell, I'm due out in March next year and I'd like an outside job – I'm due for one.'

'But if I ask, as I am entitle to ask, then I get 14 days in the front yard.'

The front yard is a segregated area where a man spends his days incommunicado and has all privileges denied – no TV, radio and so on.

'What will you do when you leave?' I asked.

'Well, I'll go back to my trade … You know I'm a homosexual, don't you?' 'Yes,' I answered.

'Well he won't let us grow long hair in here. He things some of us will go mad and doll up as sheilas and he doesn't want that. But just quietly, neither do we.'

I chatted to one chap about the special problems of a jail where the preponderance of prisoners are homosexuals.

'There'd likely be 95 per cent practising homosexuals here, and that's not overestimating. I know. I'm here,' he said.

I asked: 'What about the practice?'

'Lots of opportunities, lots,' he said.

'This is why life is made more unbearable than it should be because you are being watched all the time in case you're up to homosexual activities.'

'It's the very basis of the watching and the tormenting. In any other jail, you'd be watched for security reasons. Here you're watched for both – particularly to see you are not in a confined space with another prisoner.' (There are no doors on the toilet).

'You can't get involved with another person here any more easily than at any other place, but you can get upset more easily than at any other place.'

'You make efforts to get involved and you're split right down the middle.'

'Anyhow, no homosexual ever gets the chance at work release either.'

Cooma is old – too small for the numbers of men incarcerated there – and as the majority of inmates say, the supervisors seem to have little concept of how to deal with their special problems.

Perhaps there is then room for improvement at Cooma or wherever men with this outlook on life are imprisoned – especially when the crime for which they are imprisoned is not related to their homosexuality.

5:–8.2. – NSW Prisons Act, 1952, as amended [701]

NEW SOUTH WALES REGULATIONS

***Prisons Act 1952* (NSW) as amended.**

Reprint of Regulations published in Government Gazette no. 76 of 21*st June*, 1968, *and embodying all amendments up to* 22*nd January,* 1973.

PART I.

Preliminary.

1. These Regulations may be cited as the 'Prisons Regulations, 1968'.
2. These Regulations shall take effect on and from 1st July, 1968.
3. These Regulations are divided as follows:–

PART I. – Preliminary.
PART II. – Classification and Separation of Prisoners.
PART III. – Admission and Searching.
PART IV. – Food and Diet.
PART V. – Health and Cleanliness.
PART VI. – Employment.
PART VII. – Religious Ministration.
PART VIII. – Institutional Routine.
PART IX. – Visits and Written Communications.
Division 1. – *Visits to Prisoners.*

[701] Emphasis added.

Division 2. – *Written Communications with Prisoners.*
Division 3. – *Visits to Prisons.*
Division 4. – *General.*
PART X. – Prison Discipline.
PART XI. – Medical Officers.
PART XII. – Visiting Justices.
PART XIII. – Educational and Vocational Training.
PART XIV. – Requests, Complaints or Applications by Prisoners.
PART XV. – Remission.
PART XVI. – Goal Delivery.
SCHEDULE I. – Daily Time-Table-Prisons (Other than Open Institutions).
SCHEDULE II. – Daily Time-Table-Open Institutions.
SCHEDULE III. – Forms. Added, G.G., 10/11/72

4. Any person who is guilty of a breach of these Regulations shall be liable, upon summary conviction, to a penalty not exceeding forty dollars.

5. The forms set out in Schedule III or forms to the like affect, shall be used for the purposes for which they are respectively appropriate.

6. In these Regulations, except in so far as the context or subject-matter otherwise indicates or requires–

'open institution' means any prison or part of a prison designated as such by the Commissioner;
'the Act' means the *Prisons Act 1952*, as subsequently amended;
'the rules' means the rules made under s. 49 of the Act either before or after the commencement of these Regulations, and in force for the time being.

7. The *Interpretation Act of 1897*, as subsequently amended, shall, when capable of application, be applied in the interpretation of these Regulations, and of all Regulations amending them, as if the Regulations formed part of the Act. Amended, G.G., 28/5/71.

PART II.

Classification and Separation of Prisoners.

8. Every prisoner shall at night be housed in and shall occupy a cell, room or hut by himself, unless for medical or other sufficient reason it is necessary for prisoners to be associated. In that case, careful selection of prisoners required to be associated in a single cell shall be ensured.

9. Female prisoners shall be kept separate from male prisoners except in such circumstances and under such supervision as the Commissioner may determine.

10. Each prisoner shall be included in one of the following classes–

(a) Unconvicted.
(b) Appellants.
(c) Debtors.
(d) Maintenance confinees.
(e) Remediable.
(f) Recidivist. Amended, ibid.
(g) Intractable.
(h) Homosexual.

As far as practicable, prisoners of any class shall be separated from prisoners of any other: Provided that–

(i) the Commissioner may authorise the transfer of a prisoner from any of the classes (b) to (h) to any of those classes;
(ii) the Commissioner may, where so authorised by the rules in respect of groups of prisoners, or by specific order in respect of individual prisoners, restrict or extend the period of degree of Amended, G.G., 28/5/71.

separation; and

(iii) the Commissioner may direct the separation, within a class, of prisoners who have previously been imprisoned from those who have not, and of those whose age does not exceed twenty-one years from those of or above that age. Amended, ibid.

The foregoing provisions of the Regulation do not apply in any circumstances in which s. 22 of the Act applies. Amended, ibid.

11. The prisoners who shall be included in the classes as specified in Regulation 10 shall be– (a) 'unconvicted' – all prisoners who are not convicted prisoners and who are not included in class (c) as specified in Regulation 10;

(b) 'appellants' – all convicted prisoners who have appealed against their conviction or sentence, who shall remain in that class until such time as the appeal shall have been determined;

(c) 'debtors' – all prisoners remanded or committed to prison for indefinite periods by courts of civil jurisdiction for disobedience of the process of those courts;

(d) 'maintenance confinees' – all convicted prisoners committed to prison under Part XII or XIV of the *Child Welfare Act 1939*, as subsequently amended, or Part III of the , as subsequently amended;

(e) 'remediable' – all convicted prisoners who have not previously been imprisoned in NSW or elsewhere or who, in the opinion of the Commissioner, are prisoners likely to co-operate in and benefit by training; Amended, ibid.

(f) 'recidivist' – all convicted prisoners not included in any other class;

(g) 'intractable' – all convicted prisoners who, in the opinion of the Commissioner, have shown by their actions that it is undesirable that they should remain in association with other prisoners in the normal activities of a prison; Amended, ibid.

(h) '**homosexual**' – all convicted prisoners whose criminal history or prison record provides, in the opinion of the Commissioner substantial evidence of **homosexuality**. Amended, ibid.

5:–8.3. – CAMP NSW Letter to John Maddison, NSW Minister of Justice, 12 December 1974

I refer to regulations 10 and 11 of the regulations made in accordance with the *Prison Act 1952* as amended. These regulations stipulate that prisoners shall be included in various classes which are listed. Class (h) of that list is 'homosexual'.

We would be interested to learn the justification and reason for including homosexuals in a separate category. What special characteristics do homosexual prisoners have which justify this practice. If homosexuals must be in a category of their, why not also heterosexuals and bisexuals?

We await your reply with interest.

5:–8.4. – NSW Minister of Justice Letter to CAMP NSW, 31 December 1974

Thank you for your letter of the 12th December, 1974, mentioning the classification of prisoners.

The classification system is intended largely as a protective device, both in a physical and mental sense, and is not intended as a punitive measure.

Presently, the practised classification system does not allow for a perfect segregation of self-professed homosexuals unless they personally seek a segregation program.

The principles intended by your letter are not contrary to my own personal views, that is, assuming I

interpreted your letter accurately.

CHAPTER SIX ≈ RELIGION

6:–1. – Homosexuals Report Back

The October 1973 Synod of the Anglican Diocese of Sydney adopted a *Report on Homosexuality*, [702] prepared principally by clergyman Bruce Smith of Moore Theological College. The Report could, at best, be described as repressive.

Cross+Section, the then church group within CAMP, decided in January 1974 that the Report would have to be challenged and set about preparing a retort.

In the course of its preparation, an interesting item appeared in the official diocesan journal. It read in part [see page 456]:

> Bruce Smith's *Report on Homosexuality*, published at the time of Synod last October, continues to cause a stir wherever moral questions are publicly debated. Although the 'CAMP' camp has been very quiet for a while, the issue is bound to come up again. [703]

Spies everywhere it seems?

Our report [704] was published appropriately on Anzac Day. It consists of four main sections: Legal and Social Aspects (Peter de Waal and Michael Clohesy); Religious Aspects (Joseph Chetcuti); Psychology and Psychiatry (Debby Heywood); a Personal Response to the Report (Christopher Bendall). David Ritchie assisted with technical aspects of production.

Copies of our report were sent to all Sydney Anglican clergy, federal and state parliamentarians, religious leaders, libraries. Media copies were accompanied by a press release [see page 456].

This resulted in a news item in *The Sydney Morning Herald* [see page 464], reviews in the *Australian Church Record* [see page 464], and the Macquarie University students newspaper *Arena* [see page 465], a fight with the ABC Lateline and no mention in the *Southern Cross* which had been so eagerly awaiting our publication.

A reply by the authors to the review by Smith in the *Australian Church Record* sent to the editor was not published; instead a private letter in reply was sent to editor Meyer [see page 469]. In it he expressed interest in receiving a 2000 word article showing from the biblical statements about homosexuality that a Christian could be a practising homosexual. He apparently had not read the report, since that was precisely what the religious section was doing.

The response from individuals ranged from a 7 handwritten page letter from an Anglican clergyman proclaiming, among other things, in a large blue stamp, 'Jesus Christ is our only hope' [see page 470], to a letter of commendation from a New Zealand Catholic clergyman [see page 468].

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[702] Ethics and Social Questions Committee of the Church of England, Diocese of Sydney, *Report on Homosexuality*, 1973.

[703] For print media coverage after the Sydney Anglican synod's adoption of the *Report on Homosexuality*, see: 6:–1.15. page 474 to 6:–1.26. page 483.

[704] A sub-group of Cross+Section, (The church group within) CAMP NSW Branch, *Homosexuals Report Back: A Retort to the Report on Homosexuality of the Ethics and Social Questions Committee of the Church of England, Diocese of Sydney*, Campaign Against Moral Persecution, Sydney, [Anzac Day] 25 April 1974.

6:–1.1. – Nasty Southern Cross Snipped, April 1974 [705]

Book Talk

Bruce Smith's *Report on Homosexuality*, published at the time of Synod last October, continues to cause a stir wherever moral questions are publicly debated. Although the 'CAMP' camp has been very quiet for a while, the issue is bound to come up again. This report, which was received by Synod and commended for study by the Archbishop, is a valuable guide to the existing laws as well as the Biblical principles. Not everyone will agree with the report's conclusions, but it remains an important contribution to the argument.

6:–1.2. – CAMP NSW Press Release, 28 April 1974

Campaign Against Moral Persecution NSW Branch. Box 5074 G.P.O. SYDNEY. 2001.

P R E S S R E L E A S E
For immediate release

The Church Group within the NSW homosexual society CAMP (Campaign Against Moral Persecution) has published a reply to the *Report on Homosexuality* passed by the Synod of the Anglican Diocese of Sydney in October last year.

The 29 page CAMP document, titled *Homosexuals Report Back* [706] says, in part–

> In expecting the government to act in the light of (the Anglican) report the Synod refuses to acknowledge not only the right of non-Christian to embrace their own particular ideology, but also any other for of Christian ethics save its Sydney version of Anglicanism.

In a chapter on legal and social aspects the report calls for six reforms, including–

> Homosexual acts between consenting adults in private should ne be subject to the criminal law.
> Freedom from discrimination in employment.
> Legal recognition of homosexual unions.
> A government-initiated examination of the structure of society, with a view to finding the basic causes of the oppression of homosexuals.

The report says 'it is time that homosexuality was considered as normal and socially acceptable.'

For further information, please contact:

Michael Clohesy Peter de Waal CAMP (02) 827 3063

NOTE The Anglican Synod Report, compiled by the Reverend BL Smith of Moore Theological College in Sydney, contrasts with statements from other churches (and other Anglican dioceses) in recent years.

6:–1.2.1. – Homosexuals Report Back – Report, 25 April 1974 [707]

Dedication

To all our oppressed brothers and sisters this work is dedicated.

Preface

This report has been mainly motivated by the *Report on Homosexuality* of the Ethics and Social Queens Committee of the Anglican diocese of Sydney. We, as members of Cross+Section, feel that most of the churches are currently too dogmatic in their approach towards homosexuality. This of course can be attributed

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[705] n.a. 'Book Tank', *Southern Cross*, April 1974, p. 18.

[706] See: 6:–1.2.1. page 456, 'Homosexuals Report Back – Report'

[707] A sub-group of Cross+Section, (the church group within) CAMP NSW Branch, *Homosexuals Report Back: A Retort to the Report on Homosexuality of the Ethics and Social Questions Committee of the Church of England Diocese of Sydney*, Campaign Against Moral Persecution, Sydney, 25 April 1974.

to their wanting to re-enforce a certain moral code upon all people.

All the members of this sub-group within Cross+Section are, or have been, involved in active Christian following. They include two ex-seminarians, [Joseph Chetcuti, Michael Clohesy] one of whom has left the church, [Michael Clohesy] one liberal catholic, [David Ritchie] one ex-catholic, [Peter de Waal] and two ex-Anglicans [Christopher Bendall, Debby Heywood]. All of the members who had given up being active Christians (in the way the Sydney Church of England understands that) have done so because the churches have shown such an unenlightened and annihilating attitude towards homosexuals and homosexuality.

But, despite its strong connections with the churches, all that we say in our report is directed to all people. It has a validity and extension far beyond the bounds of the Anglican Report.

We homosexuals recommend this report to you, hoping that it will stimulate you into taking and thinking, never forgetting that your father, mother, daughter, sun, brother, sister, aunt, uncle, neighbour could be homosexual and in need of love and acceptance.

Christopher Bendall, Joseph Chetcuti, Michael Clohesy, Peter de Waal, Debby Heywood, David Ritchie.

Legal and Social Aspects – Michael Clohesy and Peter de Waal

The Anglican Synod Report's analysis of the relationship of homosexuality to society rests upon a definition of society that is at once limited and, because of this limitation, oppressive. Society means nothing more or less than a collection of individuals, but when applied to a whole nation or civilisation must mean the totality of the inhabitants of this nation, the totality of the contributions to this civilisation. In the eyes of the report, membership of society belongs only to one who is Christian, heterosexual and married. There is no acknowledgement of the rights of minority groups within a society which, numerically at least, is predominantly heterosexual and married (the first attribute being a little more in doubt).

If one accepts the Report's assumption that numerical strength equals or denotes the only acceptable situation, then the statement

> the monogamous heterosexual marriage union not only represents the mind of God for this human creation but is also the necessary social unit which offers the greatest potential for human fulfilment in relationships [708]

perhaps makes some sense. If, on the other hand, one is able to acknowledge that there are existing within our society life-styles of a nature different from that delineated by the Report, then one has no option but to reject the Report's statement as being narrow-minded and unjust. The Report produces not one shred of evidence to support its contention that the monogamous heterosexual marriage union does indeed offer the greatest potential for human fulfilment and is the necessary social unit. Its only apparent justification is its existence. Such a mindless adherence to the status quo must be rejected by those concerned that all members of society be able to lead dignified lives.

Laws, it is claimed, are framed to protect the public good. [709] But it is clear that, for the Report, protecting the public good simply means maintaining the status quo without any rational discussion as to the advisability of this. The one attuned to changing social attitudes and customs, it is obvious that the laws of society need to change because they are framed only to suit the limited definition of society which the Report is perpetuating.

We would endorse the Report's claim that a radically new society is demanded, and would applaud its perception. [710] However, its condemnation of this demand is difficult to understand since the demand is the result of a desire for some members of society to be able to live fulfilling lives. If the report committee had been more concerned about the homosexuals it was preparing a report on, and had not prejudged the question it was supposedly investigating, it would have taken the time to speak to individual homosexuals [see footnote 746]. If it had taken this time, it would, among other things, have discovered the meaninglessness of its concern that homosexuals are excluded from heterosexual fulfilment. [711] It would have discovered that the homosexual by virtue of his/her very being is oriented towards homosexual fulfilment. The existing laws and structure of society make this fulfilment difficult to achieve, and for this reason must change.

The process of change will evidently be slow and gradual. We would not undertake the task of delineating

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[708] Ethics and Social Questions Committee of the Church of England, Diocese of Sydney, *Report on Homosexuality*, 1973, p. 22.

[709] ibid. p. 20.

[710] ibid. p. 21.

[711] ibid. p. 21.

all the steps in that process, but merely make the following recommendations:

FIRST: That homosexual acts between consenting adults in private should not be subject to the criminal law.

The rate of enforcement of these laws already indicates changing social attitudes, and should indicate to the Anglican church in Sydney its waning influence. No person has been charged in the last ten years in the ACT and the NT for alleged homosexual behaviour in private between consenting adults [see footnote 514]. In NSW in 1972, 0.033% of the homosexual population were tried under ss. 79-81 of the *Crimes Act*, and only 0.03% were convicted. On 30 June 1972 0.014% of the NSW homosexual population were in goal for offences under these ss. of the *Crimes Act*. [712] Many countries already have changed their laws in the direction we are seeking. These include Belgium, Canada, England, France, Japan, the Netherlands, Switzerland and both Germanies. There were at least 25 countries in this category up to 1971. [713] Does the Sydney Anglican Church really take pride in being a bastion of reactionism?

SECOND: That general equality with heterosexuals be promoted.

We would seek this equality within the following specific areas:

a. Freedom from discrimination in employment.

Many homosexuals are prevented from declaring their sexuality by the fear of losing their jobs. Many homosexuals are discriminated against when seeking employment when their sexuality is known. We would hope that the church would become a leader in the field of non-discrimination. Unfortunately in the past it has shown active discrimination against homosexuals in its employ.

b. Lowering the age of consent.

While community feeling on lowering the present age-of-consent laws for heterosexuals, and even abolishing them altogether, are persisting, we welcome that same law in this regard applying to homo- as to hetero-sexuals.

c. Homosexual unions.

We seek legal recognition of homosexual unions, for as long as the community accepts marriage in its present form.

d. Blackmail and Poofter Bashing.

The fact that many homosexuals feel the need, because of society's attitude, to be secret about their sexuality, means that they lay themselves open to blackmail and assault. If the committee had been more open about its meetings and had actually spoken to homosexuals, many of them (and this includes women) would have been able to appear before the committee and relate personal experiences of blackmail and poofter bashings for which no justice could be sought for fear of further blackmail and bashings. Does a supposedly Christian body realise that it is in fact supporting these injustices?

e. Children

The laws governing custody, guardianship and the adoption of children should be overhauled to permit homosexuals to demonstrate their equal suitability for bringing up children in a happy environment.

f. Financial Matters.

We seek:
- i) the amendment of the income tax laws to provide maximum deductions for dependant(s) in homosexual unions;
- ii) entitlement of homosexuals in union to cover by medical and hospital funds on family rates;
- iii) exemptions from probate and death duties on the death of a partner;
- iv) the changing of regulations for obtaining housing loans to make it easier for homosexual in union to obtain these loans.

g. Social Clubs.

The discrimination against homosexual organisations in obtaining liquor licences should be ended, to enable the setting up of clubs where homosexuals can meet socially. This would encourage the growth of homosexual unions, strengthen the bond of friendship, and strengthen the homosexual's self-acceptance and acceptance by others.

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[712] Bureau of Crime Statistics and Research, NSW, *Information on Homosexual and Prostitution Offences*, (Made available privately).

[713] Social Questions Committee of the Church of England, Diocese of Melbourne, *Report on Homosexuality*, 1971, pp. 23-4.

THIRD: That sex education courses in schools provide enlightened information and attitudes about homosexuals and homosexuality. That, to this end, homosexuals themselves be involved in the teaching of these courses.

Present sex-education courses in schools teach that homosexuality is a perversion and label homosexuals as depraved. Changes need to be made to ensure that youth is informed about homosexuals and homosexuality and taught not to discriminate. We believe it is necessary to have homosexuals as sex-education teachers because their openness about their homosexuality will serve to eliminate the guilt and isolation which many children feel about their homosexuality, guilt and isolation which is reinforced by society.

FOURTH: The psychological and psychiatric facilities designed to change the sexual orientation of homosexuals be outlawed.

The existence of these facilities is predicated upon the assumption that homosexuality is a sickness which needs to be cured. This assumption is rejected by most modern psychologists and psychiatrists [see page 461]. The problems of homosexuals associated with their homosexuality stem from the pressures of a society which rejects them as a sick element and makes their acceptance of their sexuality as an integral part of their personality very difficult. Previously society asked the homosexual to change his/her ways, now the homosexual demands that society change.

FIFTH: That homosexuals be given more access to information outlets in order that the ignorance of the community at large, which contributes greatly to the oppression of homosexuals, be dispelled. That the churches, because of their large resources, play the leading role in this by starting discussion groups on a parish level and by providing homosexuals with reasonable access to their media.

The seventh recommendation of the report contravenes the fundamental right of freedom of expression. The church has discovered a group in society which it sees as being inimical to its self-interest. It can fight this threat only by using its political influence to stamp it out. This is reminiscent of the worst forms of totalitarianism. Christians should be mindful of the terrible trials the early Christians had to endure from the same causes.

SIXTH: That there be a fundamental examination of the structures of society, with a view to finding the basic causes of the oppression of homosexuals, in order that the homosexual be accepted totally by society. That this examination be initiated on a governmental level and be actively supported by all groups in society.

As equal members of society, homosexuals have the rights which we are currently being denied. These include the right to freedom of sexual expression and the right to lead lives in keeping with our inherent dignity as human persons. It is our conviction that these rights are denied because of the structures and attitudes of society. We demand that these be changed.

Religious Aspects – Joseph Chetcuti

Its is somewhat farcical for the authors of the *Report on Homosexuality* to claim 'to preserve a proper perspective' on the subject, convinced, nonetheless, that the Bible 'speaks with explicitness and considerable warning' about it. [714] Their blatant refusal to apply exegetical research largely contributed to the report's failure to put the issue of homosexuality in its proper historical perspective.

The danger of their position is discussed by David Blamires in his book *Homosexuality From the Inside*, when he explains:

> the prohibitions of the Mosaic Law are related to the necessity for the Israelites of that period to maintain their identity as a separate people and to propound a distinctive moral outlook … The Mosaic Law, however, was formulated in and for a type of society vastly different from our own and can hardly be taken as normative for the twentieth century. [715]

Having failed to come to grips with the subject, the report finds itself resorting to whimsical platitudes: the prime example of this being in citing Psalm 8, begging the readers to 'look to the heavens, the work of thy

[714] Ethics and Social Questions Committee of the Church of England, Diocese of Sydney, *Report on Homosexuality*, 1973, p. 7.

[715] Blamires, David, *Homosexuality From the Inside*, Society of Friends, London, 1973, p. 10.

fingers.' [716] What this has to do with homosexuality needs to be determined!

We are informed in 'Homosexuality in Romans' that one of the two problems to be dealt with is Paul's 'reference' to homosexuality in Romans 1:26-27. [717] Surely it would not take much biblical research to agree with H Kimball-Jones that the New Testament 'does not really deal with the problem of homosexuality.' [718] What Paul is condemning is the practice of homosexuality by persons quite capable of a heterosexual relationship. Would Paul otherwise express dismay at the menfolk who 'have given up natural intercourse to be consumed with passion for each other'? (Romans 1:27) Sydney Anglicans must appreciate that what Paul objects to is sex for its own sake and neither heterosexuals nor homosexuals are excused from such possible 'abuses'.

Let us now focus our attention on Sodom and Gomorrah. Granted that while 'no particular examples of their wickedness are given apart from the episode in Genesis 19:5-9' – which is much discussed and widely interpreted – the report does not hesitate to make full use of this narrative in its condemnation of homosexuality. [719] Even the Jerusalem Bible when explaining these verses struggles to do so only cautiously:

> the unnatural vice which takes its name from this incident was condemned by the Israelites though it was common among their neighbours. However, underlying the story is a horror of the double offence of such behaviour towards angels (as the men are revealed to be) and the breach of the law of hospitality would also be considered serious. [720]

Even Prophet Ezechiel 16:49-50 expresses no doubt that the real crime of the Sodomites in the eyes of the Lord was their idolatry. What, then, was the origin of the exclusively homosexual interpretation of this passage, an interpretation that has had such a lasting influence on Christian thinking? Antagonistic to the Hellenistic way of life, the Jews saw in Sodom 'the symbol of the peculiar vices of Hellenism, which were abhorrent not only in themselves, but as the depravities of an alien and hostile culture.' [721]

Preferring to dismiss these arguments, the biased mind unfortunately makes the point of carefully steering away from such objections. 'None of these arguments cancels out the assessment of homosexuality in the Old and New Testament which has a basis quite independent of the Genesis episode', the report painfully adds on appreciating the futility of its arguments. [722] Desperately, the authors point to Jude 7 who accepted that Sodom and Gomorrah 'indulged in unnatural lust'. Admittedly, this kind of logic has kept the evangelical and fundamentalist Anglican out of step with modern theological development. Until such hurdles as that of Mark 7:10 (forming the sole argument for the support of Moses as author of the Pentateuch) are overcome, Sydney Anglicans have little hope of either understanding the Bible or the issue of homosexuality.

Believing homosexuals to be proselytic about their homosexuality as members of the Church of England are expected to be about their Anglicanism, the authors fear that homosexuality denies both heterosexuality and sexual difference. [723] It is unfortunate, and at the same time ludicrous, that the report struggles to convince us of this sexual difference, a difference of which we homosexuals are very well aware.

In expecting the government to act in the light of this report the Synod refuses to acknowledge not only the right of non-Christians to embrace their own particular ideology, but also any other form of Christian ethics save its Sydney version of Anglicanism. As is indicated in an interim report issued for private circulation by a group of Anglican clergy and doctors through the Church of England Moral Welfare Council, not all Anglicans are of the same mind. In recommending a change in the law and fixing of an age-of-consent at twenty-one, the British report also studied the problems of blackmail, police harassment and the suicide of homosexuals. [724] [Archbishop] Marcus Loane's foreword 'to commend this report to the attention of people in the Commonwealth of Australia' makes one wonder if he is at all aware of the presence of other Christian

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[716] *Report on Homosexuality*, op. cit. p. 8.
[717] ibid. p. 32.
[718] Kimball-Jones, H, *Towards a Christian Understanding of the Homosexual*, SCM Press Ltd, London, 1967, p. 70.
[719] *Report on Homosexuality*, op. cit. p. 29.
[720] *The Jerusalem Bible*, Darton, Longman and Todd, London, 1966, Note (a) to Genesis 19.
[721] Bailey, Derrick Sherwin, *Homosexuality and the Western Christian Tradition*, Longmans, Green and Co Ltd, London, 1955, pp. 6-9, 26-7, 40.
[722] *Report on Homosexuality*, op. cit. p. 30.
[723] ibid. pp. 8-10.
[724] Hyde, H Montgomery, *The Other Love: An Historical and Contemporary Survey of Homosexuality in Britain*, Mayflower, London, 1970, p. 252.

denominations in this land. What of the Quakers who believe that candour should be introduced 'to a subject where there is a history of concealment; and concealment, as we know, is a barrier to trust and thus to honest relationships between people'. [725]

Having completely dismissed situational morality, the report comes into conflict with Romans 13:10 ('Love does no wrong to a neighbour; therefore love is the fulfilling of the law'), as it informs us that 'Love can act in ignorance and can cause harm'. [726] Doubtless this discord is soon explained away, a custom not untypical of a society so fundamentalist and evangelical as the Sydney Anglican community.

A few more words on situational morality. Joseph Fletcher informs us that situationism is moderate since it avoids the extremes of legalism on the one hand, and of Antinomianism (opposite to law, rules, even principle or maxims) and existentialism on the other. Legalism, as the Report shows, is characterised by prefabricated laws with much hair-splitting and logic-chopping. While Protestantism is rigid and puritanical, punishing and sadistic, Catholicism, to its credit, adds Fletcher, has resorted to casuistry to evade the laws in favour of love. Antinomianism, with its firm stand against laws, rules, principles, maxims, regards every situation as unique, an existential moment. Paul opposed this in his condemnation of libertinism (the theory that grace and faith have replaced law completely) and Gnosticism. Principles are indicative, prescriptive. In regarding their interpretation of Christianity as the only valid expression of the gospels, the Synod of Sydney have denied the Holy Spirit the right to move men as deemed fit. Stultifying their own theories on the nature of the personal interpretation of Scripture, the Synod moreover have made ineffectual one of the major causes setting in train their segregation from Rome during the Reformation period. One wonders to what extent the tables have been turned!

Psychology and Psychiatry – Debby Heywood

> Homosexuality is assuredly no advantage, but it is nothing to be ashamed of, no vice, no degradation. It cannot be classified as an illness. We consider it to be a variation of the sexual functions produced by a certain arrest of sexual development. [727]

The word homosexual can be defined as one who is motivated, in adult life, by a preferential attraction to members of the same sex, who usually, though not necessarily, engages in overt sexual relations with them. *The Oxford English Dictionary* defines it as 'pertaining to or characterised by a sexual propensity for one's own sex.' This therefore does not include situational homosexuality, that is, where there are no alternative sexual outlets, such as prisons, single sex orders or establishments, for example, the navy and armed forces.

It appears that many of the world's societies do not regard homosexuality as evil, sinful or perverted. Ford and Beach studied 76 different societies and found that 64% of them dismissed homosexuality as both normal and acceptable to society. [728] It is regrettable that it is particularly Western society which encourages the point of view that the homosexual is either sick or unnatural.

The question remains as to whether we should regard homosexuals as unnatural or whether we should regard them as primarily people who are just as healthy and as normal as heterosexuals, the only differentiation being their choice of partner.

There are a number of explanations given to explain the causation of homosexuality. Chiefly they are:

(a) genetic and hormonal;
(b) environmental conditioning in childhood, including family life-style, parental personalities and attitudes;
(c) social and cultural attitudes.

Genetic and Hormonal

It appears that, contrary to previous supposition, genetic factors cannot determine psychosexual differentiation.

Studies of monzygotic twins have never been completed, but results supposedly found by Kallman in 1952 have never been verified by any other workers and subsequent studies in the field of genetics have reported

[725] Blamires, op. cit. p. v.
[726] *Report on Homosexuality*, op. cit. p. 10.
[727] Freud, Sigmund, 'Letter to an American Mother', *American Journal of Psychiatry*, 107, 1951, pp. 786-7.
[728] in Clinnard, MB, and Quinney, P, *Criminal Behaviour Systems*, Holt, Rinehardt and Winston, New York, 1967.

contradictory findings. [729] Slater found that there is a greater incidence of homosexuality n the group of younger siblings and that the incidence of homosexuality also increases as the age of the mother. [730] This could be attributed to an over- protectiveness on the part of the mother. These findings are important in that they dispute the theory that abnormal genes can be the causation of homosexuality.

Hormonal imbalance cannot be blamed as a factor in the reason for an individual's homosexuality, as it is well known that doses of androgen and estrogen (male and female sex hormones respectively) have no effect on the sexual drive nor do they influence the choice of the sexual object.

Kippax states that 'neither does it appear that hormonal effect per se can determine psychosexual differentiation.' [731]

Environmental Conditioning in Childhood

The view of most psychologists is that homosexual behaviour is learned or environmentally conditioned. They believe that homosexuality is caused by 'an arrest in sexual development' which occurs in the stage of homo-eroticism or self-love.

Theories put forward also include the suppositions that homosexuals lack the stable parental figures on which the child models his behaviour, that is, that there may be a dominating, over-aggressive and over-protective mother, and a very weak, detached and indifferent father. These prerequisites may occur in a few homosexual people but certainly do not occur in, or apply to, the majority. If these findings are assumed to be correct, why would it not therefore affect all children in the family? More than one homosexual person in a family would be rare.

Two theories which can be disputed on the fact that their cause alone would be highly unlikely to cause homosexuality are:

(a) early heterosexual experiences connected with fear or repulsion, resulting in an aversion to the opposite sex;
(b) single sex schools, prisons and corrective institutions.

However, for most people this is situational homosexuality only, as they return to heterosexual behaviour when they return to the outside world.

Social and Cultural Attitudes, or Homosexuality as an Illness

Many clinicians today still hold to the view that homosexuality is an illness, from which one must be cured.

The medical profession often comes in contact with people whom it sees as being self-insecure, weak-willed, explosive, cold, affectionless, depressive and fanatic. However, these patients are not representative of homosexual society as a whole. They are not people who are adjusted to their sexuality and are willing to work for equality for homosexuals, or people who lead as well balanced lives as heterosexuals.

Siegelman found that 'homosexuals are no more abnormal or any less well-adjusted than heterosexuals and that there is no evidence that homosexuals are ill as a result of their homosexuality.' [732]

Psychiatrists' opinions have generally become more enlightened in that they no longer believe that homosexuality is an illness. PA Morris states that out of 160 English psychiatrists, only 5% described homosexuality as a disease and ⅔ described it as an 'aberrant behaviour pattern' and ⅓ described it as a 'normal variant.' [733]

Barr found that in a sample (random) of 100 psychiatrists and 93 trainee psychiatrists in NSW, ⅔ of psychiatrists and ¾ of trainees found that it was a 'developmental anomaly not necessarily associated with neurotic symptoms.' [734]

May 1972 saw a breakthrough from the field of traditional attitudes when the Federal Council of Australian and New Zealand College of Psychiatrists passed a motion that it 'strongly condemns community attitudes and laws which discriminate against homosexual behaviour between consenting adults in private.'

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[729] in Lowe, RD, *The Biological Aspects of Homosexuality*, Unpublished paper, 1972.

[730] ibid.

[731] Kippax, S, *Homosexuality: Natural or Unnatural, Healthy or Sick?*, School of Behavioural Sciences, Macquarie University, Sydney, 1973.

[732] Siegelman, M, 'Adjustment of Male Homosexuals and Heterosexuals', *Archive of Sexual Behaviour*, 2, 1972, p. 9.

[733] Morris, PA, 'Doctors' Attitudes to Homosexuality', *British Journal of Psychiatry*, 122, 1973, p. 435.

[734] Barr, RF, 'Homosexuality and Psychological Adjustment', submitted to: *The Australian and New Zealand Journal of Psychiatry*, 1973.

Conclusions

Quotations from theses on homosexuality:

S Kippax: 'Persons do not Choose to be Homosexual'. [735]

J Marmon: [sic–Marmor] 'Homosexuality is no more unnatural than exclusive heterosexuality. Both are conditioned by society'. [736]

We believe concerning the aspect of homosexuality as an illness, that homosexuals are no more mal-adjusted than heterosexuals and the traits found by patient homosexuals or neurotic disorders are also found in any other minority group.

We further believe that the present attitudes of society in general force this aspect of homosexuality as a sickness, perversion or disease, and that it is time that homosexuality was both considered as normal and socially acceptable.

A Personal Response to the Report – Christopher Bendall

The human being is a very complex animal, capable of a great variety of responses in a given situation. Anyone maintaining that sexuality should be seen only within the context of procreation is taking an extremely simple view of man and sexuality.

For various reasons, most of which are not clearly understood, society has taken the view that homosexuality is undesirable. If an individual took a similar stand, without the support of society, the individual would be quite within his/her rights, but his/her motivation would be questioned. It is this acceptance of the group's assumptions and the questioning of those of an individual, which make our society dangerous for the individual, and, because of a general denial of sexuality, particularly dangerous for the homosexual.

Societies are formed by individuals for the convenience of the individual. Because it is formed from a collection of individuals, and is not a group of identical units, society should be amenable to modification in accordance with the needs of the individual, otherwise it becomes sterile, oppressive and valueless.

A society which oppresses homosexuals, as our does, is committing a form of psychological murder. By attempting to force a homosexual or bisexual into denying his/her natural sexuality, a teaching a person from a very early age that he/she is worthless, society is preventing the development of a homosexual's personality, and possibly depriving itself of many talented individuals; so reducing the variety and richness of life within it. Thus from both the personal and social level it is desirable for homosexuals to fight their oppression wherever they find it.

The problem of old age and loneliness is not otherwise for homosexuals than for heterosexuals. Probably the ageing heterosexual who loses a mate is in a slightly worse plight than a homosexual of the same age; if only because the present heterosexual life style sets great store by the formation of a monogamous pair bond which tends to leave individuals quite disoriented upon its breakdown.

The recent Anglican Diocese of Sydney *Report on Homosexuality* while condemning the practice of homosexuality because it is sinful, fails to come to grips with the problems of homosexuals in a sinful (to use their own judgement) society. What of the lesbian mother, who, because of church and social pressures decided to attempt a heterosexual marriage but found it intolerable? … the homosexuals beaten, robbed and blackmailed simply because of their sexual preference? … the homosexual school teacher without a job simply because of his/her sexuality? If the church should not be concerned with these issues, who should be?

The Anglican Report expresses the fear that a greater social tolerance will result in the emergence of more homosexuals: The particular risks associated with using the Kinsey statistics are, perhaps, well illustrated in Paul Wilson's concluding sentence. The perspective of the British report is probably to be preferred: 'Our conclusion is that homosexual behaviour is practised by a small minority of the population, and should be seen in proper perspective, neither ignored nor given a disproportionate amount of public attention' [737] Nevertheless the admitted suspicion of the Wolfenden Committee that there had been in Britain 'an increase in the amount of homosexual behaviour' [738] deserves to be taken seriously. These words were written in 1957.

Since then the tide of advocacy of homosexual liberation has risen considerably. The vociferous activities of

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[735] Kippax, op. cit. p. 13.

[736] Marmon, J, (ed), [sic] Marmor, Judd, (ed), *Sexual Inversion: The Multiple Roots of Homosexuality*, Basic Books Inc, New York, 1965.

[737] *Report of the Committee on Homosexual Offences and Prostitution*, HMSO, London, 1957, p. 20.

[738] ibid. p. 19.

such groups-movements as CAMP (Campaign Against Moral Persecution) and Gay Liberation, blending in with other movements for social reform (see especially Dennis Altman's *Homosexual Oppression and Liberation*, Sydney 1972), have done much not only to publicise the plight of homosexuals but almost certainly to increase the number of those who practise homosexuality. As Kinsey and others have noted, the direction of many people's sexual drive can vary according to the social climate and individual circumstances so that the coming out of many folk is not just a making of their homosexual way of life public but a crossing over from heterosexuality to homosexuality or a releasing of a previously controlled homosexual propensity. Richard Hauser has pointed out 'how infectious the homosexual attitude can become' and 'how convenience and desire can produce a deterioration where homosexuality can spread easily' [739] and for this reason any indicators that the homosexual way of life is becoming more accepted or widespread in the community should be an occasion for real concern.

In the very next paragraph the Report criticises Dennis Altman for suggesting that 'a good part of the hostility toward homosexuality derives from repressed homosexual urges.' Many homosexuals have noticed that people who have problems relating physically and emotionally to members of the opposite sex also are among the most emotive and vocal objectors to homosexuality. The Report goes on to add that while this suggestion 'may comfort the homosexual, it is simplistic and untestable.' It should be pointed out that although a concept be untested it is not necessarily untestable.

Contrary to the experience of most practising psychiatrists, the Ethics and Social Questions Committee implies that one's overt sexuality is relatively easily inverted. (Perhaps this is an expression of their own repressed bi-sexual potential?) This naive attitude can easily be demonstrated for what it is by inviting members of the committee to make love to any (purely for the sake of the experiment, of course) member of their own sex … then comparing their experience with the experience of making love to their spouse, assuming that they are happily married heterosexuals.

6:–1.3. – Sydney Morning Herald Report, 30 April 1974 [740]

Homosexual Christians in Plea on Laws

A group of Christian homosexuals in Sydney has produced a 28-page report urging the legalisation of homosexual acts between consenting adults in private.

It also calls for the legal recognition of homosexual marriages.

The document – titled *Homosexuals Report Back* – was compiled in answer to the report on homosexuality adopted by Sydney's Anglican Synod in October.

The group, which calls itself Cross+Section the inclusion of the cross is deliberate), includes Roman Catholics, Anglicans and former students for the Christian ministry. It has between 30 and 35 members.

The group is affiliated with CAMP (Campaign Against Moral Persecution) in NSW.

The report claims the attitude of Christian Churches, and Sydney Anglican Synod in particular, has been unenlightened and annihilating towards homosexuals.

It asks readers not to forget 'that your father, mother, daughter, son, brother, sister, aunt, uncle, or neighbour could be homosexual and in need of love and acceptance.'

It takes issue with the Anglican Synod statement that the monogamous heterosexual marriage union 'not only represents the mind of God or His human creation but is also the necessary social unit which offers the greatest potential for human fulfilment in relationships.'

Cross+Section claim the Anglican statement is 'narrow-minded and unjust,' does not offer 'one shred of evidence' to support this contention, and constitutes 'mindless adherence to the status quo.'

6:–1.4. – Retort to the Report, 13 June 1974 [741]

Homosexuals Report Back

Homosexuals Report Back, CAMP NSW Branch, 1974, 29 pages, 50c.

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[739] Hauser, Richard, *The Homosexual Society*, The Bodley Head Ltd, London, 1962, p. 59.
[740] Gill, Alan, 'Homosexual Christians in Plea on Laws', *The Sydney Morning Herald*, 30 April 1974, p. 14.
[741] Smith, Rev Bruce, 'Homosexuals Report Back', *The Australian Church Record*, 13 June 1974, p. 7.

This document, produced by a Sydney church group within the homosexual organisation Campaign Against Moral Persecution, is a 'retort to the *Report on Homosexuality* produced in October 1973 by the Synod of Sydney's Ethics and Social Questions Committee. *Homosexuals Report Back* (HRB) covers legal and social, religious and psychological aspects of homosexuality, each by a different author, and offers a closing personal response to the Sydney synod report (ROH).

To examine in detail the HRB would be a lengthy undertaking. Suffice it to say that the chapter on Religious Aspects (pp. 16-20) resurrects the very arguments which the ROH laid to rest in a fairly thorough manner.

This is a very weak chapter fairly liberally spiced with abusive asides directed against legalistic, fundamentalist Sydney Anglicans.

The chapter on Psychology and Psychiatry (pp. 21-15) is a pale reflection of the same sort of evidence as appears in ROH (pp. 36-50). The conclusion that 'it is time that homosexuality was both considered as normal and socially acceptable' (p. 24) involves other considerations than statistical estimates of prominence. The jump from is to ought cannot be made so naively.

Perhaps the nub of HRB is in the Legal and Social Aspects (pp. 9-15) in which the authors accuse the Sydney Committee [742] of not speaking to homosexuals (quite false) and of a 'mindless adherence to the status quo' (p. 9).

Instead of the biblical norms HRB suggests a six-point program of reform fully confirming the warning issued in the ROH (pp. 21-22).

Abolition of all forms of discrimination against homosexuals involves nothing less than a social revolution – those who read (or who don't) take note!

HRB involves the assumption that all forms of voluntary sexual activity are morally acceptable and that society should recognise this and rearrange itself accordingly (moral persecution will not end until it does).

That some non-Christians should support this point of view is not to be wondered at, that any professing Christian should do so is nothing short of a tragedy.

6:–1.5. – With Great Force and Extreme Simplicity, 19 June 1974 [743]
Synod Slanders Debated

Homosexuals report back Cross+Section Campaign Against Moral Persecution, 1974, 50c

This little pamphlet is a reply to the insulting report on homosexuality delivered to the 1973 Anglican Synod in Sydney. It debates the slanders of the authors of the Synod work with great force and extreme simplicity. However, I disagree with both works because of their common base. Both are written from a Christian philosophical viewpoint, and the conclusions seem to me to be somewhat obtuse in terms of their historical and social perceptiveness.

The writers of *Homosexual Report Back* state a great number of very valid points, but the errors of their basic philosophy lead them up against a wall in understanding the terms and nature of their sexuality. This is not intended as an essay for compassion, for I know and respect the six contributors to this document, and I do not expect their views to be changed or very much influenced by what I have to say. The minor disagreements I have with their polemic are relevant only to a discussion on humankind and human relationships, and how the emotions of a person are evolved. This seems relatively unimportant, and seemingly without material foundation, but it is precisely because the writers of *Homosexual Report Back* have founded their basic argument on nothing more abstraction that I have any disagreement with them

Essentially, this report lists a number of steps which would help homosexuals overcoming their, closetedness, their fear of being known for their sexuality. These include the removal of legal restraints (applicable only to male homosexuals) and the legal recognition of homosexual unions. I would not accept the fourth recommendation 'that psychological and psychiatric facilities designed to change the sexual

[742] The membership of the Sydney Diocese's Ethics and Social Questions Committee who prepared the report were: The Rev G Beatty; Mr AE Craddock; the Rev D Davis; Dr Jill Forrest; Mr I Harvey; the Rev Canon DB Knox; the Rev Clive Harcourt-Norton; the Rev Bruce L Smith (Chairman); Professor A Steinbeck; Dr RR Winton. In the Archbishop's, M L Loane, foreword to the report he states that: 'Dr Mary Lovell should be added to the committee's membership list and the Rev C[live] H[arcourt]-Norton be deleted'.

[743] Fisher, Jeremy, 'Synod Slanders Debate', *Arena*, vol. 7, no. 7, 19 June 1974, pp. 18-9.

orientation of homosexuals be outlawed' because I feel that in this society some form of escape, extreme though it may be, should be permitted for those unable to cope with the social stultification which results when one loves someone of one's own sex. The only alternative to psychiatry is suicide, and though death may have its virtues they would not outweigh those of psychiatry.

But the major disagreement I have with the report centres around the chapter by Joseph Chetcuti, 'Religious Aspects'. Here Chetcuti uses Christian arguments to justify homosexuality. This is of importance on a number of levels, for Christianity, derived as it is from mysticism and illogic, decries and condemns homosexuals absolutely. Only the Roman Catholic Church makes allowances for homosexuality, thought that sect too condemns the practice of the desire. Since Christian thought, twisted into its present historical context through reformation and its close links with the ruling class, is irrelevant to this materialist age it would seem pointless to use its poor methodology to justify the emotional makeup of a being.

In terms of the evolution of humankind to the level of consciousness, or to the level where humankind was able to reason some form of motive for its existence, and continuance of the evolutionary process, the arguments in favour of homosexuality which Chetcuti and others make are decidedly valueless. And since these arguments use the method of Christianity, which was used to reason that the universe was spat out by God in a little less than seven days, it is not surprising that the material reality of this present world, and its historical development, is ignored. Humankind, in its evolution, has had to struggle for its superiority in order to survive. This has meant, and still means, that procreation is essentially, since only a relatively small percentage of humankind will lead a sexual life which does not involve the possibility of procreation, the struggle for procreation is not a particularly valid one. There are some who would call the battle pleasant. However homosexuals represent, in terms once again of the evolution of conscious humankind, a departure from the heterosexual norm.

No matter what the causative factors are involved in the psychic formation of a homosexual, the creation of homosexuality lies not in the pits of hell but in the adaptation of a being to a particular social situation. In this, there is no morality nor theology. As with everything else, homosexuality results from the conflict of opposing forces, forced into opposition through the relationship of matter to time. Since God resulted from the conflict of humankind developing in a universe it did not fully understand, that particular social fiction has no relevance to any discussion on homosexuality.

6:–1.6. – CAMP NSW Lettergram to Australian Broadcasting Commission, 30 April 1974

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TO:     Head Of Special Projects Radio
        Box 487
        Sydney

TEXT:   Re proposed Lateline program on homosexuality reports. Proposed format
        indicates that program will centre on Anglican report and its
        ramifications. Group within CAMP has produced retort to this. In the
        interest of objectivity and fair play authors of CAMP's report must have
        equal status with author of original. We demand right to oppose Smith in
        our own right and in all areas covered by our report. Liz Fell proposes
        Lex Watson who at no stage has been associated with our report as main
        spokesman for homosexual interests and refuses to withdraw him. Under
        these circumstances we cannot appear.

FROM:   Clohesy and de Waal for the authors 827 3063
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Figure 27: CAMP NSW Lettergram to ABC Head of Special Projects Radio

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6:–1.7. – CAMP NSW Letter to Talbot Duckmanton, General Manager, Australian Broadcasting Commission, 3 May 1974

I write to express this organisation's misgivings about a program heard on Lateline on Wednesday evening.

[744] The subject was a report published on the subject of homosexuality last October by the Church of England Diocese of Sydney, and the program consisted of a discussion between the Reverend Bruce Smith, compiler of the report, and Lex Watson, spokesperson for Homosexual Action.

Perhaps for historical reasons the ABC does have occasion to broadcast discussions on matters which have long left the limelight of the public forum; but on this occasion I feel it should be pointed out that Wednesday's discussion was directly occasioned by the publishing during the previous week of a reply to Mr Smith's report, entitled *Homosexuals Report Back*. This latter report was written by six members of the Church Group within CAMP called Cross+Section, and was made available to the media together with a press release on Monday morning. The press release made it clear that the writers of the report were available for comment and indicated the best means of contacting them.

I can envisage that a program in which the Reverend Bruce Smith debated with writers of the new report would contain a deal of public information and provide the basis for an interesting program, especially since Mr Smith and the writers share the sort of convictions which enable them to call themselves Christians.

When it became known to the writers of our report that Lex Watson, who had no part of the research, writing or publication of *Homosexuals Report Back* had been selected by Lateline to represent their point of view, they immediately expressed their dissatisfaction both to Mr Watson and to Ms Fell, researcher for Lateline. They indicated to Ms Fell that they were not prepared to accept Mr Watson as an apologist for a report with which he had no connection; nor were they willing to share a platform with him on this particular matter.

This information was also sent to the Head of Special Projects (Radio) by lettergram [see page 466] on Tuesday evening, allowing adequate time for adjustment of the scope of the program. However, Ms Fell insisted that Mr Watson should appear, indicating that there had been a former occasion on which she had not included him in a program shown on a commercial television station, so that now she felt obliged to provide him with an opportunity to speak.

The result was the program I have described at the beginning of my letter. CAMP objects to the use (and subsequent non-use) of a publication which has absorbed many hours of its members' time as the impetus for a radio program during the course of which this organisation is not mentioned. Checking by members of the executive of CAMP has failed to find any evidence for the existence of a body called Homosexual Action, so it must be assumed that Mr Watson spoke as an individual, despite his entitlement at the beginning and end of the program.

CAMP would appreciate your assurance that its representations on behalf of the sizeable homosexual minority in society might receive a reasonable acknowledgement by the Australian Broadcasting Commission. Our report is still, of course, of current interest and information, and could well provide the basis of a program in which its authors could take part.

Copy: Mr Alan Ashbolt.

6:–1.7.1. – ABC Lateline Program 190, 1 May 1974 [745]

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[744] See: 6:–1.7.1. page 467, 'ABC Lateline Program 190'.

[745] According to Guy Tranter, Assistant Archivist, Document Archives, Australian Broadcasting Corporation there is no transcript of the Lateline program available. This Lateline program number 190 was broadcast live on 1 May 1974 and scripted notes for the presenter introducing the speakers have survived. On further checking with Jean Walker at the Australian Broadcasting Corporation's Radio Archives an audio copy of the program has not survived either. In an effort to obtain a copy of the program the author wrote a letter to the editor, *Sydney Star Observer*, seeking assistance. On Thursday 5 November 1998, p. 13 the requested information was published; nothing came of that. The author further wrote a letter to *The Sydney Morning Herald*'s RSVP Column on 21 November 1998 seeking assistance with a copy of the program's tape. This request was published in the *Herald's* RSVP Column on Wednesday 9 December 1998, p. 12; no response was ever received. The author visited the Melbourne based Australian Lesbian and Gay Archives during December 1998, unfortunately their extensive audio tape collection did not include a copy. On 25 March 1999 the author contacted the National Film and Sound Archive requesting that they search their database regarding the possible holding of an audio copy of the program. Very promptly, on the same day, the archives responded that unfortunately they did not hold a copy of the Lateline program. On 7 April 1999 a letter was forwarded to the Rev Bruce L Smith, the former chair of the Sydney Anglican Diocese's Ethics and Social Questions Committee, to ascertain if he could assist with an audio or transcript copy

(continued...)

Lateline Number [190] Wednesday 1 May 1974

Theme	? [Music]
Peter Fry	Good evening, this is Lateline for Wednesday May the first. Mayday. And with some thoughts on this **ancient** festival, (of course) is Fred May.
Tape	?
Peter Fry	Frederick May, on Mayday. The mediaeval bagpipes and flute were played by Winsome Evans. And this is Lateline on ABC radio 2.
Theme	? [Music]
Peter Fry	It was last October that the Ethics and Social Questions committee of the Anglican Diocese of Sydney published its report on homosexuality. The report was not then and is not now accepted by many homosexuals. It takes a strong stand against moves to recognise homosexual conduct as a legitimate life-style and argues that monogamous heterosexual marriage is the social unit offering the greatest potential for human fulfilment in relationships. It goes on then to suggest that legislation against overt homosexuality is essential to avoid younger generations being exposed to models of sexual relationships which differ from the conventional state of marriage. To discuss these questions we have in the studio the Reverend Bruce Smith, Senior Lecturer at Moore Theological College, Chairman of the Ethics and Social Questions Committee, of the Anglican Diocese of Sydney, and Mr Lex Watson, lecturer in government at the University of Sydney, and spokesperson for a group called homosexual action. DISCUSSION Speaking with Reverend Bruce Smith, Chairman of the Ethics and Social Questions Committee of the Anglican Diocese of Sydney and Mr Lex Watson, of the group, Homosexual Action. And that's all in Lateline for this evening. Research Liz Fell and Geoff Mullens, on panel Bob Maynard, producer David Ives. This is Peter Fry saying goodnight from Lateline.

6:–1.8. – Felix Donnelly, Senior Lecturer, Department of Community Health, University of Auckland Letter to Cross+Section, 8 May 1974

Thank you very much indeed for your kindness in forwarding me a copy of your publication 'Homosexuals Report Back'. I was very interested to read the material by a group of active Christians. I do hope the churches take note of the material presented. I think your report is of very real value, and congratulate you all on its presentation.

6:–1.9. – Talbot Duckmanton, General Manager, Australian Broadcasting Commission Letter to CAMP NSW, 3 June 1974

I am now able to reply to your letter of 3rd May about Lateline on 1st May, which was acknowledged on my behalf on May 8th.

May I say first that we try to accommodate the widest range of opinion in our programs, but we reserve the right to determine who should be invited to participate in them.

Our Director of Radio Special Projects received your telegram protesting about Mr Lex Watson's proposed participation in Lateline and after considering the matter carefully, decided that there were not, in his view, sufficient grounds to withdraw the invitation to Mr Watson. As you know, we also invited representatives of your group, but I understand your members declined because they were unwilling to appear with Mr Watson.

I understand there is no ground for your assertion that Mr Watson was invited because he was not included in a previous discussion on this subject on commercial television. Should you feel there are aspects of your

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[745](...continued)
of the Lateline program. No response was ever received from Rev Smith.

group's report which need further amplification by its authors, you may care to apply for inclusion in the ABC's Access program. Applications should be addressed to:

Executive Producer, Access, Box 487 GPO, SYDNEY NSW 2001

6:–1.10. – CAMP NSW Letter to Talbot Duckmanton, General Manager, Australian Broadcasting Commission, 24 June 1974

Thank you for your letter of 8 June. You seem to have missed much of the point my letter in your statement that 'we reserve the right to determine who should be invited to participate' in ABC programs. That right is not in the least dispute, and I feel that I went to considerable pains in my original letter to point out that the program which went to air on Lateline that night was not the program which was originally outlined to us, simply because the ABC decided that Lex Watson, who had no connection whatever with *Homosexuals Report Back*, was chosen to appear to discuss a document which he could even have seen at the time.

I further resent your accusation that I lied to you in my earlier letter. ('I understand there is no ground for your assertion that …'). My information that the basis of the invitation to Lex Watson was his exclusion from an interview on *A Current Affair* in October last year was passed on to me by Michael Clohesy, one of the authors of *Homosexuals Report Back*. He had been informed of this by Liz Fell during the corse of a telephone conversation about the Lateline program under discussion. Ms Fell would be able to verify this, since she was at that time, I understand, researching for Transmedia.

Your invitation to apply for inclusion in the ABC's ACCESS program does not really provide a solution for the situation. CAMP by releasing a report from one of its groups and providing a copy of this, together with a news release, for the use of the ABC, has given the impetus for a section of the Lateline program and provided the ABC with information which we believe has been less then usefully employed. It is hardly satisfactory to us for you to suggest that all we now need to do is to spend many more hours in the preparation of a television program, which we fear may be similarly hobbled.

6:–1.11. – K Fraser, A/Assistant General Manager, Australian Broadcasting Commission Letter to CAMP NSW, 2 July 1974

The General Manager, Mr TS Duckmanton, has asked me to thank you for your letter of June 24 about the Lateline program of May 1.

I think you may agree that there is little to be gained in our continuing to discuss this issue. The ABC's Director of Radio Special Projects stands by the point of view he expressed and which Mr Duckmanton conveyed to you in his letter of June 3. And I must make it clear that the fact of Mr Lex Watson's non-appearance on a commercial television program has no bearing on his selection to appear on an ABC radio program.

As to Access and your fear that your participation in the program may be hobbled, the program is produced not by the ABC, but by members of the group taking part. The ABC provides technical facilities and advice, but allows participants free rein as to the content of the program, within the limits of such laws as may apply. It is of course, your decision as to whether you seek to appear or not.

6:–1.12. – Cross+Section Letter to Editor, The Australian Church Record, 24 June 1974

We, the authors of *Homosexuals Report Back*, would like to make some comments on the review of our publication by BL Smith (ACR, 13/6).

We feel that we are misrepresented since, by his own admission, BL Smith has not fully examined our report and therefore must be quoting out of context. He is prepared despite this admission to publish a critique. Its worth must be judged in this light.

Mr Smith demonstrates the very closed-mindedness at which HRB was protesting by refusing to consider the arguments raised in the religious section. Had we considered that ROH had laid these arguments to rest we would not have bothered to discuss them. However, since we see Christianity as wider than BL Smith, Joseph Chetcuti offered alternative interpretations to his in the hope of dialogue.

It is a mystery how Mr Smith resolves the contradiction of similar psychological and psychiatric evidence (his assertions) leading to different conclusions. Of course, in fact, the evidence itself is quite different. Debby

Heywood presents the latest evidence in these fields, in contrast with ROH which contents itself with outdated findings. That HRB is more in touch with contemporary feeling is seen in the fact that both the Australian and New Zealand College of Psychiatrists and the Australian Psychological Association have this year passed motions condemning discrimination against homosexuals, and that the American Psychiatric Association decided by referendum that homosexuality should no longer be regarded as an illness.

That Mr Smith has little concern for individual people is shown by the fact that the only attention paid to the personal response by Chris Bendall is a passing reference to its presence.

Mr Smith yet again refuses to indicate **why** he is opposed to social chance, merely repeating the warning in ROH that this would be a bad thing, a tragedy. This action fully confirms our assertion that ROH constitutes a 'mindless adherence to the status quo'.

To substantiate his claim that homosexuals did take part in the deliberations of the Committee [746], could Mr Smith indicate which of the 200,000 homosexuals in Sydney these were? We only know of two.

Signed by Michael Clohesy and Peter de Waal on behalf of Christopher Bendall, Joseph Chetcuti, Debby Heywood and David Ritchie.

6:–1.13. – Rex Meyer, Editor, The Australian Church Record, Letter to Cross+Section, 1 July 1974

I have for my attention your letter of 24 June signed by Michael Clohesy and Peter de Waal and concerning a review of *Homosexuals Report Back*.

You are quite entitled to differ from our reviewer. I am wondering however whether you actually read the review or whether someone told you about it. In your second paragraph you say – 'We feel that we are misrepresented since, by his own admission, BL Smith has not fully examined our report and therefore must be quoting out of context.'

I find this an extraordinary statement if you did indeed read our review. For 1) Mr Smith made no such admission and made no reference of any kind to not fully examining your report. You simply dreamt that one up. 2) You say he 'must be quoting out of context' and if that were true your case would be strong. But you in fact mention nothing that he quotes out of context.

Your report on both pages 10 and 12 implies that the Committee which carried out the synod enquiry did not consult homosexuals. Mr Smith clearly refutes this, yet in your final paragraph you seem to admit the truth of his statement but change your ground. But you do not concede either that Mr Smith was correct or that you were wrong.

It seems to me that your letter aims to make points and score successes but shows scant respect for truth. I do not feel that one upmanship is a game that Christians should indulge in or encourage when an important moral issue is involved.

If you and your friends (and I know some of you well and respect your ability to think and express yourselves) would take the biblical statements about homosexuality and show from them that a Christian can be a practising homosexual, I would be glad to receive a 2000 word article from you on the subject. I know all too well the confusion that exists among psychiatrists and psychologists about the question because I work with them every day. But the Anglican Church takes a very firm stand on the Scriptures and that must be our starting point.

6:–1.14. – HC Dunstan, St Barnabas Rectory Letter to The Box Holder, 1 May 1974

Reference – *Homosexuals Report Back*

What a sick 'Retort' you have sent me to read! How plausible is the argument of those who indulge in what they know to be evil, looking desperately for some backing to support them! An acceptance of the Holy Bible as absolute truth does not allow me now nor ever will to call evil good or vice versa.

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[746] As far as we are aware only Peter de Waal and Peter Bonsall-Boone, on behalf of CAMP NSW, met once, on 23 June 1972, with the Diocese's Ethics and Social Questions Committee during their over two year preparation of its report on homosexuality. Date of the meeting in: *CAMP Ink*, vol. 2. no. 11. n. p. On the back of the Classified Advertisements insert after p. 2.

[747]

God is not dead,
There is a living God,
He has spoken in the Bible
He means what He says, and
will do as He has promised

Maybe you have read the clear statement on *Homosexuality* [748] [749] broadcast by the Rev Canon DB Knox. If not, the enclosed is a copy of his statement as printed in my parish paper of May 1973. I agree with all that he said. Homosexuality, drunkenness, drug addiction etc., etc., can be adequately dealt with, and the individual completely rehabilitated God's way by confessing the sin, by repenting and belief in the Christian Gospel by invitation to Jesus Christ (who is Almighty God) to dwell in the individual's heart by faith and using Grace by which to obey God. Remember God will never allow anything to enter a human life that is more than the person can cope with. See I Corinthians 1:13.

The Christian Church definitely condemns the sin of Sodomy (by whitewashing it is called homosexuality) but, as its Lord, loves the sinner and must always extend a helping hand. The cure is God's, by God's methods. For, anyone may 'do all things through Christ who strengthens him', Philippians 4:13.

[750]

Jesus Christ
Is Our Only Hope

No reply is needed to this acknowledgement for I thank God I am a Christian by the Grace of God, believe Christ is adequate for all my needs (Universal Panacaea) [sic–Panacea] and His Word is absolute Truth. This is not brainwashing by the Sydney Diocese, but an acknowledgement of just plain common sense and decency, and refusal to change my convictions on the pleas of a half dozen sick individuals who, because they can't get what they want, not only leave the Church but abuse its stand.

HC Dunstan St Barnabas Mill Hill, Waverley.

6:–1.14.1. – A Controversial Issue, February 1973 [751]

Homosexuality

You will have read in the paper and perhaps seen on TV a discussion about homosexuality. Some people are suggesting that homosexual acts are quite compatible with being a Christian. We ought to be quite clear in our minds about what the Bible says on this subject.

The Old Testament is absolutely clear that God Abominates homosexual acts; in Leviticus 20:13 God's Word says: 'If man lie with a male as with a woman both of them have committed an abomination: they shall be put to death; their blood is upon them,' and in Leviticus 18:22 'You shall not lie with a male as with a woman, it is an abomination'; and Deuteronomy 23:17 'There shall be no harlot of the daughters of Israel, neither shall there be a sodomite of the sons of Israel. You shall not bring the hire of a whore or the wages of a sodomite into the house of the Lord your God for any vow: for both these are an

[747] This is the text of a rubber stamp (70 mm x 37 mm) included at this position in the original letter.
[748] See: 6:–1.14.1. page 471, 'A Controversial Issue', *Southern Cross*, February 1973, pp. 14-5.
[749] A further article related to Canon DB Knox's February 1973 Homosexuality article can be found in *Southern Cross*, May 1973, p. 12, by Rev Tony Bagnall, Rector of St Peter's Cremorne, NSW.
[750] This is the text of a rubber stamp (73 mm x 25 mm) included in the original letter.
[751] Knox, Canon DB, 'Homosexuality', *Southern Cross*, February 1973, pp. 14-5.

abomination unto the Lord your God.'

The Old Testament consistently condemns sodomy, but it may be said that the New Testament is different. Some people like to contrast the teaching of Jesus with the God of the Old Testament. This sort of contrast springs from a lack of knowledge. There is no difference between the Old and the New. Jesus believed every word of the Old Testament, and He spoke of the God revealed there as His Father. And if we read the New Testament we will find that it affirms in every respect the teaching of the Old Testament, and in fact on this particular question it is even more explicit in its condemnation. Thus in Romans 1:27 we read 'men … were consumed in passion for one another, men committing shameless acts with men and receiving in their own persons the due penalty for their error … who though they know God's decree that those who do such things deserve to die, not only do them but also approve those who practise them.' In I Timothy 1:10 'the law is made for the lawless and unruly, for the ungodly and sinners … for fornicators, for abusers of themselves with men.' And perhaps the clearest condemnation of homosexuality in the New Testament is in I Corinthians 6:9 'Do you not know that the unrighteous shall not inherit the kingdom of God? Be not deceived: neither the immoral, nor idolaters, nor adulterers, nor homosexuals … shall inherit the Kingdom of God.' We should be clear then that God's Word consistently condemns homosexual activity. It follows that those who deliberately and unrepentantly engage in it cannot expect to be in relationship with God through His Spirit. They cannot, that is, be Christians. They may say that they are, but the facts are against them. God will not dwell in the heart of any who set their face to do what His Word plainly and consistently forbids.

There is a second point, Christians are commanded by the Word of God not to have fellowship with those who call themselves Christians but who at the same time refuse to follow God's will. God does not have fellowship with deliberately disobedient, and we are not to enter into Christian fellowship with them either. I am not talking about non-Christians, that is, about people who do not claim the name of Christ, but about those who take the name of Christ, and yet refuse to follow the will of God as Christ followed it, from these we are to withdraw our fellowship. Thus St Paul commands in I Corinthians 5:11 'I write unto you not to keep company, if any man who is named a brother (ie a Christian) be a fornicator, or covetous, or an idolater, or a reviler or a drunkard or an extortioner; with such a one, no not to eat.' There are other passages in the New Testament to the same effect. If we are to be faithful to God's mind we are to break off our Christian fellowship with such a person. The homosexual is not especially singled out. The same is true for anyone who is breaking God's law, whether he is a thief, or living with someone else's wife.

Some people are saying that this is a form of moral persecution. It is nothing of the sort. It is simply obedience to Christ. People should not expect otherwise. Of course, the church exists to help people with problems and the problem of homosexuality can, I am glad to say, be overcome, as it is not an inherited but an acquired disposition. For someone who feels he has this disposition but is fighting against it, nothing but sympathy and help should be forthcoming from all of us. But for those who are advocating it as a way of life in the name of Christ, such teaching must be corrected by the plain word of God, and Christian fellowship withdrawn until given up.

Thirdly, why are homosexual acts abominable in God's sight? In a nutshell, because homosexuality is the expression of the concept that the enjoyment of sex is essentially self-centred. Lots of things we enjoy are self-centred, and harmless at that, such as surfing and horse driving. Advocates of homosexuality are in effect saying that sex is the same. But the truth is the exact opposite. Sex is essentially relationship, while self-centredness is, of course, the complete absence of relationship. Therefore there is an abuse of sex to use it self-centredly. The Bible puts the matter in a nut-shell when it says that our sexual natures may only be unlocked by our spouse. We have no authority over them ourselves. It may seem a strange thing when St Paul writes in I Corinthians 7:4 'The wife has no authority over her own body, but the husband: and likewise also the husband has no authority over his own body, but the wife': but these words reflect a very important truth that human nature is made for fellowship, and that sex lies close to the centre of this purpose. Sex is for relationship, while homosexuality is the complete antithesis of this, for in fact it is saying that sex is for self-satisfaction.

This leads me to make one or two remarks about the mystery of our bodies as the means through which we express our personalities. In I Corinthians 6:13 there is an interesting contrast between our physical organs which come to an end, and our body which will be raised up with Christ. It is plain that St Paul is thinking of the body as more than the sum of the physical organs. It is the expression of our personality. And so our use of sex is never merely a physical function, it is the expression of our personality in our relationship with our spouse. We express our

relationship of love and joy in each other's company through our bodies. It is a wonderful mystery which God has woven into creation. The same passage makes clear that our relationship with one another should be in the context of our relationship with Christ. As St Paul says, the body is for the Lord and the Lord for the body. Sex helps to unite persons.

We as persons of course, related and united to one another through our minds and spirits, and this is express and strengthened through our mutual use of our bodies. We are created for relationship and therefore our bodies are to express relationship; true relationship can only exist if it is other-person-centred; self-centredness destroys relationship. That is why we are not to use our sexual natures selfishly and self-centredly which is what homosexual activity is in essence. Nor, as St Paul points out, are we to use our sexual nature for the casual relationship with a prostitute. This too is self-centred.

We are not to take our bodies (that is to say the expression of our personalities) and unite them sexually with a harlot and so become one with her in this casual, mercenary relationship (I Corinthians 6:16). All relationship is other-person-centred, and this is true of man and wife relationship which becomes deeper than other human relationships by being exclusive, permanent and intimate. Sex does not create this relationship which like all human relationship is based in the mind and personality. But sex expresses and serves this relationship. For our sexual natures have been created to express life-long relationship with our spouse and so the principle of sex is fidelity. That is to say, our spouse alone has authority over our bodies in their sexual expression.

Homosexuality, however, in its essence, simply uses sex in a self-centred way, and so runs against the whole of God's purpose in creating us, our personalities and our bodies, for relationship with one another in the context of relationship with God in Christ. Sex expresses and is the instrument of this purpose. No wonder homosexuality, which contradicts this purpose in an area of its intended expression is abominated in God's Word. God has moreover written this condemnation of homosexuality into our natural instincts.

The literature of non-Christian world witnesses to this fact. God will help those who look to Him for help against this temptation as He does in every temptation. We should be clear in our minds that it is something which is essentially wrong, and to be avoided in our own lives and in the life of our Christian fellowship.

6:–1.14.2. – St Barnabas' – Coverted, Converted, Coveted or Covered? [752]

Figure 28: St Barnabas Church, Mill Hill (Waverley, NSW) for Sale Advertisement

'The stuff about Mill Hill is a hoot!

I suspect that the building may well be the old St Barnabas' church. I only have vague memories of it, but it wasn't unlike that, and looking at my Sydney street directory, Mill Hill Road is pretty much where I remember it as having been.

I'm even more amused by the estate agent's advertisement, which so boldly proclaims COVERTED HERITAGE CHURCH. I suspect they mean *converted*, but maybe it's *coveted* also – or did they mean *covered*? It's hard to tell.

In any case, if it's snapped up by the gay community for its proximity to the Centennial Park beat and Oxford street, or for its bizarre origins, it certainly would have poor old 'Red-head' Dunstan (as my father always called him) spinning in his grave. He was a most earnest and dull man, and was Rector of Mill Hill for what seemed like a century.

When the first Billy Graham Crusade was raging at the nearby Showground, there occurred an amusing incident which my mother reported back after she had gone to St Barnabas' one day to give a talk (Bible or missionary, probably) to a group of ladies there, known as (wait for it) The Sunshine Club. The dreaded Mrs 'Red-head', a lady of formidable presence, thanked mother profusely for coming and then

[752] The above advertisement (126 mm x 192 mm) appeared in the *Sydney Star Observer*, Thursday 26 February 1998, p. 66. I asked a close clergy friend in Melbourne, Rev David Conolly, who grew-up in Sydney and whose father was a Sydney clergyman, to verify if the church's address in the advertisement is in fact the same as that of the previous letter from HC Dunstan. Adjacent to the advertisement is his response dated 3 March 1998.

made the following announcement to the ever-obedient ladies of her Sunshine Club: "Ladies, you all know by now that a bus has been arranged to convey us all to the Billy Graham Crusade on Sunday night. You will also know that Dr Graham always gives an opportunity for people to come forward at one point if they want to give their lives to the Lord Jesus. Since we are going to the Crusade as a group, when I give you the signal, The Sunshine Club will all go forward **as a group** and give our lives to Jesus. I will lead the way as Madam President, of course." This was followed by dutiful murmurs of "Yes, Mrs Dunstan" and the meeting adjourned for tea and sandwiches.'

6:–1.15. – Homosexual Revolt Attacked Society, 11 October 1973 [753]

Moves on Sex A Threat to Society

MILITANT homosexuals threaten the institution of marriage and society itself, an Anglican Church report said yesterday.

It said homosexual acts should never be legalised, but that the laws against them should be made uniform throughout Australia.

The report, by the church's ethics and social questions committee, was tabled at the Anglican synod in Sydney yesterday. It will be debated by the delegates next week.

The committee, led by the Reverend Bruce Smith, a lecturer at Moore Theological College, Sydney, made its report after a two-year study.

It recommended that:

GOVERNMENTS carry out research into alternatives to gaol sentences for homosexuals, except for 'more heinous or repeated offences.'

TREATMENT

FIRST offenders at least should appear in private before a 'properly constituted tribunal' instead of in an open court.

CONVICTED homosexuals be ordered to undergo psychiatric treatment if they agree to cooperate.

GOVERNMENTS should provide this treatment and legislate against the promotion and advertising of homosexual practices.

THE use of 'agents provocateur' by police, to provoke homosexuals to commit offences, be banned because it could involve police in 'unjust and morally degrading behaviour.'

The committee said 'the homosexual revolt' attacked society 'at the fundamental level of its own sexual definitions.'

It said: 'Homosexuals are demanding not only tolerance, but acceptance of their life style on the basis that all sexual orientations are neutral and normal.

Previously society asked the homosexual to change his ways; now the homosexual demands that society change. The ramifications of this movement are enormous. It demands nothing less than a radically new society.'

The committee called on homosexuals to abstain from homosexual acts and try to 'sexually reorientate' themselves.

6:–1.16. – Homosexuals Affect the Public Good, 11 October 1973 [754]

The Law and Homosexuals: Synod Urges New Views

A demand that methods of dealing with homosexuals be changed will be made to the Sydney Anglican Synod.

The demand is contained in a 60-page report, prepared by a specially appointed Committee on Ethics and Social Questions. It will be debated by the Synod early next week.

The report stresses that 'homosexual behaviour, male and female, is an activity which affects the public good and, therefore, must never be given the status of an accepted form of behaviour by society.'

At the same time the report recognises that the law 'has to deal with realities.' The committee's recommendations were framed with this in mind.

The report says that laws relating to homosexual behaviour should be made more uniform.

Because of the possibility of inflicting permanent and psychological damage, it suggests that first offenders should appear in private before a properly constituted tribunal.

The committee feels that prison sentences might increase the problem of homosexuality. It calls for careful research with this aspect with a view to substituting forms of penalty other than imprisonment,

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[753] n.a. 'Moves on Sex Laws A Threat to Society', *The Australian*, Thursday 11 October 1973, p. 3. Original emphasis.

[754] Gill, Alan, 'The Law and Homosexuals', *The Sydney Morning Herald*, Thursday 11 October 1973, p. 7.

except for 'more heinous or repeated offences.'

The committee warns against the involvement of police in 'unjust and morally degrading behaviour.'

In particular, the process of arrest should be carefully reviewed so as to eliminate provocation of homosexuals to commit offences.

A demand is also made for convicted offenders to receive psychological help as part of their sentence.

The report warns that gay liberation and similar movements attacked society in a fundamental way that was real and not imagined.

'Previously society asked the homosexual to change his ways, now the homosexual demands that society change.' The significance could not be clearer, the report says.

This is why the committee wants legal sanctions against overt homosexuality to remain.

Mr Peter Bonsall-Boone, former full-time secretary of St Clement's Church, Mosman, who was dismissed from his post after appearing in a TV program in which he admitted to being a homosexual, is a member of the Synod.

He was elected as a representative for St Luke's Church, Enmore, and is expected to take an active part in the debate.

6:–1.17. – Stand Against Homosexuality, 11 October 1973 [755]

Church Clamp on Gay Libbers

The Anglican Church yesterday outlined its stand against homosexuality in a 64-page report tabled at the Anglican Synod in Sydney.

The chairman of the Ethics and Social Questions Committee, the Rev Bruce Smith, compiled the report.

A team of clergymen, doctors and a psychologist worked for two years on the report.

It made these recommendations.

The Laws relating to homosexual offences should be made more uniform.

FIRST offenders should appear in closed sessions before tribunals 'because of the possibility of permanent emotional and psychological damage.'

THERE should be research into penalties other than gaol, except for heinous or repeated offences.

CONVICTED homosexual offenders should be directed to receive qualified psychological help.

THREAT

The report said: 'Because homosexual behaviour is inimical to the interests of society, governments should restrict, by legislation the promotion by advertising or other means of homosexual practices as legitimate.'

It also called on homosexuals to cease from practising homosexual acts and to seek, through counselling, 'a sexual reorientation.'

The report said the homosexual movement was a threat to society because of its demands that society accept homosexuality as normal.

6:–1.18. – Increase In Practising Homosexuals, 26 October 1973 [756]

Anglicans and Homosexuals

Activities of CAMP (Campaign Against Moral Persecution), Gay Liberation and similar groups have not only publicised the plight of homosexuals, but have 'almost certainly led to increase the number of those who practise homosexuality.'

This, the view of the ethics and social questions committee of Sydney Anglican Diocese, explains the hard line taken by its recent report on homosexuality.

The report claims that homosexuals are demanding not only tolerance but acceptance of their life-style, on the basis that all sexual orientations are neutral and normal.

For this reason the report opposes relaxation of the law forbidding homosexual acts in private between consenting adults.

Some clergy feel this attitude is counter-productive.

The rector of a suburban parish told me: 'If the gay liberationists can stampede churches and other groups into irrational opposition to all they want, even the moderate and reasonable reform of legalising private homosexual acts between consenting adults, they will attract more small liberal support, which may spread to other more questionable aims.'

The report on homosexuality was printed in book form (it will be sold at 90c a copy) before the contents was received by synod.

This had led to criticism that it was rubber

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[755] n.a. 'Church Clamp on Gay Libbers', *Daily Telegraph*, Thursday 11 October 1973, p. 20. Original emphasis.

[756] Gill, Alan, 'Anglicans and Homosexuals', *The Sydney Morning Herald*, Friday 26 October 1973, p. 14.

stamped rather than subjected to genuine debate.

The debate itself, first anticipated for Monday last week [15 October], was twice postponed.

Gay liberationists demonstrated outside St Andrew's Cathedral, but had a surprise in store when they flocked into the otherwise uncrowded public gallery.

Instead of the expected debate on homosexuality they had to sit through a three-hour discussion, which some of those present felt was unnecessarily prolonged, on a legal ordinance.

The demonstrators sat quietly throughout the ordeal, but annoyed Synod members by holding hands and by other demonstrations of affection.

This behaviour was contrasted with the performance of Mr Peter Bonsall-Boone, whose speech to Synod the following day was regarded by some Synod members as both succinct and courageous.

The report itself reiterates that homosexuality is a sin and that homosexuals who make no effort to curb practical acts of homosexuality cannot be admitted to Christian fellowship.

Its points out that many heterosexual men and women have also chosen lives of celibacy, and that such a stance is not impossible for the homosexual.

Mr Bonsall-Boone called this unrealistic, and said that celibacy was a vocation which only a few people were called upon by God to practice.

The report draws a clear distinction between other sexual misbehaviour, such as fornication and adultery, and homosexuality, which it considers a direct threat to the institution of marriage and the procreation of the human race.

Some synods men do not see such a clear-cut distinction and disagreed with the report's contention that homosexual acts committed in private between consenting adults should remain outside the law.

This argument (defeated in a vote) was expressed by among others, the Rev C Harcourt-Norton, of St Peter's, Mortdale, who said the law did not legislate against many other harmful acts, including practices involving the occult.

He felt it was wrong to try to use legal means to prevent a man doing harm to himself.

Other clergymen also disagree with the view that because homosexuality is more alien to the ideal of marriage than fornication or adultery, this necessarily makes it more dangerous.

The Rector of St Chad's, Putney, the Rev GS Clarke, has written to me about this at some length.

He states: 'Butter, margarine and olive oil are all fats or oils used to satisfy hunger. Olive oil is more unlike butter than margarine is, but for that very reason is less of a threat to it. Most people wanting a substitute for butter will choose something like it, not something unlike it.

Marriage, adultery and homosexuality are all ways of satisfying sexual urges.

Most people wanting a substitute for marriage will choose a heterosexual substitute, because it is more normal to them rather than something less like it.'

6:–1.19. – The Fruit of Two Years Work, 1 November 1973 [757]

Highlights of Sydney Synod

SIR – With reference to the article by Alan Gill entitled 'Anglicans and Homosexuals' [*The Sydney Morning*] *Herald*, 26 October, [see page 475] permit me to make the following comments:

1. The report on homosexuality produced by the Ethics and Social Questions Committee of the Church of England in Sydney does not stipulate what forms the law should take in penalising homosexual practices. It does, however, stress the need for greater justice and humaneness and calls for a careful review of the present methods of apprehension and prosecution.

2. The publication of this report in book form for the benefit of Synod members was a decision taken by the Standing Committee of the Diocese, for which it has plenty of precedence.

3. At no stage during the course of the six-day Synod in October was the debate on homosexuality postponed. It took its place on the agenda and was dealt with when its turn came. The protracted debate on an ordinance which prevented the report from being debated on the last Tuesday night of Synod might well have frustrated some people, but the subject of the ordinance could hardly be regarded as an unimportant one.

4. Considering who spoke and the overwhelming endorsement which the report received, it is a little hard to understand why Mr Gill's review selects only the comments of Mr Bonsall-Boone, the Reverend C Harcourt-Norton and the Reverend GS Clarke (who

[757] n.a. 'Highlights of Sydney Synod', *The Australian Church Record*, 1 November 1973, p. 1.

did not even speak during the debate).

It is to be hoped that members of the general public will make it their business to read the report now that it is available and form their own impressions as to its quality and the significance of its recommendations.

[Rev] Bruce Smith, Chairman, Ethics and Social Questions Committee, Church of England, Sydney.

6:–1.20. – Greater Justice and Humaneness, 7 November 1973 [758]

Anglicans and Homosexuals

SIR – With reference to the article by Alan Gill entitled 'Anglicans and Homosexuals' [*The Sydney Morning*] *Herald*, 26 October, [see page 475] permit me to make the following comments:

1. The report on homosexuality produced by the Ethics and Social Questions Committee of the Church of England in Sydney does not stipulate what forms the law should take in penalising homosexual practices. It does, however, stress the need for greater justice and humaneness and calls for a careful review of the present methods of apprehension and prosecution.

2. The publication of this report in book form for the benefit of Synod members was a decision taken by the Standing Committee of the Diocese, for which it has plenty of precedence.

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It is to be hoped that members of the general public will make it their business to read the report now that it is available and form their own impressions as to its quality and the significance of its recommendations.

[Rev] Bruce Smith, Chairman, Ethics and Social Questions Committee, Church of England, Sydney.

6:–1.21. – Times Have Changed, 13 December 1973 [759]

Shortcomings of a Report

Report on Homosexuality. Report to Sydney synod, 1973. Anglican Information Office, Sydney. 62 pages. 90c.

Times have changed since parents told their children that Oscar Wilde went to gaol for murdering his wife.

Contemporary attitudes to discussion of sex matters and the activities of movements such as Gay Lib with their demands for varying degrees of acceptance and recognition have made homosexuality a live issue for the Christian church. The response runs all the way from clergy performing marriages for homosexual couples to this report for Sydney synod.

The obvious place for the report to start with the biblical material, and tis it does, outlining the biblical treatment of sexuality, sex ethics and their infringements before arriving specifically at homosexuality. Then follow the committee's recommendations, mainly concerned with the legal aspects of the issue.

The rest of the booklet is taken up with appendices. Indeed, if an appendectomy were performed there would be little patient left (24 pp in 61). The appendices treat further biblical material, with lengthier sections on aetiology of homosexuality and legislation.

This breakdown indicates the strengths and weaknesses of the report. It is strong on theology but despite lip-service at two or three points, weak on pastoral concern. This is a serious defect in a report from a Christian body, because although theology is obviously involved in the issue for both minister and parishioner the main problem is not theological. After all, the biblical perspective is clear enough even after the most

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[758] Smith, Rev Bruce, 'Anglicans and Homosexuals', letter, *The Sydney Morning Herald*, 7 November 1973, p. 6.

[759] Meadows, Don, 'Shortcomings of A Report', *The Australian Church Record*, 13 December 1973, p. 7. Original emphasis.

lenient interpretation (eg [Derrick] Sherwin Bailey [760], H Kimball-Jones [761]).

The area where homosexuality becomes a distressing issue is not theological but pastoral, and it is here that the committee has looked the difficulty in the eye and passed by on the other side. The recommendations are all addressed to the Government! The committee has not here given any positive guide to the ordinary Christian who would most appreciate the benefit of pastoral wisdom in approaching the homosexual and his problems. The main thrust is dire warning. If God be against us, who can be for us? May we be delivered from such compassion.

Despite this serious shortcoming, the most disturbing part of the report remains its preoccupation with the legal issues. At this point the report falls into gross inconsistency. It is concerned to protect the institution of marriage, but will not legislate against adultery and fornication on the grounds that these constitute less of a threat to marriage. A likely tale! There is about as much chance of the homosexual destroying marriage as there is of the primate retiring to become an SP bookmaker.

Nor is the situation helped by the advocacy of legal penalties for all homosexual behaviour. Imprisonment, recommended for 'repeated offences' (between consenting adults?) is surely the least appropriate response. What else is there? Fines? Commitments to a psychiatric hospital? The fact is that homosexual rhetoric notwithstanding, it does not represent a threat to society such as to warrant this reaction; the 96 per cent majority need have no fear.

Perhaps leavening of the Christian wisdom of CS Lewis may be appropriate here:

> The real reason for all the pother is, in my opinion, neither Christian nor ethical. We attack this vice not because it is the worst but because it is, by adult standards, the most disreputable and unmentionable, and happens also to be a crime in English law. The world will lead you only to hell; but sodomy may lead you to goal and create a scandal, and lose you your job. The World, to do it justice, seldom does that. If those who have known a school like Wyvern had dared to speak the truth, we should have to say that pederasty, however great an evil in itself, was, in that time and place, the only foothold or cranny left for certain good things. It was the only counterpoise to the social struggle; the one oasis (though green only with weeds and moist only with foetid water) in the burning desert of competitive ambition … a perversion was the only chink left through which something spontaneous and uncalculating could creep in Plato was right after all. Eros, turned upside down, blackened, distorted, and filthy, still bore traces of his divinity. [762]

This is not to call evil good and good evil, but it is important that our response to the homosexual be determined by compassion, not condemnation. However inconsistent with Christianity homosexuality may be, beyond the law of the land lies the ultimate reality of the grace of God.

[Rev] Don Meadows

6:–1.22. – Not Easy to Keep Pace, 10 January 1974 [763]

The Report on Homosexuality

SIR – It is not easy to keep pace with the Rev G Clarke's correspondence to newspaper editors on the subject of the Sydney synod's Report on Homosexuality (ACR 15/11/73). [764] He has written at least four apart from the one quoted in *The Sydney Morning Herald's* review of the synod debate (26/10/73). [765] He is particularly nervous about the notion of 'endorsement' and wants it understood that the synod only 'received' the report.

It may help to recall the following points:

1. The report was not received formally on the first day of synod along with other reports but was reserved for special debate in a separate motion.
2. The debate was deliberately extended a half-hour into the tea recess at the request of synod in order to

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[760] Bailey, Derrick Sherwin, *Homosexuality and the Western Christian Tradition*, Longmans, Green and Co Ltd, London, 1955.

[761] Kimball-Jones, H, *Towards a Christian Understanding of the Homosexual*, SCM Press Ltd, London, 1967.

[762] Lewis, CS, *Surprised by Joy*, Fontana, London, 1959, p. 90.

[763] Smith, Rev Bruce, 'The Report on Homosexuality', letter, *The Australian Church Record*, 10 January 1974, p. 5.

[764] See: 6:–1.22.1. page 479, 'Received or Adopting a Report'.

[765] See: 6:–1.18. page 475, 'Increase in Practising Homosexuals'.

allow time for adequate debate and a decision to be reached.

3. The motion called upon synod to receive the report and to recommend its publication in sufficient quantity dor distribution to influential members of the community and for sale to the general public.

4. This motion was followed by a further motion urging its immediate circulation to parliamentarians in the ACT in the hope that it might prove useful in the debate in the House of Representatives due the following day [see page 4].

5. Not only were these motions overwhelmingly passed but two amendments before synod expressing opposition to the report were soundly defeated.

Clearly not every member of the Sydney synod endorsed the *Report on Homosexuality* but the final vote suggested that the majority certainly did. *The Sydney Morning Herald* reporter was not technically correct when he spoke of the report's 'adoption' (18/10/73) [766] but he was under no illusion as to what the debate was all about.

If I may close with some words from the foreword to the Report on Homosexuality by the Archbishop of Sydney:

> The synod of the diocese of Sydney in October, 1973, voted overwhelmingly in favour of receiving and publishing this report. This action serves to underline its importance and encourages me to hope that it will be widely and carefully read.
>
> [Rev] Bruce L Smith, Chairman, Ethics and Social Questions Committee, Diocese of Sydney.

6:–1.22.1. – Receiving or Adopting a Report, 15 November 1973 [767]

Report Received Not Adopted

SIR – It is regrettable that *The Sydney Morning Herald* has reported that Sydney Synod adopted the *Report on Homosexuality*, recently presented to it when it only received it.

Adopting it would mean that synod agreed with it and endorsed it, whereas, as the chairman of the committee which prepared the report said on the floor of the synod, receiving it means only that synod accepts it as the opinion of the people it asked to consider the matter.

As a member of synod, I am glad that I was not asked to adopt the argument of the report that homosexual acts, even between consenting adults in private, should remain criminal when adultery is not because homosexuality is more different from the ideal of marriage than adultery and therefore more of a threat to it.

It is at least equally plausible that the more like an ideal a substitute is the more of a threat to it its is. Margarine is more of a threat to butter than olive oil because it is more like it. Is not adultery therefore a greater threat to marriage than homosexuality?

From its use of dubious arguments like this the committee seems to have rationalised its panic at the grandiose claims of the Gay Liberationists about the radical challenge their movement poses to the mores of society without analysing these claims or their plausibility.

This plays into their hands, for if they can stampede the churches into irrational opposition to all they stand for, including the moderate reform of legalising homosexual acts in private between consenting adults, they will attract small-l liberal support which may extend to other more questionable aims.

[Rev] GS Clarke, Putney, NSW

6:–1.22.2. – Homosexuals Reject Lifelong Fidelity, 18 October 1973 [768]

Move for Reform of Homosexual Law

The Anglican Synod in Sydney adopted by a large majority last night a report calling for modest reforms in the treatment by the courts of homosexual offenders.

The report recommends prison sentences for homosexual offences only as a last resort.

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[766] See: 6:–1.22.2. page 479, 'Homosexuals Reject Lifelong Fidelity'.

[767] Clarke, Rev GS, 'Report Received Not Adopted' *The Australian Church Record*, letters, 15 November 1973, p. 5.

[768] n.a. 'Move for Reform of Homosexual Law', *The Sydney Morning Herald*, Thursday 18 October 1973, p. 2.

It urges that compassion be shown to those with homosexual tendencies who attempt, even if they fail, to overcome their inclinations.

However, the report says the church cannot admit to fellowship those who practise their homosexuality and who make no effort at continence.

The report, which was described in the [*Sydney Morning*] *Herald* last Thursday, was prepared by the Ethics and Social Questions Committee of the diocese.

The committee's chairman, the Rev Bruce Smith, in proposing acceptance of the report said homosexuality defied the very polarities of sex and contravened the commandment that men and women should procreate the earth.

Mr Peter Bonsall-Boone, synods man for St John's Balmain, said the report was an 'affront to all of us', and that the views he expressed were irrespective of his own position as a homosexual.

He said the church had chosen to lay down absolute rules which were 'devoid of meaning,' and that the synod was trying to 'enclose God in a box the dimensions of which we have decided to limit.'

He defined homosexuality as 'a way of being, not merely as a means of sexual gratification.'

He particularly opposed the demand that it was imperative for homosexuals to remain celibate, which suggestion was 'denying the reality of the situation.'

A spokesman for the Catholic Church, Dr TJ Connolly, Professor of Moral Theology at St Patrick's College, Manly, spoke out strongly against the Federal move last night.

'The homosexual movement rejects the concept of lifelong fidelity. It is, at root, anti-family, anti-life and basically inhuman,' he said.

Legislators should realise that the professed aim of Gay Liberation was to win, within the community, a general acceptance of homosexuality as a valid sexual and social life style.

This aim was false, meretricious and evil.

The Australian and New Zealand College of Psychiatrists strongly condemned yesterday community attitudes and laws which discriminated against homosexual behaviour between consenting adults in private.

The college made this position statement in a clinical memorandum [see page 154] approved by its federal Council at the weekend.

The memorandum concludes that current psychiatric opinion largely agrees with the results of controlled studies of non-patient homosexuals.

These studies suggest that non-patient homosexuals 'do not show neurotic symptoms or occupational maladjustments more frequently than do heterosexuals.'

The memorandum says: 'Many psychiatrists consider that homosexual feelings and behaviour are not necessarily or commonly associated with neurotic symptoms and are compatible with good adjustment and a useful and creative contribution by the individual to society.'

6:–1.23. – Some Comments on the Review, 24 January 1974 [769]

Report on Homosexuality

SIR – May I be permitted to offer some comments on the Rev Don Meadows' review of the Sydney synod's *Report on Homosexuality* (13.12.73) [see page 477]. In drawing attention to some of its shortcomings I will also make some reference to the earlier letters of the Revs GS Clarke [770] and J Dyer [771] on the same subject (15.11.73).

First, Mr Meadows implies and Mr Clarke clearly states that the report represents an extreme (conservative) reaction to the claims of Gay Liberationists. Their criticisms in this regard simply assume without argument that the existing legislation in the Australian states is completely wrongheaded and totally fail to do justice to the serious proposals which the report advances in this area. (Mr Meadows' own brief comments about penalties are facile in the extreme and betray some disturbing assumptions about the justification of punishment.)

Second, Mr Meadows regards the report as labouring the obvious when it devotes so much space to theology. But as a matter of fact the committee failed to discover any serious contemporary theological discussion of homosexuality which did not blunt or distort the biblical imperatives (even Davidson's *Returns of Love* [sic] *The Returns of Love* [772] was not above fault – see Report p. 32). The need to say clearly what was not being said at all was absolutely essential.

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[769] Smith, Rev Bruce L 'Report on Homosexuality', *The Australian Church Record*, letter, 24 January 1974, p. 7.
[770] See: 6:–1.22.1. page 479, 'Receiving or Adopting a Report'.
[771] See: 6:–1.23.1. page 481, 'In the Pit of Homosexuality'.
[772] Davidson, Alex, *The Returns of Love*, IVP, London, 1970.

Third, Mr Meadows completely misrepresents the report when he says that all its recommendations address to the government. The recommendations are on pp. 17-24 and include (as well as compassion) words to homosexuals and Christian congregations. The final part on 'Society and its laws' examines homosexuality as a social phenomenon and concludes with various legal and social recommendations.

The aims of the report was to establish perspectives at each level of its recommendations and above all to preserve the biblical directives as it did so.

Fourth, Mr Meadows (like Clarke and Dyer) dismiss the threat of homosexuality to a heterosexual society. Much could be said on this point but suffice it to say: First, because sexual vulnerability or distractibility is more widespread than is generally acknowledged (Report pp. 6, 7, 22) and because the homosexual pattern carries with it the danger of 'fixation' (Report p. 15), the need for responsible measures designed to protect individuals from homosexual influence is clear.

Further, because homosexual behaviour so profoundly confuses the function of sex in human relationships its capacity to erode community sex standards is wider than its capacity to attract practitioners. When it ceases to be offensive to the public conscience the indications are that such erosion is well advanced. It has been the function of the law up till how [sic–now] to define homosexual practices as offensive.

The report acknowledges that not all practices offensive to the Christian or public conscience are proscribed by law (pp. 20, 22) but it is of the opinion that homosexual behaviour, because of its character and its effects on society, should continue to remain within the field of legal action. But even so the committee felt that the whole process of apprehension, trial and penalizing stood in need of careful revision (Report pp. 22-24).

Finally, Mr Meadows conducts us via a quite contentious opinion of CS Lewis to a concluding paragraph which confuses social legislation with pastoral counselling (Dyer betrays the same confusion) and effectively sunders the obligation to warn from the attitude of compassion as though the two were incompatible.

There is a compassion which tells less than the whole of the truth as one homosexual correspondent to *Christianity Today* [773] points out: He says,

> Had I in my youth, been the object of what some are now calling compassion, I could now have been of all men most miserable. But instead, the Lord granted me his compassion – the compassion that enables one to recognize sin for what it is in his sight, but then grants him forgiveness and victory over it through the power of Christ and the Holy Spirit.

The report has endeavoured to preserve this balance.

The *Report on Homosexuality* 'represents a serious attempt by a responsible committee to come to terms with the problem of homosexuality, as it relates to the teaching of the Bible and the welfare of society' (from the Archbishop of Sydney's foreword to the report). It is to be hoped that people receive it as such and give it the attention it deserves.

[Rev] Bruce L Smith, Chairman, Ethics and Social Questions Committee, Diocese of Sydney.

6:–1.23.1. – In the Pit of Homosexuality, 15 November 1973 [774]

Shortcomings of Report on Homosexuality

SIR – I have some questions which the Sydney *Report on Homosexuality* should have considered, but did not; questions which, I think, should be publicly debated. I agree with the report's view of homosexuality as a special affront to the Creator, nevertheless I ask the members of the committee responsible:

(1) Which acts disturbs the Creator more – a sterile homosexual act between unmarried consenting adults or a fertile heterosexual act between unmarried consenting adults?

(2) Is not even the miserably small percentage of marriage failures attributable to homosexuality the responsibility of the heterosexual pressures which forced such a marriage?

(3) What homosexual act is peculiar to homosexuality?

(4) What do you feel the laws of nature need to be propped up by the laws of man?

I agree that homosexuality is one threat to society,

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[773] See: 6:–1.23.2. page 482, 'Deliverance Never Came, But the Lord Did'.

[774] Dyer, John, 'Shortcomings of Report on Homosexuality', *The Australian Church Record*, letters, 15 November 1973, p. 5.

but:

(5) How can the 5 per cent invert homosexual segment of society be a significant threat to the other 95 per cent?

(6) How can we understand them if they do not advertise their point of view?

(7) Although other things are equal, the homosexual is more subject to blackmail, ostracism, prison, neurosis, sterility, loneliness and suicide than heterosexuals. Does not this make society more a threat to him than vice versa?

(8) When is it morally right to punish any man to deter others?

(9) What is wrong with their protesting injustice as loudly as they can?

I agree that Christianity and medicine will find a cure, but:

(10) Is not the very first step in curing emotional disease to reduce anxiety, not promote it?

(11) What patient will seek help from a doctor (or minister) who guarantees either to cure him or, failing that, to send him to jail?

I agree that OT and NT combine to condemn homosexuality, but:

(12) Is homosexuality considered to be worse than idolatry?

(13) Why do you trust your feelings (*Report*, page 20, para. 4) to indicate truth, and how can someone's idiosyncrasy confirm your moral judgement? (Did not the Pharisees argue in this manner?)

(14) Is not the New Covenant 'Good News' because the sinner is removed from the sphere of condemnation, even though 'that which I would not, that I do?'

(15) When the Covenant of the Law was found to be 'weak through the flesh,' to what extent was the new Covenant of Grace a condoning of sin?

(16) If you discovered your own son in the pit of homosexuality would you send for the police, ever?

[Rev] John Dyer, Narraweena, NSW

6:–1.23.2. – Deliverance Never Came, But the Lord Did, 25 August 1972 [775]

God's Compassion

I couldn't agree more wholeheartedly than I do with you editorial in the July 28 [1972] issue, 'Not Because They are Gay.'

I am a latent homosexual. My twist of mind and interest I can track back to some circumstances in my very early childhood. In my more youthful years I used to pray earnestly for deliverance from my peculiar temptations. Deliverance never came, but the lord did, in large measure, grant me victory over them. Now I am happily married to a wonderful wife and have several darling children, with none of whom I have deemed it wise to disclose my problem, but who have given me a very happy and near-normal married and home life. Many, many times I have thanked and praised God for this. Had I, in my youth, been the object of what some are now calling compassion, I could now have been of all men most miserable. But instead, the Lord granted me **his** compassion – the compassion that enables one to recognize sin for what it is in his sight, but then grants him forgiveness and victory over it through the power of Christ and the Holy Spirit.

I have often wished that social conditions permitted latent homosexuals such as myself to reveal themselves so they could make more direct contact and be of more direct help to those who are caught up in the practice of this thing. This, for obvious reasons, I do not feel free to do. But those who think they can be acceptable Christians and at the same time practice their bent of mind need to face anew the Word of God on this subject, and also face the fact that God is willing and able to grant them victory, if only they will let him.

Name Withheld

6:–1.24. – Is Receiving the Same as Adopting, 7 February 1974 [776]

Report Received or Adopted?

SIR – I am sure that Rev Bruce L Smith (ACR 10/1/74) [see page 478] believed when he presented the homosexuality report to Sydney synod that receiving it was virtually the same thing as adopting it. Obviously not all synod members agreed with him; for otherwise the amendments criticising it would not

[775] Anonymous, 'Gods Compassion', *Christianity Today*, letters, 25 August 1972, p. 34. Original emphasis.

[776] Clarke, Rev GS, 'Report Received or Adopted?', *The Australian Church Record*, letters, 7 February 1974, p. 5.

have agreed to its reception, as they did.

Perhaps he wishes now that he had moved for its adoption, since anyone will see on consulting any authority on parliamentary practice or procedure at meetings that the difference is far from a mere technicality.

Perhaps if he had done this the report would have been adopted. And perhaps not. For my part, as a believer in the workings of divine providence, I confess to being grateful that synod did not harm the image of Sydney diocese by adopting it but merely received it and so did not commit itself.

But Mr Smith is mistaken in thinking that my particular concern is whether the report was received or adopted. My particular concern is the report itself. Several people, myself included, have drawn attention to some of its faults.

[Rev] GS Clarke, Putney, NSW

6:–1.25. – The Possibility of Fixation, 21 February 1974 [777]

Another Bite at the Cherry

SIR – Since the Rev Bruce L Smith took two bites at the cherry in his letters to you on the homosexuality report, I hope you will not mind my writing again in answer to his second letter of 24/1/74 [see page 480].

I agree that homosexuality involves the possibility of fixation and offends against the principle that sexual relations should be hegerosexual [sic–heterosexual]. But heterosexual promiscuity also involves the danger of fixation and it offends against the principle that sexual relations should be exclusive to one person during his or her life. So why should homosexuality be criminal when heterosexual promiscuity is not?

I suggest that it is artificial to attempt to defend this situation on a logical basis, as the report seeks to do, since the reason why one sin is criminal and the other is not has nothing to do with any rationale.

Both were once criminal in Christian countries where ecclesiastical influence was strong. As secularisation advanced criminal sanctions against fornication and adultery were generally dropped. They have remained against homosexuality in Australia and some other countries for reasons which have no very obvious connection with Christian belief and which in any event leave the status quo contradictory.

Now that public opinion with regard to criminality of homosexuality is clearly changing, would it not be more sensible and equally biblical to resist the temptation to assume that whatever is is right and therefore bound with the cause of God, and content ourselves with emphasising the distinction between sin and crime, as we do with adultery and fornication?

[Rev] GS Clarke, Putney, NSW

6:–1.26. – Does Chocolate Toothpaste Control Decay, 7 March 1974 [778]

More on the Homosexuality Report

SIR – In continuing the discussion of the Sydney synod's report on homosexuality, I would like to restate and clarify some points made in my review of the report and referred to by Rev Bruce Smith in his letter (ACR 24 January) [see page 480].

My main criticisms of the report were twofold, namely its lack of pastoral discernment and guidance, coupled with what I regard as a serious overestimation of the right and power of law in the matter.

To touch on the pastoral issue first. The recommendations referred to in my review as 'all addressed to the government' are those on pages 22-24 of the report, in a numbered list. The 'clear (as well as compassionate) words to homosexuals and Christian congregation' to which Mr Smith refers are the same ones I described as 'lip service at two or three points.'

While I am prepared to accept Mr Smith's correction including them in the recommendations, I believe it is simply not good enough to tell homosexuals 'Don't do it or else' on one hand, and congregations 'Be understanding and sympathetic' on the other.

Further, the report minimises the enormity of the problem involved for Christians by implying that help is there simply for the asking. Despite improved understanding and methods of treatment, the prospect for the sexual orientation of the invert remains slight.

Mr Smith's correspondent in *Christianity Today* notwithstanding, the Holy Spirit seems no more to

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[777] Clarke, Rev GS, 'Another Bite At the Cherry', *The Australian Church Record*, letters, 21 February 1974, p. 5.

[778] Meadows, Rev Don, 'More on the Homosexuality Report', *The Australian Church Record*, letters, 7 March 1974, p. 5.

produce large-scale sexual orientation than he does large-scale physical healing. The bleak truth is that the best we as Christians can generally offer here is cold comfort indeed.

A further difficulty is whether there is much in the report which will lead people to adopt the recommended understanding and sympathy. The tome of the report makes me pessimistic on this score. The apparent eagerness to maximise the element of choice (page 15), the use of inverted commas for the homosexual's plight (page 4), the highlighting of homosexual acts as sins and heinous ones at that (pages 7, 12, 13, etc) and other items make me wonder whether the committee has seen the extent of the problem, and whether the report will do much to counteract the almost instinctive repulsion which is the average Australia's first reaction.

My second concern was the report's emphasis on law. In the first place I wish to emphasise that I fully concur in the law's function of protecting the weak and vulnerable. I am opposed to proselytisation, particularly such as the example brought before us in the synod debate.

I agree that some of the report's legal recommendations are worthwhile and deserve attention. I believe that punishment should be deserved and not merely used as an example or in the guise of cure. Having said all this, I repeat that prosecution of homosexuals for the reasons given in the report is utterly inconsistent with refusal to prosecute adultery and fornication. And I would further repeat that imprisonment could not under any circumstances except solitary confinement (and who would wish that?) be in any way an appropriate response to the homosexual who comes under the heading of 'consenting adult.'

In the control of homosexuality prison has all the effectiveness of chocolate toothpaste in controlling tooth decay. The social stigma will remain – it has never been absent in any society I am aware of. That is a quite sufficient burden to bear without the additional weight of the 'Blackmailer's Charter.'

[Rev] Don Meadows, Pendle Hill, NSW

6:–2. – Synod v Peter Bonsall-Boone

A challenge was issued in June [1974] to the hierarchy and leading clergy of the Sydney Church of England to prove that the Report on Homosexuality [779] adopted by the 1973 synod was more than merely:

> a mammoth publicity stunt, designed to indoctrinate the laity with propaganda which the Diocese is not prepared to implement [see page 486].

In a letter to the Standing Committee of Synod, the six bishops and the quartet of heavies (Knox, Smith, Cole, Shilton), Peter de Waal and Mike Clohesy listed four ways in which Peter Bonsall-Boone, who claims to be (simultaneously) both a practising Anglican and a practising homosexual, contravenes the principles enumerated in the hallowed report. They called on those in power, in the light of this, 'to rectify these preposterous double standards', by [see page 486]:

> 1) proposing a motion at Synod to the effect that Peter Bonsall-Boone be disqualified as a member of Synod in accordance with Standing Order 13 of the Standing Orders Amendment and Consolidation Ordinance 1968-71;
>
> or
>
> 2) proposing a motion to reject the Report on Homosexuality in its entirety [see page 487].

In the four replies received and in the failure of seven to reply at all we saw the hypocritical evangelicals, with uplifted cassocks, in full flight from the challenge [see page 486]:

Knox to God–

> I think, however, the action urged by St Paul, namely, mourning before God acts of sexual aberration in the church at Corinth is a more effective method since the sin is not so much against the congregation or the Synod but against God and his mind so clearly made know to us in holy scripture and also, I would judge made known through our consciences. And so it is to God that I intend to refer the anomaly to which you have drawn my attention, but which I was aware of before I received your letter [see pages 488];

Dain to someone else–

> I have made enquiries and understand that the contents of your letter is already under consideration by the appropriate Diocesan body who will in due course be reporting to the Standing Committee [see page 488];

Robinson to an escape clause–

> … the point of contention is not homosexuality as such, but the **practice** of homosexuality, and, to the best of my recollection (I was present in the Synod when he spoke), Mr Bonsall-Boone did not state in the Synod that he was a practising homosexual [see page 488];

(We agree that Peter Bonsall-Boone did not actually use the five words 'I am a practising homosexual' in that sequence in his speech, but this implication should have been clear to anyone of intelligence);

Standing Committee to legalism–

> … the Standing Committee has asked me to inform you that the Synod has no power under Standing Order 13 to disqualify an elected representative … [see page 488].

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[779] Ethics and Social Questions Committee of the Church of England, Diocese of Sydney, *Report on Homosexuality*, 1973.

6:–2.1. – Clohesy and de Waal Letter to the Rev LR Shilton, 11 June 1974

We see the *Report on Homosexuality* received by the 2nd Ordinary Session of the 36th Synod as nothing but a mammoth publicity stunt, designed to indoctrinate the laity with propoganda [sic–propaganda] which the Diocese is not prepared to implement.

We base this conclusion on the following evidence:

a) The overwhelming endorsement accorded the Report by the Synod indicates its desire to eradicate practising homosexuals and homosexuality.

- However, Mr Peter Bonsall-Boone, while openly acknowledging his homosexuality (even in the Synod itself), is still allowed to remain a member of the ultimate governing authority of the Diocese.

b) The Report condemns the practice of homosexuality as sinful and depraved.

- Mr Bonsall-Boone is, however, permitted to remain an active member of his local church [780] and hold responsible positions there while admitting to practising homosexuality and not repenting of it.

c) The Report urges that the promotion of homosexual practises as legitimate be restricted.

- Mr Bonsall-Boone, however, appears regularly in the media proclaiming his homosexuality in an unashamed manner and urging other homosexuals to do likewise.

d) The Report exhorts homosexuals to seek psychiatric and spiritual help in an endeavour to change their sick ways.

- However, Mr Bonsall-Boone publicly spurns the concept of a homosexual's changing her/his way and denigrates psychiatry and the church's spiritual ministry to the homosexual.

Your stand on moral issues is well known. We know therefore that you must be concerned at these glaring contradictions.

6:–2.2. – Clohesy and de Waal Letters to Various Sydney Anglican Clergy, 11 June 1974 [781]

We see the *Report on Homosexuality* received by the 2nd Ordinary Session of the 36th Synod as nothing but a mammoth publicity stunt, designed to indoctrinate the laity with propoganda [sic–propaganda] which the Diocese is not prepared to implement.

We base this conclusion on the following evidence:

a) The overwhelming endorsement accorded the Report by the Synod indicates its desire to eradicate practising homosexuals and homosexuality.

- However, Mr Peter Bonsall-Boone, while openly acknowledging his homosexuality (even in the Synod itself), is still allowed to remain a member of the ultimate governing authority of the Diocese.

b) The Report condemns the practice of homosexuality as sinful and depraved.

- Mr Bonsall-Boone is, however, permitted to remain an active member of his local church and hold responsible positions there while admitting to practising homosexuality and not repenting of it.

c) The Report urges that the promotion of homosexual practises as legitimate be restricted.

- Mr Bonsall-Boone, however, appears regularly in the media proclaiming his homosexuality in an unashamed manner and urging other homosexuals to do likewise.

d) The Report exhorts homosexuals to seek psychiatric and spiritual help in an endeavour to change their sick ways.

- However, Mr Bonsall-Boone publicly spurns the concept of a homosexual's changing her/his way and denigrates psychiatry and the church's spiritual ministry to the homosexual.

s. 4 (3) of the Standing Committee Ordinance 1897-1948 states that 'The Standing Committee shall … carry out or assist in carrying out the resolutions from time to time passed by the Synod and entrusted to them, or not otherwise provided for.' In view of these duties, the Committee must be concerned at the glaring contradictions we have pointed out.

We, therefore, urge Standing Committee to rectify these preposterous double standards by:

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[780] Peter Bonsall-Boone was one of the lay representatives for the parish of St John the Evangelist, Balmain, NSW during 1972-74 which incorporates the whole of 36th Synod.

[781] The letters were forwarded to the following clergy: Archbishop Marcus Loane; Reverend Bruce Smith; Reverend Dr Alan Cole; Canon Broughton Know; Bishop Hulme-Moir; Bishop John Reid; Bishop AJ Dain; Bishop DWB Robinson; Bishop Delbridge; Standing Committee of Synod and Reverend Lance Shilton.

1) under the powers given to it by s. 4 (1) of the Standing Committee Ordinance 1897-1948, [782] proposing a motion at Synod to the effect that Mr Peter Bonsall-Boone be disqualified as a member of Synod in accordance with Standing Order 13 of the Standing Orders Amendment and Consolidation Ordinance 1968-1971; [783]

OR

2) under the power given to it by s. 4 (1) of the Standing Committee Ordinance 1897-1948, proposing a motion to reject the *Report on Homosexuality* [784] in its entirety.

6:–2.2.1. – Standing Committee Ordinance 1897-1948 [785]

Duties and Powers

4. (1) It shall be the duty of the Standing Committee to make arrangements for the sessions of the Synod and to prepare the business to be brought before the Synod, with power to propose such business as may appear to the Committee to be necessary or desirable to be brought before the Synod, in addition to that arising out of matters which have been referred to them, and to print a Report of the proceedings of the Synod from time to time, and all documents ordered by the Synod to be printed.

(2) The Standing Committee are empowered to defray the necessary working expenses of the Synod and of the Standing Committee, and to pay such further sums as may from time to time be authorised by the Synod.

(3) The Standing Committee shall be a Council of Advice to the Bishop in any matter in which he may desire their advice. The Standing Committee shall consider and report upon any matter which the Synod may from time to time refer to them, and shall carry out or assist in carrying out the resolutions from time to time passed by the Synod and entrusted to them, or not otherwise provided for. The Standing Committee may deliberate and confer upon all matters affecting the interests of the Church and cognisable by the Synod, may make such enquiries as they shall deem to be requisite, and may communicate with the Government and all such bodies and persons as they shall consider necessary, and may present Petitions and Addresses to all such bodies and persons. Provided that any action taken by the Committee not already sanctioned by the Synod shall have full force unless disallowed by the Synod at Its next session.

(4) The Standing Committee shall discharge such other duties and exercise such other powers as the Synod shall from time to time prescribe.

6:–2.2.2. – Standing Orders Amendment and Consolidation Ordinance 1968-1971

Elections and Qualifications Committee

13. (1) The Committee of Elections and Qualifications shall inquire into and report upon all Questions which shall be referred to them by the Synod respecting the validity of any Election or return of any Member, and also respecting the qualification or disqualification of any person who has been returned as a Member of the Synod; and the Committee may sit if they think fit while the Synod is sitting.

(2) The Committee when inquiring into the matters referred to them, may receive the best evidence they can procure or which is laid before them, whether it be such as would be admitted in cases at law or not and they may reject any evidence tendered to them which they may see fit to reject.

(3) The Committee shall report the result of their inquiries to the Synod, and shall report whether they find that the Election or return of the Member whose case has been referred to them is valid, or whether he is qualified as the case may be; whereupon it shall be competent to move forthwith, without notice, or on any subsequent day, pursuant to notice, that the report be adopted.

(4) Upon the Motion for the adoption of the Report it shall be competent to substitute for it by way of amendment such resolution in respect to the matter referred to the Committee as to the Synod shall seem

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[782] See: 6:–2.2.1. page 487, 'Standing Committee Ordinance, 1897-1948'.

[783] See: 6:–2.2.2. page 487, 'Standing Orders Amendment and Consolidation Ordinance, 1968-1971'.

[784] Ethics and Social Questions Committee of the Church of England, Diocese of Sydney, *Report on Homosexuality*, 1973.

[785] Church Acts and Ordinance of the Anglican Church Diocese of Sydney were supplied by Warren Gotley of the Diocese' office.

proper; provided that such resolution shall state distinctly that the Election or return of the Member is or is not valid, or that he is qualified or disqualified to be such Member as the case may be: And if by such resolution or by the adoption of the Report, it be determined by the Synod that the Member has not been properly elected or returned or that he is not qualified to be a Member, he shall not thenceforth sit (unless re-selected) as a Member of Synod, and his seat shall be declared vacant, but if the contrary be determined he may forthwith take his seat.

(5) No Member of the Committee of Elections and Qualifications whose case has been directed to be referred to such Committee, and is still undecided, shall sit thereon until his case shall have been finally dealt with by the Synod.

6:–2.3. – DB Knox, Principal Moore Theological College Letter to M Clohesy, 19 June 1974

I have received your letter about the Report on Homosexuality with suggested actions I might take.

I think, however, the action urged by St Paul, namely, mourning before God acts of sexual aberrations in the church at Corinth is a more effective method since the sin is not so much against the congregation or the synod but against God and His mind so clearly made known to us in holy scripture and also, I would judge, made known through our consciences. And so it is to God that I intend to refer the anomaly to which you have drawn my attention but which I was aware of before I received your letter.

6:–2.4. – Bishop, AJ Dain Letter to de Waal, 15 August 1974

I have just returned from a ten weeks absence due to my involvement in the International Congress on World Evangelization in Lausanne [Switzerland] and have therefore, only just received your letter of June 11th.

I have made enquiries and understand that the contents of your letter is already under consideration by the appropriate Diocesan body who will in due course be reporting to the Standing Committee.

6:–2.5. – DWB Robinson, Bishop of Parramatta Letter to de Waal, 4 July 1974

Your letter dated 11 June reached me only a few days ago.

I cannot accept your opinion that the *Report on Homosexuality* received by the 2nd Ordinary Session of the 36th Synod was 'nothing but a mammoth publicity stunt', and I regret that you should attribute an ulterior motive to the members of the Synod.

I am in no position to comment on the position of Mr Bonsall-Boone within his own parish, but I think you are mistaken in regard to his position within the Diocesan Synod.

First, you state that Mr Bonsall-Boone has openly acknowledged his homosexuality 'even in the Synod itself'. This could be so, but the point of contention is not homosexuality as such. but the **practice** of homosexuality, and, so to the best of my recollection (I was present in the Synod when he spoke), Mr Bonsall-Boone did not state in the Synod that he was a practising homosexual. (I have never heard or read any other opinion expressed in public by Mr Bonsall-Boone other than what he expressed in Synod).

Secondly, you seem to think that the Synod could, if it wished, exclude Mr Bonsall-Boone from its membership. But I do not think the Synod has any competence, under Standing Order 13 to which you refer, to exclude any member from the Synod other than for some irregularity in mode of election, or for failure to comply with the qualifications for election set out in s. 10 [of the schedule] of the Church of England *Constitutions Act Amendment Act 1902*. Mr Bonsall-Boone's membership could not, so as I know, be challenged on these grounds.

6:–2.6. – WGS Gotley, Secretary Diocese of Sydney Letter to de Waal and Clohesy, 1 August 1974

With regard to your letter of 11 June, the Standing Committee has asked me to inform you that the Synod has no power under Standing Order 13 to disqualify an elected representative whose election has been validity [sic] carried out in terms of the Church of England *Constitutions Act Amendment Act of 1902*. [786]

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[786] See: 6:–2.6.1. page 489, 'Schedule to the Church of England, Constitutions Act Amendment Act of 1902'.

6:–2.6.1. – Schedule to the Church of England Constitutions Act Amendment Act of 1902

Representatives to be elected

10. Every such meeting shall, subject to any other provision to be made by the Synod of the Diocese, choose as representatives two male persons of the age of twenty-one years, each such person being a communicant of the Church.

6:–2.7. – Text of a Petition to the President and Members of Synod

To the President and Members of the Synod of the Diocese of Sydney in Session Assembled:

The humble petition of the undersigned baptised members of the Church of England in Australia respectfully sheweth:

That the *Report on Homosexuality* received by the third Ordinary Session of the 36th Synod takes an unenlightened and annihilating attitude towards homosexuals.

That the scriptural exegesis in the Report is selective and antiquated.

That the social and legal aspects of the same Report are inconsistent with current sociological thought.

That the recommendations of the Report are oppressive and unjust.

That the psychological and psychiatric section of the Report is academically dishonest in that it fails to take into account all modern findings on homosexuality in these fields.

Your petitioners therefore humbly pray that the third Ordinary Session of the 36th Synod will move to reject the *Report on Homosexuality*.

And your petitioners, as in duty bound, will ever pray.

(Signature)	(Addresses)
F[red] Barton	96 Dunlop Street, Epping NSW 2121
Mario Schoenmaker	61 Washington Street, Victoria Park WA 6100
Carmolo J Vella	PO Box 83, Yallourn Vic 3838
Paul Day	2/119 Gregory Terrace, Spring Hill Qld
Julie Smith	3/20 McIlwrath Street, Auchenflower Qld

CHAPTER SEVEN ≈ FESTIVAL OF LIGHT

7:–1. – Festival of Light Rally

Although not much hope was held for the exercise, Cross+Section, the then church group within CAMP made an effort to raise the awareness and tolerance of those festival of lighters attending their rally in Hyde Park on 7 April [see page 494]. It did this by distributing leaflets [see page 496]; this was followed up by a letter from CAMP to the listed members of the Advisory Committee of the FOL [see page 496].

The only follow-up was the expected response from Gordon Jackett MLA [see page 497], Salvation Army [see page 497], Kerle Bishop of Armidale [see page 498], Bruce Smith clergyman [see page 498]; a non-committal response from Milton Morris MLA [see page 498]; a conciliatory letter from John Court [see page 499]; a beaut telephone conversation with Lady Violet Braddon [see page 525].

Let's leave this section at that … the least said the better.

7:–1.1. – Festival of Light Rally Flyer [787]

Figure 29: Festival of Light Palm Sunday Rally Flyer

STAND UP!

BE COUNTED

SUNDAY APRIL 7

HYDE PARK

(Near Liverpool Street)

Chairman: THE HON MILTON MORRIS, MLA

- ***SHOW YOUR CONCERN FOR OUR QUALITY OF LIFE.***
- ***MAKE A POSITIVE STAND FOR PURITY, LOVE AND FAMILY LIFE.***
- ***HELP KEEP AUSTRALIA FROM JOINING THE RANKS OF THE SICK, SICK NATIONS OF THE WORLD***
- ***BRING YOUR FAMILY – BUILD A BETTER AUSTRALIA!***

1 pm MUSICAL PROGRAM WITH FAMILY OF BRISBANE, GREENVALLEY CHILDREN'S CHOIR, YOUNG WORLD SINGERS and COMBINED SALVATION ARMY BANDS. (Enjoy the music while you eat your lunch)

2.30 pm COMMUNITY PROCLAMATIONS FREDA BROWN, FRED NILE ED
STATEMENTS BY NATIONAL LEADERS ...
REV GORDON POWELL of Scot's Church, Melbourne.
DEAN LANCE SHILTON of St Andrew's Cathedral.
DR CLAIRE ISBISTER of Royal North Shore Hospital.
DR TOM CONNOLLY of St Patrick's College.
REV ALAN WALKER of Central Methodist Mission.

3.30 pm MARCH OF CONCERN TO THE DOMAIN.
through Bathurst, George and King Streets.

4.30 pm CLOSING RALLY – DOMAIN WITH FOLLOWERS and MAL GARVIN – NEIL FLOWER – FRED NILE and JOHN HIRT.

Visit the: EDUCATIONAL – INFORMATION CENTRE
at SYDNEY TOWN HALL
from MONDAY, 1st to SUNDAY, 7th APRIL
CENTRE OPENING: 2 pm MONDAY, 1st APRIL.
OPEN DAILY: 10 am – 10 pm Coffee Provided.
EDUCATIONAL SEMINARS EACH DAY: 12.30 pm to 2 pm

[787] The flyer (approximate size 200 mm wide x 285 mm high) has been reproduced from a very poor quality archival copy and hence some words might be missing or incorrect.

7:–1.1.1. – Rally Advertisement, 7 April 1974 [788]

stand up
– BE COUNTED
hyde park
Near War Memorial
Cnr Elizabeth and Liverpool Sts

'TODAY'

MAKE YOUR STAND AGAINST MORAL POLLUTION & PORNOGRAPHY

From 1 pm	**From 2.30 pm Speakers**
☆ ✻ *Folk Groups* *Family* ✻ *Young World* *The Followers*	**Hon Milton Morris MLA** **Rev Gordon Powell** **Dr John Court** **Dean Lance Shilton** **Dr Claire Isbister** **and other concerned leaders**

AUSTRALIAN FESTIVAL OF LIGHT
Enquiries: Telephone 29 2561
or call 3rd floor, 379 Kent St., Sydney.
Authorised by K. Harrison Public Relations Director

AUSTRALIAN FESTIVAL OF LIGHT
3rd floor, 379 Kent St. Sydney. Telephone 29 2561
Please find enclosed my generous gift to keep the light burning

Name _____

Address _____

_____ Postcode _____

[788] *The Sun-Herald*, Sunday 7 April 1974, p. 21, advertisement. Uncertain of the actual size of the advertisement.

7:–1.2. – Rod Bavaro, Convenor, Cross+Section Leaflet for Festival of Light Rally, 7 April 1974

Dear Festival of Light supporter. Palm Sunday

This may be the quietest demonstration you will ever see. The people who are handing out these letters are homosexuals and they are Christians.

They are actively involved in the life of their local churches and they are looking forward, with the Hope described by St Paul (a Hope which you share), to the joy of Easter Day, when the glory of Jesus Christ's resurrection will burst upon us all.

But their present mission is a sad one, because they pray for forgiveness of the Festival of Light's attitude of condemnation towards homosexuals: an attitude which can no longer be supported in the light of scientific studies conducted throughout the world in the past hundred years. Any condemnation of homosexuality and homosexual acts is based upon mistaken premise that homosexuals pervert something which is natural and pure into something which is unnatural and impure. Homosexuality is natural to the homosexual, and he or she has the individual ability and responsibility to ensure the purity of a human relationship – an ability and responsibility shared with heterosexuals to the same end.

They are also aware, however, that the Festival of Light has chosen in this city, although not elsewhere in Australia, to castigate them and to attempt to isolate them from the branch of Christ's Body to which they belong. No reading of Holy Scripture could possibly lead Christians to ignore and disassociate themselves from homosexuals in the way the Festival of Light advocates. This has been demonstrated to us by the fact that four separate attempts, by letter and by telephone, to obtain information about the Festival from the organisers have met with no response.

The Church has condemned and oppressed homosexuals as a group and as individuals for too long. Using the only figures available (Kinsey et al., 1948), [789] this means that one in every twenty people has no chance of receiving the ministry intended by Christ for everyone when He commended His followers to 'preach the Gospel to all people'. Our Lord did not come into the world to condemn the world, but that all the world might be saved. As homosexuals, created by God in His image, we call upon the Church Christ established to recognise him in us, and to deal with us as He would. We are called, with His whole family, to the obedience of Christ and yet find ourselves hindered by that body of believers from whom we should (by His criterion) receive the greatest help.

Will you pray with us, as we pray with you day by day, for the help of our Master to love Him more dearly, know Him more clearly and follow Him more nearly?

May the joys of Easter be yours this Holy season as they are ours.

Please or telephone if you would like more information about us or about the Campaign Against Moral Persecution. We would like you to get to know us better.

With the love which He would have us show.

7:–1.3. – CAMP NSW Letters to Members of the Festival of Light Advisory Committee, 10 April 1974

I write to you to lend support to those members of Cross+Section who handed out the enclosed leaflet at Sunday's Festival of Light gathering in Hyde Park.

Although it has been extremely difficult for us to obtain information about the aims and activities of the Festival, (whether this be caused by a lack of information from the Festival office or by a general lack of information published in the media) the NSW Branch of the Campaign Against Moral Persecution is puzzled that the subject of homosexuality, while ignored by the Festival of Light in other states and by Mary Whitehouse during her visit here, is being used by the Festival in NSW as some sort of scapegoat.

The connection between homosexuality and abortion, prostitution, pornography and forces undermining family life is not clear to the members and executive of CAMP. If you, as either a speaker at one of the Festival of Light meetings, or as a member of the Advisory Committee, could satisfy our curiosity on this point we should be most grateful.

We do apologise if you are not connected with the organisation of the Festival of Light. One person whose name is listed as a member of the Advisory Committee in a pamphlet detailing last week's Festival events was surprised at the inclusion of her name when we telephoned to check the address. We were therefore not certain that those whose names are connected to the Festival by the Festival of Light have in fact had anything to do

[789] Kinsey, AC, et al. *Sexual Behaviour in the Human Male*, Saunders, London, 1948.

with events attributed to the Festival.

May we, in conclusion, apologise that the Festival organisers were not forewarned of Cross+Section's intention to distribute leaflets last Sunday. Information about the meeting in Hyde Park reached us only hours before, so preparations were necessarily incomplete.

7:–1.4. – Gordon Jackett, MLA, Letter to CAMP NSW, 24 April 1974 [790]

I acknowledge receipt of your recent letter concerning the Festival of Light Meeting in Sydney.

I cannot accept your contentions, nor approve in any way the proposition which you and the Cross-Section [sic] group put forward. I am a member of the Advisory Committee of the Festival of Light and approve the arrangements made for the rallies. In my view, the publications which are being produced and sold in this State and to which the Festival of Light takes exception, are contrary to the fundamental principles of Christianity and an ordered society. Many of these publications have a strong homosexual emphasis which can only be described as deplorable, and the strongest action should be taken to prevent their publication. Homosexuality is inconsistent with the Judao-Christian ethic and, whilst compassion is essentially a part of Christian teaching, there is no question that Christ exhorts us to stand by fundamental concepts of good and evil. There is an obligation on every human being to resist ungodly-like attitudes and actions.

For this reason, I have no intention of approving the actions and views of those whom you represent.

7:–1.5. – CAMP NSW Letter to Gordon Jackett, MLA, 16 May 1974

Thank you for your letter dated 24 April 1974 in response to my earlier letter concerning the attitude of the Festival of Light to homosexuals and homosexuality. Your response to my earlier letter makes some sweeping statements about Judao-Christian morality and homosexuality; statements which are not supported to any great degree by theologians of any shade of Christian belief today.

You mention that '… the publications … to which the Festival of Light takes exception are contrary to the fundamental principles of Christianity' and that '… many of these publications have a strong homosexual emphasis which can only be described as deplorable …' Are we to gather, then, that a homosexual emphasis in these publications is to be considered to be more damaging (to whom is not specified) then those with a heterosexual emphasis?

Why is it that neither you as an individual, nor the Festival of Light as a body, has spoken out against the use of evening newspapers (and in the case of morning newspapers, the Daily Telegraph) as a medium of denigration of the female in society to the role of a semi-naked photograph on page three of every edition? This organisation fails to understand, in the light of the feelings you express, that the general press has been ignored by the Festival of Light.

Campaign Against Moral Persecution (NSW Branch) is astonished that you feel able to make such statements as 'homosexuality is inconsistent with the Judao-Christian ethic' on the letterhead of the Legislative Assembly of NSW in your capacity as State Member for Burwood. Your own constituency must contain many thousands of people who would disagree quite fundamentally with your contention. Surely your private views should be expressed on your own paper and given the dignity of your own address.

7:–1.6. – Richard E Holz, Chief Secretary, The Salvation Army Letter to CAMP NSW, 23 April 1974

This will acknowledge receipt of your letter to Commissioner Harry Williams, relative to your comments on the Festival of Light.

The Territorial Commander in London, and I do not desire to speak for him on this matter, however I do attach hereto copy of our official statement (see 7:–1.6.1. below) on breakdown in standards in society.

When the Commissioner returns in mid-June your letter will be placed before him.

7:–1.6.1. – The Salvation Army: A Statement Concerning Pornography, March 1974

International Headquarters, London

[790] Gordon Jackett, LP MLA for the NSW seat of Burwood.

The Salvation Army, concerned that the dignity of mankind should be preserved, deplores the increasing pornography infecting books, magazines and newspapers, and the pornography and blasphemy infecting theatres, cinemas, radio and television.

The Salvation Army believes that its attitude reflects widespread feeling against blasphemy and the commercialisation of sex in ways which ensure financial gain for the exploiters and the creation of the false values in the lives of the exploited.

The Salvation Army maintains its stand against evils which threaten the quality of personal and national character and seeks to arouse public conscience against such evils.

The Salvation Army wholeheartedly supports the proper education of the young on matters relating to the sanctity of right human relationships based on the teaching of Christ.

Above all, The Salvation Army believes that the wholesomeness of society depends upon the conversion of men and women everywhere to the Christian way of life in which high standards of morality are established.

7:–1.7. – Rev Bruce L Smith Letter to CAMP NSW, 19 April 1974

Thank you for your letter in which you draw attention to the activities of the Festival of Light in the city of Sydney. I am not personally aware of all the ingredients in the Festival's program although it does not surprise me to find that some attention should be drawn to the particular issue of homosexuality. I have not in fact heard or read any statements of the Festival of Light on this subject but you must realise in the light of the Sydney Synod's *Report on Homosexuality* that it would be particularly appropriate for the Festival of Light or any other body concerned with moral issues in our society to speak out against the promotion of homosexual practices as acceptable. I as much as some television programs have implied that all forms of sexual activity are equally acceptable I am not surprised if supporters of the Festival have expressed their dissatisfaction with such programs.

As for your circular which you included with your letter it is clearly opposed to the teaching of the Bible that homosexual practises are against the will of God. The Synod Report was at some pains to make this clear. I am not sure what forms of disassociation the Festival of Light have adopted but clearly if the Bible is to be taken at all seriously Christians must disassociate themselves from your point of view on this subject.

Many people who are homosexually inclined are trying, by the grace of God and personal discipline, to refrain from expressing their sexual impulses. They take their place along side other Christians with other problems in many congregations. But the so-called Christian who advises that homosexual practises are not against the mind of God poses a very different problem for the Christian congregation. The Synod Report said sufficient on this subject.

I will forward a copy of your letter and my reply to the organisers of the Festival.

7:–1.8. – R Clive Kerle, Anglican Bishop of Armidale Letter to CAMP NSW, 26 April 1974 [791]

Thank you for your letter received recently in which you inquire about the attitude of the Festival of Light organisation on a number of issues.

After inquiry I have ascertained that this is a circular letter which has been directed personally to a number of members of the Festival of Light Advisory Committee. I have therefore referred the contents of the letter to the members of the executive committee.

7:–1.9. – Milton A Morris, MLA, NSW Minister for Transport Letter to CAMP NSW, 29 April 1974

Just a short note to thank you for your letter which I received only recently and which concerns the recent and tremendously successful rally held in Sydney in connection with the Festival of Light.

May I say at the outset that I appreciate your comments and the manner in which they have been put. I suppose that there will always be some matters on which we can agree to differ. I see absolutely no reason at all to apologise for not warning organisers of the rally about your intention to distribute leaflets on that Sunday afternoon.

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[791] The Right Reverend R Clive Kerle is Anglican bishop of Armidale.

7:–1.10. – CAMP NSW Letter to Milton A Morris, MLA, 19 May 1974

Thank you for your letter dated 29 April. My earlier letter to you, however, and not merely present 'some matters on which we can agree to differ'.

Your chairmanship of many of the Festival of Light meetings in Sydney would indicate to this organisation that you are willing to apply the kudos of your position as Minister of Transport to a body which is actively associated, as a body of fundamentalist Christianity, with the open and continuing oppression of homosexual members of the community. May I quote, for instance, from a letter received by us from your colleague, Gordon Jackett, MLA, who is himself also associated with the Festival of Light: 'Homosexuality is essentially inconsistent with the Judao-Christian ethic …' Gordon Jackett's statement is by no means a final statement on the subject, for there is as much literature to disagree with what he has said as there is literature to support him. For him, and for you, therefore, to be associated publicly with a body which represents what is, after all, a minority of professed-Christian ethics, is to the mind of this organisation a misuse of the power of your office.

We must ask you therefore, to make public your contention that the view expressed by the leaflet from our Cross+Section Group is as valid a Christian point of view of homosexuality as that which you share with the Festival of Light. The stand which you are seen to be taking at the moment is a cause of great offence and harm to many Christian homosexuals, whose Christianity is no less valid than that of Christian heterosexuals.

PS: I draw your attention to a publication of Cross+Section recently sent to you, which enlarges on many of the matters under discussion.

7:–1.11. – Dr John H Court, Australian Festival of Light, SA Branch, Letter to CAMP NSW, 27 April 1974

I understand your letter to me arrived some time ago, but I have been interstate a lot so that it reached me only yesterday.

I would doubt that the Festival has at any time adopted a condemnatory attitude to homosexuals, though it would be easy to interpret statements regarding the morality of homosexual acts in that light. You would be well aware that we do not agree that homosexual acts can be accepted without moral evaluation. We have tried to avoid appearing to take a public stand on homosexuality out of a very real wish to accept homosexuals, Christians or others, on the same terms as anyone else.

For myself I have done my utmost to understand the position of the homosexual, and my thinking to this point is summarised in the enclosed article. [792] It involves a different reading of scripture from Camp's in some places, but I trust is not unsympathetic in the way you suggest that we have been.

I would be happy to continue dialogue with you if you feel it could be profitable. If so, I would ask that you should be a little less sensitive about apparent slights. Any difficulty you may have had in contacting the Festival office in no way reflects a personal thing against you – or if it does, I too am in the same boat! I could also add that my correspondence with members of Camp here in SA has at times run into the same kind of difficulties. No doubt the problems lie more in the area of our respective psychological defences than they do in theological or moral viewpoints.

7:–1.11.1. – Homosexuality: A Scientific and Christian Perspective [793]

Research into sexual behaviour and attitudes has arisen only over the last twenty-five years. Many people still retain emotional reservations about the propriety of such investigations. Nonetheless, the ground-breaking Kinsey reports on sexual behaviour in the human male [794] and female [795] have been followed by numerous significant studies and every indication that sex research will extend much further. The Christian can welcome the replacement of myths by factual information as he always welcomes the truth. Although at this point, facts are still few and speculations many it is necessary to come to terms both with data on normal sexuality and

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[792] See: 7:–1.11.1. page 499, 'Homosexuality: A Scientific and Christian Perspective', *Interchange – Papers on Biblical and Current Questions*, Number 13, 1973, pp. 24-40.

[793] Court, John H, *Interchange*, No. 13, 1973, pp. 24-40. (Court is Senior Lecturer in Psychology at The Flinders University of South Australia).

[794] Kinsey, AC, et al. *Sexual Behaviour in the Human Male*, Saunders, London, 1948.

[795] Kinsey, AC, et al. *Sexual Behaviour in the Human Female*, Saunders, London, 1953.

those concerned with sexual deviations.

Concurrently with this fact-finding period there have been revolutionary changes in sexual attitudes, and associated major changes in the law. Information that would not have been available to the serious student twenty years ago is now available from any bookshop. The treatment of sexual themes in films and on television has increased public awareness of both normal and deviant sexual practices quite dramatically. Whether this new climate of expression will lead to education or obsession remains to be seen.

Homosexuality is a theme which has achieved recognition, and perhaps even prominence, in both the research and the entertainment fields. Many earlier assumptions must in consequence be abandoned, while the status of the homosexual in society needs to be reconsidered both from legal and moral viewpoints. Critical considerations are those concerned with definition, with causation, and with management of the homosexual. Developments have occurred in each of these areas which affect such questions as blame and responsibility.

I Definition and Incidence

(a) A distribution, not an entity

No longer is it possible to consider that two categories of people exist homosexuals and heterosexuals. The Kinsey studies have yet to be improved on in demonstrating the existence of a **continuing** of sexual orientation rather than categories. The heterosexual-homosexual rating scales were developed in order to assign individuals to a position which identified the relative strength of sexual orientation, taking into account behaviour patterns, physiological responses and private fantasies. A zero score is reserved for the individual who displays exclusively heterosexual responses, while a score of six identifies the exclusive homosexual, both with reference to overt experience and psychological reaction. Intermediate scores are allocated to varying degrees of homosexual activity and interest.

It follows that with such a distribution of the population, the definition of homosexuality, and its incidence in a community will depend on how rigorously the criteria are applied, and how carefully the relevant information is obtained. Such qualifications, together with the difficulty of obtaining entirely honest reports regarding sexual data, affect one's interpretation of findings which show differential incidences among various cultures and between the sexes. Even so, significant differences do appear which may throw light on the underlying causes.

(b) It is age-related

The study of the genesis and development of sexual response was pioneered by Freud [796] who, in the face of great opposition at the time and since, postulated that the springs of sexual response are to be found back in infancy. From being ego-centric in the earliest years, it develops an interpersonal component as early as five years in some children. Studies of incidence related to age show a complete absence of sociosexual response declines rapidly between the ages of five and twenty at which point it disappears almost completely. Meantime, homosexual responsiveness increases from the age of five to reach a peak around age twelve, at which point about 25-30% of individuals show homosexual responsiveness, after which there is a decline with increasing age to a residual 4-5%. In other words, for a period in the adolescent years, some degree of homosexual attraction occurs sufficiently often for it to be considered normal, but this can be expected to give way to a heterosexual orientation in all but a few.

(c) It is sex-related

Homosexuality is still most commonly used to describe a male phenomenon, but the existence of female homosexuality, or lesbianism, is no less important, though it is less common in an overt form. West [797] makes it clear that there is agreement from several sources that about 4% of males have an exclusively homosexual orientation in adult life. A comparison of the Kinsey studies shows that homosexual experience in women is significantly less than among men. While about 4% of single women were exclusively homosexual this compares with a figure for men three times greater.

This sex difference is also reflected in the behaviour patterns adopted. Men engage in promiscuous and fleeting relationships more commonly than do women. Men more commonly seek a full physical sexual relationship than do women who are affectionate and faithful, content to indulge in caressing without full physical expression. [798]

(d) It is culture-related

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[796] Freud, Sigmund, *Three Essays on the Theory of Sexuality*, Trans. by J. Strachey, Basic Books, New York, 1905.
[797] West, Donald J, *Homosexuality*, Penguin Books, Harmondsworth, 1960.
[798] ibid.

Magee [799] introduces his book on homosexuality, *One in Twenty* with the statement: 'We can be virtually certain that one person in every twenty men and women is a practising homosexual.' This cannot be deduced from the above figures based on Kinsey's data, but derives from a rather too cavalier acceptance of the equal incidence of homosexuality among women suggested by the so-called 'Quaker report'. [800] More importantly, however, figures of this kind can refer only to a given culture at a given time. We do not have reliable evidence regarding the incidence in earlier civilizations or even in other cultures. What is available about other cultures comes from Ford und Beach [801] who indicated that in studying a number of more primitive societies, 62% considered homosexual activity as normal and acceptable, at least for certain members of the community. A conclusion was drawn that homosexuality does not occur to the same degree in all societies However, their data may suffer from underestimation, since the records from which their data came were often lacking regarding details of homosexual behaviour. [802]

For the future, it may be that Magee's assessment of incidence will prove nearer the truth, since a postulated increase is noted by several observers. Willis [803] follows Kardiner [804] in seeing an upsurge in homosexuality based on 'a wholesale flight from the female' and in similarly extravagant terms describes 'the enormous increase in the incidence of overt homosexual behaviour since World War II … to obtain relief from a growing sense of urgency, insecurity and insignificance'. This bold claim lacks statistical confirmation and is subsequently expressed more moderately by Willis [805] as he draws on psycho dynamic explanations why an increase may occur. The imposition of dehumanizing conformity in a sex-repressive culture was blamed by Lindner [806] while Willis [807] also invokes 'the general level of anxiety attendant to unsettled or transitional times'. While there may be truth in these postulates, they must be accepted only on a speculative basis.

II Description

No single description of the homosexual can be adequate for either sex, since heterogeneity is a feature which recurs regularly in the literature. Just as the aetiology to be discussed is multiple, so too the behavioural characteristics vary widely within and between sexes. The best differentiation of mate types is that of Allen [808] who, in describing twelve categories, makes it clear that the label is essentially a symptomatic one. The more important ones are:

(i) The shy, nervous immature man who is too afraid of women to approach them and who drifts into homosexuality, often with a man of similar character, as a result. This is the most common type to seek treatment and probably most responsive to it.

(ii) Homosexuality associated with neurosis. The neurosis is most commonly an hysterical disorder or anxiety state. Dealing with the neurosis tends to dissipate the homosexual problem also.

(iii) The compulsive homosexual who has periodic overwhelming urges for relationships with other men. In this instance the homosexuality is the neurosis. Relationships with other men tend not to be loving in character, but involve considerable aggression.

(iv) Deprivation homosexuality. This is common in prisons and other situations where men are deprived of women or vice versa.

(v) The homosexual whose personality is otherwise normal, who leads a useful life and who apart from his sexual adjustment presents no difficulties.

(vi) The homosexual with an ancillary endocrine deficiency, usually testicular failure.

(vii) The homosexual whose inversion penetrates the whole of his personality. He talks in a falsetto voice, dyes his hair, wears extravagant clothes, and is exhibitionistic. He does not see himself as having a

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[799] Magee, Bryan, *One in Twenty: A Study of Homosexuality in Men and Women*, Corgi Books, London, 1968.

[800] Heron, A, (ed), *Towards A Quaker View of Sex: An Essay by A Group of Friends*, Friends Home Service Committee, London, 1963.

[801] Ford, CS, and Beach, FA, *Patterns of Sexual Behaviour*, Methuen, London, 1965.

[802] Hooker, E, 'Male Homosexuals and Their Worlds', In J Marmor (ed), *Sexual Intervention*, Basic Books, New York, 1965.

[803] Willis, SE, *Understanding and Counselling the Male Homosexual*, Little Brown and Co, Boston, 1967.

[804] Kardiner, A, 'Flight From Masculinity', In *Sex and Morality*, Bobbs-Merrill, Indianapolis, 1954.

[805] Willis op. cit.

[806] Lindner, R, 'Homosexuality and the Contemporary Scene', In *Must You Conform?*, Holt, Rinehart and Winston, New York, 1956.

[807] Willis op. cit.

[808] Allen, CA, *Textbook of Psychosexual Disorders*, 2nd ed, OUP, London, 1969.

problem, and does not wish for cure.

(viii) The homosexual psychopath who tends to drift into crime and feels no inhibitions about any form of conduct, however antisocial.

The characteristics of the lesbian are less well-defined, but recent studies make some points clearer. Relationships commonly involve the adoption of a masculine (butch) role by one, and a feminine (femme) role by the partner. However, these roles are not unalterably adopted. Cory [809] writes of the interchangeability of roles and assesses that only about 15-20% of lesbians tend to dress in an obviously masculine style. Saghir and Robins [810] found that in only a minority of relationships did a role remain unchanged. They also remarked on the relative stability in the emotional adjustment of the subjects they studied. However, they did exclude from their study a significant group of unknown size who had had psychiatric care or been in prison. A similar report of stability came from Hopkins [811] who administered a personality test to a group of volunteer lesbians. Here, too, a selection factor clearly operates but the results are still of interest. Comparing twenty-four lesbians with matched controls, she rejected the generalization of Caprio [812] 'that the vast majority of lesbians are emotionally unstable and neurotic'. Her own group proved instead to be more independent, resilient, reserved, dominant, bohemian, self-sufficient and composed than their heterosexual counterparts.

III Aetiology

From the presenting characteristics it is clear that the issue of causation must also be complex. Apart from a few more militant homosexuals, who refuse to recognize that their condition should be considered as anything but normal, most will view homosexuality as a condition which is not normal. By a statistical definition of normality this is indisputable. Whether it is seen as a disease or a maladjustment or a state of sin may depend upon one's viewpoint. The relative importance of these possibilities may be considered after the causal hypotheses have been reviewed. A detailed examination of the many theories is not warranted here but three main alternatives may be canvassed.

(i) Homosexuality as a genetic aberration.

There was for some time a belief that Kallman's [813] twin study demonstrated a genetic component. Among eighty-five homosexual men, he reported a 50% concordance among binovular twins and 100% among uniovular twins. Allen [814] rejects the evidence on five grounds – (1) his clinical material is not satisfactory; (2) it is contradicted by the experience of others; (3) it is unusual in medicine to obtain a 100% result, and one usually encounters some omission or contradiction; (4) his work has never been confirmed by others; (5) a good percentage of homosexuals can be cured by suitable psychotherapy.

Pare [815] reviewed the possibilities of a genetic basis and came to an equivocal conclusion. The evidence he favoured of Slater [816] relating to birth order and maternal age of mother, could equally be interpreted in psychodynamic terms, so his position is further weakened. At this point in time it appears safe to agree with James [817] that 'there is now little support for the notion that homosexuality has a predominantly inherited basis'.

(ii) Homosexuality as an endocrine disorder.

The evidence regarding endocrine abnormalities was similarly put forward as a proposition. The most recent impetus for this has arisen from studies with gonadal hormones in rats. [818] Following castration at one day, rats were later primed either with oestrogen and progesterone, or with testosterone and their behaviour in relation to other rats was observed. As a result, male rats were shown to develop female type activity. Harris [819] postulates that the brain of the rat is initially sexually undifferentiated, but becomes fixed in the early days due

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[809] Cory, DW, *The Lesbian in America*, MacFadden Books, New York, 1965.

[810] Saghir, MT, and Robins, E, 'Conference Paper Reviewed' in *Psychiatric Progress*, 3, 1968, p. 6.

[811] Hopkins, JH, 'The Lesbian Personality', *British Journal of Psychiatry*, 115, 1969, pp. 1433-6.

[812] Caprio, FS, *Female Homosexuality*, Peter Owen, London, 1957.

[813] Kallman, F, 'Comparative Twin Studies on the Genetic Aspects of Male Homosexuality', *Journal of Nervous and Mental Disease*, 115, 1952, pp. 283-98.

[814] Allen op. cit.

[815] Pare, CMB, 'Etiology of Homosexuality: Genetic and Chromosomal Aspects', In J Marmor (ed), *Sexual Inversion*, Basic Books, New York, 1965.

[816] Slater, E, 'Birth Order and Maternal Age of Homosexuals', *Lancet*, 1, 1962, pp. 69-71.

[817] James, B, 'Homosexuality', In CG Costello (ed), *Symptoms of Psychopathology*, Wiley, New York, 1970.

[818] Harris, GW, 'Sex Hormone, Brain Development and Brain Function', *Endocrinology*, 75, 1964, pp. 627-48.

[819] Harris op. cit.

to the presence or absence of testosterone.

That such an association might form the, basis for homosexuality in humans receives little support at this time. In cases of male homosexuality associated with an ancillary endocrine deficiency (e.g. undescended testicles or eunuchoidism), the administration of testosterone or androsterone does not prove beneficial. The case of the female homosexual could not be readily explained within the framework proposed by Harris. [820] specific attempt to test the endocrine hypothesis with one homosexual male by repeated assays of urinary steroids failed to show the kind of association postulated. [821]

Feldman and MacCulloch, [822] in seeking to establish the basis for distinguishing primary and secondary homosexuals (see below) have favoured the possibility that abnormal circulation of foetal steroids could play a part. Their evidence is drawn entirely from animal studies, though the more recent work of Loraine [823] has related implications from assays of hormonal functioning in adults. Feldman and MacCulloch speculate that 'there are male and female areas in the human foetal brain which are critically susceptible to circulating levels of male and female hormones'. [824] They acknowledge the inconclusiveness of the data for the human adult. The small series of adult males reported by Loraine [825] might appear to strengthen this viewpoint, and indeed, may well do so, but at this stage the evidence remains equivocal. As evidence accumulates to show that visceral activity is under greater control than previously realized (e.g. Miller [826]) it becomes more difficult to postulate hormonal imbalance in the adult as a causal factor.

While it would be premature to reject completely the significance of endocrine function in homosexuality, it is likely to be a factor in at most a minority of cases, and then only as a contributory factor.

(iii) Homosexuality as a psychologically-determined condition.

Psychological factors have the greatest weight of evidence in their favour at the present time, though numerous types of psychological explanation am available. The importance attached to one or another will depend more on the background of the observer and the context of investigation than on simply scientific criteria.

Psychodynamic explanations have received much attention, emphasizing the interaction between parents and child as crucial to the determination of sex role. Classic analytic theory relates psychosexual identity to the Oedipal theme which, in normal development, involves a desire for the opposite-sexed parent, accompanied by hostile feelings to the same-sexed parent. In the deviate, an incest conflict is postulated, such that the parent of the same sex is cherished as well as seen as a rival for the other parent's affection.

Whether such theorizing is accepted or rejected a more fundamental question asks why such desires arise. There is much to suggest that the forces at work arise from the parental interaction. That is, the initiative, conscious or otherwise, lies with the parents, although the child may subsequently respond in such a way that the parental pattern is enhanced. Certain constellations of interaction appear particularly prone to lead to a homosexual pattern in either sex. Willis [827] summarises these as follows:

> (a) A weak or absent same-sex parent paired with a dominant, overprotective and seductive opposite-sex parent.
> (b) A sadistic, punitive opposite-sex parent coupled with a submissive or absent same-sex parent.
> (c) A sadistic or punitive same-sex parent with a submissive or disinterested or rejecting opposite-sex parent.
> (d) A strongly seductive same-sex patent coupled with a rejecting or ineffective opposite-sex parent.

The common characteristic inherent in these constellations is of an imbalance between the parents such that the usual adoption of a gender identity by modelling is inhibited.

The definition, which someone has offered, that a homosexual is 'the man who is as his mother made him' can be seen to have only limited value. An imbalance between parents is more likely to be hazardous for the

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[820] ibid.

[821] Dewhurst, K, 'Sexual Activity and Urinary Steroids in Man with Special Reference to Male Homosexuality', *British Journal of Psychiatry*, 115,1969, pp. 1413-5.

[822] Feldman, M, and MacCulloch, MJ, *Homosexual Behaviour: Theory and Assessment*, Pergamon, Oxford, 1971.

[823] Loraine, J, 'Hormones and Homosexuality', *New Scientist*, 3 February 1972.

[824] Feldman op. cit.

[825] Loraine op. cit.

[826] Miller, NE, 'Visceral Learning and Other Additional Facts Potentially Applicable to Psychotherapy', In R Porter, (ed), *The Role of Learning in Psychotherapy*, J and A Churchill, London, 1968.

[827] Willis, op. cit.

child than the impact of one parent alone.

Brown [828] has reported on the relationships of 400 homosexual males and found, predominantly, that their mothers could be described as 'close, strong and intimate, as well as dominating', but with a propensity for fondling, petting and caressing their sons. At the same time, none of the 400 was considered to have had a satisfactory relationship with their fathers, who were generally described as either ineffective or hostile. However, the constellations postulated must also be viewed critically. Firstly, they can be interpreted loosely to the point that one has to explain why so few become homosexual and wander why more do not. Secondly, the apparent unequal distribution between males and females also needs examination. Here one may say that it is easier for a girl to develop a gender identity (in Western society) than for a boy. Alternatively, in line with the animal studies of Harris, [829] the sexually-undifferentiated state is female, so that in the event of an inappropriate environment throughout childhood preventing effective differentiation, it is the male who will experience gender problems while the female remains in a feminine role

Such reservations regarding psychodynamic explanations lead one to note the importance of learning in a more general sense as an explanatory principle. Animal studies have to be included here, since deliberate shaping of children's behaviour to test hypotheses cannot be ethically accepted. It is recognized that extrapolating from animal learning is hazardous. Nonetheless, work on critical periods for learning, and the strength of imprinting in young animals is sufficiently well-established to deserve some attention. The widely publicized studies of Harlow [830] working with rhesus monkeys, made clear that the young deprived of normal mothering showed abnormalities of courtship and mating behaviour. Such work links with that of Lorenz [831] who showed how many species will 'imprint' to man instead of their own kind, following a critical early learning experience. Probably more directly relevant than true imprinting is the concept of critical or sensitive periods (Sluckin [832]), which have been shown to have greater generality as well as greater possibilities for subsequent modification.

There is a degree of agreement in both the psychoanalytic and more general learning framework than the stage at which significant events occur can be crucial. Although imprinting studied by the ethologists is generally in the very early hours or days of a creature's life, critical periods may well occur throughout the developmental period, just as the psychoanalytic emphasis on the Oedipal period takes one up to the seventh year. A comparison of time-scales must take account of the very long period of dependence and development which characterizes the human species, as well as the more complex pattern of psychosexual behaviour which is learned.

It is not necessary in this discussion of various causal explanations to do more than emphasize that psychological factors are of great importance when compared with other possible explanatory hypotheses. In particular, the learning of a deviant set of attitudes arising from an imbalance in the family constellation is the major finding. A useful discussion of various aspects of psychological theories has recently been provided by James. [833]

Of the three types of causal explanation considered, this last must be stressed as the most critical. The interaction between several causes could account for the appearance of a few cases of homosexuality, but the influence of genetic and hormonal factors even in combination can be largely discounted. This position is unfavourably received by some homosexuals who find comfort in the deterministic nature of a physical abnormality to which the concept of responsibility or blame is less readily attached.

The psychological foundations of homosexuality are also less attractive to the fully-committed homosexual because of the possibility for change which they imply. Many would prefer to retain their deviant orientation than go through any programme of re-orientation to heterosexuality. To this group the belief that their condition was immutable was most attractive. However, to those many homosexuals who could wish to be otherwise, the identification of significant learning experiences offers the hope of modification to a

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[828] Brown, DG, 'Homosexuality and Family Dynamics', *Bulletin Menninger Clinic*, 27, 1963, pp. 227-32.

[829] Harris, op. cit.

[830] Harlow, H, 'The Maternal Affectional System', In BM Foss, (ed), *Determinants of Infant Behaviour*, II, Methuen, London, 1963.

[831] Lorenz, K, 'Morphology and Behaviour Patterns in Closely Allied Species', in Schaffner (ed), *Group Processes*, Macy, 7, New York, 1955.

[832] Sluckin, W, *Early Learning in Man and Animals*, George Allen and Unwin, London, 1970.

[833] James, op. cit.

heterosexual adjustment. These possibilities will be discussed below.

One other outcome of studies which emphasize the parental constellation also has implications for therapy. While many writers have written of the homosexual as having a strong attraction to members of the same sex, others have recognized that this is only part of the story. In many instances it is a fear of the opposite sex; making the development of a normal heterosexual relationship difficult, which lies behind an apparent homosexual problem. The blocking of a normal relationship means that a homosexual pattern is adopted more by default than by choice. Such a problem can arise from the kind of family constellation already described, or may arise due to difficulties in adolescent years. The naturally shy child, the one who never meets others of the opposite sex, the one with some deformity or handicap which hinders the normal processes of attraction – all run the risk of not finding a partner in the usual fashion, but seeking an expression of normal psychosexual drive in some alternative type of relationship. This type of person is a much better prospect for therapy than the one with an exclusive and positive homophilia.

This conclusion is also reached by Feldman and MacCulloch, [834] who divide male homosexuals into two types – on a behavioural basis as primary and secondary. The primary homosexual is the one who is identified as showing a complete absence of heterosexual pleasure throughout his life history. The secondary homosexual does record some degree of heterosexual responsiveness. The importance of this distinction is that therapeutic predictions differ for the two types. Their experience is that the primary type is unresponsive to aversion therapy, while the secondary type can be helped unless there is a complicating factor of poor personality.

IV Treatment

What should be attempted by way of treatment depends in part on how the problem is conceptualized and in part on what is available. Society's ignorance of the nature and extent of homosexuality has traditionally led to fear and rejection, to the point that homosexuals still feel that they are a minority group subject to unwarranted persecution. Furthermore, in a society where the laws reflect the Christian condemnation of homosexuality as sinful, a generally punitive attitude has prevailed for many years. Both these conditions existed in a setting where any form of corrective treatment was either not known or else available only to an élite minority.

All these conditions have now changed. Research has increased knowledge in the community, and this has now extended further by the frequent treatment of homosexuality as a theme in the mass media and the theatre. Even allowing that some of these presentations have been sensationalist or superficial, enough has now found its way to the man in the street for him to have a better appreciation of the nature and extent of homosexuality in the community.

Concurrently, significant changes have been occurring in the relationship between the law and the Christian ethic. No longer is it axiomatic that the law will reflect Christian standards of conduct and morality. Pluralist societies are re-structuring the law, especially regarding moral issues, to take account of the values and attitudes of those who do not see the teaching of scripture as the basis for the ordering of society. The re-thinking in this area has been continuing now for some ten years and will be considered further below.

The availability of treatment has also changed over the same interval, so that the therapeutic pessimism of earlier years has had to be somewhat tempered. To see more clearly what changes have occurred, it is useful to consider what the theoretical alternatives might be, together with what is being attempted.

(a) Total rejection and condemnation.

This was the practice of some primitive groups. Malinowski [835] reports that contempt and ridicule were widely used by the Trobriand Islanders while some other groups went as far as putting men to death. The shame associated with exposure was enough to cause some to commit suicide, a phenomenon not unknown in our own culture today. There is little doubt that this approach is highly effective as a means of control, serving the community's interest at the expense of the individual. Few, if any, would seriously advocate in public such an approach today, yet private attitudes do still retain enough hostility to make fear of contempt and ridicule part of the homosexual's experience.

(b) The adoption of legal sanctions.

This has been traditionally widespread in Western society. The sanctions have been notably harsher for men than for women. They have also been notably ineffective. Imprisonment as a constraint without treatment has merely increased the individual's difficulty by removing him into an environment most likely to reinforce

[834] Feldman 1971, op. cit.

[835] Malinowski, B, *The Sexual Life of Savages in North-Western Melanesia*, London, 1929.

his behaviour. That homosexuality is an offence also makes it an opportunity for blackmail and so extends the first problem by adding further complications. It would be easier to support prosecution of the homosexual if this were a means of making available help or therapy which would facilitate the individual's adjustment. Since none of the currently available sanctions has been shown to improve sexual orientation, the application of the law, where it is still on the statute books, must be questioned. This is not to say that the law must be abandoned, but the provisions of the law should lead to better adjustment rather than have simply a punitive function.

(c) Treatment to reduce a fear of heterosexual involvement.

This has been the approach of most psychodynamic therapies. The problem has been conceptualized as a conflict, and an attempt made to expose the underlying fears. As the fear of the opposite sex is reduced so there is the hope that attraction for the same sex will diminish. While at first sight attractive as a technique, depth psychotherapy has not been conspicuously successful, and for several powerful reasons. The person who seeks therapy has usually had the problem so long that a whole way of life has been acquired which makes a major psychosexual reorientation difficult. In addition, secondary problems (e.g. fear of persecution, depression, shyness) have developed to such a degree that any therapy has to be wide-ranging, intensive and lengthy to deal with what has become a whole constellation of inter-related difficulties. The probability of effective change is further reduced if motivation is low. This is commonly the case when help is sought under duress, such as pressure from the family or the courts. In view of these difficulties, it does mean that this approach, through dealing with fear of the other sex, may be important, even though therapies so directed have not had good results.

The impact of psychoanalytic therapy, which seeks to correct a neurotic conflict and deal with homosexuality in the context of its associated problems, has not been as great as might have been wished. Perhaps the best reporting of the psychoanalytic method has been that of Bieber et al, [836] who reported on the treatment of male homosexuals. 27% developed a heterosexual adjustment – a figure impressive enough to discount total pessimism but still of limited merit, since most patients received between 150 and 350 hours of treatment. This puts it beyond the reach of most who might seek help.

Efforts to treat lesbians by psychotherapy have not often been reported in the literature. It is therefore of interest to find that, in the experience of Ellis, lesbians responded better to therapy than did male homosexuals, even though initially more emotionally disturbed. Ellis has pioneered a more active type of psychotherapy than traditional Freudian psychoanalysis.

He explicitly directs therapy to assisting the lesbian over a fear of males rather than countering their attraction to females: 'I find that it is not too difficult to get confirmed and often exclusive lesbians over the extreme fear of and/or hostility towards males that usually keeps them fixed homophiles.' (Ellis, in Cory [837]).

It is with this rational-emotive approach that Ellis [838] reported all of a series of twelve lesbians showing some degree of heterosexual reorientation compared with a third of his male homosexuals, while he adds: 'since 1955, having developed an even more active, non-psychoanalytic, rational-emotive therapeutic method, 1 have helped almost 50 confirmed lesbians to achieve a normal amount of heterosexual inclination and satisfaction' (in Cory [839]). He claims good follow-up for many of these, but does not indicate how many failed to respond to therapy. Whatever the percentage may be, the point is made that a sexual reorientation cannot be discounted as impossible.

(d) Counselling to enable the homosexual to accept his condition.

Many today adopt the view that a homosexual orientation is as valid and normal as any other. Hence the goal of a counsellor would be to assist the homosexual to accept himself as he is without guilt. The social activist would meantime seek to alter society's attitudes to make this acceptance possible personally and at a community level. This standpoint finds favour with those of existentialist and humanist persuasion, as well as those of a Christian belief who espouse situation ethics. The idea that one person should seek to change another is anathema to such. Change is seen to be necessary within the community in order to embrace the

[836] Bieber, Irving, et al. *Homosexuality*, Basic Books, New York, 1962.

[837] Cory, op. cit.

[838] Ellis, A, 'The Effectiveness of Psychotherapy with Individuals Who Have Severe Homosexual Problems', *Journal of Consultant Psychology*, 20,1956, pp. 191-5.

[839] Cory, op. cit.

homosexual as normal. So Keeling [840] writes: 'society will have to come to a time when it is able to accept these relationships openly and calmly as an ordinary part of human life'.

Under this heading of acceptance, one may in passing note that another possible approach is to ritualize or institutionalize homosexuality within the social structure. West [841] refers to a number of tribes where anthropologists have found quite elaborate ritual arrangements for the accommodation of homosexual males and, less commonly, females. Indeed, the Siberian shamans were so fully accepted that they were credited with supernatural powers, while in other countries an attitude of indifference was noted.

(e) Hormonal intervention to effect sexual reorientation.

Although hormonal imbalance now appears unimportant as a causal factor in the genesis of homosexuality, the possibility has been considered often enough for corrective measures to be attempted. Even in the absence of direct evidence of hormonal imbalance, the use of hormones might still be justified on the basis that they are demonstrably involved in sexual drive. While this approach is often used successfully to control the **strength** of libido, the outlook for changing sexual orientation is unpromising. It is Perloff's [842] view that:

> steroid hormones of the oestrogenic and androgenic types have nothing to do with the choice of sex object and therefore with the determination of homosexuality. Therapy with these substances may occasionally affect the sexual urge but should not be expected to exert beneficial effects on the course of homosexuality.

(f) Treatment to reduce homophilia directly

It is characteristic of the strict behaviourist approach that intervention should be directly and measurably related to the presenting behaviour. The principles of classical conditioning have been used to reduce attraction to the same sex by creating a conditioned aversion. What was attractive is made undesirable by associating it with noxious (painful or unpleasant) experiences. This use of aversive techniques is scientifically attractive for its directness, its reliance on well-established scientific phenomena, and its observability. Nonetheless, the reported work of Max, [843] using painful electric shock, and later, the use of the drug apomorphine by Freund [844] has not been followed up. Dealing with the problem symptomatically in this way did not take the patient's total adjustment into account and follow-up has proved disappointing. In effect, this technique suppressed a response which was providing some sexual outlet without providing an acceptable alternative. As Spinoza observed, the only way to overcome a desire is with a stronger contrary desire.

(g) Treatment involving discrimination.

When West's discussion of treatment alternatives was published in 1960, he offered little hope for the confirmed homosexual except through psychoanalysis. This made the prospect gloomy indeed since only modest advances have been reported by psychoanalysts in the treatment of homosexuality since Freud's initial pessimism.

The years since then have seen a number of reports in which operant conditioning techniques have been employed. This type of conditioning involves teaching selected responses which can be shaped to become closer and closer to a desired criterion. At the same time, undesired responses can be progressively extinguished. By a careful arrangement of conditioning trials, the homosexual can be trained to avoid making homosexual responses while concurrently developing positive heterosexual responses. This approach takes account of the need to weaken one type of response while strengthening a competing response. It has also an ethical attraction in that each conditioning trial involves a choice by the patient to respond or not. There is therefore a sense in which the patient does not submit to change brought about by someone else, but he takes an active part in determining the outcome of therapy.

The series of reports by Feldman and MacCulloch best illustrate this approach. They describe [845] a method involving anticipatory avoidance learning. The male patient knows that pictures will be projected on a screen

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[840] Keeling, M, *What is Right?*, SCM, London, 1969.

[841] West, op. cit.

[842] Perloff, WH, 'Hormones and Homosexuality', In J Marmor (ed), *Sexual Inversion*, Basic Books, New York, 1965.

[843] Max, LW, 'Breaking Up A Homosexual Fixation by the Conditional Reaction Technique: A Case Study', *Psychological Bulletin*, 32, 1936, p. 734.

[844] Freund, K, 'Some Problems in the Treatment of Homosexuality', In HJ Eysenck (ed), *Behaviour Therapy and the Neuroses*, Pergamon, Oxford, 1960.

[845] Feldman, M, and MacCulloch, MJ, 'The Application of Anticipatory Avoidance Learning to the Treatment of Homosexuality, I, Theory, Technique and Preliminary Results', B*ehaviour Research and Therapy*, 2, 1965, pp. 165-184.

and that following the appearance of an attractive male, a shock may be given unless an avoidance response is made. He may avoid by pressing a button which results in rejection of the slide and the appearance of a female instead. In this way males become associated with threat of pain and hence lose their attractive connotations, while females are associated with escape from pain and hence develop positive associations. The reverse associations can be used for female patients.

The outcome of this type of treatment gives room for optimism that lasting change will become a real possibility. In 1967, MacCulloch and Feldman described the outcome of treating forty-three patients (including two females). Thirty-six completed treatment and when followed up a year later twenty-five (58%) were significantly improved. It is of particular interest that of the twenty-five, sixteen were over twenty-five years of age. It should also be noted that although this type of treatment is time-consuming and demanding, it does not involve anything like the long interval and heavy expense of psychoanalysis.

Many problems remain with this type of treatment, including the identification of those who will respond, and the development of a wider variety of stimuli to allow for individual needs. That these problems are worth solving may be concluded from the finding that a good response to treatment of this type is commonly accompanied by better adjustment in other ways also. [846]

(h) Treatment by systematic desensitization.

Behaviour therapy comes close to much conventional psychotherapy when dealing with homosexuality by systematic desensitization. By this approach, the presenting problem may be largely disregarded, while attention is devoted to the learned fear of the opposite sex. A graded retraining is provided in which mildly unattractive members of the opposite sex are associated (in fantasy or reality) with same kind of rewarding situation. (Progressively, more and more threatening fantasies are handled with equanimity as they are associated with pleasurable feelings.) Relaxation is commonly used to inhibit the anxiety which would otherwise be generated, though assertive responses can also be used (Stevenson and Wolpe [847] 1960).

This approach has been defended on ethical grounds as providing even greater opportunities for self-determination than operant conditioning. LoPiccolo [848] comments that:

> systematic desensitization does not require the therapist to assume a moralistic or directive stance with the patient. Indeed, if homosexuality is a response to fear of women, desensitization actually increases the patient's freedom. Successful desensitization frees the patient from coercion by his own fear, and allows him to make a genuinely free sexual object choice. The desensitization approach essentially puts the therapist in the position of saying "I will free you from fear, and make it possible for you to truly choose your own sexual orientation."

The approach may well be a promising one for the future, but at this point only single cases have been reported with a satisfactory outcome (Kraft [849], LoPiccolo [850]).

The closely related technique of covert sensitization which involves responding to fantasies of males and females by pairing pleasant or unpleasant emotions with them, has also proved effective in single case studies. With follow-up of one year, Gold and Neufeld [851] have reported clear evidence of a change in sexual orientation with a sixteen-year-old male. By combining covert sensitization with an aversive stimulus (an offensive odour), Maletzky [852] reports a sustained change over twelve months in nine out of ten homosexuals treated. This report is unfortunately brief and further details about the patients have not been provided.

In summary, one may say that the probability of successful treatment for the homosexual, male or female, is still not high for any given individual. The exclusively homosexual, the older person, and the one forced into treatment by external pressures, are particularly unlikely to benefit. However, an increasing appreciation of the

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[846] Court, JH, 'The Evaluation of Behaviour Therapy of the Neuroses', *The Australian and New Zealand Journal of Psychiatry*, 2, 3A, 1968, pp. 215-20.

[847] Stevenson, I, and Wolpe, J, 'Recovery From Sexual Deviations Through Overcoming Non-sexual Neurotic Response', *American Journal of Psychiatry*, 116, 1960, pp. 737-42.

[848] LoPiccolo, J, 'Case Study: Systematic Desensitisation of Homosexuality', *Behaviour Therapy*, 2, 1971, pp. 394-9.

[849] Kraft, T, 'A Case of Homosexuality Treated by Systematic Desensitization', *American Journal of Psychotherapy*, 21, 1967, pp. 815-21.

[850] LoPiccolo, op. cit.

[851] Gold, S, and Neufeld, IL, 'A Learning Approach to the Treatment of Homosexuality', *Behaviour Research and Therapy*, 3, 1965, pp. 201-4.

[852] Maletzky, BM, 'Assisted Covert Sensitization: A Preliminary Report', *Behaviour Therapy*, 4, 1973, pp. 117-9.

psychological factors involved, as well as techniques deriving a rationale from them, has significantly improved the situation over the last ten years or so. When the outlook for treatment is bleak, many who might benefit tend not to seek help but cope as best they can. One may now reasonably hope that more will seek help at an earlier stage with high motivation so that help may prove more effective. Meantime, it is now possible to refute categorically the view that the homosexual cannot be effectively treated. [853]

There remain many for whom known methods of therapy cannot help. Others will find their search for help blocked by a shortage of suitable therapists. There are others also who firmly believe their condition is unchangeable and indeed do not wish any change, preferring the adjustment they have come to know. For all these the main question is how the community will respond to them. This question leads to a consideration of the Christian position regarding the normal status of homosexuality, and the legal sanctions which may be exercised.

V Moral Issues

To discuss homosexuality in terms of genetic, hormonal and psychological explanations is a necessary but not sufficient treatment of the topic. For the Christian, morality is also important in determining our attitudes and actions. A mere ten years ago few would have doubted that homosexuality comes under the strongest biblical condemnation, and should properly be the object of legal sanctions for the protection of society. A succession of reports, secular and spiritual, has changed these assumptions for many. The rejection of the need for legal sanctions has been repeatedly asserted and implemented, while the significance of biblical teaching has also come under scrutiny. No longer is there unanimous agreement among Christians over biblical teaching in this area. The rise of situation ethics has led to such as Pittenger [854] stressing the importance of a loving relationship and each man's right to be loved as a principle overriding the general condemnation of homosexual acts. At the same time, the conservative evangelical position has been reasserted, leaving no exceptions to the condemnation of homosexual acts. [855]

Before turning to consider the biblical evidence, it should be noted that the previous paragraph made no reference to homosexuality as such, but to homosexual **acts**. There is no justification for supposing that a person who finds himself **attracted** more to his own sex than the other is under any moral condemnation. It is important to distinguish between the person and his behaviour – between the sinner and his sin. The mercy of God is always directed to the person even while the condemnation of God is towards a sinful act.

However, to do full justice to New Testament teachings, the concept of an act must also include the kind of thought which prefaces an act. As Jesus condemned the lustful look at a woman (Matt. 5:28), so, too, the active harbouring of homosexual desires is a matter of morality. While it is no sin for the Christian homosexual to experience sexual attraction when meeting another of his own sex, he is as much required to resist the temptation to lust as the heterosexual faced with a comparable experience. In a commentary on the passage from Matthew, Barclay [856] writes:

> What the Greek condemns is not the person who looks at a beautiful person and has an instinctive reaction of admiration and even of desire. What it does condemn – and the Greek makes this quite clear – is the person who looks at another in such a way as deliberately to awaken and foment desire. What is condemned is a particular kind of looking.

The Old Testament records two episodes of homosexuality (Gen. 19:5-9, Judges 19:22-28), and in both cases judgement follows. Some have interpreted the offence as being something other than homosexuality (e.g. an inhospitality in Sodom) but Smith [857] notes that the Hebrew is clear in its meaning. There are in addition the offences mentioned in (Leviticus 18:22 and 20:13) which quite explicitly refer to homosexual acts and specify death as the penalty.

In the New Testament, several passages include homosexual acts in a list of sins (Rom. 1:26-32; I Cor. 6:9-10; I Tim. 1:8-11; II Peter 2:4). These lists are meant to characterize the behaviour which distinguishes the

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[853] Court, JH, 'Behaviour Therapy with Homosexuals', *Homosexuality in South Australia*, CAMP [SA], 1972, pp. 8-13.

[854] Pittenger, Norman, *Time for Consent*, SCM Press, London, 1970.

[855] Smith, Bruce, 'Homosexuality in the Bible and the Law', *Interchange*, 4, 1, 1968, pp. 218-22.

[856] Barclay, William, *Ethics in a Permissive Society*, Fontana, London, 1971.

[857] Smith, op. cit.

heathen from the Jews and Christians. The TEV rendering of Romans 1:6,27 and 32 makes the intent clear:

> Because of what men do, God has given them over to shameful passions. Even the women pervert the natural use of sex by unnatural acts. In the same way the men give up natural sexual relations with women and burn with passions for each other. Men do shameful things with each other, and as a result they receive in themselves the punishment for their wrongdoing They know that God's law says that people who live in this way deserve death. Yet they continue to do these very things – and worse still, they approve of others who do them also.

This passage in Romans is particularly significant for its context. It follows a reference to man rejecting God and turning to idolatry, as a result of which God withdraws from man. In his refusal to acknowledge God, man turns to immorality – homosexuality being one expression of this.

A contemporary expression of this same viewpoint occurred in DH Lawrence's *Women in Love*. [858] This sensitive exploration of various types of sexual relationships included extensive discussion of the importance of a homosexual relationship between men as a complement to a heterosexual relationship. Gerald and Birkin [859] discussed the insufficiency of marriage as follows:

> Then wherein does life centre, for you?
>
> I don't know – that's what I want somebody to tell me. As far as I can make out it doesn't centre at all. It is artificially held *together* by the social mechanism. Birkin pondered as if he would crack something. I don't know, he said, it just doesn't centre. The old ideals are dead as nails – nothing there. It seems to me there remains only this perfect union with a woman – sort of ultimate marriage and there isn't anything else.
>
> And you mean that if there isn't the woman, there's nothing? said Gerald.
>
> Pretty well that – seeing there's no God!

Without a recognition of the spiritual and moral significance of God's condemnation, it is difficult to demonstrate that homosexual acts are any less valid than heterosexual behaviour. Indeed, secular writers can plausibly argue for the acceptance of homosexuality on a variety of sociological and psychological grounds, even to the point that one is left wondering if it is not the majority who have the problem (e.g. Magee, [860] Szasz [861]).

In addition to the direct indication from Romans 1 that the condemnation is derived from man's rejection of God, two additional interpretations are put forward by the Report on Homosexuality [862] presented to the Diocese of Melbourne:

> Homosexual acts were unnatural' in the sense that they involved a turning away from man's more usual attraction for womankind. Secondly, homosexuality held an inherent threat to the family ties so important in Jewish tradition. Biblical evidence thus leads many to conclude that homosexual activity is to be regarded as prohibited to the Christian.

It is also true that a number of Christian writers have in recent years placed a non-condemnatory interpretation an both Old and New Testament references to homosexuality. These efforts to obscure the issue have been summarily dealt with by Bockmühl [863] who, writing as an evangelical theologian, accuses them of 'fantastic exegetic somersaults'.

Not all agree that the acceptance of homosexuals within a society necessarily constitutes a threat to family life. Convinced homosexuals will often argue that their own relationships are satisfying and self-contained, not challenging heterosexual relationships and should therefore be accepted in the same way. There is no biblical support for the acceptance of such relationships. Genesis 2:24, speaks only of the marriage of a male and female as man and wife.

Whatever may be the impact of homosexuals on the family, there is now little doubt about the impact of the

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[858] Lawrence, DH, *Women in Love*, Heinemann, London, 1921.

[859] Gerald and Birkin refers to the two characters in Lawrence's *Women in Love*, with the dialogue that follows.

[860] Magee, op. cit.

[861] Szasz, TS, 'Legal und Moral Aspects of Homosexuality', In J Marmor (ed), *Sexual Inversion*, Basic Books, New York, 1965.

[862] Social Questions Committee of the Church of England, Diocese of Melbourne, *Report on Homosexuality*, 1971.

[863] Bockmühl,.K, 'Homosexuality in Biblical Perspective', *Christianity Today*, 16 February 1973, pp. 12-18.

family on the homosexual. It has been shown above that homosexuals commonly come from a disturbed family setting. Some would wish to excuse the homosexual from blame because it is so clear that his problem arises from a pathological family. At the level of moral responsibility, however, this is too easy a solution. Because the 'sins of the fathers are visited on the children', this does not excuse the children from making moral choices. We may equally say that the delinquent child comes from a pathological family, but it does not mean his stealing can be condoned.

In Old and New Testaments alike, the severe condemnation of homosexual acts is not specific to them but refers also to a number of other offences, both sexual and non-sexual. As Smith [864] comments:

> Homosexuality is not singled out for separate treatment or given special prominence. It is one sin – one symptom – among many, and our alarm at its presence in society ought, perhaps, to be no greater than our alarm over the presence of adultery, drunkenness, covetousness, boastfulness, insolence, gossip and so on.

It must also, be recognized more widely that there are many Christian homosexuals. While it would constitute a sin for them to be practising, it is no sin for them to have this problem. Theirs is in some ways a special difficulty, in that they cannot hope for sexual fulfilment as long as their problem remains. Yet in other ways their problem is no greater than for many others who for various reasons are unable to marry. It is the testimony of many homosexuals that their close relationship with God has enabled them to resist temptation, even when their basic orientation has remained unchanged. Others will be wise to seek treatment which, by the grace of God, may enable them to overcome their handicap and assume a heterosexual relationship.

The Melbourne Report [865] takes up the responsibility of clergy and congregations towards the homosexual, emphasizing the important role each can play:

> More than most, perhaps, the homosexual in his loneliness and isolation, deserves the warm acceptance and understanding of the Christian community. Whether or not the law is changed, parish priests will inevitably find themselves called upon to advise and assist homosexuals in coming to terms with themselves, and the society in which they live … We strongly urge that clergy, whilst recognizing the importance of their own rote as counsellors, should avail themselves of medical and psychiatric help wherever possible.

The position one adopts regarding the morality of homosexuality derives from one's approach to the Bible. The conservative evangelical has no difficulty in seeing the commission of homosexual acts as sinful, since this is the clear teaching of both Old and New Testaments. Those who seek to temper their interpretation with other criteria may view the matter differently. It is with the upsurge of situation ethics that the issue has become so much debated. For a fuller discussion of the theological issues the reader is referred to Smith, [866] Thielicke, [867] and Bockmühl. [868]

There are many Christians who would shy away front unequivocal condemnation of homosexual behaviour, believing such a stand to be contrary to principles of Christian love. It is therefore worth re-emphasizing that the Christian must view the homosexual as a person with the utmost charity and concern. He must distinguish the person with a problem from commission of sinful acts. The Christian should stand with others who, for a variety of reasons, seek to reduce the persecution and alienation which so often confronts the homosexual. The Christian should be active in society to prevent discrimination and to enable more help to be made available for those who would seek it. As a member of secular society, the Christian must also be active to ensure that the law is framed with a due regard for the best interests of the homosexual as for anyone else.

VI The Legal Position

This has changed in many countries over the last ten years. The major impetus for this undoubtedly came from the recommendations of the Committee on Homosexual Offences and Prostitution (The Wolfenden Report, [869]). Since that time there has been increasing support from Christian groups for the view that

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[864] Smith, op. cit.
[865] *Report on Homosexuality*, op. cit.
[866] Smith, op. cit.
[867] Thielicke, Helmut, *Theological Ethics*, vol. I, A and C Black, London, 1968.
[868] Bockmühl, op. cit.
[869] *Report of the Committee on Homosexual Offences and Prostitution*, HMSO, London, 1957.

homosexual acts between consenting adults should no longer be illegal. Thielicke [870] notes the support for this position given by the Roman Catholic Griffin Report [871] and the Swedish Pastoral Letter. [872] More recently, one notes the Quaker document (Heron, [873]), and the Melbourne Report. [874] To some it has appeared that this trend is incompatible with the view that homosexual acts are under moral condemnation.

The relationship between the law and Christian standards of morality is a complex one, and may be best handled here by presenting in capsule form the views of a few writers who have come to terms with the issue. In essence, the point is made that in our pluralist society it does not follow that our laws will always accord with Christian teaching

> It is the duty of a Christian to support the authority of the state. It may be his duty also to labour for the reformation of the laws of the state. In doing this, it has no right to put aside what it has learnt as a Christian, and in the quality of citizenship to act as a mere natural man. Such a division of personality is intolerable. But neither is it bound to insist that the laws of the state … shall conform exactly to Christian teaching. Not all the subjects of the state are Christian and the state must legislate for all. (Putting Asunder). [875]

The Christian must in consequence see the moral and the legal issues as separate ones. This position has been recognized for long enough in relation to premarital intercourse and adultery, which are clearly condemned in scripture but do not come under the law. So Babbage [876] writes:

> It is now widely felt that while the practice of homosexuality is rightly a matter for moral condemnation, it is not a proper matter for legal prosecution, except for cases involving the seduction and corruption of minors and offences against public decency … What the Christian must believe and say is that every kind of sexual immorality is wrong and therefore sinful. Whether offences that are sins in the eyes of God should also be crimes in the eyes of the law is a matter requiring most careful examination.

There is an important dilemma here, however, if one has a moral conviction about homosexuality and yet advocates that what was once illegal should no longer be so. It is not easy for the Christian to make clear that the offence is not made right. A change in the law will lead people to believe homosexuality is not wrong after all, and the approval of Christians, especially when voiced through church reports, will appear to add moral sanction. [877]

The Melbourne Report [878] contributes to this problem by stressing that the church may speak in two distinct ways – to society regarding social injustice and to its own members. Commenting on the need to 'preserve and defend the faith of its members' the Report says:

> There is a danger that recommendations made to the government to change laws which, say, penalize homosexual acts, could be misinterpreted as reflecting the faith and practices to which the majority of Anglicans adhere. This manifestly is not so. The English report on *Putting Asunder* … stressed that anyone speaking on behalf of the church who fails to distinguish between what we may call the 'public' and 'private' roles of the church is asking to be misunderstood, both within the church and the society at large.

Some quite properly fear that changes in the law, allowing greater freedom to homosexuals, will result in an increase of the problem. It remains to be seen whether this will be so, or whether the opposite may occur:

> There is no clear conclusion whether a more tolerant attitude on the part of society would reduce or increase the incidence of homosexuality. It is possible that a more tolerant attitude would break down prejudices which

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[870] Thielicke, Helmut, *The Ethics of Sex*, James Clarke and Co Ltd, London, 1964.
[871] See: 7:–1.11.1.1. page 513, 'Roman Catholic Griffin Report (1956)'.
[872] See: 7:–1.11.1.2. page 518, 'Swedish Pastoral Letter (1951)'.
[873] Heron, op. cit.
[874] *Report on Homosexuality*, op. cit.
[875] *Putting Asunder: A Divorce Law for Contemporary Society*, Report of a group appointed by the Archbishop of Canterbury [Michael Ramsay], SPCK, London, 1966.
[876] Babbage, SB, *Sex and Christianity*, IVP, Chicago, 1963.
[877] Court, JH, 'Sexual Deviation in Society', *Interchange*, I, 4,1968, pp. 223-31.
[878] *Report on Homosexuality*, op. cit.

> presently isolate the homosexual and offer him no alternative other than continuing as a homosexual. On the other hand, it is possible that greater tolerance would lead to give free rein to propensities which they presently hold in check for fear of the social consequences. [879]

The possibility of two opposite effects arising from legislation is a reminder that the law can serve both as a restraining force and as a guiding influence. The positive contribution the law may make has been discussed by Devlin: [880] 'Devlin's conception of the role of law, and it is one that would be shared by a great many Christians, is that it is to be creative and should foster ideals which the social majority approves of'. [881] Although the weight of discussion in this section has favoured the other viewpoint, this position deserves serious thought. 'Here is a point', says Smith, quoting another author, 'at which one has to choose one's side.'

It should also be noted that a discussion of changes in the law, such as have already occurred in England, is concerned with the activities of men more than women. There has always been a double standard in the legal position for the two sexes, which is not parallelled by the moral position, where the homosexual practices of both sexes are under condemnation (Rom. 1:26, 27). The difference in law is hard to defend.

To advocate **changes** in the law relating to homosexual acts between consenting adults can be quite consistent for the Christian who at the same time accepts the plain biblical condemnation of the same acts. In particular, there is a real need to seek measures which are humane and constructive in contrast to much repressive and punitive practice. To frame such laws, which retain the traditional protections but do so more humanely, would appear not only better for society in the long run, but also a truer expression of Christian concern than to support total abolition of the law.

Bockmühl [882] says:

> the church of Jesus Christ has to resist the trend that would ironically make it the agent for abolition of its own ethical. norms, an abolition for which neither the Old nor the New Testament offers the slightest justification. The biblical norms are relevant precisely because they deal with homosexual **behaviour**, which is exactly the problem today.

7:–1.11.1.1. – Roman Catholic Griffin Report, 1956 [883]

HOMOSEXUALITY, PROSTITUTION AND THE LAW

The report on the existing laws relating to homosexual offences and prostitution was recently drawn up by a Catholic Committee commissioned for the purpose by the Cardinal Archbishop of Westminster at the request of the Departmental Committee of the Home Office now sitting to consider and make recommendations upon this subject under the Chairmanship of the Vice-Chancellor of Reading University, Mr J Wolfenden. The Catholic Committee was charged with the task of presenting to the Departmental Committee a reasoned account of Catholic moral teaching upon the subject together with appropriate conclusions which might be drawn from such principles in so far as they affect the criminal law, for this purpose the members of the Committee were chosen so as to include as wide a range of professional opinion as possible, consisting of a Professor of Moral Theology, a parish priest, a queen's counsel, a doctor of medicine specialising in psychiatry, a psychiatric social worker and a welfare officer, under the chairmanship of Mgr GA Tomlinson, Catholic Chaplain to London University.

It would be out of place here to do more than adumbrate either the conclusions which the Committee arrived at or the principles upon which the conclusions were based, both of which can be found in the body of the report itself. It may, however, shed some light both upon the findings of the Committee and the course of the discussions which led to them if a word were said by way of introduction to the report upon the situation which had to be considered.

The existing law treats all homosexual acts committed between male persons of whatever ages as criminal

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[879] ibid.
[880] Devlin, P, *The Enforcement of Morals*, OUP London, 1965.
[881] Smith, op. cit.
[882] Bockmühl, op. cit.
[883] The Roman Catholic Advisory Committee on Prostitution and Homosexual Offences and the Existing Law (Griffin Committee), 'Homosexuality, Prostitution and the Law: The Report of the Roman Catholic Advisory Committee' (Griffin Report), *The Dublin Review*, vol. 230, no. 471, Summer 1956, pp. 57-65.

offences. Bearing in mind the principle that to be just the criminal law must be based upon the moral law; but avoiding the false logic of the conclusion that therefore all moral offences may rightly be the subject of civil legislation, the Committee agreed that the end of the civil law was to maintain and safeguard the common good. Moral offences therefore which of their nature tend to subvert the common good are rightly the subject of criminal enactments and this principle logically implies the conclusion that while homosexual acts which include the corruption of young persons or which constitute an offence against public decency are justly punishable as crimes, acts committed in private by consenting adults do not themselves militate against the common good of citizens and are therefore not justly subject to the criminal law. Admittedly the present law is an expression of detestation of such acts by the normal public, but such a motive is not sufficient reason for making them crimes at law, mortal sins thought they are. The witness of the history of certain Puritan States is sufficient warning against the idea that individually can be made morally good by Act of Parliament.

Further, a law directed against consensual acts of homosexuality between adult males in private must depend for its effectiveness either upon a system of police espionage or the activities of the informer, either of which appears to be more directly detrimental to the common good than the evil it is claimed to be by those who would justify such a law. Nor can the fact be overlooked that adultery, an offence which undermines the institution of marriage, and hence constitutes a direct attack upon the common good, is not treated as a crime by the law – an anomaly which shows the law in question as the more inequitable by contrast. The same observation may justly be made with regard to the absence of any law directed against consensual homosexual acts between women.

The Committee was also obliged to consider the effects of the present law, notably the evidence of blackmail about which nothing further than the mention need be said. Evidence was also given by a prison doctor of the deleterious effects in many cases of the prison sentence served by persons convicted under this law in heightening rather than mitigating their moral disorder.

The moral problem which the homosexual has to face is not different in degree from that which every unmarried person, man or woman, must conform. The Catholic is taught by his faith that the human will aided by the grace of God and the constant practice of self-control und mortification can both tackle and overcome the problem, and the experience of large numbers of men and women proves this to be no lie. In individual cases the help of the priest and also of the doctor can do much, where there is no question of harm to the common good; the criminal law can only further the injury it is designed to remedy.

The problem of prostitution is one which is particularly acute for the Church in this country on account of the number of girls coming from Catholic countries who find the trade a more profitable way of making a living than any other, and the remedy is yet to be found. The present law upon the subject takes no cognisance of fornication as such unless the commission involves an offence against public decency; what is proscribed is soliciting and importuning to public annoyance. To such proportions has prostitution grown in London that every Monday morning a solemn farce is enacted at Bow Street at which members of a selected band of prostitutes are charged without witnesses and individually fined forty shillings for this offence, the turn of each coming round periodically. Such a method has the effect of reducing the periodic fine to the category of overhead expenses with the minimum effect upon the offender and brings the whole law into contempt. In the Committee's opinion a more effective way of dealing with the situation would be the abolition of the present practice of automatic summons, and the substitution of the more regular proceeding of requiring witnesses to substantiate the change and of empowering the Courts to place convicted offenders under the care of the probation officer or welfare worker. The members of the Committee, however, were fully conscious that in making this recommendation they were proposing a measure rather to remedy a legal anomaly than to produce an answer to the fundamental problem. Like homosexuality, prostitution is basically a moral problem, and later remedies are at best but makeshifts for the lack of early moral and religious training in the home.

It has been thought fit to publish the report of the Catholic Committee in *The Dublin Review* with the permission of the late Cardinal Griffin and the concurrence of the Department Committee of the Home Office as the expression of the deeply considered view of this section of priests and laymen on the question of the present law with regard to homosexuality and prostitution. Members of the Committee recognise that their conclusions will not be universally supported; they can claim at least that the recommendations they have made are the fruit of much thought and discussion having always before their minds the moral teaching of the Catholic Church.

Report of the Roman Catholic Advisory Committee (Cardinal Griffin Committee) on Prostitution and Homosexual Offences and the Existing Law, 1956

Section 1

Catholic Teaching on Homosexual Offences

I Homosexual activities and desires to which the informed will gives full consent involve grave sin.

II The Church refrains from giving official recognition to any theory about the origin of homosexual tendencies and alludes to the unborn weakness of human nature as a result of original sins and attributes evil practices in matters of sex not so much to ignorance of the intellect as to weakness of will exposed to dangerous occasions and unsupported by the means of grace. (Plus XI, *Christian Education of Youth*.)

It is desirable to emphasise that sins of a sexual nature like any others derive from original sin and man who is endowed with free will is not the sport of fate in these matters.

III The fundamental governing force in man is the soul with its free will and not the instinctive drives of the unconscious. However strong the instinctive drives in man they can be ordinarily governed and controlled by the will informed by grace.

Original sin did not take away from man the capacity or obligation to direct his own actions himself through his soul. Even in cases of psychological illness these forces such as the sexual instinct should not be prematurely considered as a sort of fatality, as a tyranny of the affective impulses streaming forth from the subconscious and escaping completely from the control of the conscious and of the soul. [884] That these forces may exercise pressure upon an activity does not necessarily signify that they compel it. [885]

IV The freedom of man, notwithstanding these strong tendencies, must be considered to remain intact so that with the help of grace he can avoid formal sin.

V When endeavouring to help a homosexual person to refrain from giving expression to his wayward impulses it is important to remember that virtue is largely a matter of habit rather than a single instance.

VI Whilst every sympathy must be shown towards homosexual persons, such persons must not be led to believe that they are doing no wrong when they commit homosexual acts. 'It is never lawful to counsel a person to commit material sin.' [886]

VII It is not the business of the State to intervene in the purely private sphere but to act solely as the defender of the common good. Morally evil things so far as they affect the common good are not the concern of the human legislator.

VIII Since public morality belongs to the highest goods of the common weal and of human culture, it is the function of the State as defender of the common good to defend society against morally destructive forces in so far as it is able to do so.

The criterion of what is meant by public good is to be sought in the fact that from a particular mode of conduct there can proceed effects morally harmful to the members of the community who do not possess the necessary power to resist such influences. Individuals whose moral judgement and character are not yet settled are to be protected from situations which would impose too severe a strain upon them.

The State has the right and the duty to protect the sexually immature from premature sexual experience.

IX In assessing the moral responsibility of individuals for wrong acts done by them it is important to make the distinction between material and formal sin.

Material sin may be defined as a violation of the law without knowledge or consent.

Formal sin is a free and deliberate violation or transgression of a Divine law, or the voluntary transgression of a dictate of conscience.

X All directly voluntary sexual pleasure outside marriage is sinful.

XI Crime as such is a social concept not a moral one and therefore is a problem to be tackled by the State with the assistance of its specialists in jurisprudence and psychiatry. Sin as such is not the concern of the State but affects the relations between the soul and God.

XII The right of the State to punish those who commit crimes is best stated in relation to the legitimate objects of penal sanctions. These are (a) retributive, (b) deterrent and (e) reformative. The second and third of these do not in our day require explicit justification. The first may be debatable but it is surely right that a healthy public opinion should reprobate crime and reasonably require that evil-doers should be justly served. A

[884] Papal Address to Psychotherapists, 13 April 1953.
[885] ibid.
[886] ibid.

general assurance to this effect goes some way to control violent reactions and especially with regard to the more detestable offences, to minimise the tendency for individuals to take the law into their own hands.

It is of the first importance, however, that the State should not go beyond its proper limits in this connexion. Attempts by the State to enlarge its authority and invade the individual conscience, however high-minded, always fail and frequently do positive harm The *Volstead Act* [The National Prohibition Act] in the USA affords the best recent illustration of this principle. It should accordingly be clearly stated that penal sanctions are not justified for the purpose of attempting to restrain sins against sexual morality committed in private by responsible adults. They are, as later appears, at present employed for this purpose in this country and should be discontinued because:

(a) they are ineffectual;
(b) they are inequitable in their incidence;
(c) they involve severities disproportionate to the offence committed;
(d) they undoubtedly give scope for blackmail and other forms of corruption.

XIII It is accordingly recommended that the Criminal Law should be amended in order to restrict penal sanctions for homosexual offences as follows, namely to prevent:

(a) the corruption of youth;
(b) offences against public decency;
(c) the exploitation of vice for the purpose of gain.

Section II

The Nature of Sex Inversion

I Sex inversion may be defined as the direction of the psychosexual impulse more or less exclusively towards persons of the same sex who should have reached psychosexual maturity.

II Various views exist on the nature of sex inversion.

(a) Some authorities regard it as a congenital anomaly. According to this view a certain proportion of the population – a fairly conservative estimate would be 4 per cent – are so constituted that quite regardless of training, environment and in fact all external influences or individual experiences they are quite unable to develop normal heterosexual desires. Such persons, termed true inverts, may or may not exhibit physical or temperamental characteristics proper to the opposite sex. All grades are found from physical pseudo-hermaphroditism down to apparent physical and temperamental normality. The origin of this condition is not always clear, although there is much to suggest that it depends primarily on the lack of balance between the various glands of internal secretion. Apart from the misdirection of sexual impulse, inverts may be perfectly normal in every other respect although it is true that moral and social conflicts arising equally from the frustration of their sexual lives and the gratification of their – to them perfectly normal – impulses frequently lead to neurosis, but such neurosis is adventitious rather than part and parcel of their condition.

(b) Others who regard sex inversion as a psychogenetically acquired misdirection of the sexual impulse form three main groups:

(1) Various members of the Freudian School maintain that we are all potentially bisexual, and that we all pass consciously or unconsciously through a homosexual phase. Sexual inverts are peculiar in that they remain stuck at or fixated as the technical term is, or suffer a regression to this level of development. The cause of this developmental anomaly is to be found in the failure to resolve the well-known Oedipus complex situation.

(2) The Adlerians interpret sexual inversion in terms of the inferiority complex according to which view homosexual males have a profound distrust in their own essential virility and ability to dominate the opposite sex. They attempt the treatment of inverts by their reeducation technique.

(3) A third group maintains that sexual inversion results from the physical shock associated with homosexual experience occurring in early or adolescent years. However, all the evidence tends to show that such experience in no way determines the direction that the sexual impulse will take in later years. The number of perfectly normal heterosexual adults who have had homosexual experience at various times during childhood and adolescence proves that that factor alone cannot account for inversion. Further we come across a large number of inverts who have either never indulged their homosexual tendencies or who have remained perfectly chaste till adulthood.

III It is desirable to establish a distinction between sex inversion and homosexuality. The evidence is almost overwhelmingly in favour of the view that a conscious or unconscious phase of homosexuality is common to the race during the years of late childhood or adolescence. Further, a large number of people

experience sexual attraction towards members of both sexes. The term homosexuality should be restricted to homosexual desires or activities occurring in potentially heterosexual or in bisexual individuals. Sex inversion should be applied to sexual impulse which appear to be congenitally and ineradicably homosexual.

IV Homosexuality and sex inversion have been known to occur from the dawn of human history. In Athens, for example, and more or less throughout Hellas for two or three centuries prior her decadence, pederasty was encouraged until a man reached the age of about thirty, when he married as a civic duty. The same practice has been tolerated and is still exceedingly common throughout Islam.

Romantic relationships of the same kind were also the rule between adult Samurai and their pages in feudal Japan. Every culture develops its own code and standards. Our own Christian civilisation is based entirely upon a heterosexual attitude and there is no danger of homosexuality being absorbed into its structure. The extent to which penal sanctions directed against homosexual practices are justified or effectual is a very different question.

V It is clear then that the specialist in psychological medicine has something to contribute to a solution of
the problem of homosexual offences in relation to the law.

Section III

Summary of Conclusions and Recommendations

I The existing law does not effectively distinguish between sin, which is a matter of private morals, and crime, which is an offence against the State, having antisocial consequences. In matters of sex this distinction may not always be easy to draw but it is certainly ignored by Section II of the *Criminal Law Amendment Act 1885*, which for the first time imposed penal sanctions in respect of acts of gross indecency done by adult consenting males in private.

II Under the existing law criminal proceedings against adult male persons in respect of consensual homosexual acts in private (whether of the full offence of sodomy or of gross indecency) inevitably fall upon a small minority of offenders and often upon those least deserving of punishment.

III The Committee recommends that the criminal law be amended so as to exclude consensual acts done in private by adult males and to retain to the full extent penal sanctions to restrain:

(a) offences against minors;
(b) offences against public decency;
(c) the exploitation of vice for the purpose of gain.

IV In connection with 3(a) the Committee, having taken note of the fact that a valid marriage may be contracted in this country at the age of 16, that the age of consent in France under the Napoleonic Code is 18, and that children are only amenable to the care and protection provisions of the *Children and Young Persons Act 1933*, up to the age of 17, nevertheless recommend that for the present purpose male persons should be deemed to be adults at the age of 2l.

V The Committee has reached the conclusions (a) that imprisonment is largely ineffectual and reorientate
persons with homosexual tendencies and usually has deleterious effects upon them, and (b) that a satisfactory solution of the problem is unlikely to be found in places of confinement exclusively reserved for homosexuals. Accordingly, no positive recommendation is made with regard to methods of detention.

VI The Committee regards with abhorrence arrangements understood to obtain in Denmark whereby homosexuals condemned to imprisonment may obtain release by voluntarily submitting to castration.

VII The Committee accept the propriety of the use for good cause under medical supervision of drugs to suppress sexual desire and activity, with the consent of the patient. Such treatment is permissible where serious pathological conditions obtain and when other remedies have proved ineffectual.

The Committee has no particular recommendation to make in relation to prostitution. From the point of view of moral theology the Same principles apply as are stated above in connection with homosexuality (Section 1, paragraphs III, IV, VII, IX-XIII); the distinction made there between sin and crime is equally valid regarding prostitution. There is a clear duty on the part of the State to protect women from exploitation and to preserve public order.

We do, however, suggest that the existing practice of what may be called automatic prosecution for solicitation and importuning followed by trivial fines serves no useful purpose and is indefensible on any grounds and should be discontinued.

Persecutions should not be initiated except in cases where satisfactory evidence is available to establish the charge and in such cases the Courts should be empowered to inflict suitable penalties including the power to make probation orders where it is desirable, with or without a condition of residence.

The Report was unanimously agreed by the Roman Catholic Advisory Committee on Prostitution and Homosexual Offences and the Existing Law.

Signed:

- GA Tomlinson, MA (Oxon), Chairman, Chaplain to Catholic Students, University of London.
- J McDonald, LCL, Professor of Moral Theology, St Edmund's College, Ware.
- John Preedy, Parish Priest, Englefield Green, Surrey.
- BS McFie, MA (Oxon), Psychiatric Social Worker.
- CM Jenner, Probation Officer.
- EB Strauss, MA (Oxon), DM, DSC, FRCP, Psychiatrist.
- Richard Elwes QC, Recorder of Northampton; Chairman of Derbyshire Quarter Sessions.

7:–1.11.1.2. – Swedish Pastoral Letter, 1951 [887]

In this context is also the statement made by the Swedish bishops, published in a pastoral letter in 1951. It deals in concentrated form with questions of sexual ethics such as extramarital sexual intercourse, abortion, sterilization, artificial insemination, and homosexuality. The statement on homosexuality, [888] though it declares homosexual acts to be offenses against God's command (without giving any explicit theological reasons), approves the elimination of the penal clauses with respect to homosexuality in the new Swedish Penal Code. We are, of course, not to conclude from this elimination that homosexual acts are **ethically** justified. The right view, on the contrary, is: 'that means other than imprisonment are required in order to save a man with homosexual tendencies.' The homosexual who is honestly struggling would 'receive all the understanding and all the encouragement that Christian love can give.' The pastoral letter does not indicate what the objective purpose of this pastoral love should be in dealing with homosexuals (since the phenomenon as such is not interpreted theoretically, it is, of course, impossible to make out from the statement what direction the pastoral therapy is to take), but rather limits itself to an appeal for medical help and prophylactic social measures to guard against possible infections. Therefore, care must be taken that homosexuals be not allowed to deal with young people. Moreover, society must fight against every form of homosexual prostitution. In our particular connection the most important point is the statement's insistence that a criminal prosecution of homosexual relations between adults is out of the question, since this is a matter of ethics and not of criminal law.

7:–1.12. – CAMP NSW Letter to Dr John H Court, Australian Festival of Light, SA Branch, 2 May 1974

Thank you for your letter and its enclosure which I received today. I shall read your article with great interest. When I was working at St Clement's Mosman, Ray Weir did show me an earlier article of yours from *Interchange* [889] on the subject of homosexuality. May I crave your indulgence to allow me time to read your article thoroughly before replying to it?

In the meantime, I enclose a booklet produced by Cross+Section, [890] our Church Group (roughly similar to the religious and moral issues group of CAMP in SA) which states many of our objections to the report compiled by Bruce Smith and presented to our Synod last year. At the time I spoke; as a synods man; against the receiving of the report.

I shall write again as soon as I have been able to digest the information in your article.

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[887] Quoted from Thielicke, Helmut, *The Ethics of Sex*, James CLarke and Co Ltd, London, 1964, p. 274.

[888] Reprinted in *Monatschrift für Kriminologie und Strafrechtsreform*, 1955, p. 193.

[889] See: 7:–1.12.1. page 519, Court, JH 'Sexual Deviation in Society', *Interchange – Papers on Biblical and Current Questions*, vol. 1, no. 4, 1968, pp. 223-231. This article is based on a paper delivered to the Humanist Society of SA in April 1968.

[890] A sub-group of Cross+Section, (The church group within) CAMP NSW Branch, *Homosexuals Report Back: A Retort to the Report on Homosexuality of the Ethics and Social Questions Committee of the Church of England, Diocese of Sydney*, Campaign Against Moral Persecution, Sydney, 25 April 1974.

7:–1.12.1. – Sexual Deviation in Society [891] [892]

I propose first to define my terms of reference and then consider ways in which sexual behaviour may be examined. Scientific statistical studies, social surveys, aetiological considerations and religious beliefs all contribute to our understanding, and our attitude will be very much determined by the relative weight we give to each type of evidence.

Defining the Term Sexual

Logically, one should first ask what is meant by sexual behaviour. It is by definition that behaviour which is concerned with interaction between the two sexes. The link with reproductive function is usually strongly emphasized, even though sexual interaction does not lead to reproduction on every occasion. While for the man in the street such a definition might seem adequate, psychologists need to qualify it because of the extension given to the term sexuality by Freud. He extended the concepts of sexual feelings and responses to incorporate a great deal of pre-adolescent behaviour, including, for example, early feeding experiences. The point he was making was that he assumed the pleasurable experiences associated with these early pieces of behaviour were of the same order as later sexual pleasures. Many have objected to this description and have challenged it. For our purposes it may serve to avoid confusion if we simply recognize that sexual in the Freudian sense is a more extended use of the word than that which is more generally understood. It will serve us little to argue whether his usage is right or wrong. Since we are concerned here with adult sexuality, we may safely leave the issue and agree to speak of sexual behaviour in the conventional sense of the word.

Normality and Deviation

Inherent in the definitions of sexual behaviour are the two ideas that (a) it is behaviour involving the two sexes, and (b) it is related to reproductive activity. This is perhaps the nearest one can hope to Get to defining what we understand by normal sexual function. If we seek to identify sexual deviation, the obvious question is, Deviation from what?, What is normal?. The more information is obtained by psychologists, sociologists and anthropologists, the more uncertain does the answer become. Each attempt to provide a working definition drives one further back so that eventually one finds there is no single norm against which to assess sex patterns.

Much research into sex practices has adopted the convention (scientifically quite legitimate) that sexual behaviour which is statistically common is normal. This is one way of defining normality. According to such a criterion, Ford and Beach can readily show that homosexuality is normal, since by studying 76 folk societies they found that among 49 (64%) homosexual activities were considered normal and acceptable at least for certain members of the community. [893]

Exactly the same percentage of married females (64 %) was reported by Kinsey et al. as having experienced sexual orgasm before marriage. [894] Adopting a statistical criterion of normality, this, too, should be viewed as normal at least for the population studied.

Some writers prefer to move away from trying to identify what exists and offer comment on what ought to be. Exponents of this dangerous but valuable practice then use a different concept of normality, viewing it rather as the ideal to which one should aspire. Such a convention is equally permissible scientifically. Storr adopts this approach in his book, *Sexual Deviation*, and offers a useful way of seeing the problem, viz. relating it to emotional maturity:

> Although it may be impossible to define normality in sexual behaviour even within the confines of a single society, there do exist other standards in terms of which it is possible to make comparative appraisals. One such standard is that of *emotional maturity*. [895]

Storr proceeds to write about the recognized deviations using maturity as the yardstick, thus maintaining the position that such forms of behaviour may be seen as less than mature. This kind of approach is happily in keeping with those schools of thought which emphasize stages or phases of psychosexual development moving

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[891] *Interchange*, vol. 1, no. 4, 1968, pp. 223-231.

[892] John H Court is Lecturer in Clinical Psychology, Department of Mental Health, University of Adelaide. This article is based on a paper delivered to the Humanist Society of SA in April 1968.

[893] Ford, CS, and Beach, FA, *Patterns of Sexual Behaviour*, Methuen, London, 1965, pp. 137-8.

[894] Kinsey, AC, et al. *Sexual Behaviour in the Human Female*, Saunders, London, 1953.

[895] Storr, Anthony, *Sexual Deviation*, Penguin Books, Mitcham, Vic, 1964, p. 12.

from the infantile to the adult. By the same token, one is led away from a judgemental attitude to a more therapeutic one; deviation, instead of being seen basically as a vice, becomes an unsatisfactory adjustment requiring treatment. While valuable, this I suggest must be only *one* attitude to deviation to be adopted along with others. It is developmental in orientation, but we must not ignore the social or the moral positions.

Society

When we come to look at sexual deviation in its social context, there are again many different ways of examining the material. We can afford to pass over lightly the fact that other societies have quite different patterns of behaviour and sexual codes, simply noting that such an observation underlines how dangerous it is to try and make absolute statements from observations. If there are right and wrong sexual practices, we are not going to discover which is which through-h anthropological studies. These can only report on what is found, not what *ought* to be found.

Within our own society we will find also enormous variations in expectations and behaviour. What is acceptable and normal sexual behaviour between a working man and his wife would seem strange to a professional man and, if you will pardon the pun, vice versa. Many of the sexual conventions we now take for granted are the outcome of such relatively recent innovations as upstairs bedrooms and doors which ensure privacy. Among homogeneous and relatively primitive societies norms and values show a marked similarity within the society, but with our social differentiation many sub-groups emerge, and hence the idea of a cultural pattern becomes obscured among the many sub-cultural patterns.

Consequently, sexual deviation has varying degrees of acceptance in different parts of our society. In general, male homosexuality is less socially disastrous than lesbianism. The male homosexual is more readily incorporated into the world of show business than into Education Departments or the Armed Forces. The transvestite when discovered generally loses his job and his friends, but if he moves to Kings Cross he acquires both.

One of the difficulties today in assessing what may be considered statistically normal behaviour is that the Kinsey reports have become so widely accepted and quoted. It might superficially appear that these surveys did a service in at least identifying prevalence of sexual behaviour in a society not too different from our own. But one must recognize that the studies paid little regard to those within-culture differences which are so important in a developed society. Just how restricted was the value of their figures has been shown succinctly by McMillen in relation to the report on females: [896]

> Kinsey interviewed only one out of every fourteen thousand women in the country. Second, these women were certainly not typical of the average American woman … because the ratio of single women to married women was three times greater than that found in the country at large, and the ratio of college women to non-college women was ten times greater. Third, the only women in the group were women who had volunteered to lay bare the details of their intimate sexual lives.

Yet the unsuspecting public, unable to judge fairly the limitations of a piece of research, has been bombarded with statistical conclusion S about sexual behaviour leading them to accept with equanimity what previously had been considered deviant. Bergler and Krogler state that Kinsey, abandons the whole medical concept of perversions and puts heterosexuality on the same level as homosexuality and animal contact … This kind of logic disregards all the ethical, religious and moral advances mankind has made. [897] I suspect that the production of the Kinsey reports on male and female behaviour has brought about a shift in opinion at administrative and lay levels, and if this shift is towards a greater recognition of sexual variability and increased tolerance of difference, the shift is a valuable one. But if it has appeared to sanction what was previously abhorrent, then a public disservice has been perpetrated in the name of science.

A further problem of identifying normality and associated deviation has been postulated by Durkheim. He saw man facing a crisis due to the collapse of social norms and coined the word *anomie* to describe this. Commenting on this, Andersen [898] has defined *anomie as*:

> the breaking-down of rules of conduct, due to increasing non-observance of them by individuals, who were concerned more with their own immediate pleasure than with societal welfare. Secondly … the absence of norms to cover areas of

[896] McMillen, ST, *None of These Diseases*, Oliphants, London, 1966, p 47.
[897] Bergler E, and Krogler, WS, 'Sexual Behaviour', *Journal of the American Medical Association*, 9, 1, 1954.
[898] Andersen, WE, 'Three Perspectives on the Individual and Society', *Interchange*, I, 2, 1967, p. 87.

> behaviour where regulation was obviously required. *Anomie* was, then, both a transgression of existing rules, and the existence of a norm-vacuum.

While Durkheim's concept is a help in diagnosing the forces at work in society, he is sadly lacking, when it comes to treatment. While believing morality should be based on religious sanctions, he prefers a sociological God to a religious one. 'God is Society worshipping itself.' [899] Such a narcissistic belief can only be self-defeating, since it lacks any external check.

Merton [900] follows Durkheim's viewpoint in interpreting deviation of all types as deriving from *anomie.* The incidence of deviation within a society varies a great deal between social classes. The more a group is able to achieve the success goals of the society by legitimate means, the less deviant behaviour occurs. Where great stress is laid on certain goals and yet significant numbers are unable to achieve the goals, deviation appears. In our own society at the present time it is evident that significant conflicts over sexual goals abound. Pressures are brought to bear to persuade young people especially that the sexually successful image is a must. Nearly everything is advertised through sexual innuendoes. Fashion and social customs give every opportunity for sexual arousal and exploration. Yet the double standard operates, since if young people seriously follow their impulses to the logical conclusion, overt conventional sexual norms are transgressed. Placed in a heads I lose, tails you win situation, sexual deviation is an understandable side-track.

Legislation

A social definition of sexual behaviour is inherent in most of our legislation, rather than a statistical one. In particular, the emphasis is on *relationships.* In attempting to define what is socially unacceptable, four criteria are adopted:

(a) the degree of consent: force, either physical or moral, is thus excluded;

(b) the nature of the object: legally acceptable sexual behaviour is with another person, a member of the opposite sex, above a certain age, and not a close blood relative;

(c) the nature of the act: some behaviour leading to sexual intercourse is permitted, but sadomasochistic practices do not receive support;

(d) the setting in which the sex act occurs: public decency is protected by requiring that the sex act be conducted in private.

Legal criteria of this sort may be set up either as a reflection of society's wishes or in an attempt to provide an ideal model for behaviour. Opinion is divided as to the function of law in relation to society. If it aims to represent the wish of the majority, one is in danger of having simply the lowest common denominator, with the law making few demands and offering little guidance or protection. At the other extreme, if the lawmaker seeks to go ahead of society, moulding behaviour by *avant-garde* statutes, there is the danger of rejection of the law so that it falls into disrepute.

In many areas the conflict is not acute, but legislation concerning sexual behaviour in society runs into the difficulty that there is no clear authority to turn to. As John Wilson asks in his carefully reasoned book, *Logic and Sexual Morality*: [901]

> Who are the experts? … Today, as in the past, authorities like the word of God, conscience, tradition … are often invoked. Since the rise of psychology and the social sciences, however, there has been a strong tendency to use what psychologists say as a bogus authority.

Wilson quite properly calls the authority bogus, because among psychologists there are widely divergent viewpoints and, perhaps more important, psychology is concerned with what may be observed and has no brief to say how people *ought* to behave.

In our own society, sanctions have traditionally been strongly influenced by Christian morality. So close has the link been that in the minds of many, law and morality are coextensive. It may well be that much of our present dilemma arises from this illusion. Before looking at the Christian influences specifically, it may help to consider how the issue is discussed in the Wolfenden Report on homosexual offences and prostitution (1957). A clear distinction is there drawn between the standards of morality and the standard of law. The Committee

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[899] Tiryakian, AE, quoted by Andersen, p. 86.

[900] Merton, RK, *Social Theory and Social Structure*, Free Press, New York, 1967, pp. 157-9.

[901] Wilson, John, *Logic and Sexual Morality*, Penguin, London 1965, p. 34.

was only interested in defining what shall constitute a criminal offence, acknowledging that other acts may be morally wrong, but not the concern of the law: [902]

> In this field, its [the law's] function, as we see it, is to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others. It is not, in our view, the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behaviour further than is necessary to carry out the purposes we have outlined … Certain forms of sexual behaviour are regarded by many as sinful, morally wrong, or objectionable for reasons of conscience, or of religious or cultural tradition; and such actions may be reprobated on these grounds. But the criminal law does not cover all such actions; at the present time, for instance, adultery and fornication are not offences for which a person can be punished by the criminal law.

This one may compare with the Roman law which permitted abortion, while by Jewish law adultery was punishable by death. The interpretation of the Jewish law was taken even further by Christ, who equated looking lustfully on a woman with adultery.

When the law does intervene in sexual deviation, the form this intervention takes will be dependent on (a) the prevailing view of the origins of sexual deviation and, (b) the prospects of modifying the behaviour.

Both of these premises have changed significantly over the years. A third consideration, namely, society's view of the place of punishment, can be left till later.

The Origins of Deviation

Concerning the prevailing view of the origins of sexual deviation, I can with little risk of contradiction be brief. Whereas in the past, it was scientifically respectable to consider sexual deviations, and in particular homosexuality, is genetically determined, there is now little or no support for such a view. On the face of it, Kallman's studies of twins indicate a strong genetic link (40 pairs of identical twins, 37 traced brothers all homosexual), but Kallman's data have been challenged before, and alternative explanations may be found. One study reported that 66% of homosexuals display feminine characteristics, but this has been strongly questioned by Walker and Fletcher. [903] Also against a genetic view is the fact that injections of male hormone are of little therapeutic value.

There is now overwhelming evidence that patterns of sexual behaviour are learned, and that the nature of the family constellation is most important. A homosexual has been defined as 'a man who is as his mother made him'. Sexual identification is a complex interaction in which parents play a highly responsible role. Where the parents themselves adopt an ambiguous role, or the child is made to adopt an ambiguous role, there lie the seeds of deviant sexuality. Oscar Wilde, it is stated in his recent biography, was kept dressed as a girl until he was nine.

The aetiology of deviation must colour one's attitude to the way it should be dealt with. If deviation is genetically determined and unalterable, a case can be made for a rigorous attitude designed to protect society. If, on the other hand, one adopts the view that faulty learning is the significant aetiological factor, one thinks more positively about how re-learning may occur. It is, therefore, logical that there should be at the present time pressures both to talk in terms of treatment more than punishment, and to explore ways of making treatment more effective.

Prospects for Modifying Behaviour

The psychological literature concerned with treatment of the sexual deviate has been singularly pessimistic. Occasional case-studies reporting success with an individual after months or years of work have only served to emphasize the failure to meet the needs of the majority. It was well established that treatment of homosexuals over the age of 25 was practically a waste of time. The same pessimistic view was held in relation to those who were required by the courts to undergo treatment.

The last few years have seen a minor revolution, largely due to careful application of the principles of operant conditioning. The pioneering work of Freund using Pavlovian conditioning has been followed by increasingly impressive demonstrations of effective change in sexual adjustment through operant techniques in reports by Barker, Rachman, MacCulloch and Feldman and McConaghy. [904] The popular press has

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[902] *Report of the Committee on Homosexual Offences and Prostitution*, HMSO, London, 1957, Cmnd. 247, paras 13 and 14.

[903] Walker K, and Fletcher, P, *Sex and Society*, Penguin, London, 1955, pp. 181, 193.

[904] Cf. Freund, K, 'A Laboratory Method of Diagnosing of Homo- or Hetero-erotic Interest in the Male', *Behaviour Research and Therapy*, 1, 1963, pp. 85-93; Barker, JC, 'Behaviour Therapy for Transvestism: A Comparison of

(continued...)

unfortunately at times seized on some of the more dramatic reports, but this should not cause us to disparage significant results across practically the entire range of deviant behaviour My own experience with treatment of sexual deviants leads me to believe there is tremendous scope for advance as well as room for optimism. Perhaps most significantly, successful treatment is now being reported among both the earlier most difficult groups - the over 25s and the court referrals.

The Christian Position

Before trying to collect many threads together, one must make some reference to the impact of Christian thought on current attitudes, especially in its relation to Humanist views. The Christian Church has much to answer for in this area, and there is little doubt that much of the current confusion arises from the dominance of Christian opinion both in legislation and attitudes to sexual behaviour.

Condemnation on moral grounds of sexual deviation has always been unequivocal and based on support from the Bible. The first chapter of Romans contains a very full indictment of sexual deviations and of those practising them, concluding that 'all who do these things deserve to die' (JB Phillips translation). It is in this tradition that Dr Fisher as Archbishop of Canterbury wrote in 1953: 'Let it be understood that homosexual indulgence is a shameful vice and a grievous sin from which deliverance is to be sought by every means.' [905]

It is sadly easy to laugh at such strong words and reject them as archaic and primitive. But before we do so I suggest there are several distinctions here which must be clearly observed.

(a) The first is between moral law and the law of the land. It is evident that there are acts committed by man which are condemned as immoral, but not illegal, and others which are illegal but may not be immoral. It is illegal to park in certain streets in the metropolitan area, but apart from the law, no-one would see that as a moral issue. Conversely, it is against God's moral law for a man to take his own life or in general to remarry following divorce, yet neither is illegal in Britain (though suicide is still illegal in SA). Because the framing of laws for our society has been so coloured by Christian principles, it has been too easy to equate legality and morality. As society has become less and less Christian so the distinction becomes more obvious. Not surprisingly, the Christian minority within a community sees it as its responsibility to influence legislation: [906]

> Christians seek to make the laws of a nation not merely such that they may obey them with a clear conscience, but also such that those very laws while commanding the people's obedience are conformable to the divine law.

In the specific case of sexual deviation it is important for the Christian that he asserts unequivocally that certain practices are sinful, i.e. against the law of God. But this does not necessarily mean they will also be illegal in a non-Christian society. This distinction may be put another way, by defining sin as an offence against God and crime as an offence against society.

(b) Again, the distinction between *the act and the person who commits it* is fundamental in Christian thought, though often overlooked. In relation to morality it is said that God hates the sin while loving the sinner. The same distinction is valuable in relation to deviant behaviour. It is quite possible to condemn a piece of behaviour without rejecting the person. This distinction explains why the attitude of Jesus when faced by sexual deviation caught the legalistic Pharisees unaware. Confronted by an adulterous woman and knowing that the clearly defined penalty of the law was death, he adopted an authority higher than the law. In a remarkable commentary on the relevant passage in John 7, Dr William Barclay ascribes an attitude to Jesus which would surely accord very closely with a Humanist viewpoints: [907]

> It was a first principle of Jesus that only the man who himself is without fault has the right to express judgement on the fault of others … It was a first principle with Jesus that our first emotion towards anyone who has made a mistake should be pity. When we are confronted with someone who has made a mistake, our first feeling must be, not, I'll see

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[904](...continued)
Pharmacological and Electrical Aversion Techniques', *British Journal of Psychiatry*, 111, 1965, pp. 268-76; Rachman, S, 'Sexual Disorders and Behaviour Therapy', *American Journal of Psychiatry*, 118, 1961, pp. 235-40; MacCulloch MJ, and Feldman, MD, 'Aversion Therapy in the Management of 43 Homosexuals', *British Medical Journal*, 2, 1967, pp. 594-7; McConaghy, N, 'Penile Volume Change to Moving Pictures of Male and Female Nudes in Heterosexual and Homosexual Males', *Behaviour Research and Therapy*, 5, 1967, pp. 43-8.

[905] Fisher, Dr G, [Archbishop of Canterbury] *Diocesan Notes*, November 1953.

[906] Bayston, BD, 'The Enforcement Christian Morality by Law' *Interchange*, I, 1, April, 1967, p. 32.

[907] *The Gospel of John* (vol. 2), St Andrew Press, Edinburgh, 1955, pp. 7-8.

> that person suffers for this!, but, What can I do to help? What can I do to restore?

Barclay goes on to show that a positive attitude was adopted, a second chance offered and a belief in human nature expressed. Paul's attitudes already referred to (and those of the Archbishop) are not at variance with these: they were condemning immorality as such. Jesus never hesitated to do the same, but also recognized the value of the person.

(c) A final distinction needs to be drawn between *society and the individual*. There seems to be a fundamental divergence in attitude between the Christian and Humanist positions when it comes vo legal sanctions applied to the deviant. I believe the Humanist view would be that punishment should be inflicted either as a deterrent or a cure for the individual, or as a safeguard to society. [908] That is, one looks to the future and acts accordingly. Such a viewpoint is in itself commendable, except insofar as the individual may be punished or treated for the sake of society rather than for his own sake. It lacks, however, the dimension which Christianity also emphasizes, viz. the personal sense of responsibility which the individual must carry. In other words, it is also important to look *back* as well as forward and treat people as they deserve. To fail to do this removes from an offender all personal sense of responsibility, and I would challenge any man's right to do this.

It is, of course, understandable that we should seek to evade the responsibility of evaluating justice in relation to sexually deviant practices. To make judgements involves standards or norms, and as we have seen our society is remarkable for its normlessness. The logical conclusion to *anomie* must be to abandon the term sexual deviation altogether, and simply describe sexual behaviour. The psychologist may quite legitimately do this, but those who must make responsible decisions for the welfare of society cannot enjoy such freedom.

One alternative would appear to be to define norms of acceptable behaviour and frame laws accordingly. The difficulties involved in this have been well dealt with by Wilson in *Logic and Sexual Morality*. Storr has offered one approach to this by his use of maturity as a touchstone, but the concept is not easy to define. My personal conviction is that as long, as we seek our own criteria for sexual behaviour we will always be limited by our own shortcomings in knowledge and judgement. It is for that reason I adhere to the position that the Christian view cannot be improved upon, the view, that is, that God as Creator has laid down moral laws based on infinite wisdom which we are required to take as our first principles. Our responsibility is then to apply them rightly.

The Christian Church has often been guilty of misapplying the broad principles in the particular case, and has at times confused the person with the act. But this is no reason to evade the principles as taught. I should like now to conclude by attempting to resolve a paradox in my own thinking about the legal position concerning homosexuality, since it in some ways crystallizes many of the issues raised.

Christianity and the Law on Sexual Deviation

The law against male homosexual behaviour has been traditionally strict. The present trend in SA is to liberalize the law, following recent British changes allowing for homosexual practices to occur in private between consenting adults. The intention is clearly to allow personal liberty while protecting society and especially children. A Christian viewpoint which caused quite a disturbance was published a few years ago, entitled *Towards a Quaker View of Sex*. [909] It was a valuable document, full of deep understanding of the human predicament, while recognizing that morality cannot be ignored. It supported in essence the view of the Wolfenden Committee which has now after ten years become law. Dr Babbage wrote recently: [910]

> It is now widely felt that while the practice of homosexuality is rightly, a matter for moral condemnation, it is not a proper matter for legal prosecution, except in cases involving the seduction and corruption of minors and offences against public decency … What the Christian must believe and say is that every kind of sexual immorality is wrong and therefore sinful. Whether offences that are sins in the eyes of God should also be crimes in the eyes of the law is a matter requiring the most careful examination.

I believe it proper as a Christian to support liberalization of the legal position here as has occurred in Britain, while at the same time believing that homosexual behaviour is morally wrong. The important distinction is between sin and crime, between moral and legal. I believe homosexual behaviour as such is

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[908] Cf. Knox, DB, 'Punishment as Retribution', *Interchange*, I, 1, April, 1967, pp. 6-7.

[909] Heron, A, (ed), *Towards A Quaker View of Sex: An Essay by A Group of Friends*, Friends Home Service Committee, London, 1963.

[910] Babbage, SB, *Sex and Christianity*, IVP, Chicago, 1963, pp. 56-7.

morally to be condemned as being against God's law, but it is not the purpose of the law of the land to attend to this. The law is concerned with behaviour in relation to society. 'There has never been anywhere, so far as is known, a law against homosexuality as such in any secular legal code. It is only with what [a man] *does* that the law is concerned.' [911] Liberalization of the law would permit certain people to behave in a way which they have learned brings certain satisfaction, without apparently harming, society. It would make it easier to offer treatment and reduce many of the fringe problems like blackmail which at present surround this group. It would leave each person answerable to his own conscience.

There is one important, proviso in my thinking. While in principle one may distinguish between an immutable moral law on the one hand and a flexible legislation on the other, this distinction is not sufficiently clear for its implications to be fully appreciated. Skinner, in analysing governing agencies in terms of reinforcement, shows how under dictatorship behaviour is defined as illegal if the government agency itself is threatened, while in a democratic situation the criteria approach more closely to right and wrong. [912] In our own democracy, the blurring of distinctions results in people incorrectly equating legal with right and illegal with wrong. In consequence to legalize a lottery in the State is for many to make it right. There follows a real danger that if one legalizes homosexual practices, these too will appear to have a moral sanction.

For those who do not believe in absolute standards of right and wrong there is, of course, no problem. The legal requirements may be taken as the guide to acceptable behaviour, and deviation becomes no more than a statistical concept. For myself, I would prefer to see the law exercise a positive as well as a negative influence - not merely punishing the law-breaker, but offering a way to better adjustment; not merely reflecting the lowest common standard, but offering something to live up to. The sexual deviate is at present more at the mercy of the aversive effects of law-enforcement than he is subject to pressures to seek help. The Christian Church has, on the whole, connived at this negative approach. Yet the plain teaching of the New Testament for society is, 'Let him who is without sin cast the first stone', and its teaching for the sexual offender, 'Go and sin no more'. That is, there is a non-judgmental and positive attitude in relation to the person, though a full recognition of the immorality of the act.

My contention is that the Humanist, the behaviourist and the Christian would be in substantial agreement about the relation between sexual deviations and *legal* sanctions, while disagreeing fundamentally at a different level: the *moral* level of considering whether behaviour is right or wrong. It is not enough simply to analyse human behaviour into a series of related acts and assume, with the behaviourist, that the human situation is completely analogous to the animal one. To do full justice to human sexual behaviour, one must look to the significance of what is done. At its best, sex offers a relationship between two people of the most meaningful type. I do not believe that the purpose of sex is to be understood entirely in terms of procreation, as some parts of the Christian Church have asserted. Neither do I believe that the Church was right in condemning sexual activity as sinful while advocating celibacy as a higher calling.

A major limitation of sexually deviant behaviour is that it invariably lacks the lasting quality of relationship found in mature heterosexual behaviour. The voyeur, the paederast, the fetishist, are all fearfully seeking as near an approximation of a mature relationship as they dare. The male homosexual repeatedly finds his affairs short-lived and unrewarding. The lesbian will often report a longer and more satisfying relationship, but even here an unsatisfied emptiness seems most commonly to supervene. It would be difficult to predict such an outcome from a purely behavioural analysis, but it is logically concluded from the Christian view that there is a God-ordained pattern of behaviour which is right, in contrast to which other forms can only be less than the best.

It then follows that by adopting, a monogamous heterosexual relationship the individual experiences a deeply satisfying form of behaviour, while society's stability remains unthreatened. When deviation appears, society's responsibility is to offer protection to its members and help to the deviant, while the individual must come to terms with his own conscience.

7:–1.13. – CAMP NSW Letter to Lady Violet Braddon, 18 April 1974

This is just a short note to assure you of my appreciation of your telephone call earlier today. Thank you so much for contacting us.

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[911] Heron, A, 1963, op. cit. p. 27.

[912] Skinner, BF, *Science and Human Behaviour*, Macmillan, New York, 1953, pp. 336-7.

Michael Clohesy, to whom you spoke, has told me of the interesting conversation he had with you, and of the feelings which you expressed.

I do hope you won't mind if I take the liberty of telephoning you some time during the next few weeks. There are some matters about the Festival of Light which are of interest to us, and perhaps there are some things about the Campaign Against Moral Persecution which we could share with you.

Thank you again for ringing.

CHAPTER EIGHT ≈ PUBLIC EDUCATION AND INFORMATION – MEDIA

8:–1. – Media

21 January 1974	John Ware appeared on ATN7 news program talking about male homosexuals and VD.
28 April 1974	Press release issued to all Sydney and some interstate media in connection with the publication *Homosexuals Report Back* [see page 456]. The results of this are set out in the section on the report [see page 455]. The fight with Lateline mentioned there centred around the fact that they intended to use our report as the basis of a program but not allow us to be the principal speakers on it.
10 May 1974	Press release [see page 531] issued to all Sydney media outlining the commemoration by the homosexual movements of Sydney of the death of Dr Duncan. The only result of this was a melodramatic description of the ceremony by Brian White on his 2GB Today show. A letter [see page 532] of protest was sent to him; a standard letter was received in reply [see page 534].
21 May 1974	Copy of the letter sent to SA Premier [see page 396] re Duncan and signed by several members was published in *The Australian* [see page 534]. As a consequence of this, the ABC radio program PM [913] contacted Peter Bonsall-Boone and an interview with him was broadcast that evening.
21 May 1974	Peter de Waal and Peter Bonsall-Boone appeared in the 100th program [914] of ABC TV's Chequerboard as a follow-up to their original appearance.
26 May 1974	Peter Bonsall-Boone appeared on the Mike Willesee show, together with Acceptance representatives Joe Foster and Joy Thomas, to discuss the attitudes of the churches to homosexuality.
2 June 1974	(Rev) Jim McLaren on 2UW [915] talkback program attacked a mother who said she understood and accepted her daughter's homosexuality. Margaret McMann rang in and counter-attacked McLaren.
29 June 1974	Press release [see page 434] issued to all Sydney media in connection with decisions on homosexuality of the CP conference.
18 July 1974	A letter [see page 534] was sent to the rebel media group *New Journalist* seeking a discussion about an alleged ban of news on the homosexual movement by Fairfax and Murdoch. No reply has ever been received.
2 August 1974	An hysterical leading article [see page 535] and editorial [see page 535] appeared in *The Manly Daily* expressing alarm at the fact that the Manly Community Centre was operating facilities for homosexuals. A letter in reply from CAMP NSW was published in that paper on 10 August [see page 536].

[913] See: 8:–1.1.1. page 531, 'ABC Radio PM Program Interview with Peter Bonsall-Boone'.

[914] Guy Tranter, Assistant Archivist, Document Archives, Australian Broadcasting Corporation informed the author that this program, according to *TV Times* and ABC internal documents, was transmitted on 21 May 1974. The author has a video taped copy of the original *Chequerboard* program aired in NSW on 31 October 1972 and the subsequent 100th program.

[915] The author wrote to the general manager of radio station 2UW on 6 November 1997 enquiring if a transcript and/or audio tape was available of this program. No response was ever received to this request.

4 August 1974	Mike Clohesy spoke on the 2CH [916] religious news program explaining the reasons for CAMP's decision not to support the trip to Australia by Troy Perry [see page 416].
3 September 1974	A caustic letter [see page 537] was sent to radio personality Claudia Wright in response to remarks she made when beginning her new radio program, to the effect that people would not have to put up with listening to 'lesbians, transvestites, homosexuals' on her program. [917] The letter bore fruit on 20 September [see 20 September below].
9 September 1974	Following an invitation from the ABC an impressive number of people from CAMP NSW were present at the recording of a televised debate [see page 538] between Brigid [Bridget] Gilling and Frieda Brown on the subject 'That the family is the basic unit of society'. Some pertinent questions and much fruitful heckling were contributed.
20 September 1974	Mike Clohesy spoke to Claudia Wright's program on 2GB [918] concerning the psychiatric treatment of homosexuals.
31 October 1974	A letter from CAMP [see page 541] in reply to one by Acceptance [see page 539] in that paper concerning the churches and the law reform was published in *The Australian*.
25 November 1974	Following an ABC Four Corners program on Christ's Community Church, CAMP wrote to the ABC [see page 547] complaining about certain aspects of the program and at the fact that it has never attempted a documentary on the real struggles of the homosexual and the homosexual movement in Australia.
6 December 1974	Reports of CAMP's appearance before the Public Service Commission [Royal Commission on Australian Government Administration, see: 1:–6, page 251] were carried by *The Daily Telegraph* [see page 548], *The Australian* [see page 549] and *The Canberra Times* [see page 549]; Channel 9 [919] ran a news item on it.
16 December 1974	Press release [see page 549] issued to Wollongong media in connection with a talk given to trainee nurses at Wollongong Hospital by Margaret McMann and Robyn Plaister. The release was not reported.

Because of the poor coverage of the activities of minority groups in general and the homosexual movement in particular, CAMP has become involved with the Inner City Community Radio Group which is attempting to obtain a licence for an AM community access station.

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[916] The author wrote to the general manager of radio station 2CH on 6 November 1997 enquiring if a transcript and/or audo tape was available of this program. No response was ever received to this request.

[917] The author wrote to the general manager of radio station 2GB on 6 November 1997 enquiring if a transcript and/or audo tape was available of this program. No response was ever received to this request.

[918] ibid. Radio station 2GB, 6 November 1997.

[919] The archive division of the Nine Network Australia Pty Ltd (Channel 9) was approached about a transcript and/or an audio/video tape being available of the news item televised on 6 December 1974. The response received stated: 'Sorry a computer search does not reveal any report dealing with this subject.' After providing further search perimeters the final response said: 'Sorry a further search does not reveal any information regarding this request.'

8:–1.1. – CAMP NSW Commemoration of Dr Duncan Press Release, 10 May 1974

Campaign Against Moral Persecution NSW Branch. Box 5074 G.P.O. SYDNEY. 2001.

P R E S S R E L E A S E
Release Date: Friday 10 May 1974

A group of homosexuals, members of the Campaign Against Moral Persecution, Cross+Section (the Church Group within CAMP) and Sydney Gay Liberation will hold a tribute to the memory of the late George Duncan outside the offices of the SA Government Tourist Bureau, 402 George Street, City, tonight at 11.

Dr Duncan, a lecturer in the Department of Law at the University of Adelaide, was murdered at about 11pm on 10 May 1972, for no better reason that he was a homosexual and that he was in a place frequented both by homosexuals and members of the Adelaide vice squad.

Since the Duncan murder, homosexuals in Australia have adopted this date as a focus of attention for their endeavours to obtain changes in the law and in society to give them equality with their heterosexual sisters and brothers. That fact that an unsolved murder committed on an unknown Adelaide lecturer is an assault on the whole of society will be developed in a speech [see page 394] prepared for the occasion.

A posy of flowers, with a memorial note, will be left on the step of the Tourist Bureau.

A letter will be signed by those present and forwarded to the Premier of SA. It asks that either the report of the New Scotland Yard detectives brought to SA to investigate the murder be released to the public, or that the SA Government's inquiry into the case be reopened so that the guilty can be brought to justice.

Further information from: Michael Clohesy, 927 3063

8:–1.1.1. – ABC PM Radio Program Interview with Peter Bonsall-Boone, 21 May 1974

Iain Finlay: Two years ago, Adelaide was shocked by the death of university lecturer and homosexual Dr George Duncan whose body was found in the Torrens River near a known homosexual meeting place. After police investigations the SA Government commissioned two detectives from New Scotland Yard to enquire into the murder. The report, which was completed early last year, has still not been released.

Dr Duncan was a homosexual, and today a group of homosexuals in NSW, in a letter to the national press, called on the SA Government to publish the findings so that justice can be done. One of the signatories of the letter was a public servant, Peter Bonsall-Boone. He's talking to Steve Cookson.

Peter Bonsall-Boone: We don't really feel that the passage of time since he was killed makes any difference. The fact that he was fairly obviously murdered, and murdered by people unknown; that two years have passed without the publication of any sort of report into the matter seems to us to be just two years too long.

Steve Cookson: What positive virtues are there in publishing a report?

Peter Bonsall-Boone: Anonymity of the entire events before and after the murder of Dr Duncan lead homosexuals to conclude that they're generally unrecognised in the community: that what they do can go unnoticed: that they can be murdered without being noticed. The homosexual organisations of Australia have decided that the death of Dr Duncan is probably a date on which they can focus their attention, and a date which can become important to the homosexual movement.

Steve Cookson: Just how much of a martyr, or a saint, is Dr Duncan being made in the eyes of homosexuals?

Peter Bonsall-Boone: I don't know that he is being made a martyr or a saint. In a way one could say that his name is being used by the homosexual groups to create a focal point, and to try and increase the awareness of society of the fact that there are homosexuals, and that there are things happening to them with which society would not agree.

Steve Cookson: How hopeful are you that the report will be published as a result of your renewed campaign?

Peter Bonsall-Boone: I hold out great hopes. It's not just the homosexuals of NSW who have been urging the publishing of the report, but there were gatherings in Melbourne and in Adelaide as well; so that it's not

just a campaign which is being conducted from Sydney. We feel that the whole of the homosexual movement in Australia is involved with this.

Iain Finlay: Peter Bonsall-Boone. And in Adelaide, Stewart Summerland spoke about the report to the Acting Premier of SA, Mr Des Corcoran.

Stewart Summerland: Mr Corcoran, why has the Government refused to release the report?

Des Corcoran: Well, the Government has refused to release the report because contained in the report are certain assumptions which in fact, er, cannot, er, and are not based on evidence. In other words, we, if the report was released and these assumptions were made known, they could be very damaging. In fact there was no evidence to back those assumptions up even though they were made.

Stewart Summerland: Well, would it consider doing so if the names were withheld of people named in the report who had given evidence but who were not implicated?

Des Corcoran: Well, I don't see that that would make very much difference because I think, er, in the case, er, that, er, is under question; or that you're putting under question at the moment, you may very easily be able to attach names to it. And in fact I don't think that, er, it's fair to anyone to, er, release a report which contains certain assumptions whether the names are there or not without having the evidence to back them up.

Stewart Summerland: How does the Government react to the claim that failure to release the report leads to speculation that it contains information that could lead to whoever was responsible for Dr Duncan's death.

Des Corcoran: Well, I can only say that if there in the report clearly showed to the Government who was responsible for Dr Duncan's unfortunate death then the Government would have taken action to apprehend those people, so that speculation is not well based.

Stewart Summerland: Are investigations still underway?

Des Corcoran: Not that I know of. At the moment I suppose it's true to say that, er, investigations into a case like this never cease, because, er, it seems to be that, er, in experience of that past anyway that, er, er, as time goes on, it is likely, and always likely, that some information will come to hand which could assist, er, the police, or the Government, er, in its endeavours to clear up this case which we would dearly like to be able to do.

Stewart Summerland: If the Scotland Yard investigation didn't provide sufficient evidence and if there isn't sufficient evidence in hand at the moment, would the Government consider reopening the case completely?

Des Corcoran: At this point of time, so far as I'm aware, there would be absolutely no point in reopening the case because it would be going over ground that we've thoroughly, er, been over before.

Iain Finlay: Acting Premier of SA, Mr Des Corcoran.

8:–1.2. – CAMP NSW Letter to Brian White, Director, Current Affairs, 2GB, 23 May 1974

In your *Today* program yesterday afternoon, 22 May, [920] you paid some attention to a memorial service conducted for Dr George Duncan by this organisation Friday week ago, 10 May, and to an article appearing in yesterday's *Adelaide Advertiser* [921] which was concerned with the bashing of homosexuals in Adelaide. We would express our appreciation for your devoting time to the activities of homosexuals. However, we were

[920] The author wrote to the general manager of radio station 2GB on 6 November 1997 enquiring if a transcript and/or audo tape was available of this program. No response was ever received to this request.

[921] See: 8:–1.2.1. page 533, 'Homosexual Assaults in Adelaide'.

disappointed by your presentation of the facts on this occasion.

Your confusion about the facts of the demonstration could have been very quickly and simply dispelled by reference to the Press Release you received concerning the demonstration. The inaccuracy of your emotional and patronising assumption that it would have been 'one of the most lonely and forlorn little protests' you had every heard of could have been avoided by obtaining an account of the gathering from the contact mentioned in the Press Release by a simple telephone call. That we were not graced with the presence of the media (although ABC Radio and *The Sydney Morning Herald* did express some interest) says more about the selectivity and sensationalism of the media than it does about our organisation and activities.

While your reporting the Adelaide article was well received and seem to be of value, it would seem strange that a Sydney-based program should concern itself with interstate situations while ignoring those closer to home. We refer you to a letter published in yesterday's *The Australian* [see page 534] in connection with Duncan case, by a group of members of CAMP NSW. We also assure you that the legal and social situation of homosexuals in Sydney is no less 'strange and weird and sad' than that of those in Adelaide. In this connection, we refer you to a CAMP document titled *Homosexuals Report Back*.

We thank you again for spending time reporting homosexual news, but would have that in future you will avoid tarnishing your reputation for fair and accurate reporting by spending some time thinking about the subject, and checking on details from readily available sources (which includes this organisation). We were prompted by the indifferent reception our Secretary received when he telephoned your office following the broadcast.

8:–1.2.1. – Homosexual Assaults in Adelaide, 22 May 1974 [922]

Rise in Bashings of Homosexuals

Up to 10 homosexuals are believed to have been assaulted in the city since the beginning of the year.

The assaults have occurred on well-known homosexual beats on the banks of the River Torrents and in the East and South parklands.

Detectives believe many cases go unreported because the victims fear disclosure to police might bring disgrace to their families and endanger their jobs.

Some homosexuals believe the number of attacks have increased since the death of University of Adelaide law lecturer Dr GIO Duncan after having been thrown into the River Torrens on May 10, 1972.

They say they believe the reluctance of police to intervene in cases involving homosexuals since the Duncan case has led to an increase in the number of attacks.

Police denied this last night but admitted that less attention was now being paid to the activities of homosexuals since the Duncan case.

Uniform patrols still visited the areas frequented by homosexuals, however.

They said homosexuals were easy prey for criminals who visited those areas to rob people.

Dr Roger Knight, chairman of CAMP [SA] (Campaign Against Moral Persecution), said such attacks would continue so long as homosexuals were forced to frequent beats for the purpose of making contacts with other homosexuals.

He said there had certainly been a spate of bashings in which homosexuals had been the victim in the past few months.

Homosexuals who visited beats were usually lonely and isolated people.

He believed it was not the regular homosexual visitor to those areas who got beaten up. It was usually the more inexperienced ones.

Dr Knight said it was only natural that such attacks would continue while the law discriminated against homosexuals.

He said he would like to see more attention paid to homosexual beats by uniform patrols.

Obviously co-operation by homosexuals with the police in such cases would be helpful in the immediate situation, he added.

In the long term, however, there had to be a public acceptance of homosexuality.

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[922] Whitington, Bob, 'Rise in Bashings of Homosexuals' *The Advertiser* (Adelaide), 22 May 1974, p. 1. Original emphasis.

8:–1.3. – Brian White, Director, Current Affairs, Radio Station 2GB, Letter to CAMP NSW, 26 August 1974

The weight of mail I am now receiving on the programs I do is such that I'm no longer able to find the time to reply to each one individually. That does not mean, however, that I don't read each letter. In fact, I spend a good deal of each day doing just that, and your letter has been given full attention.

Let me assure you that I take note of all criticism and where I find it justified, I respond to it. I'm sure you ask no more than that.

Thank you for writing, and may I say I hope you continue to listen.

8:–1.4. – Letter to the Editor, 21 May 1974 [923]

The Case of Dr George Duncan

SIR – It is now two years since the death of Dr George Duncan in the River Torrens in Adelaide.

According to the City Coroner, Mr TE Cleland, 'the cause of death was drowning due to violence on the part of persons of whose identity there is no evidence.'

We the undersigned strongly request that the report requested by the SA Government, prepared by two Scotland Yard detectives, be made public, with proviso that the names of those who gave evidence but are not implicated in Dr Duncan's murder, be withheld.

The Failure re release this report has let to the speculation that it contains information which could lead to the apprehension of Dr Duncan's murderer or murderers. Such speculation would cease upon release of the report, unless that speculation is correct.

If the New Scotland Yard Investigation did not reveal Dr Duncan's murderer or murderers then we require that the case be re-opened and investigation proceed until the guilty be brought to trial.

This letter expresses the thoughts of NSW homosexuals who, for the past week, have taken part in activities recalling the violent death of Dr George Duncan.

We are confident that there is the wish to see justice done in the case of Dr Duncan.

MF Weaver Annandale, NSW

8:–1.5. – Queensland and Dr Duncan, 6 June 1974 [924]

Dr Duncan

In *The Australian* (21/5) [see page 534] there was a letter from a group in Sydney people who had requested the release of the report by New Scotland Yard on the death of Dr Duncan in SA.

In view of the fact that the police in Qld have recently increased their interest in homosexual activities and numerous arrests have been made over the past few months, I feel it is well overdue that this report be released as soon as possible so that the public can obtain a far greater insight into the plight of homosexuals in Australia.

Wayne Stanley Sandgate, Qld

8:–1.6. – CAMP NSW Letter to Executive, The New Journalist, 18 July 1974

It has recently come to our attention that a memo has been issued to the staff of the Fairfax and Murdoch press groups placing a ban on reporting news of the homosexual movement.

We have felt the effects presumable of this ban in that press releases issued to all the media on 10 May concerning a demonstration in memory of Dr George Duncan, drowned in Adelaide two years ago, and 29 June concerning the discussion on homosexual issues at the CP conference received no attention.

The Executive of CAMP is seeking your support in efforts to break or force the withdrawal of this ban which not only suppresses our rights, but yours as journalists. Our executive would interested in a meeting

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[923] Weaver, M[urray] F, *The Australian*, letters, 21 May 1974, p. 8. A footnote published with the letter states: 'The writer is a nurse. The above letter was also signed by Stefani Bennett, co-editor, Saturday Club Book of Poetry; Margaret Schmidt [McMann], teacher, Robyn Plaister, teacher; Ian Walker, film editor; Christopher Bendall, technical operator; Col Eglington, public servant; Jan Davis, nurse; Peter de Waal, public servant; Peter Bonsall-Boone, public servant; Mike Clohesy, student; Danny Sampson, bio-chemist; Monica Hauber; Danni Dellas, driver; and P[eter] Parkes, teacher.'

[924] Stanley, Wayne, *The Australian*, letters, Thursday 6 June 1974, p. 8.

with you, if this could be arranged, to discuss the whole matter.

8:–1.7. – Leading Article in the Manly Daily, 2 August 1974 [925]

Gay Group Set Up At Govt. – Backed Centre

A homosexual group is operating out of the Federal Government – funded Manly Community Centre.

The group uses facilities at the Centre every Thursday night.

LEAFLETS SENT ROUND HOTELS

Leaflets advertising the Gay group were distributed in several Manly hotels last week.

Officials at the Centre were tight-lipped yesterday about the activities of the group.

A counsellor, Mr Les Hubbard, said: 'The whole emphasis is on personal things.'

Until recently the group's meeting time was advertised on the Centre's official notice board under the word Gay.

Yesterday a transparent gummed strip had been placed over the word, but the times were still advertised.

The Centre was established with a Commonwealth grant of $80,000.

PURPOSE

Its major purpose is to provide services to people with mental health problems.

Counselling staff is provided by the North Ryde Psychiatric Centre.

Yesterday Mr Hubbard refused to discuss any details of the group's activities.

He said there was a certain 'consciousness' within the group about its activities.

He would not say how many attended the weekly meetings or how long the group had been operating from the Centre.

He would not discuss what type of counselling or therapy was practised within the group.

Mr Hubbard said: 'Mainly they discuss their personal experiences.'

'They have a kind of awareness of their problems and it is all very personal.'

NO COMMENT

He said he did not know if new friendships had been formed within the group.

He added that he believed the group may soon 'fold up because of lack of support'.

To a series of other questions, Mr Hubbard said, 'I have no comment.'

When the Centre opened a month ago Mr Hubbard said, 'It's not a passive receptive centre for the community – it's a stimulating centre.

The various social and cultural activities of the Centre are not aimed at camouflaging the psychiatric functions of the Centre.

We're here to help anyone with a problem – drugs, alcohol, kids with problems with their parents – but we want the Centre to extend beyond this.

Although we are an arm of the Queenscliff Health Centre, we want to play down the word health.

We are not interested in labelling people.

We are prepared to see anyone, irrespective of their motives for coming to us.'

FOOTNOTE Yesterday the Centre's official notice board advertised the candidature of five people for the Manly Council elections.

8:–1.8. – Editorial in the Manly Daily, 3 August 1974 [926]

Opinion – The Fairy Godmother

That the new Manly Community Centre is operating facilities for homosexuals raises a number of questions.

The first is that, through the Federal Government, the Centre is existing on $80,000 of public funds.

At the outset, its major role was to provide services to people with mental health problems.

Homosexuals would seem not to qualify in this category.

After all, as the law stands, homosexuality is a criminal offence.

In their defence, it has been argued that homosexuality is more sickness than crime.

Yet the Centre itself refers to the Thursday night group as Gay – a thoroughly non-medical term.

This tends to indicate that it might be more club than clinic.

If this is so, there is considerable cause for alarm.

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[925] n.a. 'Gay Group Set Up At Govt. – Backed Centre', *The Manly Daily*, Friday 2 August 1974, p. 1. Original emphasis.

[926] 'Opinion – The Fairy Godmother', *The Manly Daily*, editorial, Saturday 3 August 1974, p. 2.

The word would soon get out that there is an open house for them at Manly.

No one would object to a centre providing genuine help.

The Federal Department concerned must inquire urgently into the use of public funds for such a venture.

It will need to look critically at the medical and psychological value of any services provided.

After all, no one expects the Federal Government to be a fairy godmother to gay times.

8:–1.9. – Get Together Every Week, 3 August 1974 [927]

Far Too Gay Out Manly Way

Homosexuals are using a Government-backed community centre at Manly as a place to get together every week.

The Minister for Health, Mr Waddy, yesterday called for a full report from the Health Commission into the matter following complaints from Manly residents.

'He wants to know all the facts before making a statement.' Mr Waddy's press secretary said yesterday.

The centre established with a Commonwealth grant of $80,000 is run on Federal Government funds.

The homosexuals meet there every Thursday night.

The group's meeting times were put on the centre's notice board under the word Gay.

ELECTIONS

This week a transparent strip was placed over the word, but the times were still advertised.

On Tuesday a new notice was placed on the board stating that five people were standing for the Manly Council elections.

The Mayor of Manly, Mr W Manning, yesterday said the Council had asked staff at the centre to modify or remove the notice.

8:–1.10. – CAMP NSW Letter to the Editor, the Manly Daily, 10 August 1974 [928]

Homosexuality: A Valid Life-style

Letters to the Editor

Your editorial, 'The fairy godmother' (August 3), has been drawn to my attention and calls loudly for comment.

The first paragraph tells us the Manly Community Centre's facilities for homosexuals raise 'a number of questions'.

That only one question is subsequently posed leaves those interested in humanity, be it homo-hetero or bisexual, quite puzzled.

Your statement that 'after all, as the law stands homosexuality is a criminal offence' is blatantly erroneous and displays the sort of willful ignorance blazoned publicly as a fact against which the homosexual organisation of this country have been working for some years now.

Homosexuality is not a criminal offence for any member of the community.

However, homosexual acts performed between two or more males are a criminal offence, even though such acts may be performed in private.

You seem not to have noticed that homosexual acts between females are not legislated against.

Your use of the pronouns 'their' and 'them' to describe homosexuals must be repugnant to those members of your staff and the many citizens of Manly who are homosexual.

You pretend to be speaking about some sort of extra-terrestrial beings instead of members of your own family.

It is no defence for homosexuals that 'it has been argued that homosexuality is more sickness than crime', since this line of reasoning was abandoned many years ago.

The Australian and New Zealand College of Psychiatry and the Australian Psychological Society last year voted (in a survey conducted among all their members) that homosexuality is a valid life-style, showing no specific signs of abnormality.

The one and only reason why homosexuality may appear more often in discussion between psychologists, psychiatrists, and other members of the 'helping' community, is that homosexuals suffer in society from the very oppressions which you editorial

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[927] n.a. 'Far Too Gay Out Manly Way', *The Daily Telegraph*, Saturday 3 August 1974, (front page) p. 1. Original emphasis.

[928] Bonsall-Boone, Peter Michael, 'Homosexuality: A Valid Life-style', *The Manly Daily*, letters, Saturday 10 August 1974, p. 4. Original emphasis.

expresses much better than I can.

In other words, at the moment the homosexual is forced to pretend to the rest of society that he/she is a heterosexual and the pressures of society to do this are what constitute the only 'problem' connected with homosexuality in this society.

We would hope that any homosexuals, male or female, dispossessed of a meeting place by your untimely utterances, will telephone CAMP's Counselling and Information Service, Phone-A-Friend, on 660 0061, to obtain the addresses of the many other places and organisations where they will gladly be welcomed as human beings.

Love and peace.

8:–1.11. – CAMP NSW Letter to Claudia Wright, 3 September 1974

I did not have the good fortune to hear your first program on station 2GB yesterday morning. However, I have just been reading a press report [929] of it.

I see that you took the precaution to reassure your no-doubt-concerned listeners that they would not have to listen to lesbians and homosexuals (among others). How thoughtful of you! What a shame it would be cause any ruffle of concern to your listeners, how dreadful it would be to jolt them out of their accustomed pattern, how insidious it would be to present middle Australia with anything which might challenge their precious ideals. That's right – shut the poofters in their cupboards, keep those dirty people under the carpet. Don't let us see them – we might be shocked. Why! they actually love people of their sex, and even – so we're led to believe – sleep with them. They deserve to be oppressed. Now, don't you worry, dear suburban housewife, don't get upset Mr Rugby, I won't make you listen to those dreadful 'people'. Just you keep on beating them up, take their kids off them, deny them jobs, force them to hang their heads in shame and don't allow them to be themselves. We don't want your white Anglo-Saxon Protestant life-style to be upset do we? You sleep contentedly tonight – a family is being torn apart because it has found out one of its members is 'one-of-them' and knows what a curse that is – but I'll make sure you don't find out about that.

Take a bow, Ms Wright – you've stuck the boot in well.

8:–1.11.1. – Claudia Fails to Shine as Star, 3 September 1974 [930]

She's Not Up to Scratch

Shortly before 10 o'clock yesterday morning, a woman rang John Laws on 2UW to announce that she was about to commit suicide.

No sooner had Mr Laws saved her than, 40 minutes later another woman rang to say she was about to do the same.

Needless to say, Superjohn saved her too.

But what greater love hath a listener than to threaten to lay down her life at the very same time as opposition station 2GB were trying to launch their latest star, one Claudia Wright.

Mrs Wright, who was apparently discovered on the radio when she left a Melbourne newspaper after making a contentious advert for bed sheets, came out of Melbourne with the greatest promotional push since the Libs tried to blast Bill Mackie Snedden into orbit last May.

To say Mrs Wright did a Snedden yesterday would be unfair. At least, our Bill went close.

For a lady who is going to scratch your eyes out, dearie, for the fastest fingernails in the south, I thought Mrs Wright went down like a herd of sucking pigs at a barmitzwah.

LESBIANS

Mrs Wright kicked off her program by informing us that when you tune into Claudia you won't have to listen to lesbians, transvestites, homosexuals or threatened suicide.

Mrs Wright gave us a pot-smoker instead.

MIKE GIBSON

But to open the show, she hit us with an even more stock character, the famous diarist Mrs Margaret Whitlam.

Ye Gods, Mrs Wright, has there ever been a women's program yet that hasn't hit us with Mrs Margaret Whitlam?

… of previous Prime Minister's. Mrs Wright claimed that Mrs Whitlam had proven herself to be one of the first of the breed who could talk.

Of course it could have been, Mrs Wright, that the others could talk, but just didn't care to keep opening

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[929] See: 8:–1.11.1. page 537, 'Claudia Fails to Shine as Star'.

[930] Gibson, Mike, 'She's Not Up to Scratch', *Daily Telegraph*, Tuesday 3 September 1974, p. 4. Original emphasis.

their mouths.

From the interview, we deducted that the Prime Minister's wife was happy to be getting her own television program. Why wouldn't she be?

On the subject of trying to improve decaying moral standards in Canberra (isn't that beautiful, mother), Mrs Whitlam said she wouldn't know what to do, on account of she wasn't there all that often.

Mrs Wright said she had read that Canberra had a very high delinquency rate, and asked Mrs Whitlam for her thoughts on the problem.

I nearly fell of my chair when Mrs Whitlam replied that the only reason you hear about delinquency in Canberra is on account of the newspapers keep talking about it.

Claudia fails to shine as star

People are more aware of it because it's reported more, she said.

All that hoo-haa about the high rate of delinquency in Canberra, eh?

Before playing her pre-recorded interview with an un-named pot-smoker locked in a room in an un-named establishment in an iron ore township she refused to name (for all I know, he could have been a drunk in the back bar of a pub in St Kilda) Mrs Wright said it was hilariously funny, but that listeners mightn't think so because they weren't there at the time.

PROBLEM

She was right. I wasn't there at the time, and it wasn't funny at all.

Mrs Wright said that the Aboriginals in the north of Australia have this tremendous problem with alcohol. Now blimey, mother, there's a real revelation.

At the start of her program, throughout which she sounded nervous and kept saying Um, Mrs Wright declared that Sydney's morning radio audience would no longer have to decide whether to listen to John Laws or jump off the bridge.

Having listened to Mr Laws before, and now Mrs Wright, I can only say the bridge sounds more inviting.

Over at 2UE, where Bob Rogers is still on holidays, a spokesman said that, after listening to Mrs Wright, the station felt there was no need for Bob to hurry back.

8:–1.12. – Telegram From the ABC, 3 September 1974

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TO:     CAMP
        Box 5074
        GPO SYDNEY NSW

TEXT:   Could you please ring ABC 310 211 Ext 2545 urgently and ask for
        Robyn Smith.

FROM:   ABC
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Figure 30: ABC Telegram to CAMP NSW

8:–1.13. – Invitation to Attend ABC Televised Debate [931]

2 **THAT THE FAMILY IS THE BASIC UNIT OF SOCIETY**

Is the family unit an outdated institution? Should it continue in its present form? What of communal living? Is it an alternative to or an evolution of the family unit? What constitutes a family?

Frieda Brown, Chief Speaker for the Festival of Light in NSW debates with Bridgit Gilling, Vice-President of the Humanist Society of NSW.

Sunday:	9:30 pm approx.
Qld:	20th Oct.
NSW and Vic:	17th Nov.
SA and Tas:	24th Nov.
WA and DAR:	15th Dec.

[931] During September 1997 a request for a transcript of the televised program was lodged with Guy Tranter, Assistant Archivist, Document Archives, Australian Broadcasting Corporation. Unfortunately he was unable to assist in this respect. (continued...)

Re Debate:
That the family is the basic unit of society.
Frieda Brown – Bridget Gilling
Arcadia Theatre Chatswood Monday 9 September 7.30pm.
As many members of CAMP as wish to come welcome.

8:–1.14. – Acceptance Letter to the Editor, 25 October 1974 [932]

Sex Policy

I'M INTERESTED to note in *The Australian* (15/10) [933] that Presbyterian leaders have come out in favour in legalising homosexual acts between consenting adults in private.

With increasing evidence that Australians overwhelmingly favour this (a recent Morgan Gallup Poll), [934] the attitude of most of the other churches to anti-homosexual legislation is to say the least, oppressively un-Christian.

It's one thing to regard homosexual acts, like premarital sex, as immoral and quite another to open the possibility of imprisonment for those who commit such acts. We as a group of homosexual Catholics our membership includes priests, a nun, doctors, a father, a mother and other responsible members. of the community), urge the other churches to follow the lead given by the Presbyterians in WA.

Mark Stinson Mascot, NSW

(The above letter was submitted for the Members of Acceptance, a group of Catholic homosexuals.)

8:–1.14.1. – WA Presbyterian Assembly, 15 October 1974 [935]

Church Call for Sex Law Reform

The Presbyterian Assembly of WA has declared that homosexual acts between consenting adults in private should not be regarded as illegal and has called for a change to existing legislation.

Delegates to the assembly meeting in Perth yesterday said there did not seem to be any justification for the homosexual to be any more the subject of legal sanction than other forms of behaviour which the church disapproved of.

8:–1.14.2. – Morgan Gallup Poll, August 1974 [936]

The Morgan Gallup Poll, number 41, was conducted during 24-31 August 1974. The third question of that poll asked respondents the following: 'And about homosexuals. In your opinion , should homosexual acts in private between consenting male adults be legal or illegal.'

Table 70: Morgan Gallup Poll, August 1974 – Responses by State

Homosexual Acts in Private: by States						
n = 1885	Qld	NSW	Vic	Tas	SA	WA
Legal	49.6	55.3	53.3	35	56.6	65.2
Illegal	32.1	23.3	26.9	32.4	31.3	18.3
Undecided	18.3	21.4	19.8	32.6	12.1	16.5
Total	100	100	100	100	100	100

Table 71: Morgan Gallup Poll, August 1974 – Responses by Voting Intention

Homosexual Acts in Private: By Voting Intention						
n = 1885	ALP	Aust Party	LP/CP	DLP	Other Party/Independent	No Answer
Legal	55.6	81.8	53.7	42.6	51.5	39.4
Illegal	24.2	7.1	29	37.6	25	19.5
Undecided	20.2	11.1	17.3	19.8	23.5	41.1
Total	100	100	100	100	100	100

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[931](...continued)
However, he informed that this telecast had been part of religious programs called *Challenge* which were televised from around 1973 till 1976. The above '… basic unit …' program was recorded on Monday 9 September 1974, 19:30hrs at the Arcadia Theatre, Chatswood.

[932] Stinson, Mark, 'Sex Policy', *The Australian*, letters, 25 October 1974, p. 10.

[933] See: 8:–1.14.1. page 539, 'WA Presbyterian Assembly'.

[934] See: 8:–1.14.2. page 539, 'Morgan Gallup Poll, August 1974'.

[935] n.a. 'Homosexuality: A Valid Life-Style', *The Australian*, 15 October 1974, p. 3.

[936] The Morgan Gallup Poll, no. 41, was taken during 24-31 August 1974. Responses reproduced here are taken from tables on pp. 22-26.

Table 72: Morgan Gallup Poll, August 1974 – Responses by Various Indicators

Homosexual Acts in Private: By Various Indicators								
n = 1885	Male	Female	24 August	31 August	Capital Cities *	Country Areas †	Electors ‡	Non Electors §
Legal	53.5	55	52.2	55.4	57.1	49.4	54.6	52.7
Illegal	27.5	24.8	26.7	25.8	22	33.2	26.7	22.9
Undecided	19	20.2	21.1	18.8	20.9	17.4	18.7	24.4
Total	100	100	100	100	100	100	100	100
Note: * All of the 6 State Capitals ie. Sydney, Melbourne, Brisbane, Adelaide, Perth and Hobart; † All of the 6 State, and the ACT, outside the six capital cities; ‡ All those enrolled to vote at Federal elections; § All those under 18 and others not enrolled to vote at Federal elections.								

Table 73: Morgan Gallup Poll, August 1974 – Responses by Five Age Groups

Homosexual Acts in Private: Analysis by Age					
n = 1885	14-19 Years	20-29 Years	30-49 Years	50-69 Years	70 and Over
Legal	56.5	71.8	58.4	37.1	21.8
Illegal	18.6	16.1	24	37.7	51.6
Undecided	24.9	12.1	17.6	25.2	26.6
Total	100	100	100	100	100

Table 74: Morgan Gallup Poll, August 1974 – Responses by Occupational Groups

Homosexual Acts in Private: By Occupations									
n = 1885	Professional *	Managers †	Small Business Owners ‡	White Collar Clerks §	Skilled Worker #	Semi Skilled ‖	Unskilled ¶	Farm Owners	Farm Labourers **
Legal	78.1	77.9	33.1	67.3	51.3	43.7	30.9	39.8	48
Illegal	16.8	17.1	38.7	18.2	27.5	28.9	36.1	45.5	32.6
Undecided	5.1	5	28.2	14.5	21.2	27.4	33	14.7	19.4
Total	100	100	100	100	100	100	100	100	100
Note: * Professional, lecturers, doctors, lawyers, engineers, etc; † Owners and managers of comparatively big businesses, accountants, senior executives and officers in the services; ‡ Owners and managers of small factories and shops, taxi proprietors, etc; § Clerks and other white collar workers, such as teachers, policemen, ministers, salesmen, shop assistants, typists, nurses, etc; # Skilled workers, tradesmen, linesmen, foremen, etc; ‖ Semi-skilled workers, truck drivers, storemen, painters, process and factory workers, etc; ¶ Unskilled workers, labourers, waiters, waitresses, porters, cleaners, watchmen, etc; ** Farm labourers, shearers, farmhands and gardeners.									

Table 75: Morgan Gallup Poll, August 1974 – Responses by Whether Working or Not

Homosexual Acts in Private: By Whether Work *				
n = 1885	Others/None †	Work Full-Time	Work Part-Time	Do Not Work
Legal	39.7	61.8	60.7	44
Illegal	35.7	21.7	20.5	32.5
Undecided	24.6	16.5	18.8	23.5
Total	100	100	100..0	100
Note: * Indicates whether the respondent is a full-time worker or part-time worker or non-working housewife, pensioner, student, etc; † Housewives, no occupation, pensioners, servicemen and others who cannot be classified according to their previous occupation.				

Table 76: Morgan Gallup Poll, August 1974 – Responses by Religious Denominations

Homosexual Acts in Private: Analysis by Religion									
n = 1885	Roman Catholic	Protestant	Anglican	Presbyterian	Methodist	Baptist	Other X–ians *	Non X–ians †	No Religion
Legal	49	53.6	54	58.2	52.2	44.1	51.5	80.1	71.7
Illegal	29.2	27	24.4	25.6	29	47.9	31.6	19.9	11.7
Undecided	21.8	19.4	21.6	16.2	18.8	8	16.9	–	16.6
Total	100	100	100	100	100	100	100	100	100
Note: * Other Christians; † Non-Christians.									

Table 77: Morgan Gallup Poll, August 1974 – Responses by Annual Income

Homosexual Acts in Private: Analysis by Annual Income *				
n = 1885	Under $4,000	$4,000–$5,999	$6,000–$7,999	$8,000–and over
Legal	41.9	48.5	59.4	70.3
Illegal	33.9	27.4	23.1	19.7
Undecided	24.2	24.1	17.5	10
Total	100	100	100	100
Note: * The **personal** annual income, before tax, of people who are full-time workers, or the income of the **breadwinner** if the respondent does not work full-time.				

Table 78: Morgan Gallup Poll, August 1974 – Responses by Five Educational Levels

Homosexual Acts in Private: By Education Level					
n = 1885	Primary Only	Some Secondary	Intermediate /4th Form	5th–6th Form	Tertiary/ University
Legal	30.5	47.4	63.7	61.6	76.4
Illegal	42.7	28.4	19.5	21.7	16.5
Undecided	26.8	24.2	16.8	16.7	7.1
Total	100	100	100	100	100

8:–1.15. – CAMP NSW Letter to the Editor, The Australian, 31 October 1974 [937]

Sex Reform

OTHERS of your readers were doubtless as surprised as I to read in your letter columns (25/10) that Acceptance, a group of Catholic homosexuals urge churches to follow 'the lead given by the Presbyterians in WA' recently expressed about homosexual law reform.

The idea of legalising (male) homosexual acts in private is not new to the churches. The Anglican Church said it in its submission to the Wolfenden Committee in England [938] in 1956; the Society of Friends said it in *Towards A Quaker View of Sex* [939] in 1963; the NSW Presbyterian Assembly, [940] the NSW Methodist Conference [941] [942] and the Anglican dioceses of Canberra-Goulburn [943] and Melbourne [944] all said it in 1971.

So far in Australia the result of this decision-making by the churches has been absolutely nil. Repressive laws are still in force creating victimless criminals of at least 5 per cent of the population.

But the slight reform in law which is suggested by the churches is not what is needed for homosexuals. CAMP (NSW Branch), whose membership includes priests, doctors, fathers and mothers without any test of their being responsible members of the community, can see the way ahead for homosexuals only in terms of repeal of all laws relating to homosexuality as separate from sexuality from the statute books of this country.

The law has been reformed in England. This has resulted in increased police harassment throughout the country in places where homosexuals meet (and are therefore 'in public'), with the corollary that male

[937] Bonsall-Boone, Peter Michael, 'Sex Reform', *The Australian*, letters, 31 October 1974, p. 8.

[938] *Report of the Committee on Homosexual Offences and Prostitution*, HMSO, London, 1957.

[939] Heron, A, (ed), *Towards A Quaker View of Sex: An Essay by A Group of Friends*, Friends Home Service Committee, London, 1963.

[940] See: 8:–1.15.1. page 542, 'National Presbyterian Assembly'. See: 8:–1.15.2. page 543, 'NSW Presbyterian Assembly'. See also 1:–1.1.2. page 22, 'The Responsibility of the Church Regarding Homosexuality'. In 1967 the General Assembly of the Presbyterian Church in NSW, at its Annual Session, commissioned a report to be produced. In 1968 the 'Responsibility of the Church Regarding Homosexuality' report was presented to the General Assembly and was published in early 1969.

[941] It would appear that Peter Bonsall-Boone here refers to: The Methodist Church of Australasia, 23rd General Conference, Melbourne, May 1972 p. 277. See in particular page 545.

[942] See: 8:–1.15.3. page 543, 'The NSW Methodist Conference'. The Conference did not produce a report on homosexuality however they did debate the issue which started as early as 1966.

[943] See: 8:–1.15.4. page 546, 'Anglican Diocese of Canberra and Goulburn'.

[944] Social Questions Committee of the Church of England, Diocese of Melbourne, *Report on Homosexuality*, 1971.

homosexuals are therefore never able to make arrangements to be 'consenting adults in private.'

CAMP looks forward to the day when all people, including the churches, will be able to recognise sexuality for what it is; sexuality. Not hetero, homo or bi – just sexuality.

Peter Bonsall-Boone Sydney, NSW

(The writer is co-president of the Campaign Against Moral Persecution, NSW branch.)

8:–1.15.1. – National Presbyterian Assembly, September 1970 [945]

Homosexuality: It is in the particular manner in which the homosexual is able to find gratification for his sexual drive, that he differs from the heterosexual person. The sex drive remains constant, the psychodynamic is different. Reliable indications are that the Kinsey estimates of prevalence in American society also apply for Australia. Namely, 4% of males are exclusively homosexual all their lives, and up to 10% have long periods of more or less exclusive homosexuality.

The time has come for some of the folk myths concerning homosexuality to be exploded, and for the Church to give pioneering leadership in relating to a large and estranged proportion of the community. Each of the following statements, though widely accepted, is false: 'All homosexuals are unhappy.' 'Men are made homosexual as a result of being seduced.' 'All homosexuals are alike.' 'Homosexuals are more likely to molest young children than others.' 'Homosexuals are more likely to commit crimes than other people.'

The Australian *Crimes Act* (ss. 80-81) sends the convicted homosexual to the all-male society of prison As a punishment this action is strangely inappropriate. As a deterrent it is worse than useless. A British MP referred to the custom of sending consenting homosexual adults to prison, saying that it was 'as therapeutically useless as incarcerating a sex maniac in a harem'. The Church and Nation Committee believes that there are sound reasons for supporting reform of the law so that the homosexual behaviour between consenting adults in private should no longer be a criminal offence.

Reasons for Reform: The Committee agrees with one of the central contentions of the Wolfenden Report, namely that it is not the function of law to intervene in the private morality of citizens. Nor is it the duty of the Church to try to impose Christian standards of behaviour upon people by means of law. Undue discrimination is wasteful of the talents that might otherwise be set to work for the benefit of society, and is wasteful of law enforcement manpower. Unnecessary suffering is caused, and greater tolerance would lessen the need for some individuals to identify themselves as fully homosexual. The present law discriminates unfairly against the homosexual as compared with the adulterer, fornicator and lesbian and this is apparently based on the unfounded assumption that the homosexual is a greater threat to society.

The present law encourages blackmail, and may possibly also encourage the seduction of children by those who would otherwise prefer adult contacts, but who imagine that child seduction is less risky. Court Chaplain Ralph Maidment says 'If … the Wolfenden (recommendations) were introduced into our legal code it might do something to break up the scourge of blackmail. Some of my most distressing experiences have been the counselling of the blackmailer and the blackmailed.' [for more details see page 35]. Chaplain Maidment also believes that such a reform 'would minimise many social aspects of homosexuality such as the street nuisance, soliciting in public, and organised male prostitution'.

Reform of the law would make way for our society to devise civilised ways of discouraging the condition and to alleviate the anguish of those who cannot be helped, or do not wish to be helped.

The Church can bring to the problem the unique contribution of respect for personality. The Church needs to aim to build up a readiness within its congregations to welcome homosexuals into a creative, redemptive Christian fellowship. The first step towards this goal is to remove injustices inflicted upon the homosexual by society and the Church.

The Committee recommends for study 'Sociological Aspects of Homosexuality' [946] The Wolfenden Report [947] The NSW Church and Nation Committee has published a booklet, entitled 'The Responsibility of the

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[945] Thirty-Second Assembly of the Presbyterian Church of Australia, *Minutes of Proceedings*, Sydney, September 1970, pp. 105-6.

[946] Schofield, Michael, *Sociological Aspects of Homosexuality: A Comparative Study of Three Types of Homosexuals*, Longmans, Green and Co Ltd, London, 1965

[947] *Report of the Committee on Homosexual Offences and Prostitution*, HMSO, London, 1957.

Church Regarding Homosexuality', [948] which embodies much of the thinking of this Committee, and is available from the Convener at 30c per copy.

8:–1.15.2. – NSW Presbyterian Assembly, May 1967 [949]

That the Assembly:

(1) Receive the report [Church Life and Work Committee].

(2) Declare 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 well-being and happiness, it nonetheless supports the Wolfenden Report [950] that homosexual behaviour between two consenting adults in private should no longer be a criminal offence, and that the appropriate authorities be advised accordingly.

(3) Request the State Government to make a substantial sum of money available for research into the causes and treatment of homosexuality.

(4) Instruct the Committee to print and issue to all members of Assembly a transcript of the Seminar on Homosexuality arranged by the Church Life and Work Committee on 17 March 1967. [For full text of this seminar see 1:–1.1.2. page 22].

Homosexuality: A simple and general definition of homosexuality is 'the sexual attraction of a person to one of the same sex', but the term cannot readily be applied to any specific type of person. All of us have homosexual tendencies, whether they be conscious or unconscious, overt or unexpressed. No doubt these tendencies express something of the fallen-ness of human natures, and of man's alienation from God. However they are real, and must be acknowledged.

We recognise that sensuality is an element in healthy human personality, and not merely the mark of unhealthy personality. Due to differences of heredity and experience persons have different means of sex fulfilment. The assumption that there is a normal sex life is challenged by sexologists. As every person has the need of sex fulfilment it follows that every person has the right to it. This is riot to say that license is to be condoned. Self discipline is an ideal of the moral personality. But complete sex repression is unrealisable and would dehumanise personality if it could be realised.

We believe that the Christian task involves us in recognising that many people who are troubled by the problem of homosexuality are decent upright human beings who are tormented by the crushing burdens of legal guilt and social ostracism to which they are subjected. The Church has a responsibility to offer help through acceptance of the homosexual and his problems, and to encourage the development within the community of those resources which will assist his rehabilitation and personal development. 'Legislators have a ready excuse for inaction when there is no obvious consensus in favour of reform. It is not merely that a strong public opinion is necessary to bring politicians to the point of change on these difficult questions. They are in fact entitled to be given the clearest possible guidance on the community's attitude to problems which are hardly political and which are certainly beyond party formulas.' [see 1:–1.1.2.1. page 37]

The Wolfenden Report [951] represents a thorough examination of the issues as carried out in the United Kingdom. The Report recommends that homosexual behaviour between consenting adults in private should no longer be a criminal offence. The wisdom of this recommendation has been supported by our own extensive inquiries into the matter, and we recommend that the Assembly should support this point of view as a tangible means of expressing its concern in this problem area.

8:–1.15.3. – NSW Methodist Conference [952]

There is no evidence to suggest that the Methodist Church was concerned with homosexual law reform.

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[948] See: 1:–1.1.2. page 22, 'The Responsibility of the Church Regarding Homosexuality'.

[949] NSW Assembly of the Presbyterian Church of Australia, Report of the Church Life and Work Committee, *Minutes of Proceedings*, Sydney, May 1967.

[950] Report 1957, op. cit.

[951] Report 1957, op. cit.

[952] Details in this section are gratefully taken from Malcolm I Cowan's thesis on the Methodists in NSW. Personal communication dated 4 December 1998.

The Rev Alan Walker of the Central Methodist Mission was well known for his outspoken statements on a number of social issues and appeared to many to be the unofficial spokesperson for the Methodist Church in NSW. He was certainly the best known commentator and was known at times to contradict the official stance of the Methodist Church. Although the topic of sex was listed as one of his many discussion points, there is no other reference to the topic or the context in which the topic was raised. Homosexual law reform did not appear to be a strong social issue for the Methodist Church; it certainly would not have been for Walker, who was known to oppose such reforms.

The official Conference minutes of the NSW Methodist Conference have little to say on the topic.

In 1966 the Department of Christian Citizenship received from the Conference a request: [953]

> That the whole matter of homosexuality and its relation to the law be investigated by the Department of Christian Citizenship and that the Department endeavour to find ways in which people who are afflicted in this way can be help.

The Sydney Morning Herald, [954] 19 October 1966, reported the Conference decision to set up an inquiry and reported in more detail than the official minutes, the discussion that had taken place at Conference. A move for the possible legalisation of homosexuality between consenting adults was rejected by the Conference. There was considerable difference op opinion between ministers, one minister opposing legalisation because he did not believe that it was 'the correct therapy.' A minister who supported legal changes to the law, said that the current laws were 'of considerable antiquity' and also anomalous in that 'while male homosexuality was illegal, lesbianism was legal.'

As with SA and Vic, there appears to be no stated indication why the Conference should request that DCC should investigate homosexuality. Although the Wolfenden Report had been in existence for some time there was no acknowledgement of its existence in this earliest reference. The report was first mentioned in Conference minutes in October 1967. The 66th Annual Conference of the Methodist Church in Australasia in NSW reported in its Minutes, under the heading Personality Deviation: [955]

> A representative committee containing psychiatrists, psychologists, lawyers and clergy had been set up. A preliminary working paper by the Rev Norman Webb has been circulated to selected correspondents throughout the Commonwealth and the Wolfenden Report is presently under study.

Although not mentioning homosexuality per se, the committee, by reference to the Wolfenden Report, indicated that it was attempting to address the issues of homosexuality and prostitution. The title Personality Deviation could be construed as an euphemism for homosexuality, and is difficult to understand its usage given that in 1966, homosexual was used in the minutes of Conference. The following year the Annual Conference reported, under the heading, Social Issues: [956]

> The Social Questions Division is presently examining subjects such as abortion, personality deviation, divorce reform and prostitution.

This report, as with the 1967 report, again obtusely referred to homosexuality as a personality deviation.

The 72nd Annual Conference in 1973, stated: [957]

> That this matter of a statement on homosexuality be referred to the Department of Christian Citizenship.

If the report on homosexuality by the NSW Conference of the Methodist Church was written, no records appear to exist. From 1966 to 1974, it would appear that the whole issue of homosexuality for Methodists in NSW, was subsumed under the designation of perversion. The Methodist Church in NSW, unlike its SA counterpart, had little reason to comment on homosexuality. Homosexual law reform was not an agenda item for the State political establishments of the day. Reports of other denominations, and events interstate or

[953] The Methodist Church of Australasia, NSW Conference, 65th Annual Conference, Sydney, October 1966, p. 154.
[954] See: 8:–1.15.3.1. page 545, 'Inquiry Into Law and Sex Deviates'.
[955] The Methodist Church of Australasia, NSW Conference, 66th Annual Conference, Sydney, October 1967, p. 508.
[956] The Methodist Church of Australasia, NSW Conference, 67th Annual Conference, Sydney, October 1968, p. 519.
[957] The Methodist Church of Australasia, NSW Conference, 72nd Annual Conference, Sydney, October 1973, p. 113.

overseas appeared to be of little interest to the Methodists of NSW.

The 23rd General Conference of the Methodist Church of Australasia in Melbourne in May 1972; reiterated the words of the Church of England's 1954 report, when it stated: [958]

> In the light of the fact that Parliament, society and the Church do not consider fornication, adultery and lesbianism as criminal offences, we consider that homosexual acts between consenting male adults should not be proscribed by law.

The resolutions emphasised the necessity for education and research, a need for Christians to determine their own standing on the issue and: [959]

> to assist those with homosexual (including lesbians) – [the resolution's brackets] – tendencies to make a responsible decision in regard to any future relationship that compassionate and competent counselling be available in church and society.

The Methodist Church in SA furnished the most extensive report in the three states, although initially, those commissioned to write the report were unable to decide whether the laws criminalising homosexual acts should be altered. It took a statement from the General Conference in 1972 supporting decriminalisation for the SA Methodist Conference to also support changes to the law.

The Vic paper on homosexuality was written at the request of the DCC to be a study paper on the topic. It never constituted an official report of the Methodist Church although initially a report and recommendations were called for from the Methodist Conference. [960] The introduction to the paper stated: [961]

> It is intended as an information and study paper for those who want to think about, and perhaps discuss, the complex and controversial question of homosexuality.

This paper went further than the SA report in that it called for the decriminalisation of male homosexual acts and also for the church and Christians to 'accept the reality of homosexuality and not to be insecure in our own sexuality whatever our choice may be.' [962]

In Vic and NSW, political discussion on homosexual law reform became more prominent in the mid to late 1970s, at a time when the Uniting Church was being formed and union was high on the church agenda. Homosexual law reform became more of an issue for the Uniting Church in those states than it did in SA.

8:–1.15.3.1. – Inquiry Into Law and Sex Deviates [963]

Methodists to Examine Homosexuality

The Methodist Church is to examine homosexuality and the law in NSW.

The NSW Methodist Conference, which is meeting in the Lyceum Theatre, [Sydney] city, made this decision yesterday.

The Church's DCC will carry out the investigation, and also examine ways in which homosexuals may receive help.

The conference rejected a motion which called for a report on the desirability and practicality of amending legislation to:

Legalise homosexual acts between consenting males in private;

Make illegal such acts where minors of either sex are involved; and

Prevent police from acting as agents provocateur to obtain evidence of homosexual offences.

In another decision, the conference requested its president Rev GL Walker, to appoint an advisory committee to examine the controversial British Council of Churches report on *Sex and Morality*.

The committee will be empowered to work with

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[958] The Methodist Church of Australasia, 23rd General Conference, Melbourne, May 1972, p. 277.

[959] ibid. p. 277.

[960] The Methodist Church of Australasia, Vic and Tas Conference Minutes of the 73rd Annual Conference, Melbourne, 1974. DCC [Vic] p. 249.

[961] Carey, BE op. cit. front cover of paper.

[962] ibid. p. 8.

[963] n.a. 'Inquiry Into Law and Sex Deviates', *The Sydney Morning Herald*, Wednesday 19 October 1966, p. 9.

the NSW Presbyterian committee now examining the Christian attitude towards sex, and with a committee of the General Conference of the Methodist Church of Australasia.

8:–1.15.4. – Anglican Diocese of Canberra and Goulburn, August 1971 [964]

A motion was passed by the Synod on 2 August 1971. The terms of the motion are as follows - Homosexuality:

That the Bishop be asked to communicate to the Attorneys-General of the Commonwealth and of the State of NSW the opinion of this Synod–

(a) that while this church as traditional teaching on homosexuality has strong foundations in Scripture and History and hence it does not condone homosexual practice, it considers nevertheless that the Christian Faith as now understood makes no claim on the civil power to treat homosexual acts between consenting adults in private as criminal offences;

(b) that our experience in the church of pastoral concern for persons-in-community would predispose us to believe that an understanding society is more likely to help homosexuals than one which rejects, isolates and punishes them;

(c) that the civil powers should be encouraged to consult with the Churches and expert opinion in order to f nd more effective ways in which

(i) minors and those at special risk may be protected from homosexual assault;
(ii) harmful and aggressive homosexuals may be treated or confined; and
(iii) therapeutic help may be made available to homosexuals.

The voting for this motion was 128 for and 17 against.

There was no evidence of a report or a committee relating to this motion.

8:–1.15.5. – Congregational Union of NSW, 1969 [965]

The Congregational Union of NSW, like many other denominations in that state, appeared more conservative and evangelical in its outlook. The Rev Best in his Presidential Address of 1969, continually stressed the importance of evangelism in the life of the church and referred to the Billy Graham Crusades and to a local Congregational minister's program of evangelism. CASE was developed by the Rev Fred Nile and [966]

> designed to inspire, prepare a train the total membership of the local church for participation in evangelism at every level of Church and personal life.

Nile was to become noted for this rabid denunciations of homosexuality as a minister of the Uniting Church and as a MLC of the NSW parliament.

Although recognising that a role of the church was to speak out on social issues, Best maintained that this was not the primary role of the church. He was of the opinion that: [967]

> many of these issues are so complex that it often seems to me to be inappropriate for Church Assemblies to make the kind of pronouncements which requires expert knowledge in such fields as economics, politics, and the like.

In 1971, the Assembly commented on abortion law reform, recommending that the criminal law be amended and that, if possible, be uniform throughout Australia. The resolution was passed by a small majority with many members of the Assembly having their names recorded as being in opposition. [968]

The Congregational Union of NSW, at its Assembly in 1973, supported the Federal Government's decision

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[964] Information supplied by Brian Norris, Registrar, The Anglican Diocese of Canberra and Goulburn.

[965] Details in this section are gratefully taken from Malcolm I Cowan's thesis on the Methodists in NSW. Personal communication dated 4 December 1998.

[966] Best, Rev RA, 'Mission Imperative', The Congregational Union of NSW, 104th Annual Assembly, 1969, *The President's Address*. Year Book for 1970., p. 18.

[967] ibid. p. 16.

[968] Congregational Union of NSW Resolutions, Annual Assembly 1970, Year Book 1971, p. 21.

to decriminalise homosexual acts in private [969] and recommended that a committee be established to examine homosexual relationships within the Christian context. [970] In the Assembly resolutions of October 1975, the Congregational Church condemned the social oppression and legal discrimination against relationships between consenting adults and called for a wider acceptance and understanding by the church. The resolution also recommended that local churches discuss homosexuality in order to break down prejudices and ignorance. [971] There was no further reporting on the issue in the subsequent year books of the Union in 1977. Those Congregational churches which did not enter into Union, formed themselves into a new body corporate called the Fellowship of Congregational Churches [NSW]. There is no evidence of any debates on homosexual law reform in their official documents.

8:–1.16. – CAMP NSW Letter to Peter Reid, Executive Producer, ABC Four Corners TV Program, 25 November 1974 [972]

The homosexual liberation movement has been working publicly in Australia now since the beginning of CAMP in Sydney in August 1970. It has spread throughout the country largely through CAMP branches in all states and to a similar extent through the influence of gay liberation groups, which latter tend to spring up, wither and re-spring more readily than a semi-structured organisation as this one. This is not to say that the aims of such groups are different; rather that homosexuals are able to associate themselves with a group whose methods towards the goal of liberation they can best appreciate.

I have been prompted (and I express the feeling of the executive of CAMP) by that section of last Saturday's Four corners dealing with Christ's Community Church in Melbourne condemn the ABC's record of serious coverage of the whole subject of homosexuality on television, and find that this program has been seriously lacking in both frequency and scope. Before dealing with those two shortcomings I would comment on the program which has prompted this letter.

There must surely be serious doubts of your program's intention to deal seriously with the subject matter that the first introductory section includes the phrase: 'The Bible provides enough references against their sexuality to validate five thousand years of Jewish and Christian prejudice'. That the six biblical passages usually referred to (two of which in the Old Testament describe the same occasion; and three of which in the New Testament came from the same pen, that of Paul) have any specific reference to homosexuality as the subject is understood today is open to interpretation; but quite apart from this I would question that it is any part of the ABC's office to propagate the idea of 'validated prejudice'. Surely the two words are contradictory.

Just as contradictory to the reputed intent of Four corners are such questions as 'Do you think some people might think it a bit of a giggle for homosexuals to get together – a bit like a worshipful party?', the … documentary investigating of social phenomena as it is also contrary to the interests of those people interested … enough to take part in such a program.

In examining the frequency with which the ABC seems content to deal with homosexuality I can … in the last four years when it has been concerned with anything more, than the passing interest of a news item or current affairs segment. Dennis Altman was the main speaker in a Monday Conference program in mid-1972. He was introduced as a Lecturer in the Department of (Government at Sydney University and was to speak about and be questioned on his just-published book *Homosexual Oppression and Liberation*. University lecturing and writing are both Very Nice Things to do. A Chequerboard program (in which I was myself involved) in October 1972 looked at two homosexual relationships, one male and one female. Those who took part were portrayed as trying to conform as closely as possible to the nuclear western suburbs family. Rather a Nice Thing for homosexuals to do since it more shields the community from having to think about the

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[969] Congregational Union of NSW, Assembly Resolution 13, 24-28 October 1973, Year Book 1974, p. 24.

[970] ibid, Resolution 12B, p. 24.

[971] Congregational Union of NSW, Assembly Resolution 10, 22-26 October 1975, Year Book 1976, p. 24. The resolution continued:

> 10(b)(i) recognises that for a small but significant minority of people homosexual relationships are the expression of their emotional make-up;
>
> 10(c) urges that Christian acceptance, fellowship and pastoral care should be extended to those whose basic orientation is homosexual.

[972] Some of the archival copy is illegible.

oppressions and difficulties it so … willingly imposes on those whose sexual orientation is different from the statistical norm. Then on Saturday night, Christ's Community Church. Perhaps the Nicest Thing yet, since there is a feeling in the community that whatever is done in and by churches must be right.

So far, then, the ABC has tried to show us that homosexuals are determined to see as far as possible the standards adopted by the white Anglo Protestant western consumer community; and herein lies CAMP's cause for alarm. True liberation for all people involves a re-evaluation of the force which the majority of society ought to enforce upon its individual members, and it is in the particular oppression of homosexuals as individuals and homosexuality as a life-style to which this organisation addresses itself.

Could you suggest some avenues through which the ABC would be prepared to document the real struggle which faces not only the homosexual but the members of other minority groups in the community? A suggestion we received earlier this year from Talbot Duckmanton that the *Access* program would suit our needs was rejected by us, since the task we already perform occupy all the spare time of those members of CAMP whose intentions are to devote themselves to human freedom and the production of a television program could hardly be added to this.

Any member of our executive would be only too happy to discuss our ideas and plans with you, in the hope that a program truly documentary of the homosexual movement in Australia may be seen on Australian television in the very near future.

8:–1.17. – Homosexuals in the Public Service, 6 December 1974 [973]

5 Per Cent of PS Gay

Homosexuals make up 5 per cent of the Commonwealth Public Service, the Royal Commission on Australian Government Administration was told yesterday.

Members of the Campaign Against Moral Persecution (CAMP) said the homosexuals in the Public Service faced a terrifying ordeal.

They said only three or four had publicly declared their homosexuality.

Others were afraid to for fear of losing promotion.

Mr Michael Clohesy, of CAMP said: 'Only someone who has gone through it can understand how terrifying it is.'

INQUIRY TOLD OF ORDEAL ON JOBS

He said it was impossible to prove that sexual grounds were the sole reason for a promotion being held up.

'Conditions of employment for homosexuals are, at best, second best.'

Mr Clohesy said while public servants with a family could claim bereavement leave, time to take a wife to hospital and fares involved in visiting a sick family member, homosexuals faced difficulty asking for the same.

He called for a new definition of the word family in the public service to include the homosexual family.

HERESY

He said he was a member of a homosexual family of three.

If this were done, homosexuals, would have equal rights with superannuation, leave and allowances.

He said that according to a 1948 study [974] carried out in America, at least 5 per cent of the population was homosexual.

That had been reinforced by more recent surveys and the 5 per cent figure was conservative.

There are just under 300,000 Commonwealth public servants.

At a press conference before yesterday's hearing the chairman, Dr HC Coombs, said he was anxious to finish the commission's hearings by the end of the year.

He said: 'We are not conducting a heresy hunt or investigating the possibility of a scandal.'

'We will assess soberly the way the Government is administered and seek areas where improvement is possible.'

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[973] Easdown, Rod, '5 Per Cent of PS Gay' *Daily Telegraph*, Friday 6 December 1974, p. 13. Original emphasis.

[974] Kinsey, AC, et al. *Sexual Behaviour in the Human Male*, Saunders, London, 1948.

8:–1.18. – Create Homosexual Ombudsman, 6 December 1974 [975]

CAMP Bid for PS Bureau

TWO homosexuals yesterday urged the royal commission into Federal Government administration to set up a bureau for homosexual affairs [see page 253] and create a homosexual ombudsman [see page 234].

Mr M Clohesy and Mr P de Waal, members of the NSW branch of the Campaign Against Moral Persecution, said an ombudsman was needed to investigate cases of alleged discrimination, particularly in appointing people to the Public Service, and in promotion.

8:–1.19. – CAMP NSW Demands Homosexual Bureau, 6 December 1974 [976]

Bureau Wanted by Homosexuals

SYDNEY. Thursday – The NSW branch of Campaign Against Moral Persecution said today that a government bureau should be established to analyse and change existing attitudes and practices within the Federal Public Service relating to homosexuals.

A branch representative, Mr Michael Fossey [*sic*–Clohesy], told the commission that the Public Service played an important role in forming community attitudes.

Because it was the largest employer in Australia it should take the lead in reducing discrimination against homosexuals.

The membership of the proposed bureau should comprise only homosexuals since it was only they who were aware of type and degree of discrimination levelled against the group.

Mr Fossey [*sic*–Clohesy] said he knew of instances where people had been barred from joining the Public Service because of convictions relating to homosexuality.

To a question fam. Dr Coombs about removing discrimination relating to other groups, Mr Fossey [*sic*–Clohesy] said there might be a need for a bureau to deal with all types of discrimination in the service but within it there should be a specific section to deal with discrimination against homosexuals.

8:–1.20. – CAMP NSW Press Release, 16 December 1974

Campaign Against Moral Persecution NSW Branch. Box 5074 G.P.O. SYDNEY. 2001.

PRESS RELEASE

For release: 16 December 1974 . (02) 827 3063 *

Homosexuals are phantom people

Addressing a group of trainee nurses at Wollongong Hospital today, Margaret McMann, President of CAMP NSW Branch, attacked the control exercised by society over the life-styles of people and, in particular, of homosexuals. ‘Being homosexual is ipso facto a challenge of sex-control/sex-denial. But budding individual attempts at self-expression are usually crushed: being openly homosexual is punished with ridicule, public condemnation and loss of job. As a result homosexuals have become a phantom population.’ She described the ignorance of society as the highest hurdle for the homosexual. In their ignorance, she said, people cling to the image of homosexuality as perversion, abnormality and vice, and so reject the homosexual, generating fear and dislike. This has accumulated into wholesale condemnation. ‘Society is cowardly – by some slight of hand, it has shifted the blame for its atrocities against homosexuals to homosexuals themselves. Hiding its own intolerance of difference, society makes those who try to live differently appear ridiculous, even insane. Clearly, it is a clever trick when victims of injustice are made to look guilty.’ Ms McMann called for an education program aimed at eradicating the ignorance that gives rise to feelings of guilt in homosexuals and the hostility against homosexuality. ‘It is necessary to change society; not merely to encourage homosexuals to find an individual solution so they fit themselves into society.’

* (Margaret McMann will be available for interview in Wollongong today and tomorrow. Information on

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[975] n.a. ‘CAMP Bid for PS Bureau’, *The Australian*, Friday 6 December 1974, p. 9.

[976] n.a. ‘Bureau Wanted by Homosexuals’, *The Canberra Times*, Friday 6 December 1974, p. 7.

where to contact her will be available from the above number).

8:–1.20.1. – Homosexuals are Phantom People [977]

My name is Margaret McMann and I belong to the phantom population. Let me explain what I mean by that:

All of us here are used to enjoying the benefits of civilisation and its offspring technology, and can broadly summarise them with relative ease. There is only longer life made possible by adequate food, shelter, medical care, and generally safer conditions; there is a fuller mental life and more goods produced to make physically less strenuous. Most of us reason that these benefits are possible because of the underlying social order that prevents chaos.

But what have we traded for these benefits?

Freud suggested that for civilisation, we traded full sexual and instinctual expression. He saw no way out of the bargain. He felt the trade was necessary: that to end repression was to end civilisation.

I see as one result of the trade the possibility of natural love has been forfeited. For example, religion, the law, and psychiatry have equated sex control with what is good and right and healthy, so most people blame themselves when they are unable to meet societal demands for sex control or sex denial. Rather then question their environment, most people question their feelings, and in trying to solve their conflicts can become estranged from parts of themselves. The burden to fit into society is on the individual.

I have become continually aware of the individual's sense of powerlessness in modern society, and of the increasing control of society over the individual. Both, taken together, make it hard for individuals to discover and live their own life-styles, to sense the validity of their needs. Being **homosexual** is ipso facto a challenge of sex-control/sex-denial. But budding individual attempts at self expression of self-assertion are usually crushed: being openly homosexual is punished with ridicule, public condemnation and loss of job. As a result homosexuals have become a phantom population, and because I love another woman deeply, thus challenging the control society has placed on me I am labelled gay/dyke/leso and society designates that I belong to this **phantom population**.

WHY?

Why is homosexuality punished with ridicule, public condemnation and often loss of job?

Why does society classify me as an outsider?

Perhaps the answer is in the word itself – HOMOSEXUAL. Certain words become in time either too light or too heavy for the load to carry, and their meaning can get so distorted as to make them practically meaningless. When this happens we experience ignorance, and it is the ignorance of society that has become the highest hurdle for the homosexual.

What about the word HOMOSEXUAL?

A word arises from an image or an idea. When either cannot be recognised behind the word, then it does not ring true. The word LOVE is a striking example. It is used today as a form of greeting for the grocer, the bus conductor, and others; as well as for sex-play. Obviously such a use has nothing to do with the original meaning. The word homosexuality belongs to this very category. It implies love for a person of the same sex, and is part and parcel of the whole concept of sensations, feelings and emotions for which the word love is the symbol.

The use of the word homosexuality has strayed so far from its true meaning that it has acquired the status of a taboo. To the man in the street the term signifies perversion, abnormality and vice. It stands in the minds of many people for nothing else but various kinds of sex-gratification between people of the same sex.

The word itself is an unhappy choice and a misleading one. Homosexuality is, in fact, an emotional disposition which leads to close and intimate contact between people of the same sex; a contact which may or may not be expressed sexually. The affixing of the magical, or rather black Magical **sexual to homo** has overshadowed the real meaning of the word. The word homosexuality is a misconstrued symbol for a particular kind of love; and little wonder that it has lead to repugnant images in the minds of the majority of people on both sides of the world. It carries now a connotation of perversion: the mechanical and imitative minds of an

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[977] Presumably this is the text of the talk delivered at Wollongong hospital and/or a hand-out used with the trainee nurses spoken to at the hospital. Original emphasis.

ordered society are threatened by something that may destroy that order; the weakness of their ignorance allows this connotation to flourish.

The majority of society refuses to or is unable to go to the bottom of the well, to the image or idea from which the word comes; and so reject. This rejection, of course, stems from fear, and breeds dislike.

Images of repulsion towards homosexuals arise from both collective and personal fear. The collective fear is engendered in the interest of the state – the personal fear of homosexuality generally results from religious conflicts and repressed homosexual feelings and desires. This dislike of the pervert is nothing but the unconscious fear of being perverted, and reflects self-hate. How these fears and dislikes accumulated into wholesale condemnation of homosexuality can only be understood through certain ideas and ideals about the male and female, which were the natural outcome of a man-made society where the male is the master and the female subservient to him. The ostracism of homosexuality is directed more against men, while homosexual women, as a rule, have been less exposed to it. This attitude results from the inferior place of women in society. The fact that, in the main, it was the men who were dragged before the Courts of Justice for homosexual offences is proof in itself that **their** behaviour was always considered of prime importance to the State. The female was and still is regarded as of minor importance: it is indeed the second sex. The idea of male superiority does not allow men and a man-ruled society to accept homosexuality among women as either a serious threat to their sexual needs or to the interests of the state. Lesbianism is regarded by most men as a **joke**, or a playful diversion, where in cases of sexual competition the male would always emerge the victor. It is the arrogance of the male which has protected homosexual women from suffering the same degree of persecution as homosexual men in reference to the law – it is the arrogance of man-made society that has made the suppression and ridicule of the female homosexual so acute – classifying us as sick until we set into the mould of wife and mother – denying us our individuality and the right to love **naturally**. We become members of normal society only when we comply with its **set of standards and learn** to love as it decrees.

Society punishes the homosexual with ridicule, public condemnation and other oppressions to hide its own cowardice and neuroses. It is so much easier to reject what is outside societal conditioning than to go to the trouble of investigating it and perhaps understanding.

And society is cowardly – it advocates that homosexual grievances are rooted in the homosexuals themselves. Authorities usually suggest that the only way out of this pathetic state is personal cure – it is we who are at fault, not them! Society reasons that the best they can do for homosexuals is to offer them psychotherapeutic intervention which will lead to conversion to heterosexuality.

Various psychiatrists and therapists specialise in such attempts at conversion – very few claim any success. It is known that repressed feelings seek new outlets, and it must be asked whether individuals may not be plunged into violence, neurosis, drunkenness, or prolonged depression if they submit to societal coercion or punishment to change their sexuality.

Society, by some slight of hand, has shifted the blame for its atrocities against homosexuals to homosexuals themselves. Hiding its own intolerance of difference, society makes those who try to live differently appear ridiculous, even insane. To create its own truth society has built in misery, guilt and neurosis for homosexuals who attempt to exercise liberty outside certain authorised boundaries. Clearly, it is a clever trick when **victims** of injustice are made to look guilty.

As long as everyone believes what society has taught – that homosexuality is a private and personal problem – society is home free; it does not have to deal with the problem. Very seldom are homosexuals given help in understanding their unhappiness has its roots in society's hostility and that it indicates an awareness of real obstacles in life. Any cure logically and justly should be directed at society. There is no personal solution. Indeed – no need for one!

Society is bland – it states that heterosexuality is **natural** and homosexuality is **unnatural** and then makes no further debate possible. Heterosexuality – far from seeming effortless or natural – is taught, reinforced, and rewarded from earliest childhood. Homosexual tendencies even in young children are punished.

> Various means of instruction are employed by the older members of society to get the younger members to perform just those responses which are most likely to be rewarded. [978]

[978] Miller, Neal E, and Dollard, John, *Social Learning and Imitation*, Yale University Press, London, 1967. The title of the book referred to in the archival copy was: 'Four Fundamentals of Learning' which in fact is the title of chapter two (continued...)

It is plausible to assume that the reason strong societal controls rewarding heterosexuality and punishing homosexuality exists is exactly that homosexuality is equally natural, and is therefore a real danger to the heterosexual social system. The most obvious level of controls are those that alert or alarm by speaking directly to the drive for self-preservation. These are the sanctions against homosexuals in employment and housing. Homosexuals essentially have no civil rights. They can live in great anxiety, fearing for their survival.

Economic security is an important incentive to be heterosexual; perhaps especially for women who may have bypassed educational or training opportunities because of expectations of a heterosexual marriage they held when younger.

The amazement straight people feel when they hear of a homosexual marriage seems to have something to do with reward and punishment. In a society built around the patriarchal nuclear family, marriage means obedience to its sociosexual rules and is highly rewarded: the blessings of God, tax breaks, inheritance benefits. Heterosexuals find it amusing or horrifying that homosexuals might expect the rewards without the obedience.

Society discriminates against the homosexual – it uses religion, the law, the nuclear family, psychology, education and the economic structure to punish us – there is not the time here to expand on all these but if there is anyone who would like to discuss these subjects further I will be only too happy to talk to you at some other time.

Let me say in conclusion; it is estimated that one in twenty people are homosexual, and if they all came out a great deal of the homosexuals' problems would be over. However, although this coming out does much to alleviate misunderstanding it is not the complete answer. Blacks cannot hide their blackness. Women cannot hide their femaleness. Coming out allows homosexuals to confront discrimination openly – it does not end the discrimination.

What is needed is an education program aimed at eradicating the ignorance that gives rise to feelings of guilt in homosexuals and the hostility against homosexuality.

It is necessary to change society, not merely to encourage homosexuals to find an individual solution so they fit themselves into the present society.

What makes someone a homosexual? I don't know. But who cares?, or should care?

Why does being a homosexual have to make any difference?

I am a lesbian. I don't hate all men and I certainly don't love all women.

Would it sound funny to say that I consider myself to be really very normal?

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[978](...continued)
of the aforementioned book.

CHAPTER NINE ≈ PUBLIC EDUCATION AND INFORMATION – OTHER

9:-1. – Other

21 January 1974	Lex Watson spoke to Mascot Rotarians at the International Terminal on homosexuals and sex education in schools.
30 January 1974	Sue Wills addressed a meeting of eighty doctors, social workers and nurses at Broughton Hall.
11 February1974	Gaby Antolovich and Sue Wills addressed, with members of Gay Liberation and Radical Lesbians, thirty community service trainees – psychiatrists, psychologists, social workers and nurses – at Callan Park.
20 February 1974	Sue Wills and Gaby Antolovich addressed a Manly discussion group [979] of thirty people on lesbian liberation.
26 February 1974	Mike Clohesy addressed an Orientation Week function organised by the Gay Society of the University of New England, Armidale.
1 March 1974	Peter Bonsall-Boone addressed a meeting organised by Campus CAMP, University of Qld, as part of their Orientation Week activities. Subject: The Christian homosexual.
5 March 1974	Debby Heywood and Peter Bonsall-Boone spoke to the Chatswood Junior Chamber of Commerce Chapter at Willoughby.
3 April 1974	Seahorse Club (for transvestites) attended the Phone-A-Friend meeting.
17 April 1974	Andrea Russell and Sue Rawlings of Homosexual Guidance Service led discussion at the Phone-A-Friend meeting.
7 May 1974	Peter de Waal attended a meeting with the Society of Friends, who were preparing a paper on homosexuality.
16 May 1974	The Phone-A-Friend meeting was devoted to an exchange of information between PAF and Helen Ma of the Drug Referral Centre.
5 August 1974	Mike Clohesy spoke with one of the groups at the International Training Institute at Mosman.
22 August 1974	Dr Walker, Director of Epidemiology with the NSW Health Commission spoke at the Phone-A-Friend meeting on VD and other goodies.
11 September 1974	Peter Bonsall-Boone lectured at Monash University on 'Religion and homosexuality' as part of the Homosexual Studies Course organised by David Widdup.
26-27 September 1974	CAMP was represented at a Symposium on 'Psychosurgery and Society' at Callan Park by Mike Clohesy.
3 October 1974	A group of students enrolled in a community health nursing course attended the Phone-A-Friend meeting.
28 October 1974	Bob Hay addressed a group at the Paramedical College.
30 October 1974	Several members of CAMP attended a protest at Central Court against

[979] See: 8:–1.7. to 8:–1.10. pages 535-536. This discussion was possibly held at the Manly Community Centre.

police brutality.

16 December 1974 — Margaret McMann and Robyn Plaister addressed a group of trainee nurses at Wollongong Hospital [see page 550].

Approaches to the Chatswood Branch of the ALP (who wrote to us) [see page 557] and the principal of Randwick Boys' High School (several students of which contacted Phone-A-Friend) seeking permission to address them have received a stony silence [see page 557].

9:–1.1. – Australian Labor Party, Chatswood Branch Letter to CAMP NSW, 20 September 1974

I wish to inform you that this Branch at its last meeting fully endorsed the action taken by the American Psychiatric Association in its decision to cease the barbaric procedure in treating homosexuality as a disease or mental disorder. Accordingly we have requested the Australian equivalent to take the same action. I would be grateful if you can contact me on any advance made in this direction and also on any matter that this Branch can be helpful.

9:–1.2. – CAMP NSW Letter to Debbie Shapira, Secretary, Chatswood Branch of the ALP, 24 October 1974

It was pleasing to have news that at least some sections of the major political parties of this country are concerning themselves with liberation movements. The problem with psychiatrists is getting them to match practice with words. They are all too ready to say (as they did in their meeting in May [980] this year) that they disagree with discrimination against homosexuals, and yet at the same time prescribe aversion therapy and psychosurgery.

We are grateful that this move by your Branch will herald further moves in support of the homosexual political struggle. On a governmental level, at the moment CAMP is pushing for amendments to the National Compensation scheme [see page 215] and the new superannuation scheme for Australian Government employees [see page 227] which will make provision for the payment of reversionary benefits to the dependent members of all families, however constituted. For the purposes of these schemes, we have defined family as 'two or more persons who have lived together on a permanent and bona fide bases for at least two years, or who are married'. Even this, of course, is a stop gap measure till the time when all families are considered equally. We have proposed to the Attorney-General that some sort of family register be set up, where people could, purely for legal purposes, register themselves as a family. I am enclosing copies of a petition we are circulating. Perhaps your Branch would be able to collect some signatures and return them to us. We have more copies of the petitions if you could use them.

There are other issues to be discussed in connection with the homosexual movement. Might I suggest that you invite some of us along to a Branch meeting(s) where the discussion could most fruitfully take place.

9:–1.3. – CAMP NSW Letter to Principal, Randwick Boys High School, 30 August 1974

We have been approached by several of your senior students, requesting a discussion on homosexuality at the school.

For our part, we are very willing to comply with this request, since the discussion would be of undoubted value. We have people available to come at any time you might care to arrange.

Trusting that you will see the merit of this request and that you will be in touch soon concerning suitable arrangements.

9:–1.4. – CAMP NSW Second Letter to Principal, Randwick Boys High School, 5 October 1974

We have been reminded recently by further telephone calls from the representative of a group of your senior students that we have so far received no reply to our Secretary's letter dated 30 August, in which he sought your co-operation in arranging for a member of this homosexual rights organisation to conduct a discussion on the subject of homosexuality at your school.

I believe that our caller is aware of the alienation which is often the only attitude offered by our society to the homosexual. He feels this very alienation. I am told, at Randwick High; yet he himself is well able to cope with it. However, he is worried that other homosexuals in the school are battling privately with the problem which is not one of their own making, but which is being thrust upon them only by those who are ignorant of homosexuality and who would force them to pretend to be heterosexual in all their actions.

As Mike Clohesy has said in his earlier letter CAMP (NSW Branch) does have available people who could

[980] This appears to be referring to a motion which was passed in May 1972 and not May 1974 by the Federal Council of the Australian and New Zealand College of Psychiatrists which stated that it 'strongly condemns community attitudes and laws which discriminate against homosexual behaviour between consenting adults in private.'

come to conduct a discussion on this subject at any time you choose. As more and more homosexuals come forward to discuss their homosexuality publicly the community is becoming increasingly aware that such individual, if not homosexual him or herself, has friends and relations who are homosexual. Any discussion at your school would be of inestimable benefit to those of your scholars who are homosexual, or who have homosexual friends or relations (and I do not exclude parents from this – our telephone counselling service, Phone-A-Friend, receives a number of calls from parents who are just coming to a realisation of their homosexuality late in life, on their number, 660 0061).

We look forward to your reply, since examinations will shortly be adding to the pressures on us all at this time of the year.

CHAPTER TEN ≈ POSTSCRIPT

10:–1. – CAMP NSW Press Release, 23 February 1975

Campaign Against Moral Persecution NSW Branch. Box 5074 G.P.O. SYDNEY. 2001.

PRESS RELEASE
For Immediate Release

Homosexuals' Double-Pronged Attack

In a 72 page report, *Oppression Upon Reflection 1974*, CAMP NSW attacks both governments, particularly the Australian, and fellow homosexuals.

It accuses the Australian Government of **political cowardice** and of merely paying **lip-service** to its principle of eradicating discrimination, since it has ignored all the issues raised by CAMP in 1974 designed to overcome homosexual oppression.

These issues are listed in the report together with documentation of government response. Included in the issues are:

1 The denial of basic rights for homosexuals in the proposed Human Rights Bill.

2 Failure of the Superannuation Scheme for Australian Government Employees and the National Compensation Scheme to recognise the rights of dependants of homosexual families.

3 Deplorable delay in implementing law reform in the ACT.

'The most that has been achieved from the whole range of these activities has been **sympathetic noises. Nothing** positive has been achieved.'

The report goes on to declare:

Challenging basic structures is not an acceptable activity and oppressors will do and have done all they can to ensure that liberation does not succeed.

It lays part of the blame for the failure to achieve anything with homosexuals themselves who have failed to make homosexual oppression a political issue.

What is needed is that the oppressed take up the cry of liberation, that homosexuals shout 'We demand justice' and join together in the struggle to achieve it.

For Further Information — Mike Clohesy, Peter de Waal — 02 827 3063 (all hours)

10:–2. – Notices, April 1975 [981]

Oppression Upon Reflection 1974

Mike Clohesy and Peter [de] Waal, for CAMP, NSW, have written a book which is an extremely thorough documentation of events effecting the homosexual movement (mainly in Australia) in 1974 Details of all manner of submissions and letters to government and private organisations, mentions of homosexuality in the media, etc. are noted, with precise references to the factual sources. If nothing else, it would be an excellent record of who the enemy are; but it is more than that. For example, the (unfinished) correspondence with the Directories Section of PMG about a suitable classification for CAMP NSW in the phone directory might be useful for any other homosexual rights organisation that gets embroiled with the Post Office.

The book concludes with an interesting proposal for a Homosexual Bureau to 'analyse and change existing attitudes and practices within the Australian Public Service relating to Homosexuals'.

Copies of this publication (72 pages) are available from CAMP NSW, Box 5074, GPO, Sydney, 2001 ($1.00).

10:–3. – Monthly Book News, April 1975 [982]

'1974 has been a year which has seen more direct political activity by CAMP NSW than any year before', says Margaret McMann and Peter Bonsall-Boone in their introduction to *Oppression Upon Reflection*, the story of a year's political action, written by two of the people most actively involved in the action.

Divided into 9 sections, this 72p booklet looks at CAMP's relations with the Australian Government, the SA Government, WA Government, other

[981] n.a. 'Oppression Upon Reflection 1974', *Learning Exchange*, 15 April 1975.
[982] Doctor Duncan Revolution Bookshop: Feminist and Gay Liberation Resources, [Adelaide] April 1975, n.p. [p. 3].

organisations, the Anglican Church (and Peter Bonsall-Boone) and the festival of Light.

Interesting and at times amusing and even infuriating reading await. $1.00.

10:–4. – Law Reform [983]

Grim Outlook for the Gay

As long ago as 1967, the subject of homosexual law reform was raised within meetings of organisations not linked with the gay liberation movement. And it must be said that it was some of the Christian churches rather than political parties (left, right and centre) which first started to come to grips with the issue of homosexuals and homosexuality.

But before we go any further, let's get the record straight and make clear that, despite lots of resolutions passed in various assemblies, none of them has been acted upon sufficiently, and homosexual acts by male persons – of any age and anywhere – in Australia are still illegal and can bring stiff prison sentences, and do when police action occurs.

Two Qld University academics, Paul Wilson and Duncan Chappell, in 1967 [see: 1:–1.1.8. page 109] conducted a survey of attitudes to homosexual law reform in Australia which revealed that 22 percent of people questioned supported such a move; a repeat survey early in 1971 [sic–1970, see: 1:–1.1.9. page 115] showed that those in favour had gone to 56 percent. In October, 1974, it was revealed that the Australian public was 2-to-1 for legalising homosexual acts in private between consenting male adults. Of 1885 people interviewed by the Morgan Gallup Poll, [984] in the cities and country districts of all six States, 54 percent said 'Legalise it' because 'It's the homosexual's own business,' 'Okay so long as they don't harm anyone else.'

On the other hand, 26 percent said 'Don't legalise it' because 'It's abnormal,' 'It's unnatural.' The other 20 percent interviewed were undecided, sometimes saying 'It's a sin, not a crime.' Men and women, as separate groups, both gave answers close to those percentages. So did the Liberal-Country Party and Australian Labor Party voters, as separate groups.

The groups which have taken a reform stance, and the time when they came out for the issue, are: [see Table 79, page 516].

The Liberal Catholic Church has always had an intelligent attitude on the subject of homosexuals and homosexuality. In its official organ in this country, *Communion* in June 1974, [sic—September 1974] [985] it stated: 'To the church as a body, it matters not whether one is a homosexual, heterosexual, bi-sexual, or asexual – so long as he otherwise fits into the society which the church is, and does not seek to annoy others by pressing his (or her) particular viewpoint.' This is also the unofficial view of this country's Catholic Church as was shown in the late 1960s by the Rev Dr Leslie Rumble in his program on 2SM and his column in the *Catholic Weekly* when he said: 'Homosexuality, especially acts between consenting adults, should not be regarded by the State as a crime.'

With such an overwhelming expression of public opinion for a change (or better, decriminalization) of the law concerning homosexual acts, as the list and the Morgan and Wilson-Chappell Polls reveal, one would expect State and Federal government to accept reality and end the barbaric treatment of male homosexuals through the law. But have the politicians done this?

The WA Royal Commission into Homosexuality, which collected 2000 foolscap pages of evidence during 12 public sessions during the first half of 1974, presented its report on 23 October 1974, with many recommendations but clearly coming out for law reform. Premier Sir Charles Court referred the report to the Ministers for Health [see 3:–1.1.1. page 407], Police [see footnote 674] and Justice [see 3:–1.1.2. page 408] 'so they can give their opinions on it.' It was said by Sir Charles Court at the time that he expects to have the minister's reports 'within a few weeks' and that the reports, and any reaction from the public would then be considered by State cabinet which would decide what action to take. Then there was silence, a silence broken by Sir Charles Court [see 3:–1.1.3. page 408] in March of this year with the statement that 'the WA government will not institute action to legalise homosexual acts in private between consenting adults, although

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[983] Smith, Martin, 'Grim Outlook for the Gay', *The Bulletin*, 7 June 1975, pp. 26, 29-30.

[984] See: 8:–1.14.2. page 539, 'Morgan Gallup Poll, August 1974.'

[985] *Communion: the Magazine of the Liberal Catholic Church in Australia*, vol. 7 no. 6, June 1974 was checked and does not contain this particular statement quoted by Martin Smith, however, vol. 7 no.7 does. See: 10:–4.1. page 563, 'Homosexuals and the Church.'

if legislation was introduced in a private member's bill from either side of the House government members would be free to vote according to their conscience.' No such private member's bill has appeared nor does one look like appearing

On 18 October 1973, by a vote of 60-44, the Australian parliament endorsed the Gorton-Cass motion that 'in the opinion of this House (of Representatives) homosexual acts between consenting adults in private should not be the subject to the criminal law' and the great bulk of the Australian people felt the country was really moving into the 20th century. The next day papers quoted the then Attorney-General, Senator Lionel Murphy, as saying that 'the House's expression of opinion will be transferred into action immediately in Commonwealth controlled territories.'

But it was not until last week that a draft [Homosexual] Law Reform (Sexual Behaviour) Ordinance [see: 1:–1.2.1. page 160] was sent by the Federal Attorney-General, Kep Enderby to the ACT Legislative Assembly – 17 months after the Gorton-Cass motion was accepted by the House of Representatives.

Table 79: Organisations/Groups Which Have Taken A Law Reform Stance, 1962-1975

Date	Organisations/Groups	Date	Organisations/Groups
1962	Vic Fabian Society	April 1974	Quakers (Sydney regional meeting of the Society of Friends)
1971	Anglican Diocese of Canberra-Goulburn		
1971	Anglican Diocese of Melbourne	17 June 1974	South Australian ALP State Council
1971	NSW Methodist Conference	20 June 1974	The Advertiser (Adelaide) [newspaper]
1971	NSW Presbyterian Assembly	28 June 1974	New South Wales Branch of the Country Party
1971	The Australian Party	June 1974	Australian Psychological Society
1972	Bi-annual Conference of the Communist Party of Australia–first time	June 1974	Bi-annual Conference of the Communist Party of Australia-second time
Easter 1972	National Council of the Humanist Societies of Australia	27 July 1974	Victorian State Council of the ALP
		1 October 1974	Queensland State ALP Labor-in-Politics convention
July 1973	The Advertiser (Adelaide) [newspaper]	14 October 1974	West Australian Presbyterian Assembly
17 August 1973	NSW State Council of the LP of Australia	23 October 1974	WA Royal Commission into Homosexuality
17 October 1973	Australian and New Zealand College of Psychiatrists	24 October 1974	The West Australian [newspaper]
18 October 1973	Federal parliament in support of the Gorton-Cass motion	26 October 1974	Victorian ALP conference
		December 1974	ACT Legislative Assembly
19 October 1973	The Australian [newspaper]	1974	Guild of Undergraduates of the University pf WA
19 October 1973	[The] Canberra Times [newspaper]	1974	WA Trades and Labor Council
1973	Federal ALP women's conference	January 1975	The Apolitical Party
1973	Federal Young Labor conference	February 1975	Australian Union of Students Council
1973	Melbourne University Union	March 1975	The Workers Pary
1973	NSW Young Labor conference	27525	Alternatives to Pprison Seminar, University of NSW
Source: Martin Smith, *The Bulletin*, 7 June 1975, p. 26			

Following the support of homosexual law reform at the State Council of the LP on 27 July 1974, it was announced that two Vic cabinet ministers, Attorney General Wilcox [986] and Chief Secretary Rossiter, [987] would investigate the need for changes in the law and would report later to State cabinet. Then came the news in November [1974] that the Vic parliamentary LP would be asked to vote 'within a few weeks' for the abolition of hanging and the legislation of homosexual acts between consenting adults, Well, as we all know, the hanging debate was held and the abolitionists won the day but the debate on decriminalization of homosexual acts has yet to be held, almost a year after the success of the reform resolution at the State Council of the LP.

It's now almost two years since the NSW State Council of the LP and a year since the NSW Branch of the CP came out in support of law reform, but nothing has been done. Premier Tom Lewis [988] told homosexual groups 'As you will, no doubt, be aware, in the former Premier's policy speech delivered prior to the 1971

[986] The Hon VF Wilcox, Vic LP MLA for the seat of Camberwell, Attorney-General.
[987] The Hon JF Rossiter, Vic LP MLA for the seat of Brighton, Chief Secretary.
[988] The Hon Thomas Lancelot Lewis, NSW LP MLA for the seat of Wollondilly, Premier und Treasurer.

State elections, Sir Robert Askin [989] indicated that the government is against tinkering with the law on homosexuality. There has been no change in the government's thinking on the subject.'

SA has a Labor Party government and so, following the success of homosexual law reform motions at the annual SA convention of the ALP last June Attorney General King [990] was asked to prepare a report on deleting references of sexuality of any kind from the SA Criminal Code and to make 'an early report' to the ALP State Council. No action has followed.

So, despite lots of opportunities to do something positive no parliament in Australia has yet had the courage to grasp the nettle firmly, male homosexuals acts are as illegal now as they have ever been and it appears will be for quite some time yet.

Most gay liberationists do not believe changing the law (presuming the law is ever changed) will do much to lighten the homosexual's burden of guilt. They will still dread exposure to the family, the employer and their non-gay friends. But it will certainly help. If nothing else, it would remove one excuse for the homosexual's tiresome self-pity; and it would enable the homosexual society – and individual homosexual relationship – to stabilise itself.

Going by British and Danish experience, most homosexuals want to be as respectable and conformist as heterosexuals, by and large, a change of law would help homosexuals live with the community, even if it didn't make it much easier for so many of them to live with themselves.

While homosexuals (and supporters) work for law change they must also work for people change and towards remedying the ills, **vis-a-vis** sex and homosexuality, inflicted on this society by thousands of years of Judeo-Christian conditioning. They must work within the churches and synagogues to change the views of priests, rabbis and pastors towards homosexual and homosexuality; they should aim to shape and influence not only the legislators but also the views and attitudes of future generations. They should realise that instant relief from society's oppression is virtually impossible.

Clearly, now, the campaign has moved on to the religious front – a campaign based on reason, truth, love and understanding. Many within the churches and synagogues hold bigoted and unrealistic views on the issue, but many also have faced the institutions, and see homosexuals different, but equal, human beings – not fiends. Homosexuals must work with their heterosexual friends in religious quarters to see that future generations hold, not the unrealistic and uncharitable views taught about them now, but the truth.

In changing the thinking of opinion makers one will change the views of society, and thus change society; the revolution is the sexual revolution and the sexual revolution is the gay revolution.

In answer to the question: 'Some non-gays care don't they?' one must answer in the affirmative; in fact there are non-gays who care about (and campaign for) homosexual rights more than do many homosexuals. If homosexuals want action, then they'll get it when, and only when, the great bulk of them (both female and male) get of their butt-ends and demand not just law reform or law repeal but justice; nothing more, nothing less.

10:–4.1. – Homosexuals and the Church [991]

Sir, regarding the recent article by Greg Tillett, 'Whom May I Love?' (*Communion*, June 1974) [992] I must say I heartily concur in the matter. The social issue of tolerance for other life styles should, I feel, come under the attention of our liberal-geared Church. In deed, what is there to prevent the Liberal Catholic Church from making a simple but dignified statement on homosexuality?

I feel that any expression of love is something between the individuals concerned and God, and as such is the case, I cannot see that any finite, human establishment can possibly pronounce judgment.

If God is love, then surely all love must be godly, whether it is expressed between opposite sexes or the same sex? And if homosexual men and women were able to worship God in a church openly as homosexuals, instead of having to hide their true life form from their fellow-worshippers, surely the path to self-discernment

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[989] The Hon Sir Robin William Askin, NSW LP MLA for the seat of Collaroy, Premier and Treasurer.

[990] The Hon Leonard James King, SA ALP MLA for the seat of Coles, Attomey-General and Minister for Community Welfare.

[991] n.a. 'Homosexuals and the Church', letters, *Communion: the Magazine of the Liberal Catholic Church in Australia*, September 1974, vol. 7. no. 7. p. 21.

[992] See: 10:– 4.1.1. page 564, 'Whom May I Love?'

and spiritual evolution would be greatly assisted. As this evolution is one of the concerns or our Church, why not take a positive step towards helping our fellow man, at least by acceptance and encouragement?

We may not win the popularity poll for making an official statement of acceptance and tolerance, but how can our Church above all others, choose to ignore this situation, when a truth of love is at stake?

Yours, etc. (Name withheld)

Editors note – The writer has since left the LC Church to join the so-called Homosexual Church.

What do homosexuals really want 'to be left alone and regarded as no different from anyone else which simply means 'ignoring the situation' or to be put on a pedestal as something unique to be either tolerated or feted, and thus have attention drawn to them? The Liberal Catholic Church states quite clearly (*Statement of Principles* and *An Introduction to the Liberal Catholic Church* 2nd edition) that in matters of personal life-style, as in politics and any other social issues, it makes no pronouncements, and neither champions nor condemns, unless the individual is causing harm or embarrassment to others, or to the Church as a whole, by his attitude or activities.

To the Church as a body, it matters not whether one is a homosexual, heterosexual, bi-sexual, or asexual – so long as he otherwise fits into the society which the Church is, and does not seek to annoy others by pressing his (or her) particular viewpoint.

One reason why our Church cannot make a public statement or hold a fixed attitude in this matter is precisely because it, too, is a 'finite, human establishment'. – Ed.

10:–4.1.1. – Whom May I Love? [993]

They Want Me to Pray to Stop Loving Him

The young man sat opposite me, gazing intently at the floor. He was only fifteen, and he had a problem which was consuming his world with anxiety. He was in love. He was fifteen, and in love, and ecstatically happy – and being destroyed by guilt and fear and anxiety. His problem was clear: he was in love with another man.

Brought up in a nicely middle-class family, with comfortable evangelical views, he was completely unprepared for a society that hated him for being himself, and persecuted for seeking love. Where did he run? To his family? … they rejected him, wanted him treated to make him normal, accused his friend of corrupting him. To the Church? … to be told his nature was sinful and his love against God's will; to be told to stop being what he was, and to conform to a life he couldn't understand, or, worse, to be tolerated, given charity and sympathy.

Some days later he stood in a courtroom, the charge was one dragged from antiquity. One waited for the magistrate to take up the first stone and pronounce sentence according to Biblical injunction. There was an adjournment, and while the Court staff gazed in tactless disdain at this young criminal, he asked me: 'Why am I being persecuted? Is it a crime to be myself' There was an answer, I did not need to give it. The judicial proceedings resumed; the civilized society used words, not stones, as weapons against him. And he was very lonely; I sat beside him, his official representative, protecting the interests of his welfare. Obviously, I was not the one he wanted. The Court, in its wisdom, had ordered him to have no communication with the one person who now meant anything to him.

The Magistrate spoke of normality, of conforming to society, of living a good life … the pious platitudes and puerile cliches echoed round the Court.

The young man sat opposite me some days later, depressed and unhappy. He was angry, and tearful, and confused. He had received the usual intelligent advice to overcome his problems – 'They keep telling me to pray', he said, 'and I want to – but they want me to pray to stop loving him, and I want to pray because I'm so happy that I do love him.'

There was a silence; words are empty when they offer only hollow sentiments. He looked up, 'Whom may I love?'

Only in a very sick society could that question arise, only in a world that needs to define and categorise, to cut people into conforming patterns, to force them, squash them into stereotyped moulds.

Who can define love? Love is not a respectable relationship, a convenient contract between two socially acceptable partners; love is not conformity, nor is it legislated behaviour.

'Whom may I love?' How would Christ have

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[993] Tillett, Greg John, 'Whom May I Love?', *Communion: the Magazine of the Liberal Catholic Church in Australia*, June 1974, vol. 7. no. 6. pp. 20-1.

answered? By drawing definitions and establishing rules, plotting limits and setting up boundaries? Love is not the juxtaposition of objects; it is a life-giving relationship between two people. Those who seek to define it, inevitably destroy it.

'Whom may I love?' Love anyone, everyone … only LOVE. Find a meaningful relationship, a sharing life. Ignore social restrictions; Christ gave them no credence. Forget convention; Christ was the most unconventional of men And, when you find love, be prepared for the persecution, the hatred, the outrage – for a world living in hatred can hardly welcome the love that is prepared to give everything for its own sake.

Two young men sat opposite me; they were breaking the law, and I, by allowing them to see each other in my office, was an accessory. They did not want to be martyrs; to them, it was so very simple. Their love would not be destroyed. The full force of society – its hatred, prejudice, ignorance – had sought to crush them. It is still trying and, most likely, will succeed. Men without sin still cast stones; men without hearts still try to impose rules and regulations on the freedom of the human spirit, men without minds still perpetuate old cruelties, because they have never tasted the love which could liberate even them.

Whom may I love? Christ's life gave the answer, and it was far, far too extensive for our narrow minds to grasp.

Editor's note – The author is professionally employed in counselling young people, especially those requiring assessment and therapy for sexual problems. – Ed.

10:–5. – Nicholas Winterton MP Cannot Let Go [994]

The Argument From Design is Flawed

LIKE MARTIN Luther King, I have a dream, but it is more modest than his. I just wish that some time, some day, it would be possible to write about religion without discussing anal sex.

This has not been a good week for the dream. In the Commons debate on the age of consent, the Conservative MP Nicholas Winterton [995] announced that God had not designed human beings to gratify themselves that way: 'If the Lord Almighty had intended sodomy to be natural, He would have built men's bodies differently.' It was one of those remarks which opens, like a lightning flash, a vast inspiring vista of stupidity and ignorance. For, of all the Christian arguments around sex, the argument that certain practices are unsafe because they are abhorrent to God is surely the one which needs least thought to explode.

If the Lord Almighty had intended parturition to be natural, he would have built women's bodies differently. By far the most dangerous consequence of any sexual practice a human can indulge in is childbirth. Before modern medicine, or at least modern hygiene, the death rate among mothers was terrifying: about a third of all live births in 16th-century England seem to have ended with the mother's death. These are worse odds even than those facing the men who took their pleasure in bathhouses in San Francisco in the Eighties. Yet childbirth is one of the few things that the Bible favours almost all the way through and that some strands of Christianity continue to regard as an unmixed blessing.

The risks of childbirth are borne entirely by women, which may help to explain why they have escaped Mr Winterton's notice. The other part of the reason, of course, is that childbirth is now extremely safe in Europe: we expect mothers to survive just as we are shocked when children die. It takes an effort of imagination and a little research to realise what the natural state of affairs was like. Similar reasoning applies to the doctrine which I believe Mr Winterton also holds, that the foetus is a human being from the moment of conception. Something between two-thirds and four-fifths of all fertilised eggs miscarry before birth; most of them without anyone noticing at all. This is not evidence of a thoughtful designer.

In fact it seems to me that all instances of the argument from design are and must be flawed. This is not just because of Darwinian arguments about the evolution of complex physical structures like the human eye and the equally complex nervous systems that make eyes useful. These arguments are completely convincing. Whatever the scientific disputes within a framework of Darwinian explanations, none of them leaves room for

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[994] Brown, Andrew, *The Independent* (London), Saturday 27 June 1998, p. 8.

[995] The House of Lords, Information Office, kindly provided the author with the following information about Nicholas Winterton MP who apparently is not related to Earl Winterton, quoted at: 1:–1.1.4.1. page 53, but they have the same negative disposition towards homosexuality. The 6th Earl Winterton quoted there was in fact Edward Turnour whose son, Robert Chad Turnour, became the 7th Earl Winterton in 1962. While Nicholas Winterton's father was Norman Harry Winterton.

planning or teleology; and the most powerful evidence of Darwinian adaptations always comes from bad designs as much as from good ones.

FAIT
&
REASON
Andrew Brown
If the Lord Almighty had intended sodomy to be natural, He would have built men's bodies differently. Is Nicholas Winterton right or wrong?

Even the human eye has its retina facing backwards, in a manner of speaking. That is why we have a blind spot, where the optic nerve passes though; and God, by definition, has no blind spot. He had no need to build one into us and every other mammal. But the argument from design, in its most popular form, is not really about the perfection of the natural world; in that, narrow, form, it was not intended for converting people, but for reassuring those who already believed that they had chosen the right side, and for making their faith more elaborate. In the broad, popular form represented by Mr Winterton, it is about the coincidence of two perfections: the physical and the moral.

And here, I think, it really gets into trouble. The coincidence in this world of physical and moral perfection, as exemplified by the way in which Mr and Mrs Winterton fit together, is too rare and delicate a conjunction on which to base any general moral theory.

It has an extraordinarily 18th-century feel about it, as if the world were laid out for our edification like an agreeable stretch of parkland, but the parkland is best enjoyed from the house, a point of view which makes the gin traps in the shrubbery disappear.

It is true, I suppose, that all religions have to take a view about the sort of human sexual activity which God, or the equivalent, has in mind (or the equivalent) for us. But there is no reason to suppose that this will be particularly natural; and no reason to suppose that what is natural, if we find it, is good. It is a great weakness of the Christian gay case that they tend to argue on the same lines as Mr Winterton – though in the opposite direction. They tend to claim that they were created as they are and this disposition must therefore be good. But the goodness of their sexuality must be derived from something other than innateness. It is likely that science will find soon that some people are born with a disposition to be sociopaths or child molesters; such moral deformations are just as natural as physical ones.

In a curious way, this argument is independent even of Darwin. The abundant imperfections of the world, and the way in which even its most perfect machineries tend to mangle the innocent, would still be here even if we believed they had been put in place directly by God.

10:–6. – Graham Willett's email, 11 September 2001 [996]

Dear Peter

I am writing to thank you for Sending the Archives a copy of your *Compendium to Oppression Upon Reflection*.

It is really a remarkable piece of work and will be of enormous value to researchers for years to come.

Gary [Jaynes] and I spent the other night dipping in and out of it amazing each other with facts and reminiscences (his, I hasten to add – all a bit before my time.

Congratulations on it and on behalf of future generations of researchers, thank you!

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[996] Graham Willett, President, Australian Lesbian and Gay Archives, Melbourne.

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